

# **“ANTI-CORRUPTION INITIATIVES IN MALAYSIA: AN UPDATE”**

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## **Evaluation of Government Initiatives for the Past Year**

**by**

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At the last seminar in May 2004 the Government was urged to initiate urgently and immediately twenty propositions in pursuant to the Prime Minister's resolve to combat corruption. Foremost among them was the call to demonstrate greater political will.

When Dato' Seri Abdullah Ahmad Badawi took the office of the Prime Minister in November 2003 the level of corruption in the country was aptly described by certain quarters as pandemic. Even the former Prime Minister, Tun Mahathir Mohamad, was reported to have said that corruption may have become part of Malaysian culture. That he said after he left office.

The Barisan Nasional gave top priority to eradicate corruption in its party manifesto at the last general elections.

Prior to that two prominent figures were charged with corruption. The trials are still before the courts though the trial of the former Land and Co-Operative Minister Kasitah Gaddam is yet to begin. There were media reports of 16 other prominent persons under investigations yet we never heard more about them. Khairy Jamaluddin's statement as reported in a foreign press in April this year that after the general elections the Prime Minister decided not to dig up the past and focus on retroactive actions but rather look forward was very telling in this regard.

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Following widespread concerns of corruption in the police force in December 2003 a Royal Commission to Enhance the Operation and Management of the Royal Malaysian Police was set up. The seventeen member Commission delivered its final 607 page report on May 16, 2005 with 125 recommendations for improvements to the police force including sweeping reforms to eliminate corruption and human rights abuses. On the same day the Prime Minister announced that he would head a task force to implement the recommendations. On June 21 2005 Parliament was told that five sub-committee were set up to study the recommendations of the Commission. No time frame had been set up for these sub-committees to submit their respective reports, although the Commission in its report had very specific deadlines set for the implementation of its recommendations. With the setting up of the five sub-committees, the deadlines set by the Commission were no longer relevant. To date the public has not heard about the progress of the deliberations of the sub-committees save that the Prime Minister was reported to have said that RM3.5 billion was needed to implement the Commission's recommendations.

A pertinent point to note about the work of the Royal Commission was that its interim report to the Government was not made available to the public despite calls to do so. The entire work of the Commission was paid out of taxpayers funds yet the same taxpayers were shut away from sight of that report.

A revelation in the Commission Report that a senior police officer, since retired, had declared assets of RM34 million stunned the nation. Despite assurance by the Attorney General in May this year that this would be investigated and he "would get to the bottom of the matter" yet nothing has been heard since.

In April last year soon after the formation of the Cabinet the Prime Minister called all Barisan Nasional members of Parliament to declare their assets to him and thereafter periodically every two years.

At the same time it was reported that a code of ethics for Barisan Nasional members of Parliament were approved by the Cabinet. There has been no further reports about this Code leave alone its enforcement and effectiveness. There appears to be no transparency whatsoever in this whole exercise.

In April last year the Prime Minister launched the National integrity Plan or NIP for the purpose “... to develop a society, which is morally and ethically strong, with its members possessing religious and spiritual values that are strong and steadfast, and is supported with good values.” The purpose of establishing the Integrity Institute of Malaysia (IIM) as a company limited by guarantee is, among others, to ensure that all the planning, implementation, coordination, monitoring and evaluation related to the implementation of NIP are carried by it. According to the President of IIM, Dato Sulaiman Mahbob, the core business of IIM includes research, reporting, communication and training in relation to integrity.<sup>1</sup>

TI Malaysia has worked closely with IIM over the past one-year. IIM attempts to create spaces for citizens concerned about the level of corruption as well as the promotion of transparency and integrity in the country to voice their concerns. They have done this by organizing seminars and workshops for people to get involved. Examples are the recent World Ethics and Integrity Forum (April 2005) and the Forum on the Construction Industry (September 2005). Dato’ Sulaiman’s comments in the media have played a part in making Malaysians more aware of the importance of ethics and integrity.

In a press release<sup>2</sup> during the anniversary of IIM, Tan Sri Samsudin Osman, The Chief secretary to the Government and Chairman of the Board of IIM, announced that Malaysia will introduce its home –developed national integrity index (NII). The NII will be established in November this year and will cover all levels of society, from public to the private sector.

According to him, the main reason for introduction of this index is because the CPI by TI “*may use criteria that are not quite relevant to our situation*”. He also mentioned that the NII would be relevant and in accordance with the Malaysian situation and that the CPI by TI may not be suitable. We are of the opinion that we should be striving to better our position using internationally accepted standards instead of creating our own. The simple reason for this is that the NII will be perceived as being developed in a biased and partial manner, especially if Malaysia scores better with this index and still does poorly by the CPI. Granted the CPI is not without some weaknesses, but it has been developed impartially and has been improved over the years. However, there maybe no objection to NII being carried out by an entirely independent institution or an NGO.

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<sup>1</sup> Annual report of IIM 2004

<sup>2</sup> The Star 24 June 2005

In his address to the World Ethics and Integrity Forum in Kuala Lumpur earlier this year the Prime Minister asserted that he had given firm directions to the Anti-Corruption Agency (ACA) to carry out their investigations “without fear or favour”. That maybe so. There may be more complaints lodged with the ACA. There maybe more prosecutions and convictions in the last year. Since 2003 nine branches have been opened in the country. Its Director General has been reported to have said that there is a shortage of staff. Only 47% of the 900 odd complaints filed this year has been investigated. While this is a cause for concern the bottom line is whether the ACA is structured to act firmly “without fear or favour”.

The ACA has been in place for many years. Is it perceived as an independent institution, able to investigate and recommend prosecutions irrespective of the status of a person? That is what the public are concerned about. The Director General of ACA, is, in effect appointed by the Prime Minister and holds office at the pleasure of the Prime Minister. He is appointed from among members of the public services. He has no security of tenure save that provided for all public servants. He has no other insulations like judges or even the auditor general. How could he be seen acting independently of his political masters?

With the view of increasing the knowledge and capacity of its officers for effective performance the ACA has taken the initiative to set up a specialized training academy for its officers here in Malaysia and across the region.

In a speech that the Prime Minister made in January 2004, he mentioned that the number of civil servants increased from 1.06 million to 1.23 million from 1990 to 2003.<sup>3</sup> In this same speech, the Prime Minister also acknowledged several weaknesses in the civil service. To deal with issues such as this, he had set up several task forces headed by some ministers to study methods to reduce “red-tape” and the introduction of flying –squads to clear the backlog in land departments.<sup>4</sup>

In May this year, a Prime Minister’s Department circular to government agencies and departments instructed them to reduce bureaucracy, improve efficiency and inculcate a performance based work culture. The Key Performance Indicators (KPI) is targeted at agencies which have direct dealing with the public. The public is encouraged to fill up feedback forms so that the agencies can act

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<sup>3</sup> Prime Minister Speech titled ‘Majlis Perdana Perkhidmatan Awam Ke-5’. January 9, 2004

<sup>4</sup> Prime Minister Speech titled ‘Majlis Perdana Perkhidmatan Awam Ke-5’. January 9, 2004

on complaints.<sup>5</sup> Again it is strongly recommended that the KPI for each agency and department is released to the public periodically. This would make the agencies aware that their primary duty is to provide the best services to the public who are their clients. With the indicators made public, only the agencies that show high scores should reap benefits such as bonuses or other incentives.

To a certain degree, it is learnt, that the call to re-orientate civil servants is being gradually realized. Again, more can be done but we have to concede that after almost two decades of doing as they pleased, this process will be a long and arduous one.

In January 2004, The Prime Minister announced that government contracts and procurement will be done through open tenders to limit opportunities for corruption. This is done so that open tendering will be the norm and direct negotiations limited to special cases. He said that efficient and transparent processes will reduce uncertainty as well as limit the opportunities for corruption.<sup>6</sup>

In November 2004, a local newspaper carried a front-page story on seriously defective buildings and roads.<sup>7</sup> The immediate response of the Minister of Works was that the 2 billion ringgit fiasco was not the fault of the Public Works Department but of a group of contractors known as PMC – Project Management Consultant. PMC, established in the 90s, was a consultant consortium registered with the Finance Ministry comprising several contractors who would be awarded projects through direct negotiations, circumventing procurement regulations. This practice allowed government agencies to carry out their own projects through limited tender or direct negotiations. The justification for this new procedure was the speedy completion of projects. It was reported that the PMC concept, with consultancy fee fixed at 1.5% of project cost, had contributed to massive cost overruns and individual project failures.<sup>8</sup>

It was with relief therefore that Malaysians subsequently learnt that the PMC had in fact been abolished in March 2004 by the present Prime Minister in his first year in office. As mentioned earlier, government departments have since been directed to comply with current procurement policies with the enhanced use of the tender system which will ensure transparency and accountability in the procurement process as stated a Treasury circular dated 14 December 2004.

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<sup>5</sup> Order to improve service, NST May 29, 2005.

<sup>6</sup> PM: Most government contracts will be through open tenders, The Star January 14, 2004.

<sup>7</sup> New Straits Times, November 2004

<sup>8</sup> Opposition Leader Lim Kit Siang, calling on the government to present a White Paper on all projects handled by PMC in Parliament on November 29, 2004.

In last year's seminar the call was for binding pledges of abstaining from corruption to be included in the procurement process. This has yet to be done. Though, we applaud the Prime Minister's action of re-introducing the open tender system and the abolition of PMC.

A transformation manual was recently launched by the Prime Minister for government linked companies (GLCs). This manual is to help these companies shift to a higher gear and become "global champions". It included strategies aimed at enhancing corporate governance, developing social leaders and clarifying social obligations to steer the GLCs. The Prime Minister also mentioned that a transformation management office had been set up to ensure the success of the programme. It would report directly to him and to the Putrajaya Committee on GLC High Performance.<sup>9</sup>

The initial buzz, at least internationally, has been positive. Another development in the right step, was the announcement that an independent global standard of Corporate Governance Rating will be introduced by year end with government linked companies being the first group of companies subject to the rating to be set up by the Malaysian Institute of Corporate Governance (MICG). MICG said the move would promote good corporate governance in the country and the GLCs by being the first batch to go through the litmus test would set a good example for the rest of the sector.<sup>10</sup> . Appointments to key positions into GLCs should also be done in a transparent manner where the best of the best are selected regardless of ethnicity. This would be in line with last year's call to ensure that public expenditure is made more transparent with effective built-in checks and balances.

At the recently concluded UMNO General Assembly the Prime Minister as President of UMNO was heard giving a firm warning to the party to rid money politics. Earlier Tan Sri Mohd. Abdul Samad, the Minister of Federal Territories, was suspended for six years from UMNO for money politics and violating party code of ethics. Following that finding he was banned from attending the last UMNO General Assembly. Yet he continues to remain a minister in the Government. This is most unsettling in the minds of many. How could a man who is deemed not fit to serve the party which forms the Government and remain in the same Government as a Minister and serve the people? No doubt he has an appeal pending but that is not a valid reason to retain him as Minister. Even judges while subjected to disciplinary proceedings before a tribunal are suspended even before the findings of the tribunal. The Prime Minister who has the power to appoint and remove Ministers in his Government should have called upon Tan Sri Isa to step down from his ministerial post.

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<sup>9</sup> Motivating GLCs to become champions, The Star July 30, 2005

<sup>10</sup> MICG to introduce Corporate Governance rating by year-end, The Edge May 10, 2005

Just about the time the Prime Minister was reported to have told foreign investors overseas that his efforts to combat corruption were showing results the media here on September 15 carried front page stories of how the construction industry in Malaysia was choked with graft. It was the report of the revelations made by the Malay Contractors Association and others at the Forum on Integrity in the Construction Sector organized by the MII. This led to some concerns as to whether the Prime Minister is kept abreast of what is happening at grass root levels.

Though there has been of late greater awareness of issues related to corruption, want of greater transparency and accountability disseminated through the media yet there has been a decline in the ability of the Malaysian press to report freely since the mid-80s. In particular, this has been affected by amendments to the Official Secrets Act made in 1986, which brought in a mandatory minimum jail sentence of one year for possession and communication of information classified as 'secret'. Prior to this the courts had the discretion to impose a fine on offenders.<sup>11</sup>

Another legislation which impinges on transparency is the Printing Presses and Publications Act 1983 (PPPA). The PPPA remains a powerful tool for the state to directly control the press. Under this Act, the press and publishers have to apply for and renew their licenses on an annual basis. The Home Minister holds absolute discretion to either grant or refuse any applications and this decision is not subject to judicial review. The Home Minister can also revoke or suspend the license or permits that have been granted indefinitely.

Is it any surprise then, that Malaysia is regularly ranked by international press watchdogs Reporters Sans Frontières (RSF) and Freedom House as one of the nations with the least press freedom? Free speech and expression are restrained by these legal restrictions and a culture of fear. Malaysia's worldwide ranking in RSF's Press Freedom Index declined from 104 (out of 166 countries) in 2003 to 122 (out of 167) in 2004. In its annual report, RSF noted that Malaysia's policy of firmness towards the press has not changed following Dr. Mahathir's resignation and the subsequent succession of Abdullah Badawi.<sup>12</sup>

The statement in Parliament on September 26, 2005 by the Minister in the Prime Minister's Department, Datuk Mohd. Nazri Abdul Aziz, that the need for a freedom of information legislation does not arise as the Government was of the opinion that existing legislation was adequate to allow and

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<sup>11</sup> Q & A: Set example against corruption, leaders told Malaysiakini, March 25, 2005

<sup>12</sup> Suaram Human Rights Report 2004

ensure public access to government held information is a grave set back in the Government's resolve to fight against corruption. Without access to information, particularly government held information, there can be no effective transparency and accountability which is so essential to combat corruption. There is no space for investigative legislation in the country.

What existing legislation are there to compel a government agency to disclose information particularly in the light of the restrictive provisions of the Official Secrets Act 1972 which amongst others precludes a court from questioning the administrative certification that a document is secret and cannot be disclosed. For example could the public have compelled the government to disclose the interim report of the Royal Police Commission? With regard to the latest fuss over the release of the list of MPs granted Approved Permits (APs) could the public have compelled such a release from MITI if it was not released 'accidentally' by the MITI officer? Why should there be so much of secrecy over these documents and the information contained therein? Do they concern national security or defence and international relations?

On this issue about the disclosure of the APs issued to MPs those MPs in Parliament who expressed unhappiness over such a disclosure must be ashamed of themselves. While they earlier called for transparency from the Minister of International Trade and Industry yet they appear to object themselves to be the subject of transparent disclosure. A clear case of double standards. Parliament is expected to have oversight of malpractices in the executive arm of the government. These MPs will be seen as having brought disrepute to the majesty of Parliament. I was saddened to learn that the officer responsible for releasing the list was transferred to another division, presumably, that was his punishment. There is something most unsettling about this episode.

TI – Malaysia has consistently called for a Freedom of Information Legislation. Today sixty countries have such legislation including neighbouring Thailand. We have also called for the review of the Official Secrets Act to remove those provisions which impinge on transparency and accountability. We have also called for a legislation to protect whistleblowers.

Nobody will disagree with the Prime Minister when he told the World Ethics and Integrity Forum *“that the battle against corruption is a long and arduous one, fraught with many challenges and obstacles. There can be no doubt that there are many difficult choices and decisions that have to be made along the way. ....Beyond mere political will, it involves making improvements to legal and institutional frameworks, to the governance systems and procedures in both public and private sectors,*

*to the capabilities of anti-corruption specialists and perhaps the most fundamental and challenging aspect of all to the changing of mind-sets of people”.*

It will be seen to date that the few initiatives taken by the Government since it took office in April last year and the Prime Minister since November 2003 still remain initiatives. They have not been translated and seen having produced positive results. Some of them are seen as mere rhetorics. This brings me to what I said earlier as the foremost of the twenty propositions adopted at the last seminar. Has the Government in reality demonstrated a political will to combat corruption?

To win the hearts and minds of the people in this fight the Government must begin to demonstrate its political will even if it hurts certain quarters. It must provide for a Code of Conduct for all public servants modeled on the International Code of Conduct for Public Officials contained in the annex to the General Assembly Resolution 51/59 of December 12, 1996. Moreover, the Code should provide for an enforcement mechanism. Only last Thursday the Dewan Rakyat amended Article 125 of the Constitution to provide for a mechanism to enforce the Judge’s Code of Ethics. Hence why not a proper transparent mechanism to monitor and enforce a code of conduct on public officers? I recently called for the establishment of an office of an independent ombudsman for such a purpose.

There must be a procedure for periodic declaration of assets of all public servants or at least those above a certain rank including ministers and their immediate families to an independent institution.

The Anti-Corruption Agency must be restructured to make it independent of the executive arm of the Government.

The Official Secrets Act and the Printing Presses and Licensing Acts must be reviewed.

A freedom of information legislation and a whistleblowers protection legislation must be enacted.

The recommendations of the Royal Police Commission must be implemented without delay.

The procedure for the selection, appointment and promotion of judges must be reviewed and brought in tandem with international standards for an independent and impartial judiciary.

The United Nations Convention Against Corruption which will be coming into force on December 16, 2005 must be ratified at the latest early next year as promised by the Attorney General and implemented.

I am quite mindful that accommodation of these measures require changing of the mind sets of those wielding governmental power and not the governed. After all many of them in the present administration were in the previous administration during which period we saw the weakening of institutions and breakdown of the system of checks and balances. Until the institutions are strengthened and the system of checks and balances are restored the Government's political will to fight corruption will remain questionable.

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