

## **LETTER | Malaysia needs an Ombudsman – now**

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**C4 Center**

LETTER | The auditor-general reported in late March that non-compliance with financial management resulted in issues of irregular payments amounting to RM1.299 billion, loss of public funds of RM11.45 million, and a waste of RM8.87 million to the government in 2020.

With clear evidence that the government administration is haemorrhaging taxpayer money, a solution to this issue is sorely needed – while the auditor-general serves a vital function, their report only reflects the state of public funds after its wastage and mismanagement are irreversible. The introduction of an Ombudsman will serve to contain these issues at their root.

Prime Minister Ismail Sabri Yaakob announced in September 2021 that an Ombudsman Bill would be tabled in 2022, an announcement that was welcomed by civil society organisations including the Centre to Combat Corruption and Cronyism (C4 Centre), which had released a statement urging the government to introduce a strong and independent Ombudsman without delay.

Abu Kassim Mohamed, former director-general of the National Governance, Integrity, and Anti-Corruption Centre (GIACC) told a news portal in October 2019 that the Ombudsman would come into operation in the first quarter of 2020 if its corresponding bill was tabled in Parliament by December 2019.

However, the February 2020 coup and ensuing political instability derailed the plan, further delaying the tabling of the bill.

After coming into power, the Perikatan Nasional government pledged to continue the previous administration's efforts; in a November 2020 parliamentary reply, former law minister Takiyuddin Hassan said that the proposed Ombudsman Bill was submitted to the Attorney-General's Chambers (AGC) for review and approval before it is to be tabled in Parliament.

However, the continued political instability resulted in a new cabinet and prime minister who announced a new deadline, delaying bill's tabling even further.

Ismail Sabri on Sept 14, 2021 announced that the Ombudsman Bill is at its final stage of "drawing-up" and its draft was submitted to the AGC on Aug 24, 2021, stating that the bill would be tabled in Parliament by 2022.

His announcement was made in a written parliamentary reply to a question

posed by Sungai Buloh MP R Sivarasa.

It is already May 2022 – where is the bill? Would it be tabled before Parliament is dissolved and elections are held? Malaysians are tired of promise after promise of a vital accountability mechanism, only to be followed by silence.

The establishment of an Ombudsman was promised under the National Anti-Corruption Plan (NACP), compiled in 2019.

While the NACP was admittedly the product of a previous government that is no longer in power, it remains that the current government must channel effort and resources into bringing the NACP into fruition – no less because the NACP's strategies are in accordance with the principles outlined in the United Nations Convention Against Corruption (UNCAC), and because the government remains dogged by allegations of corruption and misappropriation of funds, demonstrating the need to establish an accountability mechanism without delay.

The Ombudsman has been a long-awaited mechanism in Malaysia, with proponents stressing its vital function in ensuring that public complaints against government administration can be adequately investigated.

In anticipation of a concrete Ombudsman proposal, activists and advocacy

groups have pointed toward Ombudsman in other countries, such as New Zealand, that would serve as a model to emulate.

### **Public Complaints Bureau**

In lieu of an Ombudsman, Malaysia instead has a Public Complaints Bureau (PCB), established in 1971, that purports to serve a similar purpose: handling the public's grievances against the administration and addressing them accordingly.

The question then arises: if a PCB exists, why is there still a need to implement an Ombudsman if they are functionally similar?

One of the main considerations for the establishment of an Ombudsman over the existing PCB is its independence. As it stands, the PCB is an agency situated under the Prime Minister's Department.

It reports to the Permanent Committee on Public Complaints, which is in turn responsible to the cabinet. Consequently, the PCB does not sit independently from the executive branch.

In 2010, Dr Tam Weng Wah, former director-general of the PCB stated in the Malaysiakini article "PCB performs similar function as Ombudsman" that the PCB

being an agency under the Prime Minister's Department meant that it carried an "implicit authority" and hence, other government departments and agencies under investigation or called to provide explanation were less likely to ignore matters brought to their attention.

While this point might be valid, it does not dispel the possible issues that arise from the PCB's lack of independence, namely their ability to remain impartial in handling complaints against members of the executive branch itself, including the administration of projects and services.

Additionally, the standards for evaluating the conduct of public officials cannot be applied to government practices and policies – the PCB is hence unable to receive complaints of this nature.

On the other hand, the Ombudsman would be appointed under an act of Parliament, with confirmation requiring the consent of every party in Parliament.

The Ombudsman ultimately reports the results of all investigations and inquiries to Parliament as well. The independence and impartiality of the Ombudsman are far more assured as it is a body divorced from the government and from any political party.

Another crucial factor in deciding the suitability of a complaint investigation body is transparency.

The PCB has no power to make complaints it receives public, and no power to report any matters to Parliament. Public interest complaints are instead brought to the attention of the permanent committee and cabinet.

This issue is concerning on two levels: the first is that under the PCB, the possibility that complaints – even regarding major instances of maladministration or misconduct on the government's end – may never be made known to Parliament or to the public, thus greatly limiting the extent to which the government can be held accountable for their wrongful acts.

Secondly, the ability of the PCB to provide meaningful resolution to complaints made regarding the government and civil service is greatly hampered by the fact that public interest complaints are escalated to the cabinet.

The executive cannot function as their own oversight mechanism to investigate and resolve complaints made against them; doing so would constitute a clear conflict of interest violation.

The introduction of an Ombudsman would serve to resolve the transparency

issues inherent to the PCB as they are empowered to report matters and make recommendations to Parliament; these reports are also made public.

This allows the results of inquiries to be scrutinised by individuals across the political spectrum, opening them up for further inquiry if need be.

Additionally, the Ombudsman can also compel the relevant ministry or agency to publicise its own misconduct.

A further advantage of an Ombudsman is its ability to integrate with existing accountability frameworks.

In receiving real-time complaints, the Ombudsman can work alongside the MACC and the auditor-general to keep track of projects that are mismanaged or failing, or instances of malpractice by the civil service.

The demonstrable benefit is that the Ombudsman can receive complaints regarding possible corruption to raise to MACC's attention – this would allow the MACC to open investigations into complaints it otherwise may not have had access to, as well as being able to divide the work of investigations between separate bodies.

With all that has been said, the precise functions of a Malaysian Ombudsman remain speculative without a proper Ombudsman Bill.

The Ombudsman functions outlined here reference the New Zealand Ombudsman, which should serve as an aspirational model, prioritising independence and transparency in a complaints investigation body that has been found lacking in the current PCB.

The introduction of an Ombudsman can no longer be delayed – its role is more vital now than ever before.

Malaysia's procurement system is infamously inefficient and corrupt, leading to the provision of subpar services and the enrichment of individuals who exploit the business-political nexus, the cost of which is borne by Malaysian citizens.

C4 Centre is requesting an official explanation from the government as to the status of the current Ombudsman Bill and why it has yet to be tabled in Parliament despite assurances made by Ismail Sabri.

If there is a legitimate reason for the delay, that reason needs to be made publicly announced in the interests of maintaining transparency.

If the government is not yet ready to table the Ombudsman Bill, consultations with civil society organisations should be made for the draft Bill to undergo scrutiny, ensuring that a proposed Ombudsman holds up to the standards of a robust and independent accountability mechanism.

Additionally, C4 Centre reiterates that the following criteria must be incorporated into the prospective Malaysian Ombudsman to ensure its role as an independent investigative body will be fulfilled:

1. The status and criteria for Ombudsman must be set up as an independent body;
2. Structure and appointments of the Ombudsman must be free of political interference, and go through a rigorous application and interview process, determined by a Parliamentary Select Committee;
3. The powers and jurisdiction of the Ombudsman as well as the wrongdoing (in public service) to be subjected to punitive actions under a specific Act;
4. Findings of investigations (especially those involving public interest) must be made public; and

5. The mechanism for the preparation of Budget allocations for Malaysian Ombudsman must be made via Parliament.

Poor governance and the proliferation of corruption in Malaysia cannot be allowed to continue any further.

The establishment of an Ombudsman is a vital step towards ensuring that the practices of corruption and cronyism so embedded into our system is eliminated.

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