

**OPEN-ENDED INTERGOVERNMENTAL WORKING GROUP ON THE  
PREVENTION OF CORRUPTION**

**ARTICLE 7 UNCAC**

**MEASURES RELATED TO POLITICAL PARTIES AND ELECTION  
CANDIDATES**

**MALAYSIA (FIFTH SESSION)**

**PUBLIC SECTOR CORRUPTION PREVENTIVE MEASURES:**

**Legislative Measures**

The Malaysian Government stance has been, from the beginning of its nationhood, to address corruption, abuse of powers and/or malpractices and its various threats to the nation. This policy is being reflected in its various penal, civil and administrative rules, regulations and laws that safeguard public law and order as well as upholding integrity, transparency and accountability of the government machinery and those of the private sector.

- |                |  |  |
|----------------|--|--|
| 1. Legislation | Criminalization of corruption in the public sector | Corruption (both active and passive) including abuse of powers and conflict of interest cases have been criminalized under the following legislations:<br><input type="checkbox"/> <b>Penal Code Act 574</b> (which was enacted as early as 1937)<br><input type="checkbox"/> <b>Malaysian Anti-Corruption Commission Act 2009</b> (Laws of Malaysia Act 694) which replaces the Anti-Corruption Act 1997 (Laws of Malaysia Act 575) and the Prevention of |
|----------------|--|--|

**G. Other Institutional Efforts**

**(i) Malaysia Anti-Corruption Academy (MACA) Efforts**

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The Academy is set up as the anti-corruption capacity and capability training center for officers of the Malaysian Anti-Corruption Commission as well as other law-enforcement Government departments, agencies and Government-linked companies.

The MACA, in collaboration with other agencies, is the training provider for certified integrity officer (CeIO) programme of the public sector. The programme participants will be deployed as the Integrity Officers of the Integrity Unit of their respective departments.

#### **(ii) Institute of Integrity Malaysia (IIM)**

Malaysian Prime Minister, Dato' Seri Abdullah Haji Ahmad Badwi has on April 23, 2004, unveiled his master plan to make integrity the cornerstone of his administration. The previous drive of modernization and industrialization has delivered tremendous growth and wealth to the nation and has transformed Malaysia from a mainly agrarian economy into the dynamic economy that it is now. However, the national economic transformation has left significant imprints of the country's social fabric; pertinent among these is the erosion of the value system. Environmental degradation, irresponsible civic behaviour and corruption were widespread.

The scope of the plan is holistic and wide-encompassing. For the first 5 years, the plan outlined 5 objectives to be achieved namely:

- To continuously and effectively combat and reduce incidence of corruption, malpractices and abuse of power;
- To enhance efficiency in the delivery system of the civil service and to reduce unnecessary bureaucracy;
- To improve corporate governance and business ethics;
- To strengthen the family institution; and
- To improve the quality of life and the well-being of the society.

**2. Please provide information demonstrating implementation of the measures described above.**

### **TRANSPARENCY IN FOR ELECTED PUBLIC OFFICE AND FUNDING OF POLITICAL PARTIES**

The current legislative measures governing transparency in public elections and political parties are:-

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(a) Election Offences Act 1954 (Act 5), in particular corrupt practices under section 8 (Treating), Section 9 (Undue Influence) and Section 10 (Bribery) as below:

**Section 8 - Treating**

Every person who, corruptly, by himself or by any other person, either before, during or after an election, directly or indirectly gives or provides or causes to be given or provided, or is accessory to the giving or providing, or pays or engages to pay wholly or in part, the expense of giving or providing any food, drink, refreshment or provision, or any money or ticket or other means or device to enable the procuring of any food, drink, refreshment or provision, to or for any person for the purpose of corruptly influencing that person or any other person to give or refrain from giving his vote at such election or on account of any such person or any other person having voted or refrained from voting or being about to vote or refrain from voting at such election, and every elector or voter who corruptly accepts or takes any such food, drink, or refreshment or provision or any such money or ticket or who adopts such other means or device to enable the procuring of such food, drink, refreshment or provision shall be guilty of the offence of treating.

**Section 9 - Undue influence**

(1) Every person who, before, during or after an election, directly or indirectly, by himself or by any other person on his behalf, makes use of or threatens to make use of any force, violence, or restraint, or inflicts or threatens to inflict, by himself or by any other person, any temporal or spiritual injury, damage, harm, or loss upon or against any person in order to induce or compel such person to vote or refrain from voting, or on account of such person having voted or refrained from voting, at any election, or who by abduction, duress, or any fraudulent device or contrivance impedes or prevents the free exercise of the franchise of any elector or voter, or thereby compels, induces, or prevails upon any elector or voter either to give or refrain from giving his vote at any election, or who directly or indirectly interferes or attempts to interfere with the free exercise by any person of any electoral right shall be guilty of the offence of undue influence.

(2) A person shall be deemed to interfere with the free exercise of the electoral right of a person within the meaning of this section who induces or attempts to induce such person to believe that he, or any person in whom he is interested, will become or will be rendered an object of divine displeasure or spiritual censure.

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**Section 10 - Bribery**

The following persons shall be deemed guilty of the offence of bribery:

*(a)* every person who, before, during or after an election, directly or indirectly, by himself or by any other person on his behalf, gives, lends, or agrees to give or lend, or offers, promises, or promises to procure or to endeavor to procure, any money or valuable consideration to or for any elector or voter, or to or for any person on behalf of any elector or voter or to or for any other person, in order to induce any elector or voter to vote or refrain from voting, or corruptly does any such act as aforesaid on account of such elector or voter having voted or refrained from voting at any election;

*(b)* every person who, before, during or after an election, directly or indirectly, by himself or by any other person on his behalf, gives or procures, or agrees to give or procure, or offers, promises, or promises to procure or to endeavour to procure, any office, place or employment to or for any elector or voter, or to or for any person on behalf of any elector or voter, or to or for any other person, in order to induce such elector or voter to vote or refrain from voting, or corruptly does any such act as aforesaid on account of any elector or voter having voted or refrained from voting at any election;

*(c)* every person who, before, during or after an election, directly or indirectly, by himself or by any other person on his behalf, makes any such gift, loan, offer, promise, procurement, or agreement as aforesaid to or for any person in order to induce such person to procure or endeavour to procure the election of any person, or the vote of any elector or voter at any election;

*(d)* every person who, either before or during an election, upon or in consequence of any such gift, loan, offer, promise, procurement or agreement, procures or engages, promises or endeavours to procure, the election of any person, or the vote of any elector or voter at an election;

*(e)* every person who, either before or during an election, advances or pays or causes to be paid any money to, or to the use of, any other person with the intent that such money or any part thereof shall be expended in bribery at any election or who knowingly pays or causes to be paid any money to any person in discharge or repayment of any money wholly or in part expended in bribery at any such election;

*(f)* every elector or voter who, before or during any election directly or indirectly, by himself or by any other person on his behalf, receives, agrees, or contracts for any money, gift, loan, or valuable consideration, office, place or employment, for himself or for any other person, for voting or agreeing to vote or for refraining or agreeing to refrain from voting at any such election;

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(g) every person who, after any election, directly or indirectly, by himself or by any other person on his behalf, receives any money or valuable consideration on account of any person having voted or refrained from voting or having induced any other person to vote or to refrain from voting at any such election;

(h) every person who, after an election, directly or indirectly, by himself or by any other person on his behalf, on account of and as payment for voting or for having voted or for agreeing or having agreed to vote for any candidate at an election, or on account of and as payment for his having assisted or agreed to assist any candidate at an election, applies to such candidate, or to his agent or agents, for the gift or loan of any money or valuable consideration, or for the promise of the gift or loan of any money or valuable consideration or for any office, place or employment or for the promise of any office, place or employment; and

(i) every person who, either before or during an election, directly or indirectly, by himself or by any person on his behalf, in order to induce any other person to agree to be nominated as a candidate or to refrain from becoming a candidate or to withdraw if he has become a candidate, gives or procures any office, place or employment, or agrees to give or procure or offers or promises to procure or to endeavour to procure any office, place or employment, to or for such other person, or gives or lends, or agrees to give or lend, or offers, or promises to procure or to endeavour to procure any money or valuable consideration to or for any person or to or for such other person, or to or for any person on behalf of such other person.

(b) Malaysian Anti-Corruption Commission Act 2009 – in relation to money politics is punishable under Section 16 of the Act.

**Offence of accepting gratification**

Any person who by himself, or by or in conjunction with any other person—

(a) corruptly solicits or receives or agrees to receive for himself or for any other person; or

(b) corruptly gives, promises or offers to any person whether for the benefit of that person or of another person, any gratification as an inducement to or a reward for, or otherwise on account of-

(A) any person doing or forbearing to do anything in respect of any matter or transaction, actual or proposed or likely to take place; or

(B) any officer of a public body doing or forbearing to do anything in respect of any matter or transaction, actual or proposed or likely to take place, in which the public body is concerned, commits an offence.

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**Politicians arrested and charged for corruption between 2009-2012**

- In 2009, out of a total of 23 politicians arrested, 14 have been charged and the majority are members of the ruling Party
- In 2010, four politicians were arrested and 2 were charged. One of the latter was Ex-MB Selangor Datuk Seri Mohamad Khir bin Toyo.
- In 2011, two politicians were arrested and three were charged.
- In 2012, three politicians were arrested and one was charged.

**Reported Cases of Money Politics**

**Public Prosecutor Dato' Hj Azman bin Mahalan [2010] 6 MLJ 833**

The respondent was charged in the sessions court on two counts of giving gratification under s 10(b)(aa) of the Anti-Corruption Act 1997 ('the Act'). The prosecution's case was that the respondent had given SP1 certain sums of money in order to persuade SP1 not to accept an offer of settlement from his bankrupted debtor -- SP6 -- so that SP6 would remain a bankrupt, thereby disabling him (SP6) from contesting the top post in a political organisation. The respondent was a serious contender for that same post. The respondent was convicted and sentenced on both charges by the sessions' court judge

**Public Prosecutor v Dato' Mohamad Norza bin Zakaria & Anor (2009)**

In March, 2009, Dato' Norza and his agent **Halimi bin Kamaruddin** were charged in the Temerloh Magistrate's Court on two charges of corruption for the winning post in the UMNO party elections in 2008.

**PP v Mohd Anuwari bin Mohd Solleh Mohd Noor (2009)**

Accused allegedly bribed complainant to nominate an individual as a deputy head of a party division.

**PP v Junaidi bin Abdul Hamid (2009)**

Accused was charged for bribing a party member as inducement to secure vote for a certain individual to be elected as party division head post.

**PP v Azman bin Noh (2009)**

Accused was charged for bribing a party member as inducement to secure vote for a certain individual to be elected as party division head post.

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#### Political Funding in Malaysia

- **Disclosure of donations by political party**

A political party is a registered society under the Societies Act 1966 (Act 335). Hence it is subjected to the rules and regulations of the Registrar of Societies.

Societies Act 1966 (Act 335) defines a “political party” reads as follows:

(a) any society which by any of its objects or rules, regardless whether such object or rule is its principal object or rule, or constitutes merely an object or rule which is ancillary to its principal object or objects or to its principal rule or rules, makes provision for the society to participate, through its candidates, in elections to the Dewan Rakyat, or to a Dewan Undangan Negeri, or to a local authority, or makes provision for it to seek the appointment or election of a person proposed or supported by it to the Dewan Negara; or

(b) any society which, notwithstanding anything contained in its objects or rules, carries on any activity or pursues any objective which involves its participation, through its candidates, in elections to the Dewan Rakyat, or to a Dewan Undangan Negeri, or to a local authority, or which involves its seeking the appointment or election of a person proposed or supported by it to the Dewan Negara;

There is no definition of the term “political donation” in the Societies Act 1966 and neither is there any legislative prohibition for any political party to accept so-called political donation from any individual or organization.

Currently, there are also no limits to the amount of “donations” political parties and candidates can receive from special interest groups making it possible for some of the donations being channelled directly to individual politicians instead of to their party.

There is also no requirement for **public** disclosure of such contributions. The Societies Act 1966 only requires the political parties to submit a yearly audited account under Section 14 of the SA 1966 with “the description of any money or property, any pecuniary benefit or advantage received by the society from any person ordinarily resident outside Malaysia or an organization, authority, government, or agency of any government outside Malaysia” within 60 day after it AGM or if no AGM, within 60 days after the end of each calendar year. Additionally, the Registrar of Societies may use its power at any time order the society under Section 14 (2) of SA 1966 to furnish the same information.

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However disclosure of its annual returns under Section 14 of SA 1966 is not for public consumption but only for the Registrar and “*a member or subscriber or person having an interest in its funds*” under Section 29 or Section 30. The objective of such disclosure is twofold: to prevent misuse of fund of a registered society and to satisfy the Registrar that the society is prohibited from having, directly or indirectly, any affiliation, connection, communication or other dealing with any society, or other body whatsoever outside Malaysia, or with authority, governmental or otherwise, in any country, territory or place outside Malaysia. Re Section 13 and Section 53 SA 1966.

Donation to political parties- whether legal or illegal?

In the case of *Datuk Haji Harun v Public Prosecutor* [1997] 1 MLJ, the defence put up by the accused that the sums of money solicited and accepted were political donations. The court however rejected the defence story and sentenced him to one year's imprisonment in respect of the 1st Charge and 2 years in respect of each of the 2nd and 3rd Charges.

In the said case it was decided that a donation to a political party are legal so long as the donation is not solicited/accepted with an evil mind (sic) by the accused and that the donation should not be an inducement to do an official act or conduct.

To establish what is evil or otherwise depends on the manner how the donation was solicited and presented. In *Datuk Harun*, the judge made the following observations:

*In ordinary circumstances, the presentation of a donation, be it by way of cheque or otherwise, is preceded by certain formalities, for example, a representative of the donor firm would personally hand it to the donee at a proper place and in the presence of witnesses; not in some "back alley". I am quite sure that the donor wants to be present to show that he is participating in whatever worthy cause the donee is undertaking, be it politics, charity, education or welfare. The donation is then properly presented and properly acknowledged. In the present case, the donation was "presented" in a very strange way.*

*Political contributions have been a highly-organised professional obligation in Europe and in the States; they are a sign of the times. Malaysia, it seems to me, is emulating that way of life. Whatever may be the moral of it, so long as they are not given and received for the corrupt exercise of official functions, they are not a crime.*

The judgement of *Datuk Harun's* case seemed to be consistent with a recent (2013) unreported case of *PP v Michael Chia Thien Foh*. In the latter case, the accused, Michael Chia also put up a defence that sum of money he received by way of cheating another business man was political donation for a political party. But prosecution witness from the

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political party concerned testified that the party did not seek such political fund. The accused defence therefore rejected.

Given the current scenario regarding complexity of political funding and to ensure transparency on political funding or legalising political donations so to speak, the National Key Result Area (NKRA) Against Corruption is now planning to study the need for creating an act (namely, the Political Parties Act) or proposing amendments to existing ones at several government agencies involved in supervising political parties for the purpose.

The proposed act shall make it mandatory for political parties to publicly declare their sources of political funds to create transparency. However this initiative is yet to be implemented.

- **Asset declaration by election candidates**

There is no legislation requiring election candidates to declare their assets before and after an election.

However asset declaration by election candidates for political parties and for vetting of candidates by the MACC began for the first time only before recent the 13th General Election in 2013 in a move proposed by the **MACC's Consultation and Corruption Prevention Panel** to the Prime Minister in efforts to have a clean election.

The said proposal was welcomed by the PM and was duly carried out by internal party arrangements. As for the Barisan National (National Front Coalition) all election candidates eligible for candidacy were required to declare their assets to the party president (who in this case, was the PM himself). The declaration was then to be vetted by the MACC. Similar asset declaration initiative was also adopted by the opposition coalition members of the People's Alliance or Pakatan Rakyat (PR).

### **3. Please outline actions required to strengthen or improve the measures described above and any specific challenges you might be facing in this respect.**

#### **Initiative to Training for Members of Parliament**

The Perception of corruption in politicians has remained very high among the people with 42% of the public believing that political institutions are corrupt. In an effort to remedy this

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problem an initiatives has been set up in the GTP 2.0 to create further awareness and improve the understanding of Members of Parliament in corruption related offences, penalties and impact. It will be mandatory for MPs to attend the annual training event in order to remind them and to improve their own understanding, which will hopefully translate in action. The training will be conducted by the Malaysia Anti-Corruption Academy three times a year. The first training session will commence after the 13th General Election.

#### **Declaration of Assets by Members of Parliament and elected candidates**

The challenge posed by this initiative is for such declarations to be made public. As it stands there is no consistency in the practice by ruling government under the National Front Coalition (BN) and those under the People's Alliance or Pakatan Rakyat (PR) as regards public disclosure of the assets declared. Till date, all BN MPs declarations of assets are made to the Prime Minister but made available only to the Chief Commissioner of MACC. Elected candidates of the PR –controlled states of Penang, Selangor and Kelantan , on the other hand, are made public and can be viewed from their state government websites. This challenge could be overcome by having a Political Parties act as proposed by the NKRA Against Corruption GTP 2.0 initiative mentioned above.