



# A HISTORIC OPPORTUNITY

ENSURING AN EFFECTIVE POLICE COMMISSION IN MALAYSIA

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**Cover photo:** Malaysian riot police officers with shields and batons stand guard, Kuala Lumpur, Malaysia. © AP

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# 1. SUMMARY

Effective oversight of the police contributes towards improving law enforcement, strengthening the legitimacy of the police agency in a country. It also helps to ensure that the police respect human rights. In Malaysia, a range of actors exist to provide oversight of the police, including internal accountability mechanisms, the judiciary, and public accountability. However, one has been missing to date—an independent police oversight body.

Independent oversight mechanisms play an important role in ensuring police accountability and effectiveness. They are free from bias and as such, their findings and recommendations are perceived as more credible by the public. With more countries establishing independent police oversight bodies, it is high time Malaysia followed in their footsteps, as recommended both domestically and internationally.<sup>1</sup>

In late 2018, the Pakatan Harapan government took the first steps towards police reform — announcing plans to establish an independent police commission (IPCMC) — one mandated to investigate police misconduct, serve as a police oversight body, and advise on policy relating to policing.<sup>2</sup>

Plans to establish better police oversight took place in the context of a long history of police abuse in Malaysia. Over the years, consistent reports of abuses, such as violence against people in detention and deaths in custody, have damaged the reputation of the Royal Malaysia Police. Research by Amnesty International and other human rights organisations has shown that police abuses have continued, and those responsible have not been held to account.<sup>3</sup>

While the Pakatan Harapan coalition was replaced in February 2020, the Perikatan Nasional government led by Prime Minister Muhyiddin Yassin should continue efforts to establish an independent oversight commission for the police, which began while he was Home Minister under the previous administration.

To date, effective investigations into reports of police abuses in Malaysia have been rare, only occurring after extensive media coverage or public campaigns by human rights organisations. Current internal police disciplinary mechanisms are inadequate to deal with criminal offences involving human rights violations and are often not known or accessible to the public. Furthermore, external police oversight bodies have not had adequate powers to bring to justice those responsible for human rights abuses. These weaknesses in both internal and external police accountability mechanisms have contributed to a culture of impunity.

In this briefing, Amnesty International analyses the police oversight commission that was proposed by the previous government, gives examples of cases of police abuse that an effective oversight body would address, and highlights areas of the draft legislation to create the body that could be strengthened. Amnesty

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<sup>1</sup> In 2005, the Royal Commission of Inquiry to Enhance the Operation and Management of the Royal Malaysian Police first recommended the establishment of an independent police commission. At the international level, states have repeatedly called on the government of Malaysia to establish an independent police oversight body, for example during the 2<sup>nd</sup> Universal Periodic Review of Malaysia in 2013. See for instance, A/HRC/25/10, Report of the Working Group on the Universal Periodic Review – Malaysia, para 146.56.

<sup>2</sup> Joseph Kaos Jr and Mei Mei Chu, “IPCMC will finally be set up,” The Star, 22 September 2018 <https://bit.ly/34pSp4B>. The new government called the proposed body the Independent Police Complaints and Misconduct Commission (IPCMC), but in recent months, some have suggested changing its name to the Independent Commission for Police Conduct (ICPC). In this briefing paper, the body will be referred to as the IPCMC or simply the commission.

<sup>3</sup> See for example, Amnesty International, “Malaysia: End alarming rise of deaths in police custody,” 25 July 2013; Human Rights Watch, “No answers, no apology: Police abuses and accountability in Malaysia,” 1 April 2014; “Amnesty International, “End Impunity for Unlawful Deaths in Custody,” 15 February 2017.

International believes that there are several key elements that should be present in any oversight mechanism to ensure that it can function properly to hold abusive police accountable.

First, we believe the Malaysian government should ensure that the IPCMC is able to prioritise serious abuses by police, including any death in police custody or as a result of police action. The proposed commission should also have full operational independence from the executive and be free from political influence, including in the appointment of commissioners.

To ensure complaints before the IPCMC can be properly examined, the oversight body should be afforded full investigatory powers, similar to those of a police investigator and that of the current Enforcement Agency Integrity Commission (EAIC). It should also have the power to refer cases to the public prosecutor for criminal prosecution and the ability to appeal decisions not to prosecute, if dissatisfied with the prosecutor's decision in a case.

In order to be fully transparent, and sustain public trust, the IPCMC should ensure that complaints are dealt with in a timely fashion, and that complainants are kept up-to-date on ongoing investigations. Civil society should play an active role in the work of the commission, in order to bring attention to important issues of policing, and provide expertise and input in reforming policies.

Finally, Amnesty International calls on Malaysia to ratify the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which would underscore the government's seriousness in abolishing the use of such punishments by state agencies once and for all.<sup>4</sup>

In April 2020, Amnesty International shared this briefing with the Prime Minister's Office, with an invitation to feedback on its recommendations. As of the time of its publication, there had been no response.

The overall objective of this briefing is to further strengthen a welcome and much-needed proposal to establish the IPCMC, and call on the Perikatan Nasional administration to continue with police reforms initiated under its predecessor.

Malaysia has the chance to make lasting changes that will improve policing in the country. Fifteen years after the idea of an independent police commission was first presented, the new government should not miss this historic opportunity.

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<sup>4</sup> See Amnesty International Malaysia, "Calling on Malaysia to ratify the UN Convention against Torture," 31 December 2015.

# 2. BACKGROUND

The Royal Malaysia Police (RMP) was established following Malaysia's independence in 1963.<sup>5</sup>

Today, with over 137,500 personnel, the force is responsible for preserving law and order, maintaining the peace, detecting and preventing criminal activity, arresting and charging the accused, and collecting intelligence to ensure public safety. The head of the police force is the Inspector General of Police, currently Abdul Hamid Bador, who was appointed to the position in May 2019 for a two-year term by former Prime Minister Mahathir Mohamad.

The police force is organised into four levels, namely federal, state, district and station. The federal police is headquartered at Bukit Aman, Kuala Lumpur. There are 14 states (including the Federal Territory of Kuala Lumpur), each headed by a state police chief or commissioner. The district level is led by a district police chief; there are 148 districts, which encompass 837 police stations throughout the country.

The force is also subdivided into many specialised departments, such as the Criminal Investigation Department, Counter-Terrorism Unit and Internal Security and Public Order Department. The Special Branch, formed by the British colonial government to infiltrate communist forces, is a highly covert and opaque unit whose modern-day role is to “gather quality security intelligence by clarifying the dimensions of a threat, to advise as well as carry out effective enforcement actions to maintain peace, order, and the security of the country.”<sup>6</sup> However, human rights organisations have repeatedly expressed concerns over the Special Branch's lack of transparency and the methods it uses to carry out its role. For example, in April 2019, after a months-long public inquiry, the national human rights institution SUHAKAM identified the Special Branch as being responsible for the enforced disappearances of community organiser Amri Che Mat, and pastor Raymond Koh.<sup>7</sup>

The police force is governed by the Police Act 1967 (revised in 1988), which comprises its constitution, governance, employment policies, recruitment, funds, discipline, duties, and powers.<sup>8</sup> While the law deals with lack of discipline and insubordination, it does not address more serious misconduct such as abuse of power, torture, and deaths in custody. These problems have continued unaddressed for decades, costing lives and diminishing the reputation of the police.

## 2.1 POLICE ABUSE

According to figures provided by the government in a March 2018 written reply in Parliament, there were 140 deaths in police custody from 2008 to 2018.<sup>9</sup> Not all deaths were the result of ill-treatment or torture, but the high number of them has raised concerns and increased scrutiny.

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<sup>5</sup> “Sejarah,” Royal Malaysia Police website, <https://bit.ly/3c3e0HF>.

<sup>6</sup> “Cawangan Khas,” Royal Malaysia Police website, <https://bit.ly/3c4xsi9>.

<sup>7</sup> Annabelle Lee, “Police behind disappearance of Koh and Amri, SUHAKAM inquiry concludes”, *Malaysiakini*, 3 April 2019, <https://bit.ly/2wwVWSi>.

<sup>8</sup> Police Act 1967, Attorney General Chambers website, <https://bit.ly/3e9wEKK>.

<sup>9</sup> Question 189, Ref no.: 10681, Parliamentary written reply, March 2018, <https://bit.ly/2CTS14B>.

In its 2016 report entitled “Deaths In Police Custody: A Thematic Study on Lock-Up Conditions and Factors Contributing to the Death,” Malaysia’s national human rights institution SUHAKAM reached the following conclusions:

Frequent occurrence of the cases and various complaints received from the deceased family members as well as non-governmental organisations show the existence of a systemic problem on managing the detainees in the lock-ups. At the same time, this problem has tarnished the Royal Malaysia Police’s credibility in the eye of the community.<sup>10</sup>

Then-SUHAKAM chairperson Razali Ismail said he found that all the cells at police lock-ups were in such poor and dilapidated conditions that being held in them amounted to “cruel, inhuman or degrading treatment.”

Cases of deaths in custody, torture, and corruption have created a public perception of a police force that operates with impunity. A 2017 survey carried out by Transparency-International Malaysia found that about 57 per cent of 1,009 Malaysian participants viewed the police as the most corrupt institution in the country.<sup>11</sup>

Despite the poor perception of the police and the high number of deaths in custody, the government failed to take adequate measures to reform the force. According to the human rights organisation Suaram, only nine police officers were charged in court for negligence or causing injuries or deaths to detainees between 2010 and February 2018.<sup>12</sup> Two were convicted for minor offences while the rest were acquitted.

Instead of pursuing significant reforms, the government has thus far been more inclined to make piecemeal changes. In April 2018, the Ministry of Home Affairs claimed that it had introduced a new standard operating procedure which would require detainees themselves to complete a form detailing their health condition.<sup>13</sup> Those suffering from infectious diseases or considered high risk would be detained separately from others, and detainees of different categories must be separated in detention centres. CCTVs were to be installed in lockups that did not already have them. These changes did not significantly improve matters.

Further damage was done to the police’s image by SUHAKAM’s 18-month long inquiry into the enforced disappearances of activist Amri Che Mat and Pastor Raymond Koh, who vanished in 2016 and 2017, respectively. In April 2019, the national human rights institution concluded that both disappearances were carried out by “agents of the state,” specifically the Special Branch, the intelligence agency attached to the police.<sup>14</sup>

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<sup>10</sup>“Deaths in Police Custody: A Thematic Study on Lock-Up Conditions and Factors Contributing to the Death”, SUHAKAM, 2016.

<sup>11</sup> Nawar Firdaws, “Police again viewed as most corrupt in transparency survey,” Free Malaysia Today, 28 February 2017 <https://bit.ly/2NlphOw>.

<sup>12</sup> Suaram, Malaysia Human Rights Report 2018, January 2019.

<sup>13</sup> “Guidelines On Management Of Detainees In Custody Presented To The Emergency And Trauma Department”, Ministry Of Health Malaysia, 2018 <https://bit.ly/2RqcSB4>.

<sup>14</sup> Annabelle Lee, “Police behind disappearance of Koh and Amri, SUHAKAM inquiry concludes,” Malaysiakini, 3 April 2019, <https://bit.ly/2wwVWSi>.



## EVIDENCE OF ENFORCED DISAPPEARANCES

On 24 November 2016, Amri Che Mat, a social activist from the organisation Perlis Hope, is believed to have been abducted near his home. According to his family, witnesses saw Amri's car being boxed in by unknown vehicles. It was later found with its windscreen smashed.

In similar circumstances, on 13 February 2017, Pastor Raymond Koh, a Christian pastor and social worker from Petaling Jaya, Selangor, was driving along a major road in Petaling Jaya, when his car, a silver vehicle, was boxed in by three black SUVs. CCTV footage showed at least eight men dressed in black, getting out of the cars.

In April 2019, after a year-long enquiry, the Human Rights Commission of Malaysia (SUHAKAM) concluded that these were both instances of enforced disappearances, carried out by state agents, in particular the Special Branch of the police.<sup>15</sup>

A month later, the government announced that a special taskforce would be set up to look into the findings that the police were involved. However, almost one year on, no action has been taken to hold anyone to account.<sup>16</sup> In November 2019, the wife of Amri Che Mat filed a civil suit before the courts, naming a former government official, retired senior police officers and members of the Special Branch as responsible for her husband's disappearance.<sup>17</sup> Koh's spouse, Susanna Liew, filed a similar suit in February 2020.<sup>18</sup>

Like SUHAKAM, Amnesty International believes that there is evidence to suggest that state forces, including the Special Branch, were involved in both disappearances. Over three years later, the organisation calls on the Malaysian government to expedite efforts to promptly, thoroughly, impartially and effectively investigate the disappearances, and to hold those suspected of being responsible for the violations to account in trials that meet international standards of fairness.

Human rights organisations have repeatedly expressed concerns over the Special Branch's lack of transparency and the methods by which it carries out its role. If police reforms are to be taken seriously in Malaysia, the government should ensure effective and independent oversight of the Special Branch, and accountability for human rights violations it may be responsible for.

## 2.2 PREVIOUS REFORM EFFORTS

Human rights organisations and the political opposition have highlighted incidents of torture and abuse of power by the police since the 1980s, but it took until 2004 for a significant breakthrough to occur.

Facing public anger over rising crime, increased perception of police corruption, and a general dissatisfaction about the conduct of the force, the government established a Royal Commission of Inquiry to Enhance the Operation and Management of the Royal Malaysian Police.<sup>19</sup> The commission comprised prominent public officials and members of civil society, including a former Inspector General of Police and former Chief Justices.

In 2005, it published a detailed report with 125 recommendations for the government, one of which was the establishment of an independent oversight commission to receive and investigate allegations of police wrongdoing and propose to the government steps to increase the integrity of the police force.

<sup>15</sup> Esther Landau, "SUHAKAM inquiry concludes police behind disappearance of Amri, Pastor Koh," New Straits Times, 3 April 2019, <https://bit.ly/2VfuDUJ>.

<sup>16</sup> Mazwin Nik Anis, "Task force to be set up to look into SUHAKAM's findings over disappearance of Amri, Pastor Koh", The Star, 23 May 2019, <https://bit.ly/2xahepc>.

<sup>17</sup> Julia Chan, "Wife sues govt, police over her activist husband's enforced disappearance", Malay Mail, 18 November 2019, <https://bit.ly/3c3l54X>.

<sup>18</sup> Emmanuel Santa Maria Chin, "Pastor Koh's wife sues IGPs, others over his 'enforced disappearance'" Malay Mail, 12 February 2020, <https://bit.ly/39ZhdYE>.

<sup>19</sup> Report of the Royal Commission to Enhance the Operation and Management of the Royal Malaysian Police, 2005.



The commission suggested this body be called the Independent Police Complaints and Misconduct Commission (IPCMC). It also produced a draft bill to establish the powers, jurisdiction, and constitution of this oversight body.

Despite the extensive work of the Royal Commission, however, the government failed to implement most of the key recommendations. Police resistance toward the Royal Commission's recommendations was strong, with Mohamad Bakri Omar, then the Inspector General of Police, openly defying then-Prime Minister Abdullah Badawi, who was initially supportive of the IPCMC.<sup>20</sup> The police chief argued for the Police Force Commission (SPP) to be maintained as the sole disciplinary body, as set out in Article 140 of the Federal Constitution.

### **THE UN CONVENTION AGAINST TORTURE (UNCAT)**

The UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (UN CAT) establishes a set of measures and enshrined in international law which are designed to prevent torture, punish perpetrators and ensure justice and redress to victims. These measures intend not only to end torture and other ill-treatment on the state level, but also to ensure that no-one is deported across borders if they are at risk of being tortured, and that there is no safe haven for perpetrators.

A majority of UN member states – 165 – are parties to the UN Convention against Torture. Malaysia remains one of four ASEAN states that is yet to sign CAT. In order to ensure that torture by police and other state agents is eradicated in Malaysia once and for all, the government should ratify the UN Convention against Torture without any delay or reservation.

## **2.3 COMPROMISE SOLUTION: EAIC**

The government compromised by scrapping the IPCMC proposal and instead established the Enforcement Authority Investigation Commission (EAIC) in 2009. Unlike the proposed IPCMC, the EAIC is responsible for 21 government agencies, lacks disciplinary and punitive powers, and can only make non-binding recommendations and referrals.<sup>21</sup>

The EAIC attracted much criticism, in particular from civil society, centering around the fact that the police requires the attention and resources of a specific agency.<sup>22</sup> Many aspects of the commission also raised concerns, such as the automatic appointment of the Inspector General of Police to the EAIC, and the power of the prime minister to singlehandedly appoint and revoke commissioners.

In time, the EAIC itself would admit it lacked the power to address public complaints. In 2016, then chairperson Yaakob Mohammad Sam said enforcement agencies, such as the Road Transport Department (RTD) and the police, have failed to provide explanations for 90 per cent of the complaints they have received from members of the public against its personnel.<sup>23</sup> The EAIC also acknowledged that most of the complaints it received involved the police, amounting to over 80 per cent in 2017.<sup>24</sup>

Despite its limited resources, the EAIC has carried out some notable investigations. In 2016, it released an investigative report into the 2013 death in custody of N. Dharmendran, who was found dead after being detained for 10 days by the police in Kuala Lumpur. The EAIC found that the police, including senior officers, were involved in a conspiracy to cover up the incident, including falsifying lock-up diary entries and

<sup>20</sup> Kuldeep S. Jessy, "Police force rejects IPCMC," The Star, 26 March 2006, <https://bit.ly/2yHjwwa..>

<sup>21</sup> Chua Sue-Ann, "SCC vs IPCMC: Check out the difference," Malaysiakini, 27 December 2007, <https://bit.ly/2VjRr5F>.

<sup>22</sup> "EAIC cannot replace IPCMC," Malaysiakini, 1 July 2009, <https://bit.ly/2yGtjTd>.

<sup>23</sup> "90% of complaints to enforcers go unheeded, says EAIC," Free Malaysia Today, 25 July 2016, <https://bit.ly/3c7Q7Kc>.

<sup>24</sup> Hafidzul Hilmi Mohd Noor, "EAIC : Policemen received the highest number of complaints," New Straits Times, 18 April 2018, <https://bit.ly/2RrObnU>.

making a false police report on the cause of death.<sup>25</sup> In 2018, the EAIC also found the police responsible for the death of S. Balamurugan, who died in custody the previous year.<sup>26</sup>

Despite this, no one was ultimately convicted for the deaths. While four police officers were charged with Dharmendran's killing, they were subsequently acquitted.

## 2.4 RENEWED REFORM EFFORTS

Under the Pakatan Harapan government efforts to establish a police oversight body recommenced in 2018. This time, senior police officials lent public support to the efforts. Shortly after his May 2019 appointment as Inspector General of Police, Abdul Hamid Bador announced the force's amenability to the IPCMC. He said: "The police force is eagerly waiting for IPCMC to be finalised and come into implementation. Once it's final, then it would be my responsibility to convince my men that the formation of the commission will ensure their welfare is taken care of."<sup>27</sup>

While the police, government, and human rights organisations all agreed in principle to the formation of an independent oversight commission, there were differences in the desired approach. Notable voices in civil society had hoped the government would adopt the 2005 draft bill produced by a royal commission on police reform. Instead, the newly established Governance, Integrity and Anti-Corruption Centre (GIACC) was tasked with drafting a new bill. The draft bill appears to be weaker than the 2005 draft.

At the end of the parliamentary session in July 2019, the IPCMC bill was tabled in parliament for the first reading, making the document available for public scrutiny for the first time.

While welcoming the tabling of the IPCMC bill in Parliament, civil society and human rights lawyers were dissatisfied with its contents. Among areas of concern, shared by Amnesty International, was the lack of procedure for appointing or dismissing commissioners, whose positions can be determined solely by the discretion of the King or prime minister. The powers of the commission were also considerably reduced compared to those of the EAIC, lacking the power to conduct searches and seizures. The proposed IPCMC would also have too much leeway regarding which cases to reject.

The government at the time assured the public that the IPCMC bill is still subject to change, pending consultations with stakeholders,<sup>28</sup> including civil society and representatives from the police.<sup>29</sup> Human rights lawyers have proposed amendments to help strengthen the bill.

In October 2019, the government tabled the bill for the second reading, together with 24 amendments, but after strong objections from opposition lawmakers over the high number of changes, the IPCMC bill was referred to Parliament's Special Select Committee for further refinement. The Special Select Committee, headed by lawmaker Ramkarpal Singh, held seven consultations with representatives from the GIACC, EAIC, the police, civil society and the Independent Office of Police Conduct (IOPC) from the UK. Five public hearings were also held.

On 2 December, the government announced that the IPCMC bill would be tabled the following day with 37 amendments, but it gave no indication what these amendments were. Reservations aside, many in civil society would like the bill to pass, believing that further improvements can be made after the police commission has been established.

On the day of its tabling, however, the government requested more time to study the bill for further refinement, especially regarding amendments proposed by the Special Select Committee.<sup>30</sup> Then-Law Minister Liew Vui Kong also said there were requests from the police and certain bodies that must be

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<sup>25</sup> "EAIC's Investigation Findings on the Death of N. Dharmendran In Police Custody," Enforcement Agency Integrity Commission (EAIC), 28 April 2016, <https://bit.ly/3caKVFr>.

<sup>26</sup> Minderjeet Kaur, "Police to blame for Balamurugan's death, commission confirms," Free Malaysia Today, 18 January 2018, <https://bit.ly/39ZbHPv>.

<sup>27</sup> G Prakash "IGP: Once IPCMC finalised, focus will be on improving police welfare", Malay Mail, 30 May 2019, <https://bit.ly/2yJnh4g>.

<sup>28</sup> "IPCMC bill still subject to change – Liew", New Straits Times, 6 August 2019, <https://bit.ly/2UXIL6a>.

<sup>29</sup> "Minister announces first round of IPCMC consultations complete", Malaysiakini, 16 August 2019, <https://bit.ly/2xj6Knd>.

<sup>30</sup> "Tabling of IPCMC bill postponed to improve it", Free Malaysia Today, 4 December 2019, <https://bit.ly/2RsEvJJ>.

considered before improvements to the IPCMC bill could be finalised. The bill was scheduled to be tabled on 9 March 2020, but a change in government occurred late February and Parliament has been postponed to July.<sup>31</sup> The new government has yet to declare whether it will move forward with the IPCMC bill.

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<sup>31</sup> Jason Santos, "March 9 date for IPCMC bill at Dewan Rakyat, says Liew", Free Malaysia Today, 15 December 2019, <https://bit.ly/2XmsOYK>.

# 3. AN EFFECTIVE OVERSIGHT BODY

To function effectively, a police oversight body must meet certain standards. While every mechanism has to adapt to the characteristics of the country in which it operates, there are minimum requirements that a mechanism should fulfil in order to ensure accountable policing.<sup>32</sup>

UN experts, as well as the UN Office of Drugs and Crime (UNODC), recommend that police oversight bodies have adequate powers and a clear mandate to address police matters, be fully independent and transparent, have adequate resources, seek to engage civil society involvement, and cultivate public trust.<sup>33</sup>

While the proposed IPCMC bill already meets many of these requirements, it should still be improved before it is presented in Parliament, to ensure that the mechanism it establishes is effective.

## 3.1 CLEAR MANDATE

To assure its successful functioning, an oversight body should be established by law, safeguarding its mandate against political changes or interference by particular interest groups.<sup>34</sup> While the scope of mandate can vary widely among different mechanisms, the legislation establishing the oversight body should be as specific as possible about what issues the mechanism will cover and what powers the body exercises.<sup>35</sup>

Although mechanisms with a broad mandate can ensure that all types of misconduct are investigated, there should be sufficient scope for an oversight body to prioritise serious abuses, aside from minor disciplinary infringements. Enough attention should be given to serious police misconduct, such as cases of death as a result of police action, any death in custody, complaints against the discharge of an official firearm of a police officer, rape, and other forms of torture, serious assault and serious corruption matters.<sup>36</sup>

Moreover, the mandate should make clear that an oversight body has the power to receive complaints, and initiate investigations on its own volition.<sup>37</sup>

At present, the mandate of the proposed IPCMC appears to be mainly focused on dealing with cases of disciplinary misconduct. Granted, it is useful that the IPCMC can actively take part in deciding whether to impose disciplinary measures, as opposed to issuing recommendations and leaving the question of discipline to the police agency. However, when comparing the IPCMC bill with the mandate of the EAIC,

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<sup>32</sup> For further discussion of this issue, see, for example, Amnesty International, Police and Human Rights Programme, “Police Oversight, Short paper series No. 2,” January 2015.

<sup>33</sup> UNOHCHR, Report of the Special Rapporteur on extrajudicial, summary and arbitrary executions, Study on Police Oversight Mechanisms, UN Doc. A/HRC/14/24/Add.8, 28 May 2010 (hereinafter “Study on Police Oversight Mechanisms”); UNODC, Handbook on police accountability, oversight and integrity, Criminal Justice Handbook Series, 2011 (hereinafter “Handbook on police accountability”).

<sup>34</sup> UNODC, “Handbook on police accountability,” 2011, p. 49.

<sup>35</sup> Amnesty International, Police and Human Rights Programme, “Police Oversight, Short paper series No. 2,” January 2015, p. 13.

<sup>36</sup> Amnesty International, Police and Human Rights Programme, “Police Oversight, Short paper series No. 2,” January 2015, p. 14.

<sup>37</sup> UNOHCHR, “Study on Police Oversight Mechanisms,” 28 May 2010, para. 32.

there is a risk that the IPCMC may prioritise disciplinary misconduct at the expense of dealing with abuses by police that constitute criminal offences.

It should be mandatory for the IPCMC to investigate all deaths and serious injuries in custody, as well as those occurring as a result of police action — for example, the use of lethal force and firearms.<sup>38</sup> At present, the IPCMC is only compelled to investigate deaths in police custody.

In instances where the IPCMC concludes that there is criminal behaviour, it should refer the matter to public prosecution.<sup>39</sup> Though the IPCMC's conduct of its investigation and findings may differ from a criminal investigation process, if there is such a recommendation, there should be a presumption that the prosecution will ensure that further criminal investigation be carried out, with a view to subsequent prosecution.

To ensure that the IPCMC has the power to deal with serious cases, the IPCMC bill should make clear that for incidents the commission considers to involve possible criminal offences, the case will be referred to the public prosecutor, as previously stated in the EAIC Act, as opposed to the “relevant authority.”

At present, in the current bill, it is not clear who may be considered as the “relevant authority.” This opens the door to referring cases back to the police, which would clearly be problematic. For greater clarity, the IPCMC bill should specify explicitly that the prosecutor is the relevant authority.

## 3.2 INDEPENDENCE AND TRANSPARENCY

An important part of ensuring an independent police commission is independent are measures to safeguard its senior officials against politicisation, and to protect it from political pressure or undue interference by executive powers.<sup>40</sup> Crucially, the appointment or election procedure for commissioners, as well as procedures for their removal, should protect their independence and not place undue control in the hands of the executive authority.

At the time of writing, despite concerns raised by civil society and others, the King, on the advice of the prime minister, will play a role in the appointment of the IPCMC commissioners. As such, the independence of the IPCMC may be compromised. Rather than having the prime minister play a role in the appointment of commissioners, this task should be designated to a more independent and impartial body. The IPCMC bill should have a clear appointment procedure, to be carried out by a representative body, such as parliament or a selection panel. It should set out the minimum qualifications the commissioners should have in order to ensure its independence and the high quality of its staffing.<sup>41</sup>

Apart from functional independence, the work of a police oversight mechanism should be highly transparent. It should issue detailed reports and publish its investigative findings as well as its recommendations. This degree of transparency will allow for public scrutiny, which in turn will put pressure on the relevant police forces to follow up on recommendations put forward. Transparency further has the additional effect of developing trust in the system in which a visible oversight body takes police abuses seriously.

This necessary transparency is not provided for in the current bill for the establishment of the IPCMC. There are also no provisions by which the IPCMC must investigate a complaint within a reasonable period of time.<sup>42</sup> Nor are there provisions by which complainants can appeal against the findings of the IPCMC in cases where they are not satisfied with how the IPCMC handled the complaint.<sup>43</sup>

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<sup>38</sup> UNODC, “Handbook on police accountability,” 2011, p. 52.

<sup>39</sup> UNOHCHR, “Study on Police Oversight Mechanisms”, 28 May 2010, para 43, see also: Amnesty International, Police and Human Rights Programme, “Police Oversight, Short paper series No. 2” January 2015 p.19.

<sup>40</sup> UNODC, “Handbook on police accountability,” 2011, p. 49.

<sup>41</sup> “Study on Police Oversight Mechanisms”, 28 May 2010, para 56.

<sup>42</sup> Amnesty International, Police and Human Rights Programme, “Police Oversight, Short paper series No. 2” January 2015 p.27.

<sup>43</sup> Amnesty International, Police and Human Rights Programme, “Police Oversight, Short paper series No. 2” January 2015 p. 28.



## INCIDENTS OF SERIOUS ASSAULT, EXTORTION

Amnesty International recently documented several cases of alleged police abuse, which indicate that the unlawful use of force continues and that some complaints are not adequately investigated.

The case of Charles Xavier is instructive. On the evening of 10 December 2018, Xavier was arrested for theft and taken to the Bukit Jalil police station. Eventually released without charge after three nights in police custody, he told Amnesty International that he was beaten by police in an attempt to force him to provide information.<sup>44</sup> When Xavier and his family lodged a complaint to the police about his mistreatment, he said that the police apologised and attempted to offer to pay for his medical fees, and even visited his house to try and get him to withdraw the complaint. He refused. Over a year later, he and his family told Amnesty International they were still waiting for an outcome in his case.

Teacher James Anthony told Amnesty International that, in the early hours of the morning on 4 May 2019, he was driving in a car with his relative when he was stopped by men with torches, who ordered him to step out of the vehicle.<sup>45</sup> Fearful that they were criminals, he drove off but was pursued by motorcycles. Forced to stop, it was then that James realised they were police. When he stepped out of the car he said he was held at gunpoint and beaten in the abdomen and head before being extorted for RM10,000 (\$2,400 USD) in order to “settle” their claim that he had tried to run them over. He handed over RM8,000, and was then allowed to leave. After filing a police complaint, he is still waiting for an outcome.

Amnesty International is aware of other allegations of police abuse and unlawful use of force that have occurred in recent years. In order to address the impunity that prevails within the police, particularly in lock-ups, an independent police oversight commission is urgently needed.

## 3.3 POWERS OF INVESTIGATION AND ACTION

States are obligated to investigate offences committed by police, and hold to account law enforcement officials in any case that uncovers sufficient, admissible evidence of responsibility for offences involving human rights violations.

Powers of investigation of a police oversight body should therefore allow for an effective inquiry into a complaint – meaning that police oversight mechanisms should have, at least in theory, similar powers to those held by the police. This includes, but may not be limited to, the ability to summon witnesses, enter and search premises, seize and dispose of articles, carry out arrests, and execute warrants, as well as compel the full cooperation of the police.<sup>46</sup>

The IPCMC should also have the support of other bodies or technical experts from, for example, the police themselves, in order to have the full investigative expertise to conduct investigations. In cases in which the police may be involved in investigations, the police should not be from any unit or department linked to individuals who are the subjects of a complaint, in order to ensure impartiality and independence.<sup>47</sup> Police should be compelled by law to cooperate with the IPCMC.<sup>48</sup>

Apart from powers to investigate, the police oversight mechanism should have the ability to follow up on its recommendations for further action. If the prosecution decides not to bring the case to court, it should be obliged to provide a reply to the oversight body as to why it did not do so. The body should have the opportunity to have the decision reviewed if dissatisfied with the outcome within the hierarchical structure of the prosecution and, should it come to it, a judicial authority.<sup>49</sup>

<sup>44</sup> Amnesty International interview, Kuala Lumpur, 23 November 2019.

<sup>45</sup> Amnesty International interview, Kuala Lumpur, 28 November 2019.

<sup>46</sup> UNOHCHR, “Study on Police Oversight Mechanisms,” 28 May 2010, paras. 36-37.

<sup>47</sup> Amnesty International, Police and Human Rights Programme, “Police Oversight, Short paper series No. 2,” January 2015, p.26.

<sup>48</sup> Amnesty International, Police and Human Rights Programme, “Police Oversight, Short paper series No. 2,” January 2015, p. 18.

<sup>49</sup> UNOHCHR, “Study on Police Oversight Mechanisms,” 28 May 2010, para. 42.

As of the time of writing, it is unclear whether in its proposed form, the IPCMC will have the full set of investigatory powers needed to fulfil its mandate effectively.

In addition, it is not clear if there will be any obligation on the prosecution to carry out the action recommended, or any ability for the mechanism to appeal if they are dissatisfied with the prosecutor's decision not to proceed. There should be a way to ensure that when the IPCMC does recommend action, it is sufficiently able to follow up, should the relevant authorities fail to act.



### UNLAWFUL DEATHS IN CUSTODY – S BALAMURUGAN

On 6 February 2017, S Balamurugan was arrested with two of his friends for burglary. The following day, he was brought to court for a remand hearing. S Balamurugan's lawyer stated in a police report that he could not walk and that he was bleeding severely from his mouth during his appearance in court. The presiding Magistrate rejected the police officers' request to remand S Balamurugan in police custody and ordered that he be released and sent to a hospital for medical treatment.<sup>50</sup>

However, the police appear to have failed to comply with the Magistrate's orders. When his family went to the North Klang Police Station later that day to wait for his release, they were informed that S Balamurugan had been re-arrested. The day after, his family was informed that he had died. When his wife went to identify S Balamurugan's body, they said that it was badly bruised and covered with blood, despite a post-mortem which stated that he had died from a heart attack.

All deaths in custody must be promptly, independently and effectively investigated to ascertain cause, manner, location and time, as well as the extent of involvement of all those implicated in the death. Where there are grounds for believing that the cause of death was unlawful, and where sufficient, admissible evidence is found, suspected perpetrators, including those with command responsibility, must be prosecuted in fair trials.

Following investigation by the Eaic, a taskforce which looked into Balamurugan's death concluded that he was a victim of police unlawful and abusive use of force and referred the case to public prosecutors.<sup>51</sup> One police inspector was charged in October 2017, but for a lesser charge of causing injury.<sup>52</sup> His case is one of over a hundred of deaths in custody known to have occurred over the past ten years in Malaysia. Almost none of these have been effectively investigated.

## 3.4 PUBLIC TRUST AND CIVIL SOCIETY PARTICIPATION

A police oversight mechanism will not function well without the trust of the general public. There is therefore a need to ensure that any new oversight mechanism establishes public confidence, which will in turn engender greater trust in the police, and encourage the public to seek the assistance of the mechanism should the need arise.<sup>53</sup>

At present, weaknesses exist within the proposed IPCMC which should be remedied to assure the public that it will be able to address the question of police accountability effectively. First, the IPCMC has too wide of an ambit in terms of which cases to reject. This includes cases considered "too old" to justify investigation, or those with alternative avenues for redress. This broad discretion creates uncertainty for complainants about what falls within the scope of the IPCMC.

There should be strict criteria regarding when the IPCMC may reject cases, especially those involving alleged deaths, enforced disappearances or torture. The IPCMC should only be allowed to reject complaints on the

<sup>50</sup> Amnesty International, "End Impunity for Unlawful Deaths in Custody," 15 February 2017.

<sup>51</sup> Minderjeet Kaur, "Police to blame for Balamurugan's death, commission confirms," 18 January 2018, <https://bit.ly/39ZbHPv>.

<sup>52</sup> Jarni Blakkary, "'Culture of impunity': People keep dying in Malaysian police custody," SBS News, 2 April 2019, <https://bit.ly/3e8l2qr>.

<sup>53</sup> Amnesty International, Police and Human Rights Programme, "Police Oversight, Short paper series No. 2," January 2015, p. 28.

basis of time elapsed if they can demonstrate that there is no possibility to investigate them because too much time has passed.

In addition, the current IPCMC bill is missing concrete timelines. There is no time frame within which the IPCMC has to classify or start investigating a case, and no timeline for police to refer cases to the mechanism. Generally, there is no timeframe within which the complainant is entitled to know what is being done with his or her complaint. This again makes it uncertain for the complainant, and could lead to delays in the complaint being handled. Overall, the complainant has few rights or roles vis-a-vis the IPCMC apart from filing a complaint.

A few changes to the bill would improve it greatly. Police should be obliged to refer cases promptly to the IPCMC, when allegations or evidence of misconduct comes to light, to avoid deliberate or undue delay to reporting or non-reporting of police misconduct to the commission. In the same way that public trust is important, the IPCMC should seek to build the trust of the police. There are currently few regulations in the draft IPCMC bill as to the rights of the police officers whose conduct may be being investigated.

Finally, an effective oversight mechanism would allow civil society organisations to play an active role in the body's work. Civil society organisations often have unique monitoring capabilities due to their work within communities, and can bring important issues to the body's attention and provide expertise and input in reforming policies related to the police. They can also add to the outreach mechanisms of the IPCMC and increase public support for the commission. For this reason, the IPCMC should involve civil society organisations in its work, take into account their views on IPCMC public policies, and provide a role for them in policy-making processes.



# 4. CONCLUSION & RECOMMENDATIONS

The establishment of an independent police oversight commission presents a momentous opportunity for Malaysia. While a culture of police impunity will not change overnight, both police and those striving for police accountability are on the brink of ensuring more effective policing in the country. After reports of human rights violations over many years, this moment is a chance for the Royal Malaysia Police to improve their reputation amongst the public, by ending police abuses.

Over the past year, the government of Malaysia, together with the Royal Malaysia Police, civil society and the Select Committee to Deliberate on the IPCMC, have made progress in crafting a police commission that is fit for purpose. The bill was planned to be tabled and voted on in the March 2020 parliamentary session, but political events have resulted in uncertainty over the bill's future. To prove its commitment to reforms, the new government should do all it can to table the IPCMC bill, and ensure that the commission will function properly and effectively.

If approved by Parliament, the IPCMC bill has the potential to play a significant role in preventing impunity and providing effective scrutiny of police conduct. This would be a huge step toward the reduction of human rights violations in Malaysia, and would allow police to fulfil their core mandate of protecting society from violence, enforcing the rule of law, and securing the rights of everyone in the country.

## RECOMMENDATIONS

### TO THE GOVERNMENT OF MALAYSIA:

Establish in law and in practice an independent police complaints commission that will streamline and unify accountability efforts related to human rights violations by the Royal Malaysia Police. Ensure the commission has the following functions, powers and resources to empower and enable it to carry out prompt, impartial and effective investigations:

- The mandate to file a complaint to the criminal prosecutor, whenever its investigations have found sufficient and admissible evidence that a police officer has committed offences involving human rights violations;
- Entitlement to a detailed and reasoned response from the authorities as to its recommendations and – if dissatisfied with the response – have the ability to have this reviewed by a higher hierarchy of the responding authority and judicial authorities of the country;
- Full functional independence from the Royal Malaysia Police;
- Freedom from executive or political influence;

- Commissioners that are highly qualified and democratically appointed following consultation with or approval by the legislature, and enjoy security of tenure;
- Full investigative powers, including the power to obtain documents and testimony from the police, and the ability to conduct its own investigations;
- The authority to compel police cooperation;
- The mandate to receive complaints and start investigations on its own initiative;
- Have clear timelines to refer, classify and investigate complaints;
- Strict criteria by which to reject cases – for example, cases should only be allowed to be rejected for being “too old” if there is no way to investigate them due to the time that has passed;
- The power to require police, by law, to report all deaths of individuals in police custody and deaths due to police action, with penalties for non-reporting and delays in reporting;
- The mandate to provide or refer witnesses to witness protection where necessary;
- Rights and roles for the complainant in proceedings before the commission including a process to appeal against a decision of the commission;
- Rights for police officers whose conduct may be investigated by the commission;
- The ability to propose policy reforms on policing to the police force and the government;
- Adequate resources and funds to carry out effective investigations and hire skilled staff;
- The mandate to record and track complaints and abuses and keep comprehensive records;
- The power to maintain detailed data on police abuses, including by conducting statistical or general reviews of patterns in police killings, such as their causes;
- A requirement of regularly reporting on performance, including information on the outcome of cases and financial audits;
- A requirement that the commission consult with and seek the support and involvement of civil society organisations in its work.

In addition to establishing an independent police commission, the government of Malaysia should immediately ratify the UN Convention against Torture without any delay or reservation.

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# A HISTORIC OPPORTUNITY

## ENSURING AN EFFECTIVE POLICE COMMISSION IN MALAYSIA

The establishment of an independent police commission presents a historic opportunity for Malaysia. As public trust in the police has eroded, there is a possibility of restoring the reputation of law enforcement officials in the country, and ensure effective policing for decades to come.

In this briefing, Amnesty International outlines the history of police reform in Malaysia, and puts forward its recommendations for the creation of an external oversight mechanism to address misconduct, and improve policing in Malaysia on a wider scale.