

**THEMATIC COMPILATION OF RELEVANT INFORMATION SUBMITTED BY  
MALAYSIA**

**ARTICLE 13 UNCAC**

**PUBLICATION AND DISSEMINATION OF INFORMATION ON CORRUPTION**

**MALAYSIA (SEVENTH MEETING)**

**In relation to respecting, promoting and protecting the freedom to seek, receive, publish and disseminate information concerning corruption (article 13 (1) (d)):**

- Outlines of the procedures or regulations that ensure the freedom of the public to seek and receive information concerning corruption, in particular using ICT. States parties and signatories may wish to include the following information, if applicable:
- The extent to which such information is proactively and systematically published by the Government online;
- The extent to which such information is available upon online request for access to information by a member of the public;
- Any restrictions applicable to exercise of the freedom to seek, receive, publish and disseminate such information, in particular using ICT, including:
  - Restrictions necessary for respect of the rights or reputations of others (libel and defamation laws, etc.);
  - Restrictions necessary for the protection of national security or *order public* or of public health or morals;
- Description of how such restrictions are applied in practice;

• Description of procedures that allow a member of the public to apply for review of, or appeal against, the application of such a restriction by the Government. In Malaysia, the legislation to seek, receive, publish and disseminate information concerning corruption and at the same time respecting the rights of others and for the protection of national security or public order, health or morals is subject to the provisions of the following legislation and regulation:-

**Restricted/ Prohibitory Legislation:**

**A. A report made to the MACC shall be kept secret under Section 29 (4) of the Malaysian Anti-Corruption Commission Act 2009 (Act 694)-** Power to investigate reports and enquire into information:-

(1) Every report relating to the commission of an offence under this Act may be made orally or in writing to an officer of the Commission, and if made orally it shall be reduced into writing and read over to the person making the report; and every report, whether in writing or reduced into writing, shall be signed by the person making the report.

(2) Every report, whether in writing or reduced into writing, shall be entered in a book kept at the office of the Commission and there shall be appended to such entry the date and hour on which such report was made.

(3) Where an officer of the Commission has reason to suspect the commission of an offence under this Act following a report made under subsection (1) or information otherwise received by him, he shall cause an investigation to be carried out and for such purpose may exercise all the powers of investigation provided for under this Act and the Criminal Procedure Code.

(4) **A report made under subsection (1) shall be kept secret and shall not be disclosed by any person to any person** other than officers of the Commission and the Public Prosecutor until an accused person has been charged in court for an offence under this Act or any other written law in consequence of such report, **unless the disclosure is made with the consent of the Public Prosecutor or an officer of the Commission of the rank of Commissioner and above.**

(5) A copy, which is certified by an officer of the Commission of the rank of Superintendent and above, of an entry under subsection (2) of a report under subsection (1) shall be admissible as evidence of the content of the original and of the time, place and manner in which the report was recorded.

**B. Printing Presses and Publications Act 1984 (Act 301) Section 7- Undesirable publications**

(1) If the Minister is satisfied that any publication contains any article, caricature, photograph, report, notes, writing, sound, music, statement or any other thing which is in any manner prejudicial to or likely to be prejudicial to public order, morality, security, or which is likely to alarm public opinion, or which is or is likely to be contrary to any law or is otherwise prejudicial to or is likely to be prejudicial to public interest or national interest, he may in his absolute discretion by order published in the Gazette prohibit, either absolutely or subject to such conditions as may be prescribed, the printing, importation, production, reproduction, publishing, sale, issue, circulation, distribution or possession of that publication and future publications of the publisher concerned.

(2) In the case of a publication originating in any country outside Malaysia, an order under subsection (1) may, if the order so provides-

(a) prohibit the importation of any or all publications whether before or after the date of the order, subject to such conditions as may be prescribed therein;

(b) in the case of a periodical publication, prohibit the importation of any past or future issue thereof;

(c) in the case of a publication which has been issued or appears or purports to have been issued from any publishing house, agency or other source specified in the order, prohibit the importation of any other

publication which may at any time whether before or after the date of the order has been, or appears or purports to have been, issued from the specified publishing house, agency or other source;

(d) require the publisher thereof to make such deposits of such amount and in such manner as may be prescribed therein before any such publication may be imported. (3) Where the Minister is satisfied that the publisher of any publication has acted in contravention of the Act or any rules or order made thereunder or any condition of the licence or permit or any law relating to sedition or defamation, he may after giving such publisher an opportunity to show cause why the deposit made under paragraph 2(d) should not be forfeited, order the deposit or part thereof to be forfeited.

(4) Whether or not an order has been made under subsection (3) the court may order the deposit or any balance thereof, if any-

(a) to be forfeited where the publisher fails to appear in court to answer any criminal charge or civil action relating to any matter in connection with such publication; or

(b) to be paid out in settlement of any judgment obtained against the publisher arising out of any proceeding in connection with such publication.

(5) Where a deposit made under paragraph 2(d) is ordered to be forfeited or utilized in settlement of any damages under subsection (3) or (4), the order of prohibition under subsection (1) shall become absolute unless the publisher makes a further deposit as may be required by the Minister.

(6) A local or foreign publisher shall be responsible and liable for any action in respect of any material published in his publication.

#### Section 8 Offences

(1) Any person who without lawful excuse is found in possession of any prohibited publication shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding five thousand ringgit.

(2) Any person who prints, imports, produces, reproduces, publishes, sells, issues, circulates, offers for sale, distributes or has in his possession for such purpose any prohibited publication shall be guilty of an offence and shall, on conviction, be liable to imprisonment for a term not exceeding three years or to a fine not exceeding twenty thousand ringgit or to both.

#### Section 8 A Offence to publish false news

(1) Where in any publication there is maliciously published any false news, the printer, publisher, editor and the writer thereof shall be guilty of an offence and shall, on conviction, be liable to imprisonment for a term not exceeding three years or to a fine not exceeding twenty thousand ringgit or to both.

(2) For the purposes of this section, malice shall be presumed in default of evidence showing that, prior to publication, the accused took reasonable measures to verify the truth of the news.

(3) No prosecution for an offence under this section shall be initiated without the consent in writing of the Public Prosecutor.

#### Section 8 B Suppression of publication

Where any person has been found guilty of any offence by any court in respect of anything published in any publication, it shall be lawful for the court upon the application of the Public Prosecutor to order the suppression of the publication for a period not exceeding six months of such publication.

#### Section 8 C Suspension of publication

(1) Pending the determination of any proceedings for the prosecution of a printer, publisher, editor or writer before any court for any offence in respect of anything published in any publication, it shall be lawful for the court upon the application of the Public Prosecutor to order the suspension of such publication.

(2) Where an appeal has been lodged against the order of acquittal of any person charged with an offence in respect of anything published in any publication, it shall be lawful for the court which will hear the appeal, on application by the Public Prosecutor, to order a further suspension of such publication pending the final disposal of the appeal.

(3) Any person who contravenes an order made under this section shall be guilty of an offence and shall, on conviction, be liable to imprisonment for a term not exceeding two years or to a fine not exceeding ten thousand ringgit or to both.

#### Section 9 Undesirable publication may be refused importation

(1) Without prejudice to anything in this Act, the Minister may refuse the importation into Malaysia or withhold delivery or return to the sender thereof outside Malaysia any publication which he is satisfied contains any article, caricature, photograph, report, notes, writing, sound, music, statement or any other

thing which is likely to be prejudicial to public order, morality, security, or which is likely to alarm public opinion, or which is likely to be contrary to any law or is otherwise prejudicial or is likely to be prejudicial to public interest or national interest.

(2) Notwithstanding subsection (1), the Minister may allow the importation or delivery of any publication after any part of the publication which he considers objectionable under any of the grounds specified in subsection (1) has been, to his satisfaction, obliterated, deleted, erased or removed.

### **C. Sedition Act 1984 (Act 15) Meaning of " seditious" under Section 2**

“seditious” when applied to or used in respect of any act, speech, words, publication or other thing qualifies the act, speech, words, publication or other thing as one having a seditious tendency;

Meaning of "seditious tendency" under Section 3

A “seditious tendency” is a tendency-

- (a) to bring into hatred or contempt or to excite disaffection against any Ruler or against any Government;
- (b) to excite the subjects of any Ruler or the inhabitants of any territory governed by any Government to attempt to procure in the territory of the Ruler or governed by the Government, the alteration, otherwise than by lawful means, of any matter as by law established;
- (c) to bring into hatred or contempt or to excite disaffection against the administration of justice in Malaysia or in any State;
- (d) to raise discontent or disaffection amongst the subjects of the Yang di-Pertuan Agong or of the Ruler of any State or amongst the inhabitants of Malaysia or of any State;
- (e) to promote feelings of ill will and hostility between different races or classes of the population of Malaysia; or
- (f) to question any matter, right, status, position, privilege, sovereignty or prerogative established or protected by the provisions of Part III of the Federal Constitution or Article 152, 153 or 181 of the Federal Constitution.

(2) Notwithstanding anything in subsection (1) an act, speech, words, publication or other thing shall not be deemed to be seditious by reason only that it has a tendency-

- (a) to show that any Ruler has been misled or mistaken in any of his measures;
- (b) to point out errors or defects in any Government or constitution as by law established (except in respect of any matter, right, status, position, privilege, sovereignty or prerogative referred to in paragraph (1)(f) otherwise than in relation to the implementation of any provision relating thereto) or in legislation or in the administration of justice with a view to the remedying of the errors or defects;
- (c) except in respect of any matter, right, status, position, privilege, sovereignty or prerogative referred to in paragraph (1)(f)-
  - (i) to persuade the subjects of any Ruler or the inhabitants of any territory governed by any Government to attempt to procure by lawful means the alteration of any matter in the territory of such Government as by law established; or
  - (ii) to point out, with a view to their removal, any matters producing or having a tendency to produce feelings of ill will and enmity between different races or classes of the population of the Federation, if the act, speech, words, publication or other thing has not otherwise in fact a seditious tendency.

(3) For the purpose of proving the commission of any offence against this Act the intention of the person charged at the time he did or attempted to do or made any preparation to do or conspired with any person to do any act or uttered any seditious words or printed, published, sold, offered for sale, distributed, reproduced or imported any publication or did any other thing shall be deemed to be irrelevant if in fact the act had, or would, if done, have had, or the words, publication or thing had a seditious tendency.

Offences under Section 4 (1) Any person who-

- (a) does or attempts to do, or makes any preparation to do, or conspires with any person to do, any act which has or which would, if done, have a seditious tendency;
- (b) utters any seditious words;
- (c) prints, publishes, sells, offers for sale, distributes or reproduces any seditious publication; or
- (d) imports any seditious publication, shall be guilty of an offence and shall, on conviction, be liable for a first offence to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding three years or to both, and, for a subsequent offence, to imprisonment for a term not exceeding five years; and any seditious publication found in the possession of the person or used in evidence at his trial

shall be forfeited and may be destroyed or otherwise disposed of as the court directs.

(2) Any person who without lawful excuse has in his possession any seditious publication shall be guilty of an offence and shall, on conviction, be liable for a first offence to a fine not exceeding two thousand ringgit or to imprisonment for a term not exceeding eighteen months or to both, and, for a subsequent offence, to imprisonment for a term not exceeding three years, and the publication shall be forfeited and may be destroyed or otherwise disposed of as the court directs.

#### Section 9 Suspension of newspaper containing seditious matter

(1) Whenever any person is convicted of publishing in any newspaper any matter having a seditious tendency, the court may, if it thinks fit, either in lieu of or in addition to any other punishment, make orders as to all or any of the following matters:

- (a) prohibiting, either absolutely or except on conditions to be specified in the order, for any period not exceeding one year from the date of the order, the future publication of that newspaper;
- (b) prohibiting, either absolutely or except on conditions to be specified in the order, for the period aforesaid, the publisher, proprietor, or editor of that newspaper or from publishing, editing or writing for any newspaper, or from assisting, whether with money or money's worth, material, personal service, or otherwise in the publication, editing, or production of any newspaper; and
- (c) that for the period aforesaid any printing press used in the production of the newspaper be used only on conditions to be specified in the order, or that it be seized by the police and detained by them for the period aforesaid.

(2) Any person who contravenes an order made under this section shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding three years or to both.

(3) Nothing in this Act shall affect the power of the court to punish any person contravening an order made under this section for contempt of court: Provided that no person shall be punished twice for the same offence.

#### **D. Official Secrets Act 1972 (Act 88) Meaning of "official secret" under Section 2**

"official secret" means any document specified in the Schedule and any information and material relating thereto and includes any other official document, information and material as may be classified as "Top Secret", "Secret", "Confidential" or "Restricted", as the case may be, by a Minister, the Menteri Besar or Chief Minister of a State or such public officer appointed under section 2B;

#### **Section 8. Wrongful communication, etc. of official secrets**

(1) If any person having in his possession or control any official secret or any secret official code word, countersign or password which-

- (a) relates to or is used in a prohibited place or relates to anything in such a place;
- (b) relates to munitions of war and to other apparatus, equipment and machinery which are used in the maintenance of the safety and security of Malaysia;
- (c) has been made or obtained in contravention of this Act;
- (d) has been entrusted in confidence to him by any public officer; or
- (e) he has made or obtained, or to which he has had access, owing to his position as a person who holds or has held office in the public service, or as a person who holds, or has held a contract made on behalf of the Government, or as a person who is or has been employed by or under a person who holds or has held such an office or contract, does any of the following:

- (i) communicates directly or indirectly any such information or thing to any foreign country other than any foreign country to which he is duly authorized to communicate it, or any person other than a person to whom he is duly authorized to communicate it or to whom it is his duty to communicate it;
- (ii) uses any such official secret or thing as aforesaid for the benefit of any foreign country other than any foreign country for whose benefit he is duly authorized to use it, or in any other manner prejudicial to the safety or interests of Malaysia;
- (iii) retains in his possession or control any such thing as aforesaid when he has no right to retain it, or when it is contrary to his duty to retain it, or fails to comply with all lawful directions issued by lawful authority with regard to the return or disposal thereof; or

(iv) fails to take reasonable care of, or so conducts himself as to endanger the safety or secrecy of, any such official secret or thing, he shall be guilty of an offence punishable with imprisonment for a term not less than one year but not exceeding seven years.

(2) If any person receives any official secret or any secret official code word, countersign or password knowing or having reasonable ground to believe at the time when he receives it, that the official secret, code word, countersign or password is communicated to him in contravention of this Act, he shall, unless he proves that the communication to him of the official secret, code word, countersign or password was contrary to his desire, be guilty of an offence punishable with imprisonment for a term not less than one year but not exceeding seven years.

**Public access to information on corruption**

A. Malaysian Anti-Corruption Commission “Name and Shame” Data base published on MACC website ([www.sprm.gov.my](http://www.sprm.gov.my)). Details of offenders under trial or convicted are made available for 3 years. This has been used as effective reference for employers, the Immigration Department, the banking fraternity and also embassies in application for employment, visa and also financial service matters.

B. Law journals of decided cases-Malaysian Law Journals, Current Law Journals etc

C. Public survey/research results by institutions (TI, Universities, independent survey sponsored by NGOs, IIM, MACC)

D. MACC Publications- Annual Reports

See attachments:

- Malaysian Anti-Corruption Commission Act 2009 (Act 694)
- Printing Presses and Publication Act 1984(Act 301)
- Sedition Act 1984 (Act 15)
- Official Secrets Act 1972 (Act 88)