

TRANSFORMING **MALAYSIA**

THE FIGHT AGAINST CORRUPTION

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Anti-Corruption Day:
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International Anti-Corruption Day: A Time For Championing Integrity and Best Practices

By Nurirdzuana Ismail and Mohd Azhar Ibrahim



Corruption hampers economic development, undermines democracy, and damages social justice and the rule of law. It impinges on good governance, sound management of public money, and competitive markets. In extreme cases, it undermines the trust of citizens in democratic institutions and processes. Hence fighting corruption is an important agenda in almost any country in the world. However, this should not be the responsibility of the anti-corruption agency alone. The burden lies equally heavy on the shoulders of every citizen in the country.

To raise people's awareness on the debilitating effects of corruption and

rally their support and participation in fighting graft, the United Nations General Assembly had on October 31, 2003, passed a resolution designating December 9 as International Anti-Corruption Day. On that day, UN member nations hold seminars and activities to promote public awareness and involvement in the global war against corruption.

In conjunction with World Anti-Corruption Day 2013, the Malaysian Anti-Corruption Commission (MACC) the National Key Result Areas (NKRA) Fighting Corruption and the Association of Certified Integrity Officers (ACeIO) jointly organised a seminar on 'Global

And Domestic Best Practices Towards Eradicating Corruption', recently.

Organised in collaboration with the United Nations Development Programme (UNDP), Transparency International Malaysia (TI-M) and PETRONAS, the Putrajaya event sought to highlight best practices – at the local and international levels – in inculcating integrity and good work ethics at the work place; to share new and relevant ideas that can be applied by the integrity units within public and private sector corporations; and to broaden the networking among the NKRA Against Corruption division with the CeIOs of the private and public sectors in order to achieve the

ideals of a corruption-free nation. Over 200 participants comprising Certified Integrity Officers (CeIO), senior government officials, representatives from corporations that have taken up the Corporate Integrity Pledge, and civil society representatives attended



the seminar. In highlighting the effort to promote Domestic Best Practices in anti-corruption measures, PETRONAS Chief Integrity Officer (CIO), Dato' Samsiah Abu Bakar spoke at length on the corporation road map to promote zero tolerance to corruption in the organisation and PETRONAS Integrity Agenda. As the CIO of PETRONAS, Dato' Samsiah responsibilities are to promote integrity and ethics education and awareness programmes for PETRONAS employees. This includes organising Integrity Talks to various business units, PETRONAS subsidiaries, and third-party contractors and vendors; implementing in-house integrity enhancement courses and monitoring their effectiveness; and

where applicable, enhancing policy and procedures to beef up ethics and integrity.

PETRONAS has come up with an Anti-Bribery and Corruption Manual and Guideline (ABC Manual) and formed a PETRONAS Integrity Awareness Committee to ensure the company is always transparent in its business dealings and that PETRONAS' integrity is beyond reproach, Dato' Samsiah said. Royal Malaysia Customs Department (RMCD), Senior Assistant Director, Tuan Haji Aidi Tajuddin touched on the RMCD 5-year Strategic Plan covering the period 2010 to 2014, which sets out to transform the RMCD into a 5-star public sector agency. This Star Rating System

graft. In his closing address, Senator Ezam Mohd Nor, who is a member of the Special Committee on Corruption (SCC), said corruption is a topic that is on the minds of most of the Malaysian public, and is of great concern to everyone. Those who politicise corruption and cast aspersions on certain agencies in order to create a bad impression on the government are actually dishonouring the MACC's and the independent oversight bodies' efforts in fighting the war against corruption, the senator said.

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(SSR) for government agencies was introduced in 2005 by the Malaysian Administrative Modernisation And Management Planning Unit (MAMPU). The purpose is to evaluate the performance of government agencies and improve the public service delivery system. Haji Aidid also elaborated on the RMCD Vision to become a World Class Customs Administration by 2015.

Meanwhile, Bangkok-based UNDP Anti-Corruption Advisor, Elonie Beth Seo and Transparency International Malaysia Business Integrity Programme manager, Dr. Mark Lovatt gave their respective account on the Global Best Practices that are being adopted in the fight against

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The SCC is one of the five independent MACC oversight bodies, the other four being the Anti-Corruption Advisory Board (ACAB), Complaints Committee (CC), Operations Review Panel (ORP) and the Consultation and Corruption Prevention Panel (CCPP).

UNCAC Country Review Find Malaysia With Highest Number Of Good Practices

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No country – be it developed, developing or under-developed – is free from corruption. Consequently, fighting such a global phenomenon requires an equally global response. It is precisely for this purpose that the United Nations Convention against Corruption (UNCAC) was drafted by the United Nations Office against Drugs and Corruption (UNODC) on 29 September 2003 and which entered into force on 14 December 2005. The Convention calls for member nations to institute specific measures to prevent corruption, treat graft as a criminal offence, promote international cooperation in fighting corruption, and facilitate the recovery of ill-gotten assets arising from corruption.

An Implementation Review Group (IRG) was established whereby each member will be reviewed by two of its peers to assess the status of UNCAC compliance in the country under review. In the first cycle of the review process, which runs from 2010 to 2014, member countries will be reviewed on their compliance with Chapters III (Criminalisation and law enforcement) and IV (International cooperation) of the Convention. The second cycle, to be conducted from 2015 to 2019 will cover compliance to Chapters II and V concerning preventive measure and asset recovery procedures. The Malaysian Anti-Corruption Commission (MACC) set up an UNCAC Compliance Task Force in 2011 to implement measures recommended under UNCAC's Chapters III and IV. This Task Force was helmed by MACC Deputy Chief Commissioner of

Operations, Datuk Mohd Shukri Abdull and its members 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. A year later the task force submitted its answers to an UNCAC Chapters III and IV compliance checklist to an IRG Team from Kenya and the Philippines. Subsequently, a 9-member IRG team from Kenya, Philippines and the UNCAC Secretariat made a 5-day country visit to Malaysia in February 2013 to verify Malaysia's submission.

Recently, on February 7, 2014, UNODC Regional Anti-Corruption Adviser (Asia and Pacific), Shervin Majlessi was in Malaysia to officially announce the IRG findings. According to Majlessi the review panel has identified 23 'good practices' in Malaysia – the highest number out of all countries reviewed. These comprise 7 measures under Chapter III and 16 measures under Chapter IV.

Good Practices: Chapter III (Criminalisation and Law Enforcement)

1. Section 25 of the MACC Act (MACCA) makes it a criminal offence not to report any bribe or attempt to bribe.
2. Under Section 50 of MACCA the burden of proof that any gratification received is above board lies with the



recipient; failing which the receiver is deemed guilty of corruption. Evidence that show such a gratification is customary practice in a profession, social occasion or similar context, is not admissible in court. In addition, there is no statutory limitations for prosecuting a corruption offence. A person can be charged with corruption no matter how long ago the offence took place.

3. The MACC Operations Review Panel will review delayed cases or cases where no further action (NFA) has been declared by the Deputy Public Prosecutor (DPP). The Panel will then submit its recommendations to the BPP. However, the Panel has no authoritative powers that could interfere with the DPP's discretion.

4. 14 specialised anti-corruption courts have been in existence since 2011.

5. The institutional set-up of MACC, the Malaysian Anti-Corruption Academy (MACA), and the 14 special anti-corruption courts whereby judges are instructed to hear cases within one year and can be held accountable for non-compliance, are seen as exemplary practices. Further, the introduction of pre-trial conferences and plea

bargaining has helped to reduce the backlog in hearing corruption cases.

6. High level of inter-agency collaboration takes place regularly at different levels.

7. Private sector corruption prevention initiatives such as the corporate integrity pacts (CIPs), Integrity Pledges in government procurement, formation of monitoring committees for large projects, deployment of Certified Integrity Officers (CeIO), together with the adoption of no-gifts policy are excellent ways to nip corruption in the bud.

Good Practices: **Chapter IV(International cooperation)**

1. Malaysia has signed bilateral and multilateral treaties and cooperates extensively in international and regional organisations and initiatives.

2. The Attorney-General Chambers (AGC) play a positive role 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 educate and promote awareness among all relevant stakeholders as to the applicable laws, procedures and timeframes to be followed.

4. The documentation and procedures currently in place in Malaysia are conducive to facilitating international cooperation.

5. Case management database for extradition and MLA requests allows

the internal affairs division (IAD) to quickly provide status updates and ensures timely, accurate and efficient execution and tracking of requests. This should 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 expedite extradition procedures and simplify evidentiary requirements.

8. Malaysia indicated that it is able to render a wide measure of MLA to requesting countries. This has been proven 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 conducted by the Malaysia Anti-Corruption Academy (MACA) are among the international good practices for information exchange, cooperation and corruption prevention.

12. The active role of the MACC as an international training and assistance provider through capacity building

exchange programmes, overseas training and hosting attachment officers is a welcome development.

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 Royal Malaysian Police (RMP) were also noted.

14. Malaysian law enforcement agencies, particularly the MACC, RMP, AGC and BNM's Financial Investigation Unit – in particular, the leadership levels of the agencies concerned – exhibit a high level of commitment in fighting corruption, including extending international cooperation to fully implement the principles of the Convention,.

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 is highly commendable.

The reviewers also recommended that Malaysia's corruption laws be 'refined and broadened'. They noted that the authorities' confiscation powers are hindered in that transformed or converted property acquired through corruption may not be liable for confiscation. The same hindrance also applies to confiscating instruments used in corruption.

"Sometime things like these are not spelled out in the law. This power

to confiscate must be clarified and specified,” Majlessi said at a press conference held at the Malaysian Anti-Corruption Academy (MACA) to announce the release the UNCAC Review 2013 Report. In the case of illicit enrichment, the UNCAC reviewers noted that investigation into money acquired without legitimate explanation will only be conducted contingent to an ongoing investigation. They recommend that the

legal provisions be amended so that anyone who cannot account for his/her wealth can be investigated straight away. Further, the fact that the appointment of the MACC chief commissioner is the prerogative the prime minister smacks of lack of independence. “During our discussions we were informed that this need to be addressed via constitutional amendment, so we are happy to hear this is being addressed,” Majlessi added.

Minister in the Prime Minister's Department Datuk Paul Low said the government wants the MACC chief commissioner's position elevated to be similar to that of a chief judge, whose position cannot be removed except via a tribunal. Another proposal being looked into is amending the MACC Act to make living beyond one's means an offence and corporations incur vicarious liability over their employee's corrupt acts.

MACC To Create And Administer SEA-PAC Website

by Nurirdzuana Ismail

The ninth annual South-East Asia Parties Against Corruption (SEA-PAC) meeting which was held in Vientiane, Laos, on 14 November 2013 recently, served as an important platform for anti-corruption authorities in the South-East Asia region to share lessons learnt and best practices in combating corruption.

The Malaysian Anti-Corruption Commission (MACC) was represented by its Deputy Chief Commissioner (Operations) Dato' Sri Mohd Shukri Abdull and Policy, Planning and Research Director Dato' Ahmad Khusairi Yahaya. The papers that they tabled at the meeting, namely the 'UNCAC Review Process: Malaysian Experience and MACC Transformation Progress' and 'Malaysia's proposal to create a SEA-PAC website', generated keen interest and attention from the more than 200 delegates who were present. The

proposal was accepted and the MACC was given the honour of creating the SEA-PAC website as well as act as it's administrator. Towards this end it was decided that a special committee be set up at the secretariat level, to assist in this project.

Participants also discussed the possibility of implementing more stringent measures to stamp out corruption, especially in the private sector. In this regard the MACC representatives highlighted the Commission's initiative to actively engage private sector participation to adopt various measures and approaches to inculcate ethics and good practices among the stakeholders. The delegates were briefed on how the MACC has assisted private sector companies to formulate their in-house anti-corruption programmes, including

how to implement them. In addition to these, the MACC also conducts regular training programmes to instill and strengthen corporate integrity and corporate governance in the private sector in Malaysia

Meanwhile, the organisation gave a warm welcome to its newest member, Myanmar. The country officially became the 10th SEA-PAC member after the Myanmar delegate signed the memorandum of understanding to enter SEA-PAC. As the new kid on the block, Myanmar was given a month to decide if it wants to take up the honour of hosting to the tenth annual SEA-PAC meeting in 2014. If they decline the offer then Malaysia will host the event in their stead.

'UNCAC Review Process: Malaysian Experience and MACC Transformation Progress' and 'Malaysia's proposal to create a SEA-PAC website',