

Fighting Corruption



Fighting Corruption



“ With the implementation of the initiatives under the Fighting Corruption NKRA, the Government has continued to demonstrate dedication towards eliminating corruption and graft in the nation. The recent Global Corruption Barometer results reflect this, and although I am confident that we are on the right path, we will not be complacent and will step up our efforts towards achieving our targets and objectives in 2011. ”

Dato' Seri Mohamed Nazri bin Abdul Aziz
Minister in the Prime Minister's Department



Courtesy of Info Centre, Menara Star, Star Publications (Malaysia) Bhd

SNAPSHOT OF 2010'S ACHIEVEMENTS

Tackling the Roots of Corruption

It cannot be denied that corruption is one of the major concerns of the Malaysian public. If left unchecked, the problem can become endemic and take root throughout the public and private sector and among society at large. The unfortunate result of this would be that we as a nation will lose out both in material and intangible ways.

Surveys such as the Merdeka Centre National Youth Survey 2008 had indicated that Malaysian society identified corruption as a priority concern for the government to tackle. As such, the Fighting Corruption NKRA and the NKPI targets within it were developed to stem the tide of corruption perceived to be permeating Malaysian society. Despite the many challenges faced in 2010, several major successes were achieved.

Big Wins

- Development of the Convicted Corruption Offenders Database with a listing of 284 offenders – thus surpassing the initial target of 84 names
- Development of the MyProcurement portal, which lists more than 3,500 contracts on the website and other pertinent information such as advertised and awarded tenders and dates, values of contracts and winners of tenders
- Guidance on support letters i.e. the issuing of a circular providing guidance to civil servants on support letters
- The establishment of compliance units in each of the five key enforcement agencies. The Royal Malaysian Police Force (PDRM or the Police), the Immigration Department (Immigration), the Royal Malaysian Customs Department (Customs), the Road Transport Department (Jabatan Pengangkutan Jalan Malaysia or JPJ) and the Malaysian Anti-Corruption Commission (MACC) have set up compliance units and sent officers to be centrally trained by the MACC
- The introduction of the Whistleblower Protection Act 2010
- The expediting of corruption trials with 14 special Corruption Sessions Courts and four special Corruption High Courts established and the amending of the Criminal Procedure Code (CPC) to speed up trials
- The implementation of Integrity Pacts (IPs) through the Ministry of Finance directive
- The use of closed-circuit television cameras at Customs and Immigration “hot spot” checkpoints



Courtesy of Info Centre, Menara Star, Star Publications (Malaysia) Bhd

Some of these measures are unprecedented firsts for Malaysia and aim to bring us on par with the developed nations. The measures will improve our international standing, and more importantly, will provide a sound base upon which the government can initiate further measures to address the issue of corruption.



Courtesy of Info Centre, Menara Star, Star Publications (Malaysia) Bhd

GENERAL OVERVIEW

Corruption and Public Perception

Compared to other crimes, in particular physical crimes involving persons or property, corruption takes on less tangible manifestations, and its occurrence is not always easily detected. Corruption is therefore correspondingly more complex to measure and quantify empirically. Given this, a number of key international experts refer to the perception of corruption as a suitable measure of corruption, and in particular Transparency International's Corruption Perception Index has over the years gained prominence as an internationally recognised measure.

Based on Malaysia's score and placing in Transparency International's Corruption Perception Index over the past decade or so, international business people and country experts perceived a gradual rise in corruption in Malaysia. This was reflected in the country's Corruption Perception Index score which dropped from 5.28 in 1995 to 4.5 in 2009.

Similarly, the perception of corruption among the rakyat too has been deteriorating, with the Transparency International Global Corruption Barometer survey showing that in 2009, only 28% of the rakyat viewed the Government's actions in fighting corruption as being effective, as compared to 53% in 2007.

As a response to calls from the public to address these concerns and to halt the perceived increase in corruption within the country, the government made fighting corruption one of its top priorities, by including "Fighting Corruption" as a NKRA under the GTP.

By specifically addressing corruption through a NKRA, the appropriate level of focus and resources can be brought to bear on the problem, whilst setting in motion a slew of initiatives to effectively address the existing scenario.

Since commencing with initiatives, the Fighting Corruption NKRA and other independent efforts by the government have begun to generate growing positive sentiment from various stakeholders.

At the launch of the Global Corruption Barometer 2010 results in December, President of Transparency International Malaysia, Datuk Paul Low, noted that more Malaysians had begun to regard the government's anti-corruption measures as effective. The survey, which involved 1,000 people nationwide, reported that 48% felt that the government's measures to fight corruption were effective. Another 32% were neutral on this point while 20% felt that the government's actions were ineffective.

Datuk Low was supportive of the initiatives proposed by the government to fight corruption, which he believed contributed to the positive public perception. This is despite the fact that the government did not meet its 4.9 target for its Corruption Perception Index score. He highlighted that Malaysia's current score of 4.4 is almost the same as last year's 4.5 mark.



“ This is a drastic turnaround from 2009 where 28% thought the government's actions were effective, 6% were neutral and 67% deemed the government's measures ineffective. The 48% mark substantially exceeds the government's key performance indicator of 37%. ”

Datuk Paul Low
President of Transparency International Malaysia

2010 FIGHTING CORRUPTION NKRA OBJECTIVES

2010 NKPIs

Sub Areas within the NKRA

In 2010, the following were identified as the key areas that needed to be addressed:

- The poor perception of regulatory and enforcement agencies, whereby the Police, Customs, Immigration and JPJ were the Federal Government agencies that had the highest number of corruption cases under MACC investigation. These departments also had the lowest perceived integrity scores among the business community and the public. In addition to the four agencies, the MACC itself had also come under scrutiny.
- The poor perception of government procurement practices, where there was little awareness of existing practices that would lead to meritorious, economically sound decisions.



Courtesy of Info Centre, Menara Star, Star Publications (Malaysia) Bhd

- The perception that corruption amongst high-powered individuals was going unpunished, where there were insufficient repercussions for those with influence.

The year 2010 saw several NKPI targets being set to address these issues as well as improve perception on corruption in Malaysia (as per the Transparency International Corruption Perception Index score) and the effectiveness of government actions in fighting corruption (as per the Transparency International Global Corruption Barometer survey). To this end, several NKPI targets were set under the Fighting Corruption NKRA and grouped under three main areas with specific aims and initiatives:

Table 1: The Three Sub-areas of the Fighting Corruption NKRA			
	Law Enforcement and Regulatory Agencies	Government Procurement	Grand Corruption
Aims	<ul style="list-style-type: none"> • Greater deterrents and effective enforcement against corruption by public officials • Enhance the system for delivery of justice for corruption cases 	<ul style="list-style-type: none"> • Reduce leakages of public funds • Better transparency and accountability in the award and execution of contracts 	<ul style="list-style-type: none"> • Regain public confidence in law enforcement agencies • Reduce opportunities for abuse of power by law enforcement agents
Initiative	e.g. strengthen and empower compliance units	e.g. define parameters of support letters e.g. disclose details of government procurement contracts	e.g. endeavour to complete prosecution of corruption cases within one year, particularly for cases of public interest

Grand Corruption

To enhance the speed and effectiveness of detection, prosecution and punishment of corruption, there would be a focus on the percentage of corruption trials completed within one year and the number of people listed in the MACC database of convicted offenders.

In 2010, we also targeted to increase Malaysia's Corruption Perception Index score from 4.5 to 4.9 and the percentage of respondents agreeing that the Government's action in fighting corruption is effective in Transparency International's Global Corruption Barometer from 28% to 37%.

Throughout the ongoing, iterative process of refining and implementing the NKRA initiatives, as well as continuous engagement with the key agencies responsible for the NKRA, it was discovered that not all the NKPIs that had initially been identified in the GTP Roadmap were the most suitable or appropriate to measure the desired outcome. Where this was the case, the NKPIs were refined as follows:

Table 2: Refinements to the Original 2010 KPIs*

Focus Area	KPIs in Roadmap	Period 2010 KPIs	Baseline	2010 Target
Public Perception	TI's Corruption Perception Index Score	-	4.5	4.9
	TI's Global Corruption Barometer	-	28%	37%
Regulatory and Enforcement Agencies	Number of cases charged versus number of arrests for drug trafficking and possession under the Dangerous Drugs Act	Number of charges brought versus the number of arrests (investigation papers) for drug trafficking and possession under the Dangerous Drugs Act	75%	80%

* Refinements were made in 2010 to the original KPIs identified in the GTP Roadmap

Focus Area	KPIs in Roadmap	New KPIs	Baseline	2010 Target
Law Enforcement Agencies	Number of summons settled versus number of summons issued for JPJ	-	60%	78%
	Number of summons settled versus number of summons of issued for PDRM Traffic	Number of summons issued versus total hours of operation	10	10
	Number of cases charged versus number of arrests and detentions under Immigration Law	-	53%	60%
	Tax recovered from under-declared goods	Tax that can be claimed on goods and services that were not properly declared	118 million	186 million
Government Procurement	Number of audit findings on maladministration of procurement per ministry sampled	Number of Ministries scoring above 90% on the Procurement Accountability Index	-	13
Grand Corruption	Percentage of trials completed within one year	-	8.5%	30%

For a full account of refinements, amendments, targets and baselines for 2010, please refer to pages 96 - 102 of this Annual Report.

KEY NKRA PARTICIPANTS

Unlike in some of the other NKRAs, where a single ministry is adequately positioned as the single authority required to drive its initiatives, fighting corruption requires the collaboration of many Ministries and agencies. At the end of the six-week-long lab on corruption involving top civil servants and representatives from the private and public sectors, a total of 26 different parties from various Federal Ministries, agencies and commissions were listed as being required to play some role (ranging from having a consultative role to being an owner of a complex project).

As the NKRA initiatives were cross-jurisdictional and needed to be executed at each agency or ministry involved, a cross-functional NKRA team had to be constituted to manage the initiatives.

No single ministry, however, had overarching jurisdiction over anti-corruption as a specific issue, within which to house the team. Yet an existing entity was required to house the NKRA team in order to leverage on pre-existing logistics and administrative infrastructure.

After much deliberation and following the initial hosting of the NKRA team in the Legal Affairs Division (Bahagian Hal Ehwal Undang-Undang) within the Prime Minister’s Department, the MACC was identified as the most appropriate entity within which to house NKRA efforts.

From within the MACC, the NKRA team worked together with the following entities on the key initiatives that formed the focal points for 2010’s efforts:

Table 3: Key 2010 Initiatives and Relevant Stakeholders

No.	Initiative	Projects	Relevant Agency/ Ministry
1.	Stiffer punishment for givers and receivers of bribes	Amending the General Orders for Discipline of Civil Servants	MACC Attorney-General's Chambers (AGC) - Legal Reform JPA - Services
2.	Creating a database of corruption offenders that can be accessed by the public	Corruption Offenders Database	MACC - ICT MACC - Integrity Management Department

No.	Initiative	Projects	Relevant Agency/ Ministry
3.	Completing the prosecution of corruption cases within a year	Additional Corruption Courts	AGC Federal Courts Legal Affairs Div
		Public Prosecutors Directive to complete cases within a year	AGC
		“Speedy Trial” Act	AGC
4.	Whistleblower Protection Act	Creating Whistleblower Protection Act Framework (guideline SOPs etc.)	AGC MACC Police Customs Immigration JPJ Legal Affairs Div
5.	Political Funding	Amendments to regulations to encourage societies to have greater accountability for party funding	MACC RoS IIM EC MoF
6.	Publishing awards of government contracts, including relevant details such as the amount of the contract and information about the winning bidder	Design and development of a website	MoF MAMPU
		Circular to direct all Ministries to channel all procurement details to MoF	MoF
		Implementation in all Ministries	Relevant Ministries
7.	Circular to civil servants to guide them on how to handle support letters	Draft a circular/directive letter and ensure compliance	MACC MAMPU AGC JPA MoF

No.	Initiative	Projects	Relevant Agency/ Ministry
8.	Establishing Compliance Units in all regulatory bodies and enforcement agencies	Establish Compliance Units	JPA MACC Police Customs Immigration JPJ
9.	Integrity Pacts for government procurement	To implement Integrity Pacts whereby both parties to a government contract commit not to engage in corruption	MoF EPU All relevant Ministries/ Agencies

Fighting Corruption NKRA initiatives were kicked off early in 2010, with meetings chaired by the NKRA team or the relevant owners of the projects. From there on, follow-up meetings were held to keep in touch with project owners or implementers. These ranged from formal meetings to discussing general cross-jurisdictional issues and direction, to informal sessions to identify and address everyday obstacles.



Where problems could not be resolved among agencies with the help of the NKRA team, the monthly Problem Solving Meetings were used to discuss and agree on possible solutions, and when necessary, cross-ministry issues were raised and resolutions agreed upon at the monthly Delivery Task Force meetings. In addition, monthly coordination meetings were chaired by the MACC, for the NKRA team and PEMANDU to track ongoing initiatives and identify the next steps to ease the progress of each initiative.



Parallel with this cycle of engagement and interaction to track initiatives, the NKRA Unit and PEMANDU worked with key agencies responsible for each of the NKPIs to discuss data necessary to report on the NKPIs, as well as the problems and operational issues relating to the data and the suitability of the data for tracking and reporting.

INITIATIVES

Following on from the plans set out in the GTP Roadmap and over the course of 2010, these initiatives were identified to tackle specific issues:

To Regain Public Confidence in Regulatory and Enforcement Agencies

The loss of public confidence in regulatory and law enforcement agencies can be addressed by ensuring that corruption does not adversely influence officers of these agencies to dissuade them from carrying out their duties and obligations effectively.

Key Initiative One: To Strengthen and Empower Compliance Units

Compliance units of specific departments within key regulatory and enforcement agencies should be established and strengthened to improve their effectiveness. The agencies and the relevant departments are the Police (Criminal Investigation, Commercial Crimes Investigation, Narcotics, and Internal Security and Public Order), Customs (Enforcement and Customs Divisions), Immigration (Enforcement, Foreign Workers, Visa Pass and Permit, Passport and Security) and the JPJ (Enforcement).

Tan Sri Lim Wee Chai
Chairman,
Top Glove Corporation

"Corruption levels in Malaysia are still relatively high compared with our neighbouring countries. On a positive note, I see that there have been various government initiatives over the past one year to eradicate corruption... These include public disclosure of all government procurement plans and privatisation contracts and reformation of the political system."

To Reduce Leakages in the Government Procurement Process

The results of the Merdeka Centre's Malaysian Transparency Perception Survey 2007 show that the public perceives a lack of transparency in the current procurement process, or system used for awarding major government projects. Some 54% of respondents from the public and 71% from the corporate sector believed that there was 'no transparency or openness' in the government procurement system.

The government has pledged to reduce the leakage of funds allocated for national development and operational expenditure and to ensure transparency in the award of contracts. To this end, several objectives and targets were set for 2010.

Key Initiative Two: To Define Parameters of Support Letters

The government aimed to address the practice of support letters, as it had been hypothesised that these were often used to exert pressure on civil servants to evade standard government policies and processes in obtaining contracts, leading to unmeritorious awards.

To this end, instructions were to be issued to civil servants to disregard unmeritorious support letters and not to be pressurised into making decisions based on the support letters, rather than the merits of the case.

Key Initiative Three: To Disclose Details in Government Procurement Contracts

There had already been a requirement for disclosure in the government procurement process, whereby all tender decisions were to be made public on each implementing agency's website as well as on the government portal. However, disclosure compliance had been lax and access to the information was difficult. To remedy this, the Government had planned means to ensure information was disclosed in an accessible manner, including:

- Details on awarded projects including names of the successful contractors, contract sums and project periods.
- Procurement processes including main procurement processes for tenders (open and selective), quotations and direct purchases as well as guidelines on the selection of tender committee and evaluation criteria and code of ethics.

Tackling Grand Corruption

On an institutional level, corruption at all levels needed to be tackled, not just in relation to the everyday experiences of the rakyat, but also in the criminal justice system.

Key Initiative Four: To Enforce Existing Political Laws and Conduct a Study on Revamping Political Funding

To improve accountability in the political funding process, work was proposed to increase transparency of funding for political parties, through requirements under the Societies Act 1966.

Key Initiative Five: To Announce a Zero-tolerance Policy Supported by a Robust Whistleblower Protection Framework

To support the government's commitment against corruption, a comprehensive framework to protect whistleblowers, consisting of strong legislation and effective implementation mechanisms, is to be established.

Key Initiative Six: To strengthen the independence of key institutions

The GTP Roadmap called for studies to look into strengthening the effectiveness of key institutions such as the Judicial Appointment Commission (JAC), Auditor-General's Office and the MACC by looking into characteristics such as independence. To this end, studies were planned for 2011 to develop recommendations to achieve this.

Key Initiative Seven: Endeavour to Complete Prosecution of Corruption Cases within One Year, Particularly for Public Interest Cases

The target set by the government to resolve corruption cases in court is one year compared to the average time identified at the end of 2009 of eight and a half years for trial and appeal. The GTP Roadmap stated that these lengthy trials and appeals had increased the opportunity for material witnesses to go missing or turn hostile or for a witness and evidence to be tampered with.

In line with this, the establishment of 14 Special Corruption Sessions Courts and four Special Corruption High Courts was planned for 2010.

Datuk Seri Abu Kassim Mohamed,
Chief Commissioner,
Malaysian Anti-Corruption
Commission (MACC)

"While MACC is at the forefront of the fight against corruption, true effectiveness requires everyone to play a part – including the Government, the rakyat and the business community. The efforts under the Corruption NKRA, bringing together the many strands of work to combat this crime, has been a tremendous step in the right direction."

Key Initiative Eight: Enforce Stiffer Punishment

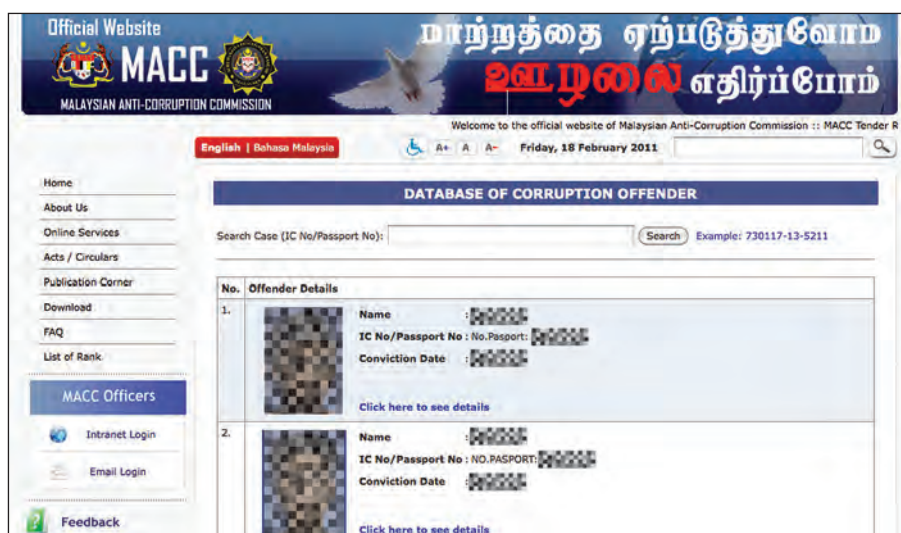
When analysis was conducted in late 2009 as to root causes for corruption, a hypothesis that developed was that the consequences for corrupt practices were an insufficient deterrent. It was initially thought that the statutory punishment under the law for corruption offences needed to be revised to impose a stiffer minimum sentence, but further examination in 2010 found that this would not have the impact needed, as minimum sentences were not seen as a mark of a progressive legal system and that it tended to dissuade persons from admitting guilt.

However, it was also found that with regards to penalties for civil servants who were found to have committed corrupt practices but for which there was insufficient evidence to bring a criminal charge, insufficient administrative action was being taken, with some only receiving warnings either by letter or verbally.

To this end, the government aimed to introduce stiffer punishment for corruption in the civil service through its human resource administration.

Key Initiative Nine: Develop a Name-and-shame Offender Database






As with the initiative for stiffer punishment, greater deterrents against corruption were required. It was agreed that introducing a “name and shame” list of convicted corruption offenders would not only create the appropriate societal pressure to deter people from corruption, but it would also be a valuable reference point and resource for employers and other members of the public.



SUCCESSSES AND ACHIEVEMENTS






The overall results of the NKPI targets set for 2010 are shown in the table below.

Table 4: Results for 2010 National Key Performance Indicators

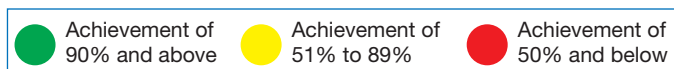
No.	NKPIs	2010 Target	Actual Results	Remarks	Traffic Lights
1.	Number of Ministries scoring above 90% in the Procurement Accountability Index	13	14		
2.	Number of cases charged vs. Number of arrests (Investigation Papers) for drug trafficking and possession under the DDA	80%	79.9%		
3.	Number of cases charged vs. Number of arrests and detentions under Immigration Law	60%	36.2%	Cases compounded also tracked to reflect Immigration policy*	
4.	Number of people in the database of convicted offenders	84	284 ⁶		
5.	Number of summons issued vs. Total hours of operation	10	10.5		

* Please refer to page 96

⁶ Upon review, it was found that 299 cases were available for upload for 2010 but due to incomplete information, as at 31 December 2010, 284 cases were uploaded. This has subsequently been updated.

No.	NKPIs	2010 Target	Actual Results	Remarks	Traffic Lights
6.	Number of summons settled vs. Number of summons issued by JPJ	78%	47% ⁷		
7.	Percentage of trials completed within a year	30%	36.8%		
8.	Ti's Corruption Perception Index	4.9	4.4		
9.	Ti's Global Corruption Barometer survey on government actions to fight corruption. Percentage answering effective.	37%	48%		
10.	Tax that can be claimed on goods and services that were not properly declared.	RM186 mil	RM175 mil		

⁷ This is based on figures from June to December 2010 only because updated data management systems have now allowed the actual number of summons settled out of the summons issued to be tracked from June. Using total number of summons outstanding and total summons settled, regardless of when issued, from January, this figure would be 57.7%.



The NKRA team and PEMANDU worked together with the key agencies responsible for each of the NKPIs to discuss the steps required to implement initiatives successfully and to track the data necessary to report on the NKPIs. All parties also worked hard to resolve the problems and operational issues relating to rolling out implementation plans and refining data collection processes as well as the suitability of the chosen data for tracking and reporting on achievements.

To Regain Public Confidence in Regulatory and Enforcement Agencies

The Setting Up of Compliance Units in Each Enforcement Agency

The initiative to establish a compliance unit within each enforcement agency saw the five key enforcement agencies (the Police, Customs, Immigration, JPJ and the MACC) setting up compliance units and sending officers to be centrally trained by the Malaysian Anti-Corruption Academy (MACA). Integrity Testing Unit training was held from 1 to 3 November 2010 and was facilitated by Professor Dr. Michel Girodo, a member of the Interpol Group of Experts on Corruption (IGEC). On 2 August 2010, the Malaysian Anti-Corruption Academy (MACA) launched training for Certified Integrity Officers (CeIO).



Courtesy of Info Centre, Menara Star, Star Publications (Malaysia) Bhd

The Use of Closed-circuit Television Cameras

Enforcement agencies are also embracing the use of technology to combat corruption with CCTVs being installed at Customs and Immigration “hotspot” checkpoints to ensure that officers comply with procedures and enforce the law. The progress of the initiative will continue to be monitored and both the agencies are to report once the CCTVs are online, and MACC will inspect the control rooms from time to time.

Rotation of Staff in “Hot Jobs”

To lower the risk of the incidence of corruption, staff in “hot jobs”, or those located in high-risk areas have been rotated on a regular basis to prevent unhealthy relationships from forming and to strengthen good governance and values.

Customs has implemented a successful programme where those categorised as being at high risk, are not placed in “hot locations” or given “hot jobs”. An e-Placement system keeps track of all Customs staff and will have mechanisms in place to highlight all “hot staff” and keep track of the length of service of staff in “hot spots”. Any staff located in a particular “hot spot” for longer than three years will be flagged for relocation.

Strengthening Key Institutions

Preliminary discussions have taken place relating to the initiative to look into the strengthening of key institutions, in preparation for proper studies to be conducted as planned in 2011. The preliminary benchmarking and analysis in relation to strengthening the MACC found that at this time, focus should be placed on transforming and improving the operations of the MACC. Thus the creation of an external Director of Prosecution function within MACC was not found to be a necessary, priority step. Nevertheless, based on preliminary assessment, a focus area to be developed in 2011 will be on improvements relating to strengthening the Auditor-General’s functions.

To Reduce Leakages in The Government Procurement Process

The MyProcurement Portal

On 1 April 2010, the government launched a website to address transparency in public procurement. Known as the MyProcurement portal which can be accessed at <http://myprocurement.treasury.gov.my/>, it aims to be a government procurement information centre.

As at end - 2010 it listed more than 3,500 contracts on the website citing information on both advertised and awarded tenders, including dates, values of the contracts and winners of the tenders. The portal also displays other procurement-related information, such as government procurement policies and principles. It has helped create a greater sense of accountability on government spending and helped create transparency and accountability in public procurement.

Privatisation projects are also undergoing a similar disclosure procedure with the launch of the MyPartnership portal on 25 August 2010. This aims to increase the transparency of the Public Private Partnership Unit (UKAS).



Guidance on Support Letters

Another initiative that was achieved quickly was the measure to issue guidance on support letters. A circular issued by MAMPU on 2 April 2010 can be found at http://www.mampu.gov.my/pengumuman/02-04-2010-gp_sokong604.pdf. It helped provide guidance to civil servants who may feel that they are under pressure from persons of influence through support letters in areas ranging from procurement to licensing.



Following the circular, civil servants should now be able to proceed with their work without feeling the need to succumb to this influence. Phrases like “sila pertimbangkan” (please consider) or “disokong kuat” (strongly supported) cannot be considered as a basis, merit or qualification for the government to make its decision as all decisions are now being made on the basis of merit.

Integrity Pacts

The implementation of Integrity Pacts (IPs) was another key initiative in 2010. The first steps were taken with the Treasury Directive Letter issued by the Ministry of Finance on 1 April 2010 available at <http://www.treasury.gov.my/pekeliling/sap/sap2010-04-01.pdf>. The directive requires all Government agencies to implement the Integrity Pact and sets out three objectives – to avoid corrupt practices between bidders and government; to require bidders and government to report any corrupt practices to the authorities; and to ensure there is no need for the government to pay for unnecessary costs. The implementation under the directive calls for all the bidders to sign a Bidders’ Declaration.

Following this the successful bidder would sign a Successful Bidders' Declaration and the Government Agency is to ensure that the contract contains an Anti-Corruption in Government Procurement clause.

On 16 December 2010, the Ministry of Finance further issued the Guidelines for Integrity Pact Implementation in Government Procurement. This is available at http://www.treasury.gov.my/index.php?option=com_docman&task=doc_download&gid=3609&Itemid=28&lang=my. It provides in further detail the undertakings and declarations to be made by various persons, including public officials and various other counterparts depending on the stage of contracting and type of contractual relation.

The development of guidelines for the application of integrity tools in the private sector is also being looked into by engaging with Institut of Integrity Malaysia, Bursa Malaysia, the Securities Commission, the Companies Commission of Malaysia, and Transparency International, Malaysia, among others.

Tackling Grand Corruption

Database of Convicted Offenders

One of 2010's big wins was the implementation of the Convicted Corruption Offenders Database or more popularly known as the MACC's "name and shame" list launched on 4 March 2010. Highlighting the names, pictures, identity card numbers and case details of convicted offenders, the database has created greater public awareness and helped encourage the stigma of corruption by making all the details of offenders available in the public sphere.

The target list of 84 offenders by 2010 has been surpassed with some 284 names on the database as at end 2010. The database consists of the full names of offenders from 1 January 2010, when the MACC Act came into effect. The database of offenders can be accessed by the public, including employers, intending to conduct background checks on certain individuals. Offenders' names will only be removed from the database after three years if there are no repeat offences.

Another measure was to amend the Criminal Procedure Code (CPC) to speed up trials. The amendments were passed in Dewan Rakyat on 22 April 2010 and in Dewan Negara on 6 May 2010 and gazetted on 10 June 2010.

The amendments included the introduction of the Pre-trial Conference, which aims to shorten the trial. At this platform, the accused can discuss issues and reach an agreement on plea bargaining with the public prosecutor before the commencement of the case management process. Case management must be held within 60 days from the date the accused is charged, while the trial must be held within 90 days from the date the accused is charged.

OUTCOMES

Transparency International's (TI) Corruption Perception Index (CPI) was released on 26 October 2010. The 2010 target was a CPI score of 4.9. However the actual score fell short, with Malaysia scoring 4.4. The TI CPI measures the perception of country/risk/expert analysts and business people and aims to provide an understanding of the levels of public sector corruption. Although the TI CPI is measured annually, some of the input from the constituent surveys used was conducted in 2009, before any of the programmes under the NKRA were rolled out. Any impact from the NKRA programmes would have been unlikely to be felt by the survey respondents, or reflected in the CPI score.

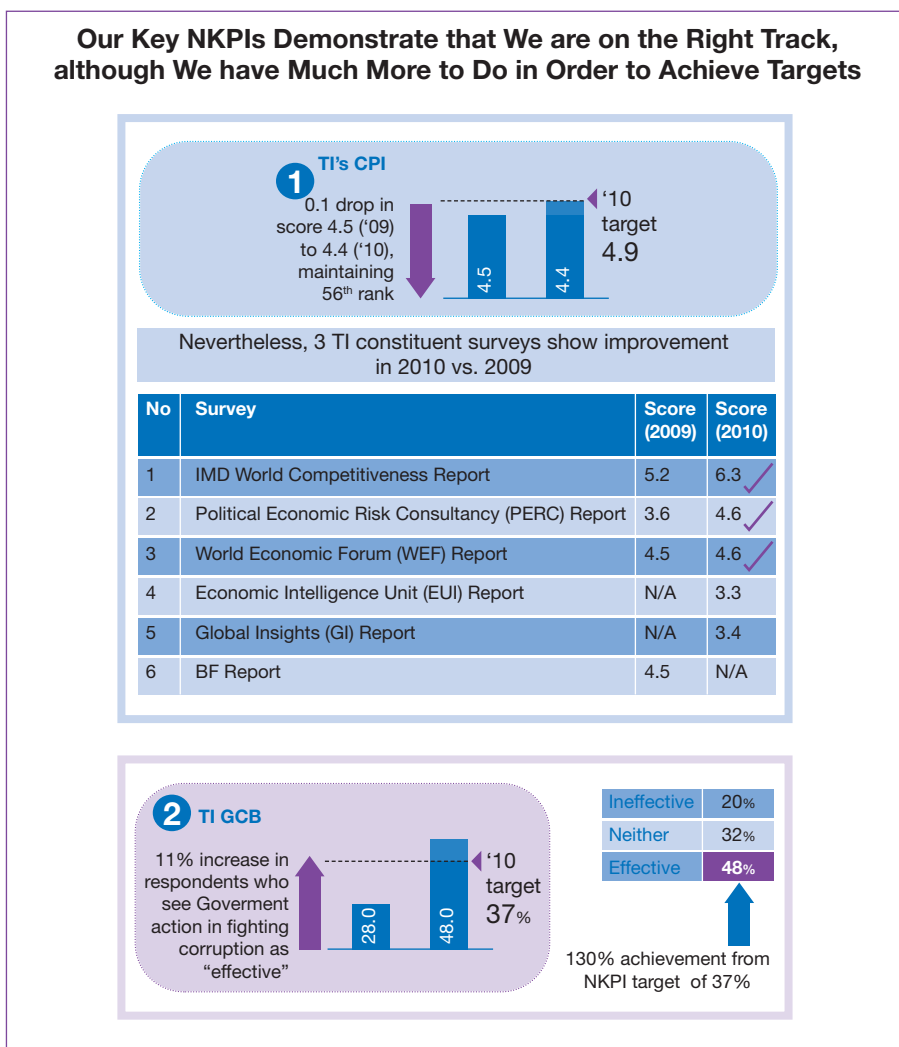
Three of the constituent surveys that formulate part of the CPI used results from both 2009 and 2010. These are the International Institute for Management Development's (IMD) World Competitiveness Yearbook 2009 and 2010; the World Economic Forum's (WEF) Global Competitiveness Report 2009 and 2010; and the Political and Economic Risk Consultancy (PERC)'s Asian Intelligence Newsletter survey.

There was an increase from 2009 to 2010 in all the surveys with the IMD score registering the biggest rise from 5.2 to 6.3, the WEF score rising from 4.5 to 4.6 and the PERC scores, from 3.6 to 4.6. This is an indicator that the business community feels that the initiatives are on the right track and are slowly showing effect.

The target for the Global Corruption Barometer (GCB) was a score of 37% which was an extrapolated target formulated at the lab. On the GCB score, conversely, the NKPI target was not only met but surpassed, proving further that the initiatives in place are slowly having an impact on the rakyat.

On the question “how would you assess your government’s actions in fighting corruption”, some 48% from Malaysia answered “effective” which was almost a two-fold increase from the previous year (28%) and clearly surpassed the NKPI target of 37%.

Figure 1: Surveys Conducted by Transparency International (TI)



CHALLENGES

SHORTCOMINGS AND LESSONS LEARNT IN 2010

Imperfect Communications

Due to the fast-paced and dynamic nature of NKRA initiatives as well as the cross-functional nature of the work required, communications relating to NKRA decisions and action items could have been better, given the many parties whose cooperation was required.

With the new, rapid nature of NKRA actions, some decisions took time to be acted upon when it came to operationalising initiatives. Similarly, in order to adhere to proper procedures, formal letters and communications needed to be secured by recognised sources of authority with jurisdiction over the subject matter before decisions could be acted upon.

Due to the cross-functional nature of the NKRA, and in order to meet timelines, decisions were on occasion, made with imperfect information. This resulted in delays due to the need to unwind the decision after more accurate facts were made known.

In addition, delays in gathering and reporting data remain, as agencies and Ministries require time to begin to use certain data for the purpose of performance management and therefore need to continue working on developing an entrenched system to capture the data in an efficient manner.

Nevertheless, the “discipline of action” in following through on decisions and acting upon instructions can be seen to be developing gradually. Some agencies are remarkably impressive with their responsiveness, and have been most effective when working-level follow up is made immediately after a high-level decision. Furthermore, by way of natural progression, as channels of communication have opened up and networks for information to flow have been built with increased engagement between all stakeholders of the NKRA, communications and efficiency have clearly begun to improve.

**Tengku Nordianda
Tengku Yunus,**
Teacher

“Before this, it seemed like only the small fry was brought to justice. Now, we see even individuals of power and influence also being arrested and brought to trial.”

View of the Public

The government’s stand is that corruption is a serious offence, whether conducted on a large or small scale and the initiatives under the NKRA are meant to be overarching measures to tackle the issue of corruption as a whole. An example of this approach would be the initiative to complete prosecutions of corruption offences within a year. This encompasses all corruption offences, not just those above a certain threshold.

However, the public perceives a distinction between less important cases involving “small fish” or less significant personalities, and those involving “big fish” or famous politicians or personalities holding high positions.

The often-heard grouse among the rakyat is that only the “small fish” are arrested and punished, while more prominent politicians or civil servants are not caught but are permitted to carry on with their improper practices. One of the main issues faced therefore has been tackling this perception, and communicating to the public that the role of the Fighting Corruption NKRA is to create zero tolerance for corruption at all levels and not to interfere with the court and investigation process to target “big fish”.

In 2011, the Fighting Corruption NKRA plans to revamp its communications strategy in order to more effectively engage with the public in order to tackle the issue of perception. Through various channels, we hope to further educate the public on the continued work being done to tackle the issue of corruption. It is hoped that through these efforts, the public will have a better understanding of all the issues we face and what is being done to address them.



Courtesy of Info Centre, Menara Star, Star Publications (Malaysia) Bhd

Administrative Procedures

During the implementation of this NKRA, adherence to administrative processes and procedures that had not been accounted for occasionally led to delays. This was primarily due to a poor estimation of the time required to obtain approvals and a lack of understanding of the intricacies involved in the procedures required.

An example is the area of human resource management. In regard to the hiring, creation of posts and adaptation to special circumstances, parties were not able to be as flexible as perhaps the private sector would be. It was also observed in the area of budget expenditure and allocation, strict financial management procedures had to be adhered to, which required adaptation of timelines for execution.

As the cross-functional nature of the NKRA initiatives mean that they would be cross-jurisdictional, it was also challenging for agencies to identify the proper unit or officer who could own the delivery process within the agency. This created challenges in terms of having the flexibility and the ability to adapt to the new scope of work or for the administrative infrastructure to embrace new job descriptions.

Finite Resources

There were also problems due to finite resource allocation. This sometimes made it a challenge to make decisions regarding the prioritisation of budget and manpower allocations.

While enhanced capabilities and more flexible working terms and conditions may enable this issue to be overcome, the rigidity of entrenched resource allocation methods currently do not fully support this.

The performance under a number of initiatives may not have been optimal, due to the difficulty in securing resources in order to carry them out successfully. For example, with compliance units, there were resourcing issues which meant that new officers could not be employed in order to staff these units. However, the solution for this situation was to redeploy officers to staff the compliance units.

With the establishment of the special corruption courts, a number of issues were faced as well. Extensive discussions had to be held with all stakeholders in order to secure appropriate staffing for the courts.

MOVING FORWARD INTO 2011

Targets and NKPIs for 2011

Having reviewed the implementation of initiatives, and based on findings and lessons learnt in 2010, there have been several refinements and improvements to NKPIs and targets for 2011.

Targets for Transparency International Indexes/Surveys

The 2011 target for Malaysia's score on TI's CPI is the same as that in 2010, which is a score of 4.9.

For TI's Global Corruption Barometer survey, the target for 2011 had originally been that 45% of respondents should agree that the government's anti-corruption initiatives are "effective". The target for last year was 37%, which was exceeded by an actual score 48%. Based on the actual achievement for the year, as well as Malaysia's historical achievements, the target for 2011 has now been revised upwards to 50%.

Procurement Accountability

Originally, in 2010, the NKPI for greater transparency and accountability in Government procurement was the number of findings of maladministration of procurement per ministry sampled. This NKPI was to be measured annually, and the target for 2010 was to reduce the number of audit findings to 10.6 in 2010 from 11.2 in 2009.

This method, however, was abandoned in August 2010 when it was found to be an unsuitable measure. Among the reasons for this were that there was no universally agreed definition of what would constitute "maladministration" and furthermore the audit was based on random sampling and would not be necessarily comparable year-on-year.

After further discussion, a more suitable and accurate measure was created based on results of the annual "Accountability Index" audit conducted on all Ministries by the Auditor General. By extracting elements of the audit relating to procurement management, a "Procurement Accountability Index" was created, that scored Ministries on a 100% scale of how well procurement management is conducted at the Ministry. A proposed target for 2010 at the time was then set at 13 out of 25 Ministries scoring 90% and above.

The Achievements of Regulatory and Enforcement Agencies

In 2010, the Police found that upon further discussion and analysis, the number of arrests was not an appropriate denominator for the ratio of “cases charged versus number of arrests”, as there was not necessarily a constant correlation between arrests and charges – multiple arrests could lead to only a single charge, depending on the facts of the case.

The better relationship would therefore be between charges that could be made for any number of investigation papers opened leading from arrests. For simplicity, and to demonstrate that the same concept behind the NKPI is used, this is expressed as “number of cases charged versus the number of arrests (Investigation Papers or IP) for drug trafficking and possession under the Dangerous Drugs Act”.

After discussion with PDRM, the 2011 target for this NKPI remains at 80%. From a historical perspective and due to operational issues, PDRM would not likely be able to go beyond this threshold. As it is a constant struggle to maintain the target, we will continue to keep this target constant.

For the Immigration Department, the NKPI for 2010 was originally set as the number of cases charged versus the number of arrests and detention under Immigration Law. The 2010 target was 60% and this NKPI target was not met (the actual achievement was only 36.2%).

This trend was identified early on in the year and further analysis and discussions with Immigration officers revealed that this number was due not to a lack of action by the officers but because many cases were being compounded. Therefore, numbers of compound cases were also tracked and this showed that cases were being dealt with appropriately. Nevertheless, as this tracking was thought to be of an operational nature and did not reflect the NKRA efforts to reduce corruption, for 2011, it has been decided that this NKPI will no longer be tracked as part of the NKRA. In its place, a perception survey will be run to monitor the perception of the rakyat as to what extent Immigration officers are affected by corruption.

For the Traffic Police, after further discussion, it was decided that the initial measure proposed for 2010 of the ratio of summons settled against summons issued, which depended to some extent on the public's willingness to let their summonses remain unsettled, should be revised. Instead, the NKPI that was identified as more suitable was the number of summonses issued per hour of operations, to ensure that officers' time during operations was properly accounted for. The target for 2011 will be 12 summonses issued versus total hours of operation, a slight increase from 2010's target of 10.

For the JPJ, the NKPI was the number of summons settled versus the number of summons issued, where the 2010 target was 70%. The target for 2011 will be 85%.

For the Customs Department, the original 2010 NKPI was based on a narrower scope of goods on which tax that were payable were recovered, from amounts due to underdeclarations. Therefore the target was only RM21 million. After more detailed discussion with Customs, the scope of the measure was broadened to include tax that can be claimed on all goods and services that were not properly declared, with a baseline measure of RM118 million.



Courtesy of Info Centre, Menara Star, Star Publications (Malaysia) Bhd

Therefore the 2010 target was revised to RM186 million based on the new baseline and definition. Nevertheless, for 2011, it was felt that while the tracking of taxes payable is a good operational measure, it would not necessarily be impacted directly by the NKRA initiatives to fight corruption. In its place, a perception survey will be run to monitor the perception of the rakyat as to what extent Customs officers are affected by corruption.

The Government is also considering a revamp of a number of NKPIs of the enforcement agencies. At this moment, work is being done to revise the precise measures and targets, which will be announced at a later date.

Grand Corruption

The percentage of trials that are completed within a year had a target of 30% this year. The 2011 has been greatly stretched to 70%, but this is to reflect the coming into operation of the special corruption courts which is hoped to greatly expedite the trial process.

Although the number of convicted offenders in the convicted corruption offender's database was surpassed this year, this was largely due to MACC running an operation which targeted the "giver", which is far easier to prove and prosecute. Therefore, the 2011 target is already stretched as compared to the baseline figure for this year.

Different Approaches for 2011

In 2011, the government plans to shift its focus on engaging the public on their perceptions and attitudes towards corruption and to raise awareness on the measures being taken to fight corruption. This engagement will run in addition to ongoing work to develop the infrastructure to fight corruption. The Fighting Corruption NKRA will engage with the business community to educate them on the creation of a transparent, open, competitive and level playing field through the avoidance of corrupt practices. It will also seek to encourage intolerance toward favours given and asked for as a means of competitive advantage in business.

The new approach includes targeting the rakyat through media initiatives. All levels of society will be targeted: from the education of school children, to instil a sense of integrity in them from a young age; to foreign analysts and the business community, in order to bolster the understanding of the ease of doing business in this country.

2011 Targets and Refinements to NKPIs

Corruption is more abstract in nature when compared to the other NKRA's, and thereby it is slightly more difficult to formulate measurements of a tangible nature. Therefore, the team is in a constant process of reviewing and refining the NKPIs in order to find the best possible method of measuring the initiatives under the NKRA.

For 2011, there will be a number of changes to the NKPIs, in order to make them more relevant to the initiatives that were carried out throughout 2010. The aim of these new NKPIs would be to measure the achievements of the initiatives thus far, which the 2010 NKPIs did not accurately do.

There will be two new NKPIs in 2011 with regards to Integrity Pacts. One of the initiatives in the GTP Roadmap was the implementation of Integrity Pacts, and this was achieved, in part, with the issuing of the Treasury Directive Letter by the Ministry of Finance which stated that all Government bodies had to include the Integrity Pact in their contracts. Therefore, it was seen to be particularly pertinent to start measuring the success rate of this initiative, given that it has been implemented for some time now.

The other NKPI will be to measure the next phase in the implementation of a broader score of integrity efforts, which is in the private sector. It is likely that a NKPI to track the number of private sector participants in this will be developed.

Another NKPI to be introduced is the number of cases reported under the Whistleblower Protection Act 2010. The Whistleblower Protection Act was gazetted on December 15, 2010 and this provides an ideal situation where the implementation of the Act can be measured from its commencement.

It was also thought to be important to track the effectiveness of the implementation of the Act. Therefore, the percentage of cases closed (investigated) and the percentage of cases closed (action taken) will also be tracked.

Also being measured is the initiative to set up compliance units in enforcement agencies. In 2010, the five leading enforcement agencies have established compliance units and completed the first round of training for their compliance officers.

Table 5: 2010 NKPIs Retained for 2011

NKPI	2010 Target	2010 Achievement	2011 Target
TI's Corruption Perception Index Score	4.9	4.4	4.9
TI's Global Corruption Barometer survey on government actions to fight corruption	37%	48%	50%
Number of Ministries scoring above 90% on the Procurement Accountability Index	13	14	19
Percentage of trials completed within one year	30%	36.8%	70%
Number of people in the database of convicted offenders	84	284	100

Table 6: 2010 NKPIs to be Revised / Modified / Dropped in 2011

2010 NKPIs	Status	Targets for 2011
Number of cases charged versus number of arrests (Investigation Papers or IP) for drug trafficking and possession (PDRM – DDA)	To be double reported as NKPI as well as MKPI under the Ministry of Home Affairs, PDRM also to be measured with TNS Perception Survey.	80%
No. of summons issued per hour of operations (PDRM – Traffic)		12
Number of summons settled versus number of summons issued (JPJ)	To be double reported as NKPI as well as MKPI for MoT, JPJ also to be measured with TNS Perception Survey.	85%
Tax that can be claimed on goods and services that were not properly declared (Customs)	Dropped – using TNS perception survey	N/A
Number of cases charged and compounded versus number of arrests under Immigration Law (Immigration)		

Table 7: New 2011 NKPIs Being Proposed

New 2011 NKPIs	Details
Integrity Pacts	Number of Ministry of Finance Integrity Pacts signed Number of private sector integrity pledges signed
Whistleblower Protection	Number of cases reported (for five key enforcement agencies)
	% of cases closed (investigated) % of cases closed (action taken)
Perception	Using locally conducted TNS Perception Survey which mirrors the GCB
Compliance Units	Number of compliance unit cases or training man-hours

The Corruption Perception Index, Global Corruption Barometer, Procurement Accountability Index, the number of offenders listed in the MACC Convicted Corruption Offender Database and the percentage of trials that are completed within a year shall be retained.

The new 2011 NKPIs measure initiatives that are the first of their kind to be carried out, and were not in place anywhere before. Therefore, unlike the 2010 NKPI targets, there is no baseline which can be used as a basis to determine a 2011 target. Also, many of 2011 NKPIs targets are to be reported in absolute numbers (e.g. number of MoF IPs). Therefore at this point appropriate targets will need to be discussed in consultation with the parties involved in carrying out the initiatives as they proceed in 2011.

The Future for Malaysia

Malaysia still has much work to do in its fight against corruption if measures such as TI's CPI score are to begin registering a positive change. Malaysia's score in 2010 dropped slightly from 4.5 to 4.4 out of 10 (with 10 being the least corrupt) with its ranking remaining the same as in 2009, at 56 out of 178 countries. While the score is not quite a cause for celebration, it need not be seen as a negative development. The progress at the Ministries and agencies to date should be acknowledged, as a lot has been achieved under the GTP. It is still rather early for signs of change to be seen.

At the same time, the government will continue to strengthen its efforts towards more serious and effective action in 2011, with greater intensity and focus on driving out corrupt practices. The increase in certain scores under the CPI - namely from the IMD World Competitiveness Yearbook, WEF's Global Competitiveness Report and PERC's Asian Intelligence Newsletter surveys are indicators that we are moving in the right direction.

The slight decline of TI's CPI score should however be fully acknowledged and be treated as a sign that the Government still has lots of work to do if we are to be successful in fighting corruption by 2012.