

# **An Advocacy Paper BRING BACK LOCAL GOVERNMENT ELECTIONS**

Commissioned by  
The Government of the State of Selangor Darul Ehsan

Written by  
Andrew Khoo Chin Hock  
*Advocate and Solicitor of the High Court of Malaya.*

Wong Chin Huat  
*Monash University Sunway Campus*

Maria Chin Abdullah  
*Persatuan Kesedaran Komuniti, Selangor (Empower)*

Edited by  
Honey Tan Lay Ean  
*Advocate and Solicitor of the High Court of Malaya  
Persatuan Kesedaran Komuniti, Selangor (Empower)*

---

Coalition for Good Governance  
Chair and Secretariat: Persatuan Kesedaran Komuniti, Selangor (Empower)  
13 Lorong 4/48E  
46050 Petaling Jaya  
Selangor, Malaysia.  
Tel: 603 – 77844977 Fax: 603 – 77844978 Email: empower05@gmail.com

# CONTENTS

	<b>Pages</b>
Acknowledgement	3
Chapter One Introduction	4
Chapter Two Legal Considerations In Re-Introducing Local Government Elections	12
Chapter Three Road Map to Bring Back Local Government Elections	22
Chapter Four The Political Road Map Conclusion	33 37
Appendix 1: The long term option: Nationwide local government elections	38
Appendix 2: Costing for people-oriented selection process	48
References	52
About the Writers	53

# **ACKNOWLEDGEMENT**

The Coalition for Good Governance expresses our deep appreciation to the Government of the State of Selangor Darul Ehsan for commissioning us to prepare this paper on 'Bring Back Local Government Elections'. We thank Yang Berhormat Mr Ronnie Liu for his support and encouragement.

Special thanks also go to our committed writers, Wong Chin Huat, Andrew Khoo and Maria Chin Abdullah for their time, effort and for sharing their ideas on how local government elections can be carried out in the short and medium terms. The paper would not have been possible without insights from Dr Kuppusamy Singaravello of Universiti Malaya, Professor Dr Phang Siew Nooi, formerly of the Faculty of Economics and Administration, Universiti Malaya, Premish Chandran of Malaysiakini, and other learned friends and contributors.

Our deepest appreciation also goes to members of the Coalition for Good Governance for giving us their critical feedback during the drafting of this paper. We also thank the members and staff of Persatuan Kesedaran Komuniti Selangor (Empower), especially Maria Chin Abdullah for her persistence in getting the writers and editor to finalise the paper, and Pook Li Yoon, Ong Jing Cheng, Nurul Hassan and Mary Sinnapan for the long hours they have put into this project and for their dedication. Finally, we would like to thank Honey Tan for editing this paper.

Coalition for Good Governance  
June 2009

## **CHAPTER ONE**

### **INTRODUCTION**

In 2008, the Government of the State of Selangor Darul Ehsan (the Selangor Government) commissioned the Coalition for Good Governance (CGG)<sup>1</sup> to prepare an advocacy paper, “Bring Back Local Government Elections” (the Paper). The Paper aimed at providing recommendations on how to bring back local government elections in Selangor Darul Ehsan (Selangor). As the chair and secretariat of CGG, Persatuan Kesedaran Komuniti, Selangor (Empower) coordinated the writing of the paper. The paper is written by Andrew Khoo, Wong Chin Huat and Maria Chin Abdullah, and edited by Honey Tan.

It is recognised that reinstating local government elections nationwide will take a longer time due to the suspension of local government elections in 1965, and the lack of political will in the States governed by Barisan Nasional.

In Chapter One, it argues for the reinstatement of the local council elections and also recommends several stages of implementation to ensure its the reinstatement . Chapter Two sets out immediate and short term recommendations as preparatory steps that will help pave the way in the long term for the local government elections. Chapter Three and Four deepens the discussion on the legal, social and political challenges and lists recommendations for long term measures to be taken to ensure that elections, and not appointments, is the mechanism to determine who should run local governments.

#### **A. DEMOCRATIC GOVERNANCE IN MALAYSIA**

Democratic governance is about people's participation in governance. This requires people to have the power to determine how decisions are made and implemented; and how marginalised issues and diverse groups can be included. The Selangor Government's role is to ensure that people's rights are realised. This means having many ordinary citizens taking small steps to claim their rights and in so doing, achieve democratic transformation.

In Malaysia, there are three main structures of government: federal, state and local governments. For the purpose of this paper, we will focus on local government and the need to bring back local elections, as part of establishing democratic governance.

Local government, also referred to as local authority under the Local Government Act 1976 (Act 171) (LGA), means “any City Council, Municipal Council or District Council, as the case may be, and in relation to the Federal Territory means the

---

<sup>1</sup> CGG – Coalition for Good Governance is made up of 23 members of civil society organisations, with 14 taskforces.

Commissioner of the City of Kuala Lumpur appointed under section 3 of the Federal Capital Act, 1960". The LGA only covers Peninsular Malaysia as local governments in Sabah and Sarawak are governed by their respective state legislation.

Constitutionally, local governments including local government elections fall under the state jurisdiction, or what is commonly known as the State List (List II, Ninth Schedule of the Federal Constitution). However, under Article 95 of the Federal Constitution, a National Council for Local Government, chaired by a federal minister and with members from each state, was established to formulate "a national policy for the promotion, development and control of local government throughout the Federation and for the administration of any laws relating thereto". In the federal government, the Ministry of Housing and Local Government (the Ministry) is the State Authority for the Federal Territories of Kuala Lumpur, Labuan and Putrajaya. In relation to the other states, the Federal Minister of the Ministry merely lays down the laws pertaining to local government, develops local government policies and implements local government functions.

The three main pieces of legislation governing local government are the Local Government Act 1976,(Act 171), the Street, Drainage and Building Act 1974 (Act 133) and the Town and Country Planning Act 1976<sup>2</sup>. In Sabah, the relevant legislation is the Local Government Ordinance 1961, whilst in Sarawak, they are the Local Authority Ordinance 1948, the Kuching Municipal Ordinance 1988 and the City of Kuching North Ordinance 1988. The Federal Capital Act 1960 also makes provisions for the Federal Territory of Kuala Lumpur. There are two main division of local government: rural district councils and urban centres. Urban councils are divided into city councils and municipalities.

## **1. The Role of Local Councils**

The importance of local government can be broadly divided into environmental, public, social and developmental<sup>3</sup>. These functions are at times, concurrent with the functions of the Federal government.

As such, the issues that local government deals with impact the daily lives of the residents<sup>4</sup>. They are distinct, though inter-related with those issues, which concern the Federal and State governments. For example, the Achehnese community interests, and matters pertaining to heritage buildings are of special importance in Penang. Local councils could reflect the country's political plurality more accurately. It is at the local government level that issues like these could be most effectively

---

2 Commonwealth Local Government Forum (CLGF) "Country Profile: Malaysia, The local government system in Malaysia", <http://www.clgf.org.uk>

3 The United Nations Economic and Social Commission for Asia and the Pacific : Human Settlements. "Local Government in Asia and the Pacific. Country Paper : Malaysia", <http://www.unescap.org>

4 The Edge Malaysia (22nd December 2003) "Appointment or ELECTIONS?" Paragraph quoted from the interview with Professor Johan Saravanamuttu, Dean of the Social Transformation Research Platform, University Sains Malaysia, p64.

addressed.

## **2. A Brief History of Local Government Elections in Peninsular Malaysia**

Affecting the people's life at the most daily level, local democracy was instrumental in the preparation for Malaya's home rule and decolonisation. Local elections, first introduced in George Town in 1857 and abolished by 1913, were reintroduced in 1951 with the passing of the Local Authorities Elections Ordinance 1950. Two years later, the Local Council Ordinance 1952 created local councils for villages. By 1958, local elections covered city councils; municipal councils, town councils, town boards, rural district councils and local councils. Under the Local Government Elections Act 1960 (LGEA1960) and its amendment in 1961, the Election Commissions took over the conduct of all local elections.

The local elections held in 1963 were the last ones in Malaysia as local elections were suspended under a proclamation of emergency in September 1964 amidst the Indonesia-staged Confrontation. Political parties and scholars like James Anthony believed that the suspension of local elections, as early as 1959 in Kuala Lumpur, was to prevent the opposition parties winning them<sup>5</sup>.

In 1965, the Royal Commission of Enquiry to Investigate into the Workings of Local Authorities in West Malaysia (the Royal Commission) was set up to study the matter. in the midst of allegations of malpractices and abuse of powers. The enquiry was led by Athi Nahappan, then deputy president of the Malaysian Indian Congress (MIC), to consider the usefulness of "the continued existence" of local authorities. While many opposition leaders saw the Royal Commission's term of reference as "a kind of death warrant to local authorities", its comprehensive report published in December 1968, (commonly known as the Athi Nahappan Report) strongly recommended that every State Capital in West Malaysia to be administered by a local authority, consisting of elected representatives. This should also be extended to all local authorities outside State Capitals<sup>6</sup>.

Unfortunately, the Athi Nahappan Report was superseded by the Development Administration Unit (DAU) Report which effectively set aside the Athi Nahappan's recommendations in 1971. It sounded the death knell of the local government elections.

Section 15 of the LGA now provides, "Notwithstanding anything to the contrary contained in any written law, all provisions relating to local government elections shall cease to have force or effect."

However, It is important to note that while the LGA 1976 repealed and superseded

---

5 The Athi Nahappan Report, pp 13-28. Also, Goh Ban Lee (2005), "The Demise of Local Government Election and Urban Politics" in Mavis Puthuchearu and Norani Othman, (eds) *Elections and Democracy in Malaysia*, pp 49-58

6 The Athi Nahappan Report, *ibid.* pp. 3, 6, 105-106

earlier legislation regarding local governments, the LGEA 1960 remains part of the statutory book. So it is arguable that the legal mechanism for local elections is merely suspended and not removed.

Currently, presidents or mayors and the councillors are appointed by the State Government, not based on merits but on the strength of their political affiliations. The lack of popular participation and feedback on local governments has led to the creation of “Little Napoleons” both amongst local councillors and bureaucrats. They have the power and access to local government resources, but the policies and actions of local governments often do not meet the expectations and interests of the *rakyat*.

### **3. The Need For Local Government Elections**

Under the appointment system, the following key issues have arisen and demand urgent attention.

#### **a) *Issue of Representation and Democracy***

With the abolishment of local government elections, Malaysian citizens are denied of their right to elect who and which party will represent them to deal with their local issues. The democratic rule of government of the people, by the people and for the people no longer applies as the fundamental principle of “no taxation without representation” was ignored. By appointing local councillors, the State government is effectively saying, “We know what is best for you, and we will make the choices for you”.

#### **b) *Issue of Merit and Competence***

Without elections, merits and competencies have given way to other considerations of the political parties' agenda. The appointments of councillors ignore the background and track record of performance of the appointees. It does not take into account whether they have been recalcitrant or totally discredited. Their appointments and positions are closely tied to the parties in power and are often meant to serve as part of the patronage mechanism. Most ironically, appointed councillors can have their tenure extended indefinitely – as in the case of Zakaria Mohamad Deros and his family of councillors – even if they refused to pay their assessments, put up buildings illegally and operate their businesses without licences, completely flouting the law and regulations.

In another case, Majlis Perbandaran Subang Jaya in 2006 awarded a 20-year contract to Konsortium S.J. Pest Control Sdn. Bhd. and business operators had to use this particular consortium to renew their licenses. Later, it was discovered that the consortium and the six companies under it did not have licences to operate pest

control businesses. Despite protests from the business community, the contract went ahead.

The Highland Towers tragedy was a stark example of how things can go wrong due to incompetency. The Majlis Perbandaran Ampang Jaya (MPAJ) failed to follow the guidelines set out for hill side development.<sup>7</sup> Lives were lost, but MPAJ was given full immunity for any negligence under Section 95(2) of the Street, Drainage & Building Act 1974 (Act 133).

The Bukit Cahaya Seri Alam agricultural park debacle happened because of poor monitoring by Majlis Bandaraya Shah Alam (MBSA). This negligence meant that the seven developers could go ahead with land clearing work without approval, as they had been given a pre-approved schedule by MBSA .

### **c) Issue of Accountability and Transparency**

If councillors are not elected, they are not immediately accountable to the *rakyat* for the money spent. There are 144 local councils in Malaysia with a combined expenditure of more than RM13 billion. They are not obliged to furnish the Ministry with their accounts, nor do they have to seek approval from the Ministry for their budget allocations.

There is a lack of transparency in how council matters are discussed and decided upon. S23 of the LGA states that:

*“All meetings of the local authority shall be open to the public and to representatives of the Press unless the local authority by resolution at that meeting otherwise decides.”*

Prior to the March 8 2008 elections, the lack of transparency was exacerbated when the councils delegate some of its responsibilities by setting up committees to carry out certain tasks of a general or specific nature. Some councillors found themselves included occasionally, but were most times left in the dark till full board meetings.

Unfettered spending by previous local councils include the following<sup>8</sup>:

- The Majlis Perbandaran Seberang Perai had a five-year agreement with a florist in Kuala Lumpur to supply fresh flowers at RM1.5 million.
- The Majlis Perbandaran Klang spent RM250,000 to buy 10 horses for petty crime prevention.
- A public zoo spent RM400,000 to buy four gorillas, which were eventually sent

---

<sup>7</sup> Malaysiakini, “Bukit Cahaya debacle shows need for third vote”, Ronnie Liu, 14 Mar 05.

<sup>8</sup> Examples extracted from *Redefining Governance: Women's Rights and Participatory Democracy in Local Government*. 2008. Women's Development Collective. Kuala Lumpur. p:49-50.



back to Africa.<sup>9</sup>

- The Dewan Bandaraya Kuala Lumpur (DBKL) spent RM94,000 to train its officials in social etiquette.<sup>10</sup>
- The Majlis Perbandaran Kemaman spent RM3.9 million on a beautification project.<sup>11</sup>
- The DBKL decided to build a RM500,000 hi-tech, self-cleaning toilet.<sup>12</sup>
- The Penang Island Municipal Council (MPPP) spent RM500,000 on closed circuit television in the council chambers despite facing a serious deficit budget.<sup>13</sup>
- The privatisation of billboards, which is still an outstanding issue where present councillors have to deal with.

Malaysians want such non-accountable and non-transparent practices to be eliminated.

#### **4. Elections As A Necessary Condition to Democratic Governance**

This paper strongly argues that the reinstatement of the local government elections is possible and necessary in achieving democratic governance, which comprises issues of participation, merit and competence to accountability and transparency. Only with elections will the *rakyat* be able to participate effectively in electing officers and ensuring that they shape the policies that best serve their needs and interests. As a starter, the *rakyat* must have the right not to re-elect those councillors who fail to perform. Their need to be accountable can then bring about more transparency to the whole local government process and lead to greater efficient use and distribution of resources, and a decrease in corruption.

We recognise that the current problems in local governance are not all directly related to the appointment system. Some problems are grounded in the constitutional and legal arrangements. For example, the Ministry has no direct power over the running of local authorities<sup>14</sup>, which fall under the purview of State governments<sup>15</sup> and this has led to some abuses. In the Majlis Daerah Sabak Bernam, the Council President “overlooked” several family entertainment outlets which were actually fronts for illegal gambling. He was however not sacked but only transferred to the Public Services Department.

---

9 The Star, “Councils rapped for wastage”, Lisa Goh, 23 May 06.

10 NST, “City Hall spends RM94,000 on social etiquette”, Minderjeet Kaur, 25 Jun 06.

11 The Star, “Storm over RM3.9m beautification project in Chukai”, 29 Jun 06.

12 NST, “It’s a waste of public funds”, MM, 8 Sep 06.

13 The Sun, “No room for costly toys in council funds”, Goh Ban Lee, 21 Nov 06.

14 The Star, “Ong : Councils call the shots”, 6 Jul 06.

15 The Star, “Some local councils yet to execute set by-laws”, Zulkifli Abdul Rahman, Elizabeth Looi and Florence A Samy, 3 May 06.

In other instances, wrong doers are protected from stronger sanctions by the LGA. Section 31 of the LGA validates all acts of any councillors on behalf of the council regardless of defects in the appointment.

Section 33 of the LGA gives immunity to persons acting under the direction of the local councils<sup>16</sup>, and Department Heads of the Councils cannot be removed by the President or Mayor, but only by the State Government<sup>17</sup>.

While we recognise that democratic governance would require revision of our constitutional arrangements, laws and regulations, local government elections are clearly a necessary condition even though they are not a sufficient condition or end-all requisite.

However, local government elections are vital to participation, accountability, transparency, competence and merit by giving the local authorities a popular mandate. Any other measure of administrative modernisation and rationalization – such as appointment of professionals or independent monitoring groups – is essentially flawed as it takes away control by the rakyat. Without doubt, only the need to win elections can ensure greater consultation of the stakeholders by the local government representatives. This in turn provides greater opportunities for communities, in particular, for women and marginalised communities, to be involved in public decision making process as well as to seek candidacy within the existing political structure, thus enabling their special needs to be taken into account. This would bring about a closer consultative process with the local citizens of an area and would enhance neighbourhood solidarity.

## **B. SELANGOR STATE GOVERNMENT'S LEADING ROLE**

By commissioning this paper, the Selangor Government has made a commendable step to initiate a thinking process and a road map to bring back local government elections. This effort by the Selangor Government, encompassing all the three members of the Pakatan Rakyat, Parti Keadilan Rakyat (PKR), Democratic Action Party (DAP) and Parti Se-Islam Malaysia (PAS), reflects the Pakatan Rakyat's willingness to fulfil their electoral promises in 2008 especially regarding local elections.

- **PKR's Manifesto 2008** promised in item 9 of its vision for a constitutional state, *"reinstate with immediate effect local elections for municipal and local councils to create greater accountability at every level of government."*
- **DAP, both through its campaign** on "The Third Vote: Restore Local Government Elections" and its 2008 Election Manifesto, reiterated its call to "implement local government elections to ensure accountability and

---

<sup>16</sup> The Star, "Act gives councillors an edge over complainants", 24 May 06.

<sup>17</sup> NST, "What to do with our little local Napoleons", Derek Fernandez, 27 Jul 06.

efficiency”.

- **The Coalition for Clean and Fair Elections (BERSIH)**, whose membership include all three Pakatan Rakyat component parties, also promises: *“The need to re-introduce elections for local authorities at city, municipal, district and village levels with an electoral system which is free and fair, and enables Malaysians to participate actively.”*
- **The People’s Declaration**, which all three Pakatan Rakyat component parties endorsed during the 2008 elections, also upheld the principle of local elections.

## **CHAPTER TWO LEGAL CONSIDERATIONS IN RE-INTRODUCING LOCAL GOVERNMENT ELECTIONS**

Local government has had a long history in Malaysia. The extent of the powers of local government were encompassed in various colonial-era enactments, e.g. the Town Boards Enactment of the Federated Malay States (Cap. 137) (which was also extended to Kedah and Perlis), Town Boards Enactment of Johore No. 118., Town Boards Enactment of Terengganu (Cap. 64, No. 3 of 1955), Municipal Enactment of Kelantan No. 20 of 1938, Municipal Ordinance of Straits Settlements (Cap. 133) and Local Councils Ordinance, 1952.

Elections to local councils began in 1950 with the passing of the Local Authorities Elections Ordinance of 1950. To this were subsequently added the provisions of the various state enactments. For example, Penang had its Conduct of Elections Authorization Enactment 1958 [*Penang En. 14 of 1958*] and Johor had its Conduct of Town Council Elections Enactment 1959 [*Johore En. 1 of 1959*].

On 1 June 1960 the Local Government Elections Act 1960 (LGEA) came into force in Malaya. Notwithstanding this, Kuala Lumpur was not bound by the Local Government Elections Act 1960, and instead had the Constitution of the Municipality of Kuala Lumpur [*Sel. G.N. 351 of 1951*] and the Federal Capital (Municipal Elections) Ordinance 1958 [*Ord. 32 of 1958*].

Section 5 of the LGEA provides for the election of members of Town and Rural Boards as follows:-

“(1) Notwithstanding anything to the contrary contained in any written law which relates to Town Boards or Rural Boards in force in any State, the State Authority may, after consultation with the Election Commission in respect of the boundaries of the local area and the number of Councillors to be elected to the Town Council, Town Board or Rural Board having jurisdiction in such area, by order published in the *Gazette* of the State direct that the whole or a majority of the members of a Town Council, Town Board or Rural Board established in the State under any such written law shall be elected instead of appointed or nominated by the State Authority; and where any such order is made in respect of a Town Board or Rural Board such Board shall thereupon be called a Town Council, District Council or Rural District Council, as the case may be, and every member thereof shall be styled a Councillor.”

Similarly, section 5A of the LGEA provides for the election of members of Local Councils as follows:-

“(1) Notwithstanding anything to the contrary contained in the provisions of any written law which relates to Local Councils in force in any State, the State

Authority may, after consultation with the Election Commission in respect of the boundaries of the local area and the number of Councillors to be elected to the Local Council having jurisdiction in such area, by order published in the *Gazette* of the State direct that the whole or a majority of the members of a Local Council shall be elected under this Act.”

It should be noted that both sections 5 and 5A of the LGEA begin with the phrase “Notwithstanding anything to the contrary contained in any written law which relates to Town Boards or Rural Boards in force in any State” and “Notwithstanding anything to the contrary contained in the provisions of any written law which relates to Local Councils in force in any State” respectively.

On 3 September 1964, the Government declared a state of emergency pursuant to Article 150 of the Federal Constitution (L.N. 271/64). Subsequently with Parliament’s approval, on 18 September 1964 the Emergency (Essential Powers) Act 1964 came into force. Pursuant to this Emergency (Essential Powers) Act 1964, Parliament passed the Emergency (Suspension of Local Government Elections) Regulations, 1965 and the Emergency (Suspension of Local Government Elections) (Amendment) Regulations, 1965.

Although local government elections were suspended from 1965 onwards, the Government continued to amend the LGEA from time to time. This was first done by way of the Emergency (Essential Powers) Ordinance No. 71, 1971 [*P.U.(A)41/71.*] in respect of certain criteria for disqualification as a candidate for local government elections. This amendment was subsequently incorporated in the Local Government Elections (Amendment) Act 1971 (in effect from 30 April 1971).

It should be further pointed out that the LGEA was revised up to 1 September 1991 pursuant to the Revision of Laws Act 1968 and the revised edition came into operation on 16 September 1991. The LGEA has never been repealed, and remains on our statute books until this very day.

## **A. THE CONSTITUTIONAL POSITION**

Article 73 of the Federal Constitution sets out in simple terms the extent of Federal and State laws. It merely states that:

“In exercising the legislative powers conferred on it by this Constitution—

- (a) Parliament may make laws for the whole or any part of the Federation and laws having effect outside as well as within the Federation;
- (b) The Legislature of a State may make laws for the whole or any part of that State.”

Article 74 of the Federal Constitution deals with the subject matter of Federal and State laws. It reads:-

- “(1) Without prejudice to any power to make laws conferred on it by any other Article, Parliament may make laws with respect to any of the matters enumerated in the Federal List or the Concurrent List (that is to say, the First or Third List set out in the Ninth Schedule).
- (2) Without prejudice to any power to make laws conferred on it by any other Article, the Legislature of a State may make laws with respect to any of the matters enumerated in the State List (that is to say, the Second List set out in the Ninth Schedule) or the Concurrent List.
- (3) The power to make laws conferred by this Article is exercisable subject to any conditions or restrictions imposed with respect to any particular matter by this Constitution.
- (4) Where general as well as specific expressions are used in describing any of the matter enumerated in the Lists set out in the Ninth Schedule the generality of the former shall not be taken to be limited by the latter.”

Article 75 of the Federal Constitution goes on to provide for inconsistencies between Federal and State laws. It states that:

“If any State law is inconsistent with a federal law, the federal law shall prevail and the State law shall, to the extent of the inconsistency, be void.”

Following on from these, it is clear from a perusal of item 4 of List II of the Ninth Schedule to the Federal Constitution that falling within the State List is the matter of:

“[I]Local government outside the Federal Territories of Kuala Lumpur, Labuan and Putrajaya, including—

- (a) Local administration; municipal corporations; local, town and rural board and other local authorities; local government services, local rates, local government elections;
- (b) Obnoxious trades and public nuisances in local authority areas; and
- (c) *(Repealed).*”

Article 113(4) also states that “Federal or State law may authorize the Election Commission to conduct elections other than those referred to in Clause 1 [parliamentary and state elections]”.

Having said that, the Federal-State arrangement under the Federal Constitution is, when studied further, much more complex. Article 76 provides for Parliament to have the power to legislate for States in certain cases.

- “(1) Parliament may make laws with respect to any matter enumerated in the State List, but only as follows, that is to say:
  - (a) for the purpose of implementing any treaty, agreement or convention between the Federation and any other country, or any decision of an international organisation of which the Federation is a member; or
  - (b) for the purpose of promoting uniformity of the laws of two or more States; or
  - (c) if so requested by the Legislative Assembly of any State.
- (2) [...]
- (3) Subject to Clause (4), a law made in pursuance of paragraph (b) or paragraph (c) of Clause (1) shall not come into operation in any State until it has been adopted by a law made by the Legislature of that State, and shall then be deemed to be a State law and not a federal law, and may accordingly be amended or repealed by a law made by that Legislature.
- (4) Parliament may, for the purpose only of ensuring uniformity of law and policy, make laws with respect to land tenure, the relations of landlord and tenant, registration of titles and deeds relating to land, transfer of land, mortgages, leases and charges in respect of land, easements and other rights and interests in land, compulsory acquisition of land, rating and valuation of land, and local government; and Clauses (1)(b) and (3) shall not apply to any law relating to any such matter.”

Thus Parliament, for the purpose stated in Article 76(4) of the Federal Constitution, may make laws with respect to local government (and by implication, local government elections).

Such a law shall come into operation regardless of the provision of Article 76(3) of the Federal Constitution. This means that there is no requirement for the legislature of any State to have to first adopt a law to give effect to such a law.

The interesting question is whether the entirety of Article 76(3) of the Federal Constitution is avoided by virtue of Article 76(4) of the Federal Constitution. What is to be made of the words in the second half of Article 76(3) which read “*and shall*”

*then be deemed to be a State law and not a federal law, and may accordingly be amended or repealed by a law made by that Legislature”?* Is such a law passed pursuant to Article 76(4) of the Federal Constitution still considered State law, and therefore “may accordingly be amended or repealed by a law made by that Legislature”, or is it now purely a Federal law?

We will consider the specific provisions of the Local Government Act 1976 in relation to local government elections in the next section. However at this juncture and in the context of Article 76(4) of the Federal Constitution, the long title and preamble to the Local Government Act 1976 should be noted. It reads:

“An Act to revise and consolidate the laws relating to local government. WHEREAS it is expedient for the purpose only of ensuring uniformity of law and policy to make a law with respect to local government: Now, THEREFORE, pursuant to the provisions of Clause (4) of Article 76 of the Constitution BE IT ENACTED, by the Seri Paduka Baginda Yang di-Pertuan Agong with the advice and consent of the Dewan Negara and Dewan Rakyat in Parliament assembled, and by the authority of the same, as follows.”

Thus the framers of the Local Government Act 1976 clearly intended to take advantage of this “by-pass” provision.

It should be noted that after the Emergency (Suspension of Local Government Elections) Regulations, 1965 and the Emergency (Suspension of Local Government Elections) (Amendment) Regulations, 1965 had been passed, Parliament in 1973 repealed these two regulations and put in place the Local Government (Temporary Provisions) Act 1973. The Local Government (Temporary Provisions) Act 1973 was also passed pursuant to Article 76(4) of the Federal Constitution and enacted a specific provision in Section 3(1) relating to local government elections ceasing to have effect:

“(1) Notwithstanding anything to the contrary contained in any law and for so long as this Act is in operation, all provisions in any law relating to local government elections shall cease to have force or effect.”

To complicate matters, we would also have to consider the implications of Articles 80 and 81 of the Federal Constitution. Article 80 of the Federal Constitution deals with the distribution of executive powers and provides that:

“(1) Subject to the following provisions of this Article the executive authority of the Federation extends to all matters with respect to which Parliament may make laws, and the executive authority of a State to all matters with respect to which the Legislature of that State may make



laws.

- (2) The executive authority of the Federation does not extend to any matter enumerated in the State List, except in so far as is provided in Articles 93 to 95, nor to any matter enumerated in the Concurrent List, except in so far as may be provided by federal or State law; and so far as federal or State law confers executive authority on the Federation with respect to any matter enumerated in the Concurrent List it may do so to the exclusion of the executive authority of the State.
- (3) So far as a law made under Clause (4) of Article 76 makes provisions for conferring executive authority on the Federation it shall not operate in any State unless approved by resolution of the Legislative Assembly of that State.

....”

Thus we would also need to consider if the Local Government (Temporary Provisions) Act 1973 and the Local Government Act 1976 (LGA) in any way conferred executive authority that belonged to the State on the Federation. If so, there would need to have been a resolution of the Legislative assembly of that State to that effect.

The position under the Federal Constitution would also need to take into account Article 81 which sets out the obligation of States towards the Federation.

“The executive authority of every State shall be so exercised—

- (a) As to ensure compliance with any federal law applying to that State; and
- (b) As not to impede or prejudice the exercise of the executive authority of the Federation.”

Finally, we would also have to consider the implications of Articles 94 and 95A of the Federal Constitution. Article 94 of the Federal Constitution is entitled “Federal powers in respect of State subjects”, and contains the following provision:-

- “(3) Nothing in this Constitution shall prevent the Federal Government from establishing Ministries or Departments of Government to exercise the functions of the Federal Government under Article 93 and this Article in relation to matters within the legislative authority of a State, and such matters may include soil conservation, local government and town and country planning.”

To sum up the constitutional position, we have already come across the provision in Article 76(4) of the Federal Constitution that “Parliament may, for the purpose only of ensuring uniformity of law and policy, make laws with respect to....local government”. This is further provided for in Article 95A which establishes a National Council for Local Government:

- “(1) There shall be a National Council for Local Government consisting of a Minister as Chairman, one representative from each of the States, who shall be appointed by the Ruler or Yang di-Pertua Negeri, and such number of representatives of the Federal Government as that Government may appoint but, subject to Clause (5) of Article 95E, the number of representatives of the Federal Government shall not exceed ten.
- (2) [...]
- (3) [...]
- (4) [...]
- (5) It shall be the duty of the National Council for Local Government to formulate from time to time in consultation with the Federal Government and the State Governments a national policy for the promotion, development and control of local government throughout the Federation and for the administration of any laws relating thereto; and the Federal and State Governments shall follow the policy so formulated.
- (6) It shall also be the duty of the Federal Government and the Government of any State to consult the National Council for Local Government in respect of any proposed legislation dealing with local government and it shall be the duty of the National Council for Local Government to advise those Governments on any such matter.
- (7) The Federal Government or the Government of any State may consult the National Council for Local Government in respect of any other matter relating to local government, and it shall be the duty of the National Council for Local Government to advise that Government on any such matter.”

While it would thus appear that State Governments need to consult the National Council for Local Government when enacting legislation in respect of local government (which would include local government elections), the Constitution does not oblige the State Governments to follow the Council’s advice.

## **B. SPECIFIC LEGISLATIVE PROVISIONS**

We are confronted with a seeming conflict between the express wording of the LGEA and the LGA which replaced the Local Government (Temporary Provisions) Act 1973 with effect from 1 January 1977.

Sections 5 and 5A of the LGEA have already been set out. In turn, the wording of Section 15(1) of the Local Government Act 1976 reads as follows:-

“(1) Notwithstanding anything to the contrary contained in any written law, all provisions relating to local government election shall cease to have force or effect.”

Notwithstanding these specific provisions, both the Local Government (Temporary Provisions) Act 1973 and the LGA contain “opt out” provisions. Section 1(3) of the Local Government (Temporary Provisions) Act 1973 reads as follows:-

”In any notification made under subsection (2) the State Authority may suspend the operation of this Act in respect of any part or parts of the State.”

Section 1(2) and (4) of the LGA reads as follows:-

“(2) This Act shall come into force in a State on such date as the State Authority may, after consultation with the Minister, appoint in relation to that State by a notification in the *Gazette* and the State Authority may, after consultation with the Minister, appoint different dates for the coming into force of different provisions of this Act and may bring all or any of the provisions thereof into force either in the whole State or in such part or parts of the State as may be specified in the notification.

(4) The State Authority may, notwithstanding the provisions of subsection (2), by notification in the *Gazette* exempt any area within any local authority area from all or any of the provisions of the Act or from any by-laws.”

It is therefore legally possible for the State Authority to opt out from the Section 15 of the LGA by evoking its power under Section 1(4) of the LGA.

## **CONCLUSION**

Taken as a whole, it can be argued that the LGEA and the LGA ought to be read in a way that gives harmony to the development of legislative intent.

So, putting aside the fact that all three of Section 5 and 5A of the LGEA and Section 15 of the LGA are stated to operate notwithstanding any other written law to the contrary, the chronology of legislative intent would lead us to conclude that local government elections, having been done away with, may only be brought back via legislation at the Federal level.

Further, given the constitutional framework within which they operate, it would appear that notwithstanding that local government issues are within the purview of State Governments, nonetheless utilising the relevant provisions of the Federal Constitution, it is not difficult to see how Federal law has been permitted to supersede and govern in this area. Certainly within the framework of Article 95A of the Federal Constitution, the desire to achieve uniformity of policy and practice would argue for the view that there is sufficient clarity that local government elections have been effectively done away with and may not be brought back save by Federal legislation. The first action for a state government to do in pushing for local election is to place nationwide local elections on the agenda of the National Council for Local Government.

Having said that, state governments do not completely lose their power to introduce local elections within their own jurisdiction.

Sense must be made of the “opt-in” provisions contained in the LGEA. If local government elections have been done away with, why is the LGEA still on our statute books? Why is it that as late as 1991 it was still being the subject of legislative revision? Would this not lead us to conclude that the LGEA is still very much alive? Is it not possible to posit the view that while local government elections may have been suspended for a time, the possibility for its return exists and lies in the hands of State Governments? After all, even with Article 95A of the Federal Constitution in full view, the “opt out” provisions are so clearly provided for in the LGA. Is the ability to exercise such “opt out” provisions only available at the commencement of the legislation and not thereafter? Are such “opt out” provisions meant to cover only aspects of the LGA other than local government elections?

What seems clear is that State Governments are still in possession of the authority in relation to membership of local government. This has not been given over to the Federal Government pursuant to Article 80(3) of the Federal Constitution. As such, the proper reading of Article 76(3) and (4) of the Federal Constitution as they apply to the issue of local government elections and the provisions for “opt out” is that whilst there is no requirement for the legislature of any State to have to first adopt a law to give effect to such a law, such a law is very much still a State law and not a

Federal law because of the existence of the discretion afforded to the State Government, and by virtue of the power to exercise that discretion which has been retained by the State Governments.

There may be some lingering uncertainty as to whether any unilateral action by any particular State Government in this regard would be contrary to the provisions of Article 95A of the Federal Constitution.

The preferred view ought to be that the provision of the exercise of the right by a State Government to exclude any area within a local authority from the provisions of the LGA must have been considered, contemplated and ultimately permitted by the National Council on Local Government. Thus no question of non-compliance with any Federal law applying to the State or any impediment or prejudice to the exercise of the executive authority of the Federation arises. The exercise of such an “opt out” is not inconceivable and would be well within the rights of any State Government.

## **CHAPTER 3**

# **ROAD MAP TO BRING BACK LOCAL GOVERNMENT ELECTIONS**

Considering the constitutional and legal provisions, the Selangor Government can adopt three strategies in re-introducing local elections:

- a) Immediate: state-wide people-oriented selection process for appointees for local government that will not require legislative amendments..
- b) short-term: state-wide local government elections with some legislative amendments.
- c) long-term: nationwide local government elections with some legislative amendments.

Strategy (a) and (b) can be carried out concurrently, while strategy (c) will depend on the response from the Barisan Nasional Federal Government and other state governments. Common to all these three strategies is the need for public awareness campaigns and political mobilisation to create a conducive atmosphere for the Federal Government and other state governments to support local democracy.

The long term recommendations (c) are annexed as Appendix 1 in this paper.

### **A. THE IMMEDIATE OPTION: A PEOPLE-ORIENTED SELECTION PROCESS FOR APPOINTEES TO LOCAL GOVERNMENT**

This recommendation avoids the constitutional and legal complexity as discussed in Chapter 2. Legally, local councillors remain appointees of the state government but their nominations will now be done by their electorate rather than the component parties of the Selangor Government or civil society groups. In other words, the Selangor Government will hold a people-oriented selection process – by-passing the Election Commission – and recognise the elected candidates through these people-oriented selection processes by appointing them to the respective councils.

These selections will have political significance but no legal status. This is the method used in Perak for the village authorities – *Jawatankuasa Keselamatan dan Kemajuan Kampung* (JKKKK) under the Nizar Administration. Avoiding any legal and political battles with the Federal Government and Election Commission, this option can be carried out at the shortest possible time frame, even within 12 months.

The main challenges are the legitimacy and administration of such selections, which are intertwined.

#### **1. Legitimacy**

Legitimacy depends on two main factors: (a) participation of the population; (b) freeness and fairness of the selections. If the selections generate turnout rates comparable or even higher to those in federal and state elections, it would be difficult for any party to discredit these selections. High turnout will require meaningful and vigorous participation of candidates including those who are not from the State's ruling parties.

This would in turn require a well-designed selection system and process, and a credible administrative body playing the role of the Election Commission, which may be provisionally termed as Selangor Local Government Selection Commission (SLGSC).

## **2. The Selangor Local Government Selection Commission**

To have a credible selections authority, the SLGSC should consist of academics and non-partisan activists from civil society groups with members from the Coalition for Good Governance; credible election watchdogs like Malaysians for Free and Fair Elections (MAFREL) and the National Institute of Election Integrity (NIEI); human and women's rights groups like Suaram, Empower, Aliran and Hakam; and the Bar Council. Representatives from the political parties and candidates should be allowed to attend as observers of the SLGSC meeting. The actual administrative work would have to be carried out by the employees of the Selangor Government functioning in the respective local authorities..

## **3. The Selections System and Process**

In designing the selection system and process, the main consideration should be simplicity, feasibility and compatibility with the actual local selections desired. In lieu of this, we recommend an selections system and process based on the Local Government Elections Act 1960 (LGEA) and modelled partially on the federal and state elections. Its features are as follow:

- a. People who are eligible to participate in the selection process will be determined by the address as stated in their MyKad. Since the law requires a person to update the National Registration Department within 30 days of their change of address, this would be the most up-to-date information available to the SLGSC. For those who are currently living away from their wards but still want to participate in the selection process may do so by post.
- b. The areas of local authorities will be divided into the wards such that all local councillors will be appointed after winning in the selection process from single-member wards on the plurality formulae.
- c. Respecting the boundary of polling districts in the electoral roll where possible

to ease administration, the apportionment of wards should aim for equality in electorate size.

- d. Candidates in the selection process may compete as independents or under party banners.

#### **4. Feasibility**

The actual cost of running the people-oriented selection process can only be estimated meaningfully when the available resources are ascertained. To facilitate smooth and cost-efficient conduct of such pioneering selections, the state government may consider introducing these people-oriented selection process in two stages: the cities and municipalities in the first stage; the districts in the second stage.

We recommend that such a people-oriented selection process should only have a lifespan of one year so as to pave way for full council elections to happen thereafter.

### **Summary of the Key Process to Conduct People-oriented Selection Process in Selangor**

#### **1. Commitment from the State Government**

- to commit, lead and implement the people-oriented selection process
- to be responsible for voters' education so as to encourage residents and citizens to vote
- to conduct the people-oriented selection process in all councils and for all 24 councillors' zones, respectively
- to appoint the elected candidates, who went through these people-oriented selection processes, as councillors of the respective councils.
- to lobby other state governments to follow suit

#### **2. People who can vote**

- to allow anyone who has a MyKad and with a registered Selangor address to vote

#### **3. Estimation of the Budget**

- refer to Appendix 2.

#### **4. Duration**

The people-oriented selection process will be for a duration of one year which will allow for preparations and voters' education. The people-oriented selection process will be carried out on a staggered basis. As this is the first time such a process is being implemented, it is best to stagger the process so as to be able to remedy and address the challenges that may arise.



**First selection process:**

Cities: Shah Alam and Petaling Jaya

Municipalities: Subang Jaya, Kajang, Klang, Sepang, Selayang and Ampang Jaya

**Second selection process:**

Districts: Kuala Selangor, Sabak Bernam, Kuala Langat and Ulu Selangor

**Recommended timeline:**

Tasks	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	June
<b>Preparatory – immediate</b> consultations, setting up structures and budget setting												
<b>Preparatory –</b> administrative briefing and preparations												
<b>Media Strategy</b> – promotion												
<b>Voters</b> <b>Education</b>												
<b>Campaign</b> <b>Period for first 8</b> <b>councils in</b> <b>cities and</b> <b>municipalities</b>												
<b>People-oriented</b> <b>selection</b> <b>process –</b> staggered process for first six councils												
<b>Campaign</b> <b>Period for</b> <b>second 6</b> <b>councils in the</b> <b>districts</b>												
<b>People-oriented</b> <b>selection</b> <b>process –</b> staggered process for second 6												

councils													
<b>Appointment of the elected candidates by the State Government</b>													

**5. Some conditions to consider:**

- to ensure transparent people-oriented selection processes to take place, allow election monitoring bodies to observe the processes
- to provide equal opportunities for residents associations, civil society as well as party members to participate in the people-oriented selection processes. This can be carried out by effective and efficient dissemination of information in Selangor.

**B. THE SHORT TERM STRATEGY: STATE-WIDE LOCAL GOVERNMENT ELECTIONS**

This strategy aims for introduction of local elections only in the state of Selangor by utilising the existing provisions in the LGEA. We adopt a minimalist strategy in the design of the elections. This strategy can be carried out concurrently with the people-oriented selection process as preparatory work needs more time.

This recommendation is the logical way out if the Federal Government and other state governments if the National Council for Local Government is not agreeable to the idea of nationwide local elections. If the State’s action is challenged by the Federal Government or the Election Commission, it may have to be decided by the Court on constitutional grounds. Politically, the legal process and even a defeat at the Federal Court would only help the cause of local elections as it would likely pit the Federal Government and the Election Commission against public opinion. This will create pressure for the two coalition political parties to seek a political solution on the negotiation table.

**1. Legal Steps**

Our starting position is that the LGEA still remains an operative law. However, the provisions of LGEA were in effect suspended by virtue of Section 15 of the Local Government Act 1976 (LGA).

To avoid application of Section 15 of the LGA, the Selangor Government must exercise its right under Section 1(4) of the LGA:

“The State Authority may, notwithstanding the provisions of subsection (2), by notification in the Gazette exempt any area within any local authority area from all or any of the provisions of the Act or from any by-laws.”

The Selangor Government must give notification in the Gazette as to which area within any local authority area is to be exempted from the provisions of Section 15 of LGA.

Once that is done, the Selangor Government must enter into consultations with the Election Commission in order to give effect to the provisions of Section 4(1) of LGEA:

“The State Authority shall, *after consultation with the Election Commission* in respect of the boundaries of the local area and the number of Councillors to be elected to such municipality, by order grant to each municipality created within the State under the Municipal Ordinance at any time after the coming into operation of this Act, and within three months of the date of the notification creating such municipality, a Constitution under this Act” (emphasis added).

To utilise the provisions in LGEA, the Selangor Government must ensure that the existing local authorities would fit as the successor institutions of the Municipalities in Section 4 of the LGEA. All local authorities should already have a Constitution which would need to be reviewed to see what provision has been made to:

- a) “prescribe the total number of Councillors;
- b) prescribe the number of Councillors to be elected and the number (if any) to be appointed;
- c) prescribe the manner in which the President and Deputy President of the Council shall be appointed or elected;
- d) prescribe the powers and duties of the Deputy President of the Council;
- e) prescribe the disqualifications of Councillors and candidates for election as Councillors;
- f) prescribe the manner in which appointed Councillors shall be appointed and the term of office of appointed Councillors;
- g) prescribe the circumstances in which the seat of any Councillor shall become vacant and the manner in which such vacancy shall be filled;
- h) provide for the payment to Councillors present at any meeting which shall

constitute a quorum;

- i) provide for the payment to Councillors of allowances and other privileges and of a salary or allowance to the Councillor for the time being performing the duties of the President or Deputy President;
- j) regulate or authorise the making of rules by the Council of the municipality to regulate the procedure at meetings.”

The intent of Section 4 of the LGEA was in effect to give to the Election Commission some role in the electoral process with respect to local government elections after its creation by the Federal Constitution. This is in reference to the “consultation with the Election Commission in respect of the boundaries of the local area and the number of Councillors to be elected to” the municipal council.

The role of the Election Commission vis-à-vis elections other than for the House of Representatives and the Legislative Assemblies of the States is set out in Article 113(4) of the Federal Constitution, which reads:

“Federal or State law *may* authorise the Election Commission to conduct elections other than those referred to in Clause (1).”

In the event that the Election Commission refuses to assist, legal proceedings can be taken to force the Election Commission to carry out its constitutional function.

## **2. System Design Options under LGEA**

The LGEA governs the following aspects, amongst others, and provides certain options, and they are as follows:

### **a) *The scope of elections***

Partial appointment of the councils are allowed (see Sections 4(2)(b) and 5(2)(b)] but municipalities must have an elected majority, exclusive of Presidents (see Section 3(2)(b)).

### **b) *The election of President and Deputy President for the Council***

These two positions can be appointed or elected, to be determined by the Constitution or Gazetted Order (see Sections 4(2)(c) and 5(2)(c)]. The election of the Presidents and Deputy Presidents can be done directly by voters or indirectly by councillors since the Act is silent.

The Act is silent if there should be a parliamentary-style government but one would

assume it to be. The power and duties of the Deputy President of the Council are to be defined by the Constitution or Gazetted Order (see Sections 4(2)(d) and 5(2)(d)] but curiously, those of the Council Presidents are not directly defined. There is no mention of other portfolios in the council except for a Secretary for Town Councils, who may be appointed by the State if the President of a Town Council is elected and will take over all the functions of the elected President specified in Third Schedule. (see Section 11]

**c) *The manner of councillor appointment***

Since this is to be determined by the Constitution or Gazetted Order (see Sections 4(2)(f) and 5(2)(f)), there is an opportunity of introducing a “party list proportional representation” (party-list PR) element in the electoral system, where a party may be allocated seats for appointment to balance vote-seat disproportionality resulting in constituency elections.

**d) *General Elections***

The elected councils are to hold office for three years. Elections must be held within 60 days of its expiration and the new council must hold its first meeting within 30 days from the general elections. The LGEA did not provide for the right of the President or members to dissolve the council prematurely to pave way for fresh elections. (See Section 13)

The general election however may be held after 60 days if the Election Commission, “upon representation in that behalf being made to it by a State Authority, is satisfied that the holding of such elections within the period of sixty days aforesaid is impracticable or would not be in the interest of the public”. (See Section 13A]

**e) *Casual Vacancy and By-elections***

A casual vacancy may happen because of death, resignation or disqualification. Disqualification may include removal by way of a Council’s resolution if a member is without leave absent from three consecutive ordinary meetings or fail during a period of consecutive months to attend at least one meeting of a standing committee the member is appointed in three consecutive months (see Sections 8, 9 and 10]

If an election is not held within the appointed time, the election fails partly or fully or becomes void, or a casual vacancy occurs amongst the elected councillors, the Election Commission should conduct a by-election within the 60 days from the day it is made aware of the vacancy (see Section 13A] The winner in a by-election to fill a casual vacancy shall hold office only for the remaining period of the original term. (see Section 12(3)).

A casual vacancy may not be filled through a by-election if it occurs within six months

before the date of the next general election, unless the total number of unfilled vacancies exceeds one-third of the total number of elected councillors for more than three months before the date of the next general election (see Section 12(2)).

If more than half of the elected councillors are vacant within three months before the date of the next election, the State Government may appoint persons to fill all or any of such vacancies if deemed necessary (see Section 12(3)).

Like the general election, a by-election may be held more than 60 days after the vacancy if the Election Commission is satisfied upon a representation by the State Government that holding it within the scheduled period is impracticable or would be against public interest (see Section 13A]

Technically, subject to the LGEA, the Constitution and the Gazetted Order “may prescribe the circumstances in which the seat of any Councillor shall become vacant and the manner in which such vacancy shall be filled” (see Sections 4(2)(g) and 5(2)(g)).

**f) *Qualification and Disqualification as Elected Councillors***

The general requirements to qualify as an elected councillor are:

- (a) attaining age of 21;
- (b) citizenship;
- (c) not being disqualified see (Paragraph 1, First Schedule]

The general grounds for disqualification to be an elected councillor are

- (a) having “been found or declared to be of unsound mind”;
- (b) undischarged bankruptcy;
- (c) being convicted on or proven guilty of an election offence;
- (d) failure to lodge return of election expenses in parliamentary or state elections;
- (e) being convicted on or proven to be guilty of fraud or dishonesty, corruption or any other unpardoned offence that carries imprisonment of a year or more or a fine of RM 2000 or more;
- (f) acquiring citizenship of, exercising of rights of citizenship in or allegiance to a foreign country other than Malaysia;
- (g) holding a fulltime office in public service;
- (h) having vested interest in contract or work related to local authority (exclusive of share-holding, contracting as a consumer of local authority’s services, or contract value less than RM150) unless exempted in writing by the Ruler;
- (i) being convicted under sub-section of 4(1) of the Sedition Act 1948 for questioning the provisions of Part III, Article 152, 153 or 181 of the Federal Constitution.

The disqualification grounds of (c), (d) and (e) are to expire five years after conviction and can be removed sooner by the Ruler.

Other grounds of disqualification may be added in the Constitution or Gazetted order (see Paragraphs 2, 3 and 4, First Schedule; Sections 4(e) and 5(e)).

The decision of the council over the disqualification of any councillors should be taken by resolution and such resolution, when approved by the State Government, shall be final (see Section 11]

A person is also prohibited from representing for more than one electoral ward or being both an elected and appointed member (see Section 7]. There is however no provision against simultaneous membership in the federal Parliament or State Legislative Assembly.

#### **g) *Qualifications and Disqualification of Electors***

The general requirements for citizens to vote in an electoral ward are:

- (a) attaining age of 21;
- (b) residency;
- (c) having registered;
- (d) not being disqualified.

The residency requirement can be waived for (a) owners of immovable property with an assessed net annual value of minimum RM30 or an improved value of minimum RM 500; who (b) have paid assessment rates for the year or half-year ending on December 31 of the year preceding the qualifying date; and (c) have filed in with the Election Commission for registration within the registration or revision period.

A non-resident voter is entitled to “only one vote in [one] local area”, see Section 1), the law does not prohibit s/he from registering in more than one local area. While Section 10 of the Elections Act 1958 further rules out the possibility of registration “as an elector in more than one constituency for the purpose of any election”, it may be arguable that elections to two local authorities are not the same election.

However, the State Government may opt out from this alternative requirement, making residency a compulsory criterion for enfranchisement. (see Paragraphs 1 and 4, Second Schedule].

#### **h) *Electoral System***

The only electoral formulae used is simple plurality, whereby the candidates who poll “the greatest number of valid votes cast by the registered electors” in an electoral ward are to be declared the winners. The Act however allows variation in the magnitude of electoral wards, namely, an electoral ward may elect one or more members. In multi-member constituencies, “each voter shall be entitled to a vote in respect of each vacancy” (see Section 19)

This means we have only two possible electoral system: “single member plurality” (commonly known as the First-Past-The-Post system) and “multi-member plurality” (more commonly known as “bloc vote” system).

Both systems are problematic in the sense of vote-seat disproportionality, that the minority groups in the constituencies may not be represented at all, but the multi-member system is the worse amongst the two. While a less populous social group may find itself in a dominant position in one or two single-member wards in an area, such opportunity of representation may be lost if the wards in the area are combined together to form a multi-member ward.

One possible manipulation is to apportion some of the seats for appointment, which will be allocated to parties based on their share of the total popular votes in all the contested wards. This will create a system somewhat similar to Mixed Member Majoritarian System in countries like Japan, South Korea, Taiwan and the Philippines (House of Representatives) except that the voters will be only given one instead of two ballots (one for candidate, one for party).

#### ***i) Electoral Roll and Districting***

Unless otherwise directed by the Election Commission, the electoral roll for local government elections should be combined with those of parliamentary and state elections, (see Section 18(1)). The Election Commission may also use such parts of the current electoral rolls for parliamentary and state elections as relate to any polling district situated within the local area of such Council (see Section 18(2)).

If the State Government chooses not to opt out from the ownership and rate-payment criterion (as the alternative to residency), the existing rolls for parliamentary and state may not be used in full. At least a supplementary roll needs to be created for non-resident voters. This however may not suffice to root out “phantom voters” in the existing rolls because of the provision in Section 18(2).

The main problem lies in districting or ward delineation.

If the existing electoral rolls for the parliamentary and state elections were to be used, the basic unit for the local ward delineation will have to be the existing “polling districts”. Since the parliamentary and state constituencies have conveniently ignored that of administrative districts and local authorities, some of the polling districts may be located between more than one local authority areas. A related problem is mal-apportionment where some districts may be much larger than others in electorate size, hence violating the principle of “one person one vote” in essence.

The issue of districting needs to be considered in drafting the Constitution or Gazetted Order. The LGEA requires consultation on the part of the State



Government with the Election Commission “in respect of the boundaries of the local area and the number of Councillors to be elected to such municipality” (see Sections 4(1) and 5(1)).

**j) *Electoral Administration***

Electoral administration is to be run by the Election Commission, as in line with Article 113(4) of the Federal Constitution which has the full power in both registration of voters (see Section 20) and conduct of elections (see Section 21).

**k) *Financial Cost***

The LGEA does not require the State Government to bear any cost of the local elections. The Federal Constitution and the Elections Act 1958 are also silent on the funding of the Election Commission operation but in practice the Federal Government has always been footing the bill. It is therefore reasonable to expect the Federal Government to foot the bill.

Section 14(1) of the Elections Act 1958 authorizes the Election Commission to “use free of charge as a polling station any school or any portion of a school in receipt of a grant, or in respect of which a grant is made, out of monies provided by any Government in Malaysia, or any other public building or premises or any portion thereof”.

In any case, it would be the responsibility of the Election Commission, assigned by Article 113(4) of the Federal Constitution to undertake any elections other than parliamentary and state elections, to prepare a budget of the cost and funding.

**3. *A Minimalist Design***

Considering the advantage of reviving local elections at the earliest possible time over the advantage of ideal locations which may involve time-consuming legislative and judicial efforts, the following minimalist design is proposed for the Selangor Government to carry it out at the earliest possible time.

**a) *Franchise***

The Selangor Government should opt out from the ownership and rate-payment criterion for franchise, paving way for the simple adoption of parliamentary and state electoral rolls (see Paragraph 4, Second Schedule).

**b) *Electoral Roll***

The existing electoral rolls for parliamentary and state elections may be used with minimal modification whereby polling districts will have to be located within only one

local authority area.

Where an existing polling district span more than one local authority area, it will have to be broken into smaller polling districts located within only one local authority area. Alternatively, the voters in the polling district should be separated by their local authority area.

**c) *Electoral System and Ward Delineation***

For simplicity, all councillors will be elected from single-member wards. The total electorate of a local authority area will therefore be divided by 24 (or any other number of the councillors) to yield an “electoral quota”, which will be the ideal size of an electoral ward.

Polling districts will be combined in the most optimal way to produce an electoral ward with an electorate nearest to the “electoral quota” after taking into consideration of administrative, economical, socio-cultural and natural boundaries that shape the local communities.

To avoid excessive mal-apportionment, the largest and smallest electoral ward must not be 25% larger or smaller than the “electoral quota”.

**d) *Chief Executive***

The President of the Council shall be elected indirectly amongst the councillors. This will produce a parliamentary style government which is in place at the federal and state levels and therefore familiar for Malaysians.

## **CHAPTER 4**

### **The Political Road Map**

This paper strongly recommends a two prong approach.

Firstly, the immediate implementation of the people-oriented selection process in order to appoint the local government representatives that are chosen by the local residents. This should take place by June 2010. As mentioned above, this strategy avoids the constitutional and legal complexity. At the same time, it is still a legal process whereby local councillors remain appointees of the Selangor Government but their nominations are carried out through their electorate rather than the component parties of the Selangor Government or civil society groups. With the results of the selection process, the Selangor Government must recognise the women and men selected by the residents and appoint them to the respective councils.

Secondly, and this is to be carried out concurrently with the selection process mentioned above, the Selangor Government should start by putting local government elections on the agenda of the National Council for Local Government and start talks with the Election Commission. Efforts to build consensus at the Selangor and Pakatan Rakyat level to support local elections must begin before the external negotiation. This can be carried out now and to move towards the conduct of local elections in the Pakatan Rakyat states by 2011.

We are sure the Selangor Government recognises the re-introduction of local government elections involves not only a legal or administrative considerations, but most importantly, political will. Whenever processes involve the *rakyat* making direct choices, there is always the possibility that the choices may not favour the government in power at that point in time.

It is our proposal that the overall roadmap should therefore consist of four parts: (a) political mobilisation; (b) federal-state negotiation; (c) judicial remedy (if necessary) (d) electoral administration (preparation of electoral rolls, constituency delineation and conduct of elections).

**Table 4.1 Road Map to Local Elections**

<b>Stages</b>	<b>People-Oriented Selection Process</b>	<b>Statewide Selections / Elections</b>	<b>Nationwide Elections</b>
<b>Immediate People-Oriented Selection Process by December 2009</b>	<b>Yes</b>	<b>Yes – Selangor to lead (can be carried out by the four states)</b>	
Political Mobilisation	Yes	Yes	Yes
Federal-state Negotiation	No	Yes	Yes
Judicial Remedy	No	Possible	No
Selection / Electoral Administration	Yes	Yes	Possible

The matters related to the last three issues have been discussed in Chapter 2 and Chapter 3.

We will now focus on political mobilisation which is the most important aspect of the entire struggle.

Beyond the State Government’s commitment, effective political mobilisation should cover three core groups: (1) the state legislature; (2) the existing local councils and councillors; (3) the general public and local communities.

**1. State Legislature Select Committee on Local Democracy**

The Selangor State Assembly shall appoint a Select Committee to produce a Local Democracy Action Plan which includes the preparation of legislative bills, consultations with local governments, residents, civil society, the Election Commission and the Federal Government. Public hearings can be an effective way to garner public support.

**2. Local Democracy Task Forces at every Local Council**

A Local Elections Task Force shall be formed in every City/Municipal/District Council to advance the Local Democracy Action Plan. Their tasks would include providing their own feedback after carefully studying the plan, proposals for revision of the Council constitution, conducting public consultation sessions with residents on the plan, and collecting public input for the delineation of electoral wards.

**3. Local Democracy Forum in every Local Authority**

This is to ‘shadow’ the Local Elections Task Force within each local authority. While

the two may have common members in the NGO councillors, it is important to separate the two as the different and even conflicting organisational and institutional interests must be recognised. Collapsing all into one body would suppress expression of certain interests and lead to inadequate consultation and deliberation.

In the political mobilisation, it is important to recognise the interests of the Pakatan Rakyat parties. No reform can be carried out without due recognition and accommodation of some vested interests. However, the re-introduction of local government elections also must not be dominated by partisan interests to the extent that the Barisan Nasional parties feel alienated. This is why it is important to have a bi-partisan Select Committee at the state level and a non-partisan forum at the local level.

For the Local Democracy Action Plan to succeed, it must have the support of all the Pakatan Rakyat parties, not only at the State level but at the Federal level. Hence, informal lobbying and mobilisation not mentioned here must be carried out hand-in-hand with the three-tiered structure proposed here.

By taking on board most, if not all, of our recommendations, we are confident that the Selangor Government will lead the way back for elected representatives to represent the *rakyat* in all 3 tiers of government.

## **Conclusion**

In summary, the recommendations of the Coalition for Good Governance are as follows:

1. Immediate: state-wide people-oriented selection process for appointees for local government that will not require legislative amendments.
2. short-term: state-wide local government elections with some legislative amendments.
3. long-term: nationwide local government elections with some legislative amendments.

In taking the lead in the local council elections, the Selangor state government shows its sensitivity towards changing political realities in Malaysia. It strengthens its commitment towards recognising citizens' rights to assert their fundamental liberties. Citizens are given the opportunity to participate in the election of their councillors and hold them accountable, as opposed to an appointment system that does not guarantee any check and balance. This move complements Pakatan Rakyat's March 8 promise towards building a more democratic, transparent and accountable Malaysia.

## **APPENDIX 1**

### **THE LONG-TERM OPTION: NATIONWIDE LOCAL GOVERNMENT ELECTIONS**

This option is one to have a thorough reform of local governments which goes beyond local elections. It therefore fits into the explicit goal of the National Council for Local Government in pursuing uniformity. The Selangor Government should request the Council to place reforms detailed in this section on its agenda.

The discussion shall cover (a) synchronizing administrative and electoral districting within the single-member plurality (SMP) or more popularly known as the First-Past-The-Post system; (b) consideration of alternative electoral systems; (c) introduction of an elected mayor or chief executive; (d) expansion of the franchise basis.

#### **1. Synchronising administrative and electoral districting within the Single Member Plurality system**

In the minimalist design, we propose that the all polling districts that are located within one local authority area to be retained, while other polling districts are to be broken down smaller so that no polling district will span beyond one local authority area. The election wards are then delineated by grouping a number of polling districts together so that the total of electorate for each ward will not vary too much in size.

This solution however does not address two inter-related deeper problems, namely, the disconnection between parliamentary and state constituencies with local jurisdictions and the gerrymandering and mal-apportionment of electoral districts at all levels of election.

With the current two-tier elections, delineation is done in such a way that parliamentary constituencies do not cross state boundary and state constituencies do not cross parliamentary constituencies. This constitutes a neat three-tier political structure (with polling districts as the basic constituting tier with no corresponding public offices) as below:

**Table A: Existing Hierarchy of Political-Electoral Divisions**

No	Entity/Division	Level	Nature
1	State	State	Political/ Administrative
2	Parliamentary Constituency	Federal	Electoral
3	State Constituency	State	Electoral
4	(Polling District)		(no public offices)

Simply because there is no local election, local administrative units have been conveniently omitted in this subject. Using the same electoral rolls for all three levels of elections naturally require the incorporation of local-level units into this hierarchy, with parliamentary and state constituencies also do not cross municipal/district boundaries and local electoral wards do not cross the state assembly district boundaries, as in the five-tier political structure (with polling districts as the basic constituting tier) below:

**Table B: Proposed Hierarchy of Political-Electoral Divisions**

No	Entity/Division	Level	Nature
1	State	State	Political/ Administrative
2	City/Municipality/District	Local	Political/ Administrative
3	Parliamentary Constituency	Federal	Electoral
4	State Constituency	State	Electoral
5	Local Electoral Ward	Local	Electoral
6	(Polling District)		(no public offices)

A rationalization of the political-electoral sub-division will significantly reduce the mal-apportionment and gerrymandering of constituencies at all three levels. On the other hand, tolerating the existing mal-apportionment and gerrymandering at the higher levels will inevitably affect electoral fairness at the local level.

More importantly, the alignment of political-electoral divisions at all three levels will synchronize political interests of citizens at different levels of government. In other words, citizens who share the same local councillor will naturally share the same state assembly person, the same parliamentarian, the same City/Municipal/District Council and the same State Government.

Such rationalization however means also two important changes. First, every inch of a state's territory must come under one local authority or another. At the moment, only local authorities in Penang and Malacca cover the entire state's territory, as a legacy of the Straits Settlement. In other states, the exhaustive sub-divisions are administrative districts, whose boundaries may cross local authorities.

Secondly, the existence of various sub-state divisions must be unified into one, effectively combining administrative districts and local authorities. At present, there are not only administrative districts run by the District and Land Office (a sub-division of state administration), also districts with slightly different boundaries for other agencies like Police and Public Works Department (both branches of federal government). A synchronization of the political-electoral divisions at the local level thus also implies the consolidation of the local authority's function in implementation and coordination.

The reform advocated here merely aims to rationalize and streamline the political-electoral division, without changing the logic of the SMP electoral system.

---

**a) *Consideration of alternative electoral systems***

Just as any electoral system, the SMP System shapes party systems and the political culture. While it is most convenient to implement the same electoral system for all three levels of election, we may also opt for different systems to allow variety and, more importantly, meet different goals in the political system.

For example, United Kingdom uses five major electoral systems for five different groups of political institutions: (a) SMP for the Westminster Parliament and most of their local elections; (b) Party-List Proportional Representation for European Parliament Elections in Britain; (c) Single Transferable Votes (STV) for elections of both Northern Ireland Assembly and European Parliament in Northern Ireland, where voters can rank all candidates in multi-member constituencies; (d) Mixed Member Majoritarian (MMM) for the Scottish Parliament, the National Assembly of Wales and the London Assembly where voters have two votes, one for the local candidate and one for the party; and (e) Supplementary Vote, for the election of the Mayor of London, where voters can indicate their first and second preference.

Currently, Section 19 of the LGEA allows only the plurality method whereby the leading candidates with the highest votes win. In the long-run, this can be changed.

*i. The Advantages of the SMP System*



The SMP system is normally credited for a few of its advantages.

Firstly, it is believed to be able to encourage responsible government and political stability. This is because it normally rewards the largest parties with more seats to constitute a majority in assembly even if it just wins a plurality in votes. This provides the ground for a single-party government and the winning party will need to bear responsibility for all its policies and implementation. The voters are given the opportunity to “kick the rascal out” if they are not happy with the incumbent, hence resulting in wholesale party alternation.

Secondly, it is believed to be able to encourage middle ground politics. Because candidates normally need to win more than half of the votes to claim victory, this forces them to take a more centrist position. Radical parties are believed to be disadvantaged in SMP elections than in Proportional Representation (PR) elections where they may win with the support of a small group of hardcore supporters.

Thirdly, SMP provides local representation in the sense the voters have individual representatives whom they can turn to for communication and assistance, which is less possible in multi-member constituencies.

#### *ii. The Disadvantages of the SMP System*

The SMP system however is not spared from its disadvantages.

Firstly, it results in vast vote-seat disproportionality since the votes for the losing candidates are not translated into any seats. Systematically, it favours larger parties and those with more concentrated support and disfavours the smaller ones and those with dispersed support. In an ethnically-divided society, this often marginalizes non-communal parties and hence effectively limits the choices for voters.

Secondly, it may be an obstacle for centrist politics in an ethnically divided society, unlike the case in culturally more homogenous democracies. Its winner-takes-all feature may increase the sense of insecurity amongst communal voters and encourages them to concentrate their votes for one party that is seen as the best champion of their ethnic interest. When the majority ethnic group in mixed constituencies chooses to back a party fully, it reduces electoral competitiveness in such constituencies. The competitive constituencies will then likely have to be those mono-ethnic ones, giving no local incentives for politicians to appeal across ethnic lines. Hence, moderation will be encouraged only when politicians see the prospect of them winning executive power which requires multi-ethnic support, not unlike in PR system. Such prospect however may be hurt by vote-seat disproportionality in the SMP system, making it more inferior than PR. In other words, the different dynamics of social groups causes the original centrist pressure built-in at the constituency level to fail or malfunction.

Hence, the SMP system may function better in local authorities that are culturally more homogenous. In those heterogenous ones, the communal dynamic may be intensified by the electoral system.

Thirdly, because the SMP system may entrench ethnic parties, party alternation may not be possible in culturally heterogenous local authorities. This may breed corruption, power abuse and incompetence.

*iii. The Cases against Pure Party-List PR and Preferential Voting*

While we need to explore alternative electoral systems, pure Party-List PR and Preferential Voting (where voters may rank their preferences) may not be suitable for different reasons.

The main objection to any electoral system with only multi-member constituencies – like pure Party-List PR - is that the close linkage between voters and their representatives will be lost. This will not bode well for both public participation in general and the managing of democratic transition. A pure Party-List PR may therefore cause a democratic deficit.

While preferential voting in single-member constituencies (as in Australia) will not weaken the ties between voters and elected representatives, they may still result in significant vote-seat disproportionality, depriving the smaller parties the incentives to move to the centre in the hope of joining a coalition government. Subject to the ethnic constitution at constituency level, Preferential Voting may just fail to reward true centrism as SMP does.

*iv. The Case for Mixed Member Systems*

If encouraging moderation amongst smaller parties via reducing vote-seat disproportionality and maintaining local representation are two main considerations in the changing or modification of the electoral system, then the most suitable options would be the Mixed Member or Additional Member systems, whether the proportional or majoritarian strands.

Both Mixed Member Proportional (MMP) and Mixed Member Majoritarian (MMM) systems gives voters two ballots, one for the local representative (as in SMP elections), the other one for the party (as in Party-List PR elections). The SMP element hence will sustain the close voter-representative link while the Party-List PR element helps to reduce vote-seat disproportionality, hence providing more incentives for radical parties to move to the centre.

The difference between MMP and MMM is the degree to which the vote-seat disproportionality will be corrected. Under the MMP system which is used in Germany and New Zealand, the party ballot determines the total seat share of every

qualified party. After deducting the number of geographical constituencies won, a party will be given the additional seats which are to be allocated to its candidates on the party list.

In contrast, the MMM system – which is used for both Houses in Japan, the unicameral Parliament in Taiwan, the Lower Houses in South Korea and the Philippines, and the regional legislatures in UK – allocates the party list seats independently from the result of the constituency elections. Hence, the disproportionality from the constituency elections (normally using SMP system) will not be corrected fully even if the total seats are equally divided between the constituencies and the party-list elements. In most cases, the MMP system normally gives larger share of seats to the constituency election and uses the party-list element only to partially correct the excessive disproportionality of the former. MMP system is therefore often characterised as a semi-proportional system.

The following hypothetical example will illustrate the allocation of seats in a 24-seat council according to SMP, MMM (50% from the party list) and MMP (50% from the party list) in a simplistic three-party format. For simplicity, the parties vote share for both the constituency ballot and party ballot are the same. The party list seats are allocated according to Hare Quota, one of the simplest formulas used<sup>18</sup>. (See Table C)

The hypothetical example shows that the smallest party is represented in a descendant order of fairness from MMP, MMM to SMP. This means a move from SMP may encourage smaller parties that take on different issues – more likely to be non-communal ones like environment, poverty, gender equality - from the main parties. Community leaders and civil society activists can then have a better chance of pushing their agenda in mainstream politics than joining the mainstream parties. We may eventually have a different and less communal party system at the local level from that in the federal and state levels. This may push the party system at the higher levels to evolve positively.

---

18 The Hare Quota first calculates the “average” needed to win a seat by this formula: [total votes]/[total seats +1]. In the 12-seat example (MMM) below, the average would be 1/12 or 8.33%. The party’s vote share will then be divided by this average to obtain a quota. The Green, Blue and Red parties with 40%, 35% and 25% of votes respectively will get 4.8, 4.2 and 3 quotas. The seats will be allocated to the parties with the full quota and the remainder will go to those with the highest remainder. It is one of the so-called “Highest Remainder” methods. In our example, the Green, Blue and Red parties will get 4+1, 4 and 3 seats.

**Table C: Hypothetical Results of a 24-seat Council under Different Electoral Systems**

<b>Geographical Constituencies</b>	<b>24</b>	<b>12</b>	<b>12</b>
Blue Party (votes: 35%; seats: 50%)	12	6	6
Green Party (votes: 40%; seats: 41.67%)	10	5	5
Red Party (votes: 25%; seats: 8.33%)	2	1	1
<b>Party List Seats</b>	<b>0</b>	<b>12</b>	<b>12</b>
Blue Party (votes: 35%; seats: 50%)	0	4	2
Green Party (votes: 40%; seats: 41.67%)	0	5	5
Red Party (votes: 25%; seats: 8.33%)	0	3	5
<b>Total Seats</b>	<b>0</b>	<b>12</b>	<b>12</b>
Blue Party	12 (50.00%)	10 (41.67%)	9 (37.5%)
Green Party	10 (41.67%)	10 (41.67%)	10 (41.67%)
Red Party	2 (8.33%)	4 (16.67%)	6 (25%)
<b>Vote-Seat Proportionality for the smallest party</b>	<b>8.33%/25% = 33.33%</b>	<b>16.67%/25% = 66.67%</b>	<b>25%/25% = 100%</b>

The second good point about having a Mixed Member system is that there can be division of labour between grassroots and service-providing politicians and politicians who focus more on policy and legislations. The party list can be used as a method to pull in political talents – including women and professionals - who may shy away from time-consuming constituency service work.

The third advantage of a Mixed Member system is that the party list facilitate the implementation of quota for certain groups such as women, Orang Asli and the disabled. By making compulsory a certain percentage or priority for candidates from certain groups, their chances of getting elected will be much higher than running in SMP constituencies.



v. *Introduction of an elected mayor or chief executive*

The introduction of a directly elected mayor or chief executive of local authority will radically transform the form of government from cabinet-style to presidential. This change is therefore more radical than a change of electoral system but is nevertheless worth consideration.

An elected major will allow the city, municipality or district to be represented by a single person. The elected chief executive can also appoint his/her own team of technocrats to run the various departments in council while the elected council can focus its role in scrutinizing the executive and legislating by-laws. This will allow the doctrine of separation of power to go the fullest, which may be necessary to eliminate the corruption and power abuse so prevalent amongst local authorities.

Direct election of the chief executive helps in recruiting more political talents in administrative capability and vision. Different from lawmakers whose job are in scrutinizing government and debates, a powerful mayoral office may be a better training ground for executive jobs at the federal and state level. Direct election of the chief executive may also help to break glass ceiling in politics as it may be easier for a women or minority candidate to win popular votes than to win the endorsement of her/his political colleagues.

While a presidential government at national level is commonly criticized for its winner-takes-all nature and also that the combination of the head of state and head of government in one person may hurt loyalty of citizens to the polity, such worry does not apply to a local chief executive since a local authority is not even quasi-sovereign and its power is limited.

**Expansion of the franchise basis**

The present laws and regulations pose a few restrictions to the basis of franchise. First, non-citizens are barred from all forms of elections. Secondly, with the emphasis of having the same electoral rolls for elections at all levels, residency is effectively privileged as the only criterion of interest representation and aggregation in the constituency-based electoral system.

All these restrictions deserve to be reviewed given the challenging modes of lifestyle and work in post-industrial societies.

While citizenship should rightly be maintained as a requisite for franchise at the federal and state levels, this need not be the case for local governance which deals with nothing sovereign. As the main function of local government is providing local services, facilities and regulations, public participation should be seen from a user and stakeholder perspective where non-citizen stakeholders like permanent residents and long-term foreign workers are to be included. To entitle the right to vote, the non-citizen residents may be required to pay certain rates or taxes as the

citizens. This may involve rearrangement of financial power between the federal, state and local governments.

As now citizens commonly work in one place, live in another place and may own property in a third place (for example, home town), taking residency as the sole basis of geographical interest representation may be obsolete. While the LGEA (see Paragraphs 1 and 4, Second Schedule) liberally allows ownership and rate-payment as the substitute to the residency requirement, this may not be compatible with the need to use the same electoral roll for federal and state elections (See Section 18 of the LGEA).

To facilitate more flexible electoral participation, the local electoral rolls should be allowed to be substantially different - and if necessary, to be separated - from the federal and state electoral rolls. While no one should be allowed to have more than one vote in a local authority area, nothing should prevent a person from registering as voters in more than one local authority if s/he meets the franchise requirement. Section 10 of the Election Acts 1958 which rules out the possibility of registration "as an elector in more than one constituency for the purpose of any election" should not be interpreted as barring registration in multiple local jurisdictions.

By commissioning this paper, the Selangor Government has made a commendable step to initiate a thinking process and a road map to bring back local government elections. This effort by the Selangor Government, encompassing all the three members of the Pakatan Rakyat, Parti Keadilan Rakyat (PKR), Democratic Action Party (DAP) and Parti Se-Islam Malaysia (PAS), reflects the Pakatan Rakyat's willingness to fulfil their electoral promises in 2008 especially regarding local elections.

## APPENDIX 2

### COSTING FOR PEOPLE-ORIENTED SELECTION PROCESS

This model projects a timeframe of **12 weeks to complete the elections** for the Selangor State, costing RM4million.

Parameters:

- There will be a Steering Committee (SC) made up of both BN and PR politicians, CSO, State Exco, Local Councillors, Media Representatives to plan and monitor the elections.
- A Secretariat will be formed for 7 months consisting of a part-time Chair (from CSO), 3 managers and 4 administrative staff to implement the elections. Their duties include community and government liaison, and media publicity.
- Volunteers will be briefed one hour before the voting commences.
- Voting in 24 districts/zones (one council) will be done simultaneously over 2 days (preferably a weekend) from 8.00am – 8.00pm.
- Ballots will be counted and verified each night after 8.00pm.
- There will be one polling station per district. Each station will have 3 returning officers and 25 volunteers - 3 usherettes, 8 volunteers to scan ICs, 8 volunteers to issue the ballot papers, 6 “floaters” to relieve the others for meals and breaks.

**Total costs for Selangor over a period of 12 weeks: RM3,655,640, approximately RM4million.**

<b>COST OF PRINTING BALLOTS</b>		
Number of elected councillors per council	24	
Voting districts per council	24	
Assumed voters per district	5000	
Total voters per local council		120000
Cost per ballot	0.05	
Total cost of printing ballots		6000
<b>COST OF STAFFING AT VOTING STATIONS</b>		
Voting Stations (one station per voting district)		24
Returning officer	3	
Payment per officer	200	
Paid volunteers per voting district (8 x 2) + 3 + 6	25	
Payment per volunteer (100 + 20 for food & drinks)	120	
Total payment for volunteers		86400



over 2 days		172800
<b>COST OF PUBLICITY</b>		
Printing of Buntings (1000 x 30)	30000	
Banners (100 x 20)	2000	
Maidrop / letter (100,000 x .15)	15,000	
Seminars with residents	1000	
Total cost of Publicity		48000
<b>COSTS PER DISTRICT</b>		
Councils in Selangor		12
		2,721,600.00
Secretariat, HR, Equipment costs (see below)		934040
<b>TOTAL COSTS FOR SELANGOR STATE</b>		<b>3,655,640.00</b>

<b>Secretariat and HR Costs</b>				
Administrative staff		7 months		
	<b>pax</b>	<b>RM/pax</b>	<b>Sub-total</b>	<b>Total</b>
Chairperson (CS)	1	3000		21000
admins staff	4	3000	12000	84000
managers	3	5000	15000	105000
communications	7		1000	7000
location (from gov / local council office)				
Transport	7		1000	7000
printing	7		1000	7000
equipment / setup				20,000
<b>SECRETARIAT COSTS FOR 7 MONTHS</b>				<b>251000</b>
<b>Equipment</b>				
computers	2400	8	19200	
card scanners	180	8	1440	
ballot box	40	8	320	
1 projector	3000	1	3000	
1 server	4000	1	4000	
furniture	500	1	500	
			<b>28460</b>	
Zones each council			24	
<b>EQUIPMENT COSTS FOR 1 COUNCIL</b>				<b>683040</b>
<b>SECRETARIAT &amp; EQUIPMENT COSTS</b>				<b>934040</b>

The second model projects a timeframe of **4 weeks to complete the elections** for the Selangor State with a cost of RM5million.

**Parameters:**

1. There will be a Steering Committee (SC) made up of both BN and PR politicians, CSO, State Exco, Local Councillors, Media Representatives to plan and monitor the elections.
2. A Secretariat will be formed for 7 months consisting of a part-time Chair (from CSO), 3 managers and 4 administrative staff to implement the elections. Their duties include community and government liaison, and media publicity.
3. Volunteers will be briefed one hour before the voting commences.
4. Voting in 3 councils of 24 districts/zones each will be done simultaneously over 2 days (preferably a weekend) from 8.00am – 8.00pm.
5. Ballots will be counted and verified each night after 8.00pm.
6. There will be one polling station per district. Each station will have 3 returning officers and 25 volunteers - 3 usherettes, 8 volunteers to scan ICs, 8 volunteers to issue the ballot papers, 6 “floaters” to relieve the others for meals and breaks.
7. This model will incur more costs due to the requirement of additional equipment for 3 councils to run the elections simultaneously.

**Total costs for Selangor over a period of 4 weeks: RM4,468,760 approximately RM5million.**

<b>COST OF PRINTING BALLOTS</b>		
Number of elected councillors per council	24	
Voting districts per council	24	
Assumed voters per district	5000	
Total voters per local council		120000
Cost per ballot	0.05	
Total cost of printing ballots		6000
<b>COST OF STAFFING AT VOTING STATIONS</b>		
Voting Stations (one station per voting district)		24
Returning officer	3	
Payment per officer	200	
Paid volunteers per voting district (8 x 2) + 3 + 6	25	
Payment per volunteer (100 + 20 for food & drinks)	120	
Total payment for volunteers		86400
x 2 days		172800
<b>COST OF PUBLICITY</b>		
Printing of Buntings (1000 x 30)	30000	
Banners (100 x 20)	2000	
Maldrop / letter (100,000 x .15)	15,000	

Seminars with residents	1000	
Total cost of Publicity		48000

<b>TOTAL COST</b>		<b>226800</b>
Councils in Selangor		12
		2,721,600.00
Secretariat, HR, Equipment costs (see below)		1747160
<b>TOTAL COSTS FOR SELANGOR STATE</b>		<b>4,468,760.00</b>

<b>Secretariat and HR Costs</b>				
	7 months			
Adminstrative staff				
Chairperson (CS)	1	3000		21000
admins staff	4	3000	12000	84000
managers	3	5000	15000	105000
communications	7	1000	1000	7000
location (from gov / local council office)				
Transport	7	1000	1000	7000
printing	7	1000	1000	7000
equipment / setup				20,000
<b>SECRETARIAT COSTS FOR 7 MONTHS</b>				<b>251000</b>
<b>Equipment Costs</b>				
computers (Netbook)	1500	8	12000	
card scanners	170	8	1360	
ballot boxes	40	8	320	
Projector	3000	1	3000	
Server & network	3600	1	3600	
furniture	500	1	500	
			<b>20780</b>	
Zones per council			24	
Equipment Costs for 1 Council			<b>498720</b>	
<b>EQUIPMENT COSTS FOR 3 COUNCILS</b>			<b>1496160</b>	
<b>SECRETARIAT &amp; EQUIPMENT COSTS</b>				<b>1747160</b>

## REFERENCES

Athi Nahappan (1968), The Royal Commission of Enquiry to Investigate into the Workings of Local Authorities in West Malaysia Report (1968). Government Printers, Kuala Lumpur.

Commonwealth Local Government Forum (CLGF), "Country Profile: Malaysia, The local government system in Malaysia".

<http://www.clgf.org.uk>

Edge, The, (22<sup>nd</sup> December 2003). "*Appointment or ELECTIONS?*" written by Professor Johan Saravanamuttu. Kuala Lumpur.

Goh Ban Lee (2005). "The Demise of Local Government Election and Urban Politics" in Mavis Puthucheary and Norani Othman, (eds) *Elections and Democracy in Malaysia*.

Malaysia (2005), Federal Constitution, Kuala Lumpur.

Malaysia (1976), Local Government Act 1976 (Act 171), Kuala Lumpur.

Malaysia (1960), Local Government Elections Act 1960, Kuala Lumpur

### **Newspapers:**

Malaysiakini. 2006-2008.

New Straits Times. Various. 2006 - 2008

The Star. Various. 2007-2008

The Sun. Various. 2006-2008

## **ABOUT THE AUTHORS AND EDITOR**

### **Wong Chin Huat**

A political scientist by training and journalism lecturer by trade based in Monash University Sunway Campus, he is completing his PhD thesis at University of Essex, UK on electoral system and party system in West Malaysia. His research interests cover political institutions, ethnic politics and democratization. Seeing appointed local governments as a substantial part of the electoral one-party state Malaysia is, he has advocated for local elections since late 1990s. He is the resource person for the Coalition for Clean and Fair Elections (BERSIH), the chair of Writer Alliance for Media Independence (WAMI) , the vice-chair of the Civil Rights Committee, Kuala Lumpur and Selangor Chinese Assembly Hall and a founding member of the Civil Society Initiative for Parliamentary Reform (CSI@Parliament).

### **Andrew Khoo Chin Hock**

A legal practitioner of 14 years' standing, Andrew Khoo is one of the 36 members of the Malaysian Bar Council, having been elected by postal ballot from the 12,500 members of the Malaysian Bar. He currently serves, with Zarizana Abdul Aziz, as the Co-Chairperson of the Bar Council Human Rights Committee (HRC). Within the HRC, Andrew co-chairs the International, Regional and Institutional Section (IRIS), which focuses on issues pertaining to institutions and mechanisms such as the ASEAN human rights body, International Criminal Court, Universal Periodic Review process of the UN Human Rights Council and Malaysia's Human Rights Commission.

As one of the HRC's Co-Deputy Chairpersons last term, he also headed the HRC's Advocacy and Public Relations Working Group, which deals with issues of the Internal Security Act, the proposed Independent Police Complaints and Misconduct Commission, promoting Malaysia's membership of the International Criminal Court, Malaysia's human rights record and the Universal Periodic Review Process before the Human Rights Council, proposed amendments to the SUHAKAM Act, and issues around freedom of religion. He has spoken at various public and closed-door forums and seminars on human rights issues. Andrew is concurrently involved with good governance, local government and freedom of information reform initiatives between civil society and the Selangor Government.

Andrew is also very active in other Bar Council committees. He continues to serve as Deputy Chairperson of the GATS (General Agreement on Trade and Services) Committee and as a member of both the Legal Profession Committee and the Islamic Finance Committee.

In his spare time he contributes occasional articles to the Malaysian Bar website and is part of a group led by Raja Aziz Addruse writing on constitutional issues in The

Sunday Times. He also writes occasionally for [www.thenutgraph.com](http://www.thenutgraph.com) and [www.micahmandate.com](http://www.micahmandate.com). Since May 2008 he acts as the co-coordinator for assistance by the Anglican Church in Peninsular Malaysia to the Anglican Church in Myanmar for post-Cyclone Nargis relief and rehabilitation work among affected persons in Myanmar's Delta region.

## **Maria Chin Abdullah**

The Executive Director of Persatuan Kesedaran Komuniti, Selangor (Empower in English) and she is a women's rights activist, researcher and specialise in gender and development, human rights, local governance and democracy. She has been with the women's movement for more than 20 years. Her leadership is shown through her active involvement in the Joint Action Group for Gender Equality (JAG), a vocal women's coalition. She is an advocate and trainer in gender equality, non-discrimination for women, women's political participation and democratic governance. She publishes books and articles on women and education and women, governance and democracy. She was a judge for two Malaysian human and civil rights awards. Her strength is in coalition building, where she chairs the Coalition for Good Governance and being a member of BERSIH for free and fair elections. She holds a Bachelor's Degree in Applied Economics and a Master of Science in Urban Planning at the University College, London.

Her work is published in books and articles on women's rights, democracy and local governance. She also develops training manuals on feminism, rights and democracy. She was a judge for two Malaysian human and civil rights awards. She also sits as an advisor to the gender think tank for the Secretariat of the Portfolio on Welfare, Women's Affairs, Science, Technology and Innovation for the Selangor State Government. Her other interests include promoting women's political participation and decision making powers. She has a Bachelor Degree in Applied Economics and a Master of Science in Urban Planning at the University College, London.

## **Honey Tan Lay Ean**

She obtained her undergraduate degree in Law from the University of Buckingham and her Masters in Law from Warwick University. She was called to the English Bar in 1989, and the Malaysian Bar in 1990. Honey serves on the Family Law, Law Reform and Special Areas, and the Professional Standards and Development Committees of the Malaysian Bar. She is a member of Asia Pacific Forum on Women, Law & Development (*APWLD*) based in Thailand, and is a trainer of their Feminist Legal Theory and Practice Programme. She is also a Fellow of the Asian Regional Exchange for New Alternatives (*ARENA*) based in South Korea.

As part of Empower and together with SUARAM, Honey has led the national civil

society's engagement in the universal periodic review process of the human rights situation in Malaysia at the United Nations Human Rights Council in 2009. She also leads APWLD's efforts in engaging with the ASEAN Human Rights Body and the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children.

Her latest publication can be read in Tan, H.L.E & Ong, S. (2009), *Women and the Law in Malaysia*, in Ariffin, J. (ed.) (2009), *Readings on Women In Development in Malaysia – A Sequel: Tracing Four Decades of Change*, MPH Publishing, Malaysia.