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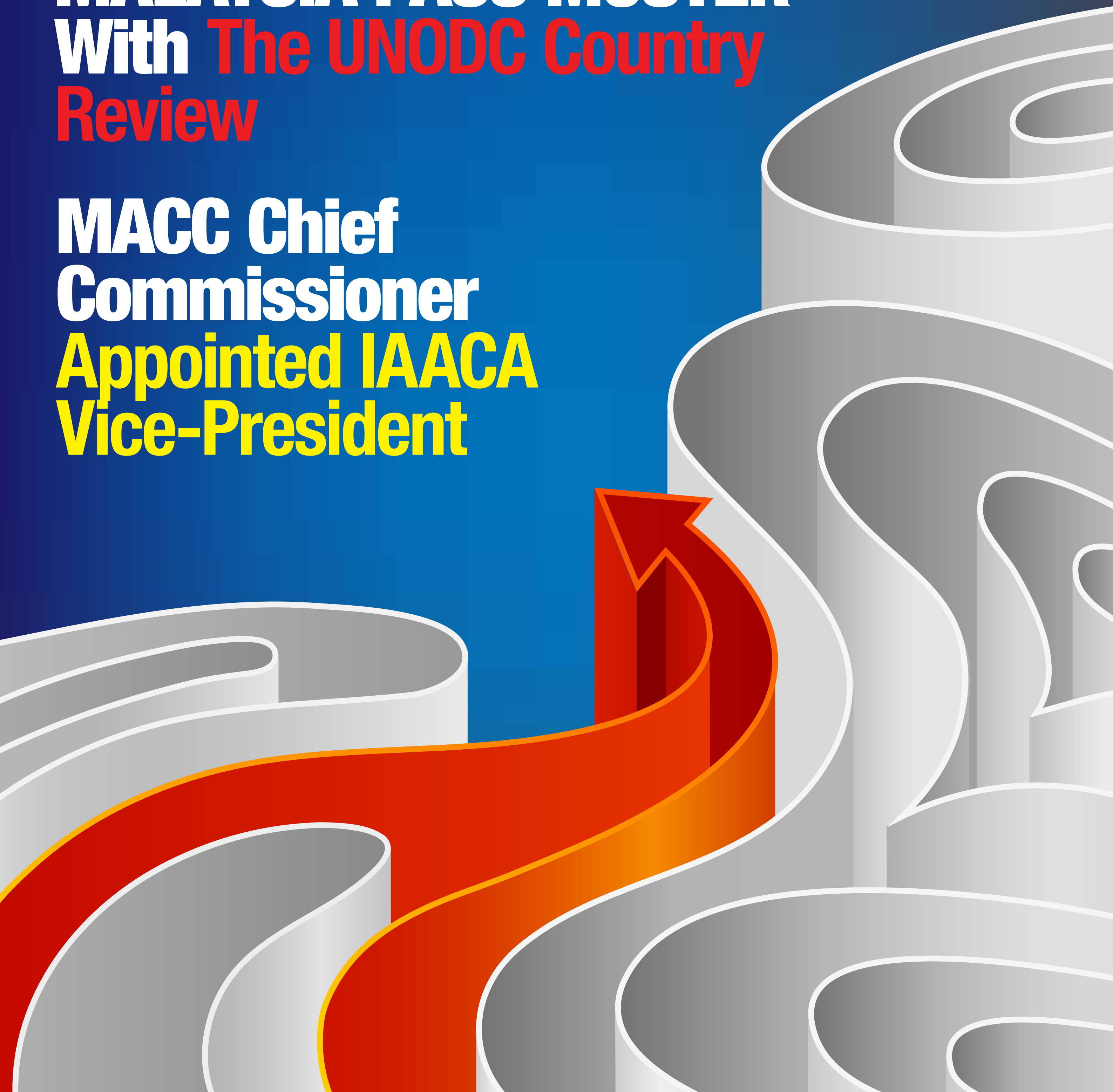
THE FIGHT AGAINST CORRUPTION

MALAYSIA PASS MUSTER With The UNODC Country Review

MACC Chief Commissioner Appointed IAACA Vice-President



MALAYSIA PASS MUSTER
With The UNODC Country Review

by Mohd Azhar Ibrahim (Co-Editor, Nurirdzuana Ismail)

Corruption is a global phenomenon which requires a corresponding global response. In this respect the United Nations Office on Drugs and Crime (UNODC) had, on 29 September 2003, drafted an international agreement called the United Nations Convention against Corruption (UNCAC). The UNCAC is an 8-Chapter international anti-corruption treaty which contains 71 Articles that proscribe a mélange of measures aim to promote the prevention, detection and sanctioning of corruption, including cross-border cooperation between UNCAC signatory countries. It is a legally binding international anti-corruption instrument that harmonises anti-corruption efforts worldwide. The Vienna-based UNODC serves as secretariat for the UNCAC.

The eight Chapters in the Convention covers various aspects such as provisions; preventive measures; criminalisation and law enforcement; international cooperation; asset recovery; technical assistance and information exchange; mechanisms for implementation, and final provisions. UNCAC member countries are obliged to help each other in preventing and fighting corruption by providing technical assistance which may include extending financial aid, human resources, training, and research. Malaysia signed the UNCAC treaty on 9 December 2003 and ratified it on 24 September 2008. The Convention entered into force in Malaysia on 4 October 2008. To-date 165 countries have ratified the UNCAC recommendations.

At the Third Conference of States Parties (CoSP) held on November 2009 at Doha, Qatar, UNCAC signatory countries agreed to set up an Implementation Review Group (IRG) to assess the status of UNCAC implementation in member countries. Under the review arrangement, each member will be reviewed by two of its peers. The review process, which will be conducted in two five-year cycles, entails the submission of a self-assessment report by the member being reviewed. The country being reviewed may, if it so wishes, request for the peers doing the review to make a country visit to verify the report. The first cycle which runs from 2010 to 2014, involves a review of compliance with UNCAC Chapters III and IV pertaining to criminalisation and law enforcement, and international cooperation. The compliance review for Chapters II and V concerning preventive measure and asset recovery procedures will be assessed in the second cycle slotted to take place from 2015 to 2019. In anticipation of the IRG review, the Malaysian Anti-Corruption Commission (MACC) had, in 2011, formed a UNCAC compliance Task Force to initiate proactive measures to implement UNCAC's Chapters III and IV recommendations.

Headed by MACC Deputy Chief Commissioner of Operations, Datuk Sri Mohd Shukri Abdull, members of the Task Force include the Attorney General's Chambers, Foreign Ministry, Royal Malaysian Police, Kuala Lumpur Special Corruption Court, Public Service Department, Bank Negara Malaysia and the Witness Protection Unit in the Prime Minister's Department. In early 2012 the Task Force furnished the answers to a self-assessment checklist on Malaysia's compliance with UNCAC Articles III and IV. The checklist – complete with detailed explanations, charts and statistics – was forwarded to an IRG Team comprising States Parties from Kenya and the Philippines. After pouring over the documents the States Parties and UNCAC Secretariat proceeded to draft out a Country Review Report on Malaysia.

This is followed with a Country Visit by a 9-member IRG team comprising State Parties from Kenya, the Philippines and UNCAC Secretariat in February 2013. During their 5-day stay the international observers held numerous Q&A sessions with the Task Force. They also paid courtesy calls to the President of the Malaysian Institute of Corporate governance; the Executive Advisor of the Associated Chinese Chambers of Commerce and Industry; the President of the Malaysian Chapter of the Association of Certified Fraud Examiners who is also an executive member of Transparency International Malaysia; including integrity experts Prof. Emeritus Dato' Dr Abdul Rahman Embong and Principal Research Fellow Anis Yusal from Universiti Kebangsaan Malaysia (UKM) and the university's Institute of Ethnic Studies (KITA) respectively. Recently on 30 May 2013, the UNODC issued an Executive Summary of Malaysia's performance with respect to compliance with Chapters III and IV embodied in the Convention.

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Successes and Good Practices in implementing Chapter III of the Convention

1. Section 25 of MACC Act 2009 establishes a duty to report any bribery transaction or attempt thereof and criminalises non-compliance.

2. Section 50 of MACC Act 2009 establishes a rebuttable presumption that a gratification has been corruptly received, unless the contrary is proven. Furthermore, according to section 57 of the Act, evidence is not admissible to show that a gratification is customary in a profession, social occasion or similar context.

3. The absence of a statute of limitations helps to maximise the possibility of corruption prosecutions.

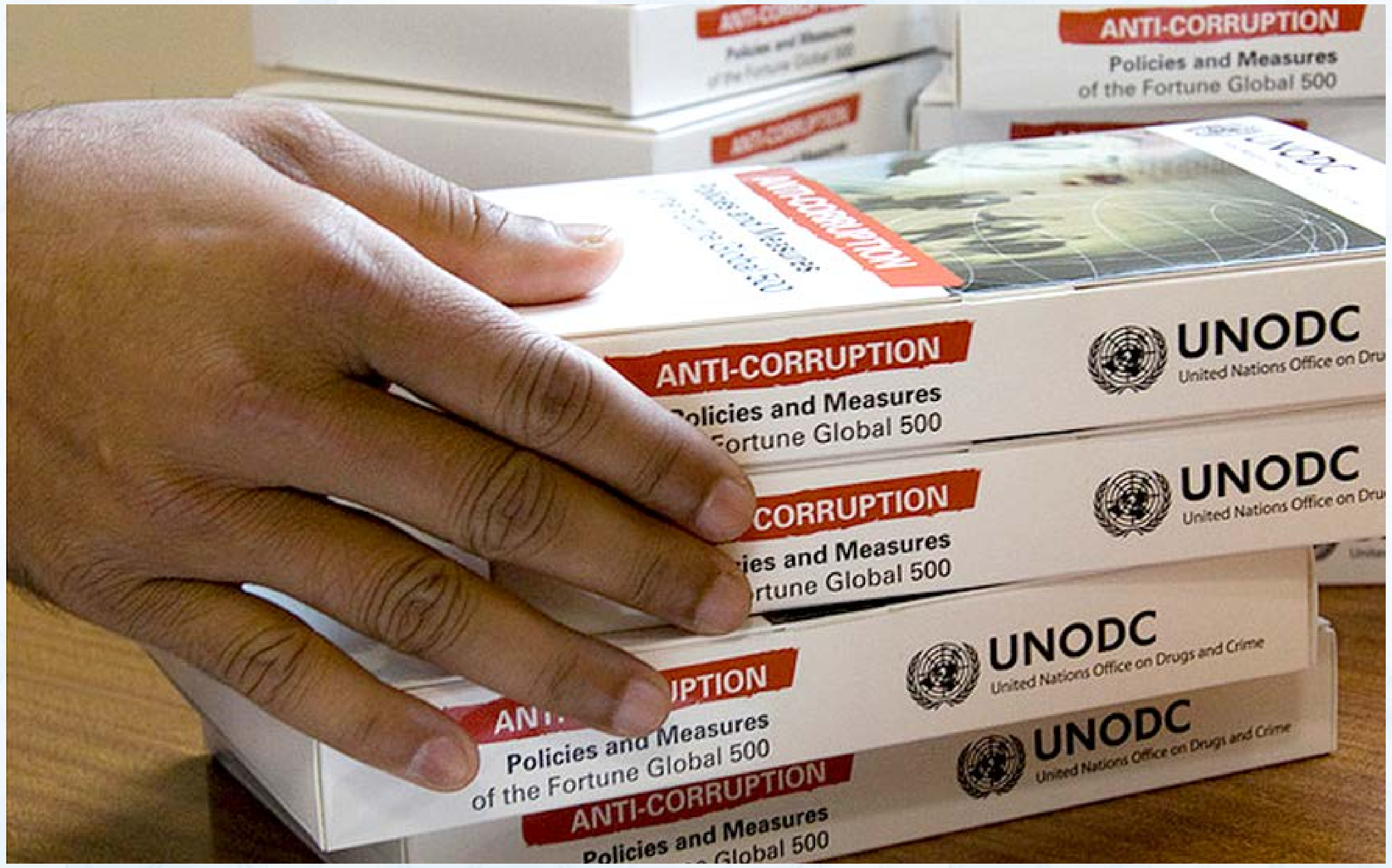
4. The MACC Operations Review Panel reviews delayed cases or cases which were transferred to Deputy Public Prosecutor (DPP), but did not result in a charge. The Panel submits recommendations, but has no authoritative powers that could interfere with the DPP's discretion.

5. 14 specialised anti-corruption courts have been in existence since 2011. Judges are instructed to hear cases within one year and can be held accountable for non-compliance. Other initiatives which helped to reduce the case backlog were the introduction of pre-trial conferences and plea bargaining.

6. The institutional set-up of MACC, the Malaysian Anti-Corruption Academy (MACA) and the anti-corruption courts were deemed to constitute exemplary practices. Although many of the institutions are still relatively young, they contribute to improved investigations and prosecutions of corruption cases and should be further strengthened.

7. Inter-agency collaboration takes place regularly at different levels. One example is the National Coordinating Committee to Counter Money Laundering , which is responsible for the development of the anti-money laundering policy and action plan. 16 institutions have established designated its focal points that meet quarterly to keep member institutions informed of anti-money laundering developments.

8. Various initiatives on corruption prevention are carried out with the private sector, such as integrity pacts, monitoring committees for large projects and integrity pledges. Large Malaysian corporations regularly employ integrity officers and have no-gifts policies in place. The MACC provides training for the private sector and has seconded a small number of its officers to large companies.



Successes and Good Practices in implementing Chapter IV of the Convention

1. Malaysia has concluded bilateral and multilateral treaties and cooperates widely in international and regional organisations and initiatives.

2. The positive role of the Attorney-General Chambers (AGC) in ensuring a cooperative working relationship among different criminal justice authorities, especially in the efficient processing of mutual legal assistance (MLA) and extradition requests and the oversight of incoming and outgoing requests.

3. Malaysian authorities have taken proactive steps to sensitise all relevant stakeholders, especially judicial officers, to the applicable laws, procedures and timeframes to be followed.

4. The documentation and procedures are conducive to facilitating international cooperation.

5. Case management database for extradition and MLA requests, which allows IAD to quickly provide status updates and ensures timely, accurate and efficient execution and tracking of requests. This could be emulated by other countries.

6. Malaysia's practice of flexibly interpreting the dual criminality requirement so as to render a wide measure of assistance.

7. Malaysia has taken necessary steps to expediting extradition procedures and simplifying evidentiary requirements.

8. Malaysia indicated that it is able to render a wide measure of MLA to requesting States. This is borne out by the increasing number of requests it responded to over the last three years, including in corruption cases.

9. The grounds for refusal do not impede Malaysia from complying with requests, which is commendable.

10. Section 27(3) of the Mutual Assistance in Criminal Matters Act 2002 (MACMA) gives Malaysian authorities flexibility to set appropriate timeframes in which safe conduct will be assured based on the principle of reciprocity.

11. Malaysia has in place specialised and skilled manpower who actively cooperate with their foreign counterparts. Dedicated training, capacity building and exchange programmes, including through MACA, are among the international good practices for information exchange, cooperation and corruption prevention.

12. The active role of MACC as an international training and assistance provider through capacity building exchange programmes, overseas training and hosting attachment officers is a welcome development. The direct cooperation between MACC, Malaysia's FIU and the RMP with foreign counterparts was also noted.

13. The exchange of personnel, experts and capacity building programmes help to enhance cross-border cooperation. The establishment of an MLA unit in MACC, the secondment of a MACC officer to INTERPOL, and specialised units in the RMP were also noted.

14. Malaysian law enforcement agencies, in particular MACC, the RMP, AGC and FIU, exhibit a high level of commitment to the fight against corruption and cooperation internationally, and to fully implement the principles of the Convention, in particular at the leadership levels of the agencies.

15. The use of joint investigations and an operational working group with Brunei Darussalam are good examples of law enforcement cooperation among countries at the policy and operational level.

16. The wide use and application of special investigative techniques in corruption cases domestically and internationally was considered a good practice.

MACC Chief Commissioner Appointed IAACA Vice-President

by Mohd Azhar Ibrahim (Co-Editor, Nurirdzuana Ismail)

The Malaysian Anti-Corruption Commission (MACC) has added another feather in its cap with the appointment of Chief Commissioner Tan Sri Abu Kassim Mohamed as Vice-President of the International Association of Anti-Corruption Authorities (IAACA) at the association's seventh annual meeting held in Panama City from 22 to 24 November 2013.

IAACA was established in Vienna on 20 April 2006 to facilitate the implementation of the United Nations Conventions Against Corruption (UNCAC). IAACA members comprise more than 300 anti-graft agencies and anti-corruption authorities throughout the world. During his opening speech, IAACA President Professor Cao Jianming praised Malaysia's commitment, especially the MACC Chief Commissioner's role in IAACA as well as his contribution towards anti-corruption efforts at the international arena. The MACC Chief Commissioner had the honour of being the first presenter during the plenary session. Speaking at the conference which carried the theme 'Rule of Law and Anti-Corruption: Challenge and Opportunity', Tan Sri Abu Kassim shared Malaysia's experiences in transforming the Commission to bring a positive impact to Malaysia's corruption prevention efforts. Speaking to the media at a press conference upon his return to Malaysia, Tan Sri Abu Kassim said the appointment indicates that Malaysia's active contribution and involvement in anti-corruption efforts and the MACC's graft-busting initiatives since its establishment in 2009, have gained international recognition. When Malaysian Prime Minister Datuk Seri Najib Tun Razak learnt of the appointment, he tweeted his congratulations at Tan Sri Abu Kassim and said that it is a huge recognition by the global community of Malaysia's anti-graft efforts. Meanwhile Transparency International Malaysia (TI-M) President Datuk Akhbar Satar said the appointment has elevated the Commission to the next level in the eyes of the international community towards Malaysia and MACC.

According to Datuk Akhbar the latest development proved that MACC's anti-graft initiatives have gained international recognition. The Right Honourable Senator Mohamad Ezam Mohd Nor, who is a member of the Special Committee on Corruption, said that Malaysians should support MACC's anti-corruption initiatives and be proud of the recognition given by IAACA. Ezam said the appointment is a huge recognition towards MACC's efforts and had rubbished the negative perception and accusations held by certain parties and hoped that this recognition would raise the spirit and enthusiasm of MACC officers in their fight against corruption.
This is the second international recognition accorded to the MACC Chief Commissioner. In 2012, Tan Sri Abu Kassim was appointed Vice-Chairperson of the Vienna-based International Anti-Corruption Academy (IACA) Board of Governors. The IACA is an educational anti-corruption institution under the auspices of the United Nations.

The Malaysia Anti-Corruption Academy (MACA) is the first anti-graft academy in the world to be entrusted to conduct Module 6 of the IACA's Master of Corruption Studies. This 24-month study programme combines distance learning with seven, twelve-day on-site modules. In 2011, the international police organisation (INTERPOL) which has police organisations from 190 countries in its membership roll had requested for an MACC officer to be stationed at its corruption prevention unit. Subsequently on 1st May 2012, MACC Senior Assistant Commissioner Mohd Hafaz Nazar from the Investigation Division reported for duty as a Criminal Investigation Officer with the INTERPOL Anti-Corruption Sub-Directorate which is headquartered in Lyon, France. Mohd Hafaz presence in the INTERPOL proves that the MACC's experience and integrity in fighting corruption is recognised and appreciated the international organisation. Apart from boosting the MACC's international recognition, Hafaz's long-term assignment to the INTERPOL would provide opportunities for strategic partnerships between the two law enforcement agencies.