

# Reform of The Malaysian Anti-Corruption Commission

The Malaysian Anti-Corruption Commission (MACC) was established in 2004 by Tun Abdullah Badawi and was modelled after Hong Kong's Independent Commission Against Corruption (ICAC). It is overseen by five independent committees.

Anti-Corruption Advisory Board	Special Committee on Corruption	Complaints Committee	Operations Evaluation Panel	Consultation & Corruption Prevention Panel (CCPC)
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However, the MACC faces many challenges in its work. There are limitations to the current setup of the commission that hamper the effective and independent fight against corruption.

The Malaysian Bar, together with the Institute for Democracy and Economic Affairs (IDEAS), Transparency International-Malaysia, the Centre to Combat Corruption and Cronyism (C4), and the Citizens' Network for a Better Malaysia (CNBM) aspire to empower the MACC and enhance current anti-corruption laws in Malaysia.

## Executive Summary of Civil Society Proposal

### What are we proposing?

#### IACC

Creating the Independent Anti-Corruption Commission (IACC). A constitutional commission that has the full autonomy to determine strategy, policy, the recruitment and disciplining of staff in its investigative arm, the Anti-Corruption Agency (formerly the MACC).

#### Amend the MACC Act

Expanding the definition of gratification and the power to investigate individuals living beyond his/her means by amending the Malaysian Anti-Corruption Commission (MACC) Act 2009.

#### Amend other Legislations

Namely the Official Secrets Act 1972 to allow for the declassification of documents that reveal corruption; enhancement of the Whistleblower Protection Act 2010, the Witness Protection Act 2009; adoption of a Freedom of Information Act and an Asset Declaration Law.

#### Separate Attorney General's roles

Separating the offices of the Attorney General and the Public Prosecutor and a review of prosecution practices to ensure that a conflict of interest between the two roles can be prevented.

## Frequently Asked Questions

Why do we need to reform the MACC again?

The MACC needs to be autonomous and independent from the executive. In order to combat corruption effectively, the independence of its Chairman and members of the commission must be ensured.

To reduce overall corruption however, we must improve the landscape. This is why we address the MACC Act 2009, other related laws and the role of the Attorney General.

It is important to create a structure that has a strong check and balance mechanism independent of executive interference.

Our proposal is to create a new Independent Anti-Corruption Commission (IACC). An independent, stand-alone, constitutional commission headed by constitutionally recognized Commissioners.

The new structure separates the IACC from the statutorily established MACC which will be renamed the Anti-Corruption Agency (ACA). The ACA will remain as the investigative arm for anti-corruption related matters but will report directly to the IACC instead.

The following are the proposed roles of the IACC and ACA respectively.

### Independent Anti-Corruption Commission (IACC)

- a. Appoints the Director General of the Anti-Corruption Agency
- b. Decides policy and overall anti-corruption strategy
- c. Reports directly to Parliament
- d. Manages resources including personnel, e.g., the hiring and disciplining of officers in the Anti-Corruption Agency
- e. Commissioners serve a three (3) year term in office, whereas the Chairperson serves a six (6) year term in office. Both have a maximum of two terms
- f. Financially independent. A separate fund can be determined either by Parliament, remuneration by way of the Service Commissions Act or the Consolidated fund

### Anti-Corruption Agency (ACA)

- a. Conducts investigations on corruption related issues
- b. Reports directly to the IACC

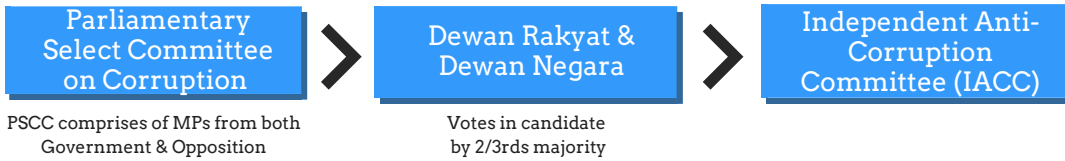
What will happen to the five oversight bodies of the MACC?

All current oversight bodies with the exception of the Parliamentary Select Committee on Corruption (formerly the Special Committee on Corruption) will be absorbed into the IACC as working groups under the IACC.

What is the proposed structure and role of the IACC and the IACA?

There should not be more than 15 members in the IACC. 60% should be from the public sector and 40% from members of civil society.

To ensure the independence of the commissioners in the IACC, the following procedure is proposed:

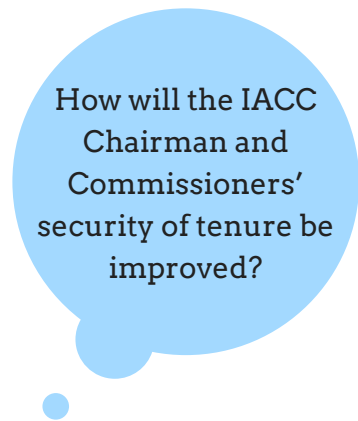


PSCC comprises of MPs from both Government & Opposition

Votes in candidate by 2/3rds majority

Candidates voted in by the Dewan Rakyat and Dewan Negara. To ensure the independence of the commissioners in the IACC. The following procedure is proposed:

Dewan Negara will then be submitted by the Prime Minister to the Yang di-Pertuan Agong for official appointment. The Chairman of the IACC will be identified by the Commissioners amongst themselves.



- Current Practice**
- The MACC Chief Commissioner is a Grade Turus II Officer (Senior Administration appointee)
  - He/she can be removed or transferred to another agency at the discretion of the Public Service Commission

- Our Proposal**
- Constitutionally guarantee security of tenure to the Chairman and Commissioners of the IACC
  - He/she can only be removed in a like manner of a judge, i.e., a tribunal appointed by the Yang di-Pertuan Agong

Section 23

Create broader definition of corrupt acts to include non-pecuniary (non-monetary) 'gratification'

Section 36

Expand MACC powers to investigate public officials living beyond their means



Amendments to Section 23 are based on provisions found in the Prevention of Corruption Act 1988 of India, under Section 13, whereas Section 36 is based on Section 10 of the Prevention of Bribery Ordinance of Hong Kong – both of which concern the offence of "public misconduct".



Other laws that need to be improved are the Whistleblower Protection Act 2010, Official Secrets Act 1972 and Witness Protection Act 2009.

Laws that need to be adopted are a Freedom of Information Act and an Asset Declaration Law.

The WPA 2010 as it stands, does not encourage whistleblowers to come forward. Some proposals to improve the Act:

1. Under WPA 2010 whistleblowers can only report corruption to an enforcement agency (MACC, Securities Commission and etc.). In other countries like the U.K. whistleblowers can speak to a lawyer, his/her employer, a Minister of the Crown or anyone prescribed by the Secretary of State- an amendment should allow individual's access to the above persons
2. Whistleblowers should be given regular updates on the status of the case throughout the entire process
3. Individuals who disclose matters related to the Official Secrets Act 1972 (OSA 1972) are not granted whistleblower status and protection. The WPA 2010 should assist in exposing wrongdoings and supersede the OSA 1972 in these matters

How can the Whistleblower Protection Act 2010 (WPA 2010) be improved?

How can the Witness Protection Act 2009 be improved?

### Current Practice

- The Witness Protection Act 2009 provides protection to a witness from threats before, during, or after a trial
- The Attorney General decides who to include into the Witness Protection Programme upon the recommendation of the Director General
- Appeals towards the Attorney General's decisions can only be made to the Minister of Home Affairs

### Our Proposal

- Avoid a conflict of interest when a witness is uncovering corruption within the executive by establishing an independent oversight body
- Investigations should include persons other than the police, e.g., retired judges or prosecutors
- The term 'witness' in the act must be expanded to include whistleblowers as is the case in Australia, Canada and the UK

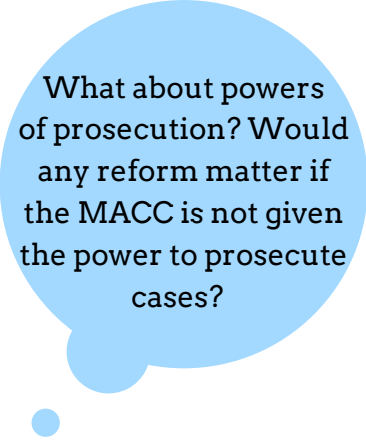
### Current Practice

- The OSA 1972 does not meet international law standards
- It imposes a blanket prohibition on any information deemed an "official secret" by the government
- This can be misused to hide corruption

### Our Proposal

- Amend OSA 1972 to allow declassification of documents that expose corruption
- Complement this with a Freedom of Information Act
- In the U.K. for example, the Freedom of Information Act 2000 has brought to light scandals involving public officials

What about the Official Secrets Act 1972? Should we have a Freedom of Information Act?



What about powers of prosecution? Would any reform matter if the MACC is not given the power to prosecute cases?

Many have advocated for providing the MACC with prosecutorial powers. However, it should be noted that some of the most effective anti-corruption institutions such as Hong Kong's ICAC do not have powers of prosecution.

In Malaysia, the Office of the Attorney General and the Office of the Public Prosecutor are joined together. Article 145 of the Federal Constitution confers the powers of prosecution on the Attorney General in his capacity as the Public Prosecutor.

In Brazil the Prosecution Service is completely independent from the Executive, Legislative or Judicial Branch. The Public Prosecutor's independence is guaranteed by the Constitution and can bring cases to the Federal Supreme Court to handle cases involving judicial reviews and criminal offences committed by legislators at the federal level, members of cabinet and the President of Brazil.

However, it would be difficult to give the MACC prosecutorial powers as it would:

1. Require an amendment to Article 145(3) of the Federal Constitution;
2. Lead to an overlap of prosecutorial and investigative functions that are currently separately conferred on the Attorney General as Public Prosecutor and the MACC respectively; and
3. Lack basis in granting one enforcement agency prosecutorial powers and denying others such as the Police.

The office of the Attorney General and the Public Prosecutor should be separated by way of a constitutional amendment.