

INTELLIGENCE-BASED INVESTIGATION: EFFECTIVE PRACTICES TO COMBAT CORRUPTION

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I. INTRODUCTION

Corruption is an act that destroys the integrity of individuals, communities and nations. It is a practice that is so detrimental to a nation's economy and good governance that it will also undermine the public's belief in law enforcement agencies. To quote the ¹Royal Address of His Majesty Sultan of Perak, Sultan Nazrin Shah in conjunction with the 47th Anniversary of the Establishment of the Anti Corruption Agency Malaysia, His Majesty has labeled corruption as:

Corruption : among the main reason that inhibits economic growth, eliminates the interest of foreign investments, increases administrative and transaction costs, denies the people from receiving services and prompts political instability. A lot of nations are blessed with numerous sources of wealth, but corruption lands them instead in regression - some are even buried so deep in poverty. The nation's wealth is mismanaged - internal revenues disappear, consequently regression persists and poverty continues to spread. When there is no determination to fight corruption, it shall grow thrivingly, then accepted as a norm and eventually permeates into a culture until it destroys the nation state.

In a statement by Mr. Jose Ugaz, Chair of Transparency International:

It is perceived as a very complex phenomenon that affects a large part of humanity. If we look at the world map painted in red according to the latest Corruption Perception Index (measurement done every year covering most countries), corruption severely impacts more than two thirds of the planet².

The landscape of corruption crimes around the world has evolved with time. Corruption is no longer concentrated on spontaneous acts, but is now more submersed in organised, conspiratory and covert crimes. The world's development has taken a step towards globalization, accompanied by economic growth and information technology advancement, and corruption is going through an evolution phase where petty corruption has begun to shift into more structured and organised crime that is more complex and covert. This trend is a phenomenon known as syndicated corruption. It doesn't only involve government sectors; if syndicated, the involvement of the private sector will also create a major impact in the evolution of methods in corruption.

Although petty corruption is an occurrence that happens on a smaller scale and is different from syndicated corruption, if not contained it could become a culture within a community or organization. Failure to control these activities will create a profound impact on society.

II. WHY IBI

When discussing the corruption issues in Malaysia, where before an act of corruption is considered petty corruption involving two individuals with interest, whether the giver or receiver, both of whom are seeking to benefit. However, it is undeniable that since Malaysia's independence in 1957 until today, through the country's rapid growth and development, corruption has also seen its evolution; it has become more

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¹ Royal Address by His Majesty Sultan of Perak, Sultan Nazrin Muizzuddin Shah in conjunction with the 47th anniversary of BPR/MACC on 1st October 2014

² Official Interview with Mr. Jose Ugaz, Chair of Transparency International by Fernando González Barroso, published in the first digital edition of the "International Journal of Transparency and Integrity" - August 2016

structured, organized and covert, thus allowing this crime to become more difficult to track and expose.

To ensure the continued efforts in combating corruption in Malaysia, the Malaysian Anti-Corruption Commission has also undergone its evolution to stay relevant with current times. Previously known as the National Bureau of Investigation (BSN), then the Anti Corruption Agency (BPR), the Malaysian Anti-Corruption Commission (MACC) has since 2009 strived to contain the crimes of corruption that have taken root as a culture in Malaysian society. Various efforts were undertaken through punitive measures as well as conducting education and prevention programmes to help curb the spread of this phenomenon.

In Malaysia, the public tendency to expose crimes of corruption is focused more on information disclosure as opposed to stepping forward to report a complaint to MACC. This notable difference is not due to lack of confidence in MACC, but is on account of various factors; the refusal in involvement as a witness in court, the change of corrupt crime from petty corruption to syndicated corruption; technological advancement and accessible information delivery mediums; and latest trends show that criminals of corruption are getting more adept at conducting said crimes without public knowledge and remains undetected by MACC.

Based on these developments, employing regular or reactive investigation methods becomes less effective in order to prove cases that involve syndicated and high profile crimes. This is due to obstacles that are difficult to penetrate, namely witness cooperation and the significant decrease in public complaints to MACC. Apart from that, the community also prefers to offer information compared to filing a complaint to avoid testifying in court.

The chart shows the significant difference in Malaysian's preference to offer information compared to filing complaints to MACC.



Between 2012 and 2016, statistics show that MACC typically receives an average of 6,000-7,000 reports of information yearly. It causes MACC to become more selective in producing quality information that consequently leads to case development that utilises proactive investigation methods through the Intelligence-Based Investigation (IBI) approach. The efforts and actions planned by MACC are not solely focused on solving crimes of corruption, but also taking into account the aspects of time, cost and manpower as well as suitable investigation methods, to yield a more effective and successful investigation. Therefore, MACC isn't just focusing on more holistic punitive efforts, but at the same time the IBI approach is able to assist MACC in identifying various genres of corruption crimes that were previously difficult to unravel.

III. WHAT IS IBI?

Intelligence-Based Investigation (IBI) is an art, an investigation approach that puts emphasis on exploration, manipulation and exploitation of intelligence ability to commence and facilitate investigations that work within a process. To yield covert output through *techniques of undercover, surveillance, intelligence analysis, deployment of agent and sources, technical equipment and others*, are basic components used in the IBI approach to unravel syndicated cases that are complex and involve middleman.

The application of the IBI approach is parallel with the current trend of corruption mediums. Corruption nowadays is deemed sophisticated. Where before, transactions were often in cash, now it involves banking transactions, involvement of a third-party in a transaction, provisions of reward in the form of entertainment and luxury, or even the acquisition of cooperation in the country's mega projects.

In order to improve IBI to become a more successful and structured approach, MACC has tried to encourage the utilisation of this approach through the MACC Transformation Plan that began in 2011. During this process, three items were given priority, namely the law and SOP, proficiency of Undercover Officers and profiling analysis capability. Although the first time the IBI approach was applied during an Undercover Operation ‘*Operation Melayang*’ in 2000, for the past decade MACC has strived to explore and try its best to use the IBI approach as an alternative in its punitive actions. This is in line with the recommendations outlined in ³Article 50, United Nations Convention Against Corruption:

1. In order to combat corruption effectively, each State Party shall, to the extent permitted by the basic principles of its domestic legal system and in accordance with the conditions prescribed by its domestic law, take such measures as may be necessary, within its means, to allow for the appropriate use by its competent authorities of controlled delivery and, where it deems appropriate, other special investigative techniques, such as electronic or other forms of surveillance and undercover operations, within its territory, and to allow for the admissibility in court of evidence derived therefrom.

Through the MACC’s Transformation Plans 2011 - 2015, among the first effort that was implemented is to improve the operational ability of Undercover Operations. This process doesn’t focus solely on the development of training modules, but efforts in other aspects have been undertaken, such as the strengthening of human resource capabilities, establishing more organised operation management procedures and acquiring of technical equipment that are more modern and appropriate.

The second aspect that was given priority during the transformation and enhancement of the IBI approach is to improve Profiling Analysis capabilities. Expertise in profiling is the most important scope in the IBI approach as it is an important contributing data in identifying criminal networks, criminal involvement as well as providing input for proactive operation actions. Profiling analysis of targets in general is to be done comprehensively, due to the fact that most corruption criminals are creative in not acquiring bribery directly in person, but instead employ family members or proxies. Therefore, aside from individuals and companies/ agencies/ institutions/ clubs/ organisations that are involved directly or indirectly with the case, it is of utmost importance to develop a comprehensive profiling of a target, his/her family members, spouse/partner’s family members as well as their spouse/partner. The next challenge is to analyse all the gathered data in order to produce the case’s hypothesis. These processes can only be accomplished by enhancing and diversifying the cooperation of information sharing between agencies, creating a system database platform that is able to store and process information data, and empowering intelligence officers with a suitable data analysis and profiling knowledge.

The MACC transformation program emphasises aspects of procedures and implementation of each initiative that was created. The third aspect that was given emphasis is the upgrading of work implementation procedures that have since become the backbone of the IBI approach. Overall, several standing orders were established through the jurisdiction under Section 12 of the Malaysian Anti Corruption Act 2009. Among those are;

- Chief Commissioner Standing Order (Chapter F) No. 1 Year 2013 “Telecommunication Interception Using Lawful Interception Monitoring System (LIMS) Under The Jurisdiction of Section 43 of The Malaysian Anti Corruption Commission Act”;
- Order of Deputy Chief Commissioner (Operation) No. 4 Year 2013 “Preparation of Quality Information”;
- Order of Deputy Chief Commissioner (Operation) No. 5 Year 2013 “Sources Management Procedures”;
- Order of Deputy Chief Commissioner (Operation) No. 7 Year 2013 “Central Intelligence Operation and Safe House Management Procedures”; and

³ Page 41, Article 50, United Nations Convention Against Corruption, 2004

- Order of Deputy Chief Commissioner (Operation) No. 4 Year 2014 “Undercover Operations Guidelines”.

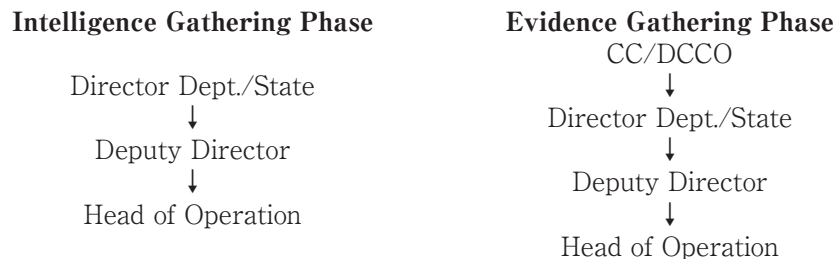
IV. DECISION MAKING & MONITORING

The implementation of the IBI approach is managed on a *case-to-case basis*, whereby each implementation focuses on the issue of gathered information and is therefore different from information issue to the other. Details of information issue and situation that should utilise the IBI approach are as follows:

- Cases of corruption, abuse of power or pre-determined offenses against a certain individual or network of individual categorised as syndicate including the involvement of a middleman that are difficult to execute through reactive (regular) investigation approaches;
- Cases where there is no complainant who will step forward to file a complaint to MACC;
- When there is an informer or internal source that could cooperate to make the operation a success; or
- Analysis is made of failed cases that using reactive investigations : where offenses under the MACC Act 2009 are on-going and must be approached using IBI.

Although cases that are developed through the IBI approach may seem different, the process used is still the same, and intelligence acts throughout the process are divided into two important phases which are Intelligence Gathering (IG) and Evidence Gathering (EG).

Overall, both phases are monitored by the same executive powers namely the Chief Commissioner (CC) or the Deputy Chief Commissioner (Operations) (DCCO) who are authorised to grant execution permission. However, during the pre-project stage, the Department/State Director is responsible for monitoring. Also, reports of project’s progress shall be monitored from time to time throughout the duration of the project. The following is the command hierarchy of project monitoring based on phase:



Each project must refer to the Director Department/State in order to understand the methods and implementation procedures of a project. Based on the details of information that should be developed as an IBI project, the Head of Operation should first and foremost prepare a Project Planning Paperwork (PPP) based on gathered information. The PPP will then be presented to the Project Committee (PC)⁴ for implementation approval and project allocation. During this stage is where a project’s suitability and feasibility is determined. Below are the main officers involved in a monitoring and decision making process;

- CC/DCCO
 - Consideration and approval of PPP,
 - Decision to delay or terminate any operation subject to reason and demand, and
 - Decision to authorise implementation of investigating operation after the EG process is finished and

⁴ **Project Committee (PC):** The committee that convenes to review, consider and approve any Operation based on the presented Project Planning Paperwork by the Head of Operation. The PC consists of Chief Commissioner/Deputy Chief Commissioner (Operation) as Chairman, as well as 3 other members namely the Director of Intelligence, Director of Investigation and Deputy Director of Intelligence.

has reached necessity.

- Director or Deputy Director Department/State
 - Consider and decide any necessary actions prior to and during the implementation of the operation,
 - To advise DCCO on decisions pertaining to any delay, termination of operation and authorisation of EG implementation, and
 - Monitor implementation of operation that is being conducted by each department/state and to receive periodical reports from the Head of Operation.
- Head of Operation
 - To present PPP to PC
 - To guide and advise the Case Officer in handling and steering a project, and
 - To monitor implementation of every operation conducted by each department/state and to report on supervised operation progress to the Director.

Based on the roles mentioned above, the most crucial task is placed upon the Project Committee (PC), where based upon the Intelligence Report (IR) that is generated following each Intelligence Gathering (IG) process, the PC will have to decide on which method will be adapted to pursue an operation, whether they'll be adapting the Undercover Method or the Analysis Method. These decisions are crucial and must be based upon a specific benchmark when selecting a method;

- Risk level of an operation and estimation of damage to the operation team, target or any possibility of collateral damage;
- Effectiveness of operational cost implemented compared to the ROI;
- Possibilities that need to be expected in deciding the feasibility of an infiltration or penetration during the operation; and
- The strengths and weaknesses of the case development to help decide if it can be pursued or not.

V. IMPORTANT TOOLS IN THE IBI PROCESS

Undoubtedly, when defining the IBI approach, naturally the process that is applied can be described in one big Intelligence Cycle, especially during the Pre-Project Phase (Intelligence Gathering -IG) and Project Implementation Phase (Evidence Gathering -EG). And while explaining aspects of Intelligence Cycle, the following are several important tools that are used throughout the IBI process:

- Informant
In the introduction section, it has been explained that an informant is an individual who plays a crucial role in providing information covertly for the purpose of intelligence. Although at times the information given might not be competent; however, each information has its own weight that must be taken into account.
- Profiling
In the IBI approach, profiling is the most important responsibility as it is with this that a target or any other individual or organisation involved in the case can be identified thoroughly. In the context of IBI, offensive profiling is adapted, which means the identity of the target is not the only profiling but should also include all aspects of information pertaining their financials, assets and properties, movements in and out of the country, business ownerships, stock and share ownerships, etc. This aspect also applies when profiling any individuals or organisation involved with the target.
- Reconnaissance
Reconnaissance or Recon is a method used by most intelligence agencies around the world, where agents are scattered to assist in the information verification process. In the IBI approach, MACC adopts the same method where intelligence officers are responsible, not only for verification purposes, but also to gather new information related to the case using the elicitation technique.

- *Casing*
Is a combination of tasks: to assess the suitability of an undercover operation area and meeting place, to gather information needed relevant to the area to facilitate infiltration, and to evaluate probabilities of challenges and threats especially in operations that utilise the undercover method.
- *Surveillance*
Derived from the words 'watching over' in French '*surveiller*', the task of surveillance is the monitoring of activities of a target, their behaviors and collecting other useful and relevant information on the target.
- *Interception*
In the context of MACC, communication interception is an important element in assisting the development of an operation using the IBI approach, specifically employed to extract and gather information through the target's communications with any individuals relevant to the case. By adapting the Lawful Interception Monitoring System (LIMS) under the jurisdiction of Section 43 of the Malaysian Anti Corruption Act, all conversation data, messages whether by post will be analysed to assist in the information analysis and verification of a case.
- *Undercover Work*
Like any intelligence agency around the world, the usage of undercover agents is a certifiable technique in information gathering and verification. However, in the context of IBI, undercover agents are not only employed during the intelligence gathering process through information assessment and verification, but are also useful in gathering evidence. The undercover evidence can be used to bring a case to court based on Section 52 of the Malaysian Anti Corruption Commission Act:

Section 52 (1)(b) MACC Act 2009: *"No agent provocateur, whether he is an officer of the Commission or not, shall be presumed to be unworthy of credit by reason only of his having attempt to commit, or to abet, having abetted or having been engaged in a criminal conspiracy to commit, such offence if the main purpose of such attempt, abetment or engagement was to secure evidence against such person; and"*

Section 52 (1)(c) MACC Act 2009: *"Any statement, whether oral or written, made to an agent provocateur by such person shall be admissible as evidence at his trial."*

Section 52 (2) MACC Act 2009: *"Notwithstanding any written law or rule of law to the contrary, a conviction for an offence under this Act solely on the uncorroborated evidence of any accomplice or agent provocateur shall not be illegal and no such conviction shall be set aside merely because the court which tried the case has failed to refer in the grounds of its judgement to the need to warn itself against the danger of convicting on such evidence."*

However, in the IBI approach that employs undercover methods, although the human undercover statements could be used as evidence in court, it could be a liability on MACC to ensure that there are no elements of entrapment and instigation from the target's operation handler, and a predisposition of the target should be done with the utmost care in relation to prejudiced information of the target.

VI. THE IMPORTANCE OF INTELLIGENCE ANALYSIS

Analysis is defined differently according to each knowledge field and skills context. In general, analysis is defined as a process that breaks down and rearranges a particular component to one that is comprehensible and generates a hypothesis of a particular matter. It's no different when applying analysis in the IBI approach, where a hypothesis of information and gathered data is of utmost importance, and this discipline is known as Intelligence Analysis. In the IBI approach, the Intelligence Gathering (IG) is not only focused on the ability to gather data and information relating to the case, but it also involves important processes in order to interpret all the data and information via an analysis that is appropriate to generate an overall hypothesis of the intelligence process. Among the importance of Intelligence Gathering and Intelligence Analysis are:

- Manage to evaluate progress or status of intelligence work,

- Discover past events and things you didn't know,
- Understand the situation of the cases more deeply,
- Assist in identifying follow-up actions that should be taken, and
- Facilitate all teams to communicate accordingly and create better understanding.

In the IBI approach, there are several analyses such as the Target Profile Analysis, Crime Pattern Analysis, Risk Analysis, Network Analysis and Demographic Analysis. Although there are various analysis methods to be employed, it depends on the type of case, the suitability of data categories and information that were gathered. What matters is that the process of the analysis is to ensure that the case being developed involves the right target, the right modus operandi and the relevant individuals involved in the case.

VII. CONCLUSION

The wide use and application of IBI methods in corruption cases domestically and internationally was considered as a good practice and initiative and caught the eyes of other anti-corruption authorities including international bodies like United Nations Office on Drugs and Crime (UNODC). MACC has also received requests from many countries to learn the IBI approach. It is an honour to us (MACC) that we have already received almost 150 participants from various agencies and countries from 2012 until July 2018 who came to learn IBI. For MACC sincerely, it would be part of our duty to share and exchange ideas and good practices with other agencies or departments, locally or internationally, as part of our efforts to fight corruption globally. Let us work together to combat corruption and strive to maintain the harmony of the world community.

References:

1. Malaysian Anti-Corruption Commission website: www.sprm.gov.my
2. United Nations Convention Against Convention (UNCAC) 2004
3. Malaysian Anti-Corruption Act 2009
4. Transparency International website: www.transparency.org