
**MESYUARAT JAWATANKUASA PILIHAN KHAS MENIMBANG RANG UNDANG-UNDANG
BILIK MESYUARAT JAWATANKUASA 1, BLOK UTAMA
BANGUNAN PARLIMEN, PARLIMEN MALAYSIA**

RABU, 23 OKTOBER 2019

AHLI-AHLI JAWATANKUASA

Hadir

YB. Tuan Ramkarpal Singh a/l Karpal Singh [Bukit Gelugor] - *Pengerusi*
YB. Puan Rusnah binti Aluai [Tangga Batu]
YB. Tuan Larry Soon @ Larry Sng Wei Shien [Julau]
YBhg. Datuk Roosme binti Hamzah - *Setiausaha*

Tidak Hadir [Dengan Maaf]

YB. Datuk Seri Panglima Wilfred Madius Tangau [Tuaran]
YB. Dato' Sri Azalina Othman Said [Pengerang]
YB. Dr. Su Keong Siong [Kampar]
YB. Dato' Sri Dr. Haji Wan Junaidi bin Tuanku Jaafar [Santubong]

URUS SETIA

Encik Wan Ahmad Syazwan bin Wan Ismail [Ketua Penolong Setiausaha, Seksyen Pengurusan Kamar Khas (Bahagian Pengurusan Dewan Rakyat)]
Cik Aiza binti Ali Raman [Penasihat Undang-undang II, Pejabat Penasihat Undang-undang (Pejabat Ketua Pentadbir)]
Puan Lee Jing Jing [Jurubahasa Serentak Kanan I, Seksyen Jurubahasa dan Terjemahan (Bahagian Pengurusan Dewan Rakyat)]
Cik Fatin 'Izzati binti Mohd Radzi [Jurubahasa Serentak Kanan II, Seksyen Jurubahasa dan Terjemahan (Bahagian Pengurusan Dewan Rakyat)]
Puan Wan Noor Zaleha binti Wan Hassan [Pegawai Penyelidik, Seksyen Antarabangsa dan Keselamatan (Bahagian Penyelidikan dan Perpustakaan)]
Puan Siti Fahlizah binti Padlee [Pegawai Penyelidik, Seksyen Sains, Tenaga dan Teknologi (Bahagian Penyelidikan dan Perpustakaan)]

HADIR BERSAMA

Suruhanjaya Integriti Agensi Penguatkuasaan (SIAP)

YBrs. Tuan Mohamad Onn bin Abd. Aziz [Setiausaha]
Puan Eda Mazuin binti Abdul Rahman [Penasihat Undang-undang]

samb/-

HADIR BERSAMA**Pusat Governans, Integriti dan Anti-Rasuah (GIACC)**

Encik Noor Rosidi bin Abdul Latif [Pengarah Bahagian Undang-undang]

Polis Diraja Malaysia (PDRM)

YBhg. SAC Dato' Mohd Azman bin Ahmad Sapri [Ketua Urus Setia KPN (Perundangan)]

Kementerian Dalam Negeri (KDN)

YBhg. Datuk Yusran Shah bin Mohd Yusof [Setiausaha Bahagian (Bahagian Keselamatan)]
Helina binti Dato' Sulaiman [Penasihat Undang-undang]

Bahagian Hal Ehwal Undang-undang (BHEUU)

Encik Yusof bin Ali [Ketua Penolong Pengarah (Dasar)]

Pejabat Penasihat Undang-undang, Jabatan Perdana Menteri

YBhg. Datuk Almalena Sharmila binti Dato' Dr. Johan [Penasihat Undang-undang]

Jabatan Peguam Negara

Encik Peh Suan Yong [Timbalan Penggubal Undang-undang Parlimen I]
Puan Farah Azlina binti Latif [Penolong Kanan Penggubal Undang-undang Parlimen]

Malaysian Centre for Constitutional & Human Rights (MCCHR)

Encik New Sin Yew (*Consultant*)
Puan Beatrice Chin (*Consultant*)

Persatuan Hak Asasi Manusia (HAKAM)

YBhg. Dato' Ambiga Sreenevasan (*Ex-Officio*)

Suara Rakyat Malaysia (SUARAM)

Encik Amir Abdul Hadi (*Co-ordinator*)

National Democratic Institute (NDI)

Ms. Mala Balakrishna
Mr. Lana Hendry

LAPORAN PROSIDING**MESYUARAT JAWATANKUASA PILIHAN KHAS MENIMBANG
RANG UNDANG-UNDANG
PARLIMEN KEEMPAT BELAS, PENGGAL KEDUA****Rabu, 23 Oktober 2019****Bilik Jawatankuasa 2, Tingkat 2 Blok Utama,
Parlimen Malaysia, Kuala Lumpur****Mesyuarat dimulakan pada pukul 5.09 petang***[Yang Berhormat Tuan Ramkarpal Singh a/l Karpal Singh **mempengerusikan Mesyuarat**]*

Tuan Pengerusi: Okey, selamat petang kepada semua para hadirin. Saya mengalu-alukan kehadiran kesemua Ahli Mesyuarat pada sesi yang keempat kami ini. Kepada Ahli Yang Berhormat dan Ahli Parlimen Jawatankuasa, Yang Berbahagia Datuk Roosme binti Hamzah, wakil-wakil tetap *ex-officio* dari Jabatan Peguam Negara, Bahagian Hal Ehwal Undang-undang, Jabatan Perdana Menteri, Pusat Governans, Integriti dan Anti-Rasuah (GIACC), EAIC, Kementerian Dalam Negeri, PDRM dan juga Pejabat Penasihat Undang-undang, Jabatan Perdana Menteri. Saya difahamkan urus setia telah menyediakan salinan Hansard untuk mesyuarat jawatankuasa kita Bilangan 1/2019 dan 2/2019 yang telah diadakan pada 10 dan 14 Oktober 2019. Hansard itu saya difahamkan telah pun diedarkan dan seperti mana yang telah diputuskan dalam Mesyuarat Jawatankuasa Pilihan Khas IPCMC ini yang lalu, jawatankuasa ini akan mengadakan empat sesi pendengaran awam seperti yang telah dimaklumkan dahulu bagi mendapatkan maklum balas pihak-pihak berkepentingan ataupun *stakeholders* dan *public*, orang awam mengenai Rang Undang-undang Suruhanjaya Bebas Aduan Salah Laku Polis 2019 ini.

Untuk makluman tuan-tuan dan puan-puan, jadual sesi-sesi pendengaran awam tersebut adalah pada 26 Oktober iaitu Sabtu ini di Sarawak antara jam 10 pagi sehingga jam 1 petang, akan diadakan di Bilik Seri Sarawak, Bangunan Lama, Dewan Undangan Negeri di Petra Jaya, Kuching. Keduanya pada 2 November, hari Sabtu juga di Pulau Pinang pada antara jam 10 pagi hingga jam 1 petang di Bilik Gerakan Aras 4, Bangunan Persekutuan Pulau Pinang, Jalan Anson. Ketiganya pada 8 November 2019, hari Jumaat di Johor pada jam 9 pagi hingga jam 12 petang di Bilik Gerakan Dewan Negeri, Bangunan Sultan Ismail, Kota Iskandar, Iskandar Puteri. Terakhirnya pada 10 November, hari Ahad di Kota Kinabalu, Sabah pada jam 10 pagi sehingga jam 1 petang di Bilik Kedah, Aras 2, Blok A, Kompleks Pentadbiran Kerajaan Persekutuan. So,

saya difahamkan notis pemberitahuan yang mengandungi maklumat lengkap berhubung perkara ini telah pun diedarkan kepada semua. Surat jemputan telah dikeluarkan kepada semua Ahli Jawatankuasa juga. Semua Ahli Yang Berhormat perlu membuat persiapan untuk menghadiri sesi-sesi pendengaran awam ini seperti tiket penerbangan dan hotel mengikut aturan masing-masing.

Pada hari hari Selasa, 22 Oktober 2019, saya telah mengeluarkan satu kenyataan media dan telah diedarkan kepada ketua-ketua editor media-media tempatan bagi hebahan sesi-sesi pendengaran awam tersebut. *That media statement was release yesterday, in fact*, kami telah pun mengadakan lagi satu PC secara lisan, *oral* tadi hari ini juga, jam empat petang tadi. Jadi, perkara ini pun telah dimaklumkan kepada para media. Ahli-ahli Yang Berhormat juga boleh mengeluarkan maklumat berhubung sesi pendengaran awam kita agar mendapat liputan hebahan yang lebih meluas. *I hope-* saya berharap kesemua pihak-pihak boleh membuat- *take your own initiative* lah, inisiatif sendiri untuk memanjangkan perkara ini kepada *as many people as possible, as we would like to get as much feedback as possible in the near future.*

Akhirnya, pihak urus setia telah melakukan *upload* ataupun memuat naik hebahan dan maklumat dalam portal rasmi Parlimen Malaysia. *I think* alamat dan semua itu akan diedarkan juga di e-mel *address and also* di portal. Itu pun telah di-*set-up* bagi tujuan mendapat *feedback* daripada orang awam. Okey. So, sekarang saya difahamkan– untuk hari ini kami ada tiga pihak yang telah pun datang bagi tujuan pendengaran petang ini. Pertamanya, dari *National Human Rights Society Malaysia* ataupun *society HAKAM* yang diwakili oleh Yang Berbahagia Dato' Ambiga Sreenevasan. Keduanya, *Malaysian Center for Constitutionalism and Human Rights* yang diwakili oleh Encik New Sin Yew dan juga dari Suara Rakyat Malaysia (SUARAM) yang diwakili oleh Encik Amir Abdul Hadi, the *coordinator of SUARAM* dan juga Puan Farida Mohamad, seorang *Board Member of SUARAM*. Jadi, tanpa melengahkan masa, saya menjemput wakil dari HAKAM yang pertamanya, Dato' Ambiga Sreenevasan. *Is Dato' Ambiga here?*

[Yang Berbahagia Dato' Ambiga Sreenevasan masuk ke bilik Mesyuarat dan mengambil tempat]

Hi, come. Atau kesemuanya? We will start with Dato' Ambiga and then– sure, no problem. You can find a comfortable seat. So, seperti yang telah saya nyatakan, ada tiga wakil dari tiga pihak yang telah saya umumkan tadi. Saya akan memulakan sesi ini dengan ucapan daripada wakil dari HAKAM, Dato' Ambiga. Welcome Dato' Ambiga, thank you for joining us this evening. We are grateful to have you with us. If you can start the session with your views please. Thank you.

Dato' Ambiga Sreenevasan [Ex-Officio, Persatuan Hak Asasi Manusia (HAKAM)]: Terima kasih Tuan Pengerusi. *Ladies and gentlemen, thank you very much. There are some key issues that we are concern with in the bill. I think one of them is the functions and powers of the commission, because the bill itself– if you look at the bill, I do not know if everyone has a copy of the bill.*

Tuan Pengerusi: *Sorry Dato', the bill with the amendments or just without the amendments first?*

Dato' Ambiga Sreenevasan: *With the amendments actually.*

Tuan Pengerusi: *With the amendments.*

Dato' Ambiga Sreenevasan: *Yes. We actually did amendments both with the amendments and our comments. But, I do not know whether that document has found its way around. We will make that available.*

Tuan Pengerusi: *I do not have a copy, I'm afraid. Yes. So, this is– the amendments are being incorporated is it?*

Datuk Roosme binti Hamzah [Setiausaha Dewan Rakyat]: *No, no. That one is our original bill.*

Tuan Pengerusi: *This is original bill without the amendments. That is the amendments. Itu original lah.*

[Ahli-ahli berbincang sesama sendiri]

Dato' Ambiga Sreenevasan: *If you can upload it, that will be great. Of, fantastic, yes. Okay, that is brilliant.*

Datuk Roosme binti Hamzah: *[Bercakap tanpa menggunakan pembesar suara]*

Dato' Ambiga Sreenevasan: *Sure. See, maybe I can start speaking for example, section 4 talks about functions secara amnya. To promote integrity, to protect interest of the public, to formulate and put in place mechanisms and so on.*

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Then, the clause 5 ada specific powers. One is functions and one is powers. So, 5.1 is kuasa that kuasa-kuasa commission. So, "The Commission shall have the power and may do all things necessary for or in connection with or incidental to the performance of its function under the act." So, what it says is to in addition and without prejudice to generality of subsection 1, "The Commission may", I think that is the problem that we have. So, in other words is the discretionary.

Tuan Pengerusi: *So, you are referring to which?*

Dato' Ambiga Sreenevasan: *5.2.*

Tuan Pengerusi: *I see.*

Dato' Ambiga Sreenevasan: *Clause 5.2 says that, "The Commission may advise the government and so on and so forth". Then, we have the key one at F, "Receive and access any complaint of misconduct from any person against any members of the police force." We feel that this is actually the key raise on that whole commission. And its touch there under F and there is a discretion whether the Commission is going to look at it. So, we feel that should actually come right up to four, it should be one of the main functions of the Commission which is to received complaints made by members of the public against the police force and it end to enquiry into this complaints and particular to detect investigate and prevent police corruption. We have put in our wording which will be on the slide in a minute. So, that is one of the key problems.*

Now, I'm just going to highlight some; I think the others can add in later. The appointment is the problem for us because its entirely by the Prime Minister. I thought the whole idea is to decentralised that and make it an accountable process. So, possibly either through the Select Committee or– so that's something that we would like to see change. Because I think its dangerous to leave it in the hands of one person. I mean, the formality can be there but you still have to go through the process. That's one of the other things that we would highlight. Now, the makeup of the Commissioner. I think there was a clause that was inserted actually, following our recommendations. Sorry, that the Commissioner's shall have knowledge, skills and experience or show capacity in professionalism matters relating to law and administration finance or any other matter relevant to the functional of the Commission. I think that is fine. I think that is actually has been added in. Now, again on members allowance which is section 12 to 14– oh, that's changed.

Encik New Sin Yew [Consultant, Malaysian Centre for Constitutional & Human Rights (MCCHR)]: *Ya, its changed.*

Dato' Ambiga Sreenevasan: *Its changed. Sorry, sorry. Its changed to what?*

Beberapa Ahli: *[Berbincang sesama Ahli tanpa menggunakan pembesar suara]*

Dato' Ambiga Sreenevasan: *So, anyway this is the clause in relation to the Committee members allowance. That allowance is determined by the Prime Minister. Again, I think that should not be there.*

Tuan Pengerusi: *Is that– sorry, which section is that?*

Encik New Sin Yew: *Section 17.*

Dato' Ambiga Sreenevasan: *17 now, 17. Sorry, it's up there. Here, to go up a bit more, I think. Ya, that's it, sorry.*

Tuan Pengerusi: *Under administration?*

Encik New Sin Yew: Yes.

Dato' Ambiga Sreenevasan: Under– yes, it is. So, what's in red is actually our suggestion. Then, we have the section– where is that now? This one?

Beberapa Ahli: [Berbincang sesama Ahli tanpa menggunakan pembesar suara]

Dato' Ambiga Sreenevasan: The next, relates to the exclusion of the IPCMC's power. Which is now 23. If we looked at 23, the new 23. This is not it?

Beberapa Ahli: [Berbincang sesama Ahli tanpa menggunakan pembesar suara]

Dato' Ambiga Sreenevasan: Ya, 23(1) shall amount to misconduct.

Beberapa Ahli: [Berbincang sesama Ahli tanpa menggunakan pembesar suara]

Dato' Ambiga Sreenevasan: Could we move up some more? I will go to the bottom of 23. Sorry. Sub 2, that's it. That is the one.

Encik New Sin Yew: So, there was decision notwithstanding subsection 1, so that has been accepted by the government.

Dato' Ambiga Sreenevasan: So, we are okay with that?

Encik New Sin Yew: We are okay with that but we wanted it to be more strengthen for this part.

Dato' Ambiga Sreenevasan: So, how?

Encik New Sin Yew: By making it clear that it applies to also police officers who has resigned.

Dato' Ambiga Sreenevasan: I think, I just let Sin New add to that because there are some amendments which were taken account of by the government.

Encik New Sin Yew: Thanks Mr. Chairman. For section 23, as you can see on the screen, this still the scope of misconduct. So, what we have proposed during the various consultations which we had with the...

Tuan Pengerusi: Sorry, I just don't wish to interrupt. You can do it together if you want, I leave it to you. Its entirely up to you if you wish to– if it that is the case because what I had in mind was Dato' was start first one by one. But if you want to sort of like do it together, if your ideas have similar, I leave it entirely up to you.

Dato' Ambiga Sreenevasan: Because, the CSO have been meeting, the civil society organization have been meeting.

Tuan Pengerusi: Right.

Dato' Ambiga Sreenevasan: They have quite a united approach.

Tuan Pengerusi: Okay. Then I...

Dato' Ambiga Sreenevasan: *So, we can move faster because I think Sin New also was involved in that process.*

Tuan Pengerusi: *Sure. So, do I take— because, this we need to have this on the record, for record purposes. So, are we going— do I take it that all three will address at once?*

Dato' Ambiga Sreenevasan: *Yes.*

Tuan Pengerusi: *Is that correct?*

Dato' Ambiga Sreenevasan: *Yes, that's the three of us.*

Tuan Pengerusi: *So, three of you will address us at once?*

Dato' Ambiga Sreenevasan: *Yes.*

Tuan Pengerusi: *Okay.*

Datuk Rosmee binti Hamzah: *Yang Berhormat, just to get our Hansard correct. We would like to get everybody who is going to speak, introduce themselves. So that, we will get the Hansard proper. Thank you.*

Dato' Ambiga Sreenevasan: *Good idea. Yes. So, if Sin New can just deal with that section.*

Encik New Sin Yew: *Thank you, Mr. Chairman and members of this Select Committee. My name is New Sin Yew. I represent a cluster of civil society organization and this cluster they consist of SUARAM, C4, PROHEM, WAO, Justice for Sisters and Amnesty International. So, I just go back to where Dato' Ambiga has left of on section 23. Section 23 – the number might run but because this is what you see on the screen is actually a bill and an amendment to the bill with track changes, by track changes of the amendments civil society— this cluster of civil society decided to make on this bill and it has also incorporated the amendments which the government had proposed during the second reading. So, the amendments in— sorry, could you...*

Tuan Pengerusi: *Sorry, just for clarification. So, you are going to address the entire thing including the amendments at one go is it?*

Encik New Sin Yew: *Yes, unless Mr. Chairman you have a different agenda in mind, we could take it...*

Tuan Pengerusi: *Well, I mean— of course, we want to know your views of the entire thing generally first. But and then, of course, to the amendments— you know, specifically if you can. After that, that was the initial plan.*

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Tuan Pengerusi: *But, I think I leave it to you, if you are comfortable with another approach, but let us know first so that we are on the same page.*

Encik New Sin Yew: *Broadly speaking, the amendments that we have proposed, they could be confined into three big areas. The first big area is on the Prime Minister's powers under the current bill. Mr. Chairman, to make it easier, what we have done is that we have prepared the handout and I believe a softcopy has been given to the Secretary of the Committee. This would really capture and summarize what we have to say today. If I could just extend a copy to Members. [Salinan dokumen diedarkan kepada Ahli-ahli Jawatankuasa] Thank you. So, in this handouts, it list down the key issues raised and amendments adopted. The key issues raised by civil society during the various consultations and so far, where amendments have been adopted by the government. So, that is the first part of this handouts. If I could refer everybody to page 5 of the amendment- Sorry, of the handouts. Page 5, it list down the concerns which are still alive and outstanding, which has not been adopted- Can I continue? So, page 5, paragraph 17 onwards, it list down life issues and outstanding concerns which was raised by CSO during the various consultations, but has not been adopted by the government. In broad terms, there are three key areas which is of concern. The first can be found in paragraph 17 and 19. So, 17 and 19 deals with the Prime Minister's powers under the current bill. The concern is that the Prime Minister has too much power under the current bill. The Prime Minister gets to appoint and the Prime Minister gets to dismiss without any cause, without any check and balance. On top of that, the Prime Minister gets to decide what constitutes minor misconduct, the Prime Minister gets to make regulations for the Commission and gets to determine the Committee Members' allowance as well as the power to change the composition of the disciplinary board.*

So, there are very broad powers that has been given to the Prime Minister and we felt that for the Commission to be truly independent, it needs to have the power to make decision for itself and not be subject to an external party and in this case, being a Prime Minister. It is because the Prime Minister is the Head of the Executive. The police force comes under the Executive. If the Commission has to be subjected to everything the Prime Minister says or decides, then you cannot be said to be truly independent. So, our amendments to the bill would propose a more transparent, more accountable process which would involve the Prime Minister, but there will be more transparency and will be more check and balance. I can take the committee later through the amendments and allow me to move on to my- the second area of concern. The second area of concern is the powers the IPCMC currently has under the bill. As it stands, the IPCMC under this bill has lesser powers compared to the EAIC. In 2009, when the EAIC Act was tabled, there were a lot of criticisms that the EAIC has no teeth. Well, that in a way has changed by us taking one step forward by giving the EAIC powers to discipline under Article 140 of the Federal

Constitutions, but we have taken two steps back by removing all the necessary powers of investigation or the powers to conduct public hearing as can be found under the EAIC Act, but not here in the current bill. So, you have disciplinary powers, but you don't have powers to investigate, you don't have powers to conduct hearings. So, that to us is self-defeating. At the very minimum, whatever powers that EAIC has, it cannot be lesser than the EAIC in 2009. So, that's the second area.

The third big area is the issue of secrecy. This ties in with the second area where there is not enough powers for the EAIC to investigate. Currently, there is nothing in this act which would prevent the police force from invoking the Official Secrets Act to say that everything here is secret and we cannot divulge any information to you. So, to us that's a big problem, because almost all police investigations, they are secret. They are protected under the OSA. How is EAIC going to conduct any meaningful and effective investigation if they do not— if they are tied, their hands are tied by the OSA? So, what we have proposed here is to have a provision which was initially found in 2005 RCI Bill by Tun Zaidin, where it says that the OSA does not apply to any investigations or any acts done by the then IPCMC. So, those are the three broad areas.

Dato' Ambiga Sreenevasan: *I think— just to add to that. I think the— we have given a very detailed suggestions in the first amendment that being put forward. I think it must— we have to detailed how these hearings are going to happen. We have to talk about public and close hearings for example, if secrecy is the problem, you can actually provide for that in the statute. So, there is no excuse saying it is under OSA or we cannot divulge certain confidential material, because there is always a way to deal with that. So, there are very detail and this is in fact, that 2005 bill under the first- the Zaidin's Commission. They provided a very comprehensive way of sections in relation to investigation powers, giving powers to examine people, to obtain documents and they talked about power to enter public premises. Then, of course they talked about the hearings, the right of appearance of interested persons, legal representation, examination of witnesses. It is because, don't forget legal representation for the police is also important. So, it's really natural justice for them as well. So, they also have to be assured of a very safe legal process that is going to take place. Right now, it's very undetermined or indetermined how this process is going to be happened. So, then the seizure and seal without warrant, etcetera, etcetera.*

So, there is no reason why this act has to be less teeth than the EAIC. The problem with the EAIC, they didn't have the powers to punish as it were. But, the problem with this is, they don't have the powers to— for a proper investigation. So, really it's a question of marrying the two. So,

its already there in the EAIC Act. So, it's just the question of marrying the two. So, I think those are the main issues that the civil society is putting forward in relation to this.

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Encik New Sin Yew: *Mr. Chairman with your leave, if I could take the committee through our propose amendments just very quickly.*

Tuan Pengerusi: *Please.*

Encik New Sin Yew: *If I could refer the committee to a section 8 as you would see on the screen, just to reiterate this is a document which encapsulate the proposed changes by the government during the second reading as well as our amendments in red. So, the amendments in blue is the amendments that have been proposed by the government during the second reading and the amendments in red is additional amendments which we feel is necessary in order for the bill to be a meaningful bill. So, section 8 and the subsequent section 9 and section 10, these deal with the selection process of the commissioners. If I could just refer to section 8 subsection 4, just a word of caution the amendments that – sorry the numbering of these document it may run from the original bill because we have added additional provisions to it. So, that could be a bit of consolation required.*

So, what we have proposed here is that any members of the commission it must be appointed in accordance with– sorry not supposed to be section 7, supposed to be next section, section 9 of this act. We will make the necessary amendments after these. So, if we were to refer to section 9 these sets out the selection process which we feel is necessary because it provides check and balance and accountability in persons being appointed. So, if you look at section 9 broadly speaking what this process is a public process. This is not found anywhere yet in current legislations, but it sets out the criteria of the selection, the openness of the selection and the requirement for the Prime Minister to table and report of his selection before the House of Representative. Now, we have, if you could scroll down to subsection 4. So, subsection 4 there is precedence for these, subsection 4, subsection 5 and subsection 6. These has been adapted from the 13 Schedule of the Federal Constitution where the Prime Minister was required or rather is required to table a report of constituent, delineation of constituency. So, it is not something that is entirely alien to the Malaysian legal process where the Prime Minister has to table a report before making the decision.

So, we feel that this is a good practice and the Prime Minister should lay a report of the selection before the House of Representatives, before appointing the commissioners. So, these gives Parliament oversight over the decision-making powers of the Prime Minister. So, that deals

with section 9. If I could refer the committee now to section 10. So, these has to do with termination of the commissioners. Again, what we proposed is that determination be done in accordance with this act with the process lay down before this act and that process can be found in subsection 5 and subsection 6 of section 10. Again, before the Prime Minister decides to revoke the appointment of any members of the commission, he is required to lay a motion before the House of Representatives. These is for the same reason that had explained with the appointment process. So, if I could move on to the next big area. Can you move on to section 19, please?

Dato' Ambiga Sreenevasan: *Section 14.*

Encik New Sin Yew: *Section 14.*

Dato' Ambiga Sreenevasan: *Section 13.*

Encik New Sin Yew: *Sorry, section 13. Any members of– yes. Section 16 sorry, section 16. So, section 16 the proposal by the government is in bill to any officers of the commission...*

Dato' Ambiga Sreenevasan: *I think read the heading of the...*

Encik New Sin Yew: *Yes. So, these deals with delegation and functions of powers of the commission where the commission may delegate its functions and powers to a third party. One of the third parties that was contained in the original bill is any members of the police force. A further proposal has been made by the government to any officers of the commission. The CSO position on these is that is fine to delegate to any members of the commission or to any committee or to any officers of the commission but it is definitely a no go if the commissions can't delegate its functions and powers to a member of the police force. Because it is the wary force that the commission has to check on. So, it does not make sense why the commission should have the power or should be allowed to delegate its power and function to a member of the police force. So, what we proposed is a deletion of (d) members of the police force.*

The next section is section 21. These deals with committees. So, again these goes back to the first big area being powers of the Prime Minister. Under the current bill, the Prime Minister has the power to decide on allowance of members of the committee. We feel that, that should be something that's left for the Parliament to decide instead of the Prime Minister. If I could now move on to section 23. Section 23 deals with scope of misconduct. Okay, section 23– the problem with section 23 is that currently the scope of misconduct its unclear because if you look at subsection (b) and if you ignore our amendments for the time being, in noncompliance, rules and standard operating procedure of the police is considered a misconduct. Now, that at first blush will not be a problem but it could also encapsulate situation where there are minor disciplinary offences such as not coming to work on time or not wearing a uniform properly and that could

potentially fall under section 23. So, what we proposed is to make it clear and to include the words which has had an adverse effect on members of the public.

Now, this term is a term of art that has been taken from the Hong Kong equivalent of the IPCMC. These would free the IPCMC from the burden of having to investigate minor offences because they should not be concern with that. They should be concern with serious offences, corruption, bribery. If I could refer to committee now to subsection 2, these is a proposal that has been – this amendment has been proposed by the government to establish exception for minor misconduct. But it still feels that there is a need to make it clear in subsection (b) that any misconduct should be something that is adverse on the members of the public. The next amendment that we have proposed is in relation to when can a police officer being investigated by the commission.

■1750

So, our proposal as contained in the 2005 RCI Bill is for police officers to be investigated even though they are not on duty and even though they did not commit such acts within Malaysia and whether or not those acts were committed before the commencement of this particular IPCMC Bill. So that, there would not be a period where the IPCMC does not have powers to investigate the police officers. If I could move on to section 26. [Merujuk slaid] So, section 26, the Complaints Committee. So, how it works with this IPCMC Bill at this moment is that the Complaints Committee, they are the first stage of decision makers. If the Complaints Committee decides that there is no case, they do not have to refer it to the Disciplinary Board. The composition of the Complaints Committee— it is not clear. It is not clear, because if we ignore the amendments in red, what it reads is that, “The Commission shall establish a Complaints Committee which shall consist of such Members of Office of the Commission”. So, it is not clear whether in “Members of the Commission”, instead of “An Officer of the Commission” can sit on the Complaints Committee. This being the first stage, we feel that it is necessary for a Member of the Commission or the Commissioner himself or herself, chairing the Complaints Committee. Instead of it being helm entirely by Officers of the Commission.

If I could refer the Committee now to section 28. Now, section 28, this is more of a stylistic amendment. There are two parts to these amendments that we are proposing. The first is stylistic, the second is situations where the complaints can be dismissed. The stylistic amendment, we feel that the word “the complaint” shall be referred to under classifications of complaints. That word should be changed instead to “shall be notified of the complaint”. The reason why we say this is because, when the complaint is referred to another body, it is unclear whether or not the IPCMC

can continue its investigations, having referred the complaint to another body. What is clear is that IPCMC deals just with misconduct. If it is criminal offence or under the Penal Code or under the MACC, then it is up to MACC or it is up to the police force to investigate such criminal offence. IPCMC deals only with misconducts by police officers, if any. But, it is not clear what happens if a complaint is referred to either the police or the MACC, whether IPCMC can continue to investigate.

So, we feel that, that should be spelled out. During the various consultations with EAIC as well as GAICC with the Minister, they have taken the position that “yes, the IPCMC can continue to investigate, having referred the matter to either MACC or to the police force”, but we do not want the situation where there are judicial interpretations that could perhaps muddled what is otherwise a very clear position. Because, if you were to take the word “shall be referred to” and we translate it to bahasa Malaysia, it will be “dirujuk”. So, “dirujuk” connotes a very different term in BM and that can be found in for example, the Courts of Judicature Act. When the court refers certain questions to a higher court and what happens is that, the court no longer considers those questions. So, we do not want a situation where that analogy is drawn. So, what we proposed instead is to have the words “shall be notified of the complaint”. So, just notify them, you carry on with your job. So, that is the stylistic amendments that we have proposed in subsection 1a, b, c.

[Merujuk slaid] If you could scroll down at c. Sorry, e. Currently there are two grounds which we take objections to. These two grounds relate to grounds where the complaints can be dismissed. So, the first ground is whether “is or was available to complainant, an alternative or satisfactory means of redress”. We feel that this is too vague, because what exactly is meant by “an alternative or satisfactory means of redress”? If the Commission were to dismissed a complaint on this grounds, I think there would be certainly injustice occasions. So, we feel that this should be removed as a ground of dismissal. The second ground for dismissal is “the subject matter of the complaint has been finally determined by any court or the subject matter of any proceedings pending in any court, including any appeal proceedings”. We anticipate the situation where a misconduct has been lodged and at the same time, there could be ongoing criminal cases, there could be ongoing civil cases. So, if there is ongoing civil cases or ongoing criminal cases, this could potentially give rise to a ground for dismissal, because the matter is currently being determined or has been determined in another court. The problem with that is that sometimes the court have different standards. For example, if it is criminal, then it is beyond reasonable doubts. The issue to be decided could be something that is quite different. So, we feel that if indeed the IPCMC were not to have their hands tied, then this two should be removed.

So, if I could just move on to the next part. Section 29. Okay, section 29 onwards deals with the investigative powers and hearing of the IPCMC. Currently, IPCMC only have investigation powers. They do not have the power to conduct hearings, whether in private or in public. So, what we have proposed is that this entire part be replaced with the very same part in the EAIC 2009 Act. This would cover section 29 all the way to section 44. So, that whole part, we proposed the replacement of whole part of what is currently in the EAIC Act. If I could now take the Committee to section 45. So, on top of what the replacement under the EAIC Act, we propose the addition of a provision dealing with secret provisions in other laws. This will deal with the potential problem that could be caused under the OSA, where the IPCMC would not be able to investigate or conduct a meaningful investigation, because of the OSA. So, we feel that section 45 is extremely important.

The next part is on to deal with the findings of the investigations. So, this follows the amendments that we had previously suggested in section 27, it is the same.

■1800

So, if I could go now to – this is where my section 46. Yes, if I could go now to the Task Force, section 47. So, we feel that currently the task force power is only limited to incidents where there is death in police custody, currently that is what the bill states. But what we propose is to remove that restriction and to allow the commission to establish a task force for any offense and where the task force has been establish, the task force would have the powers under the Criminal Procedure Code.

So, I would like to quote what I said earlier, “the commission can establish any task force for any offense but only a task force establishes to investigate an incident for death in police custody would have the power under the Criminal Procedure Code.” So, our proposal is do not restrict the task force or commission in that manner, allow the task force to have that powers of CPC if they are established. The next part is on section 51, let’s go to section 51. Section 51, yes. No, no, no, that is section 31, that is section 34. Go to the Section 51. Scroll down, scroll down. Go to Responsibility to Refer Cases of Previous Heard of Death in Police Custody. [Merujuk kepada slaid pembentangan] Yes. Okay, the amendments in blue– that is proposed by the government is in blue. So, how it reads if we ignore the amendments in red how it reads is currently is the police force shall refer to the commission any incident which has resulting reverse hurt or death to any person when custody of the police force as soon as possible. So, that still limits the requirement for the police to refer any incidents where there is death in police custody or previous heard.

What we propose is to take away reference “to death in custody” but make it a situation where the police force must notify the commission any incident as a result of any direct or indirect contact with the members of the police force.” So, this would cover all situations include situations where there has been for example police shootings, which I think in the past a few weeks also has a number of cases have occurred. In comparison to death in police custody, the amount of people who were previously hurt or had died as a result of police shooting is far greater. So, that is something that we urge this committee to seriously consider. Last two issues are on Power to Amend Schedules, section 53. Yes. The proposal by the government currently is that the Prime Minister has the power to amend schedule but he must only do so on advice of the commission. We feel that the commission should be left to decide by themselves whether or not there is a need to amend any schedule. This schedule refers to minor offenses and this schedule refers to situations– the composition of the disciplinary board. So, that refuse something that should be left for the commission to decide and not the Prime Minister because the Prime Minister does not sit in the commission. Of course, there is the whole argument about check and balance which we have explained earlier.

Lastly on Regulations, section 54. So again, the same logic applies, the Prime Minister has the power to make a regulation. We feel that is again another thing that should be left to the commission. So, I think that in summary are our propose amendments to the current bill. I have nothing else to add unless Dato’ Ambiga.

Tuan Pengerusi: *Sorry, could that be all from all three of you?*

Dato’ Ambiga Sreenevasan: *Amir, do you want to add anything.*

Encik Amir Abdul Hadi [Coordinator, Suara Rakyat Malaysia (SUARAM)]: *I think I am...*

Tuan Pengerusi: *Can I take it this bill with the all proposals and so on? I think representative of all CSOs, would that be correct? So, because we want to know whether there are any further views that we need to look at in our deliberation as well before I go into any questions.*

Encik New Sin Yew: *I think it is representative of all CSOs within our cluster and CSOs which have been public about the IPCMC Bill. We would not go so far to say that we represent all CSOs in Malaysia because a lot of CSOs which we do not know who they are. So, I could give a list which I had earlier and it would be a views representative of those CSOs.*

Tuan Pengerusi: *Yes, I think that will be helpful. At least we know we can identify with certainty who is on our behalf of...*

Encik New Sin Yew: Yes.

Tuan Pengerusi: *So that if there is anyone else that we may need to inquire then we will call them.*

Encik New Sin Yew: *Yes, we could definitely provide the committee with the list.*

Tuan Pengerusi: Yes. Okay.

Dato' Ambiga Sreenevasan: *I am not sure that the Bar Council has been...*

Tuan Pengerusi: *The Bar Council will be invited.*

Dato' Ambiga Sreenevasan: Yes.

Tuan Pengerusi: Yes.

Dato' Ambiga Sreenevasan: *So, they possibly one of the other ones here.*

Tuan Pengerusi: *That is probably— there are few others. So, we are setting for the next two or three weeks. So, we will be calling them in as well. Well, I think before I go into it, I think— another thing I want to ask you is were in our briefings over the past two or three weeks. There have been discussions about the constitutionality of the bill as well. There is a school of thought that is off the view that the bill might be unconstitutional and they have given us their reasons and their views. Of course, there is another school of thought which views it in an opposite way. So, have you put your mind to that issue and do you have any of views on that?*

Encik New Sin Yew: *Yes, certainly this is on Article 140 of the Federal Constitution I presume.*

Tuan Pengerusi: Yes.

Encik New Sin Yew: *So, Article 140 was amended in year 1976 by Tun Hussein Onn if I am not wrong, it was during a speech by Tun Hussein Onn gave the speech to amend Article 140. So, Article 140— if we could bring up Article 140. So, Article 140. The second paragraph of Article 140, it refers to “provided that Parliament may by law provide the exercise of such disciplinary control over all of any of the members of the police force in such manner and by such authority as may be provided by that law.”*

■1810

So, that was the amendment— that was part of the Constitutional amendment that was tabled in 1976. So, clearly the Parliament at that time had an envisaged an independent body that could exercise disciplinary control over the police force. So, I think in so far as the constitutionality of whether IPCMC can be set up to check on an exercise disciplinary control over the police force, I think that is— it is self-evidence, it's quite clear. I am not sure what grounds certain quarters are

raising vis-a-vie a constitutionality of IPCMC, because its clearly spelt out in 140 that it can be done.

Dato' Ambiga Sreenevasan: *What are the arguments actually on...*

Tuan Pengerusi: *I mean, broadly speaking, I think what they are concern with is currently the Police Force Commission whether or not it will have— whether it will be over taken completely by the IPCMC. That is one concern. I think the other is on the question of disciplinary control. What is that amount to and its very- I have heard the views that it can be interpreted very subjectively and that might arise- confusion might arise as a result. Broadly speaking, those were the grounds. Of course, they have been those who like you, feel that it is quite clear in what it says, it does provide for the birth of IPCMC which will take over, I think, the function of the Police Force Commission. So, where does that leave the Commission? I think that something that they have in mind.*

Encik New Sin Yew: *Ya. I think their concerns is also spelt out in 140. If you look at the third line of the second— the fifth line of the— fourth line of the second paragraph, if the authority is other than the Commission and the Commission is referring to the Police Force Commission, the disciplinary control exercise by such decision shall not be exercised by the Police Force Commission. So, if there is IPCMC, the Police Force Commission would cease to exercise disciplinary control over the police force. No provision and the— even an additional safeguard— no provision of such law shall be invalidate on the grounds of inconsistent with any provision of this part.*

Dato' Ambiga Sreenevasan: *So, what are you saying? You don't have the...*

Encik New Sin Yew: *I'm saying there are two scenarios. The first is, if Parliament decides that to establish of IPCMC, to exercise disciplinary control over the police force and taking it completely away from the Police Force Commission, that can be done. The second scenario is, if Parliament decides to remove parts of disciplinary control over— from the Police Force Commission and give it to IPCMC, that too can be done.*

Dato' Ambiga Sreenevasan: *My reading is that, we are taking just the misconduct part, because that doesn't necessarily cover the minor misconduct, don't forget. So, I am not sure that we are actually taking away all the powers of the Police Force Commission.*

Tuan Larry Soon @ Larry Sng Wei Shien [Julau]: *Mr. Chairman, also the other concern that was raised was that some parties were suggesting thing that 140 should be amended in order to provide powers to this commission.*

Encik New Sin Yew: *140 was amended in 1976...*

Tuan Larry Soon @ Larry Sng Wei Shien: ...we amended again, because over here it says they have the powers for the disciplinary control and of course, with the creation of IPCMC, that also has the powers as well.

Encik New Sin Yew: Right.

Tuan Larry Soon @ Larry Sng Wei Shien: So, I think that was one of the Constitutional issues.

Tuan Pengerusi: You have two bodies exercising powers which might intertwine, which might cause problems in the future. I think that was their main concern. So, now at the moment you have the Police Force Commission under 140. So, with the IPCMC, does that become redundant completely? Does the IPCMC in the exercise of disciplinary control, does that include investigative powers as well? As you have suggested in your amended bill?

Dato' Ambiga Sreenevasan: I like to look at that actually, a little bit further and I can send the note.

Tuan Pengerusi: I mean, I am just giving you a broad overview of what we have heard so far. So that, we can try to get as much as we can. Looking at your bill, of course it is very extensive, very— we have just received it. I still have to go through, but certain questions comes to mind. Obviously— but before that, on the inclusion of the IGP as a party to be investigated, what are your views on that?

Dato' Ambiga Sreenevasan: I don't see the need— the reason for excluding actually, the IGP at all. So, what is the rational? Actually, I don't see the rational.

Encik New Sin Yew: Yes, I agree with Dato' Ambiga on that. IGP should fall under the purview of the IPCMC. But, I think perhaps there has been— there is some sort of confusion in the current bill, whether or not that is indeed the case. During our various consultations with the Minister, we have been made to understand that the IGP does indeed falls under the purview of the IPCMC for purposes of investigations. So, you could investigate the misconduct against the IGP. But, when it comes to punishment, an ad-hoc tribunal has to be setup. If I could just take the committee to disciplinary powers. If you could bring up the IPCMC? The bill.

Tuan Pengerusi: The current bill.

Encik New Sin Yew: Ya, the current bill.

Seorang Ahli: [Bercakap tanpa menggunakan pembesar suara]

Encik New Sin Yew: No, no. English, the current bill. [Merujuk kepada slaid] Search for Article 132. Okay, disciplinary authority. So, that is the current procedure. Of course, on the first reading, I had problems understanding it. Because, it doesn't spelt out clearly that the IGP can be

investigated. So, perhaps as matter of language, that should be something that the committee should look at. But, given the assurance by the drafters of the bill, that was indeed the intention for the IGP to be investigated by the IPCMC. But, when it comes to punishment, there is a special disciplinary board which is constituted on ad-hoc basis.

Tuan Pengerusi: *That is what I am saying, because it doesn't seem to be very clear is it?*

Encik New Sin Yew: *Ya.*

Tuan Pengerusi: *Because, when it comes to disciplinary control on the IGP, there seems to be some confusion. As whether he would be a properly subject to such investigation and punishment as well like you said. So, what do you think? Do you think that would necessarily– it would be advisable to amend it, to make it clearer?*

Encik New Sin Yew: *We could propose some amendments on the language which we could forward to the committee. But, as a matter of principle, I feel that for the IGP to be punished by the IPCMC, it would become problematic, because there is currently a representative of the IGP sitting in disciplinary board. So, you have a situation where his representative would be effectively deciding on his punishment.*

Tuan Pengerusi: *His subordinate?*

Encik New Sin Yew: *Ya. So...*

Tuan Pengerusi: *What would you propose to get around that if there was– if you had something in mind?*

Encik New Sin Yew: *Certainly an ad-hoc committee is something that I– we are not objecting to. But, perhaps the members of the ad-hoc committee and the selection process of the ad-hoc committee is something that we could look at.*

■1820

What we could do is after this we could propose certain amendments for the consideration of the committee on this particular issue.

Dato' Ambiga Sreenevasan: *May I also suggest for the definition section– we should have a definition section for member of the police force and then to say that they include the IGP. I think rather than put it in there, as if the IGP is trying to stay out of the– I don't think he has any intention to. So, I think maybe that's the way to get around the– who does the definition of member of the police force?*

Tuan Pengerusi: *The reason I raised this is because, I think as everybody knows it common knowledge that one of the main reasons why this IPCMC Bill has come to light now recently is because of many high-profile cases that have hit the news and false disappearances*

and so on. Inevitably, both- one way or another, involve the IGP. So far, we had that- those are the indication. So, how- with the current, with the bill as it is now, what do you think that the investigation process extends to him as well.

Dato' Ambiga Sreenevasan: *That's me. I don't know what you- I think it should, yes.*

Encik New Sin Yew: *I think it does, it's just that could be- that could be room for confusion if you get what I mean. It is because, if we look at our Federal Constitution, it says you have IGP and a police force. So, it doesn't spell out that the IGP is a member of the police force. So, perhaps like what Datuk Ambiga has suggested that we include IGP being the member of the police force, as part of the definition section of this bill. Then, it makes matters very clear and of course there is an issue of the punishment tribunal disciplinary board. So, that's something that we could propose our amendments too.*

Dato' Ambiga Sreenevasan: *But is there any other- what is your thinking Mr. Chairman- I'm not clear on the reluctance...*

Tuan Pengerusi: *No, no, not reluctant.*

Dato' Ambiga Sreenevasan: *Not you, not you, Mr. Chairman. Anyone who has expressed any reluctance, is there any...*

Tuan Pengerusi: *Reluctance on what?*

Dato' Ambiga Sreenevasan: *So that, we can address whatever concerns they may raise.*

Tuan Pengerusi: *No, no. Because just I was thinking aloud as to the IGP's involvement in this bill. How would he be affected by this bill. That's all I had in mind and wanted your views on that. That's all. I have a few more questions but if anybody else wishes to ask any questions, please feel free to. Please feel free to do so. Perhaps you can - just for the record, identify yourself before you ask the question. Thank you.*

Encik Peh Suan Yong [Timbalan Penggubal Undang-undang Parlimen I, Jabatan Peguam Negara]: *My name is Peh Suan Yong. I'm from the Attorney General's Chambers. Last week, an expert came to give her opinion, a law professor gave her opinion on the bill. She thinks the content is ultra vires the Federal Constitution. Number one, because she said that the disciplinary control under the proviso 140(1) of the Federal Constitution does not include the power to dismiss and the power to demote. Number one. Number two, she said it is also ultra vires because disciplinary control under 140 does not include the power to conduct criminal investigation, that is a power given under the CPC. So, when you do an investigation under disciplinary control, it should be by way of disciplinary investigation, not criminal investigation. Then number three, she thinks the IPCMC is too powerful in the sense that they*

receive complaint, they investigate, they also conduct hearing and also, they decide on the case, and finally they sentence. So, that is against the rule of natural justice. No check and balance.

Dato' Ambiga Sreenevasan: *I think there is point there. I think what – on the last point that perhaps all the function shouldn't be perform by the same body. Is that what she's trying to say?*

Encik Peh Suan Yong: *Yes.*

Dato' Ambiga Sreenevasan: *Ya, perhaps that something we should also look at because normally investigation is done by a separate body. Isn't it? I think that's what she's trying to say. But, as to the constitutionality, I like to look at it further. I'm not convinced that is ultra vires, that is constitution actually. To be honest. Because, we looked at it, but I'd like to look at it a little bit further based on what you have mentioned just now.*

Encik New Sin Yew: *I think she has a point there on a natural justice. Because the bill as it is, there is no hearing. So, that's actually bad for members of the police force. They undergo complaint process, but there is no hearing, there is no opportunity for them to be heard. And there is no duty for the commission to provide grounds because there is lack of such hearing. So I think that's actually bad. I think transparency is something good for everybody, especially for those who are under investigation. I think that part when it deals with powers of investigation and hearing, you must have hearing there. Because that is possibly the only opportunity for whoever that's being investigated to share their side of the story.*

Dato' Ambiga Sreenevasan: *I don't think that's your point. Your point is that they are judge, jury, executioner, everything in one body, right? Plus, investigator. So, that's what they are saying. You are not against the hearing, right? I mean, there has to be a hearing. That is natural justice. If we don't have a hearing, then there is no natural justice. But your point is whether everything should be done by one body, I think.*

Tuan Pengerusi: *I think for example, in the normal course of thing, you have the police investigate, you have the court determine and sentence. So, it's separated. But unlike the situation here, it's all in one. So, I think that's the point Mr. Peh was trying to make just now.*

Encik New Sin Yew: *If I could just add that if we were to compare the IPCMC to other type of disciplinary tribunals like that advocate and solicitors, disciplinary board, it's all done by the same body essentially though they have various committees. But that separation is more internal. So, in that sense at this juncture what I feel that it's not out of the ordinary if it's done by a single body. It is after all, a disciplinary authority. So, there is no criminal sanction that comes along with it. That principle of it being investigated by separate body, one body to investigate, one*

body to decide the prosecute and one body to adjudicate the matter. Normally say that in the context of criminal proceedings. But this is not exactly a criminal proceeding, it's more of a disciplinary issue.

Encik Peh Suan Yong: *That's correct this is a disciplinary issue, Yang Berhormat. But the thing is that even though they have different committees to do it, the hearing, sorry the sentencing as well as adjudication, but the disciplinary board also consist of three members of the commission. So, they are all involved. Of course, I must say that this is not the position of AG. I'm just articulating what a law professor mentioned last week.*

Dato' Ambiga Sreenevasan: *The one thing I can say is this. We need something because as it stands with 140 and the Police Force Commission, there still death in custody, there still shooting, there still misconduct that are not addressed. So that – it tells us we do need this. It's just to what extent and of course it has to be constitutional as well.*

Tuan Pengerusi: *There was– it's quite interesting that you mentioned that– I mean, I think a lot of people would agree. But from what we heard last week a comparison were made with other jurisdictions like Hong Kong, UK and so on. They found that this is very much at first compared to other jurisdictions because other jurisdictions don't give so much leeway to what the IPCMC proposals. And we were urged to not make history, I quote from– I think this can be confirmed by a few of the speakers that come.*

■1830

I think their concern mainly is that too much powers will be given to a body, independent of the police. That's the police concern. That is what they said or that is what they have in mind. So, have you look at the bill in comparison to other jurisdictions? Have you come up with any conclusions from that?

Encik New Sin Yew: *I have look at the Hong Kong model, as well as the United Kingdom model. I think briefly we look at Ireland. But, it is quite a repetitive exercise, because that is all done in 2005 during the RCI. That is something that the RCI has addressed. I mean on top of my mind, I can't remember what was the thinking behind having it independent as compared to Hong Kong and United Kingdom for example, where it is still within the police force, but its parked separately, but it is still under the umbrella of the police force.*

Dato' Ambiga Sreenevasan: *Internal affairs, kind of.*

Encik New Sin Yew: *Yes.*

Dato' Ambiga Sreenevasan: *But, if you look at the Bar as well Mr. Chairman, as you know, we have a separate disciplinary body, right? But of course, constituted of lawyers, that is*

fair. They have powers. They can strike you off, because lawyers deed worth millions of dollars. There has to be some oversight over that. But, I take your point that perhaps rather than a completely separate, what these people are saying is that we should have something internal. Perhaps the answer to that is the composition of the commission. Not to remove it, not to undermined it, change the composition. If that is an issue, it can be address here.

Tuan Pengerusi: *I only have one last concern, broadly from what we have heard, the overlapped of functions between the IPCMC and other legislations such as the Penal Code and the CPC, the MACC Act and so on. Do you not think that there will be a problems if like you have suggested in, I think section...*

Encik New Sin Yew: *[Berucap tanpa menggunakan pembesar suara] Section 1.*

Tuan Pengerusi: *Yes, I think you had suggested earlier that you will have two bodies and maybe more, investigating at the same time. If we were to follow your suggestion, I think that was what you are suggesting. There are some instances you have suggested, am I right? Yes. So, I think would that not post problems when you have two forums or two bodies such as, perhaps under the Penal Code and under the IPCMC at the same time? How do we overcome that anomaly?*

Dato' Ambiga Sreenevasan: *Also going by the way the DB and all functions, the legal profession. Discipline is a separate issue from whether offence has been committed. It is very possible that an offence has been committed. But, it doesn't mean you cannot take disciplinary action on that as well, because the punishment is different. It is whether you should continue being a police officer or continue being a lawyer or continue being— so, that will be a different issue all together. So, I don't see— as long as it is quite well regulated, I don't see that, that is a problem.*

Tuan Pengerusi: *The thing is this, I think just— I am just speaking aloud. If for example, if a person is investigated under the IPCMC for disciplinary offence, the facts and the evidence would be the same that would be investigated if he would have committed an offence by the police, for an example. If the findings are different, that would obviously create a conflict and problems, wouldn't it? I think that is the issue here. How do we look at that? No doubt we will have that line to sort of like differentiate between disciplinary and criminal offence. But inevitably, it will involve the same issues, the same evidence, the same witnesses and so on. So, you might have a situation where witness A is interrogated by the IPCMC, evidence is taken from him and he is interrogated by the police as well. Statements under the CPC are taken from him and so on. So, that might create some kind of conflict and problems, wouldn't it?*

Encik New Sin Yew: *I think this is something that is inevitable, in so far as the investigations on the facts are concern. But, ultimately like what Dato' Ambiga has suggested, the considerations, the ultimate considerations by each separate bodies, there are different considerations. The MACC and the police force, they would have to decide whether or not there is a criminal offence. For IPCMC it is only for– I don't know, there has been a misconduct occasion. So, yes, I think there's going to be an overlapped, because one act could arise in separate liability, civil criminal and disciplinary. But, there is the nature for a lot of tribunals operating within such confines. You have the Malaysian Medical Council, you have a case on medical negligence, it could be a criminal offence and it could also be a civil offence, and you have investigations and you have a court proceedings ongoing and at the same time, they do not stop their investigations or wait for the outcome of the court proceedings or wait for the outcome of the investigations or nor do they outsource their investigation powers to another body. It is because, I think natural justice dictates that as a tribunal of investigating, you need to be satisfied for yourself and not rely on the findings of others. So, it is an overlapped, but it is something that we have to live with.*

Dato' Ambiga Sreenevasan: *But, I think further research, so that you can answer that in Parliament. [Ketawa] It is probably necessary. Maybe we can give you some more examples of what happens in other jurisdictions and as well as here with other professional bodies.*

Tuan Pengerusi: *Thank you. I have– yes, please.*

Tuan Larry Soon @ Larry Sng Wei Shien: *During our previous meetings, there were also suggestions that instead of creating the IPCMC, we could strengthen EAIC. Could I have your views on that?*

Dato' Ambiga Sreenevasan: *To me, the name doesn't actually matter whether you call it EAIC or the IPCMC, as long as it has all the provisions that we have suggested and that the commission, the Zaidin's Commission suggested. So, I mean the EAIC, our problem with the EIAC was lack of enforcement. So, they would go through the entire process, write wonderful judgements and then, nothing happens after that. Totally pointless exercise. So, as I said, you need to marry the two and have the enforcement part. So, I mean for me, its a question of not what you name it, it is really the power that you give it.*

Tuan Pengerusi: *Okay, I think– yes, please.*

SAC Dato' Mohd Azman bin Ahmad Sapri [Ketua Urus Setia KPN (Perundangan), Polis Diraja Malaysia (PDRM)]: *May I, Tuan Pengerusi. I am Senior Assistant Commissioner, Dato' Mohd Azman from PDRM. So, we have listened to the speakers on the bill, which has been*

proposed. So, Dato' Ambiga, do you have any suggestions on the Bill of Rights as proposed to give some protection or the Constitutional rights to the police officer which is under investigation, during investigation and during the proceedings of misconduct.

Dato' Ambiga Sreenevasan: *Absolutely. I think like any person who is facing a complaint or accused, they must be afforded every ability to defend themselves, which is why we are suggesting a hearing. Instead of just looking at records and condemning the person, they must be given a chance to speak. That is why we have asked for those provisions to be in. But, I completely agree, of course. As any person who are facing natural justice, must be at the forefront of the whole process.*

SAC Dato' Mohd Azman bin Ahmad Sapri: *I do agree with this hearing process, but on the PDRM itself, we have prepared a Bill of Rights that will be going to be insert in the provision. So, we have proposed and submit. If you can have any idea that we can support, rather than only avenue on hearing proceedings.*

Dato' Ambiga Sreenevasan: *I will be very happy to look at that and see how that can be incorporated or whatever. But, we need to have a look at that document, if we can be given. Would you be able to give us, sir?*

SAC Dato' Mohd Azman bin Ahmad Sapri: *Yes, yes.*

Dato' Ambiga Sreenevasan: *No, we will be very happy. I completely understand why your apprehensions and we must address all apprehensions I think, through this.*

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I think we can work together and come up with a solution because I think fairness to all involved is key, absolutely key.

Tuan Pengerusi: *I think— unless there any other views from anybody? Please feel free to do so now. So, I think thank you very much to all of you who have attended. We really appreciate your attendance, valuable insights and we will certainly take into accounts what you have told us. Thank you very much again.*

Dato' Ambiga Sreenevasan: *Sorry, could I know the timeframe. Sorry Mr. Chairman. Because, if we are doing a quick write up for you— additional, when will you like to...*

Tuan Pengerusi: *We are supposed to submit our report by the 18th of November 2019 and— so, in a way, we will be completing our sessions on by the 13th November, right? No. I think there is another one...*

[Ahli-ahli berbincang sesama sendiri]

Tuan Pengerusi: *So, basically we will need it— you know at least about a week before.*

Seorang Ahli: *[Berucap tanpa pembesar suara] 10 November.*

Tuan Pengerusi: *A week before the 18 November.*

[Ahli-ahli berbincang sesama sendiri]

SAC Dato' Mohd Azman bin Ahmad Sapri: *Mr. Chairman, with your permission. We have received the timeline on this select committee and we have listened from last week from the academician and from the police associations. We have listened that they are talking about welfare, talking about manpower. So, maybe I would suggest that the committee would like to call this department—Director of Management (Logistic) and Jabatan Integriti dan Pematuhan Standard (JIPS) to come and have some views on what really transpire and what is the shortcoming that we have problem.*

Tuan Pengerusi: *Yes, certainly we can invite them in our next session. Encik Syazwan, maybe you can make a note of that. Yes. Okey.*

[Mesyuarat dtempohkan pada pukul 6.43 petang]