

# The Intersection of Justice and Health: Ensuring the Right to Health for Institutionalised Persons

*By MMA Right To Health Committee 2024/2025*

## Introduction

Malaysia is a signatory to the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights (Article 12), both of which recognise the right to health as a fundamental human right [1, 2]. This right extends to all individuals, including those deprived of liberty. However, concerns have been raised regarding inadequate healthcare services within Malaysian prisons, immigration detention centres, and other institutions.

Institutionalised persons represent a vulnerable population whose right to health is often marginalised. The intersection of justice and health underscores the imperative to ensure equitable access to healthcare for these individuals, in alignment with international human rights standards and Malaysia's commitment to health for all.

The lack of access to proper healthcare for institutionalised persons in Malaysia is a critical problem that requires immediate attention. Inadequate healthcare provision in these settings can lead to the spread of communicable diseases, worsening of mental health conditions, and increased morbidity and mortality rates [3].

Overcrowding, limited access to qualified medical personnel, and inadequate sanitation facilities within institutions are well-documented issues. In 2021, SUHAKAM found prison occupancy exceeding 140% [4]. This density fuels the transmission of communicable diseases, while a shortage of health professionals hinders access to essential care. Poor sanitation infrastructure and limited access to clean water contribute to hygiene-related illnesses. These deficiencies constitute a violation of human rights and a public health concern.

This position paper examines the critical intersection of justice and health by exploring the right to health for institutionalised persons in Malaysia. It aims to identify gaps in current policies and propose evidence-based recommendations to improve healthcare access and quality within custodial settings.

## **Problem statement**

The problem at hand is the inadequate provision of healthcare services for institutionalised persons in Malaysia, leading to disparities in health outcomes and violating their fundamental right to health. According to the 2021 Annual Report of the Malaysian Prison Department, the prison population has increased by 36% over the past 5 years, with overcrowding being a persistent issue [5]. This overcrowding, coupled with inadequate healthcare resources and infrastructure, has led to a high prevalence of communicable diseases, such as tuberculosis, HIV, and hepatitis, among the institutionalised population [6].

According to a recent report by the Malaysian Human Rights Commission (SUHAKAM), many detention centres and prisons lack basic healthcare facilities and sufficient medical staff to cater to the needs of the institutionalised population. Additionally, a study conducted in Kajang Prison found that 42% of inmates suffer from mental health disorders, highlighting the urgent need for comprehensive mental healthcare [7].

## **Stakeholders Involved**

1. Institutionalised persons: Prisoners, detainees, and individuals in mental health facilities who require access to healthcare services.
2. Government agencies: Ministry of Health, Ministry of Women, Family, and Community Development, Ministry of Home Affairs, including the Prison Department are responsible for ensuring the well-being of institutionalised persons.
3. Healthcare professionals: Doctors, nurses, paramedics and mental health professionals working within institutionalised settings.
4. Non-governmental organisations (NGOs): Advocacy groups focusing on human rights and healthcare access for marginalised populations.

## **Impact on Related Policy Areas**

Ensuring the right to health for institutionalised persons has far-reaching implications for various policy areas, including the criminal justice system, public health, social welfare, and human rights. Inadequate healthcare in institutional settings perpetuates cycles of illness and incarceration, undermines rehabilitation efforts, and contributes to wider societal inequities. Furthermore, it aligns with Malaysia's commitments to the Sustainable Development Goals, particularly Goal 3 (Good Health and Well-Being) and Goal 16 (Peace, Justice and Strong Institutions).

## Criteria for Selecting Recommendations

When developing recommendations to ensure the right to health for institutionalised persons in Malaysia, the following criteria should be considered:

1. Uphold the right to health as enshrined in international human rights instruments, including the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights.
2. Ensure equitable access to healthcare services for all institutionalised persons, regardless of their legal status or socioeconomic background.
3. Implement evidence-based interventions that address the specific health needs of incarcerated individuals and promote positive health outcomes.
4. Potential for sustainable and scalable impact on the target population.
5. Engagement and collaboration with key stakeholders, including institutionalised individuals and their representatives.
6. Monitoring and evaluation mechanisms to assess the implementation and impact of the recommended policies and programs.

## Preferred Recommendations

### 1. Improve Healthcare Access and Quality in Institutional Settings

#### a. Recommendations

- Increase the number of healthcare professionals, including doctors, nurses, and mental health specialists, deployed in institutional settings.
- Ensure the provision of comprehensive primary health care, including preventive services, chronic disease management, and mental healthcare.
- Establish robust referral systems to facilitate timely access to specialised healthcare services outside of institutional settings.
- Implement continuous training and capacity-building programs for healthcare providers working in institutional settings.

#### b. Justification

- Enhancing healthcare access and quality in institutional settings is a fundamental step in upholding the right to health for institutionalised persons.
- Adequate healthcare resources and competent providers can address the high burden of communicable and non-communicable diseases, as well as the significant mental health needs of this population

## **2. Develop and Implement Standardised Healthcare Protocols:**

### **a. Recommendations**

- Establish comprehensive national guidelines outlining minimum standards of care for all institutionalised persons. These guidelines should address preventive care, acute and chronic illness management, mental health care, and access to essential medications.
- Develop specialised protocols for different populations within institutions, such as pregnant women, children, elderly individuals, and those with specific medical conditions.
- Ensure widespread dissemination of the protocols among healthcare personnel working within institutions. Provide regular training to staff on implementing the protocols effectively and staying updated on best practices.

### **b. Justification**

- It ensures that all institutionalised persons receive a minimum standard of care regardless of the specific facility or healthcare provider. This reduces disparities and promotes equity in access to healthcare.
- Standardised protocols encourage healthcare professionals to adhere to best practices and improve the overall quality of healthcare delivery.
- Streamlined processes and protocols can lead to long-term cost savings by preventing avoidable complications and unnecessary interventions.

## **3. Implement an institution-to-community healthcare transition program**

### **a. Recommendations**

- Develop comprehensive discharge planning and community reintegration programs to ensure continuity of care for individuals leaving institutional settings.
- Establish strong partnerships with local healthcare providers and social service agencies to facilitate the seamless transition of institutionalised persons back into the community.
- Provide post-release support, including access to primary care, mental health services, and social assistance (social determinants of health) to enhance successful reintegration.

b. Justification

- Programs that address social determinants of health, such as housing and employment, can contribute to lower recidivism rates for individuals transitioning out of correctional facilities.
- Targeted interventions during the transition period can prevent avoidable healthcare complications and hospitalisations, ultimately reducing long-term costs.
- Transitional support services empower individuals to reintegrate into the community and access necessary resources, promoting overall well-being.

**4. Establish an independent oversight and monitoring mechanism**

a. Recommendations

- Create an independent body, such as a healthcare ombudsman or a monitoring committee, to oversee the implementation of healthcare policies and standards in institutional settings.
- Empower this mechanism to investigate complaints, conduct regular inspections, and report on the quality of healthcare services provided to institutionalised persons.
- Ensure the involvement of civil society organisations, human rights groups, and representatives of institutionalised individuals in the oversight process.

b. Justification

- An independent oversight and monitoring mechanism can help ensure accountability, transparency, and adherence to healthcare standards in institutional settings, thereby safeguarding the rights and well-being of institutionalised persons.

**Monitoring and Evaluation**

To ensure the effective implementation and impact of the proposed recommendations, the following monitoring and evaluation measures should be considered

1. Establish clear performance indicators and targets, such as healthcare access, disease prevalence, and patient satisfaction, to track the progress of the implemented policies and programs.

2. Conduct regular, independent audits and assessments of the healthcare services provided in institutional settings, involving both quantitative and qualitative data collection methods.
3. Engage institutionalised individuals, their families, and relevant civil society organisations in the monitoring and evaluation process to gather feedback and incorporate their perspectives.
4. Regularly review and update the policies and programs based on the findings of the monitoring and evaluation activities, ensuring continuous improvement and adaptation to emerging needs.

## **Conclusion**

The right to health for institutionalised persons in Malaysia stands as a fundamental human right that intersects critically with the principles of justice and equity. This position paper has underscored the significant challenges faced by this vulnerable population, including inadequate healthcare services, insufficient health screening and disease management, and a lack of continuity in care. These challenges not only undermine the health outcomes of institutionalised persons but also reflect broader systemic inequalities that contravene Malaysia's commitments to international human rights standards.

By implementing the proposed recommendations, Malaysia can significantly improve the health and well-being of institutionalised persons. Firstly, strengthening healthcare infrastructure and staffing within institutions will ensure timely access to essential medical services. Secondly, developing and implementing standardised healthcare protocols will promote consistency and quality of care across all institutions. Thirdly, establishing an institution-to-community healthcare transition program will ensure continuity of care and facilitate successful reintegration into the community. Finally, creating an independent oversight and monitoring mechanism will foster accountability and ensure adherence to human rights standards.

This comprehensive approach recognises the interconnectedness of healthcare within institutions and broader public health. Improved access to healthcare for institutionalised persons can reduce the spread of communicable diseases within institutions and the community. Furthermore, by addressing social determinants of health through the transition program, overall recidivism rates can potentially decrease, leading to long-term cost savings for the justice system and the health system as a whole.

Investing in the health of institutionalised persons is not simply a moral imperative but a strategic one. A healthier institutionalised population fosters a safer and more just society. By prioritising the recommendations outlined in this position paper, Malaysia can not only uphold its human rights obligations but also reap the social and economic benefits of a healthier citizenry.

Further research is warranted to explore the specific costs and potential cost-effectiveness of implementing these recommendations in the Malaysian context. Additionally, engaging with stakeholders such as institutionalised persons, healthcare professionals, and civil society organisations throughout the implementation process is crucial for ensuring the success of any proposed reforms.

The realisation of the right to health for institutionalised persons in Malaysia is an essential step towards promoting social justice, upholding human rights, and enhancing the overall health and well-being of society. By adopting and implementing the proposed recommendations, Malaysia can demonstrate its commitment to these principles, positioning itself as a regional leader in the pursuit of equitable, accessible, and high-quality healthcare for all. This commitment, in turn, will contribute to the achievement of broader societal goals, such as the reduction of recidivism, the promotion of public health, and the fostering of a more inclusive, compassionate, and just society.

## Reference

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