

## Malaysia

### Corruption Perceptions Index 2008: 5.1 (47th out of 180 countries)

#### Conventions

UN Convention against Corruption (signed December 2003; ratified September 2008)

### Legal and institutional changes

- The twelfth general election in Malaysia, held on 8 March 2008, sent shock waves throughout the country.<sup>1</sup> For the first time since 1969 the ruling party, the Barisan Nasional (National Front) coalition, lost its two-thirds parliamentary majority. In addition, it lost four more states to the opposition compared to the 2004 election, to make it five in total. In 2004 the administration headed by Abdullah Ahmad Badawi had been voted in with the strongest ever mandate for an incumbent, specifically to clean up the decaying state of Malaysian institutions.<sup>2</sup> It has failed in many areas, however, especially in addressing corruption. The 2008 election results sent a very clear signal to the ruling party about the level of popular dissatisfaction with, among other things, the unbearable effects of corruption. The main opposition parties (which have subsequently restyled themselves as the Citizens' Coalition – Pakatan Rakyat)<sup>3</sup> ran on the platform of transparency, accountability and good governance and were able to capitalise on the discontent of the people.
- The Malaysian Anti-Corruption Academy (MACA) was launched by the prime minister on 12 April 2007. The MACA is intended to be the regional hub for anti-corruption capacity and capability building to fight corruption, by promoting best practices in investigation, monitoring and enforcement and by venturing into new areas such as forensic accounting and forensic engineering.<sup>4</sup>
- In a speech given at the ASEAN (Association of South East Asian Nations) Integrity Dialogue<sup>5</sup> on 21 April 2008, Badawi proposed the following measures to address public concerns. First, the Anti-Corruption Agency (ACA) would be restructured to become a fully fledged Malaysian Commission on Anti-Corruption (MCAC). The MCAC would report to a newly set up independent Corruption Prevention Advisory Board, to be appointed by the Supreme Ruler (head of state) on the advice of the prime minister. The board would advise the MCAC on administrative and operational matters. Second, the prime minister proposed setting up a Parliamentary Committee on the Prevention of Corruption. Finally, he introduced a proposal to protect whistleblowers

1 See [www.asli.com.my/DOCUMENTS/An%20Analysis%20of%20Malaysia.pdf](http://www.asli.com.my/DOCUMENTS/An%20Analysis%20of%20Malaysia.pdf).

2 J. Liow, 'The Politics behind Malaysia's Eleventh General Election', *Asian Survey*, vol. 45, no. 6 (2005).

3 Global Information Network, 'Malaysia: Opposition Parties Form Formidable Coalition', 8 April 2008; accessed at [www.proquest.com/](http://www.proquest.com/) (accessed 9 October 2008).

4 See [www.bpr.gov.my/maca/cda/m\\_about\\_us/about\\_maca.php](http://www.bpr.gov.my/maca/cda/m_about_us/about_maca.php).

5 See [www3.pmo.gov.my/?menu=speech&page=1676&news\\_id=71&speech\\_cat=2](http://www3.pmo.gov.my/?menu=speech&page=1676&news_id=71&speech_cat=2).

and witnesses. All these reforms have yet to be implemented, however.

- The Malaysian Institute of Integrity (MII – Institut Integriti Malaysia) also stepped up its efforts when it launched two major publications, *National Integrity System: A Guiding Framework* and *Corporate Social Responsibility: Our First Look*.<sup>6</sup> This was part of its ongoing collaborative effort with UNDP Malaysia to develop the necessary human capital and knowledge resources within the institute.
- Penang state has introduced several measures to improve the regulatory environment with regard to government procurement,<sup>7</sup> in what is referred to as a CAT – a Competent, Accountable and Transparent – government. It is the first state government to implement the open tender system for government procurement and contracts. As an example, in civil works, contractors are able to bid in an open tender process and to review the successful contractors and object if they are not satisfied. Furthermore, the Penang government has issued a directive whereby all administrators and state executive councillors are not allowed to make any new land applications. It has also invited professionals to serve on various boards, such as the Penang State Appeals Board, and has established a Working Professional Committee comprising individuals from five different professional bodies to improve land procedures.
- The implementation of the watered-down Independent Police Complaints and Misconduct Commission (IPCMC) to a Special Complaints Commission (SCC) indicates the inability of the government to regulate gatekeepers.<sup>8</sup> The IPCMC, which was the recom-

mendation of the 2005 Royal Commission, was diluted after open revolt<sup>9</sup> from the top brass of the Royal Malaysian Police. The bill that was subsequently produced prompted concerns that the recommendations of the Royal Commission were not adequately reflected, particularly with regard to the proposed SCC's independence and investigative powers. Not only did the bill grant the prime minister broad powers to appoint and dismiss commissioners, it also included the Inspector-General of Police as a permanent SCC member. In addition, the SCC did not have the power to oversee police investigation of complaints. The bill has yet to be debated, however, as it was deferred at the end of 2007 to the new parliamentary sitting.

### Looks like me, talks like me, sounds like me

PEMUDAH, the government's special task force to facilitate business, citing a World Bank study, estimates that corruption could cost Malaysia as much as RM10 billion a year – an amount equivalent to 1 or 2 per cent of GDP. PEMUDAH also notes that the ACA investigated only 10.1 per cent, or just 7,223 cases, of the total 71,558 reported between 2000 and 2006. The number of people successfully convicted was only 0.7 per cent, or 524, of those suspected of corruption.<sup>10</sup>

PEMUDAH also notes that, per capita, Malaysia spends only RM5 (approximately US\$1.5) on anti-corruption efforts.<sup>11</sup> This illustration of the Malaysian government's inaction in the light of the serious corruption allegations, along with its seeming inability to catch the

6 MII, 'Launching of 'National Integrity System & CSR: Our First Look'', press release, 8 May 2007.

7 'Reinventing Penang State Administration', summary of speech by Lim Guan Eng at the TI Occasional Talk in Corus Hotel, Kuala Lumpur, 11 September 2008.

8 Malaysiakini, 27 December 2007.

9 See [www.jeffooi.com/2006/05/post\\_20.php](http://www.jeffooi.com/2006/05/post_20.php).

10 Sun2Surf (Malaysia), 6 July 2008.

11 Ibid.

'big fish', instead focusing on the 'small fry', suggests that what anti-corruption efforts exist are mere tokens.

Weaknesses in the system for fighting corruption in all sectors were exemplified in 2007. The ACA came under fire when the director of Sabah ACA made a police report against the national director for corruption.<sup>12</sup> It was the first time in the ACA's forty-year history that the head of the agency itself had come under investigation. The prime minister refused to take any action until public pressure was put on him,<sup>13</sup> but the national director was subsequently investigated and cleared by a team from the ACA itself.<sup>14</sup>

The ACA rallied after the general election in early 2008, however, finally showing some effectiveness by smashing a long-standing corruption racket operated by staff of the privatised government agency tasked with ensuring the roadworthiness of vehicles.<sup>15</sup> More than thirty members of staff of Puspakom were arrested for accepting bribes in order to certify unworthy vehicles. It was a systematic operation in which junior and senior officers alike were involved, and it had a nationwide reach.<sup>16</sup>

Other failings in the system of gatekeeping were exposed by a Royal Commission<sup>17</sup> that had been set up at the end of 2007 to investigate alleged tampering in the appointment of judges. The V. K. Lingam case showed the extent of corruption, in which prominent businesspeople and their agents linked to political parties colluded to fix judicial appointments.

More startling, however, was the initial non-committal response from the government, even with audio-visual evidence.

Only after an extreme public outcry, as well as pressure from the opposition and the Malaysian Bar, did the government form the Royal Commission – and only then to verify the authenticity of the video. During the investigation by the commission, V. K. Lingam was quoted as saying of the character in the video that he '[l]ooks like me, talks like me, sounds like me, but it's not me'. The Royal Commission concluded that the video was authentic, however, and also recommended that appropriate action be taken.<sup>18</sup> Following this, the Malaysian Cabinet ordered the Attorney General to investigate<sup>19</sup> six of the prominent people in the case, including V. K. Lingam, two retired chief justices, Tun Mohd Eusoff Chin and Tun Ahmad Fairuz Sheikh Abdul Halim, and the former prime minister Tun Dr Mahathir Mohamad.<sup>20</sup> Importantly, however, as of November 2008 no formal criminal charges have been made.

While this case exposes severe flaws in the judicial system, including the inappropriate involvement of both politics and business in the judiciary, it also indicates the reluctance of the government to go after the 'top brass' when faced with corruption. It was only after being confronted with public pressure, and following disappointing results in the recent election, that there was any movement; and even then, with no convictions, it is difficult to see how justice will be served.

12 Bernama.com (Malaysia), 30 March 2007.

13 Malaysiakini, 21 April 2008.

14 Malaysiakini, 21 March 2007.

15 See [www.nst.com.my/Current\\_News/NST/Friday/Frontpage/2335144/Article/index.html](http://www.nst.com.my/Current_News/NST/Friday/Frontpage/2335144/Article/index.html).

16 The Star Online (Malaysia), 28 August 2008.

17 Malaysiakini, 24 September 2007.

18 See [www.malaysiakini.com/doc/lingam\\_tape\\_report.pdf](http://www.malaysiakini.com/doc/lingam_tape_report.pdf).

19 Technically, this is not within the remit of the Cabinet, but in Malaysia the executive has sway over all other state apparatus. ABC (Australia); see [www.radioaustralia.net.au/programguide/stories/200805/s2249493.htm](http://www.radioaustralia.net.au/programguide/stories/200805/s2249493.htm).

20 Bernama Daily Malaysian News, 12 December 2008.

### Revolving doors: the interrelationship between the government, the civil service and the private sector

A common thread running through politics, the civil service and the private sector is the revolving door, through which individuals move from government to business, or business to politics, and back again. In this way, significant government participation in the private sector and considerable business participation in politics means that the movement of gatekeepers to players and players to gatekeepers has a negative influence on the concept of checks and balances.

One of the biggest scandals of the year, was the fiasco involving the Port Klang Free Zone (PKFZ). This was a case involving politicians, government officials and businesspeople, and it resulted in a loss to taxpayers of RM4.6 billion.<sup>21</sup> The project was to have the following features: a 405-hectare facility comprising 512 warehouses, 2,000 covered parking bays, four office buildings, an exhibition centre and a four-star hotel.<sup>22</sup>

The project is owned by a government agency, the Port Klang Authority (PKA), and headed by O. C. Phang.<sup>23</sup> The land was bought by the PKA in 2002 for RM1.8 billion from Kuala Dimensi, which had bought the land in 1999 for RM95 million from Pulau Lumut Development Cooperative Bhd (PLDCB), a local cooperative of fishermen. The land price 'appreciated' more than nineteen times in three years.<sup>24</sup> Kuala

Dimensi was also the private company that was subsequently given the contract to develop the PKFZ.<sup>25</sup>

In 2006 enormous cost overruns were reported: the costs had risen from an estimated RM1.1 billion (US\$315 million) to RM4.7 billion.<sup>26</sup> The extraordinary jump in the costs of the project was reported in a Cabinet meeting in July 2007, and it was found that the increased costs did not have the correct approval from government agencies.<sup>27</sup> The case involved 'serious regulatory and procedural lapses' – for example, Ministry of Finance procedures were bypassed when the Transport Ministry provided backing for the funds to buy the land from Kuala Dimensi, which was considered to be 'against normal government practice'.<sup>28</sup> There were also allegations that the political, government and business nexus was at fault.<sup>29</sup> Jafza, the operator of the Jebel Ali Free Zone, pulled out of a fifteen-year contract to manage the zone after claiming to have been constantly misled by PKA management, but the PKA claimed that the split had been amicable.<sup>30</sup>

Despite the debacle, the government decided to bail out the company to the tune of RM4.6 billion. Furthermore, there have been no criminal cases arising from this scandal, and no individual has been held accountable for the overrun in costs. There were calls for an investigation, and a report by PricewaterhouseCoopers is being prepared on the case, but the results are yet to be published.<sup>31</sup>

21 *Asia Times* (Thailand), 31 August 2007.

22 *Malaysiakini*, 25 June 2007.

23 *The Star Online* (Malaysia), 19 July 2007.

24 See [www.parlimen.gov.my/hindex/pdf/DR-03092007.pdf](http://www.parlimen.gov.my/hindex/pdf/DR-03092007.pdf) (Hansard from the Malaysian parliament); see also *Asia Times* (Thailand), 31 August 2007.

25 *Asia Times* (Thailand), 31 August 2007.

26 *Ibid.*

27 *Ibid.*

28 *The Malaysian Bar*, quoting from *The Straits Times* (Singapore), 13 August 2007.

29 *Malaysiakini*, 15 August 2007.

30 *Malaysiakini*, 25 June 2007.

31 See *Daily Express* (Malaysia), 25 August 2007; *New Straits Times* (Malaysia), 22 December 2007; *Financial Express* (India), 7 September 2007.

What is interesting is the complex network of individuals involved, including politicians from the United Malay National Organisation (UMNO), officials at the Transport Ministry, Port Klang Authority officials and Kuala Dimensi.<sup>32</sup> Kuala Dimensi's chairperson is UMNO treasurer Azim Zabidi.<sup>33</sup> The legal firm that drafted the development agreement between the PKA and Kuala Dimensi is headed by the local UMNO branch vice-chief, Abdul Rashid Asari. Another local UMNO youth chief, Faizal Abdullah, is deputy CEO of the property development and investment firm behind the sale and development of the PKFZ. Faizal Abdullah's father-in-law, Onn Ismail, is the local UMNO branch permanent chairman as well as the former chairperson of the fishermen's cooperative that sold the land to Kuala Dimesi.

The complexity of the relationships between politics and the public and private sectors means that corruption may take place with impunity. Under the circumstances, therefore, the practice of revolving and rotating doors and active government participation in the economy

creates an appearance of impropriety, and, with the weak oversight of public-private relationships, increases corruption risks. Until drastic action is taken to separate the cosy relationship between government, business and politics, the anti-corruption effort will remain no more than a token gesture.

*Gregore Pio Lopez and TI Malaysia*

### Additional reading

- E. T. Gomez, 'The State, Governance and Corruption in Malaysia', in N. Tarling (ed.), *Corruption and Good Governance in Asia* (London: Routledge, 2005).
- E. T. Gomez and K. S. Jomo, *Malaysia's Political Economy: Politics, Patronage and Profits* (Cambridge: Cambridge University Press, 1997).
- UNDP, *Tackling Corruption, Transforming Lives: Accelerating Human Development in Asia and the Pacific* (Delhi: Macmillan, 2008).
- TI Malaysia: [www.transparency.org.my](http://www.transparency.org.my).

<sup>32</sup> *Asia Times* (Thailand), 31 August 2007.

<sup>33</sup> The Malaysian Bar, quoting from *The Straits Times* (Singapore), 13 August 2007.