

**DEATHS IN POLICE CUSTODY:
A THEMATIC STUDY ON LOCK-UP CONDITIONS
AND FACTORS CONTRIBUTING TO THE DEATH**

HUMAN RIGHTS COMMISSION OF MALAYSIA



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Human Rights Commission of Malaysia

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LIST OF ABBREVIATIONS

AADK	-	<i>Agensi Antidadah Kebangsaan</i> (National Anti-Drugs Agency)
APMM	-	<i>Agensi Penguatkuasaan Maritim Malaysia</i> (Malaysian Maritime Enforcement Agency)
AIDS	-	Acquired Immunodeficiency Syndrome
AIO	-	Assistant Investigation Officer
BMA	-	British Medical Association
CAT	-	Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
CCTV	-	Closed-circuit Television
CEDAW	-	Convention on the Elimination of all Forms of Discrimination against Women
CMT	-	Custodial Medical Team
CPR	-	Cardiopulmonary Resuscitation
CPC	-	Criminal Procedure Code
CRC	-	Convention on the Rights of the Child
CRPD	-	Convention on the Rights of Persons with Disabilities
CPS	-	Crown Prosecution Service
EAIC	-	<i>Suruhanjaya Integriti Agensi Penguatkuasaan</i> (Enforcement Agency Integrity Commission)
EPU	-	Economic Planning Unit
ESSCOM	-	Eastern Sabah Security Command
GTP	-	Government Transformation Programme
HIV	-	Human Immunodeficiency Virus

ICCPR	- International Covenant on Civil and Political Rights
ICERDS	- International Covenant on the Elimination of All Forms of Racial Discrimination
ICESCR	- International Covenant on Economic, Social and Cultural Rights
IGSO	- Inspector-General's Standing Order
IO	- Investigation Officer
IP	- Investigation Paper
IPCC	- Independent Police Complaints Commission
IPD	- Ibu Pejabat Daerah
IPK	- Ibu Pejabat Kontijen
JAIS	- Jabatan Agama Islam Selangor
JBS	- Johor Bahru Selatan
JKR	- <i>Jabatan Kerja Raya</i> (Public Works Department)
JPAM	- <i>Jabatan Pertahanan Awam Malaysia</i> (Malaysia Civil Defence Force Department)
KDN	- <i>Kementerian Dalam Negeri</i> (Ministry of Home Affairs)
NGO	- Non-Governmental Organisation
NKRA	- National Key Result Areas
KKM	- <i>Kementerian Kesihatan Malaysia</i> (Ministry of Health Malaysia)
OCPD	- Officer in-charge of Police District
OCS	- Officer in-charge of Station
OHCHR	- Office of the United Nations High Commissioner for Human Rights
OPCAT	- Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
PACE	- Police and Criminal Evidence Act 1984

PATI	-	Pendatang Tanpa Izin
PDRM	-	Polis Di Raja Malaysia
POCA	-	Prevention Of Crime Act 2015
POTA	-	Prevention of Terrorism Act 2015
PRS	-	Police Reporting System
QPS	-	Queensland Police Service
SMTRP	-	Standard Minimum Rules for the Treatment of Prisoners
SOP	-	Standard Operating Procedure
SOSMA	-	Security Offences (Special Measures) Act 2012
SPRM	-	<i>Suruhanjaya Pencegahan Rasuah Malaysia</i> (Malaysian Anti-Corruption Commission)
SUARAM	-	<i>Suara Rakyat Malaysia</i>
SUPM	-	<i>Setiausaha Polis Di Raja Malaysia</i> (Secretary of PDRM)
TB	-	Tuberculosis
UDHR	-	Universal Declaration of Human Rights
UN	-	United Nations
UNDOC	-	United Nations Office on Drugs
UN-HABITAT	-	United Nations Human Settlement Programme
UPR	-	Universal Periodic Review
WHO	-	World Health Organisation

Executive Summary

Since its establishment in 2000, Human Rights Commission of Malaysia (the Commission) has received numbers of complaints concerning human rights violations including deaths in the lock-ups under Royal Malaysia Force (PDRM) custody. Thus, in 2014, the Commission had conducted a research to identify the factors which influence the deaths in police custody. According to the Commission, right to life should be respected as it is enshrined in Article 5 of the Federal Constitution and should not be disregarded by any parties especially among the enforcing bodies. This matter is also highlighted at international level, for example in Article 3 of the Universal Declaration of Human Rights (UDHR).

Based on statistics provided by PDRM, the no. of deaths in police custody from 2000 to 2014 is 255 with the average no. of 17 annual cases within these 15 years period. This scenario indicates grave conflicts which cause dissatisfaction among the public. Frequent occurrence of the cases and various complaints received from the deceased family members as well as non-governmental organizations (NGO) show the existence of a systemic problem on managing the detainees in the lock-ups. At the same time, this problem has tarnished PDRM credibility in the eye of the community.

Therefore, the Commission had proposed an initiative to examine the factors which contribute the deaths in custody. Due to existing constraints, the Commission was not able to perform a thorough investigation to every reported case. Instead, the Commission had addressed the approach of analyzing the pattern and underlying factors of the death so that this critical violation of human rights can be diminished consistently in the future.

The Commission had visited PDRM lock-ups, police stations and interviewed the detainees, PDRM officers and personnel. The Commission had also observed the working surroundings especially for Investigation Officers (IO) and Assistant Investigation Officers (AIO) as well as the facilities provided to fulfill their duties.

As a result of the thematic study, the Commission successfully published this report which generally consists of 11 chapters.

Chapter 1 – Introduction

This chapter includes background information of the thematic study such as the scope, objectives and methodology of the research, the approach, the visited places and the limitations of the study.

The objectives of the study are as follows:

- i. To obtain the information regarding the deaths in police custody;
- ii. To propose recommendations and improvements on laws and policies; addition and improvement of the infrastructure and facilities at police detention centres;
- iii. To identify best practices nationally and internationally that can reduce the total no. of deaths in custody;
- iv. To create/develop and produce suitable training module on human rights regarding deaths in custody for PDRM;

The Commission has visited 47 police stations and lock-ups throughout the country and interviewed the respondents as shown in table below:

Respondent	Total no.
Detainees	373
Sentry personnel	129
Investigation Officers/Assistant Investigation Officers	275
Officer in-charge of station	46

Chapter 2 – Legal Frameworks, Policies and Principles of Universal Human Rights on Deaths in Police Custody

Even though there are national laws like Criminal Procedure Code and Penal Code concerning deaths in custody, these laws do not imply the definition of such cases. Instead they focus more on procedures in managing death investigations and inquest proceedings.

For the purpose of research, 'deaths in police custody' is defined as the death which occurs during arrest or detention by the police including when one passed away if he fell sick or got injured during police detention and in the situation when one died on his way to get the treatment at medical premises during police detention or while getting the treatment at medical premises for cases which lead to ward admission while still in police custody.

At international level, Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) of United Nations (UN) is established to prevent the torture and abusive acts whereas the Optional Protocol of CAT (OPCAT) is established to provide operational working framework for state members in order to fulfill their responsibility under CAT. Both CAT and OPCAT had been issued on 26 June 1987 and 22 June 2006 respectively and were being participated by 158 countries. However, Malaysia has not yet participated either CAT or OPCAT.

Chapter 3 – Deaths in Police Custody Statistics

The total number of death reported since 2000 till 2014 is 255. Although the total number of detainees who were being detained within the 15 years period was beyond the Commission knowledge, the average death of 17 cases per year is an alarming figure and it is very disturbing as the right to life is part of prominent non-derogable human rights.

Based on statistics provided by PDRM, the main cause of death (in police custody) is due to health reasons which are 207 cases. The second highest factor is due to suicidal incidence with a total no. of 30 cases. Meanwhile, there are 2 cases resulted

from fighting among detainees and another 2 cases due to falling accident at the lock-up's bathroom. The statistics also show injuries due to foul play by police have led to 2 cases of death.

The establishment of Coroner's Court in every state is seen as a positive step to investigate the factors of deaths in custody comprehensively. The scope of the court assists in determining whether the deaths occur due to misuse of power by the police or health problems suffered by the detainees.

Chapter 4 – Management and Facilities of the Infrastructure in the Lock-ups: Observation

The visit to lock-ups concludes that there are numerous of problems and difficulties such as inefficient ventilation system, overcrowded lock-ups and limited space for sleeping as well as poor quality of prepared food which does not conform with the standards set out in national law or regulations and international standards, for example in the Nelson Mandela Rules. This is happening due to financial constraints and bureaucracy which complicate the maintenance and improvement of the lock-ups.

Chapter 5 – Health Issues and Other Factors of Death: Observation

Based on the death statistics and feedback from PDRM during the visits, the Commission affirms that the main cause of deaths in police custody is related to health reasons, followed by the deaths caused by detainees own actions and foul play by the police. As there have been no medical officers who handle the medical screening on detainees, it further complicates the lock-up administration to evaluate the health status and healthcare needed though it is compulsory to carry out medical screening when a suspect is detained as stated in Lock-up Rules 1953. Besides, PDRM personnel are not trained to give emergency aid if needed. These factors have influenced the deaths in custody due to the ongoing constraints.

Chapter 6 - PDRM Officers and Personnel Welfare: Observation

The Commission finds that all visited Police Districts Headquarters/Stations face similar problems of insufficiency of basic facilities at the office; work force planning; health issues; housing and improvement of condition and building structure. Based on the observation, the Commission identifies burdened workloads have led to stress among PDRM personnel due to clash of duties and family life. This clash causes conflicts and contributes towards stress among PDRM personnel. At the same time, they are more vulnerable of getting infectious diseases because of their duties which deal with detainees in the area of poor ventilation system.

Chapter 7 - Management and Facilities of the Infrastructure in the Lock-ups: Findings and Recommendations

The Commission Recommendations are divided into three categories of lock-up management, basic needs of detainees and facilities of lock-up infrastructure.

I. Lock-up Management

Recommendation 1: Power Coordination and Cooperation between Agencies

Recommendation 2: Lock-up Gazette

Recommendation 3: Overcrowding

Recommendation 4: Old Lock-ups

II. Basic Needs of DETAINEES

Recommendation 5: Food/Drinks for Detainees

Recommendation 6: Clothing

Recommendation 7: Toiletries

III. Facilities of Lock-up Infrastructure

Recommendation 8: Ventilation and Lighting System

Recommendation 9: Cleanliness of Cells and Toilets

Recommendation 10: Space for Sleeping

Recommendation 11: Closed-circuit Television (CCTV)

Chapter 8 – Health Issues and Other Factors of Death: Findings and Recommendations

The Commission Recommendations are divided into three categories of medical facilities at detention place, deaths caused by detainees own actions and deaths due to foul play by the police.

I. Medical Facilities in Detention

Recommendation 1: Medical Officers and Health Screening

Recommendation 2: Treatment Room

Recommendation 3: Communication and Record

Recommendation 4: More Effective Monitoring and Surveillance on Detainees

Recommendation 5: Medicine Storage

Recommendation 6: First-Aid Kit

Recommendation 7: Vehicles to Hospital

Recommendation 8: Screening and Treatment at Hospital

Recommendation 9: Treatment towards Vulnerable Detainees

II. Deaths Caused by Detainees Own Actions

Recommendation 10: Dealing with Detainees who Suffer Mental Problems

Recommendation 11: Dealing with Detainees who Involve in Alcoholism

Recommendation 12: Dealing with Detainees who Involve in Drug Abuse

Recommendation 13: Dealing with Detainees who prone to Committing Suicide

III. Deaths due to Foul Play by the Police

Recommendation 14: Use of Force during Interrogation

Chapter 9 – Rights and Welfare of PDRM Personnel: Findings and Recommendations

The Commission Recommendations are divided into four categories of basic facilities/office/station, health, work force planning and housing.

I. Basic facilities/office/station

Recommendation 1: Building Structure and Location

Recommendation 2: Basic Needs and Location of Investigation Officers' (IO) Room/
Assistant Investigation Officers' Room

Recommendation 3: Interrogation Room

Recommendation 4: Eyewitness Identification Room

Recommendation 5: Vehicles

Recommendation 6: Other Facilities

II. Work Force Planning

Recommendation 7: Workload and Age Factor

III. Healthcare

Recommendation 8: Healthcare

IV. Housing

Recommendation 9: Housing for PDRM Personnel

Chapter 10 – Improvement of Policies and Laws: Findings and Recommendations

Based on the laws and policies allocated concerning deaths in detention, the Commission has proposed several recommendations for improvement on deaths in police custody management.

Recommendation 1: Creating the Definition of Deaths in Custody

Recommendation 2: Reviewing the Lock-up Rules 1953

Recommendation 3: Getting the Access of Inspector General's Standing Order (IGSO)

Recommendation 4: Malaysia Participating Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and Optional Protocol of CAT

Recommendation 5: Placement of Medical Officers in Police Lock-ups

Recommendation 6: Introducing the Employment of Medical Officers under Police Scheme

Recommendation 7: Gazetting the Lock-ups

Recommendation 8: Identifying Symptoms and Level of Injury

Recommendation 9: Electronic Custodial Module

Recommendation 10: Board of Visitors

Conclusion

As a conclusion, the Commission finds five main things that should be highlighted and dealt with immediately to reduce the deaths in police custody.

1. Health issues

This is the main problem as 80% of the deaths in custody are caused by health reasons. The Commission recommends medical unit or medical officers are established and placed at all lock-ups to deal with health issues as a specific team. They can also treat and give healthcare to detainees and this will lessen the burden of PDRM personnel. The Commission also indicates the escalating no. of death among abused drug users, among others, is due to their weak physical caused by withdrawal syndrome. The Commission advises PDRM and the Government with the assistance by Ministry of Health to carry out drug diversion programme. This programme has been practised in Melbourne, Australia where Victoria Police established cooperation with Department of Health of Victoria to carry out Victorian Alcohol and Drug Strategy in order to overcome the problem of deaths in police custody.

2. Lock-up infrastructure

The facility should be improved not only to reduce the death rate but also to respect the rights, welfare as well as the privacy of detainees. The Commission finds the standard of facility is far worse than the international standard. Those who are detained in the lock-ups are suspected to be involved in any crime though they are not yet proved guilty. Therefore, the lock-up surroundings and facilities provided should not be blaming them beforehand.

3. Investigation and request for remand

Based on the findings of the interview with detainees and IO/AIO as well as the filed complaints, the Commission observes that the investigation has been widely carried out after the arrest and modern devices and technology are barely utilized to assist the process. Remand request is done when IO do not have enough time to perform the investigation due to hefty workload.

The Commission recommends PDRM to practise prior investigation before any arrest. The report of the Royal Commission to Enhance the Operation and Management of PDRM (Royal Commission)¹ has proposed that IO have to establish reasonable grounds before making arrest and adapt a proactive investigation. This will shorten the period of detainees being in the lock-up and avoid the remand request without reasonable justification. The Commission also advises PDRM to use modern devices and technology in order to assist the investigation and minimize the direct contact with detainees.

4. Rights and welfare of PDRM officers and personnel

The Commission finds the working surroundings and facilities available at the office are not productive to assist daily tasks of PDRM personnel. Officers and personnel are vulnerable to dangerous infectious diseases and the diseases are detrimental to their safety when performing the duties. There is no doubt that PDRM personnel in-charge are trained to face difficulties however it is not comparable with unconducive, unsafe, and dirty working place which demotivate them and build up their stress. This matter can affect their treatment towards detainees and it can lead to unwanted incidents.

5. Cooperation between agencies

Cooperation between agencies is important in effectively handling the detainees including providing facilities in detention and healthcare of detainees. More attention and further treatment should be given on high risk detainees (like drug addiction, mental illness and others) to avoid any unfortunate incidents. Every party should assist the police in carrying out their duties especially in supervising the detainees which requires the best cooperation model.

This report is presented so that the highest administration of PDRM and the Government will take measures on decreasing deaths in police custody and examining the proposed recommendations. The report also emphasizes the importance of

¹ Report of the Royal Commission to Enhance the Operation and Management of PDRM, 2005 pp 248-250

assuring the police welfare to reduce their stress when handling the duties. According to the Commision, there are suggested recommendations covering the financial and legal implications which can lead to collective benefits whenever being nonetheless carried out.

CHAPTER 1

INTRODUCTION

I. Research Background

1.1 According to Article 5(1) of Federal Constitution, no person may be deprived of personal liberty except in accordance with law and he has the right to be informed of the reasons of his arrest and to be legally represented by a lawyer of his choice.³ The right to liberty is also stated in Article 3 of Universal Declaration of Human Rights (UDHR)⁴ which forms as a foundation for the Declaration. Hence, a person who is arrested is presumed innocent until there is evidence against him in the court of laws. Therefore, the arrested person shall not be subjected to humiliating and degrading treatments.⁵

1.2 Undoubtedly, civil societies describe the police as a legitimate organization in executing the duty of combating crimes and this is stated by James J. Willis⁶ as follows:

“... attempts to reshape the structures and process of accountability and control between the police and the community illuminate the importance of the degree to which the public perceives the police as legitimate.”⁷

This means the police that is a legitimate enforcement body responsible for fighting crimes and at the same time carrying out a duty in a complex situation, can get easily distracted due to their high accountability in executing the task as law enforcers and have a great responsibility in ensuring that detainees while in

³Article 5(3) of Federal Constitution.

⁴Article 3 of Universal Declaration of Human Rights (UDHR) states that everyone has the right to life, liberty and security of person.

⁵Article 10(1) International Covenant on Civil and Political Rights (ICCPR).

⁶Willis J.J; Reisig and Kand (eds). A Recent History of the Police from The Oxford Handbook of Police

⁷Willis J.J; Reisig and Kand (eds). A Recent History of the Police from The Oxford Handbook of Police and Policing. Oxford University Press 2014. (pp 3-33).

their custody are safe⁸ as well as providing duty of care to detainees and these responsibilities weigh heavily on their shoulders.

- 1.3 In carrying out the investigation, the police must follow the guidelines stated in Standard Operating Procedures (SOP). This is important to guarantee that the individuals who are being interrogated are not physically and mentally tortured ~~in order~~ to get information or confessions.⁹ It is the police's responsibility to ensure those who are detained and under police custody are being monitored at all times to ensure their safety.

II. Deaths in Police Custody

- 1.4 Based on statistics provided by PDRM, 255 detainees died in police custody between 2000 to 2014. According to the statistics, the main cause of death includes poor healthcare supervision of detainees while in detention. At the same time, police officers/personnel who attend to the detainees also face various health problems.
- 1.5 High death rate of detainees in police custody has caused dissatisfaction among the public and they are in the opinion that the police are responsible for the deaths that have occurred. Complaints from various parties have been filed to the Commission and they urged for an action to be taken in order to investigate the allegations concerning human rights violations.
- 1.6 The Commission holds the opinion that in order to address the issues deaths of detainees in police custody, a research should be done so that the problems can be identified and several recommendations can be made to reduce the number of deaths of detainees, for short term as well as for long term.

⁸*Thematic Report: Deaths in Police Custody – A Ten Year Review (New Zealand) 2012. (p 11).*

⁹Article 1 of Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment

III. Scope of the Research

- 1.7 With the mandate under Human Rights Commission of Malaysia Act 1999,¹⁰ the Commission has taken an initiative to carry out a research in order to solve the problems of death cases of detainees in police detention. The foundation of the study is based on complaints¹¹ received, periodic visits¹² to detention centres and roundtable meetings¹³ with Polis DiRaja Malaysia (PDRM) as well as the other stakeholders. The Commission has also analyzed the total number of deaths in police custody to be used as reference for the research.
- 1.8 This research analyses causes of deaths in detention and proposes several recommendations and improvements to be implemented to reduce the number of deaths in police detention. This study does not address the death cases rather it focuses on factors contributing to the deaths.
- 1.9 The research only focuses on the treatment towards detainees when they were detained until their death occurred. It does not include the process or investigation after the death like the investigation of detainees death under section 329 of Criminal Procedure Code (CPC) and the inquest by Coroner's Court.

¹⁰Act 597.

¹¹Investigation carried out by the Commission based on the mandate under Section 4(1) (d) Act 597 empowers the Commission "...to inquire into complaints regarding infringements of human rights referred to in section 12."

¹²In executing the function of the Commission in protecting and promoting human rights in Malaysia, Section 4(2)(d) Act 597 authorizes the Commission "...to visit places of detention in accordance with procedures as prescribed by the laws relating to places of detention and to make necessary recommendations;"

¹³Report of the Complaints, Monitoring and Inquiries Group; Human Rights Commission of Malaysia Annual Report 2013 (pp71-74).

IV. Objectives of the Research

1.10 The research objectives are outlined to meet the concept of the study which consists of the information obtained for the purpose of research on the deaths in detention. The findings and recommendations of the research are expected to improve the practices, laws and policies regarding treatment towards detainees, logistics, and PDRM administration in general. The Commission hopes the proposed improvements can be carried out periodically within a time frame that can be realistically implemented by the police and relevant ministries.

1.11 Objectives of the research are summarized as follows:

- i. To obtain the information regarding the deaths in police custody;
- ii. To propose recommendations and improvements on laws and policies; addition and improvement of the infrastructure and facilities at police detention centres;
- iii. To identify best practices nationally and internationally that can reduce the total number of deaths in custody;
- iv. To create/develop and produce suitable training module on human rights regarding deaths in custody for PDRM;

V. Research Question

1.12 Based on the Commission observation, there is a systemic problem from the aspect of laws and execution; procedures and facilities for investigation; the condition of detention centres; and the health status of detainees under police custody. The welfare of officers/personnel and staff involved in carrying out their duties is also an issue because death of detainees will have an impact on PDRM members as a whole. In elaborating the recurring problem in more details, the observation and research not only focus on detainees but also on PDRM officers/personnel and staff who are directly involved with detainees.

1.13 Hence, this study will analyse several issues and questions with regard to deaths in detention, and they are as follows:

- i. What are the contributing factors for deaths in detention?;
- ii. What are the present practices and current Standard Operating Procedures (SOP) in handling the detainees (arrest, interrogation, health and others), and whether the minimum standard is adhered to?;
- iii. Type of protection to ensure health condition of detainees while being detained, and measures taken when death occurs while in detention;
- iv. Providing suggestions as well as creating awareness program that can reduce deaths in police custody, and
- v. Recommendations that can be conveyed to the Government in order to assist PDRM on laws, policies, human resource and infrastructure to help improve the moral and integrity of PDRM officers and personnel.

VI. Phases of the Research

1.14 The research is carried out in stages to ensure the data obtained is exhaustive and consists of aspects required to be evaluated in analysing the deaths in police custody. The process of data collection, research and analysis are done in stages starting with preliminary data gathering until the final phase which is the process of updating the report and conducting follow-ups with the stakeholders. The phases are divided as follows:

FIRST PHASE (Two months)
Preliminary Data Gathering Process
Obtain preliminary data from Polis DiRaja Malaysia (PDRM) concerning death in detention (total no. of death, the deceased's demography, statistics of

deaths in police custody since 2000 until 2014), standard operating procedures and other relevant information that can facilitate the research.

SECOND PHASE

(Three months)

Data Gathering Process

Gather data and information on deaths in police custody through field visits to identified lock-ups. The visits to the lock-ups are divided into designated zones. The respondents are identified and categorized based on particular groups to ease the interview process for data gathering.

THIRD PHASE

(Seven months)

Field Visits

Middle Zone (Klang Valley)	28-30 April 2014 14-16 May 2014
North Zone	2-5 June 2014
Sarawak Zone	23-27 June 2014
South Zone	13-17 July 2014
East Coast Zone	August 2014
Sabah Zone	2-26 September 2014
South Zone II	October 2014

FOURTH PHASE

(Six months)

Report Preparation

Analysis on all collected data which will become as one of the main references in producing the Research report.

FIFTH PHASE (Two months)
Presentation of the Findings and Follow-ups
Draft report will be presented to PDRM and identified agencies to get feedback from all parties in order to propose recommendations that can be achieved within a certain period of time.

SIXTH PHASE (Two months)
Updating Report and Drafting Follow-ups
The report is updated according to the feedbacks received and revised as necessary. The findings are distributed to PDRM and stakeholders for follow-up actions.

VII. Methodology of the Research

1.15 The Commission has been informed by PDRM that until 16 February 2015, there were 486 active and 287 inactive lock-ups throughout Malaysia (please refer Chapter 4 para 4.13). The visited lock-ups include Central Lock-ups in Jinjang (Kuala Lumpur), Shah Alam (Selangor) and Bayan Baru (Penang) in Malaysia. The research is carried out to collect the data from lock-ups where incidences of death in detention have occurred. The Commission visited 47 lock-ups which consist of:

- i. Central lock-ups;
- ii. Lock-ups in cities and rural areas;
- iii. Lock-ups whereby there are deaths in detention and number of death cases reported. (*The visited lock-ups include for male, female and juvenile offenders*)

1.16 The methodology of the research consists of data collection through several methods as follows:

- i. Visits to selected lock-ups throughout Malaysia (Table 1);
- ii. Interviews with detainees and PDRM officers/personnel based on set of questions prepared according to identified categories of respondents (Table 2);
- iii. Observation of the police station surroundings and PDRM personnel working environments.

Table 1: List of visited Police District Headquarters (IPD) and lock-ups.

Zone	IPD	Lock-up
Middle Zone	IPD Dang Wangi	1. Dang Wangi Central Lock-up
	IPD Shah Alam	2. Shah Alam Central Lock-up
	IPD Sentul	3. Jinjang Centra Lock-up
	IPD Kajang	4. Semenyih Police Station Lock-up
		5. Kajang Police Station Lock-up
	IPD Cheras	6. Salak Selatan Police Station Lock-up
	IPD Klang Selatan	7. Klang Selatan Police Station Lock-up
		8. Pelabuhan Klang Police Station Lock-up
	IPD Klang Utara	9. Kapar Police Station Lock-up
	IPD Brickfields	10. Petaling Police Station Lock-up
		11. Travers Police Station Lock-up
North Zone	IPD Kota Setar	12. Kota Setar Police Station Lock-up
		13. Kepala Batas Police Station Lock-up
	IPD Kubang Pasu	14. Jitra Police Station Lock-up
	IPD Timur Laut	15. Patani Police Station Lock-up
		16. Dato Keramat Police Station Lock-up

	IPD Seberang Prai Selatan	17. Prai Selatan Police Station Lock-up
Sarawak Zone	IPD Barat Daya	18. Bayan Baru Central Lock-up
	IPD Kuching	19. Tabuan Jaya Police Station Lock-up
		20. Satok Police Station Lock-up
	IPD Sibu	21. Sibu Central Lock-up
	IPD Bintulu	22. Bintulu Central Lock-up
	IPD Miri	23. Miri Central Lock-up
South Zone I	IPD Johor Bahru Selatan	24. Ayer Molek Police Station Lock-up
	IPD Seri Alam	25. Seri Alam Police Station Lock-up
		26. Taman Johor Jaya Police Station Lock-up
	IPD Pontian	27. Pontian Police Station Lock-up
		28. Simpang Renggam Police Station Lock-up
	IPD Kluang	29. Kluang Police Station Lock-up
	IPD Batu Pahat	30. Batu Pahat Police Station Lock-up
East Coast Zone	IPD Dungun	31. Dungun Police Station Lock-up
	IPD Kuala Terengganu	32. Kuala Terengganu Police Station Lock-up
	IPD Kota Bahru	33. Kota Bahru Police Station Lock-up
	IPD Pasir Mas	34. Pasir Mas Police Station Lock-up
		35. Rantau Panjang Police Station Lock-up
	IPD Tanah Merah	36. Tanah Merah Police Station Lock-up
Sabah Zone	IPD Kota Kinabalu	37. Sabah Central Contingent Lock-up
	IPD Penampang	38. Penampang Police Station Lock-up
	IPD Ranau	39. Ranau Police Station Lock-up
	IPD Sandakan	40. Sandakan Police Station Lock-up
	IPD Lahad Datu	41. Lahad Datu Police Station Lock-up
	IPD Tawau	42. Tawau Police Station Lock-up
	IPD Alor Gajah	43. Alor Gajah Police Station Lock-up
	IPD Melaka Tengah	44. Melaka Tengah Police Station Lock-up

South Zone II	IPD Tampin	45. Tampin Police Station Lock-up
	IPD Jempol	46. Jempol Police Station Lock-up
	IPD Seremban	47. Seremban Police Station Lock-up

1.17 During the visit to lock-ups, the Commission interviewed detainees, officers/personnel and administrators who were directly involved with detainees to gather their opinion regarding the current management system and issues related to deaths in detention. The prepared questions are tailored to the respondents' situations in order to obtain detailed information on the situation. Both quantitative and qualitative data to facilitate the understanding of the issues at hand. Interviews are conducted with the following groups with the interview questions tailored according to identified respondents:

- i. Officers in-charge of Station (OCS);
- ii. Investigation Officers and Assistant Investigation Officers;
- iii. Personnel in-charge in supervising/managing detainees;
- iv. Detainees.

Table 2: Total no. of Officers/Assistant Officers Interviewed

Respondent	Total
Officer in-Charge of Station	46
IO/AIO	275
Sentry Personnel	129
Detainees	373
Total	823

VIII. Detainees Sampling

1.18 Interviews with detainees were also carried out and the total number involved in the study were as follows:

- i. 10% male detainees and 10% female detainees from overall total of detainees in lock-ups with high occupancy;
 - ii. minimum of 10 detainees in lock-ups with moderate capacity;
 - iii. entire detainees in lock-ups with total number of less than 10 people.
- 1.19 Observations have been done on lock-ups, interrogation room, storage for detainees, investigation officers' room/assistant investigation officers' room and other places related to the research (Table 3).

Table 3: Total number of observation done in Police Station

Area of observation	Total
Lock-up	47
IO/AIO Room/Place in-Charge	109

- 1.20 Review of the laws in Malaysia and overseas as well as international treaties which are relevant to this research were also made.

IX. Literature Review

Previous Study

- 1.21 In 2004, the Royal Commission to Enhance the Operation and Management of PDRM (Royal Commission) was established by Seri Paduka Baginda Yang di-Pertuan Agong under the Commission of Inquiry Act 1950. In 2005, the Royal Commission produced a report¹⁴ covering various policing aspects. The report examined issues raised by the public on no action being taken following a police report; corruption; deaths in police custody; accountability; dissatisfaction in public relation and abuse of power by the police.
- 1.22 The issue of deaths in detention in Royal Commission Report covers the causes for the deaths from year 2000 until 2004.¹⁵ However, the report did not cover in

¹⁴Royal Commission to Enhance the Operation and Management of PDRM Report (2005).

¹⁵"Deaths in Police Custody in 2000-2004." *Royal Commission to Enhance the Operation and Management of PDRM Report (2005)*. (pp 82-97)

details if detainee's illness was one of the factors contributing to the deaths in detention. The report studied five death cases under police custody including the case of Francis Udayappan who drowned in an attempt to escape from police custody on 16 April 2004. Observation and findings from these studies cover on how the police handled the investigation on death in detention, insensitivity showed towards the deceased family members and the responsibility of the police when detainees was not well.

- 1.23 Suara Rakyat Malaysia or SUARAM also highlighted the issue of deaths in police custody in SUARAM annual report, *Human Rights Report, 2015 Overview, Civil and Political Rights*. SUARAM report stated that until November 2015, they had recorded 11 death cases in detention. However, the total number of cases was based on media reports and there was no conclusive data on the stated deaths. SUARAM report concluded that the deaths would not happen if the ill detainees were sent to hospital for further treatment.
- 1.24 The annual report of *Amnesty International Report 2014/15, The State of the World's Human Rights* touched on the violations of human rights by the police. The violations of human rights mentioned are death in detention, torture, inhuman treatment including the use of brutal forces and the use of firearms.¹⁶
- 1.25 At the international level, a number of studies have been done concerning deaths in police custody. This research makes reference to reviews on the procedures of previous studies in Commonwealth countries on deaths in police custody. Among the reports referred to in this research are *Thematic Report: Deaths in Police Custody – A Ten Year Review*¹⁷ in New Zealand; *Death in or following police custody: An Examination of the cases 1998-99 – 2008-09*,¹⁸ in United Kingdom and *Monitoring Injuries in Police Custody: A Feasibility and Utility Study* in Australia.¹⁹ Legal analysis and relevant findings from these studies are able to facilitate in providing recommendations for this research.

¹⁶Country Entries, Malaysia (pp239-240).

¹⁷*Independent Police Conduct Authority, New Zealand, 2012.*

¹⁸*IPCC Research Series Paper: 17, Independent Police Complaints Commission, United Kingdom.*

¹⁹Sallybanks, J. *Monitoring Injuries in Police Custody: A Feasibility and Utility Study*, Technical and Background Paper No. 15; Australian Institute of Criminology (2008).

X. Legal Framework of Crime in Malaysia

1.26 The research also includes primary study on legal framework of crime in Malaysia and it is further discussed in Chapter 2. The legal summaries that are deliberated in the subsequent chapter are as follows:

- i. Constitution of Malaysia which ensures the right of an individual to be informed of the reasons of his arrest as enshrined under Article 5(3) of Federal Constitution;²⁰
- ii. Criminal Procedure Code²¹ discusses procedures on detaining a suspect as in section 28,²² 28A,²³ including Special Proceedings²⁴ to investigate a death, and
- iii. Lock-up Rules 1953²⁵ allocates the procedures on detainees who are being detained in lock-up.

XI. International Treaties

1.27 Malaysia as a State Member of United Nations upholds the spirits and hopes pursued by the United Nations (UN) especially those which are enshrined in Universal Declaration of Human Rights that emphasize the principles of human rights, dignity and worth of the human person.²⁶ At the same time, everyone has the right to life, liberty and security of person,²⁷ right to equal protection of the law²⁸ and everyone charged with a penal offence has the right to be presumed innocent until proven guilty according to law in a public trial.²⁹

²⁰Article 5. Liberty

(3) If a person is being detained, he has the right to be informed of the reasons of his arrest and to be legally represented by a lawyer of his choice.

²¹Act 593.

²²How person arrested is to be dealt with and detention for more than twenty-four hours.

²³Right of a person who is being arrested.

²⁴Chapter XXXII, Inquiries of Death, Criminal Procedure Code; Section 334-338.

²⁵L.N. 328/1953.

²⁶Preamble, Universal Declaration of Human Rights (UDHR).

²⁷Article 3 of Universal Declaration of Human Rights.

²⁸Article 7 of Universal Declaration of Human Rights.

²⁹Article 11 of Universal Declaration of Human Rights.

1.28 Malaysia has signed three out of nine main international treaties³⁰ which are Convention on the Rights of the Child (CRC)³¹, Convention on the Elimination of all Forms of Discrimination against Women (CEDAW)³² and Convention on the Rights of Persons with Disabilities (CRPD).³³

1.29 As discussed previously, Malaysia has not yet become a Member State for Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).³⁴ However, as one of the preparative steps to become a

³⁰Six international treaties which have not yet signed by Malaysia are as follows:

- i) Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment;
- ii) International Covenant on Civil and Political Rights;
- iii) Convention for the Protection of all Persons from Enforced Disappearance;
- iv) International Discrimination on All Forms of Racial Discrimination;
- v) International Covenant on Economic, Social and Cultural Rights;
- vi) International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families;

Further information regarding ratification status of Malaysia on international treaties can be accessed through the following link:

http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=105&Lang=EN (Accessed on 10 December 2015)

³¹Malaysia participated CRC on 17 February 1995 but expressed its reservations with respect to Article 2 (Without Discrimination), Article 7 (Nationality), Article 13 (Freedom of Speech), Article 14 (Freedom of Thought, Conscience, and Religion), Article 15 (Freedom of Peaceful Assembly), Article 28(1)(a) (Making Primary Education Compulsory and Available Free) and Article 37 (Torture and Depriving of Liberty). However, the Government had lifted these three reservations of Article 1, 13 and 15 in 2010.

Further information can be obtained from *the Report on the Round Table Discussion concerning Reservations on International Convention: CEDAW, CRC & CRPD SUHAKAM (2015)*. (pp 25-33).

³²Malaysia participated CEDAW on 14 August 1995 and issued reservation on Article 9(2) concerning nationality, Article 16(1)(a) which is the same right to enter into marriage, the same right freely to choose a spouse, 16(1)(c) (the same rights and responsibilities during marriage and at its dissolution), (1)(f) concerning the same rights and responsibilities with regard to guardianship/wardship of children especially under 18 years old and 16(1)(g) regarding the same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation.

Further information can be obtained from the *Report on the Round Table Discussion concerning Reservations on International Convention: CEDAW, CRC & CRPD SUHAKAM (2015)*. (pp 5-22)

³³Malaysia signed CRPD on 7 April 2008 and ratified the Convention on 19 July 2010. Malaysia expressed its reservations with respect to Article 15 (torture or cruel, inhuman or degrading treatment towards persons with disabilities) and Article 18 (liberty of movement, freedom to choose residence and nationality on an equal basis with others and children with disabilities shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by their parents).

Further information can be obtained from *the Report on the Round Table Discussion concerning Reservations on International Convention: CEDAW, CRC & CRPD SUHAKAM (2015)*. (pp37-45).

³⁴On Second Universal Periodic Review, the Government has received 232 proposals from member states of UN including accelerating the process on participation of Malaysia in international instruments including CAT whereby Malaysia has not yet become the Member State. Full report on Report of the Working Group on the Universal Periodic Review (Malaysia) by UN can be accessed through the following link:

<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G13/188/48/PDF/G1318848.pdf?OpenElement> (Accessed on 7 December 2015)

Member State, Malaysia should focus on the prohibition of torture especially when conducting official interrogations³⁵ and that investigations should be carried out if there are allegations of tortures.³⁶ Article 2 and 16 of CAT states that prevention measures should be taken to prevent actions that can lead to torture and other cruel, inhuman or degrading treatment or punishment.³⁷

- 1.30 This research also discussed in detail the Standard Minimum Rules for the Treatment of Prisoners (SMRTP)³⁸ which outlines the best model for penal institutions. Commission on Crime Prevention and Criminal Justice has ameliorated SMRTP as United Nations Standard Minimum Rules for the Treatment of Prisoners (The Nelson Mandela Rules)³⁹ which focuses on the health of detainees in prison and also on detainees who can harm other inmates. The Nelson Mandela Rules focuses on the importance of supervising the medical team that ensures the health status of the detainees and at the same time to avoid torture and other cruel, inhuman or degrading treatment or punishment towards the inmates or detainees.⁴⁰ It should be understood that the rules aims to present what is accepted and good practice in treating

³⁵Article 1 of CAT defines torture as follows:

“For the purposes of this Convention, the term “torture” means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.”

³⁶Article 12 and 13.

³⁷The importance to create prevention measures has been reiterated in Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. Further information on Optional Protocol can be accessed from the website of Office of the High Commissioner for Human Rights through the following link: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/OPCAT.aspx> (Accessed on 2 December 2015)

³⁸Accepted in United Nations First Congress on Crime Prevention and Criminal Justice in Geneva in 1955, and approved by Economic and Social Council with the Resolution of 663 C (XXIV) on 31 July 1957 and 2076 (LXII) on 13 May 1977.

³⁹It was approved in General Assembly of United Nations on 17 December 2015. Further information can be accessed through the following link: <https://www.unodc.org/unodc/en/press/releases/2015/May/mandela-rules-passed--standards-on-the-treatment-of-prisoners-enhanced-for-the-21st-century.html> (Accessed on 30 December 2015)

⁴⁰Statement by Ivan Simonovic, Assistant Secretary-General for Human Rights at the “High-Level Launch of the Nelson Mandela Rules”, New York, 7 October 2015. Further information can be accessed through the following link: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16577&LangID=E#sthash.pCCwSMPj.dpuf> (Accessed on 22 January 2016)

detainees and managing institutions; although there are disparities in terms of law, economy and geography, its execution is not possible to be done all at once. Nevertheless, it shall act as a catalyst to make it a continuous effort especially in addressing technical problems which this rule describes the accepted minimum standards by the UN.⁴¹

XII. Limitations of the Research

- 1.31 The Commission visited the lock-ups in which deaths in custody took place although a part of the lock-ups were no longer being used and unoccupied as PDRM had moved to new buildings. This creates constraints for the Commission in getting a real picture and situation on the status of deaths in detention of the detainees.
- 1.32 There were also unoccupied lock-ups as the detainees were taken out for remand application or investigation processes during the visits. There were lock-ups with limited number of detainees as well as police stations which were no longer used to place the detainees since detainees had been sent to the central lock-ups. Sometimes the selected detainees could not convey the information effectively or clearly due to their lack of proficiency or not being proficient in Malay or English (especially among foreign detainees)⁴² and there were also detainees who were isolated by the lock-up administrator as they could threaten the safety of the Commission officers. At the same time, as the total no. of detainees was not available, the Commission had a difficulty in determining the percentage of detainees who were interviewed. The Commission was informed by PDRM that there was no comprehensive record on the total no. of detainees as the numbers keep on changing every hour, thus was seen as inapplicable.

⁴¹Preliminary Observation, Standard Minimum Rules for the Treatment of Prisoners.

⁴²For respondents under OKT category, the Commission can only evaluate their language proficiency when they are taken to the Commission officers for interview. If the respondents cannot speak in Malay or English, the Commission will face the difficulty in obtaining the information. The problem occurred in lock-ups with less no. of OKT.

- 1.33 Interviews carried out with Investigation Officers/Assistant Investigation Officers did not meet the required quota and only 275 Investigation Officers/Assistant Investigation Officers were interviewed during visits to the identified Police District Headquarters as not all officers were at their offices at the time. Most of them were outstation or attending their cases. The information received regarding death in detention from Investigation Officers/Assistant Investigation Officers' perspectives was also limited. Sometimes the research forms were not filled out completely and not adequately comprehensive to provide the real situation of the study, and the welfare as well as the health of Investigation Officers/Assistant Investigation Officers.
- 1.34 The Commission had difficulty in gathering complete data concerning deaths in custody from PDRM. When drafting the report, there was only data of deaths in police custody from 2000 until February 2014 with the section of data provided according to races (2000 - February 2014)⁴³ and states as well as causes of death.⁴⁴
- 1.35 The Commission informed the Secretary of Polis DiRaja Malaysia (SUPM) in writing and was given permission to take pictures of the visited lock-ups and surrounding areas to get a clear picture on the real condition of detention lock-ups and the office. However, there were several constraints faced by the Commission:
- i. Only one camera was used throughout the study and most of the captured lock-up pictures were at the male lock-ups;
 - ii. Few Investigation Officers/ Assistant Investigation Officers did not allow the Commission to take pictures of their rooms as they felt uncomfortable.

⁴³Chapter 3, p 39

⁴⁴Chapter 3, p 38

XIII. Conclusion

- 1.36 The initial purpose of the research was to identify the contributing factors of the detainees deaths in police custody. However, after analysing the data and the information collected during the visits, the Commission found that not only detainees experienced numerous problems, PDRM officers/personnel and staff also faced various difficulties.
- 1.37 Based on the findings from interviews and observations, the Commission discovers several problems and they are as follows:
- i. **Condition of lock-ups:** The lock-ups were very dirty and not suitable to be occupied by detainees. This was one of the factors which contributed to health problems among detainees and officers/personnel in-charge or who dealt with detainees. No emergency/medical aids or facilities in handling a situation where detainees were under the influence of drugs or alcohol; no experience in controlling or managing a situation requiring first aid, and these were among the issues raised to the Commission.
 - ii. **Health:** Health issue was the main problem in lock-up management due to unavailability of Medical Officers in PDRM lock-ups. Lock-up Rules 1953 requires compulsory health screening on detainees, however it cannot be carried out as the no. of Medical Officers were not enough and there were no treatment rooms in several lock-ups being visited. In addition, PDRM officers/personnel were not trained to provide emergency aid. From the Commission observation based on the statistics provided by PDRM, health problems were among the causes of detainees deaths, followed by the deaths caused by the deceased's own actions and lastly deaths due to foul play by the police.
 - iii. **Investigation facilities and remand application:** Based on the findings from the interviews with detainees and IO/AIO, and the filed complaints, the Commission found that most investigations were carried out after arrests but

modern devices and technology were barely utilized to assist the investigation processes. A suspect's verbal statements were recorded during an investigation and in this process there existed a situation where the suspect was required to make a confession and force was used. Meanwhile, remand applications were made merely because IO did not have enough time to perform the investigation due to their heavy workload.

iv. The welfare of police officers/personnel:

Based on the observation and information gathered, the issue that often brought up was the welfare of PDRM personnel which received undue attention. Inadequate facilities at the office, uncomfortable conditions in the office (there were offices located at shop houses or buildings that were unsuitable or unsafe for occupancy), and the very high no. of cases for each officer/personnel to handle which were seen to increase their stress and contribute to their moral decline. This situation could become one of the factors influencing the personnel to release their tension towards detainees, particularly when the detainees were hesitant to give cooperation during an investigation. Also, the housing for PDRM officers/personnel should not be taken lightly as it could affect the in-service police officers/ personnel.

v. Cooperation between agencies: There was no comprehensive cooperation between governmental agencies (Ministry of Health Malaysia and National Anti-Drugs Agency) to deal with high risk detainees like drug addiction, mental illness and others.

1.38 The above issues are further discussed in this report including proposed recommendations to overcome the problems.

CHAPTER 2

LEGAL FRAMEWORKS, POLICIES AND PRINCIPLES OF UNIVERSAL HUMAN RIGHTS ON DEATHS IN POLICE CUSTODY

I. Introduction

- 2.1 In Malaysia, legal provisions concerning deaths in detention are enshrined in Criminal Procedure Code, Penal Code and Practice Direction No. 2 2014 produced by Office of Chief Registrar, Federal Court of Malaysia. However, all provisions only underline the procedures on managing death investigation and inquest proceedings on deaths in detention as well as the punishment if a person is suspected to cause one's death in detention, without giving a specific definition on deaths in custody.
- 2.2 Based on CPC, any death in detention can occur whenever involving a person is being detained for investigation purposes by the police, temporary detainees waiting for court proceedings to end and detainees under mental illness at psychiatric hospitals. However, the study only focuses on the death of detainees⁴⁵ in police custody.
- 2.3 Any individuals or detainees can be detained by the police for no longer than 24 hours.⁴⁶ If the police requires a longer detention, a remand order should be issued by the Court. Maximum period for remand is 14 days and throughout the process, the detainees will be placed in police lock-up.
- 2.4 However, the detainees can be detained for more than 14 days for investigation of cases concerning terrorism, drugs, and gangsterism, either for a period of 28

⁴⁵Detainees for the research consist of the following categories:

- a. A person who is being detained for the purpose of police investigation;
- b. A person who is being detained under remand for the purpose of police investigation;
- c. A person who is being alledged in court and placed in temporary police lock-up before moving to prison; and
- d. A convict but under trial for other case and is placed temporarily in police lock-up.

⁴⁶Article 5 (4) of Federal Constitution:

"Where a person is arrested and not released he shall without unreasonable delay, and in any case within twenty-four hours (excluding the time of any necessary journey) be produced before a magistrate and shall not be further detained in custody without the magistrate's authority;"

days under Security Offences (Special Measures) Act (SOSMA) 2012,⁴⁷ 59 days under Prevention of Terrorism Act 2015 (POTA),⁴⁸ 59 days under Prevention Of Crime Act (POCA) (Amendment) 2015⁴⁹ or 60 days under Dangerous Drugs Act (Special Preventive Measures) 1985.⁵⁰

- 2.5 Detainees being detained in police lock-up under above provisions are subjected to Lock-up Rules 1953 which cover, inter alia, the process of admission and release as well as minimum standard of treatment towards detainees. The is to ensure rights of a detainee whose liberty is being deprived in accordance with law⁵¹ as detainees are vulnerable towards the risk of human rights violations during police custody.

II. Definition of Deaths in Police Custody

- 2.6 Based on current laws in Malaysia, there is no specific definition of deaths in police custody. However, there are several rules and regulations concerning responsibility of the authority like the police and coroner to investigate the causes of death in detention in general when it occurs.
- 2.7 According to the report of *Death in or following police custody: An examination of the cases 1998/99 – 2008/09*,⁵² deaths in custody refer to deaths of persons who have been arrested or otherwise detained by the police. It includes deaths which occur whilst a person is being arrested or taken into detention. The death may have taken place on police, private or medical premises, in a public place or in a police or other vehicle.

⁴⁷Section 4 (5) Security Offences (Special Measures) Act (SOSMA) 2012:

“Notwithstanding subsection (4), a police officer of or above the rank of Superintendent of Police may extend the period of detention for a period of not more than twenty-eight days, for the purpose of investigation.”

⁴⁸Section 4 (1) (a) and 4 (2) (a) Prevention of Terrorism Act 2015.

⁴⁹Section 4 (1) (a) and 4 (2) (a) Prevention Of Crime Act (Amendment) 2015.

⁵⁰Section 3 (2) Dangerous Drugs Act (Special Preventive Measures) 1985:

“Any person arrested and detained under this section may be detained in police custody for a period not exceeding sixty days without an order of detention having been made in respect of him under subsection 6(1)”

⁵¹Article 5 of Federal Constitution:

“No person shall be deprived of his life or personal liberty except in accordance with law.”

⁵²Marina Hannan, Ian Hearnden, Kerry Grace and Tom Bucke, *Death in or following police custody: An examination of the cases 1998/99 – 2008/09*, IPCC Research Series Paper: 17,(p 9.)

2.8 The definition also covers following situations:

- a. Deaths that occur when being arrested by the police;
- b. Deaths that occur in police custody; and
- c. Deaths that occur when detainees are on their way to the hospital or any medical premises and at the hospital or any medical premises to get the treatment while still in police custody.

2.9 However, the deaths of detainees that occur after the detainees were transferred under supervision by different agencies or authorities are excluded from the definition of deaths in police custody.

2.10 Whereas Crown Prosecution Service (CPS)⁵³ indicates the definition of deaths in police custody only applies on deaths that occur in police detention. Deaths in road accidents whenever a person is in the police car and on his way to the police station is not considered as deaths in police custody.⁵⁴

2.11 Deaths excluded under above definition are defined as '*death following contact with the Police*'. Among examples of death following contact with the police are deaths of detainees who are released by the police without sufficient treatment on their illness and then died due to the failure of getting the treatment or detainees who suffer a fatal heart attack while escaping from a police officer who is trying to arrest them.

2.12 Thus, for this purpose of the research, the definition of 'deaths in police custody' refers to the death which occurs during police arrest; the death in detention by the police; and the death when one died on his way to get the treatment at medical premises or the death at medical premises for cases which require ward admission while still in police custody.

⁵³The Crown Prosecution Service (CPS) is the principal prosecuting authority for England and Wales, acting independently in criminal cases investigated by the police and others.

⁵⁴http://www.cps.gov.uk/legal/d_to_g/deaths_in_custody/ (Accessed on 24 March 2016).

III. Legal provisions whenever deaths in Police custody occur

- 2.13 Whenever deaths in Police custody occur, the frequently raised issue is lack of information regarding the death received by the deceased family members or heirs that often leads to false assumptions and misunderstanding. Additionally, claims of investigation carried out of not being transparent and unclear, inquest cases that are only heard by Magistrate, and investigations that take too long are among issues raised regularly by the family members, heirs as well as the civil society.
- 2.14 Hence, on 19 June 2013, YB Puan Hajah Nancy Shukri, Minister of Prime Minister's Department announced the Government decision to establish Coroner's Court in order to address these problems.⁵⁵ Under Practice Direction No. 2 2014,⁵⁶ the Coroner's Court was established and came into force on 15 April 2014.
- 2.15 The Coroner's Court plays a role in performing all death inquiries, which is not only restricted on cases of deaths in custody, deaths in prison, deaths in any detention centres, death of detainees at hospital but also on all death cases which require investigation as addressed in Section 329 (1) Criminal Procedure Code 1953. Coroner's Court is handled by a Section Court Judge.
- 2.16 The Practice Direction also states that in handling inquiry cases of death in custody, Coroner's Court should refer to Practice Direction No. 1 2007 issued by YAA Tan Sri Dato' Siti Norma Yaakob, the former Chief Judge of Malaya.

⁵⁵<http://www.mstar.com.my/berita/berita-semasa/2013/06/19/kabinet-lulus-tubuh-mahkamah-koroner-lokap-berpusat/> (Accessed on 24 March 2016).

⁵⁶Practice Direction No. 2 2014, Managing Death Inquiry in line with the Establishment of Coroner's Court. Can be accessed via following website:
<http://www.kehakiman.gov.my/sites/default/files/document3/PEKELILING/arahan%20amalan%20bil%202%202014.pdf> (Accessed on 24 March 2016)

IV. Provision under Criminal Procedure Code 1953

2.17 Section 334 of CPC outlines that:

“When any person dies while in the custody of the police or in a mental hospital or prison, the officer who had the custody of that person or was in charge of that mental hospital or prison, as the case may be, shall immediately give intimation of such death to the nearest Magistrate, and the Magistrate or some other Magistrate shall, in the case of a death in the custody of the police, and in other cases may, if he thinks expedient, hold an inquiry into the cause of death.”

2.18 It is clearly enacted in the Section that the officer in-charge in supervising a detainee should inform the Coroner (formerly to inform the Magistrate prior to the establishment of Coroner’s Court) immediately whenever death in custody occurs.

2.19 Other than that, based on Practice Direction No. 2 2014, the Coroner has the power to carry out an inquiry on the cause of deaths in custody as mentioned in Section 335 of CPC:

“(1) A Magistrate holding an inquiry under this Chapter shall have all the powers which he would have in holding an inquiry on an offence.

(2) A Magistrate holding an inquiry under this Chapter if he considers it expedient that the body of the deceased person should be examined by a Medical Officer in order to discover the cause of death may, whether a post-mortem examination has been made under section 331 or not, issue his order to a Medical Officer to make a post-mortem examination of the body, and may for that purpose order the body to be exhumed.”

2.20 Meanwhile Section 336, 337 and 338 of CPC⁵⁷ outline several matters that must be done by the Coroner in carrying out inquiry on deaths in custody like the

⁵⁷Section 336 Magistrate may view the body.

need to view the condition of the body and to order the body to be exhumed if necessary; to inquire when, where and the cause of the death in detention; whether any person is criminally involved in causing the death. After the inquiry of deaths in detention has completed, a copy of the Coroner's report that contains recorded statements and his judgement of the case, will be immediately submitted to the Public Prosecutor for further action.

- 2.21 However if the Public Prosecutor finds any cases of death in custody that have been closed that require further inquiry, he can direct the Coroner to reopen the case and carry out further investigation as mentioned in Section 339 (2) of CPC:

“(2) When the proceedings at any inquiry under this Chapter have been closed and it appears to the Public Prosecutor that further investigation is necessary, the Public Prosecutor may direct the Magistrate to reopen the inquiry and to make further investigation, and thereupon the Magistrate shall have full power to reopen the inquiry and make further investigation and thereafter to proceed in the same manner as if the proceedings at the inquiry had not been closed:

Provided that this subsection shall not apply to any inquiry at which a finding of murder or culpable homicide not amounting to murder has been returned against any person.”

It shall not be necessary for a Magistrate holding an inquiry to view the body of the deceased, but the Magistrate may if he considers it expedient view the body, and may for that purpose cause the body to be exhumed.

Section 337 Inquiries to be made by Magistrate.

A Magistrate holding an inquiry shall inquire 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 338 Evidence and finding to be recorded

(1) The Magistrate holding an inquiry under this Chapter shall record the evidence and his finding thereon and shall immediately transmit to the Public Prosecutor the original of such evidence and finding duly authenticated by his signature or a copy of such evidence and finding certified under his hand as correct

(2) The place in which any inquiry of death under this Chapter is held shall be a place open to the public. But a Magistrate conducting an inquiry of death may, on special grounds of public policy or expediency, in his discretion, exclude the public or any person or persons in particular at any stage of the inquiry from the place in which the inquiry is being held.

V. Provision under Lock-up Rules 1953

- 2.22 Referring to Lock-up Rules 1953, there is a provision which requires a Medical Officer to visit lock-up whenever requested by Officer in-charge and gives his opinion whether the detainees are fit to be detained. For example, Lock-up Rule 38 states that:

“The Medical Officer shall visit each lockup whenever requested to do so by the Officer-in-Charge, and he shall enter in the Journal his comments on the state of the lockup and the prisoners confined therein.”

- 2.23 Meanwhile Lock-up Rule 40 suggests:

“Whenever the Medical Officer finds that the inmate's life is threatened if he is continuously being confined in the lock-up or an inmate is not fit at all to be confined, the Medical Officer should immediately express his opinion with the reasons in written form to Officer in-Charge who will present the matter to Yang Dipertua, Section Court or First-class Magistrate to be submitted to Menteri Besar or Chief Minister, as related to.”

- 2.24 Furthermore, Lock-up Rule 20⁵⁸ states the rest for detainees is from 6.30 pm until 6.30 am. The rule ensures the right for the detainees to get enough rest and should not be taken out from the lock-up for investigation after 6.30 pm. The factor like lacking of or no rest for detainees can negatively affect their health and become an influencing factor for death cases in police custody. This rule can also prevent the cases of deaths in police custody at night while on-duty police officers are less in number.

- 2.25 The Lock-up Rules mentioned above intend to ensure the rights of detainees and to avoid any unfortunate incidents whenever an individual is being detained by the police. Although the police have the authority to detain any individuals for investigation as stated in Criminal Procedure Code, it does not mean that a suspect does not have any rights and can be treated in cruel, inhuman or degrading manner.

⁵⁸The inmates will be confined at night by 6.30 pm and will wake up ready with clothes by 6.30 am.

VI. Provision under Penal Code (Act 574)

2.26 If a person is suspected to cause one's death in detention, he can be considered committing the offence of culpable homicide and based on the Penal Code, the act is equal to killing people. The provisions can be identified in Section 229 and 300 of Penal Code as follows:

“229. Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.

300. Except in the cases hereinafter excepted, culpable homicide is murder.

(a) If the act by which the death is caused is done with the intention of causing death;

(b) If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused;

(c) If it is done with the intention of causing bodily injury to any person, and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death; or

(d) if the person committing the act knows that it is so imminently dangerous that it must in all probability causedeath, 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.”

2.27 Moreover, the Penal Code also states the culpable homicide by causing the death of a person other than the person whose death was intended as mentioned under Section 301 of Penal Code as follows:

“If a person, by doing anything which he intends or knows to be likely to cause death, commits culpable homicide by causing the death of any person whose death he neither intends nor knows himself to be likely to cause, the culpable homicide committed by the offender is of the description of which it would have been if he had caused the death of the person whose death he intended or knew himself to be likely to cause.”

- 2.28 Although culpable homicide is considered as causing one’s death, the punishment is based on Section 304 of Penal Code as the act is not amounting to murder. According to Section 3, the punishment for culpable homicide is as follows:

“Whoever commits culpable homicide not amounting to murder shall be punished-

- (a) with imprisonment for a term which may extend to thirty years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death; or*
- (b) with imprisonment for a term which may extend to ten years or with fine or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.”*

VII. Board of Visiting Justices

- 2.29 Section 64 of Prison Act 1995 (Act 537) states the appointment of Board of Visiting Justices for every State and Federal Territory in every two years.⁵⁹Based on Act 537, the Board of Visiting Justices has the following authorities:

- a. at any time, visit any prison in the State or Federal Territory for which he is appointed;

⁵⁹Section 64 (1) Visiting Justice:

Menteri Besar or Chief Minister, for every two years, shall appoint a Board for that State or Federal Territory to be called the Board of Visiting Justice of which all Magistrates of that State or Federal Territory shall be ex-officio members.

- b. inspect the wards, cells, yards and rooms and other divisions of the prison;
- c. inspect and test the quality and quantity of the prisoners food;
- d. hear the complaints, if any, of the prisoners;
- e. question any prisoner or prison officer.⁶⁰

2.30 A Visiting Justice shall call the attention of the Officer-in-Charge to any irregularity that may be observed in the visits for further action.⁶¹

2.31 However, the function of Board of Visiting Justices is only restricted on prison. Meanwhile, in police lock-ups, when writing the report, there is no mechanism for Board of Visiting Justices to visit and inspect the lock-ups.

2.32 In spite of that, based on the study, there is Inspector General's Standing Order (IGSO) A120 Paragraph 32 which requires Officer in-charge of Police District (OCPD) to request a Medical Officer to visit all gazetted police lock-ups every week. In addition, Paragraph 13 IGSO also requires the Medical Officer to verify the maximum no. of detainees who can be detained in every lock-up.⁶²

2.33 For record, the Commission does not have the access to IGSO although an official request has been submitted to the police.

VIII. PRINCIPLES OF UNIVERSAL HUMAN RIGHTS ON DEATHS IN POLICE CUSTODY

2.34 In general, everyone has the right to life, liberty and security of person.⁶³ However, persons deprived of their liberty such as being detained as suspected to be involved in crime shall be treated with humanity and with respect for the inherent dignity of the human person.⁶⁴

⁶⁰Section 65 Prison Act 1995.

⁶¹Secton 65 (2) Prison Act 1995.

⁶²Supt. Ku Chin Wah, Police Lock-Ups/ Detainees, Journal of the Royal Malaysia Police Senior Officers' College, 2003, p 41.

⁶³Article 3 of Universal Declaration of Human Rights(UDHR)

⁶⁴Article 10 (1) of International Covenant on Civil and Political Rights

- 2.35 Other than that, the police are prohibited to use force or torture towards any detainees in order to get the information related to the crime. There is no excuse or justification to use force or torture towards detainees although the country is in a state of war or a threat of war, internal political instability or any other public emergency. Any command or order by superior officer does not justify the torture.⁶⁵
- 2.36 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) by the United Nations (UN) is established to prevent any form of torture and cruel treatment imposed by any authorities whereas Optional Protocol of CAT (OPCAT) is established to create operational framework for state members to fulfil their responsibility under CAT. Both CAT and OPCAT was enforced on 26 June 1987 and 22 Jun 2006 respectively, with participation from 158 countries. However, Malaysia has not yet participated in CAT and OPCAT.⁶⁶
- 2.37 CAT defines "torture" as any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.⁶⁷
- 2.38 Therefore, based on the above definition, any detainees including those who are being detained by the police cannot be tortured or ill-treated. The torture and cruel treatment can lead to causes of death in detention as explained earlier.

⁶⁵Article 2 of Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

⁶⁶https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-9&chapter=4&lang=en
(Accessed on 24 March 2016)

⁶⁷Article 1 of Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

- 2.39 Although Malaysia does not participate in CAT, it has participated in 3 human rights treaties, which are Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), Convention on the Rights of the Child (CRC) and Convention on the Rights of Persons with Disabilities (CRPD). Malaysia adheres to the conventions in ensuring the pledged responsibility is integral and in accordance with the legal system of the country. As an example, Article 37 of CRC and Article 15 of CRPD state that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.⁶⁸ However, Malaysia still expresses its reservation on both articles.
- 2.40 Apart from CAT, OPCAT, CRC and CRPD which play a role as prevention measures for torture and cruel treatment on detainees including in police custody, rights of a detainee is also underlined in the United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules) which was accepted and came into effect used on 17 December 2015.⁶⁹ The Nelson Mandela Rules is the revised Standard Minimum Rules for the Treatment of Prisoners 1955 (SMRTP). The Rules are named after the late South African President, Mr Nelson Rolihlahla Mandela, who spent 27 years in prison in order to fight for human rights, equality, democracy and peace.
- 2.41 Compared to SMRTP, the Nelson Mandela Rules allocate more specific provision to protect the detainees from being put under solitary confinement at will and limit the period of time for the confinement.⁷⁰ When a detainee is in solitary confinement, the detainee is prevented from making any meaningful human contact for at least 22 hours to 15 consecutive days. This can be a contributing factor to cases of death in detention.
- 2.42 The Nelson Mandela Rules also provide the guidelines whenever death in detention takes place. For example, the Nelson Mandela Rule No. 69 highlights in the event of a prisoner's death, the Prison Director shall immediately inform

⁶⁸Article 37 of Convention on the Rights of the Child and Article 15 of Convention on the Rights of Persons with Disabilities.

⁶⁹A/RES/70/1/175.

⁷⁰The Nelson Mandela Rule No. 44.

the prisoner's next of kin or emergency contact. Individuals designated by a prisoner to receive information related to his health condition shall be notified by the director of the prisoner's illness, injury or transfer to a health institution. The explicit request of a prisoner not to have his or her spouse or close relative notified in the event of illness or injury shall be respected.

2.43 Moreover, if death in detention occurs, the Nelson Mandela Rule No. 71 also states the Prison Director shall report, without delay, any custodial death, disappearance or serious injury to a judicial or other competent authority that is independent of the prison administration and mandated to conduct prompt, impartial and effective investigations into the circumstances and causes of such cases. The prison administration shall fully cooperate with that authority and ensure all evidences are preserved.

2.44 Although the Nelson Mandela Rules pay more attention to inmates in prison, the standards mentioned can also be applied at police lock-ups.

Conclusion

2.45 Based on the laws, rules and guidelines as stated above, it can be concluded that in Malaysia, all procedures for inquiry and handling of deaths in custody should refer to CPC and Practice Direction No. 2 2014 by Chief Registrar of Federal Court and Practice Direction No. 1 2007 by Chief Judge of Malaya.

2.46 There is no doubt that the function of an inquest to identify the causes of death in detention is extremely important. Failure or delay in performing the inquiry process can lead to speculations and negative perceptions by the public towards the authority including the police.

2.47 The improvement and revision of current legal system should be given due consideration to ensure the effectiveness of handling cases related to deaths in custody.

CHAPTER 3

STATISTICS OF DEATHS IN POLICE CUSTODY

I. Introduction

- 3.1 In carrying out this Research, the Commission has requested the statistics on deaths in police custody from 2000-2014. The statistics were requested in order to view the pattern, profile and causes of death in detention. With cooperation from Bukit Aman police force, the Commission managed to obtain the statistics and prepared the analysis as shown below. The Commission also managed to obtain the information on death cases and information on several other issues from the interview with respondents and observation made during the visits.

II. Data of Deaths in Police Custody from 2000-2014

- 3.2 The total no. of deaths reported from 2000 till 2014 is 255. However, the data received as accordance to the catogaries listed below was only up to February 2014 which only address 242 cases. The Commission has been working on getting the latest data and while this report were written, the relevant informations have yet to be obtained.

Table 4:**Category of Ethnicity and State for 2000-February 2014**

No	CONTINGENT	M	F	NO. OF CASE	M	C	I	OTHERS	NON-CITIZEN	TOTAL NO. CASE
1.	PERLIS	1		1	1					1
2.	KEDAH	21		21	8	3	4		6	21
3.	PULAU PINANG	21		21	3	14	4			21
4.	PERAK	16		16	4	6	6			16
5.	SELANGOR	38	1	39	19	6	11		3	39
6.	KUALA LUMPUR	36	3	39	11	12	15	1		39
7.	NEGERI SEMBILAN	12	2	14	3	2	4	2	3	14
8.	MELAKA	3		3	2		1			3
9.	JOHOR	33	2	35	15	8	6	1	5	35
10.	PAHANG	4	1	5	2	1	1		1	5
11.	TERENGGANU	19	1	20	19				1	20
12.	KELANTAN	12		12	12					12
13.	SABAH	9		9				2	7	9
14.	SARAWAK	7		7	1	1		4	1	7
TOTAL		232	10	242	100	53	52	10	27	242

Note: M- Male F- Female M- Malay C- Chinese I-Indian Source: PDRM

Table 5:

Category of Ethnicity and State for 2000-February 2014

No	YEAR	M	F	NO. OF CASE	M	C	I	OTHERS	NON-CITIZEN	TOTAL NO. CASE
1	2000	9	1	10	3	4	1	1	1	10
2	2001	15	2	17	5	8	2		2	17
3	2002	16	2	18	9	3	5		1	18
4	2003	32		32	14	6	10		2	32
5	2004	24		24	14	5	2	1	2	24
6	2005	18		18	9	2	4	1	2	18
7	2006	16	1	17	8	2	4	1	2	17
8	2007	19		19	9	3	3	2	2	19
9	2008	12		12	4	4	1	1	2	12
10	2009	7		7	1	2	4			7
11	2010	9		9	5	1	3			9
12	2011	17		17	11	3	1		2	17
13	2012	17	2	19	4	4	6	2	3	19
14	2013	18	2	20	3	5	5	1	6	20
15	2014	3		3	1	1	1			3
TOTAL		232	10	242	100	53	52	10	27	242

Note: M- Male F- Female M- Malay C- Chinese I-Indian

Source: PDRM

Table 6:

Total no. of Death based on Cause of Death and Year2000-February 2014

No	CAUSE OF DEATH	YEAR															
		00	01	02	03	04	05	06	07	08	09	10	11	12	13	14	TOTAL
1	HIV	1	2	7	9	8	3	2	2						1	1	36
2	ASTHMA			3		1					1						5
3	HEART PROBLEMS	1	2	1		1	2		1	2		3	1	2	1		17
4	OTHER ILLNESSES (COLON AND LIVER PROBLEMS, JAUNDICE, STOMACH ULCER, LUNG DISEASES, AND THROAT COMPLICATIONS)	4	6	4	18	12	9	10	12	8	3	5	15	13	15	2	136
5	COMMIT SUICIDE	3	5	2	1	1	3	2	1	2	2	1	1	4	2		30
6	FIGHTING BETWEEN DETAINEES			1	1												2
7	BRAIN HEMORRHAGE		2		2	1	1	1	3								12
8	FALLING ACCIDENT AT LOCK-UP'S BATHROOM	1			1												2
9	FOUL PLAY BY POLICE																2
TOTAL		10	17	18	32	24	18	17	19	12	7	9	17	19	20	3	242

Source: PDRM

Table 7:**Total no. of Death based on Cause of Death and State 2000-February 2014**

No	CAUSE OF DEATH	STATE														
		PL	KD	PG	PK	SL	KL	NS	MK	JH	PH	TR	KN	SH	SK	TOTAL
1	HIV		7			7	4	1		1		10	5		1	36
2	ASTHMA					1	3			1						5
3	HEART PROBLEMS		2	1		2	4	2		3		1	1		1	17
4	OTHER ILLNESSES (COLON AND LIVER PROBLEMS, JAUNDICE, STOMACH ULCER, LUNG DISEASES, AND THROAT COMPLICATIONS)	1	9	12	13	21	25	6	3	21	2	8	6	7	3	136
5	COMMIT SUICIDE		3	7	2	4		3		5	3	1		1	1	30
6	FIGHTING BETWEEN DETAINEES					1				1						2
7	BRAIN HEMORRHAGE			1	2	2	1	1		3				1	1	12
8	FALLING ACCIDENT AT LOCK-UP'S BATHROOM						1	1								2
9	FOUL PLAY BY POLICE					1	1									2
TOTAL		1	21	21	17	39	39	14	3	35	5	20	12	9	7	242

Source: PDRM

Note: PL- Perlis, KD-Kedah, PG-P.Pinang, PK-Perak, SL-Selangor, KL-Kuala Lumpur, NS-N.Sembilan, MK-Melaka, JH-Johor, PH-Pahang, TR-Terengganu, KN-Kelantan, SH-Sabah and SK- Sarawak

III. Analysis of Death Statistics

Demography

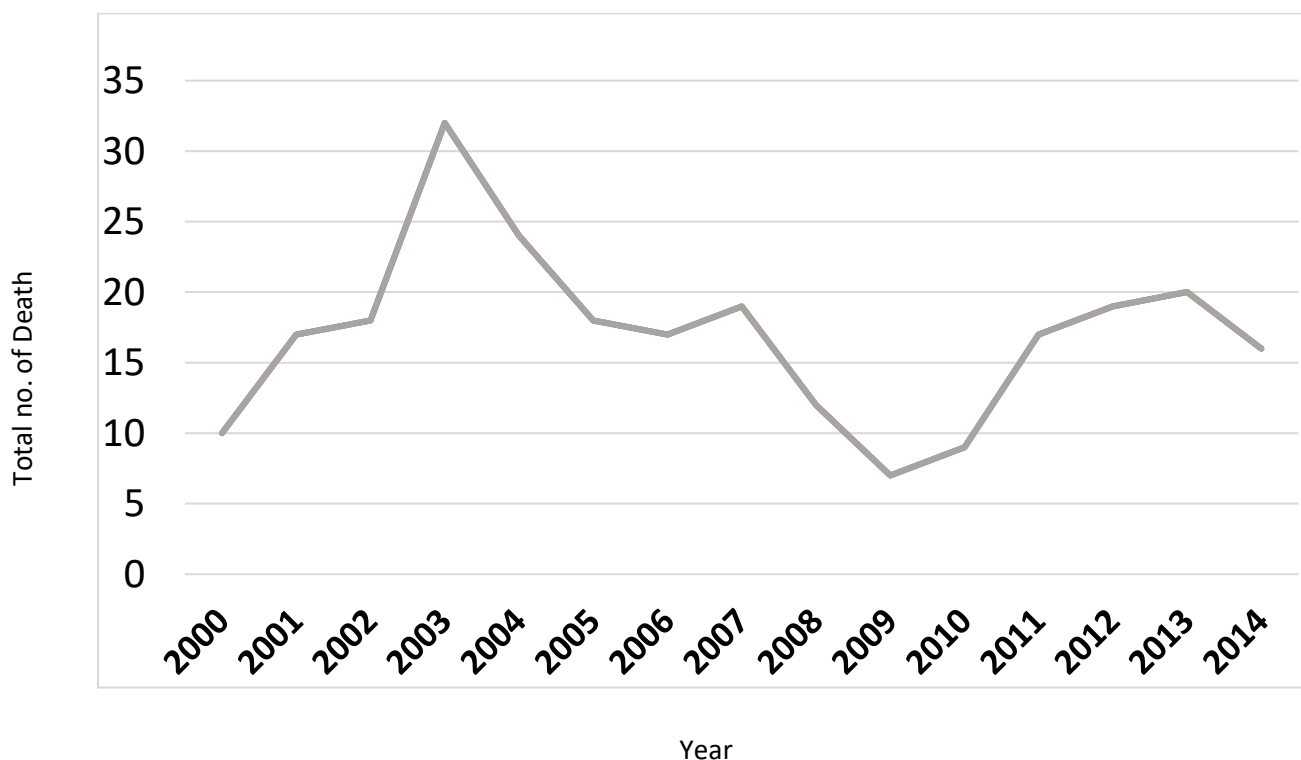
3.3 Based on the data in Table 4, the highest no. of death occurs in Lembah Klang which is 39 cases each in Selangor and Kuala Lumpur. It is followed by 35 cases in Johor and 21 cases each in Pulau Pinang and Kedah.

3.4 In small states like Perlis and Melaka, the total no. of cases are small, they are 1 and 3 cases respectively. While in Sabah and Sarawak, there are 9 and 7 cases respectively within the stated time frame.

3.5 The pattern shows more cases of death in big cities. This might be due to higher total no. of crime rates and no. of arrest in main cities in the country as compared to smaller cities.

Time Frame

Graph 1: Total no. of Deaths in Police Custody from 2000-2014



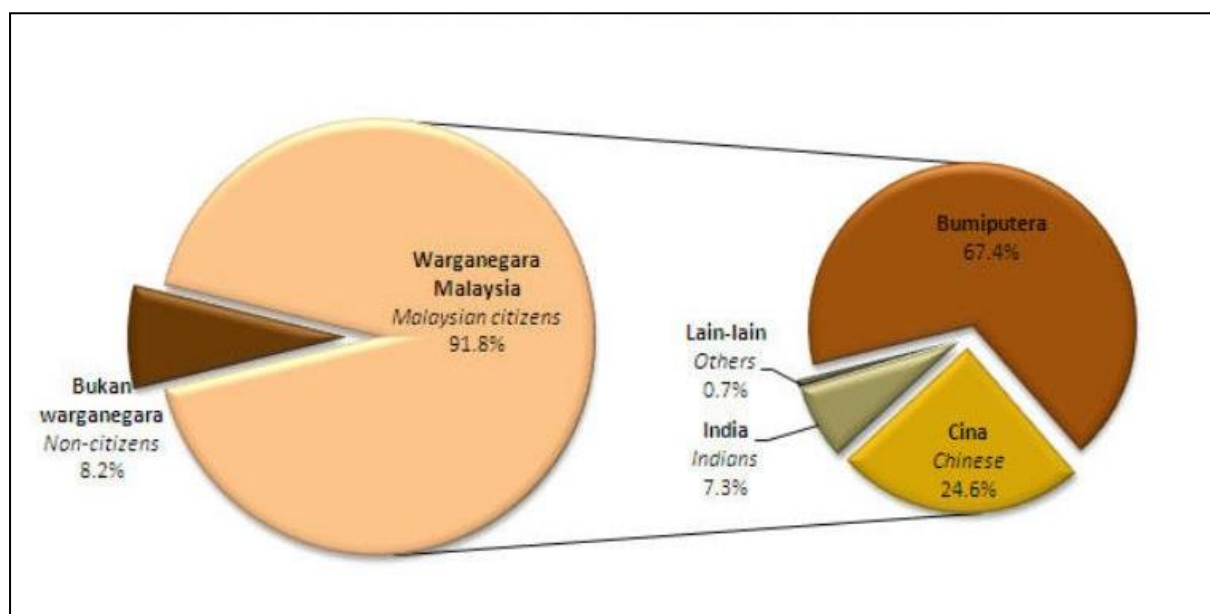
- 3.6 Based on the above time frame, the year 2003 represents the highest no. of cases at 32, whereas the lowest number of cases showed in 2009 which are 7. In 2004, there were 24 cases recorded then the number decreased until 2010 (except in 2007). In 2011, the no. of death increased to 17 cases, 10 cases in 2013 and 16 cases in 2014.⁷¹
- 3.7 Within 15 years (2000-2014), the average deaths in police custody is 17 cases per year. Although the Commission do not have the total no. of detainees detained in the 15 years period, the average death of 17 cases annually is an alarming figure and it is worrying as it is a known fact that the right to life is an essential aspect of human rights.

Ethnicity

- 3.8 Table 5 shows the tabulation of deaths based on ethnic groups. From the total no. of 242 detainees who died in police custody, 100 were Malays, 53 were Chinese, 52 were Indians, 27 were non-citizens whereas 10 people were under 'others' category.
- 3.9 According to Department of Statistics Malaysia, the total population of Malaysia based on 2010 census is 28.3 million people. Out of the total population, the percentages based on ethnicities are 67.4% Malay, Chinese – 24.6%, Indian – 7.3% and 0.7% others. While the percentage of non-citizens is 8.2%. When a comparison is made against the population ratio, it is found that the deaths among Indians and non-citizens are relatively high.

⁷¹ In 2014, there were 3 cases recorded until February and a total no. of 16 cases until the end of year

Diagram 1: Population Projection based on Ethnic Groups, Malaysia, 2010



Source: Department of Statistics Malaysia

Gender

3.10 The statistics provided also indicates a much higher total no. of death among male detainees from 2000 until 2014 which is 232 in comparison to a total no. of 10 death cases among female detainees.

Causes of Death

3.11 According to statistics provided by PDRM, the main cause of death is due to health reasons. Based on Table 6, illnesses like colon and liver problems, jaundice, stomach ulcer, lung diseases, and throat complications are major health causes that result in the deaths of suspects in police custody. These types of diseases contribute to a total number of 136 deaths. The second highest cause of death is due to HIV with a total case of 36 deaths followed by 17 cases caused by heart problems.

3.12 Since no health screening is carried out when a suspect is being detained, thus there is no concrete conclusion to determine if the health problems are due to infection prior to or following detention. For the purpose of this research, it is

assumed that some detainees have already suffered with health problems before being detained and some were probably infected by the diseases while being detained due to the condition of the lock-ups and lack of medical facilities.

- 3.13 During briefing and interview session with PDRM, it is reported that the highest deaths of suspects are among drug addicts. This is because drug users are physically weak and more vulnerable in getting infections. During detention, drug users tend to experience withdrawal syndrome.⁷² Currently, there is no specific treatment or attention given to drug users when they are in lock-up.
- 3.14 Statistics provided by PDRM indicate 30 death cases among detainees occurred due to suicide. There are 2 cases because of fighting between detainees and another 2 cases due to falling accident at the lock-up's bathroom. The statistics also show injuries due to foul play by the police which have led to 2 cases of death.

IV. Examples of Death Cases in Police Custody

- 3.15 During the study visit, the Commission had been given detailed explanation on several death cases during detention. They are as follows:

Case 1

- 3.16 A detainee named Ramasamy s/o Nagu was arrested under Section 3(1) Drug Dependents Act. After he was remanded by an investigation officer from IPD Narkotik Timur Laut, the detainee was taken to Lokap Berpusat Bayan Baru and placed in cell 16. The remand period was from 24 February 2014 until 3 March 2014. During his time in lock-up, the detainee had never complained about his pain. The detainee was alleged as a hardcore drug addict.

⁷² Withdrawal syndrome, also known as discontinuation syndrome, occurs among drug addicts or alcoholics who stop or reduce their drugs intake

- 3.17 On 1 March 2014, around 12.10 midnight, the officer on duty at the male lock-up control centre informed that an Indian detainee in cell 16 was unconscious.
- 3.18 The officer on duty and his supervisor carried the detainee to the front part of the lock-up and put the detainee in a holding cell. At 12.12 midnight, the supervisor contacted the emergency department (ambulance) of Hospital Besar Pulau Pinang. Around 12.45 am, the ambulance and assistant Medical Officer arrived at the lock-up. After the examination, the detainee was pronounced dead.
- 3.19 Shortly later, the Forensic Department of Contingent Headquarter (IPK) Pulau Pinang arrived, performed the investigation and found no criminal elements on the detainee. Then, around 3.45 am, Magistrate of Balik Pulau Court arrived at the scene and examined the deceased. He also met the deceased's brother, Letchumanasamys/o Nagu who was also detained in cell 16.
- 3.20 On 1 March 2014, around 2.00 pm to 4.00 pm, a post mortem was carried out and the cause of death was identified as "*Acute Peritonitis due to Perforated Duodenum*". It was concluded that there was no criminal elements found on the detainee.

Case 2

- 3.21 On 22 April 2014 around 5.15 pm, a detainee named Rahamat bin Md Noor was arrested in Bayan Baru under Section 3 (1) Drug Dependents Act. The detainee was alleged as a hardcore drug addict.
- 3.22 On 27 April 2014, around 2.30 am, the officer on duty at Bayan Baru Central Lock-up took the detainee to Balik Pulau Hospital for medical treatment. About 3.20 am, the detainee received the treatment and he was taken back to the cell.
- 3.23 On 27 April 2014, around 8.30 pm, the detainee complained about his stomachache and requested to be treated at hospital. Officer on duty took the

detainee to hospital at 8.45 pm by van. Once arrived at Hospital Balik Pulau, the hospital confirmed the detainee had already died.

- 3.24 On 28 April 2014, around 12.50 midnight, Magistrate of Balik Pulau Court arrived at Forensic Department of Balik Pulau Hospital and together with Chief of District Crime Investigation of Barat Daya, examined the body.
- 3.25 On 28 April 2014, around 9.00 am, post mortem was carried out and the cause of death stated was "*Acute Peritonitis due to Perforated Gastric Ulcer*".

Case 3

- 3.27 A Chinese man named Lee Luan Liong, aged 52 years old was arrested under Section 39(b) Dangerous Drugs Act in 2007 in Pontian, Johor. Based on *Sudden Death Report* dated 8 July 2007, the detainee was found dead in detention due to head and neck injuries in a falling incident. However, it was later concluded that the injuries were due to suicide.

Case 4

- 3.28 A Malay man named Ibrahim bin Selamat, aged 56 years old was arrested under Section 12(2) Dangerous Drugs Act in Pontian, Johor in 2014. Based on *Sudden Death Report* dated 16 January 2014, the detainee was found dead in custody and the cause of death was declared '*pending for investigation*'. However, the result from post mortem indicated the cause of death was due to wounds and ulcer in the deceased's stomach.

Case 5

- 3.29 A Malay man named Zaini bin Mainon, aged 47 years old was arrested under Section 379A for the crime of stealing a car in 2010 in Pontian, Johor. Based on *Sudden Death Report* dated 7 November 2010, the detainee was found dead in detention due to heart problem and he passed away at the hospital.

Case 6

- 3.30 An Indonesian man aged 36 years old was arrested under Section 26 Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act in 2014. According to *Sudden Death Report*, the detainee died while in detention at the hospital and the cause of death was not confirmed during the visit by the Commission.

V. Observation during the Visits

- 3.31 During the visit to police stations and lock-ups, the Commission did not examine in details any death cases in police custody. Nevertheless, the Commission has put in the efforts to obtain information regarding the deaths.
- 3.32 Below are several factors on why the Commission were unable to conduct detailed examination on death cases in detention:
- a. Limitations as discussed in Chapter 1;
 - b. This research focuses more on the contributing factors of death rather than to examine each case involving death in detention;
 - c. Most on duty and responsible officers/personnel during the death incidents were unable to be interviewed. This is either because they had already been transferred to other districts or they were on other duties during the visit;
 - d. The on duty officers and personnel during the death incidents did not directly witness when the incidents took place;
 - e. The officers and personnel who were interviewed had no experience in handling death cases in custody.

Experience and Death Management

- 3.33 The Commission was informed that the officers who are responsible for lock-up management and safety are Officer in-charge of Police District(alsoknown as Chief of Lock-up Guard), Officer in-charge of Station, Lock-up Administrator and sentry personnel.
- 3.34 During the interviews, 16 Officers in-charge of Station stated that they had the experience in handling death cases while 27 others did not have such experience. Out of 125 sentry personnel (including lock-up administrators) who were interviewed, only 18 had faced the situation where detainees died in lock-up whereas 107 of them had no experience in such incidence. The Commission did not interview the Officer in-charge of Police District during the research. (Table 8)

Table 8

Experience in handling/facing deaths in Police Custody

Officer/Personnel	Yes	No	Total
Officer in-charge of Station	16	27	43
Sentry Personnel	18	107	125

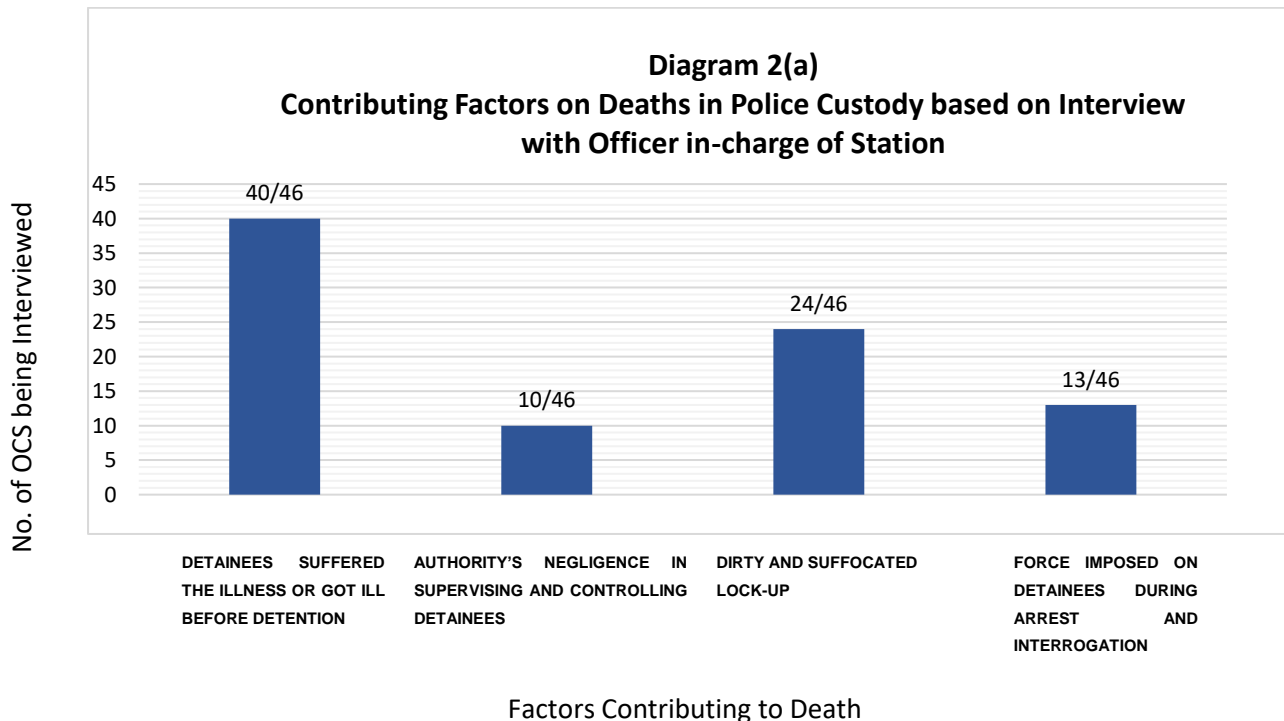
Note: 3 Officers in-charge of Station and 4 Sentry Personnel did not answer the questions

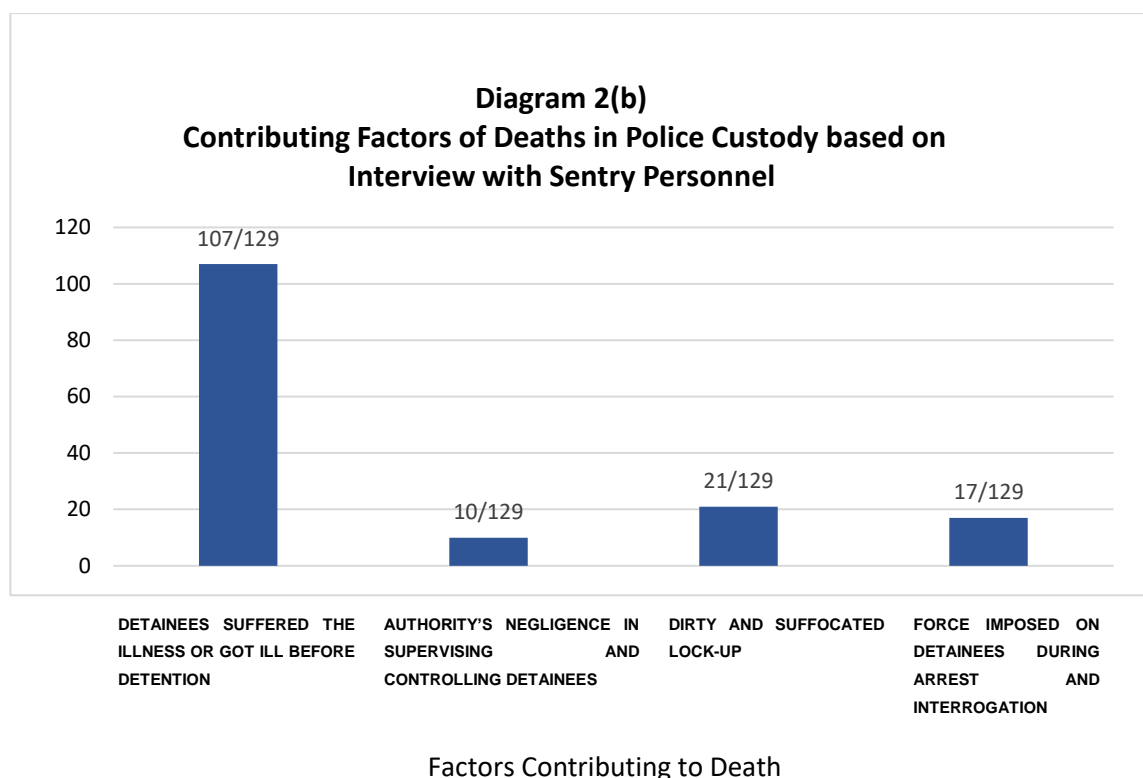
- 3.35 Most Officers in-charge who were interviewed mentioned that they knew the Standard Operating Procedure (SOP) in the event of deaths in detention occurred but not all of them gave similar responses. Among the actions taken based on the SOP are:
- a. Informing Officer in-charge of Police District, Chief of District Crime Investigation and investigation officer;
 - b. lodging police report;
 - c. informing coroner and doctor to be present in lock-up;

- d. informing the family members of the deceased;
- e. making preliminary investigation like obtaining the statement from eyewitness-police personnel/other detainees;
- f. taking pictures;
- g. taking the body of the deceased to hospital.

Factors of Death

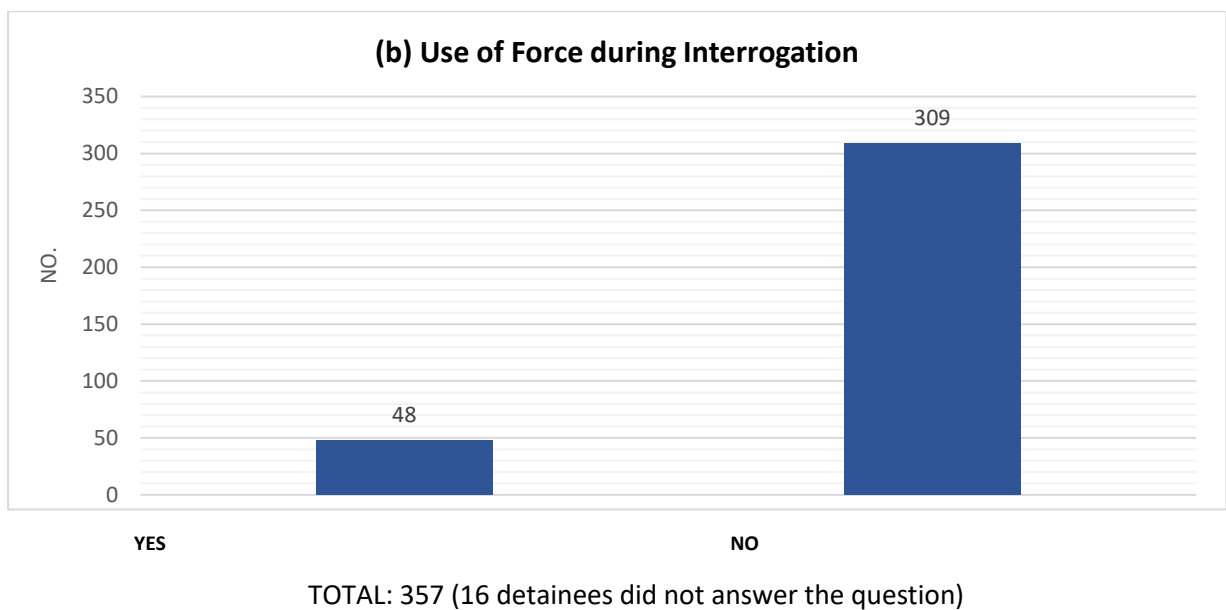
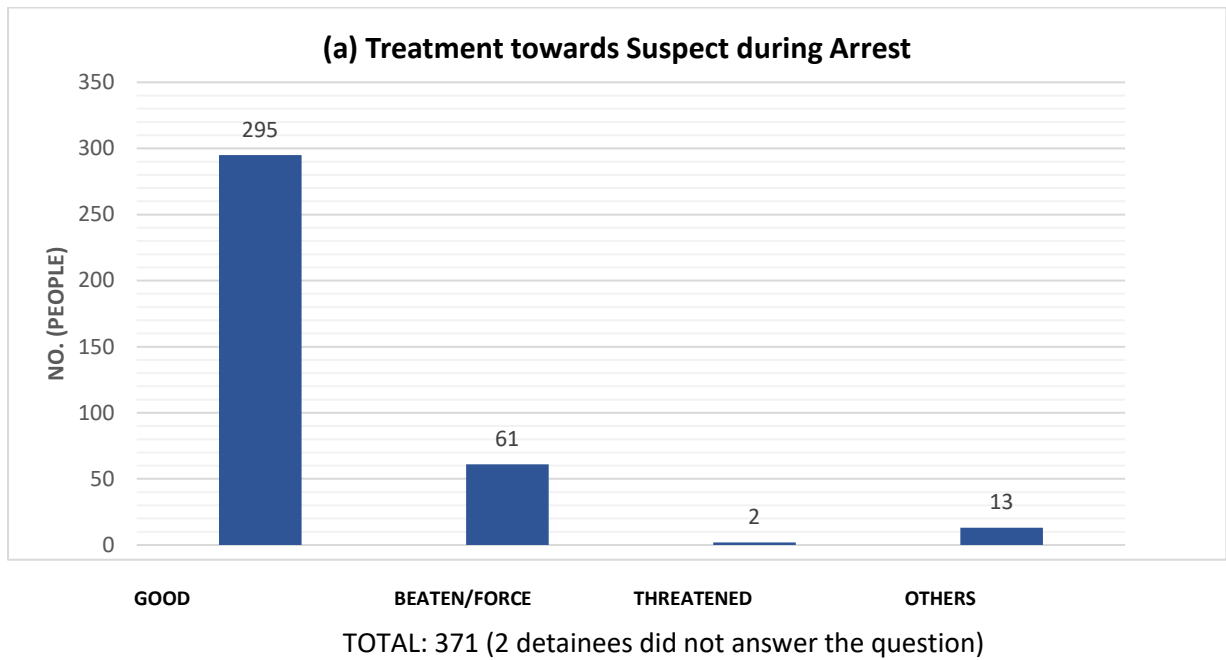
3.36 When conducting the research, the Commission interviewed Officer in-charge of Station and sentry personnel on their opinion of the factors contributing to deaths in police custody. Diagram 2(a) and (b) demonstrate their feedback.

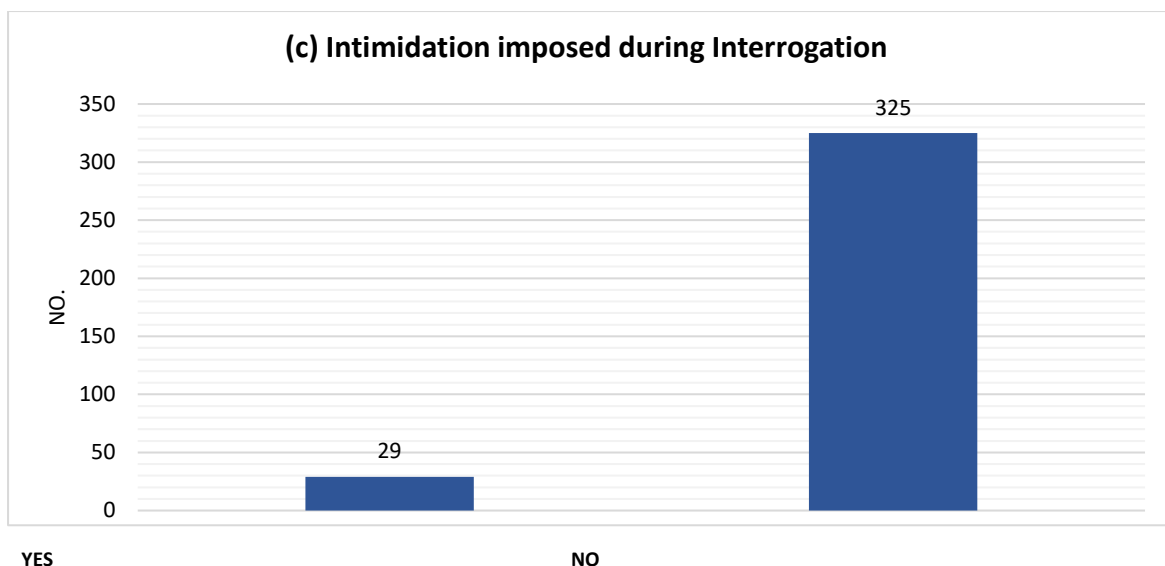




- 3.37 Diagram 2 (a) and (b) show the majority of Officer in-charge of Station (40 people) and sentry personnel (107 people) stated that illnesses are the main cause of death. The deaths occurred when detainees already had the illnesses or they were not well before being detained by the police. The second highest factor for deaths in custody was due to dirty lock-up and poor ventilation system. This was claimed by 24 Officers in-charge of Station and 21 sentry personnel.
- 3.38 Not many Officers in-charge of Station and sentry personnel suggested that authority's negligences and use of violent forces are the main factors for the deaths. There were 13 Officers in-charge of Station and 17 sentry personnel admitted that violent force is the main cause of deaths. However, 10 Officers in-charge of Station and 10 sentry personnel stated negligence as the factor for the deaths.
- 3.39 Interviews with detainees, however, indicated excessive forces were used during arrest and interrogation process. There were also detainees who were threatened. Although the no. of detainees who admitted they received good treatment were higher than those who were beaten or threatened, the use of force is in violation of the laws and human rights. (Diagram3 (a), (b) and (c))

Diagram 3: Interview with Detainees





TOTAL: 354 (19 detainees did not answer the question)

- 3.40 The detainees who were ill-treated mentioned that they were physically beaten, kicked, punched, slapped, beaten with objects, head-banged against the wall and caned. Most detainees informed that they were beaten on their soles with rubber hose as it was believed that it would not leave any bruises. Also, there were detainees who stated they were yelled at and stripped naked during interrogation.
- 3.41 Those detainees who were threatened mentioned that they were forced to plead guilty, by threatening with beatings and their family members would be arrested.
- 3.42 The use of violent treatments and threats are inhuman actions and they can be the contributing factors to deaths in police custody.

VI. Decision of Coroner's Court and Enforcement Agency Integrity Commission (EAIC)

- 3.43 The Commission intends to point that although the statistics from PDRM indicated only 2 death cases due to foul play by the police, in early 2015 Coroner's Court⁷³ adjudged the police as the cause of death in 3 other cases.

⁷³Coroner's Court was established in every capital of state and came to power on 15 April 2014. The Judge of Section Court is in-charge of Coroner's Court.

While in October 2015, Enforcement Agency Integrity Commission (EAIC) also through an open inquiry found one death case caused by the police. Those cases are as follows:

Case 1- Chandran Perumal⁷⁴

3.44 On 16 January 2015, Coroner's Court of Kuala Lumpur declared that the police of IPD Dang Wangi and Cheras were responsible for the death of Chandran Perumal who was 47 years old. Chandran was reported dead on 10 September 2012 in Dang Wangi lock-up, after 4 days in detention. According to the Coroner, Tuan Ahmad Bache, the police failed to provide treatment or send Chandran to hospital although the health status of the suspect was informed to Magistrate during remand application and the Magistrate commanded to send him to hospital. The Coroner also found that his death was only reported after 12 hours.

3.45 According to the pathologist, Dr. Nurul Kharmila Abdullah, the death of Chandran Perumal could be prevented if he received the needed treatment as the suspect died due to '*hypertensive heart disease*'.

3.46 In addition, Coroner's Court also found the injury on suspect's head was resulted from physical trauma and other actions. According to Coroner, PDRM should take the responsibility on the death of suspect if the injury was caused either by the police or other detainees.

Case 2 – P. Karuna Nithi⁷⁵

3.47 On 28 January 2015, Coroner's Court of Seremban found that P. Karuna Nithi, 42 years old, was dead due to beatings by the police and other detainees. P. Karuna Nithi was found dead in Tampin Police Station lock-up on 1 June 2013.

⁷⁴ The Star Online dated 16 January 2015, The Sun Daily dated 19 January 2015 and Malaysian Insider dated 16 January 2015.

⁷⁵ Malaysiakini dated 28 January 2015 and Malaysian Insider dated 28 January 2015.

- 3.48 The Coroner Datuk Jagjit Singh found 49 injuries especially bruises all over the body of P. Karuna Nithi. The injuries were caused by beating using objects and by other unlawful actions. According to Coroner's Court, the death of suspect was due to failure of the police in giving required medical treatment and preventing other detainees from torturing the suspect in lock-up.
- 3.49 The CCTV footage showed a police officer opened the door of the cell where Karuna Nithi was being detained and kicked him so hard that Karuna Nithi fell on the ground. The footage also showed that other detainees punched and kicked him.
- 3.50 In addition, from statements given by eyewitnesses, Karuna Nithi was transferred 9 times from one lock-up to another due to hallucination as he was often raving and screaming. According to the Coroner, although the suspect was a 'disturbing' detainee, there were no excuses that he was treated as such.
- 3.51 Moreover, the Coroner also noted that the welfare of the deceased was neglected by the police as the suspect was assumed as pretending to be sick in the lock-up.

Case 3 – C. Sugumar ⁷⁶

- 3.52 On 6 March 2015, Coroner's Court of Shah Alam found that the police's negligence of not providing an urgent medical treatment to a security guard, C. Sugumar, aged 39 years old, had caused the death of the suspect. C. Sugumar died on 23 January 2013, while being arrested by the police in a public area around Kajang. The reported cause of death was '*coronary artery disease*'.
- 3.53 The Coroner Rozi Bainon stated that the actions of the police spraying the suspect with curry powder, stepping on him, and handcuffing him with two pairs of handcuffs as violent and abnormal. The Coroner also stated the suspect's

⁷⁶ Online Malay Mail dated 6 March 2015, The Star Online dated 6 March 2015 and Malaysian Insider dated 6 March 2015.

actions of hitting his head, talking to himself, damaging a banana tree and throwing stones and zinc down the drain, could not harm other's lives.

- 3.54 The Coroner also stated the police failure to send C. Sugumar to the hospital on the reason that no ambulance was available was not acceptable. The court declared that when the police did not use PDRM vehicle to take the suspect to hospital because the vehicle was not equipped with medical equipment and because the suspect had big stature, clearly proved the police's negligence.

Case 4 – Syed Mohd Azlan bin Syed Mohamed Nur

- 3.55 On 30 October 2015, Enforcement Agency Integrity Commission (EAIC) announced to public the findings of investigation on the death of Syed Mohd Azlan bin Syed Mohamed Nur in PDRM custody. The deceased was arrested on 3 November 2014 around 3.30 am following a police report on fighting case and possession of firearms. The death of the suspect was confirmed at 8.30 am on the same day. The investigation by EAIC Team, found that the death of Syed Mohd Azlan Bin Syed Mohamed Nur had connection with the use of physical violence by the police who carried out the arrest and interrogation on the deceased.

- 3.56 The death of Syed Mohd Azlan was due to blunt force trauma to the chest. From the examination, there were 61 types of injuries on face, body and both feet. Parts of the injuries suffered by the deceased were consistent with the injuries when protecting himself from physical violence meted out by the police.⁷⁷

- 3.57 The investigation also found disturbances of material evidence by PDRM personnel and the use of handcuffs not authorised by PDRM to handcuff the deceased. There was also serious violation on PDRM's SOP on procedures on handling arrested persons, confiscated exhibits and evidences integrity.

⁷⁷ Press Release: Statement of Investigation by Suruhanjaya Integriti Agensi Penguatkuasaan (EAIC) on the Death of Syed Mohd Azlan Bin Syed Mohamed Nur during POLIS DIRAJA MALAYSIA (PDRM) custody dated 30 October 2015.

3.58 The three cases heard in Coroner's Court indicated the police's negligences in providing protection and treatment needed by the suspects. While the inquiry of the EAIC Team indicated that there were grave violations of human rights that caused the death of detainees. These death cases made up the deaths due to foul play by the police and human rights violations to 6 cases. This means if the death cases were investigated and trialed thoroughly such as by holding an inquest proceeding, the real causes of deaths could be identified. Many death cases did not get inquest proceedings even though requested by the family members of the deceased, denying them from knowing the real cause of detainees' death.

Conclusion

3.59 Based on PDRM statistics and interviews carried out in the research, health issues are the main factor for death in police custody, however, there are several other factors as well. These factors should not be allowed to persist and continue to be the reason for detainees' death in custody. It is important to pay urgent attention to these factors and that drastic measures should be taken to avoid or reduce the deaths in police custody. These issues are further discussed in the following chapters.

3.60 Moreover, since the establishment of Coroner's Court in every state, chaired by the Judge of Section Court, about 3 death cases due to negligence and misuse of power by the police were concluded. Based on the findings of Personnel in-charge of EAIC, there was 1 case involving serious violations of SOP and integrity by PDRM personnel.

3.61 In addition, among Officers in-charge of Station and sentry personnel who were interviewed, they claimed that the negligence and use of force on detainees during arrest or interrogation were among the contributing factors of deaths in police custody. The issues and measures in handling health problems and the use of force by the police will be elaborated in Chapter 5 and 8.

CHAPTER 4

MANAGEMENT AND FACILITIES OF THE INFRASTRUCTURE IN THE LOCK-UPS: OBSERVATION

A. BACKGROUND

I. Definition of Police Lock-up

- 4.1 Police lock-up is a room to confine a detainee while investigation is being conducted. All places or lock-ups are gazetted in order to be used as a place of detention for a suspect under Section 7(1) Prison Act 1995. The Minister, with his power, by notification in the Gazette, may declare any area at the police station and building of court, to be the lock-up.
- 4.2 All lock-ups are subjected to Lock-up Rules 1953 (L.N. 328/1953) and it applies to all detainees who are being detained in gazetted lock-ups. Lock-ups that came into force since 2 July 2003 are also subjected to the Inspector-General's Standing Order which is Order A118. Another rule that is subjected to all lock-ups in every district is the Officer in-charge of Police District's Standing Order⁷⁸. This order is concerning the detailed procedure of lock-ups' management in every districts.
- 4.3 The gazetted lock-up is used to detain people who have been arrested legally and receives remand order after 24 hours. Usually, the maximum period of detention is 14 days. Meanwhile, suspects who are arrested under the laws like Dangerous Drugs Act (Special Preventive Measures) 1985 can be detained for 60 days, 28 days under Security Offences (Special Measures 2012) Act and Crime Prevention Act 1959.

⁷⁸Order A118 and Officer in-charge of Police District's Standing Order are confidential documents.

- 4.4 Every gazette also states the total capacity of a lock-up. It is important in order to prevent overcrowding in the lock-up and for the management to get the allocation such as the budget for food and drinks of detainees.

II. Types of Lock-ups

Regular Lock-up at Police Station

- 4.5 Regular lock-up is located at police stations with the supervision under Police District Headquarters. It is regularly used to arrest a suspect from only one district. For example, under IPD Kajang, Selangor, lock-up in Kajang Police Station, is used to detain male suspects. On the other hand, female suspects are detained in lock-up in Bandar Rinching Police Station, nearby Semenyih, Selangor.

Central Lock-up

- 4.6 Meanwhile central lock-up is used to detain suspects from several districts. Central lock-up is a new concept and for the time being, there are three of them in Malaysia which are in Jinjang (Kuala Lumpur), Shah Alam (Selangor) and Bayan Baru (Pulau Pinang).
- 4.7 Jinjang Central Lock-up, for example, placed suspects who were arrested from police districts of Sentul, Kepong and Kuala Lumpur. Whereas Bayan Baru Central Lock-up, Pulau Pinang placed all suspects who were arrested from police districts of Timur Laut and Barat Daya (the entire area/island).
- 4.8 The central lock-up is a new concept which have bigger capacity, better facilities and structure in terms of strength of personnel, control, monitoring, lighting and ventilation.
- 4.9 Dang Wangi Police Station lock-up, Kuala Lumpur is not considered as a central lock-up although it is used to detain suspects from several police districts including districts of Cheras and Dang Wangi.

- 4.10 In Sabah, there is Contingent Central Lock-up in Kota Kinabalu which is used to detain suspects from several districts such as Papar, Tuaran and Penampang if the lock-ups in the said stations are overcrowded.

Female and Juvenile Lock-ups

- 4.11 In every police district, there is lock-up to detain female and juvenile suspects. In several districts, the lock-up is located in two different area like in IPD Kajang and Brickfields. Meanwhile, there are many stations have lock-ups for females and juveniles in the same area but they are seperated.

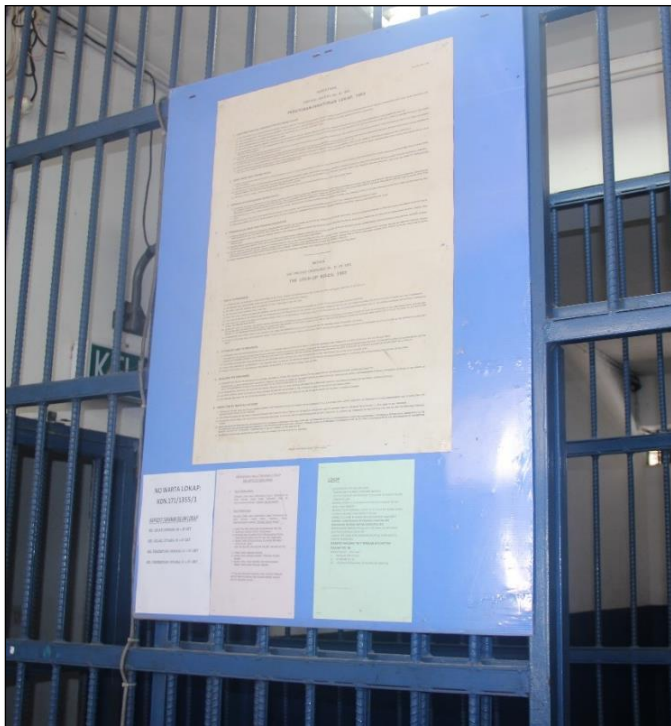
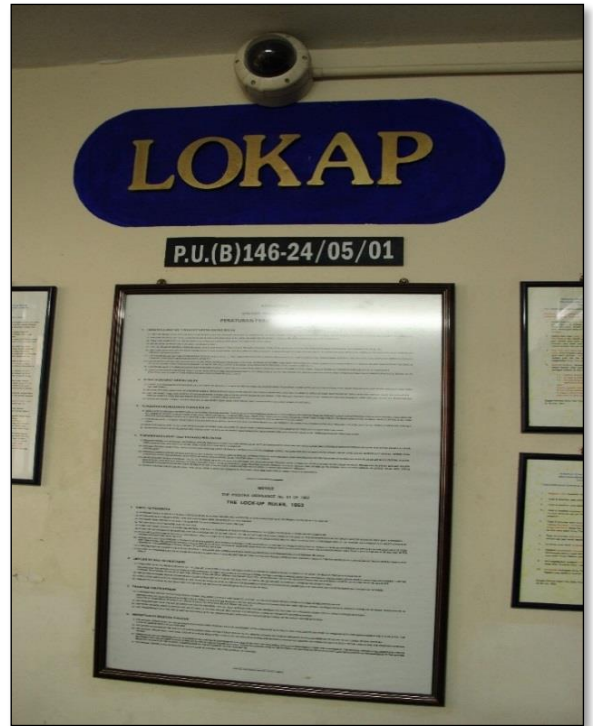
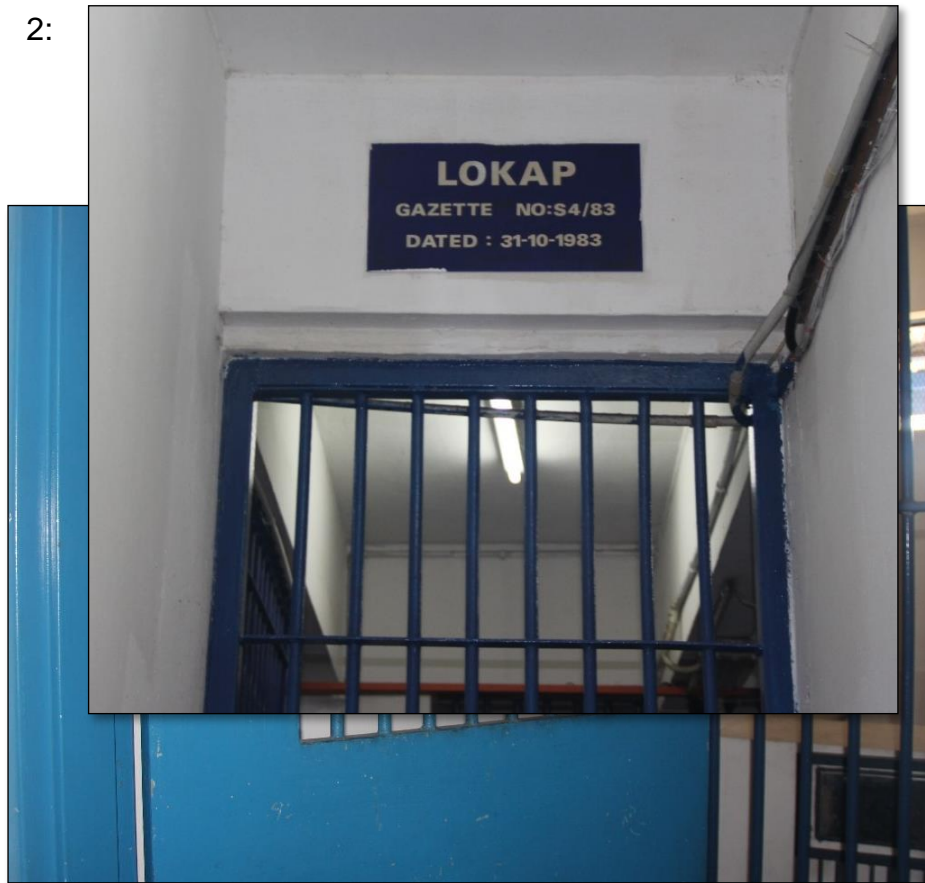


Figure 1: Lock-up Rules displayed at lock-up entrance

Figure 2:
up gazette



Lock-

Figure 3:
Detention Room for Female/Juvenile in Ranau Police Station

B. LOCK-UP MANAGEMENT

- 4.12 Every lock-up is under the management of Police District Headquarters and the lock-ups must be gazetted under Section 7 Prison Act 1995 in order to enable the police to detain suspects. The lock-up is situated at police stations, courts, and at premises of other enforcement agencies.
- 4.13 During the visit, the Commission found that the lock-up was not available in every station and not all lock-ups can be used to detain suspects. Based on PDRM data, there are 773 lock-ups in Malaysia. However, not all lock-ups are actively used (to detain suspects). This is because PDRM, whenever possible, would want to use one lock-up per time in every district. This is to improve the quality of management and supervision, to produce a more efficient monitoring system and optimum use of work force. Usually, lock-ups are located at police

station nearby Police District Headquarters. If the situation does not allow the placement of all suspects in one place, another lock-up will usually be used to separate female suspects. Moreover, the lock-up at other stations is only used for temporary detention, for instance, if a suspect is detained at night.

Table 9: List of Lock-ups under IPD Batu Pahat, Johor

No	Name of Station and Lock-up	Total no. of Lock-up	Active	Inactive
1	Batu Pahat	1	√	
2	Senggarang	1		√
3	Rengit	1		√
4	Parit Raja	1		√
5	Ayer Hitam	1		√
6	Yong Peng	1		√
7	Tongkang Pecah	1		√
8	Sri Medan	1		√
9	Parit Sulong	1		√
10	Semerah	1		√
11	Sri Gading	1		√
TOTAL		11	1	10

4.14 As shown in Table 9, in IPD Batu Pahat, Johor there are 11 police stations and lock-ups. Nonetheless, out of 11 lock-ups, only 1 is still actively used to detain suspects which is lock up in Batu Pahat Police Station. Meanwhile, other 10 lock-ups in IPD Batu Pahat are no longer active to detain suspects.

4.15 Hence, based on PDRM statistics, out of 773 lock-ups, only 486 are active while other 287 lock-ups are inactive.

Logistic Management and Coordination

4.16 All logistics and lock-up equipments are managed by Logistics Department of Police District Headquarters (IPD) through Logistics Department of Contingent

Headquarters (IPK) in every state. The logistics available in every lock-up is not the same. It usually depends on budget and safety measures.

- 4.17 For all matters related to repairing of any damage, the Station should make a report to Logistics Department of Police District Headquarters and then it will be sent to Logistics Department of Contingent Headquarters. Due to this process, the repair needed in stations or lock-ups is delayed.
- 4.18 The Commission is informed by the Officers in-charge of Station that they or management at station and Police District Headquarters do not involve in the process of decision making, for instance, to determine the specification of lock-up or the need for a repair and other facilities in lock-up. The matter is often decided by Ministry of Home Affairs (KDN) and superior officers. As a result, the requirements in lock-up are often not met.

Lock-up Gazette

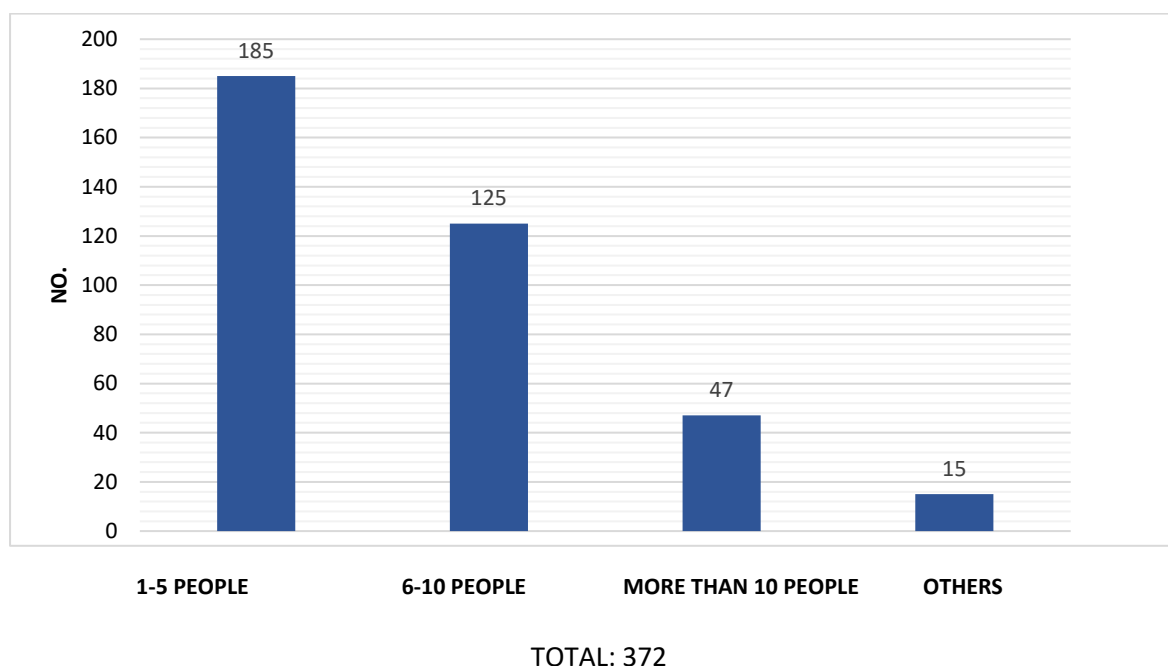
- 4.19 During the visit to Kajang Police Station, the Commission found that the lock-up used is not yet gazetted. The lock-up is an additional section which is built to adapt current detainees capacity. The gazetted area is the previous lock-up which is no longer being used as it cannot cope with the present detainees capacity.
- 4.20 The Commission mentioned that there are several lock-ups which involve in overcrowding problem as stated below (Please refer to Table 10 which shows the stations which are overcrowded during the Commission visits). The Commission examined that the lock-up capacity is not stated in lock-up gazette in most all visited lock-ups in Sarawak and Sabah. Chief in-charge of Police District has the authority to use his discretion in order to determine no. of detainees at a time.
- 4.21 In addition, female lock-up in Travers Police Station under IPD Brickfields cannot be gazetted as it does not conform to standard and unsafe to be used as a lock-up to detain detainees.

Overcrowding

- 4.22 The Commission mentioned that police lock-up is also exercised by other authorities such as Immigration Department, Customs, and Malaysian Maritime Enforcement Agency (APMM) for short term, especially after the arrest or whenever Prison Department bring detainees to court. The practice sometimes causes the police lock-up to be overcrowded. The Commission found that 14 out of 47 visited lock-ups (almost 30%) were overcrowded.
- 4.23 Diagram 4 below shows no. of detainees who shared cells, for instance, 125 detainees mentioned that about 6-10 people were placed in a cell. This problem often occur in regular lock-ups since central lock-up is bigger in terms of size.

Diagram 4

No. of Detainees Sharing Cells



- 4.24 Meanwhile there are 113 detainees (Diagram 5, p. 80) who were interviewed stated that the lock-up was overcrowded when they were being detained. About 14 Officers in-charge of the Station stated that their lock-ups undergo frequent problem of overcrowding.
- 4.25 For example, IPD Lahad Datu, Sabah is situated in the Eastern Sabah Security Command (ESSCOM) and the security level is quite high. This causes a high no. of arrest in the area. On the day of visit, the Commission found that there were 112 male suspects placed in several cells while 21 female suspects were being detained in one cell. There were 16 juvenile offenders who were being detained during visit and placed in separate cell.
- 4.26 Other than that, there is no prison in Lahad Datu. The nearby prison is located in Tawau which is a journey of approximately two hours by land transportation. Therefore, if there is court matter in Lahad Datu and sentencing by the court, especially in the evening, the detainees had to spend the night in police lock-up in Lahad Datu Police Station.

Old Lock-ups

- 4.27 Several Officers in-charge of Station who were interviewed mentioned that lock-ups over 20 years old are no longer suitable to be used. Small capacity of the lock-up and barely equipped facilities burden the lock-up management and this affects the treatment towards detainees. The maintenance also costs a lot.

Table 10: List of Lock-ups which are Overcrowded during the Commission Visit

No.	Lock-up	The Cause of Overcrowding
1	Pasir Mas Police Station, Kelantan	Lock-up capacity does not meet the current requirement. The lock-up was built in 1953 and should be upgraded according to population. There are also many drug cases in the district.
2	Tanah Merah Police Station, Kelantan	Usually overcrowding is due to operation of drugs.
3	K. Terengganu Police Station, Terengganu	Usually overcrowding is due to operation of Illegal Immigrants without Permit (PATI).
4	Tawau Police Station, Sabah	Usually overcrowding is due to operation of PATI by Immigration Department.
5	Lahad Datu Police Station, Sabah	High arrest from the operation performed by APMM, Customs, and Immigration and also due to detainees from Penjara Tawau.
6	Penampang Police Station, Sabah	Problem occurs whenever operation of criminal prevention is carried out by the police and the lock-up is overcrowded due to high arrest which exceeds the capacity.

7	Sibu Police Station, Sarawak	Usually overcrowding is due to operation of PATI by Immigration Department.
8	Miri Police Station, Sarawak	The absence of other lock-ups in <i>bandaraya</i> Miri and the arrest of PATI.
9	Bintulu Police Station, Sarawak	Numbers of operation done and the arrest from other departments.
10	Kluang Police Station, Johor	The arrest from Special Operation and Operation of PATI.
11	Pontian Police Station, Johor	Usually due to the arrest of PATI.
12	Shah Alam Central Lock-up, Selangor	Sometimes there are so many large-scale operations and Special Operation.
13	Kajang Police Station, Selangor	Numbers of operation including the arrest of illegal immigrants.
14	Jinjang Central Lock-up, Kuala Lumpur	Undergo overcrowding whenever the arrest includes public assembly and big operation like Ops Cantas. Also due to cases referred by other Departments such as religion enforcement agency and temporary transit before being taken to court.

C. BASIC NEEDS OF DETAINEES

Food/Drinks

4.28 The food and drinks for detainees are essential because they are part of the detainees' human rights. During the Commission visit to 47 lock-ups all over the country, it is identified that the food and drinks supply is different especially in terms of the budget (Table 11). The supplied food and drinks are based on the total budget. For lock-ups with more budget, the quality of the food given is better or otherwise, if the budget is low, the quality and quantity of the food would be less.

Table 11: Food Budget in Visited Lock-ups by the Commission

No	State	IPD	Lock-up	Total of Food Budget
1.	Kedah	IPD Alor Setar	Kepala Batas Police Station Lock-up	RM 5.00 – 6.00
2.	Kedah	IPD Kubang Pasu	Jitra Police Station Lock-up	RM 6.00
3.	Pulau Pinang	IPD Timur Laut	Jalan Patani Police Station Lock-up	RM 7.80
4.	Pulau Pinang	IPD Timur Laut	Dato Keramat Police Station Lock-up	RM 7.50
5.	Pulau Pinang	IPD Seberang Perai (Selatan)	Seberang Perai Police Station Lock-up (Selatan)	RM 8.00
6.	Pulau Pinang	IPD Barat Daya	Bayan Baru Central Lock-up	RM 7.80
7.	Sarawak	IPD Miri	Miri Central Police Station Lock-up	RM 13.00
8.	Sarawak	IPD Bintulu	Bintulu Central Lock-up	RM 15.50

9.	Sarawak	IPD Sibu	Sibu Central Lock-up	RM 10.50
10.	Sarawak	IPD Sibu	Sg Merah Police Station Lock-up	RM 8.00-10.00
11.	Negeri Sembilan	IPD Jempol	Bandar Sri Jempol Police Station Lock-up	RM 7.70
12.	Negeri Sembilan	IPD Seremban	Seremban Police Station Lock-up	RM 8.00
13.	Negeri Sembilan	IPD Tampin	Tampin Police Station Lock-up	RM 8.00
14.	Melaka	IPD Alor Gajah	Alor Gajah Police Station Lock-up	RM 7.00
15.	Melaka	IPD Melaka Tengah	Melaka Tengah Police Station Lock-up	RM 6.70
16.	Johor	IPD Batu Pahat	Batu Pahat Police Station Lock-up	RM 6.40
17.	Johor	IPD Johor Bahru (Selatan)	Ayer Molek Police Station Lock-up	RM 3.60
18.	Johor	IPD Seri Alam	Taman Johor Jaya Police Station Lock-up	RM 6.90
19.	Johor	IPD Kluang	Kluang Police Station Lock-up	RM 8.10
20.	Johor	IPD Pontian	Pontian Police Station Lock-up	RM 6.80
21.	Sabah	IPD Kota Kinabalu	Sabah Contingent Central Lock-up	RM 14.50
22.	Sabah	IPD Ranau	Ranau Central Lock-up	None
23.	Sabah	IPD Lahad Datu	Lahad Datu Police Station Lock-up	RM 13.70
24.	Sabah	IPD Penampang	Penampang Police Station Lock-up	RM 13.30
25.	Sabah	IPD Tawau	Tawau Centra Lock-up	RM 12.50
26.	Sabah	IPD Sandakan	Sandakan Police Station Lock-up	RM 14.50
27.	Kelantan	IPD Tanah Merah	Tanah Merah Police Station Lock-up	RM 9.50
28.	Kelantan	IPD Kota Bahru	Kota Bahru Police Station Lock-up	RM 9.00
29.	Kelantan	IPD Pasir Mas	Rantau Panjang Police Station Lock-up	RM 10.50

30.	Kelantan	IPD Pasir Mas	Pasir Mas Police Station Lock-up	RM 8.70
31.	Terengganu	IPD Kuala Terengganu	Kuala Terengganu Police Station Lock-up	RM 12.50
32.	Terengganu	IPD Dungun	Dungun Police Station Lock-up	RM 12.00
33.	Kuala Lumpur	IPD Brickfield	Petaling Police Station Lock-up	None
34.	Kuala Lumpur	IPD Dang Wangi	Dang Wangi Central Lock-up	NA
35.	Kuala Lumpur	IPD Sentul	Jinjang Central Lock-up	RM 7.00
36.	Selangor	IPD Kajang	Semenyih Police Station Lock-up	None
37.	Selangor	IPD Kajang	Kajang Police Station Lock-up	None
38.	Selangor	IPD Shah Alam	Shah Alam Central Lock-up	None
39.	Selangor	IPD Klang Selatan	Klang Selatan Police Station Lock-up	RM 7.00 – 10.00
40.	Selangor	IPD Klang Utara	No Lock-up	None

Source: Interview with Officer in-charge of Station



Figure 4: Food and Drinks in Melaka Tengah Police Station lock-up



Figure 5: Food and Drinks in Dang Wangi Police Station lock-up

- 4.29 The Commission found that the foods/drinks for detainees were given 3 times a day which are breakfast, lunch and dinner. Most of the complaints reported by detainees were that the food is not enough especially drinking water. Although water is basic need, the lock-up management does not serve it all the time. Most of detainees mentioned that usually they were asked to drink tap water if they need more water than what has been supplied to them.
- 4.30 Detainees in Jitra Police Station lock-up (Kedah), Bayan Baru Central Lock-up (Pulau Pinang), Jempol and Seremban Police Stations (Negeri Sembilan), Tampin, Melaka Tengah and Alor Gajah Police Stations (Melaka), Kluang, Seri Alam, Pontian Police Stations (Johor), Dungun Police Station (Terengganu), Pasir Mas and Kota Bahru Police Stations (Kelantan), Miri, and Sibu Police Stations (Sarawak), as well as Tawau and Lahad Datu Police Stations (Sabah) stated that the food given was insufficient.
- 4.31 The Commission also found the food/drinks budget for detainees in several places was unreasonable. For example the budget as low as RM3.60 in Ayer Molek Police Station lock-up, Johor is unreasonable for 3-meal per day. Also the budget around RM5-7 in other places like at lock-ups in Kepala Batas, Jitra, Melaka Tengah, Batu Pahat and Pontian Police Stations is insufficient to serve nutritious and adequate meals. During an interview with detainees in Ayer Molek Lock-up, Johor on 13 July 2014, the Commission was informed through the feedback that sometimes they were served with stale and wormy food.
- 4.32 The Commission was informed that detainees who undergo health problems also are being served with the same meals in most visited lock-ups without being given the priority of required diet. For detainees who are vegetarian, they are only been given bread in Seberang Perai Selatan Lock-up. Detainees in Batu Pahat Police Station lock-up requested the menu to be changed as they are being served with the same meals almost everyday.
- 4.33 On the contrary, the Commission found that food budget in East Coast lock-ups such as in Kuala Terengganu as well as in Sabah and Sarawak is reasonable. Food/drinks budget at K. Terengganu Police Station is RM12.50. In Sabah, at

Penampang Police Station, food budget is RM13.30 while in Sarawak, the budget in Bintulu Police Station Lock-up is RM15.50. Food served in Satuk Police Station (Kuching) is sufficient and clean. Nonetheless, as reported in para 4.35, there were detainees who complained the food provided was not enough.

Clothing

- 4.34 Generally, in all visited lock-up by the Commission, clothes were given to all detainee. Clothing for detainees are divided into two colours, which are purple and orange for minor and major offences respectively.
- 4.35 However, according to detainees who were interviewed, they are usually not provided with shirt, but only with pants. The Commission found that the male detainees were not given lock-up shirt in Tampin and Melaka Tengah Police Stations. Detainees in Lahad Datu and Tawau Police Stations in Sabah informed that they are only given shirt during the visit by the Commission.
- 4.36 In most other lock-ups, male detainees chose not to wear shirt because the lock-up is quite hot and they usually made the shirt as pillow when sleeping.
- 4.37 Although in general that all lock-up management stated that the total no. of clothes is enough, the frequency of changing the clothes is troublesome. Practically, clothes of detainees have only been changed in 3-4 days, or once a week or when they are dirty. In Satuk Police Station, frequency of changing the clothes depends on the total number of detainees in lock-up. In Penampang Police Station, detainees stated that the clothes given when they were being detained were those that are not yet washed.
- 4.38 Laundry service for detainees is done by own Station by providing a washing machine and sentry personnel in-charge will assist in washing the clothes of detainees. Only few Stations send the clothes to laundry service such as Ranau and Lahad Datu Police Stations, Sabah.

4.39 Also, there is lock-up management who asked detainees to wash their own clothes like in Sibu Police Station, Sarawak.



Figure 6: Jempol Lock-up N. Sembilan and Bayan Baru Central Lock-up, Pulau Pinang.



Figure 7: Johor Bahru Selatan Lock-up, Johor and Tawau Lock-up, Sabah



Figure 8: Clothes of detaineesin Batu Pahat Police Station, Johor and Dungun Police Station, Terengganu



Figure 9: Sentry personnel washing the clothing of detaineesin Dungun Police Station



Figure 10: Clothes of detainees were hung in lock-up area in Dungun Police Station

Toiletries

- 4.40 The Commission found in most visited lock-ups that toiletries, such as toothpaste, toothbrush, soap and towel were not provided to detainees. Among the reasons of doing so as stated by the lock-up management is that the toiletries are used as weapon to commit suicide or to hurt others or own self. Moreover, budget cuts is a major obstacle in order to buy and provide the toiletries for detainees. This is a main problem highlighted by the majority of detainees who were interviewed because they thought that the toiletries are essential basic needs for daily use.
- 4.41 Still, the Commission found that the lock-up management of Jinjang Central Lock-up takes the initiative to provide the toiletries. For example, in male lock-up, the toiletries are provided to detainees who are being detained in longer period. Meanwhile in female lock-up, the toothbrush is only given once when

detainees were admitted whereas toothpaste and soap are given when needed. The toiletries are provided in Patani Police Station lock-up, Pulau Pinang and in Pontian Police Station lock-up (except towels). Detainees in Jempol Police Station claimed that they were given toiletries only when the Commission visited the lock-up.

- 4.42 Most police personnel mentioned that they used their own money to buy sanitary pads in order to give to female detainees when needed. This is the practice which has been carried out in most lock-ups including Seri Jempol Police Station lock-up and Jinjang Central Lock-up.
- 4.43 In Bintulu and Miri lock-ups, Sarawak, the toiletries were not provided unless supplied by the family.
- 4.44 Moreover, most lock-ups provided facilities like praying mat, *telekung*, mat and al-Quran upon request by detainees.



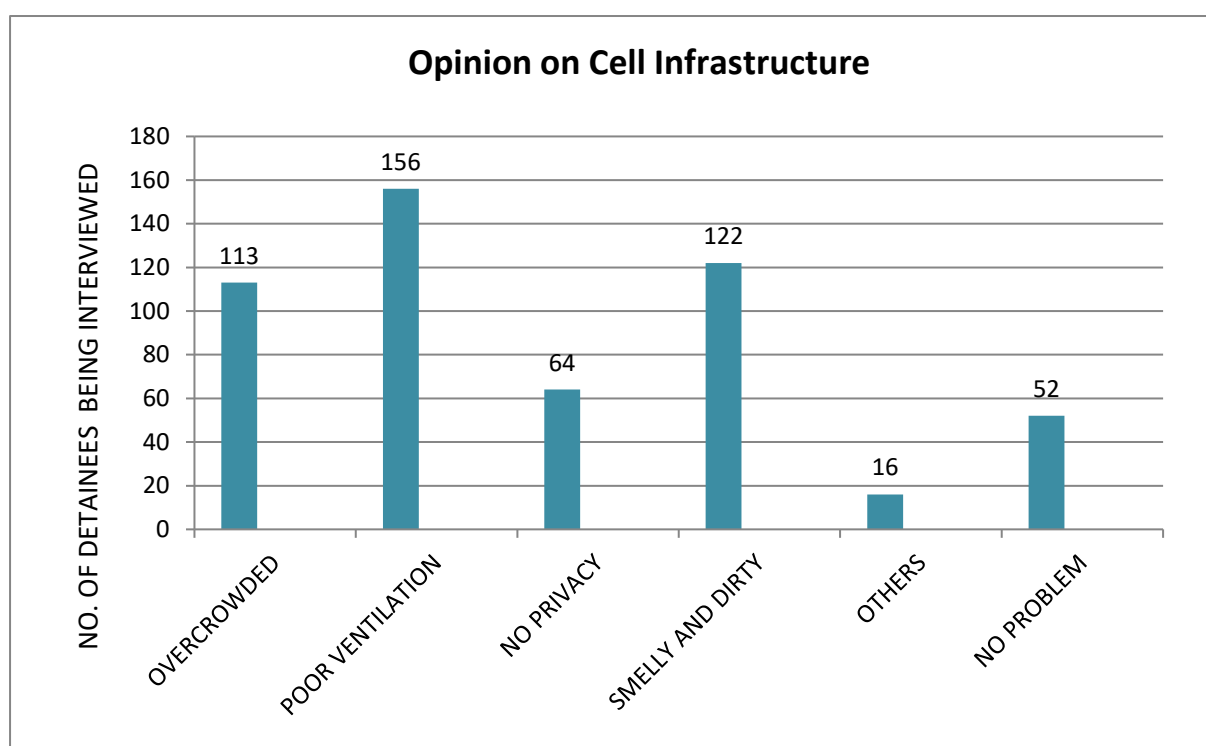
Figure 11: Toiletries in Sandakan Police Station Lock-up

D. LOCK-UP INFRASTRUCTURE

Ventilation System

4.45 Most visited lock-ups were found with bad ventilation system. The condition are even worse in old lock-ups.

Diagram 5



4.46 Diagram 5 shows the opinion of detainees concerning lock-up infrastructure. About 156 detainees stated the poor ventilation system and 122 detainees said cells are dirty and smelly. Besides, 16 detainees mentioned other reasons which mostly relates to the condition of toilets and floors that are not suitable for detainees.

4.47 Based on the Commission observation, most visited lock-ups were smelly and hot. This includes the lock-ups in Dang Wangi, Melaka Tengah, Jinjang, Kluang, Lahad Datu and Sibul. One of the main factors is poor ventilation system. Windows in visited lock-ups were quite covered and their different sizes caused

poor ventilation system. There were lock-ups which windows are small in size and covered for safety measures. Female cell in Lahad Datu Police Station and male cell in Kluang Police Station lock-up do not have windows. Whereas in Penampang Station lock-up, there are cells with no air holes or the available ones are too small.

- 4.48 Because the windows are not enough to assist the ventilation, most lock-ups are equipped with exhaust fan. However, it still does not overcome the problem of poor ventilation. Based on Table 12 below, there are 11 lock-ups which do not equipped with exhaust fan, 3 lock-ups have the broken ones and 5 lock-ups have insufficient exhaust fan.
- 4.49 Other than exhaust fan, regular fan is only used in several lock-ups. The presence of regular fan can assist the ventilation. Detainees met at lock-ups in Kuala Terengganu, Dungun, Kota Setar and Tabuan Jaya Police Stations, for instance, request the fan installation to create cold and better ventilation.
- 4.50 The Commission found the ventilation system in Bayan Baru Central Lock-up, Jitra Police Station (IPD Kubang Pasu) and Ranau Police Station (Sabah) is good due to the structure of the building. The presence of air holes assist in ventilation in cells.

Lighting

- 4.51 The Commission examined that, just like the ventilation system, the lighting is also unsatisfying. The condition is even worse in old lock-ups. The absence of big windows and those which are covered due to safety measures limit the natural light coming through the windows.
- 4.52 There is poor lighting in Bintulu Police Station, Sarawak, and lock-ups in Kluang and Batu Pahat Police Stations in Johor. It is dark in Bintulu Police Station lock-up as there are no lamps in all cells. Meanwhile it is dark in male lock-up in Kluang Police Station as there are no lamps nonetheless there is good lighting in female lock-up.

Cleanliness of Cells and Toilets

- 4.53 Based on the Commission observation, cleanliness is a major problem in police lock-ups. Most of the cells where detainees are being detained are dirty and messy. Most of the toilets provided are derogated, dirty and smelly. About 112 detainees who were interviewed stated that the lock-up where they were placed are smelly and dirty. There were also toilets which are not working and clogged.
- 4.54 For instance, toilets in Dang Wangi Police Station and Kajang Police Station were dirty. Also in Dang Wangi, it was observed that there was dried stool on walls which was left uncleaned during the Commission visit. The entire Dang Wangi Police Station lock-up was smelly. This same goes to male lock-up in Jinjang Central Lock-up.
- 4.55 In Kota Bahru Police Station, Kelantan, toilets at cells were dirty. Whereas in Tanah Merah Police Station lock-up, they were clogged, with walls being scribbled and cockroaches were seen wandering in cells. There were several detainees from few lock-ups complained about the problem of mosquitoes and other insects.
- 4.56 In Batu Pahat Police Station lock-up, Johor, there was one cell which cannot be used due to its clogged toilet. Kluang Police Station lock-up was smelly whereas in Patani Police Station, Pulau Pinang, the toilets were extremely dirty. The same condition also observed in Bayan Baru Central Lock-up although it is relatively new, the lock-up was also dirty.
- 4.57 Meanwhile in Sarawak, Bintulu Police Station and Sibu Police Station lock-ups were dirty. The walls in Sibu Police Station lock-up were extremely dirty.
- 4.58 The cleanliness of lock-up is usually maintained by detainees themselves. The lock-up management asked detainees to clean the lock-up especially the cells and toilets. This is because the management does not allocate extra budget for

services from outside. The Commission was also informed that the service from outside is not allowed due to safety measures.

- 4.59 Moreover, there are few lock-ups which do not have toilets in the cells such as Kota Setar Police Station, Kedah and Miri Central Police Station. This causes difficulty for both detainees who want to use the toilets and sentry personnel in-charge. In Central Police Station, Miri, Sarawak, male, female and juvenile lock-ups are located in the same area and all detainees have to share the same bathroom/toilets and take turns.

Space for Sleeping

- 4.60 The Commission examined that the space for sleeping is made from wood or cement in most of the visited lock-ups. Part of the lock-ups, especially old ones, tiles are used as floor and space for sleeping.
- 4.61 Although a wooden base is used, most of parts do not last long or they would be broken or torn. This causes difficulty for detainees to sleep. This happens in the lock-ups such as Melaka Tengah, Dungun, Kluang, and Kuala Terengganu lock-ups.
- 4.62 Meanwhile, whichever lock-ups with no wooden base as space for sleeping, the detainees have to sleep on cement floor. The Commission indicated that this is improper due to cold cement and in several lock-ups, the cement floor is rough. The Commission believed, whether the wooden base or cement floor, the condition is just the same in other lock-ups.
- 4.63 In several lock-ups, there is leakage on pipes which causes the water to flow directly towards the sleeping place of detainees. This limits the space for sleeping especially when it is overcrowded. There are also detainees who complained about bed bugs problem in the cells.
- 4.64 Moreover, detainees were not provided with mattress and blanket although Rule 13, Lock-up Rules 1953 stated that the detainees should be supplied with

mattress. Blankets are only given in cold lock-ups at night or in highlands like Ranau Police Station. The Commission was informed that blanket is not provided as it can be used to commit suicide.

Table 12: The Commission Observation on Exhaust Fan and Windows (Ventilation System) in Lock-up

Condition of Windows/Exhaust Fan	North and Middle Zone Lock-up	South and East Coast Zone Lock-up	Sawarak & Sabah Zone Lock-up
No exhaust fan	i. Jalan Patani ii. Datuk Keramat iii. Kota Setar iv. Kepala Batas (F) v. Kubang Pasu (F) vi. Pelabuhan Klang (F)	i. Alor Gajah ii. Batu Pahat iii. Tanah Merah iv. Rantau Panjang	i. Lahad Datu ii. Ranau iii. Tabuan Jaya, Kuching
Damaged exhaust fan		i. Tampin (M) ii. Melaka Tengah iii. Pontian	
Not enough exhaust fan		i. K. Terengganu	i. Sabah Contingent Central Lock-up ii. Penampang iii. Bintulu iv. Kuching
No windows		i. Kluang (male cell) ii. Batu Pahat	Lahad Datu (female cell)
Small windows	i. Kepala Batas		

F = Female M= Male



Figure 12: Limited air holes–Kapar Police Station Lock-up (Klang Utara)

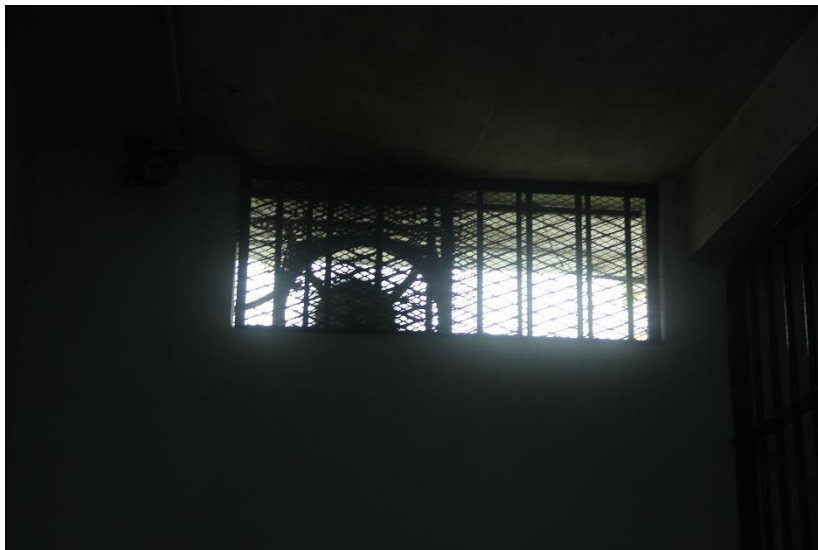


Figure 13: Tampin Police Station



Figure 14: Big windows in lock-up at Ranau Police Station, Sabah
create good ventilation and lighting

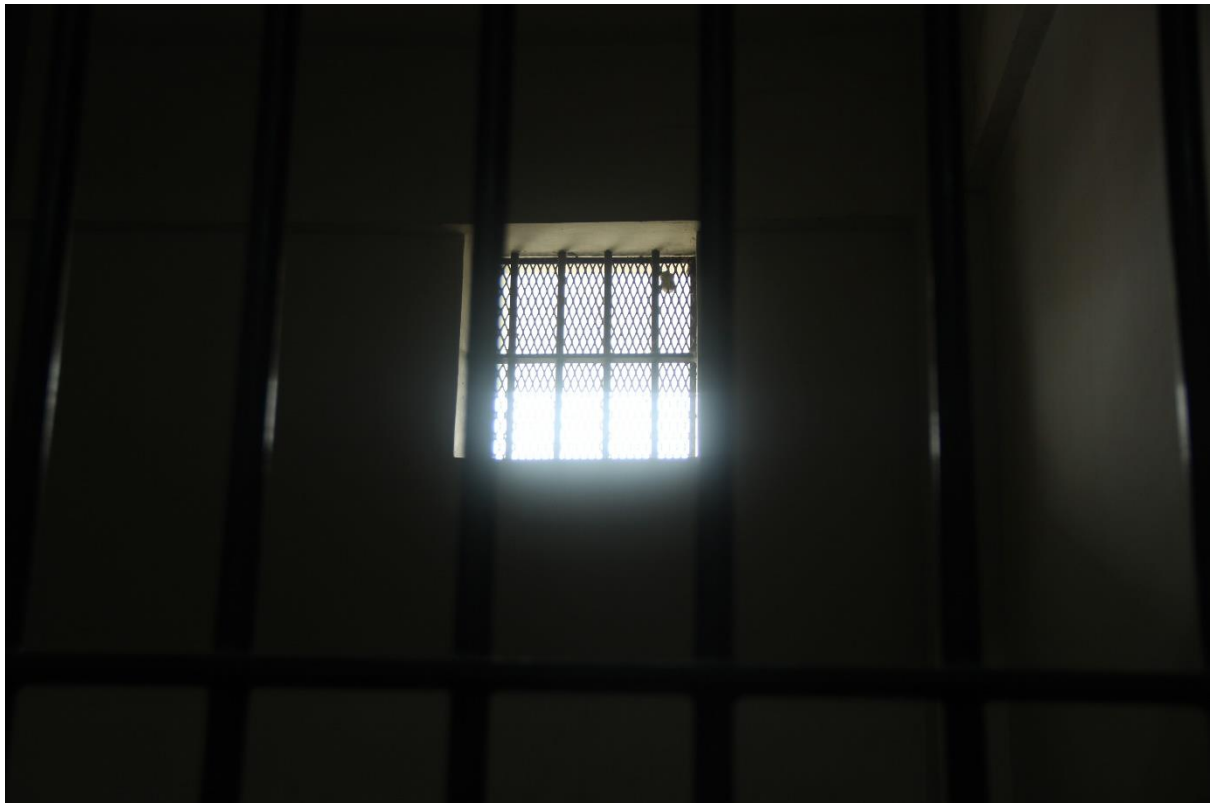


Figure 15: Limited lighting in lock-up at Alor Gajah Police Station, Melaka



Figure 16: Condition of toilets in lock-ups at Bintulu Police Station, Sarawak and K. Terengganu Police Station



Figure 17: Toilet in lock-up at Pasir Mas Police Station, Kelantan



Figure 18: Toilet inlock-up at Sandakan Police Station, Sabah which door is degrading the honour



Figure19: Dirty walls in lock-ups at Melaka Tengah Police Station, Melaka, and Tanah Merah Police Station, Kelantan



Figure 20: Rough cement floor in Melaka Tengah Police Station



Figure 21: Space for sleeping using plywood in Klang Utara Police Station, Selangor



Figure 22: Part of the wood is torn in lock-up at Dungun Police Station, Terengganu



Figure 23: Cement floor inlock-up at Kluang Police Station, Johor



Figure 24: Lock-up at Kuala Terengganu Police Station

Closed-circuit Television (CCTV)

4.65 Installation of Closed-circuit Television (CCTV) is one of the recommendations proposed by the Commission in the past to overcome the problem of deaths in police custody. Therefore, during the visit for the research, the Commission had observed the condition of CCTV in the lock-up.

4.66 The Commission observation suggested that CCTV in the lock-ups of Jitra Police Station, Kedah, Patani Police Station, P.Pinang, Tampin Police Station, Melaka, Sibu Police Station, Sarawak and Shah Alam Central Lock-up, Selangor are in good condition and they are working.

4.67 In other lock-ups, CCTV are not fully working as stated in table below:

Table 13

Condition of CCTV in PDRM Lock-up

No	Police Station Lock-up	Condition of CCTV
1	Female lock-up in Pelabuhan Klang, Selangor	Not working since 2 years ago
2	Male lock-up in Kajang, Selangor	10/16 CCTV were damaged since 3 years ago
3	Jinjang Central Lock-up, Kuala Lumpur	Presence of CCTV but no monitoring because of no expert
4	Dang Wangi Lock-up, Kuala Lumpur	8/12 not working
5	Travers Lock-up, Kuala Lumpur	The new female lock-up cannot be used because it does not meet the safety standard and CCTV is no longer working
6	Seberang Prai Selatan Police Station, Pulau Pinang	CCTV does not meet the standard
7	Lahad Datu Lock-up, Sabah	3/33 not working
8	Ranau Lock-up, Sabah	3/25 not working
9	Sabah Contingent Central Lock-up	5/47 not working
10	Miri Lock-up, Sarawak	3/3 (all) not working

11	Tabuan Jaya Police Station, Sarawak	3/16 not working and no personnel monitoring the CCTV
12	Sg. Merah Police Station, Sibu, Sarawak	6/20 not working (Complaint reported 5 months ago) New male lock-up was gazetted in 2013 although still not being used, its CCTV has not yet working
13	Sibu Police Station, Sarawak	CCTV cannot be used due to missing of password

4.68 The Commission found that the lock-ups use low-quality CCTV with poor maintenance level. Officers in-charge for CCTV are also not well-trained. The Commission was informed that if any damage occurs, the Station will contact Police District Headquarters so that they will call Contingent Headquarters for the repair. It is time-consuming and the process is entitled to the budget.

4.69 Other than the problem of broken CCTV, the installation is often made facing the lock-up especially at male toilets. The position of the CCTV violates the privacy and the honour of detainees who are being detained. There are 55 detainees who raised the issue of privacy in the lock-up.

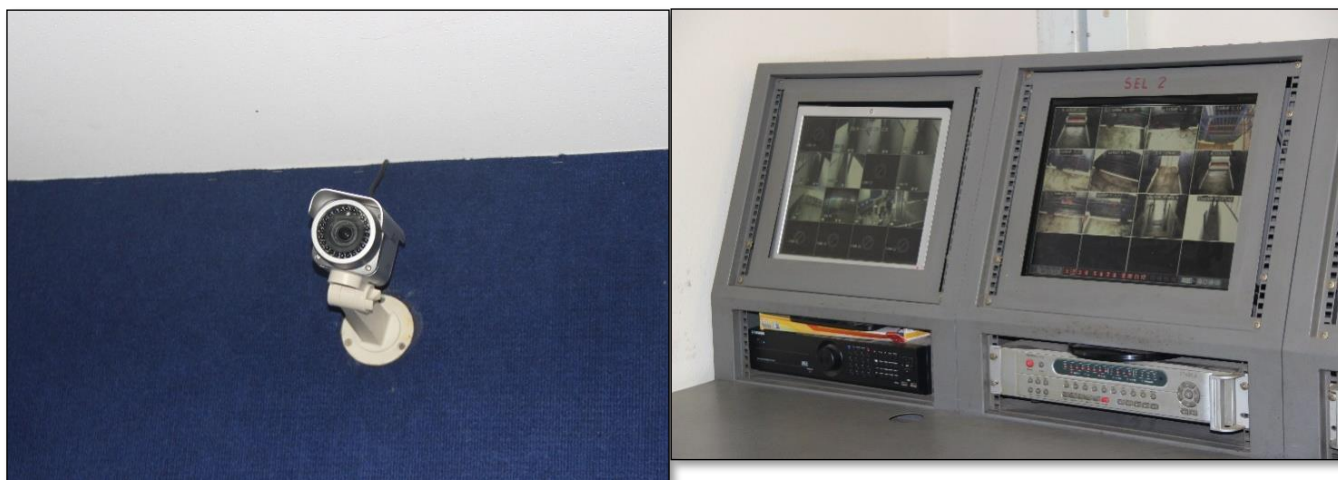


Figure 25: CCTV inKluang Police Station, Johor and CCTV monitor inKota Bahru Police Station, Kelantan

Conclusion

- 4.70 The findings of the Commission visits show that the condition of lock-up in most police stations are not satisfying. Issues and problems stated as above such as overcrowding, ventilation system, lighting, cleanliness, toilets, space for sleeping, as well as quality and budget for food do not meet the Nelson Mandela Rules. This has contributed towards the violations of human rights of the detainees. The recommendations proposed to overcome the problem will be discussed in Chapter 7.
- 4.71 Detainees who are being detained in police lock-up are suspects who will assist the investigation. As stated in the provision of Article 11 of UDHR, a person is innocent until proven guilty. Hence, the condition of detention should not be 'punishing' them and they should be treated according to the principles of human rights.
- 4.72 Other than rights of detainees, the condition of the lock-up also physically, mentally and emotionally affects the officers in-charge of the lock-up. Officers in-charge are also exposed to inconducive working environment and are vulnerable towards the risks of health problem as discussed in Chapter 5.
- 4.73 Hence, the issues elaborated in this chapter can be the influencing factors of deaths in detention. Therefore, serious concern should be paid towards these matters so that they are in line with the standards of human rights. Further attention should be underscored on the recommendations by the Commission in the following chapters.



Figure 26: CCTV screen in Lahad Datu Lock-up, Sabah

CHAPTER 5

HEALTH ISSUES AND OTHER FACTORS OF DEATH: OBSERVATION

I. Background

- 5.1 There are several factors that contribute to deaths in police custody. Based on statistics provided by PDRM and also through feedback received during the Commission visit, deaths in detention are caused by health issues, deceased own actions, and deaths due to foul play by the police.

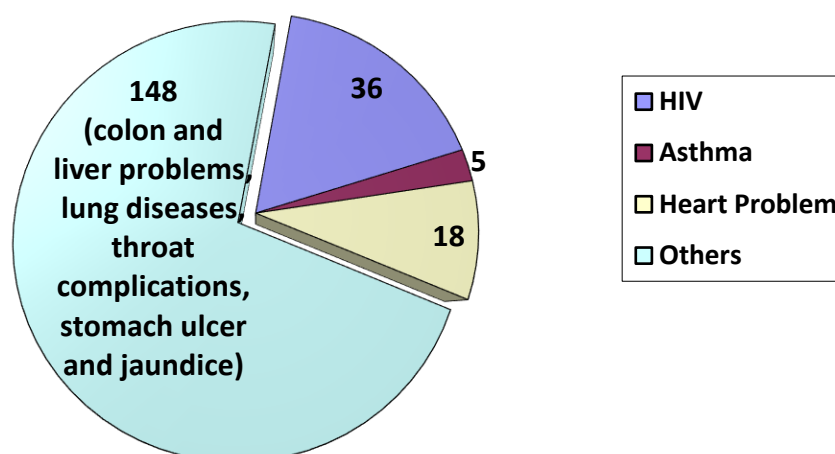
**Table 14: Cause of death of detainees in PDRM Lockup
(2000 – 2014)**

Cause	Total	Percentage (%)
Health reasons	207	81
Commit suicide	30	11.7
Brainhemorrhage	12	4.7
Falling accident at toilet	2	0.78
Fighting between detainees	2	0.78
Foul play by police	2	0.78
Total	255	100

Source: PDRM

- 5.2 Based on Table 14, it can be seen that there are 207 deaths and 81% of the total no. of death from 2000 until 2014 are caused by health problems. Meanwhile, out of 255 deaths, 48 are due to other reasons which only present 19% of the total no. of death.
- 5.3 Pie chart below demonstrates the deaths caused by health issues:

Diagram6: Statistics of Detainees Died in Lock-up based on Causes of Death due to Health Reasons (2000-2014)



Source: PDRM

II. Medical Facilities in Police Detention

Health Screening in the Lock-up

- 5.4 The Commission found that only 1/3 of detainees who were interviewed stated that they undergo health screening once arrived in lock-up, whereas 2/3 mentioned that they never received any medical screening. However, the 'health screening' carried out by the police was only through oral inquiry and not by qualified medical officers.
- 5.5 This corresponds with the answer given by IO, which is out of 248 officers, 287 replied that they asked the detainees by themselves to their health condition. 'Health screening' done by the police, if any, only by asking or interrogating the detainees. There was no medical officer who was present during the 'health screening'.

- 5.6 According to sentry personnel who were interviewed, 92% of them experienced the situation whereby the detainees requested further medical examination during the detention. About 60% of sentry personnel who were interviewed mentioned that whenever detainees requested so, they feel that it is a challenging duty. This is because the staff are lacking in number to ensure that the detainees are truthfully sick and afterwards taking them to hospital for further treatment.
- 5.7 The Commission was informed that the absence of medical officers in lock-up is due to financial constraint of employing the medical officers in every lock-up. Police officers also mentioned that there are no doctors who wanted to risk themselves by dealing with detainees and jeopardize their health and safety.
- 5.8 The Commission was also informed that there are numerous incidents whereby the detainees themselves do not know whether they are suffering infectious diseases and the extent of the diseases which can easily infect others, not only to other detainees, but also to sentry personnel. For instance, the Commission was informed that in one incident in Johor lock-up whereby a detainee was being detained without him knowing that he suffered tuberculosis. When he complained about his continuous cough, the detainee was taken to hospital for further treatment where he was diagnosed with tuberculosis by the doctor. After two weeks, the detainee died during the treatment at the hospital. The Commission was informed that if he were given a medical examination when he was arrested and being detained in lock-up, he can be admitted to hospital immediately and provided with diagnosis for further treatment. This also can reduce the risk of tuberculosis as an infectious disease which is extremely dangerous and easily infected the sentry personnel and other detainees.
- 5.9 In IPD Sibul (Sarawak), a medical assistant from Malaysia Civil Defence Force Department (JPAM) came to perform health screening and examine the medical needs of detainees. However, the Commission was not informed about the frequency of such examination.
- 5.10 The Commission was told that before conducting any interrogation, the police will examine the physical of detainees and give medicine to them if they feel

sick, or send them to nearby hospital. Around 155 IOs responded that the interrogation will be delayed while 234 IOs will inform the officer in-charge of station and request to take detainees to hospital.

- 5.11 The Commission was informed that the evaluation of whether the detainee is sick can be influenced by prejudice because several of sentry personnel felt that the detainees are just playing sick due to boredom, or as an excuse to kill the time outside the detention whenever they are taken to hospital. Around 11 IOs responded that they will ignore detainees as they always find excuses to avoid the interrogation. Whenever this occurs, the sentry personnel will not allow any medical examination⁷⁸ or wait for further order by superior officer.
- 5.12 The Commission was told that usually the detective knew more about the background of detainees, especially if they suffer chronic diseases such as heart problem and diabetes, whereas sentry personnel will only supervise them in the lock-up. However, the sentry personnel who were interviewed mentioned that there is always incident which their health background was not informed by IO.

Treatment Room

- 5.13 The Commission found that majority of the visited lock-ups have no sick bay. Throughout the visit, only Jinjang Central Lock-up has a sick bay which equipped with medical facilities, however it is not utilized. Usually, detainees who are sick are separated by placing them in other room or cell before they are taken to hospital.
- 5.14 Detainees normally fell sick due to illnesses such as fever, flu, cough and asthma as well as more serious diseases like tuberculosis, HIV/AIDS, and chronic diseases, for instance, diabetes, as well as heart and kidney problems.

⁷⁸When asked what should be done if a detainee complained about his pain, several sentry personnel replied that the detainee is usually playing sick. One of them said, *"I knew the detainees who tell the truth/lies based on experience and I will not entertain those who are lying"*

For regular sickness, the facilities in sick bay are sufficient for detainees to rest and recover speedily without going to hospital.

Medicine Storage in Lock-up

- 5.15 The Commission was told that detainees who fell sick due to regular illnesses such as fever or flu were given paracetamol once informed or asked by them. If the detainees have suffered the diseases prior to the arrest, the officer who arrested them normally advise the detainees to bring the medicine together.
- 5.16 Detainees also can request or inform sentry personnel so that the visitors can bring their medicine with the approval of their investigation officers. Medicine owned by the detainees can be stored by sentry personnel and given when needed accordingly.
- 5.17 However, the Commission found that the medicine storage is not organized and can cause the medicine to get mixed up. Most of the medicine is not properly labelled.

Medical Record

- 5.18 The Commission found that there is no specific book to record the health progress of detainees. Based on the interview, the sentry personnel told that there was a situation whereby a detainee who fell sick during previous shift was not informed to the personnel who worked in the next shift. Moreover, there were 125 sentry personnel who were asked about their action if detainees complained about their pain. Most of the answers indicated that they will inform superior officer about the complaint and wait for further order. Only 14 sentry personnel who responded that they will record the detainees who complained about their pain in medical record. If there is a book to record the progress of health needs of detainees, this will ease the process of informing and sharing the information whenever the shift changes. It also works to safeguard sentry

personnel from taking unreasonable actions or being blamed for making wrong decisions. The medical record is also easily referred and accessed.



Figure 27: Sick bay in IPD Kota Kinabalu



Figure28: Sick bay in IPD Kota Kinabalu

First-Aid Kit

- 5.19 The Commission found that most of first-aid kit in most police stations are not sufficient and not practically stored.
- 5.20 When requested by the Commission to see the first-aid kit, several police officers were not aware of the storage. In several stations, the kit is placed in other building and not in lock-up. If any accident occurs, more time will be wasted just to find the kit.
- 5.21 Most of the condition of kit checked was not satisfying as there is no suitable medicine which is not properly labelled and has passed its expiry date.
- 5.22 The regular contents of first-aid kit are paracetamol, hot oil and cotton wool. According to sentry personnel, it is normal for them to use own money in order to buy medicine like paracetamol and cough syrup for detainees. The sentry personnel also make use the medicine left by the detainees who were released from lock-up (like paracetamol) for current detainees.



Figure 29: Medicine storage in Kuala Setar Police Station, Alor Setar, Kedah



Figure 30: Medicine storage in IPD Bayan Baru



Figure 31: Medicine storage in Bayan Baru Central Lock-up, Pulau Pinang



Figure 32: Medicine storage in Seberang Prai Utara Police Station, Pulau Pinang



Figure 33: The contents of first-aid kitdi IPD Timur Laut, P.Pinang



Figure 34: First-aid kit in IPD Timur Laut stored in sentry room

Vehicles to Hospital

5.23 The Commission examined that most of larger police stations like central police lock-up are normally equipped with police truck. Meanwhile at majority police stations, there is only one police car and the problem occurs as the vehicle provided is not sufficient to be used for instance for sending detainees to court and hospital. The condition of the vehicle is usually not satisfying. During the visit to Travers Police Station (IPD Brickfields), the Commission found that the condition of the vehicle was not satisfying including the condition of worn tyres.

5.24 The Commission was told that the ambulance can be called for emergency. The time taken for the ambulance to arrive depends on several factors such as location of the station to hospital and vehicles to take detainees to hospital. For example, in rural areas, the ambulance can arrive faster than in cities due to less congested traffic.⁷⁹

⁷⁹According to sentry personnel in Alor Gajah Police Station, it takes only 2-3 minutes for the ambulance to arrive.

- 5.25 In one incident in Dang Wangi Police Station, Kuala Lumpur during the Commission visit, a female detainee was unconscious and carried by fellow detainees, then was laid on cement floor facing the stairs in lock-up area. She was left lying on the floor unconsciously for 45 minutes before ambulance arrived.
- 5.26 In IPD Tawau, if there is any emergency cases, the detainees will be taken to hospital using personal vehicle of police officers due to the absence of police car.

Health Screening and Treatment at Hospital

- 5.27 The Commission was informed that when in hospital or medical centre, detainees are treated indifferently like common patients as the detainees and officer in-charge who accompanies them have to wait in a long queue. The Commission was told that this takes time and affects the police personnel where they have to wait for too long and leave their duties at police station whenever they go to hospital. This has increased the burden of their colleagues at the station as they have to complete the tasks left by the personnel who are in-charge of taking the detainees to hospital. The Commission was informed that the time taken for the detainees to be at hospital should be shortened so that no unwanted incidents can take place, for instance, detainees trying to escape or harming other patients at hospital if they act aggressively as well as they are vulnerable towards the risk of infectious diseases.

Treatment towards Vulnerable Detainees

- 5.28 There are several groups of detainees which can be classified as those who need more attention or vulnerable, for example, aged detainees (senior citizens), pregnant ladies, PATI and children.
- 5.29 The Commission was told that most IOs and AIOs who were interviewed indicated that age and health of details influence their application to magistrate in terms of the period of remand and the total of bail. If detainees are children,

senior citizens, pregnant ladies, or female detainees who are being detained with baby, this will be informed to magistrate and he will decide on the alleged crime based on the factors.

- 5.30 If detainees are not feeling well, they will be sent to hospital for examination and the medicine received will be given to sentry personnel so that it can be given when needed accordingly.
- 5.31 The Commission was informed that police stations always receive detainees who are under drugs and alcohol influence as well as those who have mental illnesses. The typical statement stated by the police during the interview is that they usually receive 'living corpses' in police detention who are among hardcore drug addicts.
- 5.32 According to them, the deaths among drug users who are being arrested are common. Detainees from this group have the tendency to disturb other detainees, especially when they undergo the phase of 'withdrawal symptoms'.
- 5.33 There were also mentally-ill detainees who are being detained in the lock-up. The police also frequently receive calls and request from public to arrest the individuals with mental problems as they could harm the public. The police have to consider the factor of public safety and place this group of people in police custody.

III. DEATHS CAUSED BY DETAINEES OWN ACTIONS

- 5.34 Based on PDRM statistics at the beginning of the chapter, there are 30 deaths due to suicide, 2 deaths due to fighting between detainees and 2 deaths due to falling incident. These cases represent 13.26% of the total no. of deaths in custody.
- 5.35 The Commission was also informed that most of detainees are among abused drug users and/or under alcohol influence or suffer mental illnesses. This situation also contributes towards other problems which causes death. For

example, detainees who are out of control due to drugs and/or alcohol addiction, or due to mental problems can aggressively react and hurt others which may lead to fatality. Detainees who are addicts and those who experience 'withdrawal symptoms' are also in high risk of doing lethal actions.

5.36 During the interview with sentry personnel, the Commission received answers which strengthen the factor of detainees own actions has led to deaths in police custody, due to:

- i. Detainees cannot accept the fact of their crime and feel embarrassed to face outside world hence will commit suicide.
- ii. Detainees suffer mental tension then commit suicide.
- iii. Detainees are controlled by their own emotion.

5.37 Sentry personnel mentioned that, inter alia, the actions taken if detainees were observed to experience depression is to talk to them or ask other detainees to join the conversation and always talk to the depressed detainees, transfer them to cell which is nearer to the sentry to ease the supervision and inform the matter to IO.

5.38 Meanwhile the detainees mentioned that uncomfortable, hot and smelly lock-up area make them depressed. The detainees were also not supplied with the basic needs for shower and cleaning purposes such as soap, toothbrush and toothpaste. This matter had been discussed in Chapter 4.

5.39 The Commission was also told that condition and surrounding of lock-up that is more comfortable not only creates positive impacts to sentry personnel in executing their tasks, but also prevents detainees from committing suicide due to great depression.

IV. DEATHS DUE TO FOUL PLAY BY THE POLICE

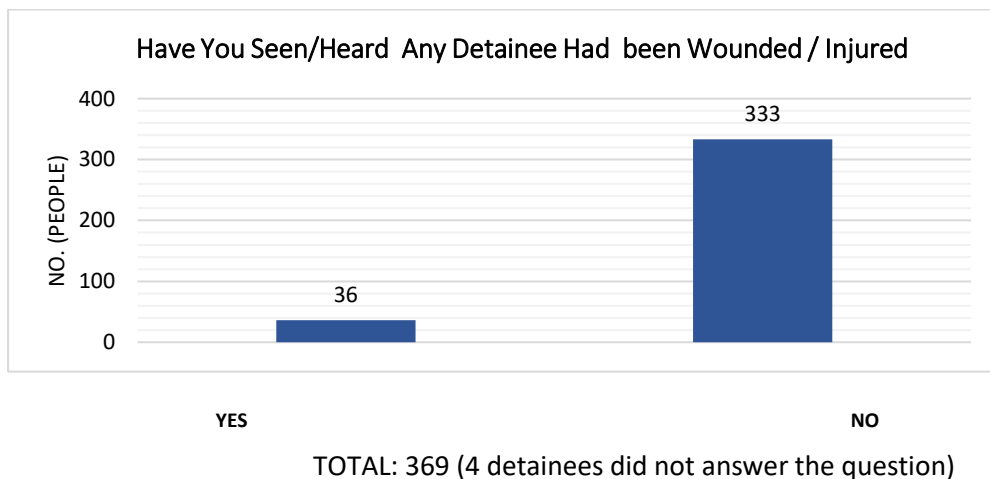
- 5.40 There are numbers of speculations on the use of force by the police towards detainees in detention which still frequently takes place and most likely, whether directly or indirectly causes death.
- 5.41 The Commission wanted to analyze whether this assumption is relevant. Based on PDRM statistics described earlier in this chapter, only two deaths are due to foul play by the police although Coroner's Court and Enforcement Agency Integrity Commission (EAIC) found other 4 death cases which are due to violence and police's negligence.
- 5.42 While being interviewed by the Commission, consistent answers by IO and detainees demonstrate that the police are still constantly using force, especially during interrogation.

Use of Force during Interrogation

- 5.43 Below are part of answers provided by the police personnel which show the use of force that is still being practised:
- i. Several IOs had seen their colleagues using force during interrogation by hitting the bottom of the feet of detainees using rubber hose to ensure no marks left.
 - ii. A superior officer admitted that he had stepped on a detainee's head so that he will confess his alleged crime. According to him, the use of force is a must when dealing with hardcore criminals who will never admit their crime.
 - iii. According to the police officer, a detainee only tells the truth when violence is imposed, especially in cases of crime. Normally detective will use force to seek for information.

- iv. Sometimes detainees provoke IO's anger, hence the use of force is no longer an exception.
- v. The use of force is only needed at times in moderation and not excessively.
- vi. The use of force is a must during interrogation since investigation paperwork is extremely abundant and it is burdensome for IO. The use of force can lessen the time needed to complete and close the paperwork.

Diagram7: Interview with Detainees



- 5.44 All statements are supported with the answers from the interview with detainees as demonstrated in Diagram 3 (a), (b) and (c) in Chapter 3, pp 51-52 and Diagram 5 above.
- 5.45 The facts obtained show that the force is still being used during interrogation. It is further supported with the sharing during interview with detainees. Among experience shared by detainees are as follows:
- i. Detainees were assaulted and beaten by sentry personnel.
 - ii. Detainees were hit on head, stomach and legs.

- iii. Detainees were hit, slapped, punched, and kicked by a group of personnel – the total no. of police personnel was unknown because their face were covered with towel.
- iv. Head was banged on walls.
- v. A detainee informed that he was beaten and stated “*a friend of mine who was detained together with me was being hit far worse than me*”.
- vi. An underage detainee was hit with pipe hose during interrogation.
- vii. A detainee who is the suspect in stealing case was beaten.
- viii. A detainee told how his friend who came back from interrogation with wounds because he got beaten.
- ix. A detainee told that he witnessed a person who was being hit in lock-up area (not in the cell).
- x. A detainee was hit by the police due to his aggressive action.
- xi. A female sentry hit a female detainee who was suspected smoking. The cigarette was being thrown from the cell of male lock-up to cell in female lock-up.
- xii. A detainee witnessed a sentry hit another detainee with pail as he was suspected smoking.
- xiii. A detainee told his experience of being beaten with pipe hose.
- xiv. A detainee told how his friend was badly beaten as he refused to admit his alleged crime.

- xv. A group of detainees for murder case were being beaten during interrogation.
- xvi. Detainees were injured in the fight between themselves.
- xvii. Detainees heard the sound of somebody being beaten.
- xviii. Being hit using cane.
- xix. Being hit by laptop bag.
- xx. A cap was put on a detainee and his head was hit using steel scissors.
- xxi. Being hit on soles
- xxii. Being hit on the bottom of feet using pipe hose.
- xxiii. Being stripped naked, assaulted and hit.
- xxiv. Being hit using wires.
- xxv. Being hit by shoes.
- xxvi. Being injured due to fighting between detainees to get the space for sleeping.
- xxvii. *"I was slapped and beaten, my head was slammed with wooden locker's door, hands and legs were also hit by a police officer wearing normal cloth while I was being handcuffed".*
- xxviii. *"I was hit, not by IO but a police officer who suddenly rushed into the (investigation room). He hit me while I was sitting using his knee".*

Feedback suggested the use of force is not needed/ does not happened

5.46 However, part of IOs admitted that the force was used in the past but no longer present in today's practice. An official showed the Commission, a steel anchored in the wall to hang or torture detainees during interrogation in the past. According to him, this practice was no longer used, and he had ordered his personnel to get rid the steel chain for that purpose.

5.47 Following are several reasons why force is no longer being used:

- i. IOs do not have to use force because they only deal with detainees after interrogation process is done by the detective.
- ii. The use of force is not needed because the use of psychological technique when handling detainees is more than enough.
- iii. The use of force is not needed in traffic or commercial crime cases. For example, for commercial crime which involves a white-collar suspect, the investigation only requires a laidback discussion.

Conclusion

5.48 Health issues should not be taken lightly or for granted by the police as most of death cases are caused by health reasons. The absence of well-trained medical practitioners should be dealt with immediately.

5.49 Although the Commission adhered to the principle of 'even one death in custody is too much',⁸⁰if 207 deaths due to health issues can be prevented, at least the average of 14 deaths a year can be avoided. Thus, the problem concerning health issue should be dealt with immediately and comprehensively.

⁸⁰Even one death in custody is too much.

5.50 In dealing and rejecting the negative perspective by the community regarding causes of death in police custody, the police should be concern with the health status of all detainees during supervision as their responsibility. It is crucial to prove that any detainee is treated as a person with his rights, especially right to health. The police should inculcate the trust among the community as they are always professional in treating detainees and paying respect towards their rights. This also makes the community to feel more confident and safe to assist the police in their investigation.

CHAPTER 6

DUTIES AND WELFARE OF PDRM OFFICERS AND PERSONNEL: OBSERVATION

I. INTRODUCTION

6.1 Throughout the research, the Commission had visited 109 offices and working places of investigation officers/assistant investigation officers (IO/AIO) in order to get a clearer picture of working environment and surroundings which affect one's emotion and morality. The focuses of the Commission observation are condition of IO's room/AIO's room; basic facilities in IO's room/AIO's room (examples: chairs, tables, computers, printers, A4 paper) and condition of building/infrastructure (examples: walls, floors, air-conditioners, lamps).

6.2 The above matters are referred during the observation on IO's room/AIO's room. Based on the observation on Police District Headquarters (IPD) and stations under IPD, the working environment and surroundings which are uncomfortable affect the officers' and personnel's spirit and health. This unfavourable condition contributes to stressful work.

6.3 The findings of the Commission are divided into several categories:

- i. Basic Facilities/Office/Station
- ii. Work force planning
- iii. Health
- iv. Housing

6.4 BASIC FACILITIES/OFFICE/STATION

The highlighted issues are based on observation on visited IPD/Stations and also the interview with Investigation Officers/Assistant Investigation Officers. The Commission found that most of visited IPD/Stations face the same problem of basic facilities and occupied offices. Following are several visited IPD and

regular problems experienced not only in the stated stations but also in most visited IPD/Station throughout the research.

a) Building Structure and Location

Location of IPD/Station:

6.5 Observing the examples of given IPD, the Commission found that the placement of IPD in premises or congested area due to heavy traffic is not suitable. This scenario can be seen through examples below:

i) IPD Johor Bahru Selatan, Johor

6.6 Throughout the visit, the Commission was given a chance to see new IPDs which is occupied by PDRM members such as IPD Seri Alam, Johor and IPD Sentul, Kuala Lumpur which serve comfortable location to PDRM members in-charge in the districts. At the same time, there are obvious differences in other districts. For densely populated area with high crime rate like Johor Bahru, IPD Johor Bahru Selatan (JBS) is strategically located in the middle of *bandaraya* Johor Bahru with the population density of 1,345,191 people;⁸¹ it is a new State Administration Centre, District Business Centre which is the entrance to Singapura known as “South Entrance” with admission of 60% foreign tourists.⁸² However, the IPD built during the era of British empire can no longer adapt the increasing no. of officers and personnel in-charge and the population as well as the burdened workload of criminal report and administration.

6.7 Due to increasing no. of officers and personnel in IPD JBS, there is insufficient area to accommodate IPD members. The management has taken an initiative to place most of investigation officers and IPD personnel in a building facing the

⁸¹No. of population and average annual population growth rate (percent) by state and district administrations, 1991, 2000 and 2010. Preliminary Count Report. Population and Housing Census Malaysia 2010. Department of Statistics Malaysia.

⁸²Iskandar Malaysia, Zon Ekonomi Utama A: Bandar Johor Bahru: <http://www.iskandarmalaysia.com.my/zon-ekonomi-utama-a-bandar-johor-bahru> (Accessed on 1 December 2015)

IPD which is a premise. The location and placement is found to be unsuitable as it is situated outside the IPD area which jeopardizes the safety people and also the documents.

ii) IPD Klang Utara, Selangor

6.8 IPD Klang Utara is located in Kapar, with population density of 848,149 people.⁸³ During the Commission visit, IPD Klang Utara was placed in two-storey shophouse in Kapar. The problems experienced by IPD Klang Utara are no official building to place IPD for district of Klang Utara, lacking of office supplies and these cause difficulty in executing daily tasks smoothly.

6.9 The IPD placement is also unsuitable because the safety of officers/personnel and staff in-charge in IPD is not secured as well as the exhibits are placed around the shophouse area.(Figure 35-41)

b) Office Structure

6.10 There are IPD which are placed in buildings from British era, such as, IPD Johor Bahru Selatan, IPD Pasir Mas, IPD Kuching which have various problems of piping and electricity. Following are several examples of IPD/Balai building which are placed in old buildings:

iii) IPD Pasir Mas

6.11 The Commission found that IPD building needs to be maintained properly. The initiative to improve and repair the damage is not well-planned. For instance, the building for the placement of IPD Pasir Mas is seen as extremely deplorable and it is frequently flooded due monsoon season. The floor of the hall is dilapidated and almost fell apart, wall is damaged, and water flows through tiles

⁸³No. of population and average annual population growth rate (percent) by state and district administrations, 1991, 2000 and 2010. Preliminary Count Report. Population and Housing Census Malaysia 2010. Department of Statistics Malaysia.

when raining. Triage room does not meet the standards and it is placed in unsuitable area which is the dining hall of IPD.

iv) IPD Kuching

- 6.12 The building was built in 1931 and currently it is located 14km from downtown. The location of IPD is next to Merdeka Plaza and due to construction of the Plaza, the septic tank is always filled up with water when it rains and it gets ruptured. This eventually affects the piping system of lock-up and station. The piping system is also seen unsuitable to accommodate current condition. The air-conditioning system is not well-maintained as sometimes it is broken and this makes daily tasks difficult because of the congested ventilation due to old structure of the building.

v) IPD Shah Alam

- 6.13 During the visit, air-conditioners in all IPD have been broken since the last two months. Although it has been informed to logistics department, no immediate action is taken to overcome the problem. This causes inconvenience to all IPD members and the complainants. Out of three lifts, two of them are also broken and not well-maintained which cause difficulty when going up and down the building.

vi) Travers Police Station, IPD Brickfields

- 6.14 No lift maintenance was carried out. Lift button is broken and it creates inconvenience for those who use the facility (Figure 44). Travers Police Station lock-up which is newly built cannot be used as it does not meet the safety standards by Fire and Rescue Department (*Bomba*) although it is equipped with facilities.

c) Location/Condition of Investigation Officers' (IO) Room/Assistant Investigation Officers' (AIO) Room

- 6.15 There are IPD which placed IO/AIO outside the IPD area such as shophouse are found unsuitable, for instance, IPD JBS, Klang Utara (Figure 35-40), Kajang; and old police quarters which have been changed to IO/AIO's rooms- Brickfields, Tampin, Klang Selatan (Narcotics), Kuala Terengganu and Sandakan.
- 6.16 Assistant investigation officers's and other personnel's rooms in most of IPD are not enough and the officers have to squeeze into the room and take turn when using it; for example: IPD Dang Wangi, IPD Alor Gajah. There are officers/personnel who have to share room with their different gender colleagues and this makes changing clothes and resting difficult if they are in-charge 24 hours.
- 6.17 In Miri Central Police Station, Sarawak, the Commission found that the rooms which have placed AIOs and the escorts are too small and narrow. The room is shared by four AIOs and it also stores numbers of investigation equipment whereas the room for the escorts is shared by 14 people which has an old, dusty carpet. (Figure 43-45)
- 6.18 Meanwhile in IPD Pontian, there are insufficient rooms to place IO/AIO and they are placed at outside section, separated with a board; no space to place confidential files and the documents can be seen by the public who go in and out the office.
- 6.19 For instance in IPD Klang Utara, the placement of officers' and assistant officers' room is in a small space provided, whereas front space is used as a space for meeting (Figure 40). The carpet is also placed and bought by own officers.
- 6.20 Most of the rooms should be properly maintained and broken equipments should be repaired or changed immediately. For example, the problem of air-

conditioners in Satok Police Station, Kuching which has been informed to Logistics Department but no action is taken to repair the damage. Such problem causes officers/personnel to use own money to repair or buy the new items in order to create more conducive environment for them as well as to the complainants.

6.21 Basic needs like tables, chairs, computers or laptops should be prepared for them, especially for new officers/personnel who just start working after completing their basic training. For instance, Investigation Officers in IPD Sandakan, Sabah have to use their own money to buy chairs, tables, lamps and also laptops. From the observation, 10 of them have shared money to buy and maintain the air-conditioners for their own comfort. There are several of them who just complete their training and are in-charge without giving tables and chairs to start working after report for duty. The same situation also occurs in IPD Kota Kinabalu, IPD Penampang and other IPD. Assistant Investigation Officers in Narcotics Department of IPD Tanah Merah, Commercial Department of IPD Kota Bahru have to share the laptops and computers when executing duties. They have to allocate own money to buy the supply as there is no stock for toner of printer.

6.22 Based on overall observation, the Commission has identified several similar problems highlighted during the visit to IO/AOI's room and it is concluded as follows:

- i. Basic office facilities: Writing stationaries, A4 paper, chairs, tables, for instance, have to be bought by officers and personnel. Locked filing cabinets also have been bought with own money to save the documents safely. Office chairs are bought with own money while chairs for complainants are taken from recycled items (Example: IPD JBS, Melaka Tengah).
- ii. Photocopy machine: Officers/personnel and staff share money to buy photocopy machine including the payment for renting the machine (example: IPD Klang Selatan and IPD Klang Utara, Figure 39 and 47).

Not all office supplies like chairs and tables are provided; there are officers/personnel who have to use own money to buy them.

- iii. Laptops/computers: Not all officers are provided with computer hence they have to buy own laptop in order to carry out daily tasks. Toner for photocopy machine is bought by using collected money (Example: IPD Sandakan, JBS, Jempol).
- iv. Air-conditioners: they are maintained by own officers/personnel in the IPD by using their own money. The air-conditioners in IPD JBS and Kuching are always broken and the cost for repair is paid by the IPD members.
- v. Toilets: No separate toilets are provided for officers and personnel. In most IPD, they share toilets which are used by public and also detainees (for urine test) which leads to less clean and uncomfortable condition.

d) Interrogation Room

6.23 Based on observation throughout the visit, the Commission found that there is no standardization of interrogation room in terms of standards and space needed. There are other rooms or available space which are used as interrogation room. For example:

- i. IPD Shah Alam: no sufficient facilities in interrogation room: no air-conditioner, CCTV is not working (broken) and it cannot be used due to incomplete installation.
- ii. IPD Johor Bahru Selatan: using eyewitness identification room as interrogation room. No CCTV.

- iii. IPD Kuala Terengganu: no interrogation room. Interrogation is carried out in meeting room or investigation officer's room.
- iv. IPD Pasir Mas: interrogation room is inside an old and deteriorated building; the room is an old office which is used as interrogation room and only has a deteriorated table, old chairs and air-conditioner that can no longer be used. The room is seen unsuitable to be used as interrogation room or occupied by any officer, and personnel/staff.

e) Eyewitness Identification Room

- 6.24 For example in IPD Pasir Mas, there is no eyewitness identification room and eyewitness identification is done in triage room directly. Not only unsuitable, it can also harm the complainants as well as officers and personnel involved.
- 6.25 IPD Johor Bahru Selatan also uses one room for both interrogation and eyewitness identification because there is only one interrogation room available in the IPD.

f) Vehicles

- 6.26 The Commission found that the official vehicles used by officers and personnel for going out completing formal tasks are not enough and it causes more difficulties when the officers/personnel have to go out simultaneously to different places. Most of the officers/personnel have to use own vehicles and money for costs like petrol and tolls. They also have to use own vehicles to arrest detainees and take them to station as well as they are more risky to be attacked by detainees or they face the possibility of them escaping from the police. The same matter has also been mentioned in all visited IPD. The similar concept being practised causes difficulties to officers and personnel involved. Vehicles (either patrol car, team vehicle or van for detainees) are not well-maintained and they often have problems. Sometimes the officers and personnel repair the vehicles with their own money to avoid any inconvenience when carry out their tasks.

g) Other Facilities

- 6.27 In several visited IPD, there are not enough female IO/AIO to assist the investigation. Better approach can be done when female detainees being interrogated by female IO/AIO hence their absence is inconvenient.
- 6.28 Police Reporting System (PRS) is quite delayed and can only be accessed in the office. Re-checking cannot be done immediately if it is outside the office like at crime scene by using laptop.
- 6.29 No room/store to keep the exhibits. Example: IPD Pasir Mas. Meanwhile in Miri Central Police Station, Sarawak there is no closed section to store the exhibits and files of cases within investigation or cases being addressed in court. Most of the exhibits are placed in space at the back of station and it is overcrowded with numbers of items and the exhibits have to be placed in an exposed station space (Figure 42). An IO has to keep a seized machete (*parang*) in his room as there is no other safer space available.
- 6.30 The Commission has observed that most of investigation officer's and assistant investigation officer's room are not equipped with telephone line. If provided, only one line is available to cover all calls in the place. It is just the same in most of visited IPD, such as IPD Tanah Merah, IPD Kota Bahru, IPD Pasir Mas.
- 6.31 For instance, officers and assistant officers in IPD Sandakan have no telephone line installed in their room. This complicates the contact with complainants and also within the department or to other related departments.
- 6.32 If any electrical appliances are broken like the air-conditioner, the cost for repair has to be covered by the ones who occupy the room. This includes the cost for regular maintenance to avoid frequent damage.
- 6.33 For instance, IPD Kota Bahru, Klang Selatan (Narcotics) always undergoes power outage (loss of the electrical power) which is troublesome for the works which are being carried out.

6.34 There are stations with no meeting room for lawyers.

6.35 There are also lack of photographers to take pictures at the crime scene and victims of the cases.



Figure 35: IPD Klang Utara is placed at shophouses



Figure 36: Crime Investigation Department, IPD Klang Utara is placed at shophouses.



Figure 37: Exhibits for cases of narcotics crime. No storage for exhibits in IPD Klang Utara.



Figure 38: The room of Assistant Investigation Officers of Crime Investigation Department, IPD Klang Utara is placed in a shophouse.



Figure 39: Photocopy Machine, bought with officers/personnel own money in IPD Klang Utara



Figure40: The space for meeting inside a shophouse in IPD Klang Utara.

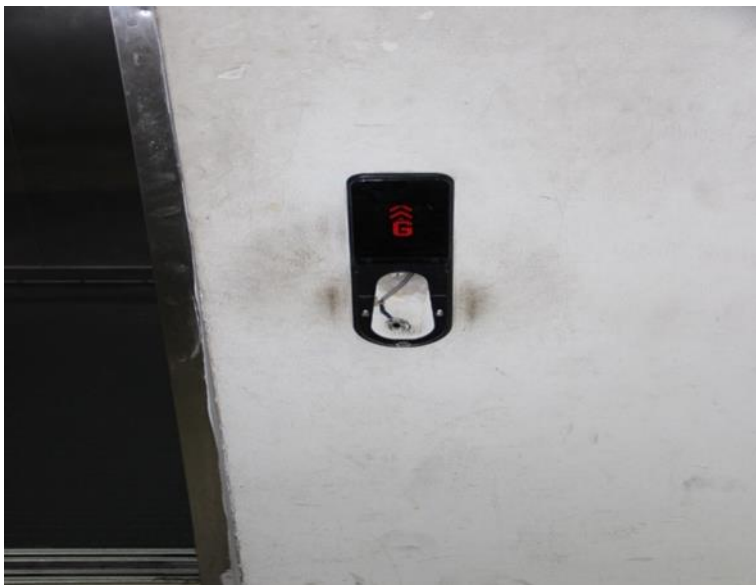


Figure 41: Broken lift button in Travers Police Station



Figure 42: The exhibits are stored around station area due to limited space for storage in Miri Sentry Station, Sarawak



Figure 43: AIOs have to share room and facilities in Miri Central Police Station



Figure 44: The room of Assistant Officer in IPD Miri. Sharing room with other personnel.



Figure 45: The room of Assistant Officers, IPD Miri. Most of the personnel have to share room with up until 3 persons.



Figure 46: The room of Investigation Officers, IPD Penampang. The room is quite small

JUMLAH PENGGUNAAN MESIN PHOTOSTAT SEWAAN
TINGKAT 2, JSJ IPD KLANG SELATAN MENGIKUT
BULAN TAHUN 2013

BULAN	JUMLAH PENGGUNAAN (HELAJ)	JUMLAH BAYARAN (RM)
OGOS	3830	199.90
SEPTEMBER	4161	209.83
OKTOBER	4198	210.94
NOVEMBER	5841	260.23
DISEMBER	5900	271.00

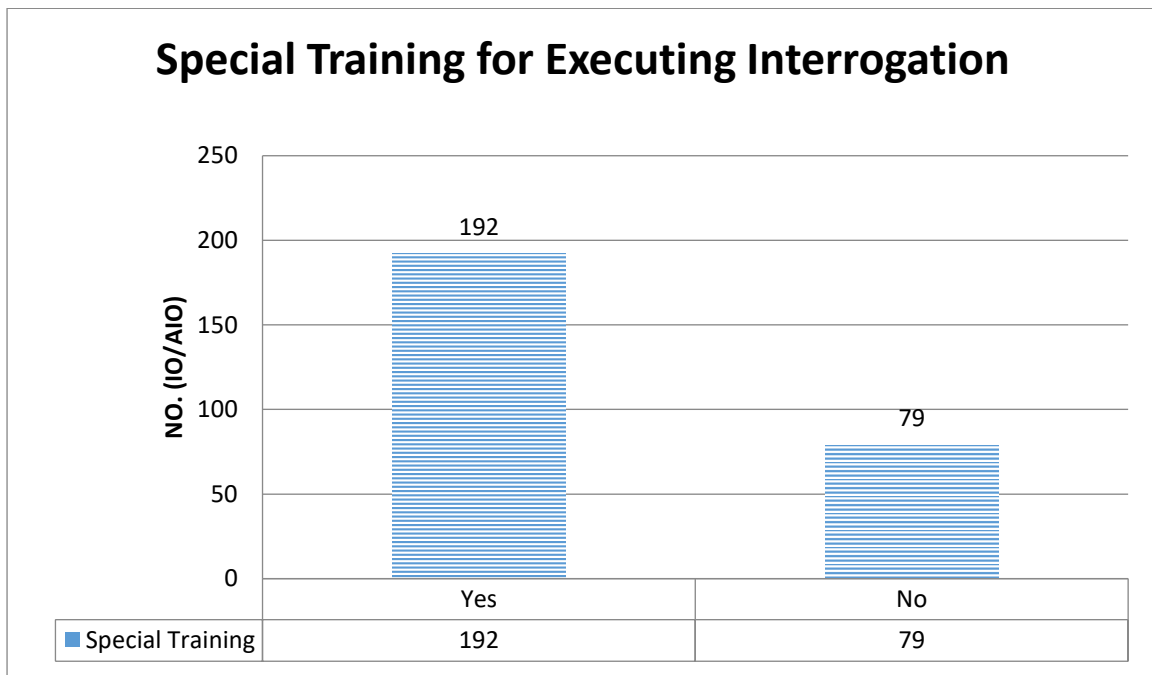
Figure47: A rental photocopy machine using officers/personnel/staff own money in IPD Klang Selatan.

II. WORK FORCE PLANNING

6.36 Work force planning should be carried out efficiently and should not be burdensome to officers/personnel. In the Commission opinion, for the time being, officers/personnel who carry out interrogation are being burdened with various tasks other than the duty of performing crime investigation. In-service training in improving their competency in investigation is also lacking. Following are the findings and interview done by the Commission towards police officers/personnel:

a) Training for PDRM Officers/Assistant Officers/Personnel

Diagram 8: No. of IO/AIO who undergo Special Training for executing interrogation.



6.37 Based on Diagram 8, out of 271 respondents who were interviewed only 192 mentioned that they have received special training related to investigation. Whereas, other 79 said they have not received any special training, although the respondents suggested that they received training or basic courses as trainees, or attended in-service training.

6.38 Based on courses attended by majority of Investigation Officers/Assistant Investigation Officers, they have received basic training, such as:

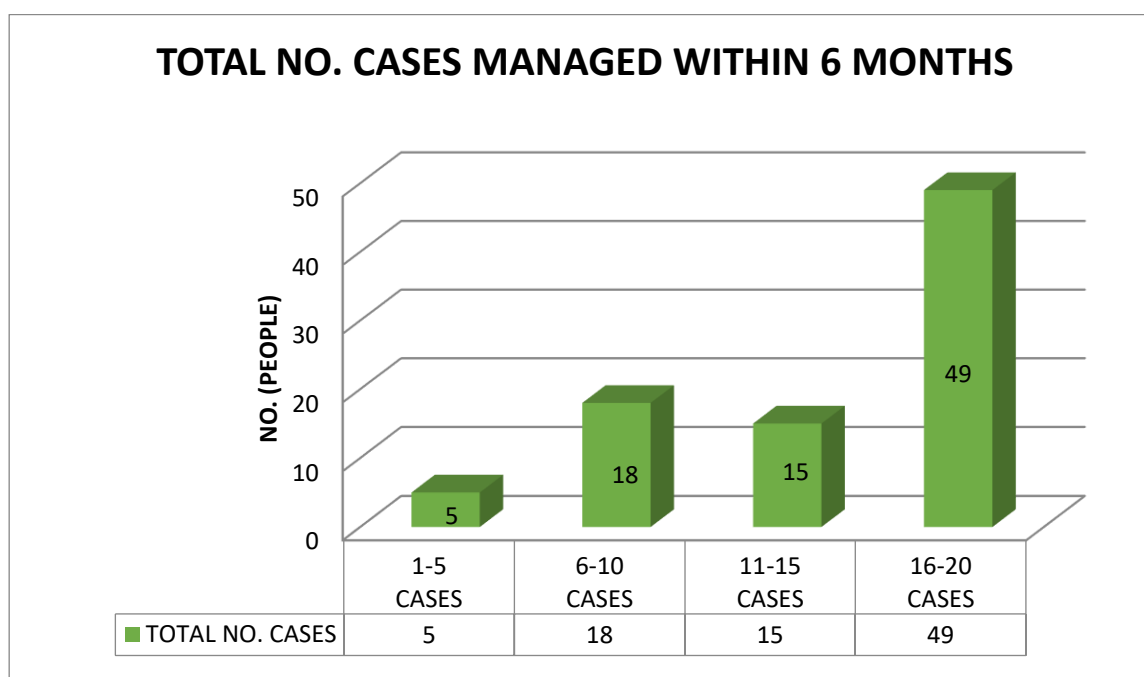
- i. Basic Training of Investigation Officer
- ii. Basic Training of Detective
- iii. Crime Investigation Course
- iv. Techniques to obtain information from children concerning sexual cases
- v. Techniques and tactics of interrogation
- vi. Basic training of traffic investigation
- vii. Basic training of commercial crime investigation
- viii. Crime scene management
- ix. Psychological training

6.39 The Commission found that the training attended by IO/AIO is basic training or courses as trainees or in-service training and they are not continuously developed after being involved in the service.

b) Workload

6.40 According to Diagram 9 below, the average of cases investigated by IO/AIO is small in number. However, the stated total no. is based on average cases handled by IO/AIO within six months period. Majority of IO/AIO managed a quite high no. of cases. Based on the total no. of cases handled by detective, more than 50% respondents manage around 80-100 cases within six months period. The respondents who were interviewed suggested that the total no. of investigated cases are extremely high to be handled and investigated. Based on the total no. of cases investigated and period of remand stated by Magistrate, they are disproportionate and for the foundation of investigation, such as comprehensive investigation, evidence collection, interrogation or identification of important eyewitness for a case cannot be fulfilled and this will affect the case, and at the same time the detainees and victims.

Diagram 9: Total no.cases handled by IO/AIO within six months period



6.41 At the same time, the respondents also mentioned that despite being burdened with a high total no. of cases to be completed, it is also essential for them to carry out various tasks which require their full commitment, for instance operation which requires a large no. of officers and personnel, security control

and traffic control for ceremonies involving dignitaries. The duty requires every IO/AIO who are being ordered to give full commitment and the case investigation will be delayed.

- 6.42 Other workload that have to be fulfilled make case investigation difficult, and sometimes IO/AIO have to prolong the remand period in order to continue the investigation.
- 6.43 Lack of employment for IO/AIO is also one of the reasons they are being burdened with a high total no. of cases every month. Although higher administration acknowledged the insufficiency, officers and personnel from investigation department who were being transferred without replacement complicates the case execution, and sometimes placement of new officers/personnel who are not yet expert in investigation department will cause low rate of case being completed.
- 6.44 For example in IPD Kuching, there is no officer in Department of Sexual Crime Investigation (D11) and there are only two personnel ranked as Sergeant. Meanwhile in Investigation Department in IPD Dungun, there is no detective and they need to request the help from IPK Terengganu when performing investigation. Although the issue of lack of officers/personnel is stated in several IPD, it does not mean that only the IPD face the problem of insufficient officers/personnel/staff. The findings of the Commission visits generally conclude that the problem is also experienced by all IPD.
- 6.45 Meanwhile in Department of Narcotics Crime Investigation in IPD Kota Bahru, it has an escalating case rate with average investigation papers of approximately 600 cases within six months. This is overly burdensome for IO/AIO who carry out the investigation and for the investigation essentials, it can be rather addressed by more appropriate agency like National Anti-Drugs Agency (AADK).

c) Age limit of IO/AIO

- 6.46 The age limit of IO/AIO should be set in order to supervise the health and welfare of officers/personnel who are in the service for long time in every department. Out of 270 respondents who were interviewed (IO/AIO), there are 31 respondents who are in between the age of 41-50 years old (11.48%) whereas 47 respondents belong to 51-60 years old group (17.4%).
- 6.47 Age limit of IO/AIO should be set at the level in which officers/personnel have reached a suitable period to carry out office tasks or as an advisor or counsellor to new junior officers/personnel. The percentage of officers/personnel aged more than 45 years old is high (51-60 years old: 17.4%; 41-50 years old 11.48%), and they are actively in charge as IO/AIO. Among them who have health problems, they should not be given demanding duties. Officers/personnel are also being burdened with the total no. of investigation papers (IP).

III. HEALTH

a) Risks to infectious diseases

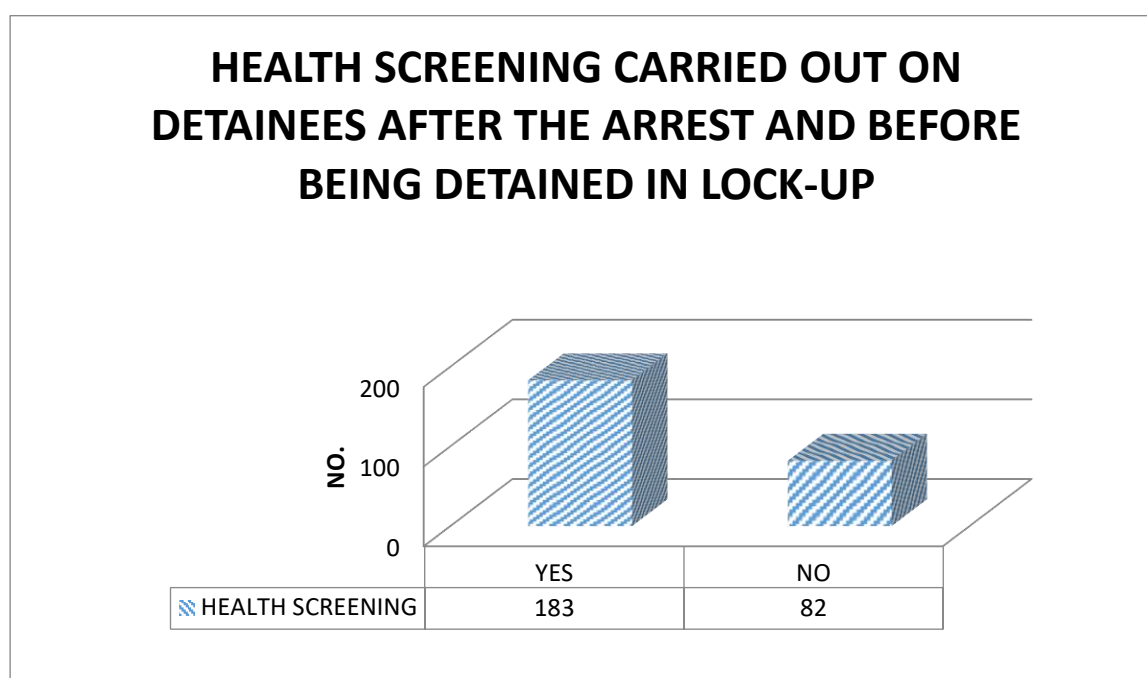
- 6.48 When performing the duties as investigation officers, they are often vulnerable to health problems suffered by detainees. From the research, generally IO/AIO will spend more than three hours in a day to carry out the interrogation. With a long time of interview session and if conducted daily, it will deteriorate the health of personnel and officers in-charge as well as their close family members. Among the risks of main diseases being exposed to them is TB which is the highest cause of death in Malaysia.⁸⁴ According to the Ministry of Health Malaysia, the incidents of TB as infectious disease were 77.41 for 100,000

⁸⁴mStar. Tibi Masih Punca Utama Kematian di Malaysia. 29 March 2015. <http://www.mstar.com.my/berita/berita-semasa/2015/03/29/tb-punca-utama-kematian/> (Accessed on 30 June 2015).

population in 2012 and it has increased in number in these years, in addition to the influx of foreigners from endemic countries.⁸⁵

- 6.49 There is no doubt that IO/AIO are vulnerable to health problems due to the exposure of infectious disease suffered by detainees when being detained by the police. Sometimes it is beyond detainees' knowledge about their infectious diseases until they are taken to hospital for treatment of injuries or fever. Most diseases which are vulnerable to IO/AIO are infectious disease or communicable disease such as tuberculosis or TB.

Diagram 10: Health screening carried out for detainees when they are being detained in lock-up



- 6.50 Diagram 10 indicates that detainees who were being detained are given health screening to check on their health status, however the examination done is only in terms of physical (external examination) which is the examination carried out to identify any injuries that require further attention by Medical Officer. The meaning of health screening as shown above does not mean that the detainees

⁸⁵Kajian Separuh Penggal Pelan Strategik KKM 2011-2015. Further information can be accessed via following link: <http://www.moh.gov.my/penerbitan/utama/Pelan%20Strategik%20KKM.pdf> (Accessed on 12 December 2015)

undergo medical examination which is fully done by a Medical Officer. If they experience injuries or they have poor health status, they will be referred to hospital for further treatment.

- 6.51 The Commission acknowledged the examination done was only brief observation carried out by IO/AIO, and not by any persons who have qualifications and experience in the field of medical which results in the health symptoms being disregarded.
- 6.52 Therefore, based on the interview carried out among respondents, there is no specific examination on detainees whereas IO/AIO are being easily exposed to the risks of infectious diseases which deteriorate their health, and in fact their spirits and morality are also affected.
- 6.53 Total no. of long working hours is also one of the reasons which cause their health to be affected as well as tension and workload that make them experience high blood pressure and illnesses related to stress.

b) Tension/stress

- 6.54 Based on interview done with Investigation Officers/Assistant Investigation, a large no. of them admitted experiencing stress due to burden of their workload. Out of 275 respondents who were interviewed, there are 189 respondents admitted undergoing stress (68.72%). This is because of tremendous workload for every respondent and no opportunity to alleviate the work stress due to high demand of completing the investigation. Respondents chose to share their problems with colleagues (149 respondents or 52%), while 33% and 36% chose to share the problems with their spouses or family members respectively.
- 6.55 Prolonged stress can cause the body system to work improperly and give negative impact to a person. It will not only affect the productivity of the person

but also to whole organization and it cannot be taken lightly as an individual's problem.⁸⁶

IV. HOUSING

6.56 In the Commission opinion, present housing is insufficient to cover the increasing no. of officers/personnel. For example if there are officers/personnel who are being transferred to new IPD, they will face difficulty to get police housing and have to wait for their turn. This will complicate the transfer process especially when they have to move from one state to another. For example, in Bintulu and Miri, Sarawak, the cost for renting a house is too expensive for IO/AIO due to the location of high living cost in Malaysia.

6.57 For officers/personnel who were given housing facility, it is not satisfying and not fully-maintained. Leakage the house and piping problem are among the issues experienced by them when living in the housing. Other problems included are as follows:

- i. Frequent lift breakdown
- ii. No security is placed to guard the safety of the housing.
- iii. Police housing in Melaka Tengah was built on a former landfill which it still smells bad and its surrounding is not comfortable as well as it affects the health of every family members.

V. Conclusion

6.58 The findings of the observation and interview with officers/personnel suggest that the problems experienced by the investigation officers/assistant investigation officers are the same in every district (lack of office equipments,

⁸⁶Jamadin, N., Mohamad, S., Syarkawi, Z., & Noordin, F. (2015). Work-Family Conflict and Stress: Evidence from Malaysia. *Journal of Economics, Business and Management*, 3(2)

CCTV breakdown, insufficient vehicles, building structure and others). At the same time, they are exposed to the risks of getting infectious diseases when dealing directly with detainees in covered area without proper ventilation system. This condition are also harmful for all members in-charge in the IPD/Station.

- 6.59 The observation also suggests that there is no building monitoring system to ensure the building and office space are in a good condition. This system should be established and closely monitored with other governmental agencies like Fire and Rescue Department and Public Works Department Malaysia to ensure the occupied IPD/Station are safe.
- 6.60 The health of PDRM members should also be highlighted because they are many of them who experience stress due to tremendous workload and the urgency in completing the cases. Massive workload is among the causes of stress and the need to balance the working life and family simultanously will create conflicts and contribute to stress. These are among the factors which influence an individual's moral and sometimes this condition affects detainees especially those who do not cooperateduring interrogation.

CHAPTER 7

MANAGEMENT AND FACILITIES OF THE INFRASTRUCTURE IN THE LOCK-UPS: FINDINGS AND RECOMMENDATIONS

- 7.1 Based on the Commission visit to lock-ups, as reported in Chapter 4 – Observation on Facilities in Lock-up shows the requirement to improve the facilities in the lock-up.

I. LOCK-UP MANAGEMENT

Recommendation 1: Power Coordination and Cooperation between Agencies

Finding

- 7.2 The Commission found that PDRM management regarding administration and infrastructure issues have to undergo a long bureaucratic process and this causes delay in actions taken. For example, a station should report any damage to Logistics Department of IPD, whereas IPD should report to Logistics Department of IPK. Sometimes it has to be addressed in Bukit Aman or centre for any action.
- 7.3 In addition, the Commission found that there is a problem in terms of tasks standardization between KDN and PDRM especially at district/state level. For instance, the issue of new lock-up construction, the standardization was carried out by KDN without the involvement of PDRM officers at IPD level. Several Officers in-charge of Station who were interviewed mentioned that they or KDN are not involved in the discussion process although they know more about the lock-up requirement. This leads to specification or quality which does not meet the standards. It is proven when the Commission observed that several new lock-ups were not similarly built and different in quality from one another, for instance, lock-up in Jitra Police Station, Kedah is in good condition as compared to lock-up in Travers Police Station, Kuala Lumpur which cannot be used because it is unsafe.

Recommendation

- 7.4 The Commission recommends that KDN and PDRM examine the problem of bureaucracy which delays the actions taken and it affects the lock-up management. For this purpose, the Commission would like to suggest the decentralization of power at centre to state or district level so the problem of bureaucracy and the delay of actions taken can be overcome. KDN and PDRM also have to closely cooperate so the requirement at fundamental level can be notified in decision making.

Recommendation 2: Lock-up Gazettement

Finding

- 7.5 All police lock-ups should be gazetted so that they will meet the allocated standards and detainees can be detained legally. For example, the lock-up in Kajang Police Station, during the Commission visit, has not yet been gazetted. The former lock-up cannot adapt the current requirement and is not used to detain detainees. Hence, the new area being used at present time should be immediately gazetted according to Section 7(1) Prison Acts 1995.
- 7.6 The Commission examined the gazette for lock-ups in Police Station in Sabah and Sarawak did not set the lock-up capacity or total no. of maximum detainees. Nevertheless, Officer in-charge of Police District has the authority or discretion to set the capacity based on current requirement. However, because most of lock-ups in Sabah and Sarawak are old ones, they are small in size and often face the problem of overcrowding. At least 6 lock-ups in Sabah and Sarawak undergo problem of overcrowding during the visit by the Commission which shows how crucial the problem is.
- 7.7 In Travers Police Station, under IPD Brickfields, the Commission found that the new lock-up cannot be used because it has not been gazetted as it does not meet the standards and unsafe.

Recommendation

7.8 Therefore, the Commission suggests that the issue of gazettelement is examined and overcome by Ministry of Home Affairs with other related agencies. This is because the gazettelement of lock-up results in the following matters:

- i. Detaineesare being detained legally.
- ii. Lock-up capacity states the total no. of detaineeswho can be detained in a lock-up.
- iii. The budget of food and drinks for the lock-up is referred to the lock-up capacity set.
- iv. Lock-up specification whether or not meets the safety measures required.

Recommendation 3: Overcrowding

Finding

7.9 The Commission found that more than 14 out of 47 visited lock-ups experience the problem of overcrowding. This can cause the violations of human rights among detaineeswho are being detained. Among the problems that take place due to overcrowding is discomfort among detainees. They do not have enough space for sleeping. Sometimes they take turn to sleep due to limited space. According to sentry personnel who guard the lock-up, overcrowding can also cause fighting among detaineesand complicate the lock-up management. The situation gets far dangerous if there is a detainee who suffers infectious disease. For example, during the visit to Lahad Datu Police Station lock-up, Sabah, the Commission found that the lock-up was quite overcrowded and most of detainees were infected with conjunctivitis.

7.10 According to several Officers in-charge of Station who were being interviewed, other factors influencing overcrowding problem is operation carried out such as drugs operation by PDRM, PATI operation by Immigration Department of

Malaysia and operation by APMM and Customs. The arrest done during the operation will place the detainees in nearby police lock-up.

- 7.11 Meanwhile, overcrowding also happens when other departments like Prison Department and religion enforcement organization such as Jabatan Agama Islam Selangor (JAIS) uses lock-up as a temporary transit before taking detainees to court.
- 7.12 Moreover, the old lock-up structure which has small capacity also causes overcrowding. For example, the lock-up in Pasir Mas Police Station was built in 1953 and the capacity does not meet current requirement.
- 7.13 The Commission was also informed that the problem of overcrowding also takes place due to escalating arrest of drug users.

Recommendation

- 7.14 The Commission thinks that central lock-up such as Central Lock-ups of Jinjang, Shah Alam and Bayan Baru do not undergo overcrowding due to building structure which is spacious and has high capacity. Hence, it is recommended that the Government can build more central lock-up throughout the country. The priority can be given to districts which have old lock-ups and small capacity.
- 7.15 Other departments such as Immigration, APMM and Customs have to provide own lock-up detention and they do not have to send their detainees to PDRM lock-up. For instance, Malaysian Anti-Corruption Commission (SPRM) have lock-ups under their own management.
- 7.16 For other agencies like Prison Department and law enforcement organization are advised to make thorough supervision with PDRM so that the temporary placement is not overcrowded. PDRM can place the detainees in the lock-up which does not undergo overcrowding and it is not necessarily the closest to court.

7.17 Furthermore, the Commission also suggests a short detention period for detainees and following cases to the extent in can be carried out:

- a. Cases with minor offence,
- b. Elderly detainees,
- c. Female detainees,
- d. Young detainees,
- e. Detainees who have diseases.

7.18 PDRM has to improve the efficiency when performing investigation especially within first 24 hours. This will help PDRM not to request for remand order from Magistrate and to avoid longer detention period in the lock-up. Besides, detainees can be released without police bail or in oral form and request them to be present in assisting investigation when needed except for major crime cases.

7.19 Other than that, PDRM also has to engage more in prior investigation before any arrest (except for major crime cases). As a consequence, the time needed to arrest any suspects is shortened and they do not have to be detained in the lock-up. The Report of Royal Commission to Enhance the Operation and Management of PDRM⁸⁷ has proposed that investigation officer to produce relevant reason before making any arrests and practise a productive investigation.

7.20 In addition, the use of technology and modern devices in investigation also assist the prevention of crime and the process can be done more effectively and immediately. The use of technology can reduce the physical contact

⁸⁷Royal Commission to Enhance the Operation and Management of PDRM, pp 248-250

with detainees in order to obtain information. A research⁸⁸ carried out by Queensland Police Service (QPS) concerning the impact of technology usage in Australia in 2001 shows that the use of technology can assist the police to perform their duties although there were several constraints were being experienced by QPS. Among the advantages are as follows:

- i. More effective communication at working place and improved labour relations
- ii. Better management and supervision of duties
- iii. Increased working accountability
- iv. Easier decision making
- v. Better relation with external agencies

7.21 Meanwhile there was a study⁸⁹ done in America in 2011 on the usage of hard technology and soft technology in the prevention of crime and improvement of police service quality. The use of technology can assist the police in several cities in America in order to enhance their service quality. Among the usage of technology is shown in the table below.

The Application of Hard and Soft Technology to Crime Prevention and Police

	HARD Technology	SOFT Technology
Crime Prevention	<ul style="list-style-type: none"> • CCTV • Street lighting • Citizen protection devices (e.g. mace, tasers) 	<ul style="list-style-type: none"> • Threat assessment instruments • Risk assessment instruments • Bullying ID protocol

⁸⁸ E-policing: The Impact of Information Technology on Police Practices, Criminal Justice Commission, Australia, 2001.

⁸⁹ Technological Innovations in Crime Prevention and Policing. A Review of the Research on Implementation and Impact, Journal of Police Studies Volume 3 Issue 20 (2011) pp 17-40

	<ul style="list-style-type: none"> • Metal detectors, • Ignition interlock systems(drunk drivers) 	<ul style="list-style-type: none"> • Sex offender registration • Risk assessment prior to involuntary civil commitment • Profiling potential offenders • facial recognition software used in conjunction with CCTV
Police	<ul style="list-style-type: none"> • Improved police protection devices(helmets, vests, cars, buildings) • Improved/new weapons • less than lethal force (mobile/ riot control) • computers in squad cars • Hands free patrol car control (Project 54) • Offender and citizen ID's via biometrics/ fingerprints • Mobile data centers • Video in patrol cars 	<ul style="list-style-type: none"> • Crime mapping (hot spots) • Crime analysis (e.g. COMPSTAT) • Criminal history data systems enhancement • Info sharing w/in CJS and private sector • New technologies to monitor communications (phone,mail, internet) to/from targeted individuals • Amber alerts • Creation of watch lists of potential violent offenders • gunshot location devices

- 7.22 The use of technology as above can assist the prevention of crime and ease the police duties because the crime rate has decreased, the monitoring is more efficient, or the technology assists in investigation process and evidence collection of a crime.
- 7.23 For cases involving drug users, the Commission recommends that PDRM and the Government with the help of Ministry of Health to held 'drug diversion' programme. This programme has been practised in Melbourne, Australia in which the Victoria Police with the cooperation with Department of Health of Victoria has held a programme of 'Victorian Alcohol and Drug Strategy 2013-2017'.⁹⁰
- 7.24 Through 'drug diversion' programme, the drug users who got arrested with the quantity of drugs less than 3 grams will not be sent to lock-up and will not be charged. On the other hand, they are required to attend a compulsory evaluation programme and treatment. If they are not willing to do so, they will be prosecuted. Based on the statistics from Victoria Police, 85-90% drug users attended the programme and almost 80% of them did not repeat their crime and the rest 20% of them had involved in minor offenses.
- 7.25 During a discussion with the Commission, the management of PDRM at IPD level has proposed that the drug users are directly sent to AADK and not being placed in police lock-up.

Recommendation 4: Old Lock-ups

Finding

- 7.26 As mentioned in Chapter 4 and several sections above, old lock-ups experience numbers of problems including limited capacity, broken floors, lock-up and sewage system problems, toilets outside the cell and many structural problems which cause high maintenance cost.

⁹⁰Police Leadership in Public Health: Study Tour to Melbourne, Australia.

Recommendation

- 7.27 The Commission suggests that PDRM do not have to use old-lock-ups. The Government should allocate a budget for new lock-up construction which has good facilities and the human rights of detainees and officers in-charge are secured.

II.BASIC NEEDS OF DETAINEES

Recommendation 5: Food/Drinks

Finding

- 7.28 The Commission found that the budget of food and drinks for detainees are different in every district. Based on Table 11 in Chapter 4 p 68, the budget is between RM3.60 for the lock-up in Ayer Molek Police Station, Johor until RM15.50 for Bintulu Central Lock-up. The Commission found that approximately 14 lock-ups are allocated with less than RM8.00 for 3 meals per day.
- 7.29 The budget of food less than RM8.00 is irrelevant and consequently affects the quality and quantity of the food provided. The Commission received a feedback on small amount of quantity and unhealthy food provided in lock-ups with low budget. Several detainees informed that sometimes they were served with wormy and stale food such as in Ayer Molek Lock-up, Johor as reported in Chapter 4.
- 7.30 The Commission was informed that water has only been served 3 times a day with a small amount of quantity. There are numbers of detainees who informed that they were asked to drink tap water from toilets in the cell if they requested extra water besides eating time. The Commission observed that only a few of lock-up managements which serve extra water besides eating time.

Recommendation

- 7.31 The Nelson Mandela Rule No. 22 states that the management has to provide nutritious and adequate food for every detainee to ensure their health and strength. Meanwhile Rule No. 22(2) indicates that all detainees should be served with water when needed at any time.
- 7.32 Rule 15 of Lock-up Rules 1953 states:
The food provided to any prisoners should follow the food quantity as mentioned in Table One of Prison Rules 1953.
- 7.33 Regulation 60 of Prison Regulations 2000 indicates:
The food of a prisoner, whether convicted or unconvicted shall be in accordance with the diet scales set out in the First Schedule or such other diet scales as may from time to time be approved by the Minister on the recommendation of the Minister of Health. (please refer to Appendix 1)
- 7.34 The Commission recommends the Ministry of Home Affairs to re-examine the budget of food and drinks in lock-ups throughout the country. The Commission suggests that either standardizing the allocation for all lock-ups or setting up a limit so that the budget is relevant and the quality as well as the quantity of food provided is guaranteed. The Commission emphasizes that the price for food tender selected should enable the lock up management to provide sufficient food and drinks for daily 3 meals.
- 7.35 The Commission also recommends that the budget is to be re-examined for every 2 years corresponding to current living cost so that the allocation is not outdated.
- 7.36 For drinking water supply, in line with Nelson Mandela Rule No. 22(2), all detainees should be served with water when needed at any time. The supply should be clean drinking water. The Commission pays serious attention to the practice of asking detainees to drink water from toilets in the cell especially when they are dirty. The practice is equal to inhuman or degrading treatment. It can also affect the health of detainees who are being detained.

- 7.37 During the Commission visit to several police lock-ups in Jakarta, Indonesia on 26 November 2014⁹¹, it was found that detainees were allowed to keep the drinking water (in water container) in every cell because water is basic need.

Recommendation 6: Clothing

Finding

- 7.38 The Commission found that all detainees were provided with lock-up clothing with either purple or orange in colour based on the level of crime. However, because the lock-up was hot, majority of male detainees did not put on their shirts but on the other hand made them as pillows.
- 7.39 The Commission found that several lock-up managements did not provide the clothes to detainees due to safety factor such as in Tampin and Melaka Tengah Police Stations. In Lahad Datu and Tawau Police Stations, Sabah, detainees mentioned that they were given clothing because of the visit by the Commission.
- 7.40 Besides, the frequency of changing the clothing of detainees is different. The Commission found that the lock-up management change the clothes of detainees either 3-4 days, once a week or only when they are dirty. In Satuk Police Station, the frequency of changing the clothes depends on the total no. of detainees in lock-up.
- 7.41 The same goes to washing the clothes of detainees. There are lock-up managements which asked sentry personnel to wash the clothes of detainees using washing machine and only small no. of them send the clothes to laundry.

⁹¹Sekretariat of SUHAKAM attended a programme called 'Blended Learning-Course On Police Detention' organized by Association for the Prevention of Torture dan KOMNAS HAM from 25-28 November 2014

Recommendation

7.42 According to Nelson Mandela Rule No.19(1), every detainee should be provided with clean clothes which are suitable with local climate and are not degrading for the detainees.

7.43 Section 58 Prison Regulations 2000 states:

(i) The clothes of a prisoner shall be changed and washed weekly, and bedclothes shall be aired and washed as often as the Officer-in-Charge may direct.

7.44 The Commission recommends that complete set of clothing which are pants and shirts should be provided to all detainees. The Government should give financial aid to lock-up management of PRDRM which undergoes lacking of clothes.

7.45 The Commission also suggests that the laundry service for detainees is standardized and sent to the laundry to ensure the cleanliness of detainees' clothes. In the Commission opinion, sentry personnel should not be burdened with this duty as the dirty clothes with bacteria can affect the health of personnel.

Recommendation 7: Toiletries

Finding

7.46 Toiletries such as toothpaste, toothbrush, soap, towel, and sanitary pads are essential basic needs of detainees for daily use. However, the facility was not provided in most of visited lock-ups. The Commission believes that the same scenario happens in other lock-ups.

7.47 During the visit, the Commission found that the toiletries were only provided in three lock-ups which are Jinjang Central Lock-up, the lock-up in Pontian Police Station, Johor and in Lahad Datu Police Station, Sabah. There were several lock-up managements which provided the toiletries due to the visit by the Commission.

7.48 In several lock-ups, there were only toothbrushes provided and detainees had to share the toothbrushes. The lock-up management usually improvises the

toothbrushes so that they will not be used as weapons. However, the Commission found that the toothbrushes were dirty.

- 7.49 Among the main reasons of not providing toiletries is due to safety measures and there is no budget allocated. Normally female personnel will buy and provide sanitary pads to female detainees using their own money due to limited budget.

Recommendation

- 7.50 Toiletries are part of basic needs for a human being. The Nelson Mandela Rules stated that the cleanliness of oneself is crucial for detainees to ensure their health. Thus, a detainee should be provided with facilities like water supply for shower and other toiletries.
- 7.51 Providing toiletries to ensure that one's dignity is secured although in detention. Special needs for female such as sanitary pads should be managed properly to ensure their dignity.
- 7.52 The Commission recommends that the Government observes the needs for toiletries when allocating budget for PDRM especially for lock-up management. The limited allocation should not burden any PDRM personnel.
- 7.53 The Commission affirms that the safety reasons should not be the excuses to deny the basic needs of detainees. On the contrary, PDRM should ensure the safety measures using other ways without jeopardizing the basic needs.

III. LOCK-UP INFRASTRUCTURE

Recommendation 8: Ventilation and Lighting System

Finding

- 7.54 It is found that air ventilation and lighting systems were not satisfying. This caused the lock-up to be dark, limited air ventilation and smelly environment. This led to no comfort and improper treatment to detainees. Exhaust fans provided were either not working like in the lock-up in Tampin, Melaka Tengah and Pontian Police Stations or not enough for example in Kuala Terengganu Police Station and absence of fan for example in Jalan Patani, Kota Setar, Alor Gajah, Batu Pahat, Rantau Panjang, Lahad Datu and Tabuan Jaya, Kuching Police Stations.
- 7.55 Air ventilation and lighting systems got worse in lock-ups with no windows such as in Kluang (male cell), Batu Pahat and Lahad Datu Police Stations (female cell). It is also found that there were limited windows and they were covered due to safety measures which caused problem of ventilation and lighting for example at the lock-up in Bintulu, Kluang and Batu Pahat Police Stations. In the lock-up in Bintulu Police Station there were no lamps which led to darker condition. Old lock-ups obviously experienced the problems.
- 7.56 On the other hand, the ventilation and lighting systems in Central Police Lock-up and new police stations built are better such as Shah Alam Central Lock-up and Jitra Police Station (IPD Kubang Pasu).

Recommendation

- 7.57 According to Nelson Mandela Rules, all detainees should be provided with accommodation which meets the needs of health, observes the climate, width of floor, lighting and ventilation.

7.58 Nelson Mandela Rule No. 14 states that in every accommodation of prisoners, there should be a good lighting system. It also stated that in all places where prisoners live or work, there should be a big window for fresh air.

United Nations Standard Minimum Rules for the Treatment of Prisoners (The Nelson Mandela Rules)

Rule 14

In all places where prisoners are required to live or work:

- (a) The windows shall be large enough to enable the prisoners to read or work by natural light and shall be so constructed that they can allow the entrance of fresh air whether or not there is artificial ventilation;
- (b) Artificial light shall be provided sufficient for the prisoners to read or work without injury to eyesight.

7.59 However, Prison Acts 1995, Prison Regulations 2000 and Lock-up Rules 1953 state that there is no need for ventilation and lighting in cells or lock-ups.

7.60 Hence, it is recommended that lock-ups with the problems of ventilation and lighting system should be improved for better ventilation and lighting system. Although safety is a very important factor, windows in lock-up should be big and not covered. The Commission would like to suggest that PDRM uses a standardized lock-up structure design throughout the country. For this purpose, the lock-up in Jitra Police Station (IPD Kubang Pasu) can be a good example.

7.61 In the visit to three lock-ups in Jakarta, Indonesia on 26 November 2014, the Commission found that the lock-ups are more cheerful due to the presence of big windows and fan attached facing the lock-up. As a good practice, this can be followed in Malaysia.

7.62 Exhaust fan can actually help to improve the condition in lock-up and remove the odour. Therefore, high quality of exhaust fans with periodic maintenance should be installed in lock-up area. The maintenance should be allocated under IPD's authority for supervision and the payment for maintenance cost.

7.63 Fan can be installed outside the cell to assist the ventilation and reduce the problem of hot condition in lock-up.

Recommendation 9: Cleanliness of Cells and Toilets

Finding

- 7.64 During the Commission visit, as reported in Chapter 4, it is found that cleanliness is one of the main problems in PDRM lock-ups. Most lock-ups and cells were dirty and not well-maintained. The toilets were derogated, dirty, smelly and sometimes clogged. There were also lock-ups with piping problem whereby the water flowed to cell's floor.
- 7.65 Other than toilets, floors and walls were also dirty. There were walls which were extremely dirty and were being scribbled. The Commission observed that cockroaches were seen wandering in cell's area in several lock-ups. There were also several detainees who complained about the problem of bed bugs in the cell's area. Lock-ups which were relatively new like Bayan Baru Central Lock-up were not excluded from the problem.
- 7.66 Currently, the cleanliness of lock-up especially cell's area and toilets are being taken care of by detainees. The lock-up management asked detainees to do the cleaning. In several lock-ups, sentry personnel are responsible for the cleanliness of the area outside the cell. PDRM do not use the service from outside to clean the lock-up because there is not budget allocated and due to safety measures.

Recommendation

- 7.67 Nelson Mandela Rule No. 18 states that all areas used by the detainees, should always be in a clean condition. Detainees who are being detained should be provided with suitable facilities to ensure their cleanliness. Whereas Section 59 in Prison Regulations 2000 mentions that prisons and every prisoners' room should be taken care of, including clothing and toiletries.
- 7.68 During the discussion with PDRM management at IPD level, it is recommended that there is a contractor or permanent workers who are hired for cleaning service. Safety control can be increased during the cleaning process. The measure taken can prevent detainees and sentry personnel from cleaning the

cell and the area around the lock-up. It is also to ensure the cleanliness of the cell.

- 7.69 During the research, PDRM management at IPD level also suggests that the allocation for hiring a contractor or permanent workers can be increased. Other than that, the budget to buy equipment for cleaning the area of the lock-up is also needed.
- 7.70 Periodic maintenance should be practised so that the problem of walls which are dirty or being scribbled can be reduced. The Commission recommends that the dirty walls should be immediately painted. The same goes to the dirty toilets and toilet bowls that should be cleaned or changed immediately. The Commission emphasizes that the detention places which are uncomfortable, hot, dirty and smelly is a degrading treatment towards detainees and it violates the human rights. It can also be categorized as a 'torture' on detainees in custody.
- 7.71 Lock-ups with the problem of clogged toilets such as in Tanah Merah Police Station, Kelantan as well as the problem of sewage and piping systems, for instance, in Kajang and Pelabuhan Klang Police Stations should be prioritized for the repair.

Recommendation 10: Space for Sleeping

Finding

- 7.72 The Commission found that the space for sleeping of detainees is made from wood or cement in most of lock-ups. Only few of old lock-ups use tiles as the floor.
- 7.73 The Commission found that the floors were not in good condition and they were not suitable to be used for sleeping. This is because rough cement floor such as in Melaka Tengah Police Station lock-up or part of the wood is torn or decayed for example Dungun Police Station lock-up are not suitable as the space for sleeping. The Commission found that the situation occurs in most of old lock-

ups. The new lock-ups also face the same problem due to poor maintenance problem such as male cell in Shah Alam Central Lock-up.

- 7.74 Cement floor or tiles cause coldness especially at night and this can affect the sleep and health of detainees.
- 7.75 The Commission observed that there was no mattress provided to detainees such as stated in Rule 13, Lock-up Rules 1953. There was not even sleeping supplies provided to detainees. Detainees usually use the lock-up shirts as pillows or base for sleeping.
- 7.76 Besides, the Commission found the width of floor or space for sleeping sometimes are not standardized with the cell capacity. The Commission found that there were lock-ups which placed extra detainees although space for sleeping was insufficient.

Recommendation

- 7.77 According to Nelson Mandela Rule No.12, every detainee should be provided with space for sleeping with proper width and it has to be clean.
- 7.78 Rule 13 of Lock-up Rules 1953 states:
“Every prisoner should be provided with blanket for sleeping and should be changed and cleaned as frequent as needed but not less than once a month”.
- 7.79 Section 57 Prison Regulations 2000 states:
(1) Every prisoner shall be supplied with bedding in accordance with a scale approved by the Director General
(2) Additional bedding may be supplied in special circumstances on the recommendation of the Medical Officer
- 7.80 The Commission recommends that the Government allocates the budget to PDRM to improve the condition of lock-up including floors so that they can be better spaces for sleeping.

- 7.81 PDRM should provide clothes for bedding as enshrined in Rule 13 of Lock-up Rules 1953. The pieces of cloth should be changed and cleaned as frequent as needed or not less than once a month.
- 7.82 The width of floor or space for sleeping should be standardized with the lock-up capacity and all detainees should get sufficient space for sleeping.

Recommendation 11: Closed-circuit Television (CCTV)

Finding

- 7.83 Installation of Closed-circuit Television (CCTV) as reported in Chapter 4 is one of the recommendations proposed by the Commission in the past to overcome the problem of deaths in police custody. Hence, the Commission has welcomed the action of PDRM in executing the recommendation.
- 7.84 The Commission found that the issue of safety has influenced the facilities provided to detainees including clothing, blanket and toiletries. Hence, with CCTV, the monitoring of detainees in lock-up area can be increased.
- 7.85 However, as shown in Chapter 4 (Table 13 on pp 88-89) the Commission found that the condition of CCTV in most lock-ups is not satisfying. Numbers of CCTV are not fully working.
- 7.86 The maintenance of CCTV is the main problem identified by the Commission. It gets worse when the CCTV becomes easily broken or the image becomes unclear due to poor quality of CCTV equipment. Whereas the repair of CCTV has to undergo a long bureaucracy process from the level of Station to IPD and IPK. It gets complicated with the problem of limited budget.
- 7.87 Furthermore, the Commission found that not all personnel who control the CCTV are well-trained. So they are not expert in performing good supervision. In Jinjang Central Lock-up, although CCTV is working, there is no personnel to control CCTV due to no expertise among them.

7.88 The Commission also observed that there is CCTV installed facing the toilet especially in male lock-up. The problem does not occur in female lock-up. The position of CCTV like this violates privacy, degrades one's dignity and disregards their human rights.

7.89 The Commission observed that not all stations have a room or specific space to place screen panel of CCTV. Sometimes the screen panel is placed in open area. A small no. of stations place personnel to monitor both panel screens for male and female lock-ups.

Recommendation

7.90 The Commission suggests the Government to allocate a sufficient budget for PDRM to manage and maintain CCTV and other related equipment. PDRM should set a fixed annual estimation for the maintenance because CCTV is essential for safety monitoring in lock-up. PDRM should provide the budget to all lock-up managements without any bureaucracy.

7.91 Because CCTV assists the monitoring and surveillance in lock-up, the CCTV equipment should be in high quality and can function in relevant timeframe. The persons in-charge for providing the assets whether in KDN or PDRM should pay attention on this matter.

7.92 The lock-up management should ensure that the position of CCTV should not violate the privacy and degrade the dignity of detainees. The Commission urges PDRM to re-study the position of CCTV and change it to a more suitable place.

7.93 The Commission suggests that there is a room or specific space allocated to place the screen panel of CCTV so that it will not be that exposed. Male personnel should monitor the screen panel for male detainees while female personnel should monitor the female's. The screen panel for male and female lock-up should be separated.

7.94 All personnel in-charge to control CCTV should be provided with training skills so that the monitoring and surveillance can be carried out more effectively.

Conclusion

7.95 Dealing with the needs of detainees and lock-up facilities are important to ensure the human rights and dignity of detainees. According to Article 11 of Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), it is the responsibility of any Government to systematically examine the rules in detention places including the preparation of the detention place and treatment towards detainees to prevent any form of torture. The condition of lock-up which violates human rights, especially without basic needs can influence the torture and violations of human rights.

Hence, the lock-up management involves in prominent roles including the maintenance and cooperation between agencies to ensure the facilities provided meet the standards and it is standardized throughout the country. It is the responsibility of enforcement agency to allocate sufficient budget to improve the infrastructure of lock-up as it is related to the treatment towards detainees and the life of human beings.

CHAPTER 8

HEALTH ISSUES AND OTHER FACTORS OF DEATH: FINDINGS AND RECOMMENDATIONS

This chapter discusses the recommendations by the Commission to reduce the rate of deaths in lock-up due to health issues, detainees own actions, and foul play by the police.

I. Medical Facilities in Police Detention

Recommendation 1: Medical Officers and Health Screening

Finding

- 8.1 The Commission believes that the health needs of suspects during detention should be highlighted by providing a medical doctor who is able to give satisfactory diagnosis on the health of detainees in terms of mental and physical.
- 8.2 In the Commission opinion, Medical Officer can provide the suggestions from the aspect of medical and health of detainees as well as he can inform the officer in-charge if he thinks that detainees are inappropriately being detained in lock-up or they need any medical treatment.
- 8.3 Medical Officer also can identify whether detainees have infectious diseases which can be infected by other detainees when they arrive in the lock-up, and at the same time decreasing the risks to other detainees who share the cell especially when the lock-up is overcrowded.
- 8.4 For several detainees, the experience of being detained and placed in lock-up is frightening, and they tend to keep silent. The Medical Officer would probably be seen more neutral by detainees. The Commission believes that detainees are

more open to share their health background by giving the important information to a Medical Officer, as compared to share it with the police.

Recommendation

- 8.5 The Commission suggests that Section 10 of Lock-up Rules 1953 should be obeyed as it makes the health screening compulsory.

“Medical Officer should as fast as he can, checking every prisoner immediately after they come in the lock-up and confirming whether the prisoner is qualified to be detained and, if the prisoner is found guilty, what kind of work can he do.”

It is also in line with Rule 30 of United Nations Standard Minimum Rules for the Treatment of Prisoners or Nelson Mandela Rules⁹² and Principle 24 of Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.⁹³

- 8.6 The Commission recommends in upholding Rule 25(2) of Nelson Mandela Rules which underlines that at least a qualified Medical Officer who has experience in the field of psychology should be placed in detention places.
- 8.7 The Commission suggests that Nelson Mandela Rule No. 30(a)-(e) should be obeyed as it states that a medical officer should see and examine every prisoner as soon as possible following his or her admission and thereafter as necessary, with the intention especially to identify any physical or mental illness and take all necessary measures; the isolation of all prisoners who are infected with contagious diseases; to examine whether the detainees are being hurt during detention, to acknowledge the lack of physical and mental capability

⁹²A physician or other qualified health-care professionals, whether or not they are required to report to the physician, shall see, talk with and examine every prisoner as soon as possible following his or her admission and thereafter as necessary

⁹³A proper medical examination shall be offered to a detained or imprisoned person as promptly as possible after his admission to the place of detention or imprisonment, and thereafter medical care and treatment shall be provided whenever necessary. This care and treatment shall be provided free of charge.

which can affect their rehabilitation, and to identify the physical capability of every detainees to work.

- 8.8 The Commission suggests in upholding Rule 31 of Nelson Mandela Rules as it states that a medical officer should take care of the physical and mental health of detainees and examine in daily basis the health of detainees who are sick and who complaint about their pain, as well as to examine every detainees which their condition has been referred to the observation of the medical officer.
- 8.9 It is also underscored in Section 38-40 of Lock-up Rules which mention that every lock-up should be visited by a Medical Officer at anytime he is requested by Officer in-charge, and he has to write in Journal about his data regarding the lock-up and all detainees who are being detained in the lock-up, and inform if there is a detainee who suffers mental problem and/or the medical officer believes that the detention will jeopardize the life and welfare of detainees.
- 8.10 In addition, in paragraph 32, IGSO⁹⁴ underscores that Officer in-charge of Police District (OCPD) should ask Medical Officer to examine every gazetted lock-up in every week. Meanwhile paragraph 13 states that OCPD should ensure that the Medical Officer has to confirm the total no. of detainees who are being detained in every cell. The total no. should be written down in every cell or in a clear place in front of the cell. This shows the importance of the medical officer's presence in lock-up premise, not only to carry out the health screening but also to examine the lock-up.
- 8.11 The Commission suggests that the Medical Officer should evaluate whether detainees can be interrogated. Based on the guidelines of Healthcare of Detainees in Police Stations prepared by British Medical Association (BMA), health screening should consist of the examination on the capability of detainees to understand and answer the questions, giving advice on the need for the patient to be accompanied by an adult if he suffers or has the probability

⁹⁴ Ku Chin Wah, *Police Lock-ups and Detainees: Journal of the Royal Malaysia Police Senior Officers' College*, 2003

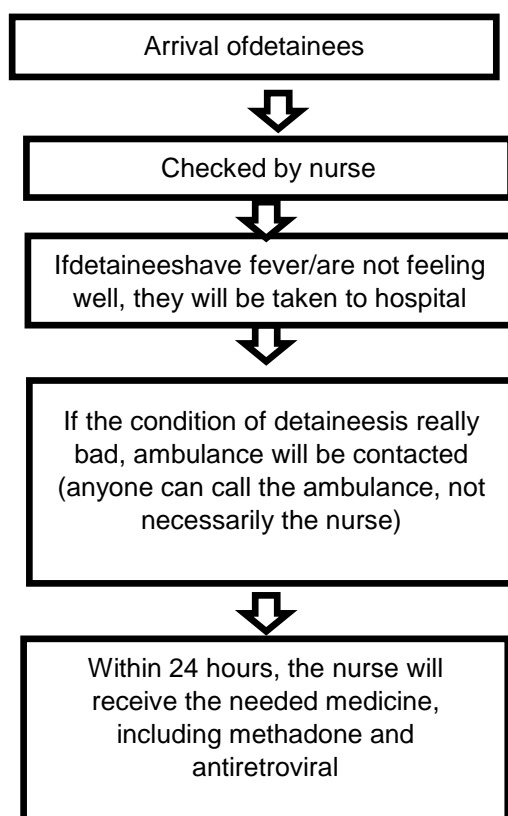
of getting mental illness, advising any special needs required during the interrogation of detainees and performing a health examination after detainees were being interrogated.

- 8.12 To achieve the goals above, PDRM should closely cooperate with Ministry of Health Malaysia for the placement of Medical Officers in PDRM lock-ups. The Commission acknowledged the problem of insufficient Medical Officers. Therefore, a mechanism to practically overcome the problem should be designed by related agencies such as PDRM, Ministry of Home Affairs, and Ministry of Health Malaysia.
- 8.13 The Commission would like to refer to a model by Victoria Police in Melbourne, Australia. Victoria Police has a medical team called Medical Advisory Unit (also known as custodial medical team). The medical unit is put under the supervision of Victoria Police which doctors, nurses, and pharmacists are in-charge of taking care the health of detainees during detention. Although not all unit members are part-timers, they are still responsible in giving medical treatment in 24 hours a day and 7 days a week.
- 8.14 The Commission recommends that the Government establishes a Medical Unit similar to the one in Victoria, Australia as it can ensure a more effective healthcare and it will not burden Ministry of Health in terms of human resources. The model can also assist PDRM personnel and officers because the unit has taken over all matters concerning health of detainees. However, it also needs extra financial allocation for PDRM.

Health Screening Model by Victoria Police

Medical Advisory Unit of Victoria is in-charge of examining and supervising the health needs of detainees in lock-up. The unit has 200 nurses and pharmacists hired by Victoria Police. Not all of them work as full-timers-mostly they work according to shifts. There are 20 nurses in-charge for on-call. The nurses work 24/7 in Custody Centre (lock-up), and all of them are experienced or qualified in handling emergency cases, addictions and psychiatric treatment.

Diagram 11: Treatment of detainees by Medical Advisory Unit of Victoria Police



**The nurse can handle 80% of health issues. If needed, the doctor will be called for advice/consultation through phone*

Recommendation 2: Treatment Room

Finding

8.15 The Commission found that there was no sick bay provided in most lock-ups. Usually, detainees who are not feeling well will be separated from other detainees by placing them in other (empty) cell while waiting to be taken to hospital if needed.

Recommendation

- 8.16 Nelson Mandela Rule No. 27(1)⁹⁵ can be interpreted as highlighting the need of providing treatment room, first-aid kit and well-trained police officers with responsive rescuing training. The Commission recommends that every lock-up should have sick bay, which is nearby to health screening room for assisting the access to medical officer in-charge, and the sick bay should be equipped with complete basic facilities for treatment.

“Sick prisoners who require specialist treatment shall be transferred to specialized institutions or to civil hospitals. Where hospital facilities are provided in an institution, their equipment, furnishings and pharmaceutical supplies shall be proper for the medical care and treatment of sick prisoners, and there shall be a staff of suitable trained officers.” - Nelson Mandela Rules No.27(1)

Recommendation 3: Communication and Record

Finding

- 8.17 The Commission found that there was one incident where the health background of detainees was told to IO but not being informed to sentry personnel. Communication breakdown between IO and sentry personnel causes the sentry personnel to become unaware of treating sick detainees more regularly.

- 8.18 The Commission found that out of 215 sentry, only 14 of them recorded the request from detainees regarding their health. Majority of the sentry only informed the superior officers for further command, if any.

Recommendation

- 8.19 The Commission suggests that all IOs and sentry personnel should be regularly informed and are aware of the condition and the needs of detainees, especially

⁹⁵Rule 27 (1) of UNSMRTP underlines that all prisons shall ensure prompt access to medical attention in urgent cases. Prisoners who require specialized treatment or surgery shall be transferred to specialized institutions or to civil hospitals. Where a prison service has its own hospital facilities, they shall be adequately staffed and equipped to provide prisoners referred to them with appropriate treatment and care.

their healthcare and they should ensure that the information is delivered to officer in-charge in their final shifts respectively.

- 8.20 The Commission suggests the use of communication procedures practised by *The Independent Police Complaints Commission: Deaths in or following Police Custody (IPCC)(UK)*, which emphasize on the delivery of written and spoken communication. Lock-up officers should ensure that their colleagues are being informed about the condition and the needs of detainees (including any risks and healthcare) as a procedure of transferring duties. It should be included with a written transfer duty note authorized by sentry or an informed officer in-charge, and the submission should be recorded with (CCTV) in lock-up.
- 8.21 The Commission recommends that the practice of recording the condition of detainees in record book can be done consistently. If detainees fall sick, the record can be checked in order to identify whether sentry personnel have carried out the required actions to ensure that detainees receive health treatment. Although most of sentry personnel inform the superior officers, the spoken statement should be included with notice or written record as reference in the future, as well as to avoid any 'overlooked' incident by sentry in-charge.
- 8.22 According to *Monitoring Police Custody: A Practical Guide*,⁹⁶ the health record of detainees is extremely important. However, the record should be properly kept by Medical Officer as the only required information which assists detainees can be informed to the police. For example, the Medical Officer can inform the police if a detainee has diabetes and has to eat at a fixed time and/or to get insulin injection everyday. The police can keep a record on the healthcare of detainees to ensure that the sentry monitor their healthcare and provide certain type of diet if needed. It is also in line with Nelson Mandela Rule No.26.⁹⁷

⁹⁶ Association for the Prevention of Torture (APT); *Monitoring Police Custody: A Police Guide*; (2013); p 75

⁹⁷ Rule 26 The Mandela Rules: (1) The health-care service shall prepare and maintain accurate, up-to-date and confidential individual medical files on all prisoners, and all prisoners should be granted access to their files upon request. A prisoner may appoint a third party to access his or her medical file. (2) Medical files shall be transferred to the health-care service of the receiving institution upon transfer of a prisoner and shall be subject to medical confidentiality.

- 8.23 The note for the record is also important if detainees claim that they were not given proper treatment by the police. The record will give an overview concerning the treatment to detainees in custody.
- 8.24 Medical Officer should inform detainees during medical examination when they are being admitted to lock-up that they can freely inform officer in-charge regarding their healthcare. Officer in-charge should acknowledge the requests on the healthcare of detainees and provide them, if there is no contradictory instruction mentioned. All the requests on the healthcare of detainees should be listed in record book, including whether the request is accepted and the justification for every decision.
- 8.25 The police officer in-charge should record if he sees or assumes that detainees fall sick and informs Medical Officer immediately.
- 8.26 The police officer in-charge should record if he sees or assumes that detainees are imposed with force and informs Medical Officer immediately.
- 8.27 The record book should be monitored and checked by medical officer and superior officer, and should always be updated. Sentry personnel are also reminded to record the related health status of detainees in the record book.

Recommendation 4: Effective Monitoring and Surveillance on Detainees

Finding

- 8.28 The Commission found that although there is monitoring and supervision by sentry personnel in-charge, it can still be improved. The frequency of monitoring is different according to lock-up. Sentry personnel also have different procedure when treating sick detainees, most of them only carry out patrol as usual, which is with hours of gap, and monitoring through CCTV.
- 8.29 There are also sentry personnel who are more aware and they always ask and talk with detainees, and they are also open-minded. Hence, detainees feel more

comfortable to share any problems with sentry. In several lock-ups, the Commission found that detainees are afraid or not comfortable to share about their health with sentry personnel and when they are sick, they only inform them when the health problem gets worse.

Recommendation

8.30 The Commission recommends that one clear procedure for medical examination can be done so that the information related to the health of detainees can be recorded and reported to responsible officer. Sentry personnel or officer in-charge should examine detainees and if needed, wake them up when patrolling. Medical Officer should instruct a specific time for the examination.

8.31 Police and Criminal Evidence Act 1984 (PACE), United Kingdom underscores ways to check the lock-up as follows:

- i. Anyone who has to patrol (the lock-up) should be informed about the condition of detainees, risks evaluation, and specific needs required by detainees.
- ii. Sentry personnel should always be open minded when interacting with detainees.
- iii. Sentry officer should be well-trained with the emergency procedures in lock-up and they have to identify the equipment and facilities provided.
- iv. They have to ensure that every patrol is recorded in record book completely with important information. It is not enough by stating 'doing patrol' or 'patrol carried out'. Checking through cell spy hole is not enough as the process should be done even though a detainee is sleeping.
- v. If a detainee is sleeping and his blanket blocks the sentry personnel's view, the blanket can be moved so that they can see the detainee clearly.

- vi. Sentry personnel should have cell's keys and ligature cutter if any emergency occurs.
- vii. If the checking has been decided to be done through observation using CCTV, the sentry personnel should write down the reasons of such decision and the name of sentry who is responsible for monitoring CCTV. The monitoring through CCTV does not mean that sentry personnel do not have to perform periodic patrol and update the book after every patrol and checking. Frequent updated records in the book is crucial, including names who carry out the checking.

Recommendation 5: Medicine Storage in Lock-up

Finding

- 8.32 The Commission found that majority of lock-up managements allow detainees to bring own medicine which they need when having any illnesses. However, there is a weakness on the storage of medicine as it is not properly stored. The medicine is not properly labelled according to its names, cell, the frequency of taking the medicine and expiry date.

Recommendation

- 8.33 The Commission recommends that all medicine and medical equipment are stored properly, as has been mentioned in *Monitoring Police Custody: A Practical Guide*,⁹⁸ which is any medicine stored for detainees use should be labelled clearly and should have their names, with the dosage and frequency to take the medicine. All medicine should be stored in a box or locked cabinet.
- 8.34 The Commission agrees the the practice of police personnel to inform detainees when being detained that they are allowed to bring their medicine with

⁹⁸Association for the Prevention of Torture (APT); *Monitoring Police Custody: A Police Guide*; (2013); p 76

them, as a procedure during detention. This is very important especially for detainees who have diabetes and heart problems.

8.35 Any medicine should be checked and approved by medical officer in-charge, and the Medical Officer should instruct police officer to give the medicine at the time needed. IO should be informed about the needs of detainees to take medicine, and they should check whether medicine are given to detainees at allocated time.

8.36 If there is a change on the police officer in-charge, the officer should be informed concerning medical information of detainees.

Recommendation 6: First-Aid Kit

Finding

8.37 The Commission found that majority of the lock-ups are equipped with first-aid kit. However, most lock-ups have less satisfying first-aid kit like contents of the kit and impractical storage. The access for the kit is not practical because the sentry personnel themselves are not aware about where the kit is stored or the kit is placed in other buildings. The Commission found that first-aid kit is not restocked although all the medicine are running out or passing the expiry date.

Recommendation

8.38 Nelson Mandela Rule No.27 can be interpreted as highlighting the needs of several facilities, including first-aid kit and well-trained police officer with rescuing responsive training.

- 8.39 According to *Monitoring Police Custody: A Practical Guide*⁹⁹ all police stations should have first-aid kit and it can be easily accessed.
- 8.40 The Commission reminds that the emphasis should be given to a quality and practical first-aid kit, and should be placed in nearby area of lock-up. The cost for first-aid kit is not that expensive, however it gives a big impact if it can be used during emergency.

Recommendation 7: Vehicles to Hospital

Finding

- 8.41 The Commission found that not all lock-ups are provided with sufficient and practical vehicles to take sick detainees to hospital easily.
- 8.42 The Commission found that the duration for ambulance to arrive at lock-up is differed according to visited lock-ups, the location and distance of nearby hospital.
- 8.43 If there is no ambulance, well-trained police officer with rescuing responsive training can attend the patient. However, most of police officers who were interviewed inform that they have only learned minimal rescuing responsive training during orientation.

Recommendation

- 8.44 The Commission recommends that there is one special vehicle provided for taking detainees to hospital for treatment. This will ease the duty of personnel in-charge and it is important during emergency.
- 8.45 The Commission suggests that there is a guideline for sentry personnel to call the ambulance when there is accident, injury or emergency, while waiting for medical officer or superior officer which might take longer time.

⁹⁹Association for the Prevention of Torture (APT); *Monitoring Police Custody: A Police Guide*; (2013); p 76

- 8.46 The hospital should cooperate and entertain the emergency calls from lock-up without any discrimination although the patients are detainees. This is because right to health is universal.
- 8.47 If detainees should be taken to hospital, they should be guarded by at least 2 police officers. In A124, Inspector General's Standing Order (IGSO), it is highlighted that there should be 2 police officers who will accompany a detainee to the hospital. *Royal Malaysia Police Senior Officers' College Journal* underscores that when a detainee is admitted to hospital, the total no. of police officer who accompany the detainee should be increased for monitoring purpose in hospital.¹⁰⁰

Recommendation 8: Health Screening and Treatment at Hospital

Finding

- 8.48 The Commission found that personnel/officer in-charge hesitated on making decision to take detainees for treatment in hospital. The current policy is too dependent on the command or agreement of superior officer or OCS, which might take time. This gives a picture that there is a weakness in terms of communication between superior officer and sentry in-charge.
- 8.49 Their action of being hesitant might due to extremely long time taken to queue up and take their turn in hospital. Police officer has to accompany detainees in hospital and at the same time burden the officers who stay in lock-up/station due to lacking of staff.

Recommendation

- 8.50 The Commission recommends that PDRM cooperate with Ministry of Health and allow shorter time taken to wait in hospital for detainees. One suggestion is that to provide a special path for detainees to decrease the time for waiting, due

¹⁰⁰Supt. Ku Chin Wah, *Police Lock-ups/Detainees, Journal of the Royal Malaysia Police Senior Officers' College*; (2003); p 44

to several factors, inter alia, to reduce the risks of harming others or getting hurt by other patients, to decrease and ease the burden of the police officer. The Commission believes that detainees can be provided with the facility because their status at that time makes them require for special attention.

Recommendation 9: Treatment towards Vulnerable Detainees

Finding

8.51 The Commission found that among detainees who are being detained require more attention or they are vulnerable for example elderly detainees (senior citizens), pregnant ladies, PATI and children.

Recommendation

8.52 In the Commission opinion, Magistrate should play a role to ensure if there is vulnerable a detainee, so that he can be sent to one of the detention centres which has more comfortable and conducive environment as well as it has better medical facilities as compared to other lock-ups. For instance, if there is a pregnant detainee, as possible as it could, she might not have to be detained or might be sent to a more conducive detention place.

II. Deaths Caused by Detainees Own Actions

The Commission found that there is death or injury in custody due to own carelessness/the deceased's own action because of:

- i. Mental illness,
- ii. Alcohol abuse,
- iii. Drug abuse, or
- iv. Suicide

Recommendation 10: Dealing with Detainees who Suffer Mental Problems

Finding

- 8.53 The Commission found that PDRM has no experty in identifying detaineeswho suffer mental illness and their healthcare in detention. This will increase the risks for detainees own self, other detainees and personnel in-charge.

Recommendation

- 8.54 Standard Minimum Regulation for Detainees Healthcare highlights the importance of identifying detainees with the risks of suffering mental illness if placed in detention. Rule 30(c) of Nelson Mandela Rules underscores the needs of medical officers who are able to make psychiatric evaluation, identify patients who suffer mental illness, and inform police officer in-charge if in his opinion the mental condition of detainees has been or might get affected due to the detention.
- 8.55 Based on Prison Acts,¹⁰¹ detaineeswho suffer mental illness be detained in the hospital or are allowed to be detained (in station) if only Medical Officer has produced a written report indicating that they are no longer mentally disturbed.
- 8.56 Based on the guideline of *Healthcare of Detainees in Police Stations* prepared byBMA, those who have mental illness might involve in criminal justice system due to various reasons, and the guideline recommends other alternatives besides punishment, such as giving warning or getting admitted to hospital.
- 8.57 Although the decision for allegation is subjected to police or prosecutor, Medical Officer should acknowledge and ensure the healthcare of detainees who suffer mental illness is fulfilled and examine whether they are able to be interrogated and if they are, the Medical Officer should advise that there will be a suitable adult to accompany detainees during interrogation.

¹⁰¹Section 36 of Prison Acts 1995 “Where a prisoner undergoing a sentence of imprisonment or sentenced to death appears to the Director General on the certification of the Medical Officer to be mentally disordered, the Director General shall, by order in writing, direct that the prisoner be removed to, kept and treated at a mental hospital or other fit place of safe custody in Malaysia and there to be kept and treated as the Director General directs”

- 8.58 Detainees who have mental illness are advised to be directly taken to any medical centre or hospital, without sending them to police station. The approach is encouraged especially when a detainee who is being detained is due to public disturbance and this is done for public priority. This can reduce the total no. of detainees who are being detained in lock-up and decrease the tendency for any risks for safety towards other detainees who are being detained.

Recommendation 11: Dealing with Detainees who Involve in Alcoholism

Finding

- 8.59 The Commission found that there is a risk when dealing with detainees who involve in alcoholism in police custody. Detainees who are drunk can jeopardize their safety as well as other detainees who are being detained in lock-up.

Recommendation

- 8.60 In the research carried out by IPCC on the deaths during or after being detained by the police, detainees who are drunk when being arrested in other countries can be sent to alternative facility besides lock-up, as detainees can be sent to the facility while gaining their 'sanity' or 'consciousness'. The facility is also known as 'drunk tanks', 'SOS buses' or 'sobering-up stations'. The approach is safer than detaining detainees in lock-up and they harm other detainees as well as the police. The measure can also eliminate the approach of 'punishing' those who are drunk.
- 8.61 The wider use of 'detoxification center' as an alternative for detention, or also known as 'arrest referral and diversion schemes'. This method is more inhumane and not punishing anyone due to short term of alcohol influence. This can reduce overcrowding in lock-up.

Recommendation 12: Dealing with Detainees who Involve in Drug Abuse

Finding

8.62 The Commission found that there is a high arrest among detainees who involve in drug abuse. Normally drug users are physically weak or they have diseases and undergo withdrawal syndrome after the arrest that makes them more vulnerable in getting infections. The Commission is also informed that the rate of deaths among drug users is higher.

8.63 Furthermore, sentry personnel who take care of detainees also do not have the expertise to handle those who are under drug influence and this complicates the condition of both detainees and PDRM personnel.

Recommendation

8.64 The Commission recommends that a procedure is established to examine detainees for types of drugs abuse (for example: heroin, cocaine) when being arrested. Detainees with positive result will be instructed to undergo drugs abuse examination by a social worker to determine the level of drug abuse of the detainees. The social worker is placed in police station to identify the problems faced by detainees and refer them for treatment needed or rest referral schemes. Participation in the programme is voluntary, and not as an alternative for punishment. Based on the guideline of *Healthcare of Detainees in Police Stations* prepared by BMA, an official research regarding the programme indicates that:

- i. Arrest referral schemes and drug diversion programme are efficient to overcome drug abuse.
- ii. More than half of drug users among detainees who have been examined never go to drug rehabilitation centre.
- iii. Rate for re-detention by the police is decreasing within six months after meeting up arrest referral worker, as compared to previous six months.

- iv. Rate for drug use is reported decreasing in number.
- 8.65 The Commission suggests to held training for police officers¹⁰² concerning ways of handling detainees who are under drug abuse.
- 8.66 Based on the interview, the Commission recommends to held several trainings to ensure that police personnel are always ready to deal with and handle detainees:
- i. Training of emergency response and revision for every year.
 - ii. Training on how (but not limited to) to lie down detainees in lock-up, current monitoring, and to ensure monitoring window is left open and not covered.
 - iii. Training to identify and handle detainees who need special attention or who are vulnerable and they tend to be depressed.
 - iv. Training on how to deal with detainees who are under the influence of alcohol or drugs.

Recommendation 13: Dealing with Detainees who Commit Suicide

Finding

- 8.67 The Commission found that besides health issues, deaths of detainees due to suicide is quite high in police lock-ups. There were 30 cases of suicide recorded since 2000 until 2014.
- 8.68 The Commission found that there is a high risk of detainees killing themselves when they are depressed, lost contact with family and outside world, afraid, and

¹⁰²Independent Police Complaints Commission (IPCC) *Deaths in or following Police Custody: An examination of the cases 2998/99-2008/09*; (UK) (2009); p 42

various other reasons. The condition of lock-up is also among causes of detainees to commit suicide.

8.69 The Commission pays a great attention towards the total no. of deaths due to committing suicide in police custody and agrees that it can be avoided.

8.70 According to a report of *World Health Organisation*,¹⁰³ there are several categories of people who incline to commit suicide: young males aged 15-49 years old, elderly people especially males, aborigines, people with mental illnesses, people with the problem of drug and/or alcohol use, people who have previously tried to commit suicide, and those who are being detained.

8.71 The report also states that detainees have more tendency to kill themselves.¹⁰⁴

Recommendation

8.72 The Commission recommends the installation of CCTV at certain cells to ensure that detainees who have the tendency to hurt or kill themselves can be further monitored.

8.73 The Commission emphasizes on health screening by authorized medical officers to analyse the risks of any detainee who tends to hurt and kill himself.

¹⁰³World Health Organisation & International Association for Suicide Prevention 2007, *Preventing Suicide and Prisons*; (2007); p 2

¹⁰⁴World Health Organisation & International Association for Suicide Prevention 2007, *Preventing Suicide and Prisons*: "There are not just more suicidal behaviours within the institutions but a lot of people who get imprisoned show a lot of suicidal thoughts and behaviour through the course of their lives. Accordingly pretrial detainees have a suicide attempt rate of about 7.5 times, and sentenced prisoners have a rate of almost six times the rate of males out of prison in the general population. 10 These facts also indicate a basic problem with regard to the causes of suicide in custody: On the one hand people who break the law inherently have a lot of risk factors for suicidal behaviour (they "import" risk), and the suicide rate is higher within the offender group even after their release from prison. 11 That does not mean the correctional services have no responsibility for the suicide of offenders; on the contrary, these vulnerable offenders should be treated while they can be reached inside the prison. On the other hand, being imprisoned is also another stressful event even for healthy inmates (as it deprives the person of important resources)."

8.74 The Commission suggests that the procedure is carried out if death occurs:¹⁰⁵

- i. The death scene should be classified as crime scene.
- ii. All information regarding scene, body of the deceased, and testimony from witnesses are recorded.
- iii. Autopsy is carefully carried out: autopsy which is performed must be recorded and it should meet the standard set for homicide cases.
- iv. Inform the deceased family members.¹⁰⁶
- v. Inform the progress of investigation from time to time.
- vi. Fair and unbiased investigation.¹⁰⁷
- vii. Take action based on the findings (punish and rehabilitate).
- viii. Draw up clear procedures which will enable the warders to open the cells as quickly as possible and not to wait for an officer to open the cell. In a situation of attempted suicide, time is of the essence.¹⁰⁸

¹⁰⁵Amod Gurong, *UN Police Expert's: Comparative Global and Regional Experiences on Preventing Deaths in Custody* on 17 December 2014 during the programme of *Interactive Discussion on the Best Practices in Preventing Deaths In Custody*

¹⁰⁶*Report of SUHAKAM Public Inquiry into the Death in Custody of S.Hendry* (2006) suggested that family members of every death in custody are allowed to see the body of the deceased immediately, with a condition that family members are only allowed to see but not touch the body. Inform the next-of-kin in cases of deaths in custody the essential information, including date, time and place of the post mortem examination, the right to be represented by a legally qualified medical practitioner or a legal practitioner or a medical practitioner during the post mortem examination, right of family members to have a second post mortem examination and a thorough explanation, in layman's language of the findings of the post mortem examination.
(p 93)

¹⁰⁷ *Principle 34 of Body Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*

¹⁰⁸*Report of SUHAKAM Public Inquiry into the Death in Custody of S.Hendry; (2006); p 93*

III. Deaths due to Foul Play by the Police

Recommendation 14: Use of Force during Interrogation

Finding

- 8.75 The Commission found that police still impose violence especially during the process of arresting and interrogating detainees. It is proven through statistics from PDRM, coroner's court decision and investigation by EIAC.
- 8.76 According to detainees who were interviewed, most of them got hurt or they witnessed their fellow detainees being hurt or the evidence or effect of being assaulted. Several police officers also admitted about this matter.
- 8.77 The Commission was informed by police officer who has been working for a long time that although the police still impose violence, it is decreasing because of the approach and training received by new personnel.
- 8.78 The Commission found that the use of violence during interrogation is due to force and pressure to obtain information and confession of a crime.
- 8.79 The Commission also found that there are several "loophole" or lacunae in remand request which has been used by IO, where many detainees informed that they are being detained for remand more than 14 days. It is called as 'roadshow' and has been widely practised by arresting suspects in different districts.
- 8.80 The Commission found that detainees have been threatened, physically harmed without using weapons, physically hurt using weapons or other tools and mentally and psychologically assaulted during police detention.
- 8.81 Through interview which has been carried out, the Commission agrees that the police especially group of detectives who incline to use violence during interrogation as a shortcut to get the confession by detainees, or testimony from

detainees which will assist the investigated case that can be solved immediately.

Recommendation

- 8.82 The Commission is totally against the violence imposed to detainees by the police and recommends several steps to stop the violence in any situations. The method should not be used at all because according to Article 15 of Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), any testimony or evidence which has been obtained through the use of violence cannot be accepted as proof.
- 8.83 The Commission highlights the needs for current regulations and guidelines to be fully utilized and practised by all parties involved. Any parties which disobey the regulations should be penalised with strict actions. For example, Article 5 of Federal Constitution allows a person to be arrested by the police for 24 hours. However, the police should take the person to a magistrate for detention more than 24 hours. Every application for remand or extension of remand should be checked by magistrate thoroughly and detainees should be examined to ensure they are fit to be detained without any injuries detected when being arrested. During the process, a lawyer should be present. Failure to ensure that the detainees are represented by a lawyer in front of Magistrate is a violation of human rights for detainees. All parties should play their roles fairly to ensure that the current justice system can function as check and balance for every party involved. In the Commission opinion, present regulations and guidelines which are being practised negligently will cause the system to be weak and easily violated.
- 8.84 The Commission disagrees with the use of remand as an excuse to arrest detainees for the purpose of interrogation. Magistrate should be more proactive and inquire detainees by himself without being too dependent to IO when extending the remand process. This is because magistrate might overlook that detainees have been detained and remanded repeatedly for the same offence without any allegations.

- 8.85 Nowadays with the advancement of science and technology, there are various equipments and techniques which can assist the investigation without imposing violence or force towards detainees. The Commission recommends that PDRM can use more of the technological facilities as suggested in Chapter 7.
- 8.86 The Commission underscores the needs for police officers to obey Code of Conduct for Law Enforcement Officials.¹⁰⁹
- 8.87 The Commission emphasizes the needs for police officers to follow Basic Principles on the Use of Force and Firearms.¹¹⁰

Conclusion

- 8.88 Because the health factor is reported as contributing cause of deaths in police custody, a serious measure should be taken to control continuous lost of lives. The Commission believes that the execution of recommendations can assist the decrease of the deaths rate due to health problems. The execution of establishing a medical unit/team in lock-ups not only decrease the death rate but it can also lessen the burden of PDRM. The Commission acknowledges that the execution of this recommendation requires a huge budget and it has the implications in terms of human resource and regulations in lock-up. However, the life of human beings is more valuable than every expense and the improvement that will be carried out is for the collaborative benefits of all parties especially PDRM.
- 8.89 Furthermore, the deaths due to detainees own actions such as committing suicide should also be overcome. This requires people with expertly in identifying detainees who incline to kill or hurt themselves. Effective monitoring system such as patrolling and CCTV is important for this purpose.

¹⁰⁹Adopted by General Assembly resolution 34/169 of 17 December 1979.

¹¹⁰Eight United Nations Congress on the Prevention of Crime and the Treatment of Offenders and was welcomed by the General Assembly of the UN in resolution 45/166 in 1990.

8.92 Meanwhile the deaths due to injuries caused by the police is a serious violation of human rights and regulations. The police who is responsible to protect public safety cannot act contradictorily and threat the life of detainees. Police station and lock-up should be seen as as safe place for society.

CHAPTER 9

RIGHTS AND WELFARE OF PDRM OFFICERS AND PERSONNEL: FINDINGS AND RECOMMENDATIONS

Background

- 9.1 The Commission has examined the issues related to rights and welfare of PDRM officers and personnel. This is an important matter because the working environment, office facility, workload, training and other basic facilities influence the work performance, manners, moral and emotion of PDRM officers and personnel.
- 9.2 The Commission has analysed the issues emphasized in Chapter 6 and the recommendations have been proposed with the hope that they will resolve several issues and problems which take place for years now.
- 9.3 The proposed recommendations in this Chapter are based on observations, interviews, and visits carried out by the Commission to the office and also surrounding area of working place of PDRM officers/personnel and staff to list down the needs as well as wellbeing of PDRM members. This matter has been discussed based on the following categories of the topics:
- i. Basic Facilities/Office/Station;
 - ii. Work Force Planning;
 - iii. Healthcare;
 - iv. Housing;

I. Basic Facilities/Office/Station

- 9.4 The Commission had visited 38 Police District Headquarters (IPD) and observed the condition of office and placement of police officers/personnel, and summarized the condition.¹¹¹ Most of visited IPD were not in satisfying condition.
- 9.5 The Commission had concluded several findings as well as relevant recommendations based on the observation and visits carried out as follows:

Recommendation 1: Building Structure and Location

Finding

- 9.6 There are various constraints experienced by PDRM personnel in-charge in IPD which create problems in terms of building structure or location, for instance, IPD which is placed in new building (IPD Klang Selatan, Tampin, Seri Alam, Shah Alam) has numbers of maintenance problems like broken wiring, pipe leakage, cracks on the wall and air condition which is not working.
- 9.7 The Commission found that insufficient space and limited budget are among the factors for placement of several IPD that have to move to shophouses or police barracks such as IPD Klang Selatan, administration office of IPD Johor Bahru Selatan, and rooms of IO/AIO IPD Kuala Terengganu to accommodate the increment of PDRM officers/personnel and staff. The provided space for IO/AIO and other staff is small and confined which causes inconvenience to carry out daily tasks. For officers/personnel in-charge as stand-by, there is no space to rest or change clothes.
- 9.8 There are several visited IPD/Police Stations which are placed at unsuitable location in the Commission opinion and should be located in proper and safe location to ease everyday routine. For example, IPD Klang Utara in Selangor and IPD Johor Bahru Selatan in Johor are among IPD which place the office for

¹¹¹Findings and conclusion regarding the visit are as in Chapter 6 pp 114-122

officers/personnel and staff at shophouses. Meanwhile IPD Brickfields has placed commercial crime investigation office in outside area of IPD due to limited office space. The Commission is extremely concerned about the placement of IPD and IPD's office in the area and building of shophouses. As discussed in Chapter 6, the placement of IPD/office is seen as unsuitable or unsafe.

Recommendation

- 9.9 The Commission would like to recommend a planning for building repairment schedule to regularly maintain and repair the building. The maintenance and repairment should not only focus on the damaged building but also to examine the building structure especially those with more than 20 years.
- 9.10 The periodic and systematic maintenance should be prioritized. This includes wiring, piping, air-conditioner system, lights and lifts. Standardization between KDN, IPK, IPD and Station should be improved so that the maintenance and repairment can be done regularly and efficiently.
- 9.11 KDN and the highest administration of PDRM should give sensible consideration to place an IPD at suitable location. The placement at shophouses is seen as disregarding the safety and not reflecting the image of PDRM as an advanced organisation in terms of location, administration, and crime combat. The location of IPD/office should assure the safety and the comfort of PDRM personnel and the public when dealing with PDRM.
- 9.12 PDRM, related ministries, and agencies such as Ministry of Finance, Federal Department of Town and Country Planning, and Public Works Department should collaborate to overcome the problem of location and placement of IPD/police station so that the location is suitable and the increment of PDRM personnel can be accommodated.

- 9.13 The area selection for IPD/police station should suit the population density, municipality hierarchy and police facility hierarchy.¹¹² The construction of IPD/police station should be standardized and exhausted in terms of building standard and infrastructure in every IPD/police station and should follow the function and the need of location as well as the service with the regard of safety, accessibility, comfort and it should also show the culture and identity of local police.^{113,114}

Recommendation 2: Location of Investigation Officers' Room/ Assistant Investigation Officers' Room (IO/AIO).

Finding

- 9.14 The Commission found that there is IPD which has placed the rooms of IO/AIO at shophouses and old police quarters. The location is seen as unsuitable and vulnerable (shophouses) and at the same time can cause risks of danger if they are unsafe to be occupied (old quarters). This can be seen in IPD Johor Bahru Selatan, Klang Utara, Klang Selatan (Narcotics) and Kuala Terengganu.
- 9.15 The placement of rooms for IO/AIO is insufficient in part of visited IPD which causes them to take turn in order to use the room. It can be seen in IPD Dang Wangi, Alor Gajah and Pontian.
- 9.16 The office equipments are also not well-maintained. Most of the equipment like photocopy machines and computers require continuous maintenance because of the regular use. There are part of IPD which do not provide the basic office facilities for instance tables, chairs, and computers for officers/personnel, especially for those who just start to work.

¹¹²Category of Safety Facility – Police, General Guidelines, Site Planning and Design. Community Facility Planning Guidelines (2013). Federal Department of Town and Country Planning Peninsular Malaysia. Ministry of Urban Wellbeing, Housing and Local Government.

¹¹³Category of Safety Facility – Police, General Guidelines, Site Planning and Design. Community Facility Planning Guidelines (2013). Federal Department of Town and Country Planning Peninsular Malaysia. Ministry of Urban Wellbeing, Housing and Local Government.

¹¹⁴Further reference concerning safety facility can be referred to Community Facility Planning Guidelines (2013 Amendment) produced through Circular from Head of Secretary Ministry of Urban Wellbeing, Housing and Local Government, No. 4 year 2014.

- 9.17 The Commission found the problem of office facilities supply such as chairs and tables, file cabinets, computers, printers, toner, stationaries including A4 paper and photocopy machines are serious. There is also an old carpet and fan which does not work. IO/AIO have to use own money to provide the facilities and will share with their colleagues to buy them.

Recommendation

- 9.18 Office space should be comfortable and conducive. The office equipment such as suitable tables and chairs should be provided for all personnel.
- 9.19 The office facilities and stationaries as mentioned above should be adequate and sufficient with the needs of department so that it will not burden PDRM staff.
- 9.20 Office space should have standardized and safe characteristics to ensure the safety and comfort of all parties.
- 9.21 Rooms of IO/AIO and administration building should not be placed at the building with no safety features or which does not reflect the police institution. The placement should consider the aspects of safety and also suitable location. The Commission is aware about the constraints experienced by PDRM to adapt the increment of staff in the service, however the space for placing the personnel should be evaluated and examined from time to time to ensure that it does not cause danger to the personnel who are being placed at dilapidated living quarters which have old electrical wiring system.
- 9.22 The width of rooms for IO/AIO should meet the guideline provided by Standard and Cost Committee which highlights the width of space needed for every officer/personnel.¹¹⁵

¹¹⁵Table 1D-(vii): Width of Office Space and Standard Working Space for PDRM. Guidelines and Rules for Building Planning by Standard and Cost Committee, Economic Planning Unit, Prime Minister's Department. 2008 Edition.

- 9.23 For any department to function better, it should have sufficient facilities to ensure its efficient and effective execution. It should consist of administration/management office, discussion room, operation room, crime investigation office, logistics office and special branch office.¹¹⁶
- 9.24 Insufficient office equipment should not occur and the administration at IPK/IPD should overcome the problem and establish an effective system for that purpose. The highest administration should not neglect in solving this main problem because the insufficiency affects the daily tasks. The concern on these matters can reduce the stress in handling the work and indirectly mitigate corruption.

Recommendation 3: Interrogation Room

Finding

- 9.25 The Commission found that most of visited interrogation rooms are not standardizedly built up and met the standard specification whereas CCTV facility is always broken and at several visited IPD, the facility is not provided.

Recommendation

- 9.26 The Commission emphasizes on the need for interrogation room in every Crime Department in PDRM to ease the work execution, meanwhile the construction should meet the specification highlighted in Guidelines of Standard and Cost Committee 2008.

Recommendation 4: Eyewitness Identification Room

Finding

- 9.27 The Commission found that there is IPD which does not provide the space for constructing eyewitness identification room and it uses the available space to

¹¹⁶Guidelines and Rules for Building Planning by Standard and Cost Committee. 2008 Edition. Economic Planning Unit, Prime Minister's Department.

carry out the eyewitness identification process. This is dangerous not only for the eyewitnesses but also officers/personnel who are there when the identification is done.

Recommendation

9.28 In the Commission opinion, there should be a space provided nearby the lock-up to ease the eyewitness identification process and to ensure the safety of all parties especially the present eyewitnesses. The absence of eyewitness identification room in several visited IPD should be given serious attention by the highest administration of PDRM.

9.29 The construction of eyewitness identification room should meet the guidelines provided. The Commission advises KDN and PDRM to frequently refer to guidelines provided by Standard and Cost Committee, Economic Planning Unit (EPU), also Public Works Department (JKR) to ensure that the construction is standardized and it meets the specification¹¹⁷ provided.

Recommendation 5: Vehicles

Finding

9.30 The vehicles used to carry out the investigation or formal events are not enough and they cost money for fuel and if they are broken.

9.31 The personal vehicles are also used to take detainees by exposing to a high risk of detainees being escaping or getting attack by detainees due to absence of safety features.

9.32 Formal/team vehicles are not well-maintained and they always experience problems.

Recommendation

¹¹⁷The width of eyewitness identification space recommended in 2008 Guidelines is 65.0 m.p (13 meter x 5 meter).

9.33 The Commission recommends that the vehicles' maintenance should be periodically carried out to avoid any damage when performing the tasks such as taking detainees to the destination.

9.34 The Commission suggests that PDRM administration to re-examine the increment of official vehicles to ease the investigation and other related official matters.

Recommendation 6: Other Facilities

Finding

9.35 The Commission also found that there are several other constraints which affect the works of PDRM officers/personnel. They are as follows:

- i. Exhibits storage: No enough room/space to keep the exhibits.
- ii. Police Reporting System (PRS) can only be accessed except in the office.
- iii. Less telephone lines in the office. It is difficult to make a phone call to complainant/eyewitness or about office matters. There is an IPD which shares a phone among IO/AIO and other personnel to make an official call.

Recommendation

9.36 The exhibits storage should be managed and ensured for its satisfying condition. For IPD with no exhibits storage, a separated building should be built to keep the exhibits with proper monitor.

9.37 The Commission would like to recommend that PRS is improved by providing the access outside the office, especially in the crime scene to carry out the investigation.

9.38 Improvement on the system of telephone line in every IPD to assist them to make an official phone call. Sharing the telephone should be restricted to two people in every room or working space.

II. Work Force Planning

Recommendation 7: Workload and Age Factor

Finding

- 9.39 There is no doubt that the police always face the challenges and trials when performing their tasks in combating crime which have been the National Key Results Area¹¹⁸ or NKRA since it has been introduced. To achieve the objectives of NKRA, it should not affect the police officers/personnel who are always working to ensure the safety of the community. Currently, the ratio of police to Malaysian population is 1:249 with the police strength of 112 583 to 28 million population (2013).¹¹⁹
- 9.40 The Commission found that in most visited IPD, IO/AIO have escalating case workload and delayed cases. This is because PDRM officers/personnel in-charge are lacking to carry out daily investigation. Moreover, other tasks such as to carry out operations, escort dignitaries, held roadblocks and be in-charge of football matches also affect the investigation by IO/AIO.¹²⁰
- 9.41 The Commission found that older officers/personnel experience the problem of being in-charge as IO/AIO. From the research, almost 30% IO/AIO are more than 40 years old and almost 18% are more than 50 years old. According to IO/AIO who were interviewed, they face difficulties to effectively carry out the investigation when getting older and having health problems.

¹¹⁸National Key Results Area or NKRA is placed under Government Transformation Programme (GTP). The Government has come up with seven main pistons stated under NKRA and reducing crime programme is one of the main pistons. The initiative can be seen in GTP1.0 and widened in GTP 2.0 to indicate its effectiveness. Further information regarding GTP can be accessed through the Government Transformation Programme website via following link: http://www.pemandu.gov.my/gtp/Reducing_Crime-@-GTP_1@0_Reducing_Crime.aspx?lang=ms-my (accessed on 11 November 2015)

¹¹⁹Information obtained from The Star Online dated 6 August 2013. Further information can be accessed from the following link: <http://www.thestar.com.my/News/Nation/2013/08/06/Enough-policemen/> (accessed on 25 October 2015).

¹²⁰The issue has been further discussed in Chapter 6 (p 129).

- 9.42 The Commission is informed that during interview session with police officers/personnel, there are outstanding cases which cannot be solved due to interference from parties who have own agenda.

Recommendation

- 9.43 The Commission suggests that the ratio of investigation work is reduced to a suitable no. for IO/AIO because it assists the immediate completion of outstanding cases as well as latest cases which require significant attention. This matter is also stated in Annual Report 2010 and 2014 in GTP to decrease the crime.¹²¹
- 9.44 The Commission suggests that PDRM can improve the task management by not burdening IO/AIO with other work and it can prevent the situation where IO has to apply for request remand only because he has no time to carry out the investigation due to high workload.
- 9.45 For IO/AIO who is close to the age of retirement and still in-charge as detective, the Commission suggests that the IO/AIO is absolved from the case investigation work and given other office tasks as well as he can be the supervisor for new IO/AIO.
- 9.46 Any individual or the society should not regard the police profession as to arrest person who commits crime. The scope of police job is exhaustive combat of crime with strategic formulation together with community as well as stakeholders. The Commission praises the steps taken by PDRM to establish the rapport between the police and society who need each other or better known as 'Police and The Community, Will not Separate' which raise awareness on mutual responsibility between the community and police to

¹²¹Government Transformation Programme, Annual Report 2010 (pp 56-58) and Annual Report GTP 2014 have recommended the ratio reduction of investigation officer to paperwork at 1:5 a month; this is because the no. of investigated cases by IO is escalating and burdensome. Based on the interview, the minimum no. of cases is 1:20 a month. Government Transformation Programme, Annual Report 2010 (pp 56-58) and Annual Report GTP 2014 (pp 132-153).

combat and reduce the crime from taking place.¹²²The concept is one of the effective ways to overcome criminal action and lessen the workload as the concept utilizes the community and strengthens the bond between police and society. The police does not take action alone or exclusively, the concept is holistic which involves the cooperation not only from society but also other governmental agencies and private sectors.¹²³

III. Healthcare

Recommendation 8: Healthcare

Finding

- 9.47 Health is closely related to the tasks done by police officers/personnel who have direct contact with detainees and at crime scene which has greatly exposed them to health risk and problem. The Commission is informed that an IO/AIO spends at least 3 hours with a detainee to perform the investigation, including sentry personnel who look after the lock-up and also escorts who face detainees everyday. They are vulnerable towards infectious diseases.
- 9.48 Other than that, in the Commission opinion, the long working hours is also one of the factors which causes the health of PDRM officers and personnel to be affected and causes depression. Due to high workload, they suffer high blood pressure and any diseases related to stress. Most of IO/AIO who were interviewed state that they always work for a long time (working hours).
- 9.49 The Commission found that several IO/AIO who were being interviewed are not feeling very well. There are among them who just recover from the treatment of

¹²²Theme Illustration of Police Day for 208th Police Day Anniversary 2015, Bukit Aman News, No. 1/2015.

¹²³*"Effective policing involves not just implementing policies but developing local resource streams, coalitions, knowledge and skills to maintain the policies in the long term. Solving security problems involves bringing together police, local government officials, private sector and neighbourhood civic actors."*

Quoted from Context of Urban policing in low and middle income countries in Introductory Handbook on Policing Urban Space. United Nations Office on Drugs (UNODC) & Crime and also United Nations Human Settlement Programme (UN-HABITAT). (pp 5-18).

cancer, but are in-charge for active tasks of IO/AIO. In the Commission opinion, this will cause pressure and affect their health. The Commission is also informed that there are among IO/AIO who experience emotional distress and have gotten the treatment from hospital as well as they apply to change to other department to reduce the stress, yet the application is not entertained.

- 9.50 Other risk experienced by IO/AIO or PDRM personnel is when dealing with drug users. The Commission is informed that PDRM officers/personnel have faced the situation where the drug addict threw used needle towards police personnel who were arresting. This makes PDRM officers to be vulnerable towards the danger of infectious diseases because most of drug users have various diseases including HIV/AIDS.
- 9.51 The Commission would like to get the attention of PDRM towards the Mid-Term Research of Ministry of Health Strategic Plan 2011-2015,¹²⁴ where the incidents of tuberculosis or TB are 77.41 for 100 000 population in 2012 in Malaysia due to influx of foreigners who come from endemic countries.¹²⁵ For 2014, the rate of TB is 78.28 for 100 000 population with the death rate of 5.37.¹²⁶ Although the data received from KKM does not state the main group who is affected or exposed to TB infection,¹²⁷ the increment of this infectious diseases should indicate the danger of infection because police always have direct contact with detainees who might have already been infected. Detainees who are being detained in the lock-up are vulnerable towards health problem and also they

¹²⁴Further information can be accessed via following link:

<http://www.moh.gov.my/penerbitan/utama/Pelan%20Strategik%20KKM.pdf> (accessed on 22 January 2016).

¹²⁵Endemic means disease which is regularly found among particular people or in a certain area. (Kamus Dewan Bahasa Fourth Edition).

¹²⁶Rate of Incidents and Deaths due to Infectious Diseases, 2013 (for 100 000 population). Ministry of Health Malaysia. Further information can be accessed via following link:

<http://www.moh.gov.my/index.php/pages/view/324> (accessed on 22 January 2016).

¹²⁷The Mid-Term Strategic Plan 2011-2015 Ministry of Health Malaysia explains the spread of TB among health personnel is alarming. The cause of this infection is due to ventilation problems in the workplace and less practical universal precaution practices. TB is detected late and it causes transmission to occur in the period before detection (p 4).

Further information can be accessed via following link:

<http://www.moh.gov.my/penerbitan/utama/Pelan%20Strategik%20KKM.pdf> (accessed on 22 January 2016).

can endanger other detainees around them, officers and personnel who are involved during the arrest, interrogation and others.

- 9.52 Clean toilets are crucial to ensure the health of those who work with water supply and effective cleaning schedule. The Commission would like to suggest that a separated toilet should be provided if there are detainees who undergo urine test. This is to avoid the infection to PDRM officers/personnel/staff if they use the same toilet.
- 9.53 The Commission found that there is no periodic health screening carried out by PDRM for their personnel especially those who deal with detainees everyday. According to officers/personnel who were interviewed, they are only eligible to go through the screening after 40 years old which is the facility provided to all civil servants and they have to use own money if they want to do health screening before 40 years old or at any other time.

Recommendation

- 9.54 The right for healthcare is among essential matters that should be paid attention. Article 25(1) of Universal Declaration of Human Rights or UDHR¹²⁸ underscores that everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control. Therefore, the Commission recommends that respected agencies especially Ministry of Health to cooperate with PDRM to ensure the healthcare of police officers/personnel is well taken care of.

¹²⁸“*Universal Declaration of Human Rights drafted by representatives with different legal and cultural backgrounds from all regions of the world, the Declaration was proclaimed by the United Nations General Assembly in Paris on 10 December 1948 General Assembly resolution 217 A (III) as a common standard of achievements for all peoples and all nations. It sets out, for the first time, fundamental human rights to be universally protected.*”

Further information regarding UDHR can be found on the website of Office of the High Commissioner for Human Rights via following link: <http://www.ohchr.org/EN/UDHR/Pages/Introduction.aspx> (accessed on 5 December 2015)

- 9.55 In the Commission opinion, PDRM should re-examine the long working hour because they can affect the health of PDRM officers/personnel. PDRM should optimize the workforce in accordance to the needs and put the effort to shorten the time or ensure the staff to get enough rest.
- 9.56 The Commission would like to suggest that those who are diagnosed sick and they receive the treatment from hospital should be reconsidered to be given a less active tasks so that they will not burden them and the staff have enough time to fully recover.
- 9.57 For detainees who have problem with drug addiction, in the Commission opinion, they are more suitable to be dealt with by the parties or agencies with the facilities and expert to manage them like National Anti-Drugs Agency (AADK) and hospital. The Commission would like to suggest the execution of 'drug diversion' programme as discussed in Chapter 7. The Commission believes that the programme can lessen the workload of managing detainees who have the problem of drug addiction and case investigation can be carried out more efficiently with the cooperation between other agencies such as AADK and KKM. It can assist officers/personnel to reduce their workload and present risks.
- 9.58 The Commission would like to suggest the needs of separate toilets for PDRM staff. The toilets should be separated from the toilets used for public and also detainees (especially toilets used for urine test). The facility of separated toilets has been suggested in the Guidelines of Cost Committee 2008. The Commission would also like to emphasize the nearby location around IPD/station for the toilets which should be in clean condition and should be cleaned with anti-bacteria products. The cleanliness of the toilets mirror the personality of PDRM personnel and ensure their health.
- 9.59 Compulsory health screening should be done at least once a year for police officers/personnel who have direct contact with detainees to ensure their healthcare. The screening should not only be done in hospital because preliminary examination can be done in district health clinics. Thus, a

cooperation between Ministry of Health (KKM) and State Health Department (JKN) is a must to realize the effort.

- 9.60 Malaysia as Member State of World Health Organisation (WHO) should uphold the Organisation Constitution to attain the highest standard of human rights.¹²⁹ More attention should be given to those who are in front line, especially the police who have been given responsibility to take care of the peace of the country. It is important to emphasize the healthcare at working place to establish healthy workplace.¹³⁰

IV. Housing

Recommendation 9: Housing for PDRM Personnel

Finding

- 9.61 The housing issue is among the common issues addressed during the interview with PDRM officers/personnel. The Commission found that the housing facility provided is not enough and unsatisfying.
- 9.62 For officers/personnel who are provided with housing facility, the Commission found that the condition of the houses is unsatisfying and not fully maintained. Leaked roofs (houses) and piping problem are among the frequent problems experienced by those who occupy the residence.

Recommendation

¹²⁹ *Right to Health, Fact Sheet No. 323. World Health Organisation (WHO)*. Further information can be accessed via following link: <http://www.who.int/mediacentre/factsheets/fs323/en/> (accessed on 14 January 2016).

¹³⁰ World Health Organisation or WHO defines *healthy workplace* as follows:

- i) *Employee health is now generally assumed to incorporate the WHO definition of health (physical, mental and social) and to be far more than merely the absence of physical disease;*
 - ii) *A healthy workplace in the broadest sense is also a healthy organization from the point of view of how it functions and achieves its goals. Employee health and corporate health are inextricably intertwined.*
 - iii) *A healthy workplace must include health protection and health promotion.*
- Burton, J. WHO Healthy Workplace. Framework and Model: Background and Supporting Literature and Practice (2010).*

- 9.63 Right to adequate housing¹³¹ is the right which not only exclusive to public but it has to be comprehensively viewed (including PDRM officers/personnel) by looking at the importance of establishing the housing with complete infrastructure and healthy surrounding. The right to housing is not limited and should be inclusionary as well as to ensure that people in general can enjoy the housing opportunity provided by the Government.
- 9.64 The Commission recommends that the housing facility provided should accommodate the needs of PDRM staff and the increment PDRM personnel from time to time. It should have great building structure, clean water supply, sanitary and safety system as well as to meet the width category listed in government living quarters.¹³²
- 9.65 The Commission recommends several matters to be reconsidered by PDRM, KDN as well as other related ministries and departments:
- i. Establishing systematic housing to accommodate the increment of PDRM officers/personnel.
 - ii. The site for PDRM housing should be safe and it has healthy surrounding to be occupied by every family and individual.
 - iii. The repairment or maintenance project of current housing is carried out effectively according to annual schedule to ensure that the surrounding is safe and comfortable to be occupied by PDRM family. This step should be carried out with Public Works Department (JKR) and Fire and Rescue Department so that a guideline can be designed for every repairment or maintenance project to be carried. This matter is also included in Royal

¹³¹ Article 11.1 International Covenant on Economic, Social and Cultural Rights:

“The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The State Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international cooperation based on free consent.”

¹³² Guidelines and Rules for Building Planning by Standard and Cost Committee. 2008 Edition. Economic Planning Unit, Prime Minister’s Department.

Conclusion

- 9.66 Overall, the Commission is truly concerned with the constraints and restrictions experienced by PDRM staff. The problems are not only faced in the building which placed district administration, but also in the residence occupied by PDRM personnel. In the Commission opinion, the building which placed police team should have standardized and specific criteria to meet the increment of staff and population.
- 9.67 Lacking of basic equipment in the office, building maintenance and cleanliness of IPD are problems which should be given serious attention because they will reflect personality and perception of PDRM personnel.
- 9.68 Issues and recommendations stated above are similarly important with the right of detainees mentioned and supported by various parties. The steps to accommodate the rights and welfare of PDRM officers/personnel are crucial to establish international policing agency. It is also essential to create welcoming and harmonized working environment and correspondently increase the service towards public and those who are being detained.

¹³³Chapter 15: Provide better housing and premise for the Police.Royal Commission to Enhance the Operation and Management of PDRM Report (2005). pp 471-485.

CHAPTER 10

IMPROVEMENT OF POLICIES AND LAWS: FINDINGS AND RECOMMENDATIONS

10.1 Based on the provision of law and policies related to deaths in detention as discussed in Chapter 2, There are findings and recommendations for the improvement related to management of deaths in police custody.

Recommendation 1: Creating the Definition of Deaths in Custody

Finding

10.2 Criminal Procedure Code (CPC) only allocates the procedure if the death occurs in detention, however there is no definition of 'death in detention' provided in CPC as explained in Chapter 2.

Recommendation

10.3 Hence, the Commission recommends that Attorney General's Chambers form an amendment to include a provision on definition of death in detention in CPC because every procedure regarding death in custody and roles of Coroner refers to CPC as the main reference.

10.4 The definition "death in detention" is extremely important because when the research is carried out, there is still confusion among police personnel whether a person died in police custody or death related to the police. It also affects the death statistics recorded by PDRM.

Recommendation 2: Re-checking the Lock-up Rules 1953

Finding

10.5 Lock-up Rules enshrine the provisions to protect detainee's rights in the lock-up from the admittance into lock-up until the detainee is released. For example, Lock-up Rule 10 states that:

“Medical Officer should as fast as he can, checking every prisoner immediately after they come in the lock-up and confirming whether the prisoner is qualified to be detained.....”

10.6 The provision is extremely important to prevent death in detention due to health factor and ensure the relevant measures taken by the police if a person needs specific healthcare in police custody.

10.7 However, the Commission found that the Lock-up Rules require review and amendment to protect the human rights.

Recommendation

10.8 Hence, the Commission suggests that Attorney General's Chambers and Ministry of Home Affairs to review Lock-up Rules 1953 because the rules have been long drafted which is in the year of 1953. Furthermore, the Government through Ministry of Home Affairs is responsible to ensure that the budget allocated and employment are enough to safeguard total adherence towards Lock-up Rules by the police.

Recommendation 3: Getting the Access of Inspector General's Standing Order (IGSO)

Finding

10.9 When executing the research, the Commission is informed concerning the existence of IGSO on the deaths in police custody. Although an official request has been made to the police so that the Commission will be given a copy of the IGSO, the Commission has not yet received any feedback from the police regarding this issue.

Recommendation

10.10 Furthermore, the Commission recommends that PDRM gives the access for the document to avoid misunderstanding between public and the police.

Recommendation 4: Malaysia Participating Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and Optional Protocol of CAT

Finding

10.11 As discussed in Chapter 2, CAT is established to prevent torturous and violent treatment towards OKT during detention for any purpose. Whereas Optional Protocol of CAT (OPCAT) is established to create operational framework for state members to fulfill their responsibility under CAT.

Recommendation

10.12 Other than current legal provisions and also to strengthen the Government commitment to fight against any form of torture towards detainees, the Commission recommends that Malaysian Government to participate Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and Optional Protocol of CAT.

Recommendation 5: Placement of Medical Officers in Police Lock-ups

Finding

10.13 Often issue addressed during the Commission visits is the absence of Medical Officer in police lock-ups. Although Rule 10 of Lock-up Rules 1953¹³⁴ allocates that Medical Officer should examine any detainees who is admitted to lock-up but practically, no examination is done on detainees due to the absence of Medical Officer in police lock-ups.

10.14 The absence of Medical Officer in police lock-ups also causes every detainee who is sick to be taken to nearby clinic or hospital to get the treatment.

¹³⁴ “Medical Officer should as much as he can, examine every prisoner immediately after they are admitted in lock-up and certify whether the prisoner is qualified to be detained and, if he allegedly prosecuted, what works can be given to him”

Recommendation

10.15 Hence, the Commission recommends that Ministry of Health to place Medical Officer in police lock-ups to ensure that every detainee has the access of medical treatment when needed. Medical Officer also can give first aid whenever emergency takes place before taking to hospital for further treatment. This matter has been discussed in Chapter 8.

Recommendation 6: Introducing the Employment of Medical Officers under Police Scheme

Finding

10.16 The Commission also considers that practically, Medical Officer is 'lent' from Ministry of Health. Taking the best practice from other countries like Victoria Police in Australia, they have Custodial Medical Team (CMT) which consists of doctors, nurses, and pharmacists. CMT is responsible to give the treatment to police detainees (24 hours 7 days a week) and they are selected by Victoria Police.

Recommendation

10.17 The Commission suggests that PDRM and Ministry of Home Affairs to review this suggestion because the absence of Medical Officer is ongoing problem for so long. This matter has been discussed in Chapter 8.

Recommendation 7: Gazetting the Lock-ups

Finding

10.18 A lock-up should only be used to place any detainees after it is gazetted so that it meets the required standard and detainees can be legally detained. However, during the visit to police lock-ups, the Commission found that there are lock-ups which are not yet gazetted but have been used to place the detainees. The situation gets worse because there are new lock-ups but cannot be gazetted because they do not meet the supposing standard.

Recommendation

10.19 The Commission recommends that related enforcing agency like Ministry of Home Affairs, Public Works Department and PDRM ensure that the used lock-ups should be immediately gazetted and every construction of new lock-up should meet the assigned standard to prevent the new lock-up from not being gazetted. The maximum no. of people who can be detained for every lock-up should be stated in the gazette. The matter has been discussed in Chapter 7.

Recommendation 8: Identifying Symptoms and Level of Injury

Finding

10.20 Dr. Craig Paterson from University of Sheffield Hallam,¹³⁵ United Kingdom emphasizes on the concern of the Police and medical practitioners in police lock-ups in identifying early symptoms of diseases or level of injuries which can cause detainees to pass away commonly due to age factor, mental health, drugs and alcohol. There is also situation where serious injury on head is misunderstood as being drunk.

Recommendation

10.21 Thus, the Commission suggests that Ministry of Health provides a guideline or principle as well as training concerning health risk evaluation and mental health on the stage of detainees' admittance in police lock-up.

Recommendation 9: Electronic Custodial Module

Finding

10.22 In 2010, the police in New Zealand introduced electronic custodial module. The module is used to record the details of detainees electronically including the information of risk evaluation towards detainees. This assists the personnel in-

¹³⁵ Dr Craig Paterson, *Deaths in Police Custody: Best Practice from England and Wales*, Department of Law and Criminology, Sheffield Hallam University.

charge in the place to access the information of risk evaluation and guide the relevant measures taken. The module also enables PDRM personnel to access the information of risk evaluation beforehand if suspect has been arrested previously.

Recommendation

10.23 The Commission recommends that the Government and PDRM review and implement the electronic system or module to key in the information of the people who are being detained. This will ease the access of detainees information for sentry personnel especially on health record and risk evaluation.

Recommendation 10: Board of Visitors

Finding

10.24 When performing the research, the Commission found that Board of Visitors monitor the condition of lock-up and detainees as suggested by the police as it is not yet established in 2013.¹³⁶

10.25 Although there is Inspector General's Standing Order (IGSO) A120 Paragraph 32 which requires Officer in-charge of Police District (OCPD) to request Medical Officer to visit all gazetted police lock-ups once every week and Paragraph 13 IGSO also requests the Medical Officer to verify the maximum no. of detainees who can be detained in every lock-up, the Commission found that this matter is not carried out in police lock-ups. This issue has been discussed in Chapter 2.

Recommendation

10.26 Therefore, the Commission recommends that the establishment of Board of Visitors which consist of independent members such as magistrate and Medical Officer is executed immediately to ensure the lock-up condition and safety of detainees are monitored by an independent organization. In countries like Scotland, United Kingdom, Namibia and Australia, there is independent

¹³⁶<http://www.sinarharian.com.my/semasa/polis-jamin-keselamatan-perubatan-tahanan-1.164847>
(Accessed on 24 March 2016)

examiner of police lock-up or volunteering organization who visits and reports the condition of detainees in police lock-up.

Conclusion

10.27 The Government's initiatives in reducing the rate of death in police custody should take the steps to amend or improve the current laws, regulations and procedures. This also includes to participate international human rights convention or treaties.

10.28 Furthermore, the Government should carry out the best practices from other countries for example United Kingdom, Australia and New Zealand which previously experience high death cases in police custody. However, after the steps are taken and improvements are performed, the rate of death in the countries is decreasing.

CHAPTER 11

CONCLUSION

I. Introduction

- 11.1 The research is carried out due to complaints received and observation done by the Commission related to death cases in police custody based on total no. death which is high. Therefore, generally community has voiced out dissatisfaction regarding increasing no. of death rate.
- 11.2 The Commission has decided to obtain the information and data concerning death in police custody to examine the contributing factors of death although at the same time there are particular constraints which restrict the examination and investigation of the reported death cases.
- 11.3 Findings and recommendations resulted from the research are based on the data collected out throughout the research. It is hoped that the recommendations can reduce the death in police custody.
- 11.4 The Commission highlights five objectives and five research questions as discussed in Chapter 1. The Commission has made an effort to achieve the objectives and questions however there are limitations experienced by the Commission especially the absence of complete and comprehensive information which complicates the analysis and summary of the questions that contribute the death in police custody. On the other hand, the Commission has concluded the influencing factors of death in police custody.

II. Laws

- 11.5 Based on the current laws in Malaysia, the Commission found that there is no specific definition given for “death in detention”. The legal provisions and related

rules only specify the roles of enforcing agencies such as the police and coroner to investigate the cause of death if it takes place.

11.6 In the Commission opinion, Lock-up Rules 1953 is a guideline to the police regarding procedures and treatment that should be imposed to a detainee who is admitted into the lock-up until he is released. However, the Commission contends that these procedures are not thoroughly practised and carried out by the police. Moreover, it is timely do a legal review as these procedures were established a long time ago.

11.7 To strengthen the Government commitment to deal with cases of death in detention, amendment, as well as improvement that should be done on current laws and pocedures. Participation of Malaysia into international convention and treaties like Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) is important. The best practices from United Kingdom, Australia and New Zealand can also be the guideline in the effort to reduce the death in detention.

II. Statistics of Deaths in Police Custody

11.8 Based on the death in detention record by PDRM, from 2000 until February 2014, there are 255 deaths recorded with average of 17 cases within 15 years period. In the Commission opinion, the average is quite high for a period of time.

11.9 There is no specific definition used by PDRM for “death in police custody”. The Commission contends that the absence of definite definition for death in detention might be one of the reasons when there is different data related to the death. The Malaysian Legislation also does not give definition of death in police custody. Section 328 of Criminal Pocedure Code (CPC) only defines “causes of death” whereas section 329 of CPC makes it compulsory for police officers to investigate the death when it occurs.

11.10 Based on the data of death received, the Commission contends that the deaths due to injury, carelessness as well as misuse of power by the police are still

going on. Based on the Commission observation on the investigation done by Enforcement Agency Integrity Commission (EAIC) as well as inquest carried out by Coroner's Court shows that there is force imposed which leads to death and this is seen to contribute to the death increment due to force imposed by the police. Based on the result of interview on 373 detainees as well as 275 police officers/personnel also indicates the element of force imposed on detainees with various reasons as discussed in Chapter 5.

III. Lock-up Infrastructure

11.11 In the Commission opinion the lock-up specification under PDRM supervision is not standardized and has no uniform standard. The Commission recommends that future lock-up construction will refer to Guidelines and Rules for Building Planning by Standard and Cost Committee¹³⁷ which highlights the maximum gross width of the lock-up according to the needs and status of related IPD/Station.

11.12 The condition and infrastructure of visited lock-up is unsatisfying and it does not meet the Lock-up Rules 1953, Prison Regulations 2000 and Nelson Mandela Rule. In the Commission opinion, the unsatisfying condition in the lock-up is one of the factors which contributes the death in detention. For example, dirty and slippery lock-up floor can cause the detainee to slip and affect his health.

11.13 There are lock-ups where the CCTVs are positioned in front of the lock-up toilet, which encroach the privacy of detainees especially for those who use the toilet in the lock-up. The Commission recognizes the importance of ensuring detainees safety in the lock-up and although it should not degrade the honour of the individual.

¹³⁷Guidelines and Rules for Building Planning by Standard and Cost Committee, Economic Planning Unit, Prime Minister's Department. 2008 Edition.

11.14 The lock-up surrounding is also not conducive for PDRM personnel in-charge. The condition will not only affect mental, emotion and physical health but indirectly influence the way of personnel to manage detainees in lock-up.

IV. Detainees Healthcare

11.15 The problem of detainees health is not a new issue and steps to overcome the health problem should be carried out by stages with the cooperation of agencies like Ministry of Health (KKM) and National Anti-Drugs Agency (AADK).

11.16 Based on the Commission opinion, if the death (207 cases) which is caused by unavoided health problem, so only 48 death cases (19%) take place throughout past 15 years which bring about the average of 3 deaths a year.

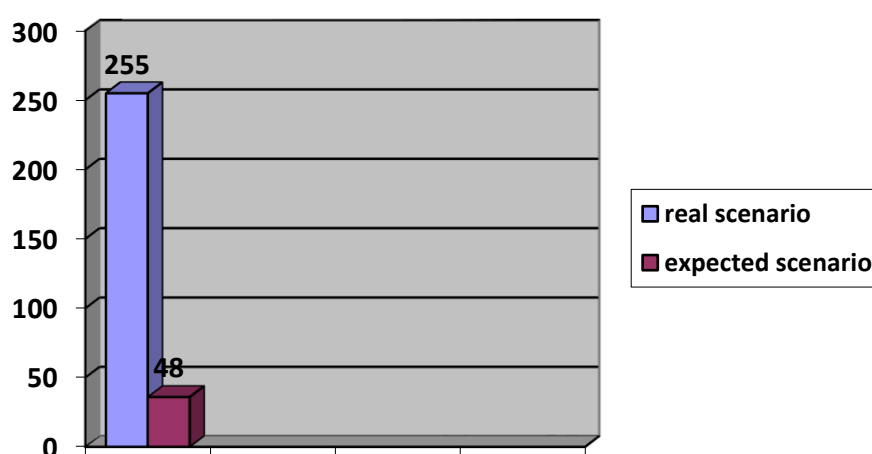


Diagram 3: The scenario difference based on statistics of death in custody since 2000 – 2014 if no death is caused by health issue

11.17 Therefore, health issue in PDRM lock-up should be dealt with immediately. For short term, the Commission suggests KKM to place Medical Officer in the lock-ups to carry out health examination on detainees. For long term, KDN, KKM and PDRM should establish a custodial medical team who is responsible for all health issues in PDRM lock-up.

- 11.18 Other than that, for every personnel who monitor the lock-up must have first-aid skills like cardiopulmonary resuscitation or CPR which can save one's life. Moreover, first-aid kit should be provided and regularly checked to ensure all needed facilities are available when experiencing emergency.
- 11.19 For sick detainees, they should be taken to hospital for examination and further treatment. There should be a cooperation with hospital/clinic to ensure detainees who really need the treatments get them without delay or a long wait. However the matter should be taken into consideration together with other factors like public safety so as to minimize time waste and energy of personnel who accompany detainees to hospital.
- 11.20 In the Commission opinion, currently most of visited lock-ups (except Pulau Pinang Central Lock-up) are not safe and conducive especially for detainees who have mental illness as well as alcohol/drug addiction. These detainees should not be placed together with other detainees because they will harm those who are in the cell as a whole. Without close monitoring and screening by Medical Officer, it will increase the risk of injury or death. For vulnerable detainees, they are more suitable to be placed in the facility where they can be frequently monitored. Facilities like "drunk tanks", "SOS buses" or "sobering-up stations" should be introduced in the station with minimum cost for those who have problems with alcohol whereas "arrest referral schemes" are suitable for detainees with drug addiction problem.
- 11.21 The Commission asserts that the remand order by Magistrate should be proportionally relevant to the crime which is being investigated and at the same time it acts as a check and balance to ensure that detainees who are being detained will not be hurt or imposed with force by the police. Meanwhile, officers who carry out the investigation should not misuse the given remand period by postponing the investigation due to workload. The Commission would like to emphasize that Magistrate also plays a prominent role to ensure that detainees are fine and there is no misuse of power when detainees are being remanded.

V. Rights and Welfare of PDRM Officers/Personnel

- 11.22 The Commission is concerned with the constraints and restrictions experienced by PDRM staff particularly at IPD level. The problems are not only faced in the building which placed district administration, but also in the residence occupied by PDRM personnel. In the Commission opinion, the building which placed police team should have standardized and specific criteria to meet the increment of staff and population from time to time.
- 11.23 The Commission observation also suggests that there is no building monitoring system to ensure the building and office space are in a good condition. This system should be established and closely monitored by other governmental agencies like Fire and Rescue Department and Public Works Department Malaysia to ensure the occupied IPD/Station are safe.
- 11.24 Lacking of basic equipment in the office, poor building maintenance and issues of cleanliness of IPD are the problems which should be given serious attention because they will reflect personality and perception of PDRM personnel.
- 11.25 The health of PDRM should also be given attention because most PDRM members experience stress due to high workload and the need of completing the case immediately. The high workload is among the causes of stress to take place and the need to make a balance between work and family at one time as it can create conflict and contribute to stress. These are among the factors which influence one's moral, which in turn may further affect how detainees treated, especially who do not cooperate when the investigation is carried out.

VI. Cooperation between Agencies

- 11.26 Most of the problems stated above get complicated due to lacking of cooperation and standardization between governmental agencies. Ranging from the healthcare issue and treatment towards detainees and PDRM staff to the work of maintenance, improvement and monitoring, they only require the cooperation between agencies such as Ministry of Home Affairs, Ministry of

Health Malaysia, Ministry of Finance, Ministry of Urban Wellbeing, Housing and Local Government, Economic Planning Unit, Attorney General's Chambers, State Health Department, Public Works Department and National Anti-Drugs Agency. All parties should put the effort to assist the police when performing their tasks especially detainees management which requires a good cooperation model.

VII. Financial Constraints

11.27 According to PDRM, financial constraint is one of the main causes of inavailability to provide facilities and services accordingly. This includes the lock-up infrastructure and healthcare which affect the rights of detainees and PDRM staff. Hence, the needs mentioned in this report should be taken into consideration in the financial allocation for PDRM in order to allow PDRM to perform the best services to public and their staff.

VIII. Safety vs Human Rights

11.28 In the Commission opinion, several basics from the perspective of human rights are not fulfilled by the police, although the facilities should be provided based on Lock-up Rules 1953 and international standards. The Commission is informed that the denial of several rights are due to safety issues (apart from financial issue) such as:

- i. Detainees are not provided with full clothes because there is tendency for them to do something which is harmful to themselves.
- ii. Detainees are not provided with bedding (like mattress/blanket) because it will be used for the purpose to hurt or cause something detrimental to themselves.
- iii. Detainees are not provided with toiletries (toothbrush, toothpaste, towel) in lock-up because the lock-up administration contends that they can be used to hurt themselves as well as all people around the lock-up.

- iv. The lock-ups are dirty. The lock-up administration has informed that safety issue is the main factor why the lock-ups cannot be cleaned using service by the contractor from outside.
 - v. In the Commission opinion, CCTV is one of the ways to monitor and control detainees' behaviour from doing unwanted actions or violate the lock-up regulations. However, at the same time, it should respect the privacy of detainees especially when they use toilet. Therefore, the Commission recommends that the CCTV is not placed facing the toilet but only in the lock-up to avoid inconvenience.
- 11.29 To ensure the safety of detainees and related parties in monitoring detainees in the lock-up, the Commission thinks that it should be a balance with the basic needs of detainees when in the lock-up. The Commission suggests that more proper monitoring mechanism should be in place to make sure that monitoring done on detainees can prevent unwanted incidents. Reviewing detainees monitoring policy and procedure should be done to provide transparency in the police handling of deaths in detention and at the same time to respect the privacy of detainees. Apparently, the use of technology like CCTV can assist the monitoring of detainees movement in the lock-up, although it should complement and not replace the monitoring from one cell to another by the personnel who take care the lock-up.

IX. Lock-up as Temporary Detention

- 12.29 The Commission would like to stress that majority individuals who are being detained in the lock-up are still under investigation and not yet proven guilty. Although their freedom is restricted, the basic needs and their rights which are guaranteed under Federal Constitution. As discussed previously, PDRM has tasks and responsibility to maintain the safety of country and at the same time to ensure those who are being detained are safe. Therefore, the role played by lock-up administrators to ensure detainees' safety in the lock-up is important in

order to prevent any unwanted incidents. The police should play their role as 'caretaker' and not 'enforcer' when handling detainees in the lock-up.