



G25 Media Statement on the IPCMC Bill

G25 commends the Government for introducing in Parliament the IPCMC Bill on 18 July 2019 to establish an independent body known as the **Independent Police Complaints and Misconduct Commission** to essentially handle and investigate complaints against the police force; and in referring the Bill to the Special Select Committee on the Consideration of Bills.

The Bill is drafted pursuant to the proviso to Article 140, Clause (1), of the Federal Constitution that empowers Parliament to enact a law to establish a body to deal with matters concerning the discipline of the police force; notwithstanding the existence of the Police Force Commission that otherwise would deal with such matters.

The Special Select Committee has held 4 sessions in Johor, Penang, Kuching and Kota Kinabalu. The responses from the NGOs, stakeholders and members of the public have been encouraging. Many quarters, including the Royal Malaysian Police, have since offered their criticisms and ideas for improvements.

G25 wishes to offer our views in relation to the IPCMC Bill.

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The Bill states that the Prime Minister advises the King on the appointment of commissioners. We are of the view that the appointment process must be clearly provided for so as to ensure that the membership of the Commission reflects the diversity of Malaysian society; and that the appointment process is fair, transparent and merit based. A committee comprised of eminent persons (i.e. persons who have held high public offices such as former superior court judges or former senior Government legal officers, with distinguished record and known for their integrity) should be established to handle the appointment process and eventually submit the selected candidates to the Prime Minister, who shall then recommend the names to His Majesty. In the interest of the independence of the Commission, the Prime Minister should only have a nominal involvement in the appointment of IPCMC Commissioners.

The Bill provides that the King on the advice of Prime Minister may remove the Commissioners at any time. We respectfully suggest that the Commissioners be given security of tenure, just like Judges. This is an important step to improve integrity and to maintain the independence of the IPCMC.

As presently drafted, the power to make regulations for the purposes of enforcing the IPCMC Act is vested in the Prime Minister. We are of the view that the Commission should be empowered to make its own regulations, and not the Prime Minister. This will be logical and

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consistent with the fact that to be an independent body, the Commission should have the power to make and to amend its regulations from time to time in order to improve its enforcement framework and keep abreast with new developments.

8. Under the Bill the Prime Minister is empowered to amend, from time to time, the Schedule that provides for the composition of the Disciplinary Board. The Schedule is an integral part of the Act. We take the position that only Parliament should have the power to amend the Schedule and not the Executive.

Investigation powers of the IPCMC must be enhanced and be spelt out in greater details. The Commissioners and officers of the Commission should have all powers of investigation as contained in the Criminal Procedure Code and such powers shall be in addition to the powers conferred under the Act.

Specific sections must be inserted to the Bill to empower the IPCMC to, amongst others, conduct public hearings, summon witnesses, examine witnesses, compel the production of documents, and to provide for the arrest of witnesses, for purposes of investigation and hearings. There must also be a provision for legal representation. The IPCMC must not end up being a mere showpiece or a toothless tiger.

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Witness protection provision under the Bill is inadequate. Whistleblowers and secret witnesses must be protected. Anyone who threatens or deters anyone from giving evidence to the IPCMC must be punished heavily. The current proposal is a jail term of 2 years or a fine of RM10,000, or both. In our opinion this is inadequate. The punishment must be heavier. The Commission must be given powers to establish a Code or Guidelines that provides for a procedure of handling witnesses, whistleblowers and persons assisting the IPCMC. Only if the witness protection framework is clearly spelt out will public have confidence in lodging reports to the IPCMC.

The IPCMC Bill states that any misconduct committed under the Police Regulations and under the Inspector-General of Police's ("IGP") Standing Orders is exempted from the IPCMC's jurisdiction. This limitation is, in our view, without good grounds and section 22(2) of the IPCMC Bill providing for the same should be removed. The Inspector General's Standing Orders (IGSO) should be made public, as it is still classified under the Official Secrets Act 1972.

The IPCMC Bill allows the IPCMC to delegate any of its functions and powers to any member of the police force. We are of the view that this delegation provision should be excluded as it adversely affects the independence of the IPCMC.

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Under the Bill, complaints against the IGP will not be dealt with by the IPCMC. Instead, the complaint will be referred to the Chief Secretary to Government and a Special Disciplinary Board will be constituted. We are of the view that the Commission should be given the power to handle complaints against the IGP, no special treatment or protection should be given to the IGP under the IPCMC Bill. Consistent with the equality before the law provision of the Federal Constitution (Art. 8) the IGP must be subjected to the same level of scrutiny as other police officers.

The Bill imposes a duty on the police force to refer cases of grievous hurt or death in custody to the IPCMC. However, there is no specific time frame imposed on the police force to discharge this duty. In the interest of certainty we propose that there should be a time frame of 24 hours for the police force to refer the case to the IPCMC.

The Bill provides for the dissolution of the Enforcement Agency Integrity (EAIC). We are of the view that the EAIC must not be immediately dissolved upon the establishment of the IPCMC; not until the proposed Ombudsman is established. Otherwise, in the interim period pending the establishment of the Ombudsman, who is to deal with complaints and misconduct against the enforcement agencies that are now under the charge of the EAIC?

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What we are highlighting in this Statement are only some of the criticisms that we have. We have other misgivings about the Bill. But space does not allow us to mention all of them here. Undoubtedly, the current IPCMC Bill contains ambiguity and weaknesses, all of which must be amended and improved upon by the legislators. More research and consultation sessions with the public and NGOs must be conducted for purposes of improving the Bill. As it stands, the move forward is very clear: the Government must not rush through the enactment of the IPCMC Bill, and sufficient time must be spent by lawmakers and drafters to debate and to implement corrective measures in order to improve the IPCMC Bill before it is passed.

It is reported that the Royal Malaysian Police has criticized the Bill as being draconian and discriminatory. We respectfully beg to differ. We are of the opinion such apprehensions as expressed are unfair and unfounded. On the contrary, we find that the Bill contains many deficiencies, and needs looking into more seriously and improvements be made for the proposed law to really have bite. Any honest and professional police officer should have no fear of the Bill. On the contrary, the Bill, which is long overdue, should be welcomed.

We associate ourselves with the Hon. Mr. Ram Karpal Singh MP (Chairperson of the Special Select Committee) that with over 1,800 death-in-custody cases from 2010 to 2017, and the recent Malaysian Human Rights Commission's (SUHAKAM) findings that activists Amri Che Mat and Pastor Raymond Koh were victims of 'enforced disappearance', it was high time that

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a body with sufficient and effective investigative powers be set up to monitor disciplinary issues within the force.

G25 MALAYSIA
17 NOVEMBER 2019

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