



THE CENTER TO COMBAT
CORRUPTION AND CRONYISM

Who Holds the MACC Accountable?

*Improving Oversight of the Malaysian
Anti-Corruption Commission*



Who Holds the MACC to Account? Improving Oversight of the Malaysian Anti-Corruption Commission
The Center to Combat Corruption and Cronyism (C4 Center)

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List of Abbreviations

Abbreviation	Definition
1MDB	1Malaysia Development Berhad
GE14	14 th General Elections
ACAB	Anti-Corruption Advisory Board
ACA	Anti-Corruption Agency
AG	Attorney General
AGC	Attorney General's Chambers
BERSATU	Parti Pribumi Bersatu
BERSATU Youth Wing	Armada
C4 Center	The Center to Combat Corruption and Cronyism
CNBM	Citizens' Network for a Better Malaysia
CC	Complaints Committee
CCPP	Consultation and Corruption Prevention Panel
COSP	The Conference of States Parties to the UNCAC
IDEAS	Institute for Democracy and Economic Affairs
LCS	Littoral Combat Ships
MACC	Malaysian Anti-Corruption Commission
MACC Act 2009	Malaysian Anti-Corruption Commission Act 2009
MPD	Management and Professionalism Division
MP	Member of Parliament
ORP	Operations Review Panel
PSSC	Parliamentary Special Select Committee
PP	Public Prosecutor
RCI	Royal Commission of Inquiry
SC	Securities Commission
SCC	Special Committee on Corruption
SUHAKAM	Human Rights Commission of Malaysia
TI-M	Transparency International Malaysia
UNCAC	United Nations Convention against Corruption
UNODC	United Nations Office on Drugs and Crime
YB	Yang Berhormat

Executive Summary

The Malaysian Anti-Corruption Commission (MACC) was established as an independent body to investigate and prevent corruption. However, persistent public controversy, repeated allegations of misconduct involving MACC officers, and high-profile cases of apparent political interference have raised serious questions about whether the Commission is meaningfully independent and accountable.

Under Section 5(1) of the Malaysian Anti-Corruption Commission Act 2009 (MACC Act 2009), the MACC Chief Commissioner is appointed by the Yang di-Pertuan Agong on the advice of the Prime Minister. When read together with Article 40(1A) of the Federal Constitution, this places effective control over appointment in the hands of the Prime Minister. Section 5(3) of the MACC Act 2009 further provides that the Chief Commissioner holds office “at the pleasure of the Yang di-Pertuan Agong”, subject to the Prime Minister’s advice, giving rise to concerns regarding security of tenure and vulnerability to executive influence - particularly in cases involving members of the government or the Prime Minister’s political associates.

Since the MACC’s establishment in 2009, there has been no comprehensive reform of its institutional oversight framework. In response to calls for reform, MACC leadership has consistently asserted that the Commission is sufficiently independent by virtue of its “framework of five independent oversight committees”, and has rejected proposals to place the MACC under parliamentary oversight, the Enforcement Agency Integrity Commission, or the proposed Ombudsman Malaysia.

The five oversight bodies are:

- The Anti-Corruption Advisory Body (ACAB);
- The Special Committee on Corruption (SCC);
- The Complaints Committee (CC);
- The Operations Review Panel (ORP); and
- The Consultation and Corruption Prevention Panel (CCPP).

This report evaluates whether these bodies, individually and collectively, provide meaningful oversight that aligns with international standards on anti-corruption agency independence and accountability. Drawing on the United Nations Convention against Corruption (UNCAC), its Legislative and Technical Guides, the Jakarta Statement on Principles for Anti-Corruption Agencies, and the Colombo Commentary, the report demonstrates that independence is not achieved through insulation from scrutiny, but through insulation from improper influence combined with robust, transparent, and enforceable accountability.

The report analyses the legal mandates and composition of the five oversight bodies, and examines their operation through case studies including the death of Teoh Beng Hock, the MACC’s investigation of Najib

Razak, the Azam Baki shareholding scandal, the sidelining of the SCC's recommendations, and allegations of witness coercion in the Syed Saddiq case.

The report finds that the effectiveness of Malaysia's MACC oversight framework is undermined by deficiencies in three core areas: transparency, institutional accountability, and enforceability.

First, oversight activity is opaque. With limited exceptions, oversight bodies are not required to publish findings, recommendations, dissenting views, or reasons for decisions. This opacity prevents Parliament and the public from assessing whether oversight is rigorous, and allows contradictory narratives to persist without institutional resolution.

Second, the MACC is not meaningfully accountable to its oversight bodies. None of the five bodies can compel formal responses, require written justifications, or impose timelines for compliance. Even where serious concerns arise, engagement with oversight remains discretionary.

Third, oversight outcomes are not enforceable. The oversight bodies lack powers to initiate investigations, compel testimony, require production of documents, or mandate disciplinary action. As a result, accountability terminates at observation rather than consequence.

These weaknesses are compounded by concentration of Executive control. The Prime Minister appoints members of all five oversight bodies, appoints the MACC Chief Commissioner, and advises on the appointment of the Attorney General, creating a vertically integrated structure in which oversight bodies, the institution under oversight, and prosecutorial authority are embedded within the same executive chain of influence. Appointment criteria for oversight bodies are broadly and vaguely defined, providing little constraint on executive discretion.

Taken together, Malaysia's current model produces the opposite of what UNCAC envisages: strong insulation of the MACC from external scrutiny, combined with weak protection against political influence. This inversion helps explain persistent public scepticism toward the MACC, recurring allegations of selective prosecution, and declining confidence in anti-corruption enforcement.

Key Findings

- The existence of multiple oversight bodies does not equate to meaningful accountability;
- Oversight activity relating to the MACC is largely opaque and occurs behind closed doors;
- The MACC is not meaningfully required to respond to or justify its position on oversight findings;
- None of the five oversight bodies possess powers to investigate misconduct, compel evidence, or impose consequences;
- The Prime Minister exercises decisive control over appointments to the MACC, its oversight bodies, and the Attorney General's office;

- Appointment criteria for oversight bodies are vague and subjective, enabling discretionary selection; and
- Oversight responsibility is fragmented across multiple weakly empowered bodies, allowing institutional buck-passing.

Key Recommendations

To realign Malaysia's anti-corruption framework with international standards, this report recommends:

- Expanding Ombudsman Malaysia's jurisdiction to include the MACC, enabling an independent body with investigatory powers to handle complaints of maladministration and misconduct within the Commission;
- Establishing a Parliamentary Special Select Committee dedicated to overseeing the MACC, with powers to summon witnesses, request documents, and oversee the appointment and removal of the Chief Commissioner;
- Reframing the ACAB, ORP, and CCPP as advisory or support bodies with strengthened transparency obligations, while relocating true oversight functions to Parliament and the Ombudsman; and
- Separating the offices of the Attorney General and Public Prosecutor, with an independent Public Prosecutor appointed through a non-executive-dominated process and governed by clear prosecutorial guidelines.

1. Introduction

Report Objective

In Malaysia, corruption is a major public interest issue. According to the National Anti-Corruption Strategy 2024-2028, the cumulative estimated loss of Malaysia's Gross Domestic Product between 2019 to 2023 was RM277 billion.¹ In the past decade alone, numerous corruption scandals have come to light, costing billions in public funds, including 1Malaysia Development Berhad (1MDB),² the flawed procurement of the Littoral Combat Ships (LCS),³ and *Jana Wibawa*,⁴ among others.

As a result, the enforcement agency responsible for fighting corruption – the Malaysian Anti-Corruption Commission (MACC) – has faced significant public criticism and mistrust for its lack of effectiveness in curtailing grand corruption.

A central criticism levied against the agency is its lack of institutional independence. The MACC Chief Commissioner is appointed by the Yang di-Pertuan Agong on the advice of the Prime Minister, pursuant to Section 5(1) of the Malaysian Anti-Corruption Act 2009 (MACC Act 2009). When read together with Article 40(1A) of the Federal Constitution, the appointment of the MACC Chief Commissioner is effectively under the full discretion of the Prime Minister. This results in a direct conflict of interest when corruption cases investigated by the MACC involve the Prime Minister and their personal or political associates.

Furthermore, Section 5(3) of the MACC Act 2009 stipulates that the Chief Commissioner “holds office at the pleasure of the Yang di-Pertuan Agong, subject to the advice of the Prime Minister”. In effect, the Prime Minister also holds the discretionary power to dismiss the MACC Chief Commissioner. This means that the Chief Commissioner's tenure is subject entirely to the Prime Minister's will, resulting in deep uncertainty when holding office and further bolstering the potential for Executive interference over the MACC's operations.

Recent reports in the media seem to substantiate these concerns. In 2024, Bloomberg alleged that Prime Minister Anwar Ibrahim instructed the MACC Chief Commissioner, Azam Baki, not to investigate his former political secretary, Farhash Salvador, despite his questionable share purchases in HeiTech Padu

¹ National Anti-Corruption Strategy, 2024-2028. Pg. 18.

² Ellis-Petersen, H. (2020, July 28). *1MDB scandal explained: a tale of Malaysia's missing billions*. The Guardian. <https://www.theguardian.com/world/2018/oct/25/1mdb-scandal-explained-a-tale-of-malaysias-missing-billions>.

³ Ganesan, R.R. (2022, Aug 14). *LCS scandal: A summary of events*. Free Malaysia Today. <https://www.freemalaysiatoday.com/category/nation/2022/08/14/lcs-scandal-a-summary-of-the-events>.

⁴ Khairulrijal, R. (2025, Oct 7). *Muhyiddin Yassin to face full trial on seven Jana Wibawa corruption charges*. New Straits Times. <https://www.nst.com.my/news/nation/2025/10/1288985/muhyiddin-yassin-face-full-trial-seven-jana-wibawa-corruption-charges>.

shortly before the company secured lucrative government contracts.⁵ Bloomberg further alleged that Anwar directed the MACC to investigate his political rivals: former Finance Minister Daim Zainuddin and the sons of ex-Prime Minister Mahathir Mohamed.⁶ Anwar initially denied these allegations, and investigation papers for criminal defamation against Bloomberg were submitted to the Attorney General's Chambers (AGC). However, over a year later, it was stated in Parliament that the AGC had classified the case as "no further action" due to insufficient evidence.⁷

In effect, the Prime Minister possesses wide influence over the country's primary anti-corruption agency – an agency equipped with significant enforcement powers akin to the police. Key provisions in the MACC Act 2009 provides MACC officers with considerable investigative and enforcement powers, including:

- Section 10 – "All the powers and immunities of a police officer";
- Section 29 – Powers to conduct investigations;
- Section 30 – Powers to examine persons and summon witnesses;
- Section 31 – Powers to search and seize premises and personal belongings;
- Sections 33 and 38 – Powers to seize movable and immovable property;
- Section 35 – Powers to investigate personal and company financial records;
- Section 36 – Powers to obtain information;
- Section 43 – Powers to intercept communications;
- Section 44 – Powers to withhold travel documents; and
- Section 49 – Powers to arrest and detain individuals.

Despite the severity of criticism towards the Commission, since its establishment in 2009, no major reform of the MACC has been instituted. Comments from the MACC have also indicated internal reluctance for reform. In recent years, separate calls to place the commission under the purview of Parliament, the Enforcement Agency Integrity Commission,⁸ and the proposed Ombudsman Malaysia have been vehemently rejected by the MACC and Azam Baki.⁹ In the face of these calls, the MACC has persistently asserted that it is independent, and that it has in place effective "check-and-balance mechanisms" that keep the commission accountable.

⁵ Koswanage, N. & Redmond, T. (2024, Sep 26). Anwar's Feud With 99-Year-Old Rival Looms Over Malaysia's Revival. Bloomberg. <https://www.bloomberg.com/news/features/2024-09-25/malaysia-pm-anwar-s-feud-with-mahathir-looms-over-country-s-revival>.

⁶ Ibid.

⁷ Malaysiakini. (2025, Nov 5). NFA: AGC closes case on Bloomberg report alleging PM meddled in MACC. <https://www.malaysiakini.com/news/759927>.

⁸ New Straits Times on 4 June 2024: <https://www.nst.com.my/news/nation/2024/06/1058916/azam-baki-macc-already-governed-specific-laws-watch>

⁹ Ibid.

In particular, defenders have pointed to the existence of five oversight bodies tasked with overseeing the MACC's operations,^{10 11} as follows:

- The Anti-Corruption Advisory Body (ACAB);
- The Special Committee on Corruption (SCC);
- The Complaints Committee (CC);
- The Operations Review Panel (ORP); and
- The Consultation and Corruption Prevention Panel (CCPP).

Azam Baki has argued that this “framework of five independent oversight committees ensures that [the] MACC remains answerable to the public, while protecting our operational independence,”¹² and that “the MACC is the only agency in Malaysia to be monitored by five independent oversight bodies.”¹³ However, a critical look at the bodies above indicate several serious issues regarding their independence and whether they keep the MACC accountable to the public. In fact, upon closer examination, describing these five organisations as “oversight bodies” may even be misleading, as each body only holds advisory functions with limited investigatory powers. Furthermore, the advice given is not always publicly available and its implementation is at the sole discretion of the MACC.

This report examines the effectiveness of these bodies and highlights major structural weaknesses that reveal severe limitations of accountability and oversight for the MACC. Key aspects to note at the outset are that:

- Members of all five oversight bodies are appointed at the unilateral discretion of the Prime Minister;
- There is a lack of transparency over the appointment or exercise of functions of all oversight bodies;
- There is a lack of transparency regarding the advice of the oversight bodies and how they are acted upon; and
- The oversight bodies do not provide a sufficient external complaints mechanism to investigate complaints against the MACC.

¹⁰ New Straits Times on 11 October 2024: <https://www.nst.com.my/news/nation/2024/10/1118409/c4-called-out-baseless-claims-against-macc>

¹¹ New Straits Times on 10 October 2024: <https://www.nst.com.my/news/nation/2024/10/1117831/malaysian-corruption-watch-supports-maccs-efforts>

¹² Bernama on 29 April 2025: <https://www.bernama.com/en/news.php?id=2417874>

¹³ New Straits Times on 17 June 2024: <https://www.nst.com.my/news/nation/2024/06/1064486/azam-focus-3-areas-watch>

Background of the MACC

Ascending to the premiership in 2003 after the 22-year tenure of Mahathir Mohamed, Abdullah Ahmad Badawi faced major public pressure to tackle corruption issues that had emerged and been left unaddressed by his predecessor.¹⁴

Among these concerns was the widespread practice of crony capitalism by Mahathir's administration, particularly in the award of multi-million-ringgit mega projects.¹⁵ Opposition to this form of capitalism became a major call of the *Reformasi* movement, led by ousted Deputy Prime Minister Anwar Ibrahim, who demanded an end to “corruption, cronyism, and nepotism” in the Malaysian government.¹⁶ Seeking to distinguish himself from Mahathir,¹⁷ upon entering office, Abdullah Badawi proclaimed that his “first priority” was to fight corruption.¹⁸

In 2009, five years into his tenure, the MACC was established.¹⁹ The newly-established MACC was billed as a transformation of its predecessor, the Anti-Corruption Agency,²⁰ which had been “admonished for perceived selective investigations and [a] lack of independence”.²¹ According to then-Minister in the Prime Minister's Department (Legal Affairs) Nazri Abdul Aziz, newly-inserted provisions in the MACC Act 2009 improved upon the Anti-Corruption Act 1997 and “bolstered anti-corruption efforts” with a wider range of powers afforded to officers in conducting investigations.²² Notably, the MACC would be modelled after Hong Kong's much-lauded Independent Commission Against Corruption, which had gained international recognition for rapidly reducing the rate of corruption on the island.²³

This optimism would be tarnished mere months after the MACC's establishment. In July 2009, Teoh Beng Hock, political aide from the Democratic Action Party (DAP), died in MACC custody.²⁴ Until today, not a

¹⁴ Caballero-Anthony, M., Political Transitions in Southeast Asia, *Southeast Asian Affairs*, (2005), available at <<http://www.jstor.org/stable/27913274>>, p.29

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ Ibid.

¹⁸ Siddiquee, N.A., Combating corruption and managing integrity in Malaysia: A critical overview of recent strategies and initiatives, *Public Organization Review*, (2010) available at <https://www.academia.edu/download/105775975/Combating_20Corruption_20and_20Managing_20Integrity_20in_20Malaysia.pdf>, p.160

¹⁹ Ibid.

²⁰ Ibid.

²¹ Free Malaysia Today on 31 December 2021: <https://www.freemalaysiatoday.com/category/opinion/2021/12/31/respond-to-allegations-against-macc/>

²² Parliament Hansard dated 15 December 2008, page 1-2.

²³ Watt, W.Y., The Hong Kong model-building an effective anti-corruption agency, *Global Public Policy and Governance*, (2024), available at <<https://doi.org/10.1007/s43508-024-00090-9>>, p. 287-296

²⁴ R.AGE on 16 July 2019: <https://www.rage.com.my/teohbenghock/>

single MACC officer involved in his detention has been held accountable, despite multiple investigations and a court ruling implicating their role in his death.

The proceeding years would see the government beset by scandal after scandal, with several public institutions – the National Feedlot Corporation,²⁵ *Yayasan Wilayah Persekutuan*,²⁶ *Majlis Amanah Rakyat*,²⁷ *Lembaga Tabung Haji*,²⁸ and, 1MDB – having been alleged or proven to have been utilised for corrupt purposes. Within this period, almost every single actor involved escaped any form of accountability, with the MACC's efficacy in handling high-profile corruption cases being called into constant question by the public.

In light of major criticisms, it became evident that the MACC itself was in need of significant reform. In 2015, the Malaysian Bar, alongside the Center to Combat Corruption and Cronyism (C4 Center), the Institute for Democracy and Economic Affairs (IDEAS), Transparency International Malaysia (TI-M), and Citizens' Network for a Better Malaysia (CNBM) submitted a memorandum proposing several wide-sweeping reforms of the commission.²⁹ The crux of this proposal was the creation of an independent and accountable MACC through the establishment of a statutorily independent service commission to oversee the MACC.³⁰

During the 2018 General Elections, the *Pakatan Harapan* coalition forefronted anti-corruption reform in their campaign, promising to place the MACC under Parliament in their manifesto.³¹ Having come into power off the back of this rhetoric, *Pakatan Harapan* would subsequently launch the National Anti-Corruption Plan 2019-2023, emphasising the need to “empower the MACC in terms of the appointment of Chief Commissioner, budgetary, oversight committee, establishment of service commission and manpower”.³²

The collapse of the *Pakatan Harapan* government after 22 months, and the period of acute political instability that followed – in which three governments were formed within two years – effectively derailed hopes for meaningful reform. As shifts in political allegiance became increasingly commonplace, political

²⁵ Kaur, M. (2018, Aug 6). *Putrajaya taking legal action against NFC over unsettled debts*. Free Malaysia Today. <https://www.freemalaysiatoday.com/category/nation/2018/08/06/putrajaya-taking-legal-action-against-nfc-over-unsettled-debts>.

²⁶ Gomez, E.T. & Kunaratnam, L. (2021). *Foundations and Donations: Political Financing, Corruption, and the Pursuit of Power*. The Center to Combat Cronyism and Corruption. Pg.7-10.

²⁷ Malaysiakini. (2015, Jun 23). *Mara fingered in Aussie property scam*. <https://www.malaysiakini.com/news/302755>.

²⁸ Gomez, E.T. & Kunaratnam, L. (2021). *Foundations and Donations: Political Financing, Corruption, and the Pursuit of Power*. The Center to Combat Cronyism and Corruption. Pg. 50-52.

²⁹ Malaysian Bar et al, Memorandum for the Reform of the Malaysian Anti-Corruption Commission Submitted to YB Senator Paul Law, Minister in the Prime Minister's Office (2015)

³⁰ Ibid.

³¹ Pakatan Harapan, *Buku Harapan: Rebuilding Our Nation, Fulfilling Our Hopes* (2018), p.41

³² National Anti-Corruption Plan 2019-2023, (2019), p.51

leaders appeared more preoccupied with power than institutional reform. To date, despite sustained scrutiny of the MACC's integrity and performance, the commission remains largely unchanged from the structure originally proposed in the Malaysian Anti-Corruption Commission Bill 2008.

Report Breakdown

This report is primarily based on desk research, drawing on a review of international legal instruments, Malaysian legislation, government publications, parliamentary records, and media reporting. These sources were analysed to map the formal mandates, composition, and institutional design of the MACC's five oversight bodies, and to assess how their structural features align with internationally recognised principles on independence and accountability.

Chapter Two provides an overview of the five oversight bodies by outlining their functions and composition. Chapter Three reviews of international standards pertaining to the independence and accountability of an anti-corruption commission to set out an ideal governance structure. Chapter Four analyses relevant case studies illustrating existing weaknesses present within the MACC's accountability framework. The final chapters will provide an analysis of the oversight bodies and provide recommendations to overcome identified issues within the oversight mechanisms.

2. The MACC Check and Balance Mechanism

2.1. Overview

Five oversight bodies monitor the MACC's roles, functions, and exercise of powers under the law. Three oversight bodies were established by the MACC Act 2009, while two were created through Administrative Orders issued by the Prime Minister.

Statutory Bodies	Administrative Bodies
Anti-Corruption Advisory Board	Operational Review Panel
Special Committee on Corruption	Consultation and Corruption Prevention Panel
Complaints Committee	

Table 1 A table listing the five MACC oversight bodies according to their mode of establishment

This chapter outlines the roles of the MACC's oversight bodies, focusing on their scope, powers, and limitations in promoting accountability, independence, and operational efficiency.

2.2. Statutory Framework

The MACC Act 2009 establishes three bodies tasked with differing advisory and monitoring functions in relation to the MACC:

- The Anti-Corruption Advisory Board (ACAB)
- The Special Committee on Corruption (SCC)
- The Complaints Committee (CC)

Their statutory functions are listed in the table below.

Body	ACAB	SCC	CC
Function	To advise the MACC on:	To advise the Prime Minister on any aspect of	To monitor the handling by the MACC of complaints of misconduct which is non-

	<ul style="list-style-type: none"> • any aspect of the corruption problem in Malaysia • its policies and strategies to eradicate corruption <p>To receive, scrutinise and endorse proposals from the MACC towards the efficient and effective running of the Commission</p> <p>To scrutinise and endorse resource needs for the MACC to ensure its effectiveness.</p> <p>To scrutinise the MACC's annual report before its submission to the SCC.</p> <p>To submit its comments to the SCC as to the exercise by the MACC of its functions under the MACC Act 2009.</p>	<p>the corruption problem in Malaysia.</p> <p>To examine:</p> <ul style="list-style-type: none"> • the annual report of the MACC • the comments of the ACAB as to the exercise by the MACC of its functions under the MACC Act 2009 <p>To seek clarifications and explanations on the MACC's annual report and the comments of the ACAB</p>	<p>criminal (i.e. disciplinary) in nature against the officers of the MACC.</p> <p>To identify any weaknesses in the work procedures of the MACC which might lead to complaints and where it considers appropriate to make such recommendations as to the work procedures of the MACC as it deems fit.</p> <p>To examine complaints and action or outcome of investigations of complaint lodged against MACC officers.³³</p> <p>To advise or give opinions as to the results of investigations.³⁴</p> <p>To examine the type of offences committed by MACC officers for the purposes of suggesting measures (e.g. trainings) to enhance the efficiency and capabilities of MACC officers in execution of their duties under the MACC Act 2009.³⁵</p>
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³³ MACC on 6 May 2025: https://www.sprm.gov.my/index.php?id=21&page_id=75&articleid=417

³⁴ Ibid.

³⁵ Ibid.

			To review and recommend improvements on work procedures and logistic needs. ³⁶
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Table 2 A table listing the functions of the three oversight bodies established by statutory provisions

2.3. Summary

The ACAB's primary role is to advise and provide recommendations to the MACC, in several ways. Namely, advising the MACC on the latest corruption developments, providing guidance on their resource needs, strategies, and anti-corruption policies, as well as scrutinising on the commission's annual report. Upon reviewing the MACC's annual report, the ACAB provides its comments and submits it to the SCC for review. Thus, the ACAB holds purely advisory functions, with any suggestions taken up by the MACC at their own discretion.

In contrast with the ACAB, the SCC's main functions centre around advising the Prime Minister on corruption issues. Additionally, the SCC has functions that allows it to examine the operations of the MACC. As per section 11(2) of the MACC Act 2009, the Chief Commissioner "shall make an annual report" – which is first commented on by the ACAB – before being channelled to the SCC. From here, the SCC creates its own annual report, which is then presented to the Prime Minister, who is mandated by section 14(5) of the MACC Act 2009 to lay it before Parliament. In summary, **the SCC's primary function is as an anti-corruption advisory body to the Prime Minister**, with its findings, comments, and recommendations packaged via its annual report.

Lastly, the CC's functions relate to the monitoring, scrutinising, and advising the management of complaints of misconduct – which are non-criminal in nature – against MACC officers. During the monitoring process, the CC is tasked with identifying weaknesses in the MACC work procedures, before providing recommendations aimed at remedying identified problems and improving flawed work procedures. However, the decision to implement these recommendations is at the sole discretion of the MACC itself. As such, **the CC operates within an advisory capacity over the handling of complaints**.

³⁶ Ibid.

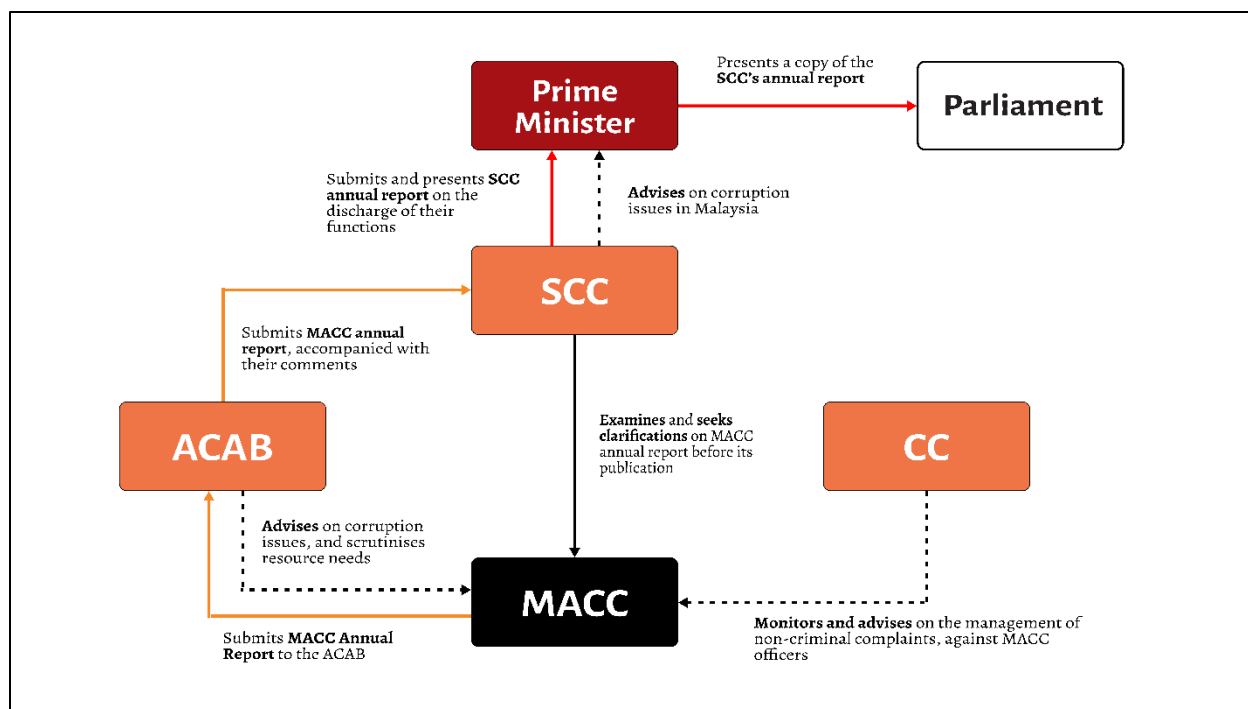


Figure 1 A chart illustrating the functions of the ACAB, SCC, and CC in relation to the MACC, the Prime Minister, and Parliament

2.4. Administrative Bodies

The MACC lists two oversight bodies set up under Administrative Order, which are tasked with overseeing the process of investigations carried out by the commission and advising the commission in its corruption awareness activities:

- The Operations Review Panel (ORP)
- The Consultation and Corruption Prevention Panel (CCPP)

The terms of reference provided by the MACC are listed below.

Body	ORP	CCPP
Function	<ul style="list-style-type: none"> To receive and seek clarification regarding the statistics of investigation papers opened by the MACC; 	<ul style="list-style-type: none"> To advise the Commission, in enhancing the effectiveness of inspection and consulting activities upon the practices, systems and work procedures of both the public and

	<ul style="list-style-type: none"> • To receive and scrutinise reports from the MACC regarding investigation papers exceeding 12 months of investigation; • To receive reports from the MACC regarding all cases where arrested suspects are released on bail by the MACC exceeding 6 months; • To receive and review reports on the closure of investigation papers on whether further investigations are required; • To advise the MACC on improving investigations due to any weaknesses; • To present its views to the MACC on certain cases where further clarifications are needed; and • To scrutinise, examine and endorse proposals to enhance the MACC's investigation operations to the ACAB. 	<p>private sectors which may be conducive to the occurrence of corruption;</p> <ul style="list-style-type: none"> • To advise the Commission, in enhancing the effectiveness of public education activities towards increasing the awareness on corruption and support on anti-corruption efforts; • To advise the Commission, in enhancing the effectiveness of anti-corruption activities through the mechanism of strengthening integrity in both the public and private sector; • To advise the Commission on some of the best practices in the fields related to the implementation of consultation and anti-corruption activities; • To assist the Commission as the key communicator in garnering support from the public, the media and the sectors identified towards the prevention efforts by the Commission; and • To submit its comments on the Commission's undertaking of its function on consultation and anti-corruption under the MACC Act 2009 to the Anti-Corruption Advisory Board.
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Table 3 A table listing the functions of the two oversight bodies established by Administrative Order

2.5. Summary

The ORP is responsible for reviewing MACC investigations through scrutinising both open and closed investigation papers. Here, the ORP oversees the progress and outcome of investigations to then provide advice and recommendations for improvements to MACC investigations. In addition, the ORP assists the ACAB in scrutinising, examining, and endorsing proposals that can enhance the MACC's investigation procedures. In sum, **the ORP acts as an advisory body for MACC investigation procedures, reviewing the**

progress of existing investigations, scrutinising the outcome of past investigations, and recommending ways to improve procedures.

The CCPP mainly assists the MACC in its public education and awareness activities. It advises the MACC on methods to improve its public communication strategies and identifies ways to increase awareness on corruption issues. Besides this, the CCPP supports the MACC in its inspection of the anti-corruption systems, policies, and work procedures of both public and private entities, providing advice to enhance their inspection methods. Additionally, the CCPP assists the ACAB by providing information on the MACC's consultation functions. In short, **the CCPP advises the MACC on public education and awareness on corruption, and ways to improve its consultation functions.**

2.6. Appointment process

Body	Composition	Appointment criteria	Appointing Authority	Term of office
ACAB	7 members. MACC Chief Commissioner is an ex-officio member. ³⁷	“persons of integrity who have rendered distinguished public service or have achieved distinctions in the profession”. ³⁸	Yang Di-Pertuan Agong on the advice of the Prime Minister. ³⁹	Three years, with a two-term limit. ⁴⁰
SCC	7 members. ⁴¹	“members of the Senate and the House of Representatives who is not a member of the administration”. ⁴²	Yang Di-Pertuan Agong on the nomination of the “Leader of the House of Representatives” i.e. the Prime Minister. ⁴³	Three years, with a two-term limit. ⁴⁴

³⁷ Section 13(2) of the MACC Act 2009

³⁸ Section 13(3) of the MACC Act 2009

³⁹ Ibid.

⁴⁰ Ibid.

⁴¹ Section 14(2) of the MACC Act 2009

⁴² Ibid.

⁴³ Under section 4A(2) of the Standing Orders of the Dewan Rakyat, the phrase “Leader of the House of Representatives” refers to the Leader of the Government”, which by conventional practice refers to the acting Prime Minister

⁴⁴ Section 14(4) of the MACC Act 2009

CC	5 members. ⁴⁵	Individuals deemed “fit and proper” by the Prime Minister. ⁴⁶	“The Minister” that oversees the MACC i.e. the Prime Minister. ⁴⁷	Four years, term limits not stated. ⁴⁸
ORP	Not defined.	“appointed administratively by the Prime Minister among experts who represent relevant professions and whom can represent the quality of integrity and independence of the Commission.” ⁴⁹	Prime Minister.	Three years, term limits not stated. ⁵⁰
CCPP	Not defined.	“appointed administratively by the Prime Minister among individuals who represent various civil societies and organizations such as academicians, business community, religious figure[s], media expert[s] and social activist[s] that can assist the MACC towards its objective of inculcating hatred against corruption among the society at large.” ⁵¹	Prime Minister.	Three years, term limits not stated. ⁵²

⁴⁵ Section 15(2) of the MACC Act 2009

⁴⁶ Ibid.

⁴⁷ Section 14(2) of the MACC Act 2009

⁴⁸ MACC on 22 May 2025: https://www.sprm.gov.my/index.php?page_id=75&articleid=417&language=en

⁴⁹ Ibid

⁵⁰ MACC on 22 May 2025: https://www.sprm.gov.my/index.php?page_id=75&articleid=419&language=en

⁵¹ MACC on 22 May 2025: https://www.sprm.gov.my/index.php?page_id=75&articleid=418&language=en

⁵² Ibid

Table 4 A table listing the appointments process for members of each MACC oversight body

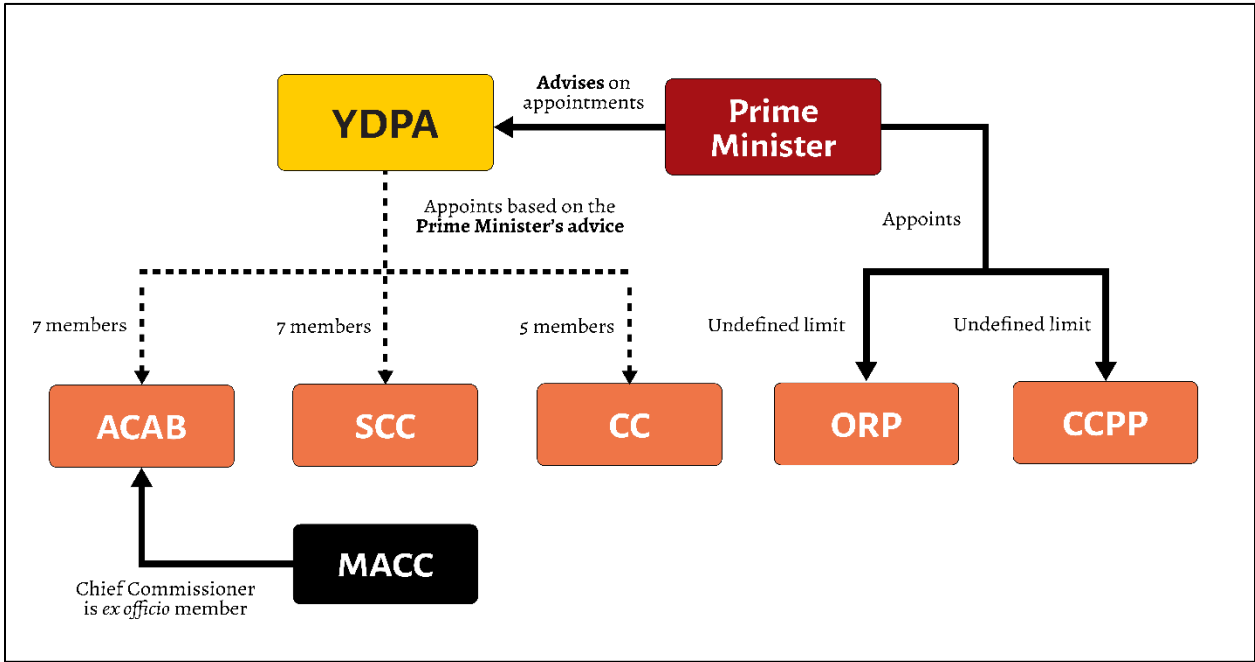


Figure 2 A chart illustrating the appointment process of all oversight bodies, including the number of members they are composed of.

In summary, members of all five oversight bodies are appointed either directly by the Prime Minister (CC, ORP, CCPP) or by the Yang Di-Pertuan Agong on the advice/nomination of the Prime Minister (ACAB, SCC). According to Article 40(1A) of the Federal Constitution, the Yang Di-Pertuan Agong “shall accept and act in accordance” with any advice given by the Cabinet. As a result, the Prime Minister holds the ultimate power in appointing the members of all oversight bodies. Notably, both the statutory provisions and the terms of reference for the oversight bodies provide broad appointment criteria for members of each body.

3. International Best Practice

3.1. United Nations Convention against Corruption and guiding documents

The United Nations Convention against Corruption (UNCAC) – the sole legally binding global anti-corruption instrument – sets out a comprehensive template of standards and measures to guide national anti-corruption efforts for States Parties and therefore presents a useful starting point for assessing present MACC oversight.

UNCAC's statement of purpose, as enshrined under Article 1, includes the promotion and strengthening of measures to prevent and combat corruption more efficiently and effectively; the promotion, facilitation, and support for international cooperation and technical assistance in preventing and combating corruption; and the promotion of integrity, accountability and proper management of public affairs and property. To accomplish these stated goals, UNCAC provisions require States Parties to introduce or clarify a range of legal measures, including preventive measures for public and private sector corruption, criminal offences related to various corrupt acts, and frameworks to facilitate international cooperation and asset recovery.

UNCAC includes two provisions that impose specific obligations upon States Parties in establishing domestic anti-corruption bodies: Article 6 on “Preventive anti-corruption body or bodies” and Article 36 on “Specialized authorities”. Both articles are reproduced below, with emphasis added to key phrases.

Article 6. Preventive anti-corruption body or bodies

1. Each State Party **shall**, in accordance with the fundamental principles of its legal system, **ensure the existence of a body or bodies**, as appropriate, that prevent corruption by such means as:
 - 1.1. Implementing the policies referred to in article 5 of this Convention and, where appropriate, overseeing and coordinating the implementation of those policies;⁵³
 - 1.2. Increasing and disseminating knowledge about the prevention of corruption.
2. Each State Party **shall grant** the body or bodies referred to in paragraph 1 of this article **the necessary independence**, in accordance with the fundamental principles of its legal system, to enable the body or bodies to carry out its or their functions **effectively and free from any undue influence**. The necessary material resources and specialised staff, as well as the training that such staff may require to carry out their functions, should be provided.
3. Each State Party shall inform the Secretary-General of the United Nations of the name and address of the authority or authorities that may assist other States Parties in developing and implementing specific measures for the prevention of corruption.

Article 36. Specialized authorities

⁵³ Article 5, titled “Preventive anti-corruption policies and practices”. requires States Parties to “develop and implement or maintain effective, coordinated anti-corruption policies that promote the participation of society and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability.”.

Each State Party **shall**, in accordance with the fundamental principles of its legal system, **ensure the existence of a body or bodies or persons** specialized in combating corruption through law enforcement. Such body or bodies or persons **shall be granted the necessary independence**, in accordance with the fundamental principles of the legal system of the State Party, to be able to carry out their functions **effectively and without any undue influence**. Such persons or staff or such body or bodies should have the appropriate training and resources to carry out their tasks.

In essence, both provisions require the creation of entities tasked with preventing and combating corruption.⁵⁴ In the Malaysian case, this would refer to the MACC. On the specific subject of oversight, both provisions simply state that the entities shall be granted independence necessary to function effectively and without any undue influence, with no elaboration on specific measures or mechanisms. So, what does UNCAC expect from States Parties in order to ensure “necessary independence” and “effective” functioning of these anti-corruption bodies?

Further guidance on the interpretation of treaty provisions may be found in the UNCAC Legislative⁵⁵ and Technical⁵⁶ Guides. Both documents are complementary tools that seek to assist with the implementation of UNCAC, as noted in the Technical Guide:

*The two Guides actually complement each other: the Legislative Guide had been drafted for use mainly by legislators and policymakers in States preparing themselves for the ratification and implementation of the Convention. The Technical Guide focuses not so much on guidance in relation to the necessary legislative changes for the incorporation of the Convention into the domestic legal system of the States concerned, but attempts to highlight policy issues, institutional aspects and operational frameworks related to the full and effective implementation of the provisions of the Convention. In view of this complementarity, the Technical Guide has to be considered in conjunction with the Legislative Guide.*⁵⁷

⁵⁴ The UNCAC *travaux préparatoires* note that the body or bodies referred to in Article 6 may be the same as those referred to in Article 36. See *Travaux Préparatoires* of the negotiations for the elaboration of the United Nations Convention against Corruption, United Nations Office on Drugs and Crime, available at <https://www.unodc.org/documents/treaties/UNCAC/Publications/Travaux/Travaux_Preparatoires_-_UNCAC_E.pdf>, p. 86.

⁵⁵ United Nations Office on Drugs and Crime, Legislative guide for the implementation of the United Nations Convention against Corruption, 2nd revised edition (2012), available at <https://www.unodc.org/documents/treaties/UNCAC/Publications/LegislativeGuide/UNCAC_Legislative_Guide_E.pdf>.

⁵⁶ United Nations Office on Drugs and Crime, Technical Guide to the United Nations Convention against Corruption (2009), available at <https://www.unodc.org/documents/treaties/UNCAC/Publications/TechnicalGuide/09-84395_Ebook.pdf>.

⁵⁷ *ibid*, p. xvii.

It is noteworthy that both Guides make explicit mention of their own limitations as interpretive aids to the Convention. The Legislative Guide states that it “lays out the basic requirements of the Convention as well as the issues that each State party must address, while furnishing a range of options and examples that national drafters may wish to consider.” It goes on to acknowledge that although there is a “need for consistency and a degree of harmonization at the international level”, the Guide itself is “not intended to provide definitive legal interpretation” of UNCAC provisions and “not authoritative”. It also notes that in assessing each specific requirement, “the actual language of the provisions should be consulted.”⁵⁸

Similarly, the Technical Guide’s stated objective is “to lay out a range of policy options and considerations that each State Party needs, or may wish, to take into account in national efforts geared towards implementation of the Convention.” The Guide is extremely cautious regarding its own utility, stating that it “intends only to raise and highlight issues pertinent to such implementation” and “by no means purports to be used as a complete and exhaustive counselling material for national policymakers”.⁵⁹

Nevertheless, both Guides do still provide direction in assessing the nature of obligations imposed upon States Parties by UNCAC provisions. Though not strictly authoritative, these Guides paint a picture of what is broadly expected of Malaysia in order to adequately implement the Convention under domestic law. With these matters in mind, we can examine what the Guides have to say about Articles 6 and 36.

3.1.1. Legislative Guide

Firstly, the Legislative Guide notes that UNCAC provisions do not all carry an equal level of obligation. Generally, provisions fall into one of three categories:

- mandatory provisions that carry an obligation to legislate (“shall adopt”);
- measures that States Parties must consider or endeavour to adopt (“shall consider adopting” or “shall endeavour to”); and
- entirely optional measures (“may adopt”).⁶⁰

In this regard, the use of “shall” in both Articles 6 and 36 with respect to the independence of anti-corruption bodies denotes an unequivocal mandatory obligation: States Parties must implement measures to this effect in establishing domestic anti-corruption bodies.

⁵⁸ United Nations Office on Drugs and Crime, Legislative guide for the implementation of the United Nations Convention against Corruption, 2nd revised edition (2012), available at <https://www.unodc.org/documents/treaties/UNCAC/Publications/LegislativeGuide/UNCAC_Legislative_Guide_E.pdf>, pp. iii-iv.

⁵⁹ United Nations Office on Drugs and Crime, Technical Guide to the United Nations Convention against Corruption (2009), available at <https://www.unodc.org/documents/treaties/UNCAC/Publications/TechnicalGuide/09-84395_Ebook.pdf>, p. xviii.

⁶⁰ *ibid*, paras. 11-12, p. 4.

The Legislative Guide also notes that several articles contain safeguard clauses “that operate as filters regarding the obligations of States parties in case of conflicting constitutional or fundamental rules”.⁶¹ This sort of safeguard clause is included in both Articles 6 and 36 – “in accordance with the fundamental principles of its legal system” – which means that the mandatory obligations are still subject to fundamental principles of Malaysian law.

When it comes to the Guide’s explanation of Articles 6 and 36 specifically, there is unfortunately no substantial guidance provided. On Article 6, the Legislative Guide merely states that “Article 6, paragraph 2, requires that States endow the body in charge of preventive policies and measures with: (a) The “independence” to ensure it can do its job unimpeded by “undue influence”, in accordance with the fundamental principles of their legal system”.⁶² Similarly on Article 36, the Guide states that “[s]uch a body or bodies or persons must be granted the necessary independence, in accordance with the fundamental principles of the legal system of the State party, to be able to carry out their functions effectively and without any undue influence and should have the appropriate training and resources to carry out their tasks.”⁶³

The Guide provides no additional elaboration or detail on what constitutes “necessary independence” or what elements need to be incorporated into the domestic framework in order to ensure the anti-corruption bodies are able to function effectively and without undue influence. In doing so, the Legislative Guide focuses solely on outcomes (a State Party’s anti-corruption body is independent) without any consideration of the process to reach that point; an approach that might allow for flexibility, but which lends no assistance for legislators, policymakers, or non-governmental actors in determining whether the UNCAC requirements have been implemented. Indeed, there is no quantifiable standard here to evaluate the degree of implementation of these provisions.

3.1.2. Technical Guide

On Article 6, the Technical Guide notes that there is “no universally accepted model”, but that “States Parties may consider a number of structural features which have been deemed useful in contributing to

⁶¹ *ibid*, para. 13, p. 4.

⁶² United Nations Office on Drugs and Crime, Legislative guide for the implementation of the United Nations Convention against Corruption, 2nd revised edition (2012), available at <https://www.unodc.org/documents/treaties/UNCAC/Publications/LegislativeGuide/UNCAC_Legislative_Guide_E.pdf>, para. 53, p. 20.

⁶³ United Nations Office on Drugs and Crime, Legislative guide for the implementation of the United Nations Convention against Corruption, 2nd revised edition (2012), available at <https://www.unodc.org/documents/treaties/UNCAC/Publications/LegislativeGuide/UNCAC_Legislative_Guide_E.pdf>, para. 464, pp. 127-128.

the effectiveness of a preventive anti-corruption body or bodies.”⁶⁴ It goes on to state that in order to ensure implementation of anti-corruption strategies and policies established pursuant to Article 5, preventive anti-corruption bodies need to address a variety of matters, including “measures to ensure the transparency, probity and impartiality of appointments, as well as security of tenure for staff; operational independence to allow the effective performance of the body’s mandate”.⁶⁵

The Technical Guide includes an entire subsection on independence and accountability of preventive anti-corruption bodies. In summary, the subsection notes the following:

- The legislative framework should ensure the body has operational independence to determine its own agenda and how it performs its mandated functions.
- In addressing independence, consideration needs to be given to rules and procedures governing matters such as the appointment, tenure and dismissal of the Director and other designated senior personnel; composition of any supervisory board; and periodic reporting obligations to another public body such as the legislature.
- The means to secure independence and accountability should be placed on statutory footing (including constitutional guarantees of independence) instead of executive decrees.
- Anti-corruption bodies should operate within an established governance system that includes appropriate and functioning checks and balances, where all are subject to the law.
- Independence must be balanced by mechanisms to ensure transparency and accountability of the body, such as reporting to or being subject to review by competent institutions (parliamentary committees, annual external audits, and where relevant, courts through judicial review).⁶⁶

The Technical Guide makes similar recommendations for Article 36 under a specific subsection on independence and resources for specialized authorities. These include the following:

- The independence of specialized authorities should be governed by legislation.
- The recruitment, appointment, disciplinary and removal criteria for senior management should be clearly established (possibly following terms governing the judiciary) and could include fixed-term appointments to avoid dependency on the executive for reappointment.

⁶⁴ United Nations Office on Drugs and Crime, Technical Guide to the United Nations Convention against Corruption (2009), available at <https://www.unodc.org/documents/treaties/UNCAC/Publications/TechnicalGuide/09-84395_Ebook.pdf>, p. 7.

⁶⁵ United Nations Office on Drugs and Crime, Technical Guide to the United Nations Convention against Corruption (2009), available at <https://www.unodc.org/documents/treaties/UNCAC/Publications/TechnicalGuide/09-84395_Ebook.pdf>, p. 8.

⁶⁶ United Nations Office on Drugs and Crime, Technical Guide to the United Nations Convention against Corruption (2009), available at <https://www.unodc.org/documents/treaties/UNCAC/Publications/TechnicalGuide/09-84395_Ebook.pdf>, p. 11.

- A reliable internal and/or external review system may avoid any undue influence, e.g. specialist committees of the legislature or external supervision or inspection commissions to conduct such oversight.⁶⁷

Thus, the Technical Guide provides greater detail on specific measures which States Parties could take to ensure the independence and autonomous operations of anti-corruption bodies. Key recommendations that are pertinent to the present discussion are the introduction of statutory/constitutional guarantees of independence and the establishment of external oversight or review as a check and balance mechanism.

3.2. Jakarta Statement on Principles for Anti-Corruption Agencies and Colombo Commentary

In 2012, leaders of anti-corruption agencies, anti-corruption practitioners and experts from around the world convened in Jakarta to formulate a set of principles aimed at promoting and strengthening the independence and effectiveness of anti-corruption agencies (ACAs). This initiative came about due to evidence suggesting “the need for specific guidance regarding the “necessary independence” requirement set out in articles 6 and 36”.⁶⁸ The resulting set of 16 principles – termed the Jakarta Statement on Principles for Anti-Corruption Agencies⁶⁹ – has since been recognised by the Conference of States Parties to the UNCAC (COSP) in 2017, where States Parties were called upon “to ensure that anti-corruption bodies have the necessary independence and competence...to carry out their functions effectively and free from undue influence, in accordance with article 6, paragraph 2 of the Convention, and to take note of the Jakarta Statement on Principles for Anti-Corruption Agencies”.⁷⁰

Subsequently, the United Nations Office on Drugs and Crime (UNODC) developed further guidance on the Jakarta Principles by way of the Colombo Commentary;⁷¹ a publication that seeks to “provide guidance to Member States and existing ACAs regarding good practices to ensure that ACAs have adequate

⁶⁷ United Nations Office on Drugs and Crime, Technical Guide to the United Nations Convention against Corruption (2009), available at <https://www.unodc.org/documents/treaties/UNCAC/Publications/TechnicalGuide/09-84395_Ebook.pdf>, p. 116.

⁶⁸ United Nations Office on Drugs and Crime, Colombo Commentary on the Jakarta Statement on Principles for Anti-Corruption Agencies (2020), available at <https://www.unodc.org/documents/corruption/Publications/2020/20-00107_Colombo_Commentary_Ebook.pdf>, pp. 4-5.

⁶⁹ See Jakarta Statement on Principles for Anti-Corruption Agencies (2012), available at <https://www.unodc.org/documents/corruption/WG-Prevention/Art_6_Preventive_anti-corruption_bodies/JAKARTA_STATEMENT_en.pdf>.

⁷⁰ Conference of the States Parties to the United Nations Convention against Corruption, Resolution 7/5 *Promoting preventive measures against corruption* (2017), available at <<https://www.unodc.org/documents/treaties/UNCAC/COSP/session7/V1800228e.pdf>>

⁷¹ United Nations Office on Drugs and Crime, Colombo Commentary on the Jakarta Statement on Principles for Anti-Corruption Agencies (2020), available at <https://www.unodc.org/documents/corruption/Publications/2020/20-00107_Colombo_Commentary_Ebook.pdf>.

mandates and are equipped with the necessary powers, independence and resources...to fully implement the Convention and fulfil the relevant international and regional obligations”.⁷² In its preface, the Colombo Commentary is described as a “snapshot of experiences that demonstrate how the Jakarta Principles are implemented in practice”.⁷³ Therefore, the Jakarta Principles read together with the Colombo Commentary might provide further insight on international best practice in relation to accountability and oversight of anti-corruption agencies.

Of the 16 Jakarta Principles, two make specific mention of “accountability”:

- **Principle 13 – Internal accountability:** ACAs shall develop and establish clear rules and standard operating procedures, including monitoring and disciplinary mechanisms, to minimize any misconduct and abuse of power by ACAs
- **Principle 14 – External accountability:** ACAs shall strictly adhere to the rule of law and be accountable to mechanisms established to prevent any abuse of power

Unlike UNCAC, these principles explicitly recognise the potential for anti-corruption bodies to be weaponised or abused, and as a result, specifically call for preventive action to guard against it.

3.2.1. Principle 13 – Internal accountability

The Colombo Commentary notes that internal accountability frameworks are essential to maintain proper standards of conduct and values of integrity, transparency and accountability within ACA staff,⁷⁴ and provides some suggestions as to what this might look like.

The broad and invasive powers granted to ACAs (search and seizure, arrest, surveillance, etc.) give rise to the risk of abuse by staff if not properly controlled. Hence, clear rules and standard operating procedures may mitigate the risk of abuse of power, alongside regular training and capacity development for ACA staff.⁷⁵ The existence of clear standard operating procedures for handling complaints, especially for choosing cases which warrant further investigation, also helps in shielding ACAs against allegations of political bias⁷⁶ – a fundamental issue that plagues the credibility of ACAs, particularly in Malaysia. The examples listed under the Colombo Commentary include Sri Lanka, where the Commission to Investigate Allegations of Bribery or Corruption developed a detailed manual on investigations and prosecutions to provide clear guidance to Commission officers on how to discharge their duties professionally; and

⁷² *ibid*, p. 2.

⁷³ *ibid*, p. iii.

⁷⁴ *ibid*, p. 41.

⁷⁵ *ibid*, p. 41.

⁷⁶ *ibid*, p. 42.

Bhutan, where the Anti-Corruption Commission produced a detailed internal framework to assess complaints against objective criteria before deciding whether it merits further action.⁷⁷

ACAs should also develop monitoring mechanisms to ensure compliance with the aforementioned rules and procedures by tracking staff activities and performance, particularly regarding the exercise of powers for investigations and prosecutions. The Commentary also notes that internal whistleblower channels are an integral part of any monitoring mechanism to empower staff to complain about internal wrongdoing without fear of retaliation.⁷⁸ The examples provided under the Commentary include Indonesia, where the Corruption Eradication Commission has an online monitoring system that tracks staff performance and an online whistleblower system to handle anonymous corruption complaints against its own officers.⁷⁹

3.2.2. Principle 14 – External accountability

The Colombo Commentary recognises that like any other institution, ACAs are also at risk of corruption from within – which necessitates balancing their powers with effective oversight by external entities and the public in general. It notes that despite the emphasis placed upon the “necessary independence” of ACAs under Articles 6 and 36 of UNCAC, such independence is to be granted in accordance with the fundamental principles of the domestic legal system. It goes on to state:

*Independence is not the same as arbitrariness. As the well-known saying goes, power tends to corrupt, and absolute power corrupts absolutely. ACAs need to be powerful, but external accountability through the rule of law must restrain them to ensure their proper functioning.*⁸⁰

Strict adherence to the rule of law and international human rights standards by ACA leadership and staff is critical due to the broad powers granted to them in the exercise of their duties. Thus, the laws which govern ACAs and set out their powers should provide detailed guidance on the exercise of investigative and coercive powers and may call for judicial oversight with regard to highly intrusive powers.⁸¹ The inclusion of judicial oversight as a procedural step in the exercise of intrusive powers (instead of as a remedial measure in the event of alleged breach) incorporates external oversight in the operations of ACAs and encourages adherence to the rule of law from the outset (rather than as a corrective act after a wrong has been committed).

Besides judicial oversight, the Commentary recommends that ACAs be accountable to other oversight mechanisms established both by the law governing the ACA and other rules of procedure, to prevent undue interference. Oversight in this regard might be exercised by a committee of the legislature, external

⁷⁷ *ibid*, pp. 41-42.

⁷⁸ *ibid*, pp. 43-44.

⁷⁹ *ibid*, p. 44.

⁸⁰ *ibid*, p. 67.

⁸¹ *ibid*, p. 67.

complaints handling bodies, or even civil society.⁸² The Commentary states no preference for any of the models here, and in fact includes the case of Malaysia as a good practice – the existence of an operations review committee tasked with reviewing the operational decision-making of the MACC and a complaints handling committee to monitor and review the management of non-criminal complaints made against the commission are listed as examples of robust external accountability mechanisms.⁸³ However, the Commentary fails to acknowledge the outcome of reviews conducted by either body, and whether the findings of these reviews are implemented.

3.3. Conclusion

When assessed against international standards and good practice (UNCAC, the Legislative and Technical Guides, and the Jakarta Principles with the Colombo Commentary), several key takeaways emerge regarding key features for accountability of anti-corruption agencies:

- **Oversight mechanisms should be grounded in law, not discretion**

As explained in the UNCAC Technical Guide, “the means to secure independence and accountability should be placed on statutory footing (including constitutional guarantees of independence) instead of executive decrees”. Thus, accountability structures – including oversight bodies – should be established on a clear statutory footing, rather than through executive policy or administrative arrangements that can be altered or weakened.

- **Appointments, tenure, and removal processes are central to credibility**

The Technical Guide further expounds on the need for rules and procedures governing the appointment, tenure and dismissal of oversight institutions. As a result, independence is undermined where oversight body members are appointed, retained, or removed through opaque or executive-dominated processes. Transparent criteria, security of tenure, and safeguards against arbitrary dismissal are key indicators of effective oversight.

- **Operational oversight should be preventive, not merely reactive**

The Colombo Commentary’s praise of the ORP highlights how international best practice favours oversight mechanisms that are embedded into decision-making processes – such as reviews of operational decisions – rather than mechanisms that only respond after abuse has occurred.

- **Internal and external accountability must operate together**

The Colombo Commentary’s principles of “Internal Accountability” stresses how oversight bodies are most effective when complemented by strong internal accountability within the

⁸² *ibid*, pp. 68-71.

⁸³ *ibid*, pp. 69-70.

MACC itself, including clear SOPs, monitoring systems, disciplinary mechanisms, and protected whistleblowing channels.

- **Oversight must be capable of restraining abuse of power**

The Jakarta Statement explicitly recognises the risk of anti-corruption agencies being weaponised. Oversight bodies must therefore have sufficient authority, access to information, and independence to meaningfully prevent or correct misconduct.

- **Reporting and transparency are core accountability tools**

Both the UNCAC Technical Guide and the Colombo Commentary posit regular reporting to Parliament or other public institutions, public-facing outputs where appropriate, and external audits as widely recognised minimum standards for ensuring public trust in an oversight mechanism.

Taken together, international standards suggest that the key question is not merely whether the MACC has five oversight bodies, but whether those bodies are legally empowered, independent, clearly mandated, and capable of exercising meaningful oversight that balances the MACC's extensive powers with accountability under the rule of law. Unfortunately, several concerns already emerge regarding the MACC's five oversight bodies. These will be examined further in the following chapters, but can be summarised as follows:

- **Not all oversight bodies are established on a clear statutory footing**

The ORP and the CCPP are established through administrative arrangements rather than primary legislation, falling short of international best practice which emphasises legally entrenched oversight to safeguard independence and continuity.

- **Appointments are effectively controlled by the Executive**

The appointment of members across all five oversight bodies are, in practice, concentrated in the hands of the Prime Minister, with limited parliamentary involvement or independent vetting. This undermines both the perceived and actual independence of these bodies.

- **Absence of security of tenure and transparent removal safeguards**

International standards emphasise fixed terms and protection against arbitrary removal. Current arrangements provide insufficient clarity and protection, leaving oversight body members vulnerable to executive influence.

- **Lack of meaningful investigative or enforcement powers**

The MACC's oversight bodies do not possess statutory powers to investigate misconduct, compel information, or impose consequences. Their role is largely advisory or review-based, limiting their effectiveness as checks on the MACC's extensive powers.

- **Weak reporting obligations and limited institutional accountability**

Other than the SCC's annual report, there are no robust requirements for the oversight bodies to report regularly or substantively to Parliament or other independent institutions, reducing transparency and public scrutiny.

4. Case Studies

This chapter identifies and analyses several case studies that illustrate the role of the MACC's oversight bodies in practice. The selected case studies provide concrete examples of how the oversight framework has operated, particularly during instances where the MACC and its officers have been implicated in alleged misconduct. Each case examines the role played by the relevant oversight bodies, assessing the extent to which they exercised their functions and highlighting structural, legal, and practical shortcomings that constrained meaningful oversight. These analyses form the basis for further scrutiny of the existing framework and inform recommendations for strengthening accountability mechanisms.

4.1. The Death of Teoh Beng Hock (2009)

4.1.1. Background

On 13 July 2009, the MACC probed seven Selangor state assemblypersons in relation to the use of state funds in their respective constituencies.⁸⁴ As part of the probe, the MACC raided the office of Seri Kembangan assemblyperson, Yang Berhormat (YB) Ean Yong on 15 July 2009. The assemblyperson's aide – a 30-year-old man named Teoh Beng Hock – was taken in as a witness to the MACC Selangor office for further questioning.⁸⁵ As per security footage, Beng Hock was seen entering the MACC office at 6:08PM. However, the next day, Teoh Beng Hock's body was found at 1:00PM on the fifth-floor maintenance rooftop of Plaza Masalam, where the MACC Selangor office was situated.⁸⁶ The Court of Appeal later ruled that Beng Hock had fallen to his death from a window on the 14th floor of the building.⁸⁷

The circumstances surrounding his death led to intense public outcry, with the Human Rights Commission of Malaysia (SUHAKAM) describing the MACC's treatment of Beng Hock prior to his death as "amounting to mental torture".⁸⁸ In response, the Federal Cabinet at the time approved the setting up of a Royal Commission of Inquiry (RCI) to look into the Teoh Beng Hock case, with the officers involved in Beng Hock's questioning transferred to other assignments.⁸⁹ However, the RCI would merely look into the MACC's investigation procedures, and not the factors that caused Beng Hock's death – a fact that would draw the ire of the public, with Beng Hock's family withdrawing from the RCI in protest.⁹⁰

⁸⁴ Malay Mail on 2 August 2024: <https://www.malaymail.com/news/malaysia/2024/08/02/who-was-teoh-beng-hock-and-why-is-the-probe-into-his-death-being-reopened-15-years-later/145801>

⁸⁵ Ibid

⁸⁶ R.AGE on 16 July 2019: <https://www.rage.com.my/teohbenghock/>

⁸⁷ Malay Mail on 2 August 2024: <https://www.malaymail.com/news/malaysia/2024/08/02/who-was-teoh-beng-hock-and-why-is-the-probe-into-his-death-being-reopened-15-years-later/145801>

⁸⁸ SUHAKAM on 17 July 2009: https://www.suhakam.org.my/wp-content/uploads/2014/01/PS10_Death-of-TBH_MACCprobe_170709_A.pdf

⁸⁹ Malaysiakini on 22 July 2009: <https://www.malaysiakini.com/news/109051>

⁹⁰ R.AGE on 16 July 2019: <https://www.rage.com.my/teohbenghock/>

Notwithstanding its purpose, the RCI discovered several findings that serve to illustrate more clearly the treatment endured by Beng Hock during his questioning.

4.1.2. Conduct of MACC during investigation

According to the RCI, the MACC officers involved had abused their powers from the very beginning, having searched the offices of YB Ean Yong without prior authorisation from the Public Prosecutor's office or an MACC officer of sufficient rank – in contravention of section 31(1) of the MACC Act 2009.⁹¹ Further still, the RCI found that although Beng Hock had volunteered himself for questioning, his attendance was secured through insistent pressure and harassment – with his lawyer being denied access to see him.⁹² From the very moment Beng Hock entered the MACC Selangor offices, he was subject to immense intimidation from the officers present, with the RCI detailing a total of four separate interrogations within a possible 12-hour span.⁹³ The first interrogation was described as a round of “verbal assault”, wherein Beng Hock was questioned continuously by six to seven officers at a time for a total of four hours.⁹⁴ The RCI further describes this interrogation tactic as “inhumane” and “torture”, particularly as Beng Hock had been led to believe that he would be having a “chat” to “calm him down” prior to formal questioning.⁹⁵

Having entered the offices at around 6:00PM, Beng Hock would only be brought in for questioning nearly four hours later at 10:45PM, where he would be questioned by two officers – “Arman” and “Ashraf”.⁹⁶ It was revealed that, initially, Arman had been given orders merely to examine a total of eight documents in relation to the investigation, with there being no explicit need for questioning.⁹⁷ Yet, Arman had chosen to question Beng Hock, bringing along Ashraf to assist him – an officer with multiple assault complaints filed against him previously.^{98 99} Notably, the RCI alleged that both officers had “most probably” used

⁹¹ Para. 248 from the Report on the Royal Commission of Enquiry into the Death of Teoh Beng Hock on 22 June 2011: https://www.malaysianbar.org.my/cms/upload_files/document/full%20report.tbh%20rci.pdf

⁹² Para. 147 from the Report on the Royal Commission of Enquiry into the Death of Teoh Beng Hock on 22 June 2011: https://www.malaysianbar.org.my/cms/upload_files/document/full%20report.tbh%20rci.pdf

⁹³ Although the first three “interrogations” were known to have been conducted between 6:30PM to 3:30AM, the RCI posits that a potential fourth round of questioning took place between 3:45AM to 7:00AM, see Para 194-197 from the Report on the Royal Commission of Enquiry into the Death of Teoh Beng Hock on 22 June 2011: https://www.malaysianbar.org.my/cms/upload_files/document/full%20report.tbh%20rci.pdf

⁹⁴ Para. 148-151 from the Report on the Royal Commission of Enquiry into the Death of Teoh Beng Hock on 22 June 2011: https://www.malaysianbar.org.my/cms/upload_files/document/full%20report.tbh%20rci.pdf

⁹⁵ Ibid

⁹⁶ Para. 41 from the Report on the Royal Commission of Enquiry into the Death of Teoh Beng Hock on 22 June 2011: https://www.malaysianbar.org.my/cms/upload_files/document/full%20report.tbh%20rci.pdf

⁹⁷ Para. 39-40 from the Report on the Royal Commission of Enquiry into the Death of Teoh Beng Hock on 22 June 2011: https://www.malaysianbar.org.my/cms/upload_files/document/full%20report.tbh%20rci.pdf

⁹⁸ Ibid

⁹⁹ Para. 158 from the Report on the Royal Commission of Enquiry into the Death of Teoh Beng Hock on 22 June 2011: https://www.malaysianbar.org.my/cms/upload_files/document/full%20report.tbh%20rci.pdf

threats of physical harm in their questioning of Beng Hock.¹⁰⁰ In the process of their interview, both officers had directly lied to Beng Hock concerning the legality of a contract awarded by YB Ean – a process Beng Hock had little knowledge on – to coax a “confession” out of him.¹⁰¹ This constant intimidation and manipulation was said to have made Beng Hock divulge his email password, providing the officers with unfettered access to his personal data – with his mobile phone and laptop also confiscated.^{102 103}

Following two hours of questioning, the interview would be terminated at 12:45AM, with Beng Hock brought to record his statement an hour later at 1:45AM.¹⁰⁴ With the two prior rounds of questioning having already taken place, the RCI contended that the recording of his statement should have been a short, formalised process.¹⁰⁵ Despite this, it took two more hours for Beng Hock’s statement to be recorded, with the RCI finding that the officer-in-charge had “started afresh” in their questioning of Beng Hock.¹⁰⁶ Describing this process as “duplicitous”, the RCI found that the two prior rounds of questioning contravened sections 30(1)(a) and 30(8) of the MACC Act 2009.¹⁰⁷ When read together, these sections require any officer who calls in a person for examination to also record their statement, seeing as the prior interrogations were done without the production of a written statement, the RCI held that they were unlawful.¹⁰⁸

Subsequently, despite nine hours’ worth of questioning and intimidation, Beng Hock was not released. The MACC claimed that Beng Hock voluntarily chose to stay in their offices until the next day.¹⁰⁹ However, the RCI asserted that his attendance was a de-facto detention.¹¹⁰ This was due to the fact that Beng Hock was escorted to the offices instead of deciding on his own volition. Other witnesses involved in the probe

¹⁰⁰ Para. 159 from the Report on the Royal Commission of Enquiry into the Death of Teoh Beng Hock on 22 June 2011: https://www.malaysianbar.org.my/cms/upload_files/document/full%20report.tbh%20rci.pdf

¹⁰¹ Para. 153-154 from the Report on the Royal Commission of Enquiry into the Death of Teoh Beng Hock on 22 June 2011: https://www.malaysianbar.org.my/cms/upload_files/document/full%20report.tbh%20rci.pdf

¹⁰² Para. 155 from the Report on the Royal Commission of Enquiry into the Death of Teoh Beng Hock on 22 June 2011: https://www.malaysianbar.org.my/cms/upload_files/document/full%20report.tbh%20rci.pdf

¹⁰³ Para. 48 from the Report on the Royal Commission of Enquiry into the Death of Teoh Beng Hock on 22 June 2011: https://www.malaysianbar.org.my/cms/upload_files/document/full%20report.tbh%20rci.pdf

¹⁰⁴ Para. 44-49 from the Report on the Royal Commission of Enquiry into the Death of Teoh Beng Hock on 22 June 2011: https://www.malaysianbar.org.my/cms/upload_files/document/full%20report.tbh%20rci.pdf

¹⁰⁵ Para. 160 from the Report on the Royal Commission of Enquiry into the Death of Teoh Beng Hock on 22 June 2011: https://www.malaysianbar.org.my/cms/upload_files/document/full%20report.tbh%20rci.pdf

¹⁰⁶ Ibid

¹⁰⁷ Para. 161 from the Report on the Royal Commission of Enquiry into the Death of Teoh Beng Hock on 22 June 2011: https://www.malaysianbar.org.my/cms/upload_files/document/full%20report.tbh%20rci.pdf

¹⁰⁸ Para. 162-163 from the Report on the Royal Commission of Enquiry into the Death of Teoh Beng Hock on 22 June 2011: https://www.malaysianbar.org.my/cms/upload_files/document/full%20report.tbh%20rci.pdf

¹⁰⁹ Para. 167-168 from the Report on the Royal Commission of Enquiry into the Death of Teoh Beng Hock on 22 June 2011: https://www.malaysianbar.org.my/cms/upload_files/document/full%20report.tbh%20rci.pdf

¹¹⁰ Ibid

were likewise not given leave to exit the MACC building after their questioning either.¹¹¹ Adding to this, although official reports stated that Beng Hock was questioned three times, the RCI deduced that a fourth and final “interrogation” occurred shortly before his death.¹¹² Namely, the RCI posited that Ashraf, together with then-Selangor MACC Deputy Director Hishamuddin Hashim and Inspecting Officer Anuar Ismail, most likely performed a final round of “intensive interrogation” that sought to coerce Beng Hock into ‘ratting out’ YB Ean Yong.¹¹³ This round of interrogation was described as “physically and mentally taxing” on Beng Hock, especially after having endured nine hours of “persistent, aggressive, and unscrupulous questioning”.¹¹⁴

Although the RCI’s findings ruled Beng Hock’s death as a suicide – with his treatment by the MACC driving him to take his own life – a later ruling by the Court of Appeal found that his death “was caused by multiple injuries from a fall from the 14th floor of Plaza Masalam as a result of or which was accelerated by an unlawful act or acts of person or persons unknown, inclusive of MACC officers who were involved in the arrest and investigation of the deceased”.^{115 116}

4.1.3. Action taken by MACC in response to RCI

Following the release of the RCI, MACC would immediately suspend Ashraf, Anuar, and Hishamuddin pending the “outcome of investigation”, which would be conducted by MACC itself.¹¹⁷ Despite this, three years later on 15 July 2014, the MACC would absolve all three officers from any wrongdoing or breach of disciplinary rules.¹¹⁸ In their statement, the MACC stated that the Attorney General’s Chambers “found that the trio did not commit any crime under the Penal Code or any other related offences”.¹¹⁹ They added that an internally run “special investigation team” consisting of the MACC Disciplinary Board and the Complaints Committee had also cleared the trio of offences under “Civil Service Regulations (Behaviour and Disciplinary) 1993, the MACC Act 2009 and the commission’s internal rules and regulations”.¹²⁰

¹¹¹ Para. 167-170 from the Report on the Royal Commission of Enquiry into the Death of Teoh Beng Hock on 22 June 2011: https://www.malaysianbar.org.my/cms/upload_files/document/full%20report.tbh%20rci.pdf

¹¹² Para. 197 from the Report on the Royal Commission of Enquiry into the Death of Teoh Beng Hock on 22 June 2011: https://www.malaysianbar.org.my/cms/upload_files/document/full%20report.tbh%20rci.pdf

¹¹³ Ibid

¹¹⁴ Ibid

¹¹⁵ Para. 233 from the Report on the Royal Commission of Enquiry into the Death of Teoh Beng Hock on 22 June 2011: https://www.malaysianbar.org.my/cms/upload_files/document/full%20report.tbh%20rci.pdf

¹¹⁶ The Edge on 5 September 2014: <https://theedgemaalaysia.com/article/court-appeal-reverses-open-verdict-ruling-teoh-beng-hock%E2%80%99s-death>

¹¹⁷ The Borneo Post on 24 July 2011: <https://www.theborneopost.com/2011/07/24/macc-suspends-3-officers-over-teoh%E2%80%99s-death/>

¹¹⁸ Malay Mail on 15 July 2014: <https://www.malaymail.com/news/malaysia/2014/07/15/macc-clears-officers-of-misconduct-in-political-aides-death-report-says/707095>

¹¹⁹ Ibid

¹²⁰ Ibid

4.1.4. Analysis of the case

Even in the face of considerable public outrage, rebuke by both SUHAKAM and the RCI, and a damning court verdict, the MACC still saw fit to clear all three officers implicated in this case. Rather than face legal or even disciplinary sanctions for clearly documented abuses, all three officers were allowed to walk free of repercussions – barring a temporary suspension. Not only has this remained true nearly 17 years later, but there is yet to be any real reform of the level of independent scrutiny faced by the MACC.

CC's involvement in the case

The MACC tasked a “special investigation team” comprising the MACC Disciplinary Board and the CC to look into the misconduct allegations. This investigation team subsequently “cleared” the trio of any wrongdoing. While it is true that the functions of the CC are to review the handling of complaints and investigations into misconduct allegations against MACC officers, it is clear from section 15 of the MACC Act 2009 that the CC does not have powers of disciplinary sanction. Rather, the CC is an advisory body, meant to provide recommendations on the weaknesses present in the MACC’s work procedures. In fact, the RCI noted this limitation, commenting that the decision to adopt or discard recommendations from the CC “is at the discretion of the MACC”.¹²¹ They stated further that: *“the complaints committee is not a complaints committee per se but rather one to be kept informed of the progress in relation to the investigation of complaints of non-criminal misconduct made against the officers of the MACC”*.¹²²

Another important fact to note is that, according to section 15(1) of the MACC Act 2009, the CC’s monitoring and advisory role is confined merely to non-criminal cases. As the case involving Teoh Beng Hock involves potential criminal offences committed by MACC officers, it appears that the involvement of the CC represents another overstep of its functions and expertise. The overreach of the CC in this case puts the basis of the MACC’s subsequent decision to clear its three officers in doubt.

Statutory limitations of the CC and internal investigation weaknesses

The RCI noted that, due to the CC’s statutory limitations, the body actually responsible for investigating complaints against the three officers was the MACC’s Excellence and Professionalism Division – at the time named the Management and Professionalism Division (MPD).¹²³ However, as the allegations levied against the officers involved criminal elements, the police were the principle body in-charge with probing the case. It was noted by the RCI, however, that “although the police conduct the investigations, the MPD

¹²¹ Para. 304 from the Report on the Royal Commission of Enquiry into the Death of Teoh Beng Hock on 22 June 2011: https://www.malaysianbar.org.my/cms/upload_files/document/full%20report.tbh%20rci.pdf

¹²² Para. 305 from the Report on the Royal Commission of Enquiry into the Death of Teoh Beng Hock on 22 June 2011: https://www.malaysianbar.org.my/cms/upload_files/document/full%20report.tbh%20rci.pdf

¹²³ Para. 306 from the Report on the Royal Commission of Enquiry into the Death of Teoh Beng Hock on 22 June 2011: https://www.malaysianbar.org.my/cms/upload_files/document/full%20report.tbh%20rci.pdf

still takes the necessary internal action”.¹²⁴ In order to ensure such “internal action” is taken, the facts of each complaint are meant to be referred to the MPD by the police, before existing protocols are improved to curb the situation or prevent future offences from occurring. However, the RCI found that there was “no system in place” to ensure a direct line of communication between the MPD and the police.¹²⁵

The implications of these findings are dire, as it implies that there were no internal measures in place to adequately address the factors that facilitated Beng Hock’s death. Beyond that, it appears that the only “control” mechanism suitably equipped with addressing criminal acts from within MACC are directly handled by MACC officers themselves. As a consequence, any plans to limit the powers of MACC officers via its work procedures – and thus prevent abuses – are formulated by the officers themselves. This heightens the probability of potential conflicts of interest and compromises the efficacy of any new measure introduced. This fact was even acknowledged by the RCI, who called for the CC to have an increased role in handling complaints, noting that the current procedure of “self-investigation and complaint action by the MACC” was unacceptable.¹²⁶

Attorney General’s involvement in prosecuting

In the MACC’s statement clearing the officers of wrongdoing, it noted that the Attorney General found that no crime was committed under any laws. In addition, despite two separate “special investigations” by the Royal Malaysian Police in 2011 and 2015 respectively, no individual was prosecuted after the Public Prosecutor ruled that the case required “no further action” in both instances.¹²⁷ This is despite the RCI identifying multiple instances of abuse of power carried out by MACC officers from the very onset of the case, including potentially abetting Beng Hock in his suicide – an offence under section 306 of the Penal Code. Separate from this, the Court of Appeal ruling in 2014 also described Beng Hock’s death as having been caused by “unlawful acts” possibly “caused or accelerated” by the MACC officers involved in his arrest and investigation.

Despite two separate investigations finding numerous potential offences committed by the three officers, the Public Prosecutor somehow saw fit to declare “no further action” in not one, but two instances. With this in mind, it is worth considering how the office of the Public Prosecutor has, for some time, also been viewed as in need of critical reform.

According to Article 145(3) of the Federal Constitution, the Attorney General “shall have power to, exercisable at his direction, to institute, conduct or discontinue any proceedings for an offence”. In

¹²⁴ Para. 309 from the Report on the Royal Commission of Enquiry into the Death of Teoh Beng Hock on 22 June 2011: https://www.malaysianbar.org.my/cms/upload_files/document/full%20report.tbh%20rci.pdf

¹²⁵ Ibid

¹²⁶ Para. 310 from the Report on the Royal Commission of Enquiry into the Death of Teoh Beng Hock on 22 June 2011: https://www.malaysianbar.org.my/cms/upload_files/document/full%20report.tbh%20rci.pdf

¹²⁷ Free Malaysia Today on 22 November 2024: <https://www.freemalaysiatoday.com/category/nation/2024/11/22/teoh-beng-hock-probe-to-be-completed-in-6-months-says-igp>

tandem with this provision, section 376 of the Criminal Procedure Code states that the “Attorney General shall be the Public Prosecutor and shall have control and direction of all criminal prosecutions”. Significantly, as per Article 145(1) of the Federal Constitution, the “Yang di-Pertuan Agong shall, on the **advice of the Prime Minister** appoint a person...to be the Attorney General”. Read together with Article 40(1A), the term “on the advice” is rendered a mere formality as it states that the Yang di-Pertuan Agong “shall act in accordance with the advice”.

Consequently, the dual role of the Attorney General/Public Prosecutor (AG/PP) places them in a position vulnerable to conflicts of interest, as they serve the dual functions of being the government’s chief legal adviser, while also prosecuting all criminal offences. Further concerns arise when considering that the AG/PP is hand-picked by the Prime Minister, intensifying the perception of partiality. These concerns were not helped when – in 2015 – then-Attorney General Abdul Gani Patail was removed from his post by Prime Minister Najib Razak and replaced by Mohamed Apandi Ali. It was alleged that Patail was dismissed after he attempted to institute corruption charges against Najib for his role in misappropriating RM3.69 billion from 1Malaysia Development Berhad (1MDB).¹²⁸ Apandi subsequently cleared Najib of all wrongdoing.¹²⁹ These events will be further analysed in the following section.

4.2. The MACC’s Investigation of Najib Razak (2015)

4.2.1. Background

On 9 March 2015, Inspector General of the Police Khalid Abu Bakar announced the establishment of a special three-agency task force – consisting of the MACC, the Attorney General’s Chambers, and the Royal Malaysian Police – to investigate allegations of misappropriation of funds by 1MDB.¹³⁰ This announcement came after multiple police reports were lodged against 1MDB following allegations by the online news blog, the Sarawak Report, that businessman Jho Low had used then-Prime Minister Najib Razak’s name to bypass approval needed from Bank Negara on a RM3.69 billion loan disbursed to 1MDB.¹³¹ Subsequently, an exposé by the Wall Street Journal alleged that the taskforce had traced RM2.6 billion of deposits into Najib Razak’s personal bank accounts.¹³²

¹²⁸ The New Straits Times on 16 May 2018: <https://www.nst.com.my/news/nation/2018/05/370059/gani-patail-claims-he-was-preparing-charge-najib-dr-mahathir>

¹²⁹ Free Malaysia Today on 26 January 2016: <https://www.freemalaysiatoday.com/category/nation/2016/01/26/najib-cleared-by-ag-on-rm2-6b-and-rm42m-from-src-international>

¹³⁰ Malaysiakini on 9 March 2015: <https://www.malaysiakini.com/news/291452>

¹³¹ Ibid.

¹³² Malaysiakini on 3 July 2015: <https://www.malaysiakini.com/news/303876>

A day later, on 4 July 2015, then-Attorney General Abdul Gani Patail confirmed that he had viewed the documents alleging that Najib Razak had transferred 1MDB's funds into his bank accounts.¹³³ Shortly thereafter, Chief Secretary to the Government Ali Hamsa announced the replacement of Abdul Gani Patail by Mohamed Apandi Ali due to "health reasons".¹³⁴ Later, it was alleged by former Prime Minister Mahathir Mohamed that Abdul Gani was in the midst of charging Najib Razak shortly before his dismissal.¹³⁵ Following this, on 31 December 2015, the MACC would submit investigation papers to the newly-appointed Attorney General, which contained details of their probe into the RM2.6 billion transferred to Najib Razak's private accounts.¹³⁶ Apandi Ali would subsequently return the investigation papers, requesting further information from the MACC.¹³⁷

Less than a month after being given the initial investigation papers, Apandi Ali would "clear" Najib Razak from all wrongdoing and closed the case, stating that RM2.08 billion of the amount transferred to his personal bank accounts was a "personal donation by the Saudi Royal family".¹³⁸ In response, the MACC would refer the case to the ORP just a day later, on 27 January 2016.¹³⁹ The MACC claimed that this was merely a "normal process" following the closure of a case.¹⁴⁰ Despite this claim, Apandi Ali would respond immediately, stating that "any bodies formed to question any decision of the AG would be against Article 145(3) of the Federal Constitution".¹⁴¹ Less than a month later, on 25 February 2016, a member of the ORP – who spoke on the condition of anonymity – stated in an interview with the Malaysian Insider that it was "unlikely that they would be reappointed based on the unwavering stand they took against the Prime Minister", but that members of the panel "performed their task in a professional manner".¹⁴²

Following the defeat of Najib Razak's *Barisan Nasional* coalition at the 14th General Election in May 2018, the newly-elected *Pakatan Harapan* government under Prime Minister Mahathir Mohamed would set up yet another task force to investigate 1MDB.¹⁴³ Additionally, Apandi Ali was suspended and replaced by

¹³³ Malaysiakini on 4 July 2015: <https://www.malaysiakini.com/news/304049>

¹³⁴ The Edge on 28 July 2015: <https://theedgemalaysia.com/article/gani-patail-replaced-attorney-general-says-chief-secretary>

¹³⁵ The New Straits Times on 16 May 2018: <https://www.nst.com.my/news/nation/2018/05/370059/gani-patail-claims-he-was-preparing-charge-najib-dr-mahathir>

¹³⁶ The Edge on 22 January 2016: <https://theedgemalaysia.com/article/nothing-unusual-if-ag-returns-investigation-papers-says-macc>

¹³⁷ Ibid.

¹³⁸ Free Malaysia Today on 26 January 2016: <https://www.freemalaysiatoday.com/category/nation/2016/01/26/najib-cleared-by-ag-on-rm2-6b-and-rm42m-from-src-international>

¹³⁹ The Edge on 27 January 2016: <https://theedgemalaysia.com/article/normal-process-take-cases-review-panel-says-macc>

¹⁴⁰ Ibid.

¹⁴¹ Ibid.

¹⁴² The Edge on 25 February 2016: <https://theedgemalaysia.com/article/we-acted-professionally-says-macc-panel-member-term-expires>

¹⁴³ The Star on 21 May 2018: <https://www.thestar.com.my/news/nation/2018/05/21/special-task-force-formed-to-look-into-1mdb/#vlgK8L6AxCe2OxGI.99>

Tommy Thomas,¹⁴⁴ ¹⁴⁵ with Mahathir claiming that Apandi had “hidden evidence of wrongdoing”.¹⁴⁶ Najib Razak was then arrested and charged by the MACC, with a total of 42 counts of corruption and money laundering charges in relation to 1MDB.¹⁴⁷ On 28 July 2020, the former Prime Minister was found guilty of abuse of power, criminal breach of trust, and money laundering charges for his involvement in misappropriating RM42 million of SRC International’s – a former 1MDB subsidiary – funds, and sentenced to 12 years of jail time along with a RM210 million fine.¹⁴⁸

4.2.2. Analysis of the case

Prime Minister’s control over ORP appointments

The Malaysian Insider interview reveals the extent of the Prime Minister’s control over the ORP. Not only does the Prime Minister have control over appointments, but also has the power to threaten removal of members if they fail to fall in line. This fear directly affects the ability of ORP members to act impartially, especially when reviewing cases involving members of the administration – in this instance, the Prime Minister himself.

This case, however, highlights not just the Prime Minister’s power over the ORP, but displays the degree of power as a whole. The saga involving Abdul Gani’s removal, and the subsequent clearing of Najib Razak by his successor, Apandi Ali, highlights the vulnerability of the Attorney General’s post to political interference. Mahathir Mohamed’s assertion that Abdul Gani was removed for political reasons is a reality that is entirely possible under the current governance framework. As has been discussed above, the fact that the Prime Minister has powers of appointment and dismissal over the Attorney General puts pressure on them to act within the Prime Minister’s interests.

¹⁴⁴ The Malay Mail on 14 May 2018: <https://www.malaymail.com/news/malaysia/2018/05/14/pm-solicitor-general-to-fill-in-as-apandi-put-on-gardening-leave/1630725>

¹⁴⁵ The New Straits Times on 5 June 2018: <https://www.nst.com.my/news/nation/2018/06/376722/agong-consents-appointment-tommy-thomas-attorney-general>

¹⁴⁶ Malaysiakini on 11 May 2018: <https://www.malaysiakini.com/news/424278>

¹⁴⁷ The Straits Times on 11 February 2019: <https://www.straitstimes.com/asia/se-asia/a-long-list-of-charges-against-najib-as-1mdb-trial-kicks-off-on-tuesday>

¹⁴⁸ The New Straits Times on 28 July 2020: <https://www.nst.com.my/news/crime-courts/2020/07/612343/najib-sentenced-12-years-jail-rm210-million-fine>

Najib would subsequently have his jail term and fine reduced to 6 years and RM50 million, following an application to the Federal Territories Pardon Board.

Free Malaysia Today on 2 February 2024: <https://www.freemalaysiatoday.com/category/nation/2024/02/02/najibs-12-year-jail-term-shortened-to-6>

4.3. The Azam Baki Shareholding Scandal (2021)

4.3.1. Background: The allegations against Azam Baki

In October 2021, a Twitter account named *Edisi Siasat* – which has since gained a reputation for exposing alleged wrongdoing and corruption among civil servants anonymously – posted information alleging irregularity among several high-ranking officials in the MACC and the Royal Malaysian Police, with MACC Chief Commissioner Azam Baki implicated.¹⁴⁹ They alleged that Azam Baki had purchased millions of shares in a company between 2015 and 2016, when he was a senior official in the agency.¹⁵⁰ Following these accusations, investigative journalist Lalitha Kunaratnam further alleged that Azam Baki held 1,930,000 shares in Gets Global Berhad, worth around RM772,000 at the time.^{151 152} She further implicated his brother, Nasir Baki, for holding 3,728,000 shares in Gets Global Berhad in 2016, while exposing Nasir's directorships and shareholdings in various other companies too.¹⁵³

In her exposé, Lalitha questioned whether Azam Baki had declared his shares as per Section 10 of the Public Officers Regulation (Conduct and Discipline) 1993. This rule requires all civil servants to declare movable and immovable properties owned, any business relationship or directorship which could compromise the impartiality of the civil service – which includes any “shares, warrants, stocks, bonds and securities”.¹⁵⁴ Further questions were raised as to how Azam Baki had managed to accrue these shares without falling foul of Service Circular Number 3/2002 – Ownership and Declaration of Assets by Public Officials, which prevents a civil servant from owning more than RM100,000 worth of shares in a company.¹⁵⁵ These allegations, alongside further revelations by *Edisi Siasat*, sparked public outcry, causing then-Sungai Buloh MP Sivarasa Rasiah to file an urgent motion for Parliament to discuss the allegations against Azam Baki, though it was rejected by the Speaker of the House.¹⁵⁶

¹⁴⁹ Malay Mail on 14 January 2022: <https://www.malaymail.com/news/malaysia/2022/01/14/how-the-azam-baki-share-saga-unfolded/2035010>

¹⁵⁰ South China Morning Post on 6 January 2022: <https://www.scmp.com/week-asia/people/article/3162408/najibs-1mdb-playbook-malaysias-anti-corruption-chief-azam-baki>

¹⁵¹ Independent News Service on 15 December 2021: <https://www.theins.news/postview/757-business-ties-among-macc-leadership-how-deep-does-it-go-part-1>

¹⁵² Malaysiakini on 19 January 2022: https://www.malaysiakini.com/news/607543?utm_source=email&utm_medium=textlink&utm_campaign=kinimorningbrief

¹⁵³ Independent News Service on 15 December 2021: <https://www.theins.news/postview/757-business-ties-among-macc-leadership-how-deep-does-it-go-part-1>

¹⁵⁴ Ibid

¹⁵⁵ Ibid

¹⁵⁶ Malay Mail on 14 January 2022: <https://www.malaymail.com/news/malaysia/2022/01/14/how-the-azam-baki-share-saga-unfolded/2035010>

4.3.2. The response and aftermath

Following these revelations, a member of the CCPP, Professor Edmund Terence Gomez, resigned from the body citing inaction over the allegations surrounding Azam.¹⁵⁷ In his letter, he stated that he had written on three separate occasions to the then-Chairman of the CCPP, Borhan Dollah, and the then-Chairman of the ACAB, Tan Sri Abu Zahar Nika Ujang, to convene and discuss further actions to be taken on this scandal, which involved several “critical issues of national interest”.¹⁵⁸ Gomez alleged that Borhan had initially agreed to convene a meeting, though it never materialised, while Abu Zahar failed respond.¹⁵⁹

On 5 January 2022, nearly four months after the allegations had surfaced, the MACC finally responded via a press conference.¹⁶⁰ At the press conference, Azam denied all wrongdoing, claiming that the allegations were part of “efforts by certain parties to undermine the MACC’s credibility”. Adding further, Azam Baki claimed that his brother had used his account to execute the share transactions, denying any pecuniary interest in the purchases.¹⁶¹ He further stated that he didn’t “owe anyone an explanation”, adding that his only responsibility was to explain himself before the ACAB.¹⁶² At the same press conference, Abu Zahar cleared Azam Baki of all wrongdoing, stating that the ACAB had been satisfied by Azam Baki’s explanation and that they were convinced that it was his brother who had executed the share transactions.¹⁶³ Furthermore, the Chairman stated that it was the ACAB’s opinion that no further investigation would need be conducted on this matter and disregarded calls for a Royal Commission of Inquiry (RCI) to investigate the scandal.¹⁶⁴

Startlingly, on 8 January 2022, six members of the ACAB released a joint statement denying that the ACAB had agreed to clear Azam Baki of all wrongdoing.¹⁶⁵ The statement stressed that Abu Zahar’s pronouncements were merely his personal views, and that they had not reached the same conclusion as him.¹⁶⁶ Moreover, the six members alleged that the Chairman had misled the public by failing to raise the

¹⁵⁷ Ibid

¹⁵⁸ Malay Mail on 28 December 2021: <https://www.malaymail.com/news/malaysia/2021/12/28/report-economist-terence-gomez-quits-macc-panel-to-protest-inaction-over-az/2031518>

¹⁵⁹ Ibid

¹⁶⁰ Free Malaysia Today on 5 January 2022: <https://www.freemalaysiatoday.com/category/nation/2022/01/05/azam-breaks-silence-says-claims-he-controls-many-companies-are-false>

¹⁶¹ Ibid

¹⁶² New Straits Times on 5 January 2022: <https://www.nst.com.my/news/nation/2022/01/760567/azam-baki-breaks-silence-following-allegation-levelled-against-him>

¹⁶³ New Straits Times on 5 January 2022: <https://www.nst.com.my/news/crime-courts/2022/01/760549/anti-graft-board-met-azam-baki-nov-24-cleared-him-wrongdoing>

¹⁶⁴ Free Malaysia Today on 5 January 2022: <https://www.freemalaysiatoday.com/category/nation/2022/01/05/macc-advisory-board-clears-azam-on-share-purchase>

¹⁶⁵ New Straits Times on 8 January 2022: <https://www.nst.com.my/news/nation/2022/01/761339/acab-denies-statement-made-its-chairman>

¹⁶⁶ Ibid

board's views and proposals during the press conference – with them having proposed to Abu Zahar that Azam Baki's case be referred to an independent committee; the Parliamentary Special Committee on Corruption, or the MACC's "Complaints Panel".¹⁶⁷ The six further contended that the ACAB had in fact, no investigative powers, and that they were a mere advisory body, leaving them no power to clear Azam Baki of any wrongdoing.¹⁶⁸

Following this, all three MACC deputy commissioners – Ahmad Khusairi Yahaya (operations), Norazlan Mohd Razali (prevention) and Junipah Wandu (management and professionalism) – came out in support of their Chief Commissioner.¹⁶⁹ The trio claimed that their statement was made "on behalf of all MACC's staff", further adding that they were united in "defending the Chief Commissioner's institution".¹⁷⁰

Separately, the Parliamentary Special Select Committee (PSSC) on Agencies under the Prime Minister's Department announced on 12 January 2022 that it had scheduled a hearing wherein Azam would be called in to explain himself.¹⁷¹ Two days before the scheduled hearing was to be held, on 17 January 2022, PSSC Chairperson Abdul Latiff Rahman announced that it would be postponed after Azam Baki had raised several "legal issues". Firstly, he argued that due to his recent filing of a defamation suit against Lalitha Kunaratnam, any matters discussed by the PSSC might be considered by the courts and therefore sub judice.¹⁷² Secondly, he argued that he was already being investigated by the Securities Commission (SC) and the CC.¹⁷³ Thirdly, he contended that, as the discussions centred around his conduct, any discussions in Parliament should be conducted via a private motion rather than a select committee.¹⁷⁴ Hence, Azam Baki claimed that these factors might result in the hearing being deemed beyond the PSSC's legal authority based on provisions under the Houses of Parliament (Privileges and Powers) Act 1952.¹⁷⁵ As a result, Abdul Latiff Rahman opted to postpone the hearing indefinitely. It was never subsequently rescheduled.

In the wake of all this, investigations concluded by the SC on 19 January 2022 revealed that it had found no evidence of "proxy trading" conducted by Azam Baki, clearing him of wrongdoing under Section 25(4) of the Securities Industry Central Depositories) Act 1991.¹⁷⁶ However, due to these findings, the SC

¹⁶⁷ Ibid

¹⁶⁸ Ibid

¹⁶⁹ Malaysiakini on 9 January 2022: <https://www.malaysiakini.com/news/606202>

¹⁷⁰ Ibid

¹⁷¹ Malay Mail on 14 January 2022: <https://www.malaymail.com/news/malaysia/2022/01/14/how-the-azam-baki-share-saga-unfolded/2035010>

¹⁷² Malaysiakini on 17 January 2022: <https://www.malaysiakini.com/news/607234>

¹⁷³ Ibid

¹⁷⁴ Ibid

¹⁷⁵ Ibid

¹⁷⁶ Malaysiakini on 19 January 2022: https://www.malaysiakini.com/news/607543?utm_source=email&utm_medium=textlink&utm_campaign=kinimorningbrief

concluded that Azam Baki had in fact, full control over his trading account, contradicting his initial claim that his brother had used Azam Baki's account to purchase shares.¹⁷⁷

4.3.3. Analysis of the case

It is worth stressing that, due to the SC's findings, Azam Baki's claim that his brother purchased the shares was disproven, leading to the conclusion that he did in fact breach Service Circular Number 3/2002 – Ownership and Declaration of Assets by Public Officials, as his transaction clearly exceeded RM100,000. Despite this, Azam Baki faced no legal or disciplinary repercussions in the aftermath of this scandal and has subsequently had his term as Chief Commissioner extended three consecutive times, as of the time of writing.

Misleading interpretation of ACAB and CC involvement

Azam Baki's initial claim that he was only answerable to the ACAB was a clear misinterpretation of the MACC Act 2009. As such, the subsequent decision by the then-ACAB Chairman to clear Azam Baki of wrongdoing was entirely misleading. Under Section 13 of the MACC Act 2009, there are no provisions that provide the body with either investigative or disciplinary powers. Rather, it clearly stipulates that the ACAB acts purely in an advisory capacity. Thus, it can be contended that the ACAB – by virtue of its Chairman – acted *ultra vires* or beyond its legal authority when declaring Azam Baki "innocent".

The discord between the ACAB members and its Chairman throughout this scandal further highlights structural weaknesses present in the body. Although the MACC Act 2009 details both the functions and the composition of the body, there are no clear provisions that intimate how the ACAB makes decisions. For instance, it is unclear whether the Chairman has a definitive say over decisions or if a vote is needed to finalise decisions or if the Chief Commissioner – as an *ex-officio* member – has voting rights. This ambiguity may have emboldened the then-ACAB Chairman to clear Azam Baki of wrongdoing.

Accordingly, this episode illustrated the problem with the MACC Chief Commissioner's position as an *ex-officio* member of the ACAB. The fact that the Chief Commissioner is able to sit in on the ACAB's meetings – and thus, be present among their deliberations and decisions – puts into serious question the impartiality of the body. How can the ACAB carry out independent oversight of the MACC, if its Chief Commissioner is actively involved in their discussions? This is especially stark in instances where the ACAB has to scrutinise misconduct or impropriety involving the Chief Commissioner and his officers as seen in the shareholding scandal.

Moreover, Azam Baki's subsequent claim that the CC were investigating him – which prevented the PSSC from summoning him – is another grave misinterpretation of the MACC Act 2009. Section 15 of the Act

¹⁷⁷ Ibid

explicitly describes the CC's functions as monitoring "the handling by the Commission of complaints of misconduct", identifying "any weaknesses in the work procedures", and making "such recommendations as to the work procedures of the Commission". Therefore, the CC lacks any investigative authority and functions solely in an advisory capacity, providing guidance to the MACC on best practices in handling complaints against its officers. This means that, regardless of the CC's views on Azam Baki's conduct, they are powerless to compel any disciplinary action on the Chief Commissioner. Consequently, the CC's review of Azam Baki's case should have had no bearing on the PSSC's decision to summon him, and reliance on the CC's involvement can only be regarded as a weak and unconvincing justification.

Problematic intervention by Deputy Chief Commissioners

The subsequent statement by the three deputy commissioners, declaring full support for Azam Baki and claiming that their statement was "on behalf of all MACC's staff" was also immensely problematic. By publicly declaring support for Azam Baki before any internal or external inquiry had been completed, the deputy commissioners signalled that the MACC's senior leadership had already come to their own conclusion. Furthermore, by claiming to speak "on behalf of all MACC's staff", the deputy commissioners effectively disregarded any potential for internal dissent and prejudiced any internal investigations into the matter. Ultimately, the fact that the deputy commissioners, who are directly subordinate to Azam Baki, produced this statement raises concerns of conflict of interest and undue influence.

Role of Parliament in investigation

Additionally, this saga underscored the limitations faced by the SCC in providing actual oversight over the MACC, particularly in view of the involvement of the PSSC on Agencies under the Prime Minister's Department in investigating Azam Baki. Due to the provisions listed under Section 83 of the Parliamentary Standing Orders, PSSCs are granted far more powers than the SCC. For instance, the Standing Orders grant PSSCs the ability to "send persons, documents or papers" and "report its opinion and observations" before Parliament. This provision allows PSSCs to conduct investigations on relevant matters, allowing them to call for witnesses to provide evidence too. On the other hand, the SCC is not empowered to conduct their own investigations, with their only powers of scrutiny lying in their examination of the MACC's and the ACAB's annual reports.

Notably as well, Section 14 of the MACC Act 2009 confines the SCC's role as an adviser to the Prime Minister on matters pertaining to corruption. This is significantly different from PSSCs, whose findings are the subject of open debates among MPs, affording them greater influence in pushing for changes to policies or laws. These factors provide context as to why the SCC was relegated to the side-lines throughout the course of this scandal, and why the PSSC was more prominently involved in investigating Azam Baki. However, even with these powers, it must be noted that the PSSC failed in its attempts to

summon Azam Baki. Thus, it is apparent that in the existing governance framework, even Parliament faces limitations in demanding accountability from the MACC.

Inadequate intervention by PSSC

It is worth noting though, that despite the reasons cited in Azam Baki's letter, it is arguable that Abdul Rahman Latiff could have intervened far more decisively to compel Azam's appearance before the PSSC. The legal objections raised by Azam Baki – namely the claim of investigations by the CC – were proven to have been misleading, as the CC itself possess no investigatory powers. Furthermore, rather than accepting these objections at face value and postponing the hearing indefinitely, Abdul Latiff could have sought legal clarification and required Azam Baki's attendance solely to address governance and accountability concerns. These were hardly insurmountable barriers, and his failure to take any follow-up action suggests a lack of real desire on his part, which effectively allowed Azam Baki's to escape Parliamentary scrutiny.

The Chief Commissioner has few checks on power

These instances clearly show that, at present, other than the Prime Minister, there are no enforceable or independent check-and-balance mechanisms over the MACC Chief Commissioner. For one, with the Chief Commissioner stationed as an *ex-officio* member, the independence of the ACAB is compromised. Even Parliament, when attempting to call Azam Baki for investigation, was easily ignored, with neither the relevant PSSC or the SCC capable of compelling greater accountability for the Chief Commissioner. At each juncture, attempts at keeping the Chief Commissioner in check were thwarted by limitations in existing legislation. Thus, this saga implies that the Chief Commissioner is able to act without repercussions, so long as the Prime Minister does not act.

4.4. Ignoring of the SCC's Recommendations (2022)

4.4.1. Background

Although Section 14(5) of the MACC Act 2009 creates an obligation on the SCC to produce an annual report to the PM, who shall lay a copy before both Houses of Parliament, there is indeed no complimentary obligation on the Houses of Parliament or the PM to openly debate on the annual report and the recommendations made therein during parliamentary sessions. The outcome of this is that the SCC's efforts and comments are often not considered for debate by the Prime Minister or Parliament. Tellingly, the closing remarks of the SCC's 2020 Annual Report intimated exactly that:

“...the Prime Minister should heed the contents of this SCC Report. Previously it has been seen that the Prime Minister gave no reaction, suggestion, or explanation on the views, recommendations and advice submitted by the SCC. It is hoped that this Report shall not face the same fate.”

Notably as well, despite section 15(5) of the MACC Act 2009 stating that upon receiving the SCC’s annual report, the Prime Minister “shall lay a copy of that annual report before each House of Parliament”, this report was not presented to Parliament by then-Prime Minister Ismail Sabri or any of his successors.

4.4.2. Analysis of case

Even with there being an explicit provision requiring the Prime Minister to table the SCC’s annual report before Parliament, multiple Prime Ministers have been able to ignore this requirement. The constant disregard of the SCC and its recommendations by successive Prime Ministers displays significant limitations in the committee’s ability to influence real change in the running of the MACC. Within this current structure, the SCC has little function other than scrutinising the MACC’s annual report and producing its own – with there being no statutory provisions compelling any party to heed its advice. With this being its only avenue to express its opinions on the state of corruption in Malaysia and the necessary remedies, it is no exaggeration to say that the SCC’s functions are largely trivial in nature, without significant effect.

4.5. Syed Saddiq’s Corruption Case (2025)

4.5.1. Background

On 22 July 2021, Muar MP Syed Saddiq was charged in the Kuala Lumpur Sessions Court for one count of abetting a criminal breach of trust of RM1 million and another count for the “dishonest misappropriation of property” of RM120,000.¹⁷⁸ These charges were allegedly involved the misuse of *Armada’s* – the youth wing of *Parti Pribumi Bersatu (BERSATU)* – campaign funds for the 14th General Elections (GE14).¹⁷⁹ On the first count, Saddiq was alleged to have instructed the then-*Armada* Assistant Treasurer, Rafiq Hakim, to withdraw RM1 million from *Armada’s* accounts, with the subsequent withdrawal amounting to a criminal breach of trust.¹⁸⁰ On the second count, Saddiq was accused of transferring RM120,000 worth of funds collected by *Armada* during the GE14 into his personal bank account.¹⁸¹

¹⁷⁸ Syed Saddiq Syed Abdul Rahman v Public Prosecutor [2025] CLJU 1505 (CA), [1-2]

¹⁷⁹ New Straits Times on 20 March 2025: <https://www.nst.com.my/news/crime-courts/2025/03/1190976/syed-saddiqs-cbt-case-timeline-events>

¹⁸⁰ Syed Saddiq Syed Abdul Rahman v Public Prosecutor [2025] CLJU 1505 (CA), [1-2]

¹⁸¹ Ibid.

Subsequently, on 5 August 2021, he was charged with a further two counts of money laundering for the sum of RM100,000 in the Johor Bahru Sessions Court.¹⁸² Under these charges, Saddiq was alleged to have illegally transferred RM50,000 into his *Amanah Saham Bumiputera* account on two separate occasions.¹⁸³ On 23 August 2021, he applied to have all four charges jointly tried in the Kuala Lumpur High Court, which was allowed by High Court Judge Mohamed Zaini Mazlan two months later.¹⁸⁴ On 9 November 2023, after over a year of court proceedings, Syed Saddiq was found guilty of all four charges by the Kuala Lumpur High Court and sentenced to seven years in jail, a RM10 million fine and two strokes of the cane.¹⁸⁵

4.5.2. Appeal and Subsequent Acquittal

A month after this ruling, Saddiq filed a petition to the Court of Appeal to have all four charges discharged through an acquittal.¹⁸⁶ Following his appeal, the Court of Appeal acquitted him of all four charges of corruption on 25 June 2025.¹⁸⁷ On the count of abetment, the three-judge panel found that the act of withdrawing funds did not amount to a criminal breach of trust under Section 405 of the Penal Code, therefore clearing Saddiq of abetting Rafiq Hakim.¹⁸⁸ On the count of dishonest misappropriation, the Court of Appeal ruled that as the RM120,000 raised by *Armada* during GE14 was for the purposes of financing Saddiq's election campaign, all proceeds were considered his own personal funds.¹⁸⁹ As the Court found that none of these funds were illegally obtained, the Court further ruled that Saddiq could not have committed money laundering as he had no reason to believe that the transferred funds "were proceeds of an unlawful activity".¹⁹⁰

4.5.3. Allegations of Misconduct against MACC Officers

Part of the Court of Appeal's judgement centred around the fact that MACC officers had, throughout the course of their investigations, potentially acted inappropriately – particularly when questioning witnesses. The judgement lists at least three different instances wherein MACC officers were alleged to have acted inappropriately when questioning witnesses.

¹⁸² New Straits Times on 20 March 2025: <https://www.nst.com.my/news/crime-courts/2025/03/1190976/syed-saddiqs-cbt-case-timeline-events>

¹⁸³ Syed Saddiq Syed Abdul Rahman v Public Prosecutor [2025] CLJU 1505 (CA), [1-2]

¹⁸⁴ New Straits Times on 20 March 2025: <https://www.nst.com.my/news/crime-courts/2025/03/1190976/syed-saddiqs-cbt-case-timeline-events>

¹⁸⁵ Ibid

¹⁸⁶ Ibid

¹⁸⁷ New Straits Times on 25 June 2025: <https://www.nst.com.my/news/crime-courts/2025/06/1235640/syed-saddiq-acquitted-all-corruption-charges-watch>

¹⁸⁸ Syed Saddiq Syed Abdul Rahman v Public Prosecutor [2025] CLJU 1505 (CA), [48-49]

¹⁸⁹ Syed Saddiq Syed Abdul Rahman v Public Prosecutor [2025] CLJU 1505 (CA), [90]

¹⁹⁰ Syed Saddiq Syed Abdul Rahman v Public Prosecutor [2025] CLJU 1505 (CA), [155]

Prosecution Witness 13 – Rafiq Hakim

A major issue raised by the defence was the alleged mistreatment of the 13th prosecution witness, former *Armada* Assistant Treasurer Rafiq Hakim, with them claiming that he had “tailored his evidence to appease the MACC”.¹⁹¹ The defence supported these claims by highlighting the following pieces of evidence, which display Rafiq’s unease with MACC’s methods:

- Rafiq stated that the MACC’s remand of him for six days made him “sad” and put him “under a lot of stress”;¹⁹²
- Rafiq suffered a “break down” after being told that his remand period could be extended by another day;¹⁹³
- During his remand, he had informed his wife via a phone call that, “*saya yang kena teruk* (I am the one suffering)”;¹⁹⁴ and
- Rafiq had admitted to changing his evidence during his cross-examination.¹⁹⁵

Additionally, the Court found that the evidence provided by Rafiq was riddled with inconsistencies, which showed up during direct examination, cross-examination, and re-examination.¹⁹⁶ Due to these findings, the Court agreed with the defence’s contention stating that there was, “a strong reasonable inference that the MACC might have also exerted improper pressure upon PW13 (*Rafiq Hakim*) to tailor his evidence to suit the prosecution case.”¹⁹⁷ The Court further stated that the pressure placed upon Rafiq by the MACC may have been so extreme that “he admitted he had committed criminal breach of trust when questioned by the prosecution and gave evidence against the Appellant.”¹⁹⁸

Defence Witness 4 – Siti Nurul Hidayah

The defence also highlighted the alleged abuse of the 4th defence witness, Siti Nurul Hidayah, who previously served as Syed Saddiq’s private secretary.¹⁹⁹ Hidayah had previously testified that she was “threatened and roughed up by MACC officers”, before lodging a police report and calling a press conference.²⁰⁰ During her testimony, she spoke on three separate incidents where MACC officers had acted improperly, namely:

¹⁹¹ Syed Saddiq Syed Abdul Rahman v Public Prosecutor [2025] CLJU 1505 (CA), [134]

¹⁹² Ibid.

¹⁹³ Ibid.

¹⁹⁴ Ibid.

¹⁹⁵ Syed Saddiq Syed Abdul Rahman v Public Prosecutor [2025] CLJU 1505 (CA), [135]

¹⁹⁶ Syed Saddiq Syed Abdul Rahman v Public Prosecutor [2025] CLJU 1505 (CA), [138]

¹⁹⁷ Ibid.

¹⁹⁸ Ibid.

¹⁹⁹ Syed Saddiq Syed Abdul Rahman v Public Prosecutor [2025] CLJU 1505 (CA), [136]

²⁰⁰ Ibid.

- During the recording of her statement with the MACC, “MACC officers had taken her mobile phone, squealed at her and threw her mobile phone towards her”;²⁰¹
- In the investigation room, six MACC officers had “hissed [at] her and abused her with the words *babi* (pig) and *bodoh* (stupid)”;²⁰²
- The same officers had also “asserted that she deserved to live alone and to be cast aside by her family”, after being dissatisfied with her answers;²⁰³ and
- One MACC officer had threatened to slap her face and instructed her “to stand for about 30 minutes with one of her legs and both of her hands up.”²⁰⁴

Notably, following this incident, Saddiq had written an official complaint letter to MACC Chief Commissioner Azam Baki to highlight the alleged abuse faced by Hidayah.²⁰⁵

Prosecution Witness 10 – Abdul Hannan bin Khairy

The last example of witness intimidation noted in the Court’s judgement concerns the husband of Siti Nurul Hidayah, the 10th prosecution witness, Abdul Hannan bin Khairy. Hannan, who was formerly an *Armada* executive committee member, had admitted that he had been pressured by the MACC during investigations.²⁰⁶ Upon questioning by the defence, Hannan revealed that the pressure exerted on him was part of the prosecution’s strategy to obtain “*jawapan-jawapan tertentu dari [sic] kamu dan isteri kamu* (certain answers from you and your wife)”.²⁰⁷

Based on these testimonies, the Court found that there was sufficient evidence to prove that “witnesses were pressured and submissions made to infer evidence being tailored to suit the prosecution case”.²⁰⁸

4.5.4. Analysis of the Case

Serious Allegations of Misconduct Unheeded

As mentioned above, following the alleged mistreatment of Siti Nurul Hidayah, an official complaint letter was sent to MACC Chief Commissioner Azam Baki by Syed Saddiq.²⁰⁹ Despite this, no publicly known action has been taken thus far to look into these claims. This is further compounded by the fact that an official police report was filed by Hidayah, shortly after her alleged mistreatment.²¹⁰ Further still, despite

²⁰¹ Ibid.

²⁰² Ibid.

²⁰³ Ibid.

²⁰⁴ Ibid.

²⁰⁵ Syed Saddiq Syed Abdul Rahman v Public Prosecutor [2025] CLJU 1505 (CA), [137]

²⁰⁶ Syed Saddiq Syed Abdul Rahman v Public Prosecutor [2025] CLJU 1505 (CA), [138]

²⁰⁷ Ibid.

²⁰⁸ Syed Saddiq Syed Abdul Rahman v Public Prosecutor [2025] CLJU 1505 (CA), [139]

²⁰⁹ Syed Saddiq Syed Abdul Rahman v Public Prosecutor [2025] CLJU 1505 (CA), [137]

²¹⁰ Syed Saddiq Syed Abdul Rahman v Public Prosecutor [2025] CLJU 1505 (CA), [136]

these complaints being publicly known – and no action taken internally by MACC – none of the five oversight bodies has made so much as a comment acknowledging the seriousness of these accusations.

Additionally, during this trial, MACC officers have, on three separate occasions, been accused of “pressuring” witnesses to “tailor” their statements in ways that aid the prosecution of Syed Saddiq.²¹¹ These are serious allegations of impropriety that, if true, expose immense malfeasance within the investigatory practices of the MACC. The fact that the Court of Appeal find these allegations credible is enough justification for the CC or the ORP to act immediately in reviewing existing MACC work procedures and for authorities to take immediate action against the alleged perpetrators.

Lack of Complaint Channels Present

It is telling that Hidayah opted for a police report, rather than approaching any of the five oversight bodies to make her complaint. Despite the five bodies ostensibly being “oversight” bodies, there are evidently no explicit or direct channels available to lodge complaints to any one of these bodies. A look at the provisions under the MACC Act 2009 (for the three statutory bodies) and the terms of reference (for the two administrative bodies) show no indication of a public complaints mechanism.

As illustrated previously in Tables 2 and 3, there are no express functions from any of the oversight bodies to specifically “receive” complaints from the public. Even the CC, is only empowered to “monitor the handling” of misconduct complaints against MACC staff. The lack of formal channels to direct complaints to any of these oversight bodies is a grave issue, especially when complaints concern higher-ranking members of the MACC. This means that the only formalised channels publicly available to make complaints against MACC officers are with the MACC themselves or through the police.

²¹¹ Syed Saddiq Syed Abdul Rahman v Public Prosecutor [2025] CLJU 1505 (CA), [139]

4.6. Conclusion

The case studies examined in this chapter demonstrate that the MACC's oversight bodies have, in practice, played a marginal and largely ineffective role in ensuring accountability for misconduct within the Commission. Across vastly different factual contexts – custodial death, allegations involving a sitting Prime Minister, a Chief Commissioner's personal financial conduct, ignored parliamentary committee recommendations, and credible claims of witness intimidation – a consistent pattern emerges: oversight bodies either lack the legal authority, institutional independence, or political insulation necessary to intervene meaningfully.

First, the cases reveal that most oversight bodies are structurally confined to advisory or monitoring roles, without investigative or disciplinary powers. Bodies such as the CC, ACAB, and SCC are repeatedly portrayed – both in law and in practice – as entities that may observe, comment, or recommend, but cannot compel action. Even where serious wrongdoing is alleged, these bodies are dependent on the MACC itself, the Attorney General, or the Prime Minister to take further steps. This dependency fundamentally undermines their purpose as external checks.

Second, the case studies illustrate how internal self-investigation remains the dominant model for handling complaints against MACC officers. Whether through internal divisions, internal committees, or reliance on MACC-led processes, allegations of misconduct are ultimately filtered back into the institution under scrutiny. This creates an inherent conflict of interest and contributes to repeated outcomes in which officers are cleared despite adverse findings by courts, commissions of inquiry, or other independent bodies.

Third, political concentration of power emerges as a central obstacle to accountability. The Prime Minister's influence over the Attorney General, key oversight body appointments, and the MACC Chief Commissioner, combined with the Attorney General's dual role as Public Prosecutor, creates structural conditions in which politically sensitive cases are especially vulnerable to interference or premature closure.

Fourth, these cases demonstrate that Parliament's role in overseeing the MACC is weak and fragmented. While certain parliamentary select committees possess stronger procedural powers than the statutory oversight bodies created under the MACC Act 2009, even these committees have proven unable to compel cooperation in high-profile cases. Meanwhile, the SCC – the body most directly linked to Parliament – is confined to reviewing reports and issuing advice that can be ignored without consequence.

Finally, the absence of clear, independent, and accessible complaint channels to the oversight bodies further diminishes their relevance to affected individuals and the public. Victims, witnesses, and whistleblowers appear to have little practical avenue to trigger independent oversight, reinforcing reliance on the MACC or the police as the primary recipients of complaints.

In sum, the case studies illustrate that the shortcomings of the MACC's oversight framework are not merely the result of poor implementation but are rooted in structural and legal design. The existing model prioritises internal control, executive dominance, and advisory oversight, rather than independent, empowered, and enforceable accountability. These findings underscore the need for substantial legislative and institutional reform, which is examined in the chapters that follow.

	ACAB	SCC	CC	ORP	CCPP
Teoh Beng Hock's Death (2009)	<ul style="list-style-type: none"> Not involved.²¹² 	<ul style="list-style-type: none"> Not involved.²¹³ 	<ul style="list-style-type: none"> Cleared Ashraf, Anuar, and Hishamuddin of all wrongdoing, despite holding no statutory powers to do so 	<ul style="list-style-type: none"> Involvement unclear 	N/A
1MDB (2015)	<ul style="list-style-type: none"> Involvement unclear 	<ul style="list-style-type: none"> Involvement unclear 	<ul style="list-style-type: none"> Involvement unclear 	<ul style="list-style-type: none"> Reviewed the AG's decision to "clear" Najib of wrongdoing. Subsequently told by the AG that, "any bodies formed to 	N/A

²¹² Although the ACAB did not involve itself in the investigations and subsequent action taken, they included a paragraph within the "ACAB Review 2010" that addressed the case, stating:

"The prejudice and negative perceptions that were cast against the MACC throughout 2009 were overcome through various approaches. The most sensitive issue that led to the tarnishing of the MACC's image was the death of key witness Teoh Beng Hock. As a result of this issue, authorities such as the MACC were placed in a precarious position and often became the victim of attacks and criticism from certain quarters. This directly contributed to Malaysia's unsatisfactory performance in the Transparency International Corruption Perceptions Index, where there was no change in Malaysia's ranking in 2010 compared to the previous year's ranking, which remained at 56th place."

Anti-Corruption Advisory Board. *Ulasan Lembaga Penasihat Pencegahan Rasuah 2010* (2010), available at < https://www.sprm.gov.my/admin/uploads_publication/ulasan-lppr-2010-jurnal-my-15112020.pdf>

²¹³ Although the SCC did not intervene in the investigations and subsequent action taken, they included a paragraph within the "SCC Annual Report 2010" that indirectly referenced the case, stating:

"The SCC also emphasizes that training and skills in handling witnesses, accused persons and the public should be emphasized and implemented continuously for MACC Officers. With this, MACC Officers will be more competent and professional in handling witnesses, accused persons and the public. The physical security system for each MACC building and office should be improved as much as possible to ensure that unwanted incidents do not recur. Instructions and regulations related to security should be formulated and adhered to, to ensure that security is always at an optimal level. Continuous monitoring and updating of existing systems and regulations should also be constantly implemented to further enhance the delivery of comprehensive duties and responsibilities of each MACC Officer."

Special Committee on Corruption. *Laporan Tahunan Jawatankuasa Mengenai Rasuah 2010* (2010), available at < https://www.sprm.gov.my/admin/uploads_publication/laporan-jkmr-2010-jurnal-my-15112020.pdf>

				question any decision of the AG would be against Article 145(3) of the Federal Constitution”. A member allegedly claimed that the Prime Minister would not renew their term following this incident.	
Azam Baki Shareholding Scandal (2021)	<ul style="list-style-type: none"> ACAB Chairperson unilaterally released a statement clearing Azam Baki of wrongdoing. However, the body’s remaining six members refuted his statement, claiming that the Chairperson had misled the public and that the ACAB has no powers to clear Azam Baki. 	<ul style="list-style-type: none"> Investigations from a Parliamentary body was initiated by the PSSC on Agencies under the Prime Minister Department instead of the SCC. With the SCC possessing no powers of investigation. 	<ul style="list-style-type: none"> Azam Baki claimed that the CC had conducted an investigation on the matter, but the results of the investigation are unclear. Notably, the CC possesses no investigatory powers, meaning any investigation conducted by them would have no statutory footing. 	<ul style="list-style-type: none"> Involvement unclear 	<ul style="list-style-type: none"> A CCPP member submitted a letter requesting a meeting with the Chairpersons of the CCPP and ACAB, but no meeting materialised.
Ignoring of SCC’s Recommendations (2022)	<ul style="list-style-type: none"> N/A 	<ul style="list-style-type: none"> Expressed concern at their recommendation being persistently ignored by successive 	<ul style="list-style-type: none"> N/A 	<ul style="list-style-type: none"> N/A 	N/A

		Prime Ministers. The Prime Minister has yet to present this report to Parliament.			
Syed Saddiq Corruption Case (2025)	<ul style="list-style-type: none"> • Involvement unclear 	<ul style="list-style-type: none"> • Involvement unclear 	<ul style="list-style-type: none"> • Involvement unclear despite a formal complaint having been written to the MACC 	<ul style="list-style-type: none"> • Involvement unclear despite a formal complaint having been written to the MACC 	N/A

Table 5 A table summarising the role of each oversight body in the above case studies

5. Analysing the MACC Oversight Framework

5.1. Analytical Framework

Oversight mechanisms must function as external checks on the exercise of public power. In the context of anti-corruption agencies, effective oversight is meant to ensure that broad investigative and coercive powers are exercised lawfully, impartially, and in accordance with human rights standards, while providing credible avenues for detecting, correcting, and deterring misconduct. Oversight, therefore, is not proven by the mere presence of supervisory bodies; it must operate in a manner that constrains discretion, exposes wrongdoing, and generates institutional consequences.

Chapter 3 demonstrated that international best practice does not measure accountability by the mere existence of oversight bodies, but by whether such bodies are legally empowered, institutionally independent, and capable of restraining abuse of power. Chapter 4 illustrated how the MACC's five oversight bodies have operated in practice during moments of acute institutional stress. Read together, these chapters suggest that the central problem is not simply that the MACC's oversight bodies exist in advisory form, but that the overall oversight system lacks three interrelated elements: transparency of oversight activity, mandatory accountability of the MACC, and enforceability of oversight outcomes.

This chapter evaluates the MACC's oversight architecture through these three accountability dimensions, drawing on international standards and the case studies examined earlier.

5.2. Opacity of Oversight Deliberations and Advice

International standards emphasise transparency as a minimum condition for external accountability. The UNCAC Technical Guide highlights regular reporting to legislatures and public institutions as a key safeguard, while the Colombo Commentary stresses that external accountability mechanisms must operate in ways that are open and subject to external scrutiny. Transparency does not merely serve an informational function, but enables Parliament, civil society, and the public to assess whether oversight bodies are discharging their mandates effectively.

In Malaysia, however, the operations of the MACC's oversight bodies are characterised by a high degree of opacity. With the partial exception of the SCC's annual report, none of the five oversight bodies are subject to statutory requirements to publish meeting minutes, findings, recommendations, dissenting opinions, or reasons for decisions. Communications between these bodies and the MACC largely occur behind closed doors.

This opacity has tangible consequences. During the Azam Baki shareholding scandal, the public was informed by the ACAB Chairman that the Board had cleared the Chief Commissioner of wrongdoing.

Shortly thereafter, six ACAB members publicly denied that the Board had reached any such collective decision. The absence of any publicly accessible record of ACAB deliberations made it impossible to verify which account was accurate, or whether proper procedures had been followed. This episode illustrates how opacity enables contradictory narratives to coexist without institutional resolution.

A similar pattern is evident in the Teoh Beng Hock case. Although oversight bodies were notionally involved in internal processes following the Royal Commission of Inquiry, no publicly available oversight report explains what concerns were raised, what recommendations were made, or how those recommendations were addressed. The public is therefore left without any basis to assess whether oversight bodies meaningfully engaged with the serious findings of abuse documented by the RCI and the Court of Appeal.

Even the SCC, which is statutorily required to produce an annual report, suffers from transparency deficits. SCC reports are not consistently tabled in Parliament, and there is no obligation for their contents to be debated. As noted in the SCC's own 2020 Annual Report, successive Prime Ministers have failed to respond to or acknowledge the Committee's views and recommendations. Consequently, even where oversight information exists, it is not reliably placed into the public domain.

These examples demonstrate that Malaysia's oversight framework operates largely as a closed system. Oversight bodies may deliberate internally, but their conclusions do not enter the public accountability space. In such a context, oversight activity cannot generate reputational, political, or institutional consequences, severely undermining its disciplining effect.

5.3. Absence of Mandatory Response and Follow-Up

Transparency alone is insufficient for accountability. International best practice further requires that institutions subject to oversight be legally obliged to respond to oversight findings. The UNCAC Technical Guide and Colombo Commentary emphasise reporting relationships and review mechanisms that create structured dialogue between oversight bodies and the institutions they oversee.

The MACC's oversight framework lacks such mandatory answerability. None of the five oversight bodies are empowered to require the MACC, the Prime Minister, or the AG/PP to provide formal written responses to findings or recommendations. There are no statutory timelines, response obligations, or justification requirements for non-compliance.

This structural design is reflected consistently in practice. In the Teoh Beng Hock case, despite extensive findings of misconduct by the RCI and judicial criticism by the Court of Appeal, MACC officers were ultimately cleared through internal processes. No oversight body appears to have compelled the MACC to explain how this outcome reconciled with the RCI's findings.

Similarly, during the Azam Baki shareholding scandal, calls for independent investigation were deflected through references to ACAB and CC involvement, even though both bodies lack investigative powers. No oversight body required the MACC to justify its acceptance of Azam Baki's explanation, nor to reconcile that explanation with the SC's later finding that Azam exercised control over his trading account.

In the Syed Saddiq case, the Court of Appeal expressly recognised credible allegations that MACC officers pressured witnesses to tailor their evidence. Yet, no oversight body publicly demanded an explanation from the MACC, nor required the initiation of disciplinary or criminal proceedings.

These cases illustrate that oversight bodies may serve as forums for receiving information, but they do not function as institutions to which the MACC is answerable. In the absence of legally enforceable response obligations, oversight transforms into mere discretionary consultation.

5.4. Lack of Enforceability and Consequence

The third dimension of effective accountability is enforceability. International standards do not require oversight bodies to exercise prosecutorial power, but they do envisage mechanisms capable of triggering consequences, such as compulsory referrals, independent investigations, or binding remedial directions.

Malaysia's oversight bodies possess none of these capacities. They do not have statutory basis to initiate investigations, compel testimony, require production of documents, impose disciplinary measures, or mandate referrals to prosecutorial authorities. At most, they may offer advice or express concern.

The consequences of this design are evident across the case studies. In the Teoh Beng Hock case, despite findings of unlawful acts, no MACC officer has been successfully prosecuted. In the Azam Baki shareholding scandal, oversight bodies could not compel independent investigation. In the Syed Saddiq case, credible allegations of witness intimidation did not result in any known institutional action.

The cumulative effect is an accountability system with no escalation pathway. Even where misconduct is identified, there is no legally mandated route through which oversight bodies can ensure that consequences follow. Accountability thus terminates at the level of observation. This design falls squarely within the risks anticipated by Jakarta Principle 14, which recognises that anti-corruption agencies must be accountable to mechanisms capable of preventing abuse of power, not merely observing it.

5.5. Concentration of Executive Control

The deficiencies outlined above are compounded by Executive dominance over appointments and institutional positioning. The Prime Minister appoints members of all five oversight bodies, appoints the Chief Commissioner, and advises the Yang di-Pertuan Agong on the appointment of the Attorney General. This creates a vertically integrated structure in which oversight bodies, the institution under oversight, and prosecutorial authority are all embedded within the same executive chain of influence.

The Najib Razak case demonstrates the risks inherent in this arrangement. The removal of an Attorney General allegedly preparing charges, followed by the appointment of a successor who cleared the Prime Minister, occurred in a system where no oversight body possessed independence or authority to intervene.

Executive concentration of control undermines not only actual independence, but also the perception of independence. Even if individual oversight members act in good faith, the structural reality creates reasonable public doubt about the impartiality of oversight outcomes.

Executive dominance over oversight bodies is reinforced not only through formal appointment powers, but also through the design of appointment criteria that impose few substantive constraints on Executive discretion. Across all five oversight bodies, eligibility requirements are framed in broad, subjective terms that lack measurable standards and are not accompanied by independent vetting or parliamentary confirmation.

For the ACAB, Section 13 of the MACC Act 2009 requires members to be “persons of integrity who have rendered distinguished public service or have achieved distinctions in the profession”. These terms are undefined in law. No criteria exist to assess what constitutes “integrity”, “distinguished public service”, or “distinction”, leaving their interpretation entirely to the Prime Minister. As a result, the provision operates less as a safeguard and more as an open-ended licence for discretionary selection.

The same pattern is evident in the CC, where members must merely be persons whom the Minister considers “fit and proper”, without statutory elaboration. Similarly, the ORP is appointed from among “experts who represent relevant professions” and who “represent the quality of integrity and independence of the Commission”, concepts that are neither defined nor subject to external verification.

Even where appointment categories appear more specific, such as in the CCPP, which draws from civil society, academia, business, media, and religious groups, candidates must still be individuals deemed capable of assisting the MACC to “inculcate hatred against corruption”, a subjective formulation that again leaves final judgment to the Prime Minister.

The SCC, although composed of Members of Parliament and Senators, is likewise not protected by requirements of proportional party representation or consultation with the Opposition, in contrast to parliamentary select committees established under the Standing Orders. The only statutory restriction is that members do not belong to the administration, a threshold that still permits appointment of government-aligned backbenchers.

These vague and discretionary appointment frameworks ensure that formal eligibility criteria do not meaningfully constrain executive choice. When combined with the Prime Minister’s direct appointment power over all five oversight bodies, they entrench a vertically integrated oversight structure in which

those tasked with scrutinising the MACC owe their positions to the same authority that appoints the MACC Chief Commissioner.

This structural arrangement undermines both actual and perceived independence of oversight bodies, irrespective of the personal integrity of individual members.

5.6. Fragmentation and Diffusion of Oversight Responsibility

Rather than consolidating accountability, Malaysia's oversight architecture disperses responsibility across multiple bodies with narrow, overlapping, and weak mandates.

Complaints are monitored by the CC, operations are reviewed by the ORP, strategy is advised by the ACAB, prevention is considered by the CCP, and parliamentary scrutiny is assigned to the SCC. However, no single body is responsible for end-to-end accountability when serious misconduct occurs.

The result is institutional buck-passing. Each body can plausibly claim that primary responsibility lies elsewhere. This fragmentation was visible in the Azam Baki case, where responsibility appeared to oscillate between the ACAB, CC, SC, and Parliament, without any body assuming decisive ownership of accountability. While multiple oversight bodies can in theory enhance accountability through plural scrutiny, this benefit arises only where mandates are clear, coordinated, and anchored to enforceable authority.

5.7. Conclusion

This chapter has shown that the central failure of the MACC's oversight framework is not merely the advisory character of oversight bodies, but the systemic absence of transparency, mandatory accountability, and enforceability. While multiple bodies exist in form, oversight in practice operates largely as private consultation rather than public accountability. Oversight activity is opaque, responses to oversight are discretionary, and no institutional pathway exists through which findings are translated into consequences.

These structural deficiencies are compounded by Executive dominance over appointments and the fragmentation of oversight responsibilities across multiple weakly empowered bodies. The combined effect is an oversight architecture that is incapable of restraining abuse of power or correcting institutional misconduct, even in cases involving serious allegations against MACC officers or senior leadership.

Independence, as envisaged by UNCAC, is not insulation from scrutiny, but insulation from improper influence combined with robust accountability. Malaysia's current oversight model produces the opposite effect: strong insulation from external scrutiny and weak protection against political influence. This inversion helps to explain persistent public scepticism toward the MACC, recurring allegations of selective prosecution, and declining confidence in anti-corruption enforcement.

Meaningful reform therefore requires more than incremental adjustments to existing bodies. It requires structural redesign of where oversight authority is located, how it is exercised, and to whom the MACC is ultimately accountable. The following chapter sets out recommendations aimed at realigning Malaysia's MACC oversight framework with international standards by embedding transparency, enforceable accountability, and institutional independence at the core of anti-corruption governance.

6. Recommendations

The preceding chapters reviewed the functions and terms of appointment of the five oversight bodies, examined international best practices under UNCAC, the Jakarta Statement, and the Colombo Commentary, and analysed multiple case studies involving alleged misconduct by MACC officers and leadership. Collectively, this analysis demonstrates that the MACC's oversight framework fails to provide meaningful accountability because it lacks transparency of oversight activity, mandatory accountability of the MACC to independent authorities, and enforceability of oversight outcomes.

The following recommendations are therefore directed at restructuring MACC oversight around these three accountability dimensions, with the aim of transforming existing oversight from private consultation into transparent, independent, and enforceable control.

6.1. Expand Ombudsman Malaysia's scope to include the MACC

Malaysia is currently in the process of drafting legislation to establish a Federal Ombudsman office.²¹⁴ Once established, this body would be responsible for managing and resolving public complaints, being vested with the authority to investigate allegations of maladministration and misconduct involving civil servants. Therefore, this recommendation primarily addresses the absence of enforceable and independent investigative pathways for complaints against the MACC.

Although the CC is purported to perform a comparable function, the above analysis has revealed significant structural and functional deficiencies in the CC. Most notably, it lacks investigatory powers, and its members are appointed by the Prime Minister. As a result, no truly independent mechanism exists to investigate allegations of misconduct within the MACC. This institutional gap has led to numerous instances in which MACC officers – including the Chief Commissioner himself – have evaded accountability for serious misconduct.

These deficiencies underscore the urgent need for an independent body with investigatory powers over the MACC. Therefore, the government must include the MACC within the jurisdiction of Ombudsman Malaysia, thereby empowering the Ombudsman to investigate and follow up on complaints against the agency. This would mean going against the protestations of Azam Baki, who has publicly opposed proposals to extend the Ombudsman's mandate to the MACC.

However, this proposal is viable only if Ombudsman Malaysia itself is established as a genuinely independent institution. In particular, safeguards must be in place to ensure independence in the appointment and removal of Ombudspersons, as well as in staffing and budgetary matters. In essence,

²¹⁴ Bernama. (2025, Dec 8). Ombudsman Malaysia Underscores Madani Govt's Commitment to Strengthening Citizen's Rights, Public Sector Integrity. <https://www.bernama.com/en/news.php?id=2500232>.

Ombudsman Malaysia must be granted sufficient autonomy to manage its own affairs free from external interference.

Hence, the government must include the MACC within the jurisdiction of Ombudsman Malaysia, thereby empowering the Ombudsman to receive complaints directly from the public, initiate independent investigations, and issue findings and public recommendations that require formal responses from the MACC and relevant authorities.

6.2. Establish a Parliamentary Special Select Committee to oversee the MACC's functions

At present, Parliament plays only a limited role in overseeing the affairs of the MACC through the SCC. However, as noted above, the SCC's mandate is confined to advising the Prime Minister on matters relating to corruption, rather than exercising direct oversight over the MACC. Moreover, the sole mechanism through which the SCC may act as a "check" on the MACC – namely, the review of the agency's annual report – has proven largely ineffective, as the SCC's findings and recommendations are frequently disregarded by the government. This restricted mandate was evident in the SCC's inability to meaningfully intervene during the Azam Baki shareholding controversy, with responsibility instead falling to the PSSC on Agencies under the Prime Minister's Department. Even then, the PSSC failed to pursue an investigation, as Azam Baki declined to appear before the committee.

This episode underscores the reality that, despite claims to the contrary, Parliament wields minimal authority in holding the MACC accountable. Thus, the establishment of a PSSC dedicated specifically to the oversight and monitoring of the MACC should be treated as a priority, with this change reflected in the MACC Act 2009. This PSSC would not merely replace the functions of the SCC but serve to enhance Parliament oversight over the agency. In line with the recommendations set out in the 2015 *"Memorandum for the Reform of the Malaysian Anti-Corruption Commission"* authored by the Malaysian Bar, the C4 Center, IDEAS, and TI-M, the creation of this PSSC would ensure that the MACC is properly accountable to Parliament. This recommendation thus addresses the lack of parliamentary-centred transparency and mandatory accountability in the current oversight framework.

Pursuant to Standing Order 82 of the Standing Orders of the Dewan Rakyat, Parliamentary Select Committees are required to reflect the political balance within the Dewan Rakyat. This requirement mitigates the risk of undue interference by any single party in the MACC's functions, and, instead, ensures that the PSSC operates on a bipartisan basis. Accordingly, the PSSC should oversee the appointment of the Chief Commissioner, without Executive involvement.

The process of nominating candidates and subsequently appointing the Chief Commissioner can be done as follows:

1. The PSSC establishes clear eligibility criteria, ensuring that all prospective candidates possess the requisite qualifications and experience.
2. Applications are invited through a public call, allowing all eligible candidates to apply in an open and transparent manner.
3. The PSSC nominates the most suitable candidate, whose appointment is then subject to approval by a vote in the Dewan Rakyat.
4. The nominee must secure a two-thirds majority in the Dewan Rakyat before being sworn in as Chief Commissioner.
5. The removal of the Chief Commissioner should likewise require a two-thirds majority in the Dewan Rakyat, with the PSSC first presenting the relevant grounds before the matter is put to a vote.
6. All PSSC proceedings relating to appointments, major investigations, and oversight hearings should, as a general rule, be conducted publicly, with transcripts and reports made accessible, subject only to narrowly tailored confidentiality exceptions.

This proposal is consistent with the principles articulated under UNCAC and the Jakarta Statement, as discussed above – specifically Article 5 of UNCAC and Principle 14 of the Jakarta Statement. Article 5 emphasises the need for anti-corruption agencies to be afforded the “necessary independence” to carry out their functions “effectively and free from undue influence”, while Principle 14 stresses the requirement that such agencies be “accountable to mechanisms established to prevent any abuse of power”.

6.3. Reframe and make transparent the operations of the ACAB, ORP, and CCPP

While the functions currently performed by the ACAB, ORP, and CCPP remain important to the effective functioning of the MACC, their existence as “oversight bodies” is flawed in practice. Oversight, properly understood, requires a level of authority that is limited in bodies that are purely advisory in nature. Where advisory bodies are retained, their advisory nature must be acknowledged and accompanied by transparency obligations. At a minimum, these bodies should publish annual reports detailing activities, general areas of concern, and non-sensitive recommendations, so that their work contributes to public accountability rather than remaining entirely internal.

The ACAB’s role is best framed as providing policy guidance and strategic direction, ensuring that the MACC’s operations are aligned with national anti-corruption priorities. The ORP’s review of investigation papers is essentially a case review function, focused specifically on investigatory procedures rather than accountability. Similarly, the CCPP’s functions are closely tied to public education and external outreach. These functions can be retained, and even strengthened, if they are clearly situated within dedicated departments.

Meaningful oversight, however, should rest with bodies designed for that purpose. As discussed, the PSSC on Corruption and Ombudsman Malaysia should be given responsibilities more in line with the

concept of “oversight”. Beyond its role in appointing the Chief Commissioner, the PSSC should be granted the authority to request reports from the MACC, particularly to ensure that the agency faithfully discharges its mandate. In this capacity, the PSSC would have the power to question the Chief Commissioner or any relevant officer on significant cases and investigations. Reports submitted to the PSSC should subsequently be presented to Parliament for debate, where appropriate. Parallel to this, Ombudsman Malaysia is best positioned to provide independent redress for maladministration, abuse of power, and systemic failures affecting the public.

6.4. Separate the Attorney General and Public Prosecutor’s offices

This recommendation addresses a critical bottleneck in enforceability, namely the ability of prosecutorial discretion to nullify investigative and oversight efforts. Even if the above proposals are flawlessly implemented, the integrity of anti-corruption enforcement would remain in doubt, should the offices of Attorney General and Public Prosecutor remain combined. Without an independent Public Prosecutor, even strengthened MACC oversight and investigative mechanisms risk being rendered ineffective.

Therefore, the government is strongly urged to prioritize the separation of these offices. Past experience has demonstrated that crucial investigations conducted by the MACC can be rendered redundant if the Attorney General fails to pursue charges. This concern is further amplified in cases where the Prime Minister – who appoints the Attorney General – or any of their associates are implicated in the wrongdoing itself.

Reform of this office must extend beyond the mere separation of roles. The government must also ensure that the appointment of the Public Prosecutor is conducted in a manner that safeguards the independence and objectivity of the office. Most notably, the Public Prosecutor must not be subject to appointment by the Executive, while staffing and budgeting of this office must similarly not be interfered with by the Executive. At the same time, the introduction of clear and fair prosecutorial guidelines is essential, providing consistent standards to guide prosecutorial conduct and decision-making.

6.5. Conclusion

These recommendations seek to realign Malaysia’s anti-corruption governance framework with international standards by embedding transparency, mandatory accountability, and enforceability into MACC oversight. Incremental adjustments to existing bodies will be insufficient; meaningful reform requires structural redesign of where oversight power is located, how it is exercised, and to whom the MACC is ultimately accountable.

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