



**Resolution Adopted at the 76th Annual General Meeting of the Malaysian Bar
(Held Virtually on 19 Mar 2022)**

Resolution on the Coroner and Inquests

Whereas:

- (1) About 109,000 persons died in Malaysia in 2020.
- (2) All deaths, including deaths in custody, must be referred to the Coroner who then decides whether or not to hold a public inquiry into the death (known as an “inquest”). According to section 333 of the Criminal Procedure Code (“CPC”):
 - (1) If the Magistrate shall be satisfied as to the cause of death without holding an inquiry under this Chapter, he shall report to the Public Prosecutor the cause of death as ascertained to his satisfaction with his reasons for being so satisfied and shall at the same time transmit to the Public Prosecutor all reports and documents in his possession connected with the matter.
 - (2) In all other cases the Magistrate shall proceed as soon as may be to hold an inquiry under this Chapter.
- (3) The Coroner’s duty to establish the “cause of death” includes not only the apparent cause of death as ascertainable by inspection or post-mortem examination of the body of the deceased, but also all matters necessary to enable an opinion to be formed as to the manner in which the deceased came by his/her death, and whether his/her death resulted in any way from, or was accelerated by, any unlawful act or omission on the part of any other person.
- (4) With regard to deaths in custody, the law in section 334 of the CPC states (emphasis added):

When any person dies while in the custody of the police or in a psychiatric hospital or prison, the officer who had the custody of that person or was in charge of that psychiatric 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.

- (5) Section 339 of the CPC states:
 - (1) The Public Prosecutor may at any time direct a Magistrate to hold an inquiry under this Chapter into the cause of, and the circumstances connected with, any death such as is referred to in sections 329 and 334, and the Magistrate to whom

such direction is given shall then proceed to hold an inquiry and shall record his finding as to the cause of death and also as to any of the circumstances connected with it with regard to which the Public Prosecutor may have directed him to make inquiry.

- (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.
- (6) Hence, the Public Prosecutor serves as a check and balance to determine whether an inquest ought to be held when the Coroner decides not to do so, **or** whether further inquiry is needed after the Coroner completes the inquest.
- (7) It is sad that even Cabinet Ministers and the police seem to be confused about the law. The Minister in the Prime Minister's Department (Parliament and Law), Dato Sri Dr Haji Wan Junaidi bin Tuanku Jaafar said that "ALL deaths in custody must be referred to the Attorney-General's Chambers (AGC) first". (*Malaysian Insight*, 11 Feb 2022)
- (8) The Minister was wrong on two counts. First, a death in custody must be referred to the Coroner and not to the Attorney General. Second, the Attorney General has no role to play when it comes to inquests of death or deaths in custody — it is the Public Prosecutor, and he comes into the picture after the Coroner submits his/her report.
- (9) In a Parliamentary Reply dated 16 Dec 2021, the Minister of Home Affairs said:

Bagi tempoh Januari 2015 hingga September 2021, pihak Polis Diraja Malaysia (PDRM) telah merekodkan sejumlah 606,664 tahanan yang ditahan di lokap-lokap PDRM seluruh Malaysia. Daripada jumlah tersebut, sebanyak 79 laporan atau 0.09 peratus kes kematian tahanan dalam lokap PDRM direkodkan. Untuk makluman Yang Berhormat, Mahkamah telah memerintahkan 20 kes dalam prosiding inkues; 17 kes dalam tindakan Timbalan Pendakwa Raya; 12 kes masih dalam siasatan; dan 30 kes berstatus 'no further action'. (Parliamentary Questions, 16 Dec 2021 — Mesyuarat Kedua, Penggal Keempat Parlimen Keempat Belas 2021, Soalan 402)
- (10) The Minister of Home Affairs was wrong in several aspects:
 - (a) An inquest does not require any Court Order, as CPC is clear that all deaths must be referred to the Coroner, who decides to hold an inquest or not;
 - (b) Why are the cases with the Deputy Public Prosecutor, as he/she should only be reviewing the Coroner's decision not to have an inquest, or the report of the Coroner after an inquest;
 - (c) Cases under investigation are different from the requirement of referring to the Coroner, and the decision to hold an inquest. In any death case, two things will happen: first, the Coroner determines the cause of death; and second, the police continue the criminal investigation with a view of identifying and prosecuting the

perpetrator. The question was about inquiries, but the Minister seems to have been confused between police investigation for the purpose of prosecution; and the duty of the Coroner, and death inquiries; and

- (d) “No further action” is a conclusion made by the police and prosecutors in a criminal investigation. It has nothing to do with the Coroner and an inquest, whereby the Coroner still needs to inquire into and determine the causes of death, and whether anyone is criminally liable for the death.
- (11) The earlier two examples demonstrate ignorance or lack of comprehension by Ministers of the existing laws in Malaysia concerning the Coroner and inquiries into death. There is a need for the Attorney General, together with perhaps the Malaysian Bar, to educate Cabinet members, Members of Parliament, Senators, and State Assemblypersons of the law of the land. Statements of Ministers and elected representatives can seriously confuse and/or deceive members of the public about the law and their rights.
- (12) As reported in *The Star*, 12 Feb 2022:

[Bukit Aman Integrity and Standards Compliance Department (Jabatan Integriti dan Pematuhan Standard, “JIPS”) Director, Datuk Azri Ahmad] said the police would submit investigation papers to the Deputy Public Prosecutor’s office to ensure all aspects of the investigation were conducted by complying with all investigation procedures relating to cases of death in police custody under the Criminal Procedure Code and Practice Direction 2/2019.

“In this context, the practice of referring investigation papers to the Deputy Public Prosecutor is to obtain further advice and views on investigation procedures. This practice is to ensure that all legal provisions have been complied with and the investigation is complete,” he said in a statement Friday night (Feb 11).

He said a complete investigation paper would be forwarded immediately to the Coroner’s Court for further action.

On Wednesday, police confirmed that there had been seven cases of death in police custody this year and investigations found that only one of them involved criminal elements.

- (13) The police are wrong here, for as soon as the police become aware of a death, the Coroner must be informed — not after investigation is completed. The Coroner, in some cases, may want to visit the site, view the body, and even commence investigation, if need be, as he/she needs to determine the cause of death. It is for the Coroner, not the police, to determine the cause of death, and whether anyone was criminally liable. Who was criminally liable in a death is for the police to determine, not whether anyone was criminally liable. The Coroner considers all evidence, not just the evidence submitted by the police — more so when it is a case of death in police custody.
- (14) The setting up of the Bukit Aman JIPS to investigate deaths in custody is better than when the police in the station or district investigate deaths in police custody, and deaths as a result of police shootings. However, a concern remains when the police investigate

a death that happened on police premises, or where a police officer may be the cause of the death.

Judiciary, Inquest, and Coroner

- (15) To supplement and clarify the role and duties of a Coroner regarding deaths, the Judiciary came out with Practice Directions.
- (a) Practice Direction No. 1 of 2007 entitled “Guidelines on Inquest” was issued by Tan Sri Dato’ Seri Siti Norma Yaakob, then-Chief Judge of Malaya;
 - (b) Arahan Amalan Bil 2 Tahun 2014 entitled “Pengendalian Siasatan Kematian (Death Inquiry) Selaras dengan Penubuhan Mahkamah Khas Koroner” was issued by Azimah Omar, then-Chief Registrar of the Federal Court of Malaysia. The Coroner was now a Sessions Court judge — no more a Magistrate — an indication of how the Judiciary felt about the Coroner and inquests. Coroners were specifically reminded that they have to deal with deaths classified as sudden death (death by natural causes where apparently no one is criminally liable).
 - (c) Arahan Amalan Bil 2 Tahun 2019 entitled “Pengendalian Laporan Mati Mengejut dan Siasatan Kematian oleh Mahkamah Sesyen Koroner” was issued by Tun Richard Malanjum, then-Chief Justice of the Federal Court of Malaysia. Here again, it was stressed that “2. Semua kes [Laporan Mati Mengejut] dan Siasatan Kematian hendaklah dikendalikan oleh Hakim Mahkamah Sesyen yang digelar Koroner”. It stressed that cases of sudden death must be investigated by the Coroner and, if need be, should be reclassified as cases requiring inquest, or cases of death in custody. The Judiciary stated that the Coroner and inquests are required not just by reason of CPC, but also to provide the needed particulars as required by the Births and Deaths Registration Act 1957.
- (16) The existing Acts need to be amended, including to state clearly that the Coroner today is a Sessions Court judge, no more a Magistrate.
- (17) Considering the fact that the Coroner needs to look into about 109,000 deaths annually, all of which require a Coroner’s report as to why there would, or would not, be an inquest, there is a need for the appointment of more Sessions Court judges as Coroners. There is a need to consider whether some of these Coroners need to be freed from other court work. There is a need for the provision of more staff for Coroners, as their duties also include investigation; verification of police investigation; presence at the site to view the site and bodies; and maybe even the speedy procurement of needed evidence that is at risk of being tampered with, more so in cases of deaths in police custody, where the person(s) criminally liable may also be police officers.
- (18) The Coroner should not rely only on police investigations, more so when it is a death in police custody or a death resulting from a police shooting incident.
- (19) Criminal liability is not simply the use of physical force, but also includes the failure to provide needed healthcare and required medication speedily, and the failure to have occupational safety measures in place in cases of deaths by “industrial accidents”.

- (20) Custodial Medical Unit (“CMU”) for all lock-ups whereby the arrested shall be subjected to health checks by a medical professional before detention, must be expedited. Working closed-circuit televisions (“CCTVs”) in all places, including bodycams, will provide a record that the police were not criminally liable. In Hong Kong, for more than three decades lawyers and/or suspects are being provided with CDs, on request, to show that the police acted in accordance with the law in the dealings with suspects at all times from the point of arrest.
- (21) The 12th case of death in police custody for 2022 was reported in *Free Malaysia Today* on 6 Mar 2022. What is not being reported are the other deaths in custody — in immigration detention centres and other government facilities. Deaths caused by police whilst effecting arrests are also not reported.
- (22) In UK today, there is the Coroners and Justice Act 2009. In Malaysia, we have one part in CPC, made clearer by Practice Directions of the Judiciary. It may be best for us to have a comprehensive Act of Parliament. Remember, the Coroner decides on the cause of death in all deaths, not just “suspicious deaths”. Whether a death is “suspicious” and warrants an inquest is also a decision by the Coroner — not the police or some other party.

Therefore, it is hereby resolved that:

- (A) When any person has died either a violent or an unnatural death; or died in custody, or on Government premises, or in a death caused by public officers, such death must be immediately reported to the Coroner, who then will have the opportunity to visit the site of death, view the body and even start his/her own independent preliminary inquiries;
- (B) The Coroner be the determiner of the cause of death, and the police and other public officers, respecting the law, shall refrain from publicly announcing the cause of death;
- (C) A Coroners’ Court Act be enacted, with Sessions Court judges as Coroners. The Act should also provide for the setting up of a Coroners Department, staffed with the human resources and other resources needed for a Coroner to carry out his/her duties speedily, effectively and independently, more so when it involves deaths in police custody and/or in any other government facility;
- (D) The CPC be amended to insert the improvements and clarifications as determined by the Judiciary via Practice Directions, and to further clarify the process;
- (E) The Ministers, Members of Parliament, and public officers responsible for arrest and detention of suspects be educated about the law about the Coroner and inquiries into death, including the need to inform the Coroner as soon as a death occurs;
- (F) The remaining 59 cases of death in police lock-ups from 2015 to 2021, and the 12 cases in 2022, be speedily referred to the Coroner as, to date, only 20 inquests of the 79 deaths in police lock-ups have been or are being conducted; and
- (G) The Malaysian Government annually disclose the number of all suspicious deaths, deaths in custody, deaths on Government premises, and deaths caused by police officers; and the findings of the Coroner. This should include not just deaths in lock-ups but all deaths in police custody, and deaths caused by police shootings when trying to effect arrests.