

Strengthening the Royal Malaysia Police by Enhancing Accountability

Executive summary

This paper examines the structural design and institutional features that empower Malaysia's top cop, the Inspector General of Police (IGP). The IGP wields considerable power: he sits atop a hierarchical structure that spans multiple policing competencies across the country. The IGP's powers are further strengthened by a slew of controversial legislative instruments that afford him a great deal of latitude in choosing when and how to apply the laws.

This paper provides a historical account of Malaysia's highly centralised police force and outlines existing deficiencies in both direct and indirect accountability mechanisms for the IGP. It attempts to compare and contrast the experiences of other countries in establishing police oversight agencies to handle police complaints and launch independent investigations. The relevant jurisdictions covered by this study include the United Kingdom (UK), Australia and Hong Kong.

The paper recommends one immediate and one long-term measure to uphold the independence and integrity of the IGP's office. After taking into account the direct and indirect accountability measures in place, this paper argues for the establishment of the Independent Police Complaints and Misconduct Commission (IPCMC) to receive, investigate and recommend a course of action for complaints about the Royal Malaysian Police (RMP). Given the span of power enjoyed by the police as well as the size of the force, a specialised oversight body would be much more efficient than the current Enforcement Agency Integrity Commission (EAIC) which is still largely seen as a toothless tiger.

To add, the IPCMC as recommended by the Dzaidin Royal Commission report is conferred pre-emptory powers to initiate investigations against the police, not to mention having the authority to recommend disciplinary action, and where appropriate, refer the case to its Chief Legal Council to initiate legal proceedings. This paper also recommends an emulation of the UK's Independent Police Complaints Commission's (IPCC) mandatory reference criteria where cases which involve serious assault or corruption (including abuse of power) must be referred to the oversight agency. This would reduce the chances of cases being swept 'under the rug'.

Lastly, as a long-term commitment, the government should reform the RMP's structure to avoid excessive concentration of power within the hands of the IGP and the Executive. This would involve decentralising the police force's command structure and dispersing power to local policing competencies and divisions. This will help improve the overall accountability of the police force because each policing entity will serve as a potential check-and-balance mechanism against one other.

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**The contents of this paper represent the views of the author and do not necessarily reflect the views of IDEAS or any one individual at the organisation.*

Introduction

Malaysia's current Inspector General of Police (IGP), Tan Sri Dato' Sri Khalid Abu Bakar, has been making and taking controversial decisions and actions. These include everything from the arrest of those who speak out against the current administration to his casual use of Twitter to monitor Malaysia's outspoken individuals (BBC, April 6, 2015). The appropriateness of these actions have been repeatedly questioned by the public as well as various Parliamentarians. He has been accused by many of being unprofessional and partisan in his conduct.

However, Tan Sri Khalid is not the only IGP whose actions have been questioned. His predecessor was convicted for assaulting a former Deputy Prime Minister while the latter was in police detention. Another former IGP allegedly had links with a powerful member of the criminal underworld (Yatim & Tan, 2012), while another openly defied then Prime Minister Abdullah Ahmad Badawi's intention to establish a police oversight body, the Independent Police Complaints and Misconduct Commission (IPCMC) - a recommendation made in the Report of the Royal Commission to Enhance the Operations and Management of the Royal Malaysia Police, popularly referred to as the Dzaidin Report (Chan, 2015).

The perceived lack of professionalism and impartiality is also highlighted in the Dzaidin Report as one of the shortcomings among the police force (Royal Commission, 2005). However, while the report lists 125 recommendations to improve the conduct and operations of the police force, it does not comprehensively address the concentration of power in the IGP's office. This concentration of power also means greater potential for abuse.

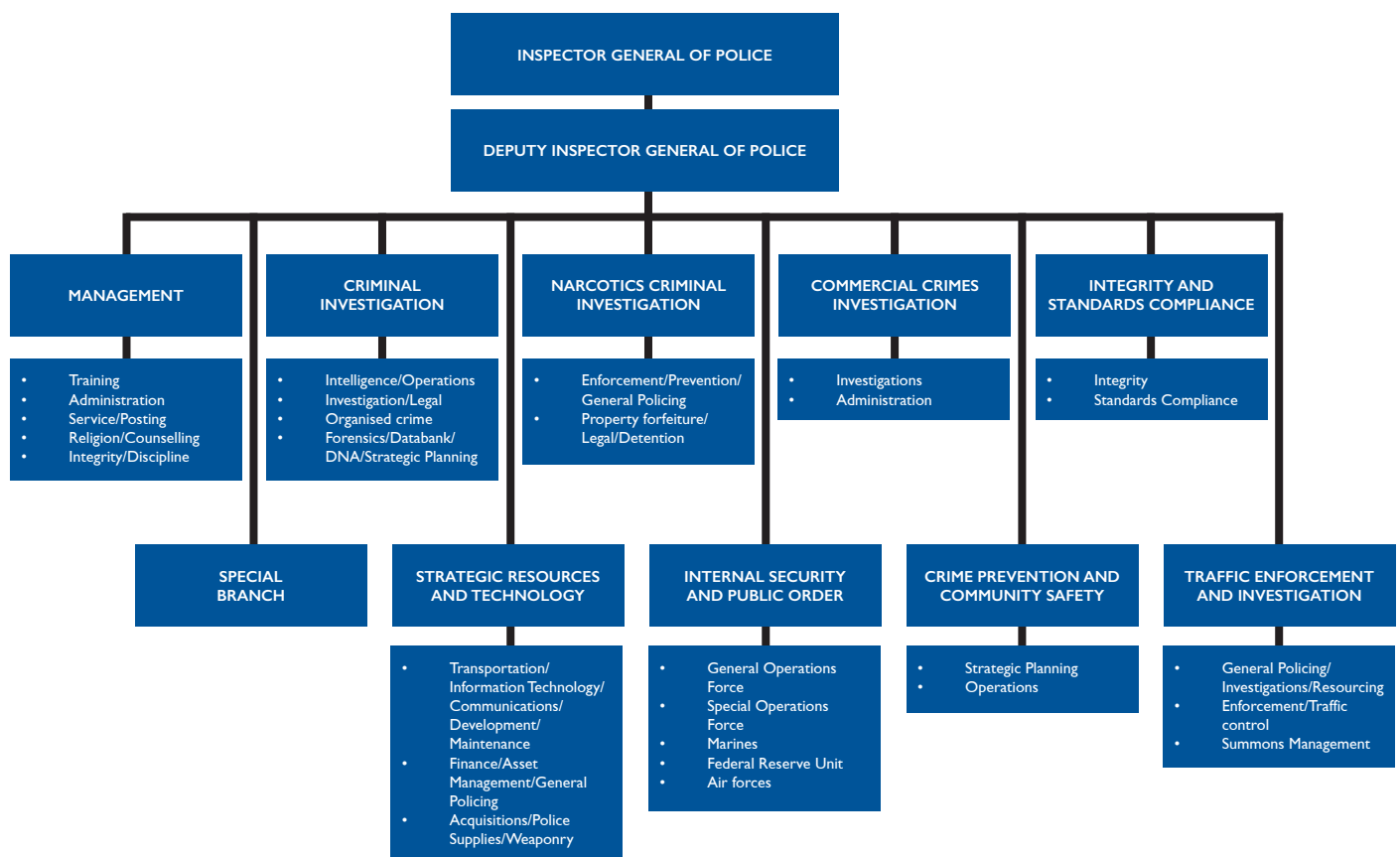
A debate on the IGP's powers is increasingly relevant considering the age we live in today. Major national security threats such as the terrorist attacks in Paris in November 2015, Jakarta in January 2016 and more recently in Malaysia have unfortunately caused a shift towards centralised and authoritarian measures as is exemplified by the National Security Council Act 2016. In light of this, enhancing the accountability of the IGP becomes a high priority and a necessity.

This paper argues that the IGP's perceived lack of professionalism and impartiality is a result of his broad powers as well as weak checks and balances to these powers. This paper outlines how the IGP came to be such a powerful position, why the current accountability mechanisms are inadequate and how a country's level of good governance impacts these accountability mechanisms. It provides recommendations on how we can move forward to ensure that the IGP is held accountable to the people that he serves.

The IGP's powers

The IGP holds a powerful position in Malaysia. The individual in this position has jurisdiction over the entire country and across many policing competencies, ranging from street crime to white collar crime to even counter-terrorism efforts. He sits atop a structure that oversees 10 departments, 14 regions, 148 police districts, 837 police stations and employs 153,122 police officers (see Figure 1).¹

Figure 1: Organisational Chart of the Royal Malaysian Police



¹ Figures obtained from Interpol website. Total number of police officers calculated based on answer given to question asked by MP Steven Sim on 2015 budget (141,365 police officers) and the fact that RMP hired 11,757 new officers in 2015 giving us a total of 153,122.

The IGP's powers: Supported by legislation

The IGP's powers are strengthened by a number of controversial laws. It gives the police extensive powers that can potentially infringe citizens' freedom of speech, movement, and assembly. Examples of these laws include the Sedition Act, Prevention of Terrorism Act (POTA), Prevention of Crime Act, Security Offences (Special Measures) Act (SOSMA), the Peaceful Assembly Act, and now the National Security Council Act. By virtue of his position the IGP has the ability to censor free speech (via the Sedition Act), disallow freedom of assembly (via the Peaceful Assembly Act), and use detention without trial, even on individuals that are unlikely to be terrorists under SOSMA.²

In fact, over the past few years the IGP has demonstrated his ability to carry out many controversial decisions under the guise of the law. There have been frequent allegations of arbitrary arrests made by the IGP of individuals that may have spoken out against the current administration.

In 2016, the IGP arrested an Opposition Member of Parliament under the Official Secrets Act without a warrant. He also broke Parliamentary convention by not informing the Dewan Rakyat Speaker prior to the arrest.³ On another occasion, he ordered the arrest of a youth opposition party leader based on a comment that the youth leader had made, which was allegedly misinterpreted by a news portal.⁴ Following this, the IGP had instructed his officers to arrest a citizen who tweeted to the US Department of Justice (while they were investigating IMDB in Malaysia) to be weary of the "corrupt" IGP who "protects Najib".⁵

Deaths in police custody and unjustified police shootings are not uncommon in the country and the IGP rarely takes the lead and responsibility to investigate these cases (Human Rights Watch, 2014).

There have also been several occasions where free speech has been curtailed by the IGP's seemingly arbitrary decisions. They include the IGP calling off a debate between Cabinet Minister Dato' Haji Abdul Rahman Dahlan and Penang Chief Minister Lim Guan Eng⁶, banning a course on Marxism⁷, ordering the removal of billboards with the words "Bebas Anwar" (Free Anwar)⁸ printed on them in spite of the matter being a municipal council issue outside of his jurisdiction⁹, and ordering a probe on a Twitter user who posted a meme of Prime Minister Najib dressed as a woman.¹⁰

These incidences create the impression that the IGP seems to blur the lines in carrying out his professional duties.



10
departments



14
regions



148
police districts



837
police stations



153,122
police officers

² An example of this would be the controversial detention of former United Malays National Organisation (UMNO) branch leader Khairuddin Abu Hassan and his lawyer Matthias Chang under SOSMA, despite there being no substantial evidence suggesting that they are terrorists or pose an immediate security threat to the nation. See Anbalagan, V., 'Lawyer Matthias Chang arrested under Sosma', The Malaysian Insider, October 8, 2015

³ This example is taken from online news portal MalaysiaKini: Arrest of Rafizi Ramli under ISA without court order (<https://www.malaysiakini.com/news/336899>)

⁴ This example is taken from online news portal MalaysiaKini: Instructing to arrest Amanah Youth Vice-Chief Shazni without proper investigation (<https://www.malaysiakini.com/news/336226>)

⁵ This example is taken from online news portal MalaysiaKini: Instructing the Police Cyber Investigation Response Center through Twitter - on arresting a twitter-user that posted a warning towards US Department of Justice (<https://www.malaysiakini.com/news/336203>)

⁶ This example is taken from online news portal MalaysiaKini: IGP calls off the debate between Cabinet Minister Abdul Rahman Dahlan and Penang MP Lim Guan Eng (<https://www.malaysiakini.com/news/338065>)

⁷ This example is taken from theSundaily <http://www.thesundaily.my/news/1732348>

⁸ Anwar Ibrahim is the jailed de facto leader of Parti Keadilan Rakyat

⁹ This example is taken from online news portal MalaysiaKini: Police taking down "Free Anwar" billboard, meddling with issues that are supposed to be under local authorities (<https://www.malaysiakini.com/news/334663>)

¹⁰ This example is taken from online news portal MalaysiaKini: Ordered the PCIRC to probe on case of social media abuse (ridicule on Najib) through Twitter (<https://www.malaysiakini.com/news/326002>)

The role of the IGP: Structural design and historical context

The IGP's powerful position is mainly an outcome of a structural design that stems from historical contingencies and political considerations.

Malaysia's police system is highly centralised and operates within a federation system that is also highly centralised.¹¹ In contrast, most Commonwealth countries adopt a decentralised Anglo-Saxon police system. In this system, different police forces attend to constitutionally or legally defined jurisdictions. In India and Australia for example, each state has its own police force and police chiefs. The police chiefs usually maintain operational autonomy at the subnational level (reporting only to Chief Ministers, governors, or mayors) and federal intervention can only happen under specific conditions, such as interstate crimes, terrorism, or cyber-crimes.

Malaysia, on the other hand, despite being a former British colony, never fully embraced the Anglo-Saxon model. Its police system is heavily centralised and contains a paramilitary wing.¹² State governments furthermore are not given any policing mandate under the Constitution.

The structural expansion and consolidation of the Royal Malaysia Police (RMP) happened amidst the Malayan Emergency era (1948-1960).¹³ As the major security force handling the Communist insurgency, the Malayan police (instead of the army) became the bastion of defence for the central government. Its role expanded from typical policing duties into areas such as population control and surveillance.¹⁴ In fact, the importance of the police as an appendage of government can be seen even after the communists were defeated. For example, when Emergency rule was declared after the May 13 1969 riots, then IGP, Tun Mohamed Salleh Ismael, was appointed to the National Operations Council (NOC) which was at the time the nation's highest ruling body.¹⁵

Currently, the IGP is only answerable to the Federal Government, or specifically the Home Minister. This is enforced by Section 4 of the Police Act 1967 which states that,

“the Force shall be under the command of an Inspector General who shall be a police officer and shall be responsible to the Minister for the control and direction of the Force ...”.

Historically speaking, the centralised police system does provide certain operational advantages during times of emergency. Yet, it has also resulted in the consolidation of power in the person holding the highest position in the police force. Such centralisation can be detrimental especially when the mechanisms of check and balance are weak. Several bodies are supposed to play this role and they are discussed below.

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¹¹ See Wong, C.H. & Chin, J. (2011). Malaysia: Centralised Federalism in an Electoral One-Party State in Varieties of Federal Governance, ed. R.Saxena. New Delhi: Cambridge, 208-231 for a succinct discussion of Malaysia's centralised federalism ruled as a “one party state”

¹² The General Operations Force (GOF) and the Special Operations Command (in which the famous VAT69 is a part of) are infantry units within the RMP modelled after military battalions. Both units played a central role during the Communist Insurgency, as well as in the recent 2013 Lahad Datu Standoff.

¹³ Major departments (and other bodies that resulted from these departments) of the RMP were constituted during that era, including the departments responsible for administration, general operations, police properties, as well as the Criminal Investigation Department and the Special Branch. (See Royal Commission Report, p22)

¹⁴ A forthcoming publication by this author on Malaysia's centralised federalism and her police system will feature a more detailed discussion about the history of centralisation of the RMP.

¹⁵ Similarly, the IGP is included as one amongst the eight members of the National Security Council according to the recently passed National Security Bill 2015

Current check and balance mechanisms and their deficiencies

As the previous section has highlighted, the IGP's powers remain unfettered even to the present day. It is therefore essential to examine the IGP's current accountability mechanisms including bodies that the IGP is directly and indirectly accountable to, where they are lacking and how to remedy this.

Direct accountability

Police Force Commission

The Federal Constitution states that the Police Force Commission (PFC), a body responsible for the hiring and firing of members of the police force, is also responsible for the "exercise of disciplinary control" on the force. Article 140 (1) of the Constitution stipulates,

"There shall be a Police Force Commission whose jurisdiction shall extend to all persons who are members of the police force ... shall be responsible for the appointment ... promotion, transfer and exercise of disciplinary control over members of the police force."

However, the PFC is chaired by the Home Minister. Other members in the commission include the IGP, the Secretary General of the Home Ministry, a representative from the Public Service Commission appointed by the Yang Di Pertuan Agong (YDPA) and two to six other members all appointed by the YDPA (Ministry of Home Affairs, 2016). The membership structure suggests that the PFC lacks independence from the Executive and since the IGP is a member of the Commission, it is unlikely that the PFC can play an impartial role in overseeing the IGP's position.

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Enforcement Agency Integrity Commission (EAIC)

In 2009, following the publication of the Dzaidin Report, the government established the Enforcement Agency Integrity Commission (EAIC). The EAIC is tasked with investigating complaints from 21 different agencies including the police force. This wide scope dilutes the EAIC's focus which has often led to criticism as the agency seemed ill-equipped to carry out its duties effectively.

Case in point, in 2013 the EAIC received 301 complaints but only one investigating officer was assigned to handle these complaints (Christopher Leong, 2014). Furthermore, while the agency can investigate a complaint, it then has to pass its recommendations onto the RMP and is unable to compel the RMP to take any follow-up actions (Christopher Leong, 2014). These reasons, inter alia, are why the EAIC has come to be known as a "toothless tiger" as it is unable to perform its functions effectively. This agency is also far from independent as demonstrated by the sudden transfer of Chief Executive Nor Afizah Hanum Mokhtar in 2013 while she was leading investigations into deaths under police custody and criticised the shortcomings of the commission (Boo, 2013).

Nevertheless, at a public forum in 2016 the Chairman of the EAIC, Datuk Yaacob Mohd Sam reiterated that the EAIC was doing all it can to address the complaints against RMP. To alleviate concerns over the EAIC's abilities, he proposed the creation of special units under the EAIC dedicated to overseeing the RMP.¹⁶ He also defended the EAIC by highlighting its findings on two recent cases against the RMP, which he asserted demonstrated the EAIC's ability to work independently and effectively.¹⁷

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The IPCMC

One of the recommendations made in the Dzaidin Report was the creation of an Independent Police Complaints and Misconduct Commission (IPCMC). The purpose of this independent body (established by an Act of Parliament) would be to solely oversee the RMP.

It was recommended that the IPCMC would be setup as follows:

- The IPCMC commission would consist of seven commissioners appointed by the YDPA - none of whom should be retired or serving police officers.
- The IPCMC would produce an annual report to be tabled in Parliament (presented to YDPA and PM beforehand) (Royal Commission Report, 2005).
- Most noteworthy is the suggestion to give the IPCMC power to investigate complaints and to conduct its own investigations if it felt it necessary, and any actions recommended would be binding and unappealable (Royal Commission Report, 2005).

However, it must be noted that the EAIC, is able to initiate an investigation if it believes it necessary as well.¹⁸

¹⁶ Malaysian Bar Council, Police Accountability Forum, Held May 4th 2016 at the Renaissance Hotel.

¹⁷ "The commission found the death of Dharmendran a/l Narayanasamy on May 21, 2013 resulted from the use of physical force by the police," Yaacob. The report also indicated that several police officers, including the then Deputy Head of Criminal Investigation Division SAC Khairi Ahrasa, were responsible for falsifying and tampering with evidence in a bid to cover up the violent interrogation. (As reported by the MalayMail Online on April 27th 2016.)

¹⁸ EAIC Act 2009, Section 28 "Without prejudice to section 27, the Commission may commence an investigation in respect of a misconduct it becomes aware of on its own initiative only if the Commission is satisfied that the matter is of significant interest to the public or that it is in the public interest to do so."

Indirect Accountability – Other possible accountability agencies

Other than the PFC and the EAIC, there are other agencies that can theoretically keep the IGP in check even though they were not specifically designed to play this role. These agencies include the Attorney General's Chambers, the Malaysian Anti-Corruption Commission (MACC), the Human Right's Commission of Malaysia (SUHAKAM), and the Public Complaints Bureau.

However a major drawback of all these agencies is they are lacking in oversight mechanisms that would ensure more accountability.

While it is customary for these agencies to be part of the Executive (particularly in Westminster Parliamentary democracies), in mature democracies equivalent agencies are also made accountable to parliament.

Figure 2: Accountability agencies and reasons why they are unable to keep IGP accountable

Accountability Agencies	Reason they are currently unable to keep IGP in check
Attorney General's Chambers (AGC) of Malaysia	<p>Theoretically, the AG in his role as the Public Prosecutor should be able to hold the IGP accountable for any wrongdoings or complaints made against him. For example, if any investigations are carried out against the IGP due to a complaint, the PP should be able to call for the final investigation report and take steps to ensure that appropriate action is taken.</p> <p>However, this potential mechanism of internal supervision is ineffective as there is an inherent conflict of interest in the fused roles of the AG and PP, given that the PP is not independent of the Executive.</p>
Malaysian Anti-Corruption Commission (MACC)	<p>As a separate entity from the RMP, the MACC should theoretically be able to investigate corruption in relation to the police force. The MACC has dealt with a number of police related corruption cases that resulted in prosecution. However, we have not come across any cases of the IGP being investigated by the MACC, even if calls have been made (Free Malaysia Today, 2012). More interestingly, the said IGP was later appointed to the advisory board of the MACC (Murad, 2016)</p> <p>The MACC also suffers from a lack of independence. The recent retirement of the Chief Commissioner and his deputy besides three of its key oversight panels being kept vacant for four months (at the time of writing) was seen by many as a reshuffling of the MACC as a response to IMDB investigations.¹⁹</p> <p>Additionally, the MACC is unable to investigate cases unless a complaint has been filed. It also does not have prosecutorial powers and cannot take any legal or punitive action even if its findings support prosecution.</p>

¹⁹ The MACC certainly is not the only casualty to the shake-up exercise as the Attorney General who was first involved in the investigation was also sacked. 'Major shake-up in MACC, top two men to leave', Malaysiakini, June 23, 2016.

<p>Human Right's Commission of Malaysia (SUHAKAM)</p>	<p>SUHAKAM is an external oversight mechanism, which theoretically can call the IGP in for any inquiries but beyond that is unable to take any follow-up action on him.</p> <p>SUHAKAM has in the past tried to look into investigations of complaints against the police but as summarised by a SUHAKAM investigator below, these attempts are usually ineffective:</p> <p>"There is stiff resistance from police when anyone questions them. When we inquire about a case, the police tell us that it's under investigation and everything is done according to procedures, but we are not given their SOPs [standard operating procedures] or ever told what their investigation found. "Trust us," they say, "We are taking care of it." But people want tangible proof of what action they take which is nowhere to be seen. There are no checks and balances." (Human Rights Watch, 2014).</p> <p>This agency is solely dependent on government funding and does not have any real powers.</p>
<p>Public Complaints Bureau (PCB)</p>	<p>The PCB sits under the Prime Minister's Department. It is also answerable to the Permanent Committee on Public Complaints (PCPC) chaired by the Chief Secretary to the Government. Other members include the Director-General of Public Services, the Director-General of the Malaysian Administrative and Modernisation Planning Unit, the Chief Commissioner of the Malaysian Anti-Corruption Commission and the Senior Deputy Secretary General of the Prime Minister's Department.</p> <p>With heavy Executive involvement the PCB is unable to function as a truly independent body. Additionally, the PCB is empowered by government circulars (instead of legislation). As such its mandate is to manage complaints instead of conducting investigations thoroughly and imposing recommended actions (Chua Hong Teck, 2007).</p>

In order to analyse this further, the next section will look at the overall state of governance in countries and how it impacts police oversight mechanisms.

Governance and police oversight mechanisms

Governance indicators and police oversight mechanisms in various countries

Oversight agencies, especially ones with civilian representation, have been seen by many as the answer to enhancing the professionalism, impartiality and accountability of the police force. However, if we juxtapose the World Bank's Governance Indicators (Worldwide Governance Indicators, 2014) with the presence of police oversight bodies/mechanisms²⁰ in several Asian countries, the results are not too encouraging.

The World Bank Governance Indicator looks at the “traditions and institutions by which authority in a country is exercised”. The study looks at two indicators, i.e., ‘rule of law’ and ‘voice and accountability’, because they correspond to areas where the IGP has exerted his authority; namely the misconduct of the RMP and the infringement of civil liberties such as free speech and freedom of assembly by the police.

Figure 3: Governance indicators and police oversight mechanisms in various countries

Countries	Governance Indicators (2014)		Presence of Oversight Mechanisms			
	Score in Voice and Accountability	Score in Rule of Law	Human Rights Commission	Anti-Corruption Agency	National Ombudsman	Specialised Police Complaints Organisation
Japan	79	94			✓	
South Korea	73	86	✓	✓	✓	✓
Thailand	20	51	✓	✓	✓	
Singapore	45	100		✓		
Malaysia	31	78	✓	✓	✓ ²¹	
Philippines	53	43	✓	✓	✓	✓
Pakistan	31	24	✓	✓	✓	
Hong Kong	71	94		✓	✓ ²²	✓
United Kingdom	92	99	✓	✓	✓	✓
Australia ²³	100	100	✓	✓	✓	✓

²⁰ Nalla (2015) provides a framework for analysing police oversight in Asia, where oversight is defined by presence of a (i) human rights commission, (ii) anti-corruption agency, (iii) a national ombudsman, (iv) a specialised police complaints organisation. Despite the existence of the EAIC and the PFC, Nalla concludes that in the case of Malaysia there is in effect no specialised police complaints organisation.

²¹ Malaysia does not have a National Ombudsman per se, but the Public Complaints Bureau claims itself to be as such.

²² The Ombudsman offices in the United Kingdom do not deal with police complaints.

²³ It is important to note that in terms of the ombudsman, anti-corruption commission, and SPCO in Australia; they are all located at the state-level in Australia and their presence are not replicated across states. Nevertheless, it is safe to say most states in Australia do have at least the presence of two out of three of these agencies.

The table shows how in Asian countries the presence of police oversight mechanisms themselves does not necessarily guarantee police accountability. For example, only South Korea, Hong Kong and Philippines have a Specialised Police Complaints Organisations (SPCO). But where the first two scored fairly high in 'rule of law' the latter scored poorly. In fact, Philippines ranks even lower than Malaysia in 'rule of law' even though Malaysia does not have a SPCO.

When comparing Japan and Philippines, we can see that the number of oversight mechanisms does not correlate with outcomes on measures of 'voice and accountability' and 'rule of law'. The former only has a National Ombudsman, yet still ranks highly on both governance indicators while the latter has all four types of oversight agencies but ranks well below Japan in both indicators.

Hence, it can be argued that oversight agencies should be complemented with greater democratisation and other mechanisms that enhance rule of law. For that reason, while an oversight body such as the Independent Police Complaints and Misconduct Commission (IPCMC) is important, it has to be complemented with another measure which in this case is decentralisation. This is an area which will be explored further in a separate study by this author.

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Specialised Police Complaints Organisations in selected countries (UK, AUS, HK)

By looking at governance indicators, it would appear that the SPCOs in the United Kingdom, Australia and Hong Kong - all of which are referenced by Malaysian policymakers in terms of designing police oversight mechanisms - have played their role well.

For the purpose of this paper, we will look at three agencies (see Figure 4); the United Kingdom's Independent Police Complaints Commission (IPCC), Hong Kong's Independent Police Complaints Council (IPCC HK) and the Crime and Corruption Commission (CCC) of Queensland.



Figure 4: A comparison of three SPCO agencies

Agency	Function	Powers
IPCC (UK)	<ul style="list-style-type: none"> Oversees the police complaints system in England and Wales and sets the standards by which the police should handle complaints.²⁴ Investigates serious complaints against Her Majesty's Revenue and Customs department and the Serious Organised Crime Agency in England and Wales. 	<ul style="list-style-type: none"> Investigative powers for the most serious cases of police misconduct. Offers recommendations following investigation. No punitive power against police personnel.
IPCC (Hong Kong)	<ul style="list-style-type: none"> Observe, monitor and review the handling and investigation of Reportable Complaints against the Police by the Commissioner of Police.²⁵ 	<ul style="list-style-type: none"> Only reviews complaint cases handled by the Complaints Against Police Office (CAPO) department in the Hong Kong Police Force. Does not investigate directly. Offers recommendations as to investigative outcomes. No punitive power against police personnel.
CCC (Queensland, Australia)	<ul style="list-style-type: none"> Investigates major and serious misconduct in the public sector. Plays a complementary role to the police in fighting major crimes. 	<ul style="list-style-type: none"> Able to conduct independent investigations as well as supervise, oversee and even take over investigations. Can conduct public and private hearings. No punitive powers. Will refer the matter to the authority, and if action taken is not satisfactory, the case will be referred to the Queensland Civil and Administrative Tribunal.

Despite being independent and having broad powers (including the power to summon the Chief Police Officer to answer their queries), these bodies maintain their role as investigative authorities instead of being the disciplinary body themselves. In most cases, they oversee and review the investigations by the police themselves instead of leading them, barring major cases (with the exception of IPCC HK which has no investigative powers). This is to prevent the SPCOs from being the 'judge, jury, and executioner' in order to maintain a healthy check and balance system.

²⁴ Taken from <https://www.ipcc.gov.uk/page/about-us> (accessed June 28, 2016)

²⁵ Taken from http://www.ipcc.gov.hk/en/about_us/about_ipcc.html (accessed June 28, 2016)

Recommendations on making IGP accountable: the IPCMC

As an immediate step we reiterate the call to establish the IPCMC as per Dzaidin's report with mandatory investigative powers. This should be complemented by other measures, such as decentralisation of the police force which will be addressed in a separate paper to be published by IDEAS later.

The Independent Police Complaints and Misconduct Commission (IPCC) is one of the main recommendations of the Dzaidin Report. Its purpose would be to receive and investigate complaints against the RMP as well as prevent, detect and investigate corruption within the force. The Commission would also have the power to order any punitive actions they deem necessary such as fines, dismissals and demotions (Royal Commission, 2005).

01 In many ways, the IPCMC is similar to the three aforementioned SPCOs. Yet, in many ways it is even **more powerful** than most police oversight agencies worldwide.

02 The IPCMC has **peremptory power in initiating investigations against the police without a report being lodged** or a complaint of misconduct. In international practice, most of the misconduct complaints against police are investigated by the police themselves while the oversight bodies play a monitoring and supervisory role for the investigation. Only when serious cases of misconduct have occurred do the British IPCC and Queensland CMC conduct investigations on their own (the IPCC HK does not have such powers).

03 The IPCMC is conferred the authority to not only recommend disciplinary action against the police officer involved, it can also refer the case to its **Chief Legal Counsel to take legal actions** against the police officer involved. While this is not strictly in adherence to international practice, we argue that in the present context where many lack confidence towards police oversight, such broad powers for the oversight agency is warranted, potentially with a sunset clause added so that this can be reviewed after a fixed time in the future.

04 Relevant to this paper's focus on the IGP, the IPCC of the United Kingdom contains a practice that is worth emulating. Its statutory guidance stipulates that it is **compulsory to refer complaints of "serious corruption", which include "abuse of authority", to the IPCC** (IPCC, 2015). The body also makes it compulsory that the **investigating officer in charge of a complaint "must not be under that chief officer's direction and control"** if the case relates to the conduct of the chief officer (IPCC, 2015). These are important safeguards to ensure that if a serious complaint is brought against the IGP, it must be (i) attended to by a civilian oversight body and (ii) investigated fairly without interference or fear of retribution.



more powerful
oversight



initiate
investigations
without report



**Chief Legal
Counsel**
to take
legal actions



**Investigating
officer**
not under
Chief Officer

Moving forward: Decentralisation

The weakness of the current system stems from its structure. There are two structural issues that make the IGP's accountability problematic. First, the IGP's mandate covers too many policing competencies because there are no divisions of authority within Malaysia's police system. Second, this centralised, insular, top-down structure makes the currently available check and balance mechanisms ineffective.

In order to address the structural issue, the RMP will also need to undergo structural reforms such as decentralisation, while having a strong independent oversight body such as the previously mooted IPCMC. Decentralisation allows for a division in policing competencies and a separation of powers because each entity will serve as a potential check and balance mechanism to the other. An independent oversight body like the IPCMC on the other hand will ensure any abuse including corruption and abuse of power will be addressed promptly without fear or favour. This idea of a decentralised police force will be explored further in a future paper by this author to be published by IDEAS.

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