

MEMORANDUM

REJECT THE INDEPENDENT POLICE CONDUCT COMMISSION (IPCC)

12 October 2021

The undersigned Malaysian civil society organizations firmly and unequivocally reject the Independent Police Conduct Commission (IPCC) bill which was tabled in August 2020 and is expected to be tabled for second reading during this session of parliament.

1. Background

In 2005 the Royal Commission of Inquiry to Enhance the Operation and Management of the Royal Malaysian Police (RCI) proposed an Independent Police Complaints and Misconduct Commission (IPCMC). The RCI prepared a bill which defined the IPCMC. The IPCMC was designed to receive and independently investigate complaints of misconduct and allegations of wrongdoing by the police. The IPCMC was also to propose measures to increase the integrity of the police force.

The Pakatan Harapan (PH) government tabled an IPCMC Bill in July 2019. Civil society was invited to review this Bill and criticised it severely, as it failed to provide the proposed commission with sufficient powers and independence to ensure its effectiveness. The government made 24 amendments and scheduled a second reading in October 2019.

In response to massive public outcry, the government deferred the second reading and referred the bill to the Parliamentary Special Select Committee for the Consideration of Bills (PSC), for further review. After conducting extensive public consultations, the PSC proposed a slew of amendments. These restored much of the original content proposed by the RCI. However, the government collapsed before the IPCMC bill could be tabled for second reading.

The Perikatan Nasional (PN) government introduced a fresh bill, to create an IPCC (Independent Police Complaints Commission), purportedly with the same intent as the IPCMC bill proposed by the RCI. The IPCC bill ignores the work of the PSC.

The IPCC bill is a regressive document. It undermines years of consultations. It is a naked attempt to subvert efforts to ensure police accountability. The IPCC has less power than the Enforcement Agency Integrity Commission (EAIC). The IPCC will be even less effective than the woefully inadequate EAIC. If the IPCMC proposed by the Royal Commission is a coconut, the IPCC is merely the husk.

2. Key areas of concerns¹

¹ This includes analyses by various individuals and civil society organisations.

The IPCC bill reintroduced fatal flaws that would undermine the functions of the proposed oversight body and render it completely irrelevant and a waste of public funds.

These include:

2.1 Limited investigation powers

The powers of the proposed IPCC are inadequate to conduct full and thorough investigations or to take sufficient action against police officers found to have committed misconduct or serious breaches of power.

- i. **Limited scope:** The IPCC's powers are limited and ineffectual as it exempts the commission from investigating any act provided for in the Inspector-General Standing Orders (IGSO) (Section 96 & 97 of the Police Act 1967). The standing orders generally govern issues such as the conduct of arrests, the treatment of detainees, and on matters related to permissible use of weapons, amongst others.

IPCC Bill 2020 [Section 22(2)]

Scope of misconduct

22. (1) Any conduct falling under any of the following descriptions shall amount to a misconduct:

(a) any act or inaction which is contrary to any written law;

(b) any act or inaction which is unreasonable, unjust, oppressive or improperly discriminatory; and

(c) any act or inaction which is committed on improper motives, irrelevant grounds or irrelevant consideration.

(2) Notwithstanding subsection (1), misconduct shall not include any act regulated under sections 96 and 97 of the Police Act 1967.

- ii. **Early notice requirements for site visits.** The IPCC can make site visits to police stations, quarters, detention centers and lock-ups and make necessary recommendations. However, unlike the EAIC, the IPCC would be required to provide early notice to the Head of Department before any such site visit. Early notice diminishes the efficacy of such site visits.

IPCC Bill 2020 [Section 5(2)(b)]

Powers of Commission

5. (1) The Commission shall have the power and may do all things necessary for or in connection with, or incidental to, the performance of its functions under this Act.

(2) Without prejudice to the generality of subsection (1), the Commission may—

(a) advise the Government on the enhancement of the well-being and welfare of members of the police force;

(b) visit any place and premises such as police stations, police quarters, lock-ups and detention centres by giving early notice to the relevant Head of Department and to make any necessary recommendations;

(c) receive and assess any written complaint of misconduct from any person against any member of the police force and investigate the complaint;

(d) collect evidence relating to any written complaint and investigation of misconduct under this Act; and

(e) make a recommendation for disciplinary action against any misconduct committed by any member of the police force to the Police Force Commission.

iii. **No powers to search and seize in the IPCC.** Such powers are crucial in conducting investigations into certain types of misconduct such as deaths in custody. The current EAIC has the powers of search and seizure, and may do so without warrant in certain circumstances.

iv. **Task Forces.** The IPCC may set up task forces to conduct investigations. However, unlike the EAIC task force which has all the powers of investigation under the Criminal Procedure Code, no such powers exist under the IPCC.

IPCC Bill 2020 [Section 31]

Task Force

31. (1) The Commission may establish such a number of Task Forces to assist the Commission in the investigation of any misconduct under this Act.

(2) The members of the Task Force may comprise the officers of the Commission and the consultants engaged under section 17.

(3) Sections 27, 28 and 29 and subsections 30(1) and (2) shall apply mutatis mutandis to the investigation conducted by the Task Force.

v. **Limited powers to summon witnesses and compel production of documents.** While the proposed IPCC will have the authority to summon witnesses and compel the

production of documents, a witness may refuse to answer any question or withhold the disclosure of documents in following situations:

- If it would expose the person to criminal charge/penalty/forfeiture;
- If certified by the Head of Department that its production is prejudicial to national security or national interest;
- If a document is classified under the Official Secrets Act; and/or
- If the person is of the view that the answer/document is prejudicial to national security and would require the Head of Department approval before release.

This undermines the current procedures under the EAIC where, a witness appearing before EAIC is not excused from answering questions or producing documents because they “may incriminate or tend to incriminate the witness, or on any other ground of privilege, duty of secrecy or other restriction on disclosure, or on any other ground.” These limited powers would make it even more difficult to break the “blue wall of silence”.

IPCC Bill 2020 [Section 27(4)(a)(b)]

Power to examine persons

Section 27

(4) The member of the police force, officer of a public body or person examined under paragraph (1)(a) shall be legally bound to answer all questions put to him by the officer of the Commission, but the member of the police force, officer of a public body or person examined—

(a) may refuse to answer any question the answer to which would have a tendency to expose the member of the police force, officer of a public body or person to a

criminal charge or penalty or forfeiture; or

(b) may refuse to disclose sensitive information if certified by the Head of Department that the production of the sensitive information is prejudicial to national security or national interest.

IPCC Bill 202 [Section 28(5)&(6)]

Power to obtain documents or other things

28. (1) The Commission may, by notice served on any member of the police force or officer of a public body through his Head of Department, or any person, require the member of the police force, officer of a public body or person to produce any document or other things related to the investigation which in the opinion of the Commission are relevant.

(5) Where a document requested by the Commission is a classified document, such document shall be dealt with under the Official Secrets Act 1972 [Act 88].

(6) Where any member of the police force or officer of a public body is of the opinion that a document or other thing as requested by the Commission contains information prejudicial to national security or national interest, such member of the police force or officer of a public body shall obtain the approval of their respective Head of Department prior to producing such document or other thing to the Commission.

2.2 Limited enforcement powers

The IPCC further deprives the Commission of enforcement powers as it removes disciplinary power or power to compel actions based on recommendations made by the Commission.

Upon conclusion of an investigation, and where the allegations of misconduct are determined, the Commission is only empowered to refer the findings to the 'relevant authority', Malaysian Anti-Corruption Commission (MACC), or the Police Force Commission.

The referral does not come with enforcement powers as the Commission would have no authority to compel that body to act, or even to require the MACC or the Police Force Commission to report back on its actions within a stipulated time frame.

Further, the Police Force Commission is chaired by the minister of home affairs and with a membership that includes the police inspector general, thus likely to have a conflict of interest.

IPCC Bill 2020 [Section 30(1)]

Action by Commission after considering findings and recommendations of Complaints Committee

30. (1) After considering the findings and recommendations by the Complaints Committee under subsection 29(2), the Commission shall take the following actions:

(a) where the findings disclose any offence under Part IV of the Malaysian Anti-Corruption Act 2009, refer the findings to the Malaysian Anti-Corruption Commission;

(b) where the findings disclose any criminal offence under any written law, refer the findings to the relevant authority;

(c) where the findings disclose any misconduct, refer the findings of misconduct to the Police Force Commission with the recommendation for disciplinary action; and

(d) where the findings disclose no misconduct, reject the complaint and inform the relevant Head of Department.

2.3 Lack of independence

Under the IPCC, the members of the Commission are still appointed by the Yang di-Pertuan Agong on the advice of the Prime Minister and can be dismissed at any time without cause.

The Commission's secretary, who functions as the chief executive officer of the Commission, is appointed by the Minister of Home Affairs. This further dilutes the Commission's independence by bringing the Commission's administration effectively under the purview of the Ministry of Home Affairs. The EAIC currently appoints its own Secretary.

Further, unlike the previous IPCMC bill and the EAIC, the current bill does not bar the appointment of former police officers or current government officials to the commission.

Remuneration of Commission members is determined by the Prime Minister. There is no limit for Commissioners' terms, unlike in the EAIC where members cannot serve for more than two consecutive terms.

IPCC Bill 2020 [Sections 6, 7(3) & 8]

Members of Commission

6. (1) The Yang di-Pertuan Agong shall, on the advice of the Prime Minister, appoint not more than seven members of the Commission, one of whom shall be appointed as the Chairman and another as the Deputy Chairman.

Term of office

7. (1) Subject to subsection (2), a member of the Commission shall hold office for a term not exceeding three years as may be specified in his instrument of appointment and he shall be eligible for reappointment.

(2) A member of the Commission may at any time resign his office by letter addressed to the Yang di-Pertuan Agong.

(3) The appointment of a member of the Commission may at any time be revoked by the Yang di-Pertuan Agong on the advice of the Prime Minister.

Remuneration

8. A member of the Commission shall be paid such remuneration and allowances as the Prime Minister may determine.

3. Proposed elements of an oversight body²

The following must be upheld in the adoption of any legislation that will promote police accountability:

3.1 Clear mandate to receive, initiate and to conduct investigations of serious abuses committed by police, and not be limited to minor disciplinary misconducts. Cases such as deaths as a result of police actions, death in custody, various forms of torture, including rape, serious assault, serious corruption matters and complaints against discharge of an official firearm of a police officer, are to be prioritised.

3.2 A commission which is impartial, independent and transparent. The appointment and removal of commissioners must be through an independent process, either through a parliamentary select committee or an independent panel appointed by said committee. There shall be no undue control or interference by the executive body. The appointment criteria and procedures must be transparent and disclosed as a matter of public interest.

The decisions of the independent commissions shall be impartial and must also be made transparent at all times, allowing for it to withstand public scrutiny and to develop trust in the system.

3.3 Real powers to investigate and initiate action. The oversight body should be empowered, through its mandate and with sufficient human and fiscal resources, to conduct inquiries into offenses committed by the police involving human rights violations. The powers, embedded with support of other bodies or technical experts, should include, amongst others, the ability to summon witnesses, enter and search premises, seize documents, carry out arrests, and execute warrants, as well as compel the full cooperation of the police.

Police should be compelled by law to cooperate with the oversight body.

Apart from powers to investigate, the independent commission should have the ability to follow up on its recommendations for further action and seek a review if dissatisfied with the actions or results of authoritative bodies mandated to follow up on the decisions of the independent commission.

4. Conclusion

It is evident that the IPCC bill had greatly strayed from the original spirit of an oversight body and if passed will weaken the already existing mechanisms in place. It will further place the credibility and integrity of the police at stake. The current government must withdraw the IPCC Bill and conduct further consultations with relevant stakeholders, including key civil society organisations to propose a bill that has the trust of the public and can withstand international standards and scrutiny.

² The recommendations are derived from analyses by Amnesty International Malaysia and other organisations.

This memorandum is sent by:

1. Amnesty International Malaysia
2. Article 19
3. Centre for Independent Journalism (CIJ)
4. Citizens Against Enforced Disappearances (CAGED)
5. Eliminating Death and Abuse in Custody Together (EDICT)
6. Malaysian Centre for Constitutionalism and Human Rights (MCCHR)
7. Persatuan Hak Asasi Manusia Malaysia (Proham)
8. Suara Rakyat Malaysia (SUARAM)

Appendix 1

The problem with the IPCC Bill

Background

1. The proposed Independent Police Conduct Commission Bill 2020 (IPCC) will set police accountability more than 10 years backwards. It establishes a commission to oversee police misconduct that has significantly **LESS** powers than the Enforcement Agency Commission, set up in 2009. It is unacceptable that after 12 years, the government is proposing a commission that does less, not more.

2. A chart comparison of the IPCC Bill with the IPCMC Bill proposed by the Pakatan Harapan government and the current EAIC Act is annexed. Some of the most problematic provisions are summarised below.

Lack of Independence

3. The Yang di-Pertuan Agong still appoints members of the Commission on the advice of the Prime Minister. They can be dismissed at any time without cause.

4. The Prime Minister determines the remuneration of Commission members.

5. The Commission's secretary, who functions as the Commission's chief executive officer, is appointed by the Home Affairs Minister.
 - 5.1 This further dilutes the Commission's independence by effectively bringing the Commission's administration under the Home Affairs Ministry's purview.
 - 5.2 The EAIC currently appoints its own Secretary.

6. Unlike in the EAIC, there is no prohibition for current or retired police officers to be members of the Commission.

7. There is no limit for Commissioners' terms, unlike in the EAIC, where members cannot serve for more than two consecutive terms.

Lack of powers

8. **Site visits.** The IPCC can make site visits to police stations, quarters, detention centres and lock-ups and make necessary recommendations.
 - 8.1 Unlike the EAIC, however, which does not need to give any notice, the IPCC would be required to provide early notice to the Head of Department before any such site visit.
 - 8.2 Early notice diminishes the efficacy of such site visits.
9. **Search and seizure.** The current EAIC has search and seizure powers and may do so without a warrant in certain circumstances.
 - 9.1 Such powers are crucial in conducting investigations into certain types of misconduct, such as deaths in custody.
 - 9.2 No such powers exist for the IPCC.
10. **Powers of investigation.** Both the EAIC and the IPCC may set up task forces to conduct investigations. The EAIC task force, however, has all the powers of investigation under the Criminal Procedure Code. No such powers exist under the IPCC.
11. **Powers to order protection.** The IPCMC Bill proposed by the PH government gave the Commission the power to direct the Inspector General of Police or any public body or officer to protect persons assisting the Commission.
 - 11.1 While the IPCC Bill has a similar provision that allows the Commission to make arrangements to protect persons assisting the Commission, it is silent on whether or not the Commission can direct the IGP or any public officer to provide that protection.

Narrower scope

12. **Misconduct.** The EAIC has the power to investigate misconduct including breaches of procedure, failure to give grounds where they should have been given, and situations where the officer is not on official duty. Not the IPCC

- 12.1 The IPCC expressly excludes the Commission from examining matters covered under the Inspector General's Standing Orders.

Withholding of evidence

13. **Exclusions.** The EAIC Act requires witnesses to answer questions and produce evidence regardless of privilege, secrecy or self-incrimination. The IPCC, on the other hand, allows witnesses to refuse to answer questions or disclose documents in a number of situations:
- 13.1 If it would expose the person to criminal charge/penalty/forfeiture;
 - 13.2 If certified by the Head of Department that its production is prejudicial to national security or national interest;
 - 13.3 If a document is classified under the Official Secrets Act; and/or
 - 13.4 If the person is of the view that the answer/document is prejudicial to national security and would require the Head of Department approval before release.

Disciplinary Authority

14. **Disciplinary Board.** The IPCMC Bill proposed by the Pakatan Harapan government would have established a Disciplinary Board upon a finding of misconduct.
- 14.1 The Board would consist of a combination of three IPCMC Commissioners, a Police Force Commission member and a member of the police force.
 - 14.2 This was intended to rectify the current situation under the EAIC, where it may only refer cases of misconduct back to the appropriate authority and receive a report within 14 days of the action taken and the grounds.
 - 14.3 Despite the EAIC having made several findings of serious misconduct, it is unknown whether any disciplinary action has been taken against the officers involved.
15. **No disciplinary authority.** The IPCC has no provision for any disciplinary board and like the EAIC, has to refer any cases of misconduct back to the police force. Unlike the EAIC, there is no provision for any report to be made back to the IPC within 14 days.

Conclusion

16. The IPCC Bill is inferior in every way to the current EAIC Act as well as PH's proposed IPCMC Bill. It does not advance police accountability in any way but instead sets it back by over 10 years. It should therefore be rejected in its entirety.

Appendix 2

Analysis of Enforcement Agency Integrity Commission, IPCMC (proposed under PH government), IPCC (proposed by PN government).

Categories	EAIC Act	IPCMC Bill (PH)*	IPCC Bill
Appointment of Commission members	Appointed by the YDPA, on advice of the Prime Minister	Appointed by the YDPA, on advice of the Prime Minister	Appointed by the YDPA, on the advice of the Prime Minister
Number of Commissioners	Not more than seven members	Not more than 10 members	Not more than seven members
Expertise required	Not specified	Not specified (Updated Jul 2019 bill states must have knowledge, skill, experience, or shown capacity and professionalism, in matters relating to law, administration, finance or any other matter relevant to the function of the Commission.)	Have knowledge, skill, experience, or shown capacity and professionalism, in matters relating to law, administration, investigation, finance, or any other matter relevant to the function of the Commission.
Term of office	Not exceeding three years, can be reappointed. Not more than two consecutive terms.	Not exceeding three years, can be reappointed. Not more than two consecutive terms.	Not exceeding three years, can be reappointed. No prohibition on length of service.
Remuneration	Determined by the YDPA	Determined by the YDPA	Determined by Prime Minister
Secretary of Commission	CEO of the Commission, appointed by the Commission.	CEO of the Commission, appointed by the Commission.	CEO of the Commission, appointed by the Home Minister.
Site visits	Commission has power to make site visits to any enforcement agency, including police stations and lockups in accordance with any written laws and make necessary recommendations.	Power to visit any police station, quarters, lock-up and detention centres and to make necessary recommendations.	Power to visit police station, quarters, lock-ups, detention centres by giving early notice of the Head of Department and to make necessary recommendations.
Delegation of powers		Commission can delegate function and powers to - member of the Commission - officer of the Commission (updated bill) - any committee - any member of the police force	Commission can delegate function and powers to - member of the Commission - officer of the Commission - committee - member of the police force

Dismissal	Can be dismissed at any time	Can be dismissed at any time	Can be dismissed at any time
Commission membership	No enforcement officers or retired enforcement officers.	No police officers or retired police officers	Police officers/retired police officers can be part of the Commission - no restriction
Coverage	All enforcement agency officers	Police officers only	Police officers only
Scope	<p>Misconduct meaning:</p> <ul style="list-style-type: none"> - act/inaction contrary to written law - non-compliance of police rules/SOP - act/inaction which is unreasonable, unjust, oppressive, improperly discriminatory - act/inaction committed on improper motives, irrelevant grounds or consideration - act/inaction based on mistake of law/fact - act/inaction where grounds should be given but were not given - failure to follow rules and procedures laid down by law/appropriate authority - commission of criminal offence <p>Covers situations where others who are not enforcement officers are involved and when enforcement officer not on official duty.</p>	<p>Misconduct meaning:</p> <ul style="list-style-type: none"> - act/inaction contrary to written law - non-compliance of police rules/SOP - act/inaction which is unreasonable, unjust, oppressive, improperly discriminatory - act/inaction committed on improper motives, irrelevant grounds or consideration - omission to provide grounds where they should have been provided - commission of criminal offence <p>(Updated bill) Prime Minister, on advice of Commission may prescribe what is minor misconduct which shall be dealt with by police force internally in terms of disciplinary action.</p>	<p>Misconduct meaning:</p> <ul style="list-style-type: none"> - act/inaction contrary to written law - act/inaction which is unreasonable, unjust, oppressive, improperly discriminatory - act/inaction committed on improper motives, irrelevant grounds or consideration. <p>Exclusion of matters covered under IGSOs (ss 96 & 97 of Police Act)</p>
Investigation powers	Search and seizure powers, without warrant in some circumstances.	No search and seizure powers	<p>No search and seizure powers</p> <p>No investigative powers akin to CPC</p>

<p>Power to compel witnesses to attend and disclose evidence</p>	<p>Witnesses can be compelled to attend, answer questions and produce evidence, regardless of privilege, secrecy or self-incrimination.</p>	<p>Witnesses can be compelled to attend.</p> <p>No provisions on being compelled to answer despite secrecy/self-incrimination</p>	<p>Witnesses can be compelled to attend. Can refuse to answer if tendency to expose the person to criminal charge/penalty/forfeiture.</p> <p>Witness may refuse to disclose sensitive info if certified by Head of Dept that its production is prejudicial to national security or national interest.</p> <p>Can refuse to disclose classified document under OSA.</p> <p>Can refuse to answer/produce if of the view it is prejudicial to national security, and would require HOD's approval before release.</p>
<p>Public hearings</p>	<p>Power to hold public hearings</p>	<p>No provision on public hearing</p>	<p>No provision on public hearing</p>
<p>Interested parties</p>	<p>Power for 'interested parties' to question witnesses</p>	<p>No provision for 'interested parties' to intervene and ask questions</p>	<p>No provision for 'interested parties' to intervene and ask questions</p>
<p>Disciplinary Authority</p>	<p>Can only recommend disciplinary action to the appropriate authority.</p> <p>Appropriate authority to send back a report within 14 days to EAIC on the action taken and grounds.</p>	<p>Once finding of misconduct made, a Disciplinary Board is convened consisting of:</p> <ul style="list-style-type: none"> a. Chairperson (IPCMC member) b. Two IPCMC members c. One Police Force Commission member d. One Police Force member <p>Minor misconduct - sent back to police to be dealt with</p>	<p>Can only recommend to the Police Force Commission with recommendation for police action.</p> <p>No provision for Police Force Commission</p>

Task Force	<p>May establish task force.</p> <p>May comprise Commission officers and consultants.</p> <p>Shall have all the powers of investigation under the CPC, in addition to powers under EAIC Act.</p>	<p>May establish task force to assist Commission investigation.</p> <p>May comprise Commission officers and consultants.</p> <p>Task force members shall have all the powers of investigation as contained in the CPC, in addition to powers under the IPCMC Act.</p>	<p>May establish task force.</p> <p>May comprise Commission officers and consultants.</p> <p>No provision that task force members shall have powers of investigation as contained in the CPC.</p>
Commence own investigation	Commission may commence investigation of its own initiative if satisfied it is in the public interest.	Commission may commence investigation of its own initiative if satisfied it is in the public interest.	Commission may commence investigation of its own initiative if satisfied it is in the public interest.
Regulations	Prime Minister may make regulations to give effect to the Act's provisions.	<p>Prime Minister may make regulations to give effect to the Act's provisions.</p> <p>Updated bill states upon advice of the Commission.</p>	Home Affairs Minister may make regulations to give effect to the Act's provisions.
Referral of grievous hurt or death in custody	No such clause.	Police force shall refer to the Commission any incident which has resulted in grievous hurt or death while in police custody.	No such clause.
Protection of person assisting the Commission	No provision on arrangements for protection of person assisting the Commission.	<p>Commission may make arrangement for protection of person assisting the Commission.</p> <p>May direct the IGP, public body, or officer to comply with the Commission's directions to provide protection.</p> <p>Any person who contravenes an order made under this section commits an offence.</p>	<p>Commission may make arrangement for protection of person assisting the Commission.</p> <p>No provision to direct the IGP or any public body to comply with the Commission's directions.</p>
Threats against witnesses	Offence to hinder person from giving evidence or to threaten witnesses	Offence to hinder person from giving evidence or to threaten witnesses	Offence to hinder person from giving evidence or to threaten witnesses

*Updates were made to the bill in July 2019 when the Bill was sent to Committee.