

STRUCTURING THE MALAYSIAN OMBUDSMAN OFFICE

WHY DOES MALAYSIA NEED AN OMBUDSMAN OFFICE?

To ensure good governance and efficient public service, independent oversight of the public service is crucial. At present, this is managed by the Public Complaints Bureau (PCB) – an agency stationed under the Prime Minister’s Department (PMD) and governed by administrative circulars. It lacks statutory foundation and is vulnerable to political interference. Establishing an Ombudsman with statutory powers, independent from direct government control, can prevent such risks and enhance public confidence.

SCOPE OF OMBUDSMAN OVERSIGHT

- Ombudsman institutions address citizen grievances regarding public administration. They primarily focus on cases of maladministration, such as non-compliance with laws and procedures, poor service, or unjust decisions.
- The jurisdiction of the Malaysian Ombudsman’s authority should encompass the public services as per the Federal Constitution, federal statutory bodies, and privatised public utility providers.
- To optimize efficiency and resource utilization, the Ombudsman should not overlap with existing oversight bodies such as the Malaysian Anti-Corruption Commission (MACC), Human Rights Commission of Malaysia (SUHAKAM), and Independent Police Conduct Commission (IPCC).
- The Enforcement Agency Integrity Commission (EAIC), which deals with misconduct by enforcement officers, serves a similar role to the Ombudsman on a smaller scale. Consolidating efforts and resources between the Ombudsman and the EAIC can result in a more streamlined and effective oversight infrastructure.
- A federal Ombudsman would not have power to oversee state public services due to constitutional separation of powers between federal and state governments.

PRESERVING AUTONOMY

- Preserving the autonomy of the Ombudsman demands robust structural measures, especially in appointing and removing Ombudspersons, staffing, and budgeting. Existing laws governing oversight institutions like MACC and SUHAKAM grant the Prime Minister unilateral discretion in appointments and removals, creating a conflict of interest. Therefore:
- Parliament should be empowered to decide on appointments (and removals), either through a parliamentary vote or a Parliamentary Select Committee.
 - Ensuring transparency and open calls for candidates would guarantee the selection of the most qualified individuals.
 - For removals, a comprehensive list of clear conditions, akin to those for judges under Article 125(3) of the Federal Constitution and the Judges Code of Ethics, must be statutorily defined.
 - The Ombudsman office should have the autonomy to govern its own affairs without interference from the Executive, allowing independent decision-making on crucial matters such as staffing and budgeting.

GRANTING SUFFICIENT INVESTIGATIVE POWERS TO THE OMBUDSMAN

1. Enhancing Ombudsman Effectiveness

- Granting broad investigative powers is vital for the Ombudsman's primary role to investigate complaints.
- This includes the ability to require cooperation with investigations, and unrestricted access to relevant documents and premises.

2. Enforcement Powers

- The Ombudsman should not have enforcement powers to implement its findings.
- It is not ideal for the Ombudsman to compel implementation of its recommendations as they may not be privy to certain relevant factors and may not be best suited to balance competing interests.
- Empowering the Ombudsman with the authority to penalize public servants would overstep constitutional powers and could divert resources towards managing disciplinary processes, potentially deviating from its primary investigative focus.
- Allowing the Executive some discretion in this regard maintains a balanced approach, but alternative measures should be introduced to ensure the Government can still be held accountable in the event of failures.

3. Government Accountability Measures

- To ensure transparency, a statutory requirement should be introduced for Government/Service Commissions to provide detailed written reasons if Ombudsman recommendations are not followed.
- These written reasons should be submitted to the Ombudsman, who can then refer the matter to a Parliamentary Select Committee.
- This Parliamentary Select Committee should be specifically constituted to consider Ombudsman reports, and should use all powers under the Standing Orders to conduct further questioning of public officers or ministers.

4. Legal Standing

- Conferring statutory standing on the Ombudsman to initiate legal proceedings in cases of fundamental liberties violations resulting from maladministration adds an additional layer of protection for complainants.
- This is crucial when reliance on the judiciary's coercive power is necessary for addressing certain complaints effectively.

To download the full C4 Center report, "Structuring the Malaysian Ombudsman Office", visit c4center.org.