

## **Report of the Local Government Elections Working Group**

Dr Goh Ban Lee  
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### Introduction

The Local Government Elections Working Group is set up by Penang State Executive Councillor in charge of Local Government and Traffic Management Y.B. Chow Kon Yeow. The task is to provide a road map towards local government elections in Penang.

### Members

Dr Goh Ban Lee (Chairman)

YB Liew Chin Tong

Encik M. Murgan (MPPP)

Encik Mansor Hashim (MPSP)

Tuan Haji Mohideen Adul Kader

Ms Lim Kah Cheng

Encik Ahmad Chik

Ms Lau Shu Shi (SUARAM)

Mr Khor Hung Teik (Secretariat)

Mr Ben Wismen (Secretariat)

Mr Jonathan Yeoh

SERI acts as the secretariat and all meetings were held at its premise.

## Meetings

Three meetings were held, namely on 13 March, 20 March and 27 March 2009. In addition, a preliminary report was presented at the Penang Local Government Consultative Forum 2009 which was chaired by YB Chow and held at the Caring Society Complex, Penang on 31<sup>st</sup> March 2009.

## Brief History of Local Government Elections in Penang

1. As early as 1800, an informal Committee of Assessors was formed by the rate-payers of George Town to play a role in the workings of the colonial government then, especially in issues relating to rates and expenditure. In 1857, the first experiment in elected representatives in the government was carried out in Penang. Three out of the five municipal commissioners for the George Town Municipal Commission were elected. Partial elected municipal commissioners in George Town were abolished in 1913. It was in 1951, that partial elections were reintroduced. Nine out of the 15 commissioners were elected. In 1956, George Town became the first local council in the country to have a fully elected council with the president elected from among the councillors.
2. On the Jan. 1<sup>st</sup>, 1957, George Town was elevated to a City and the Municipal Council became the City Council of George Town. In 1963, a councillor accused some fellow councillors of corruption and the council passed a resolution calling for a Commission of Enquiry. This was only established in 1966.

3. In 1965, local government elections were suspended. In the following year, the functions of the George Town City Council were transferred to the Penang Chief Minister to facilitate the workings of the Commission of Enquiry.
4. The Alliance state government fell in 1969 after losing in the general elections and Parti Gerakan Rakyat Malaysia (Gerakan) under Tun Lim Chong Eu become the state government. In 1971, the remaining four local councils in the state were taken over by the state government.
5. In 1974, the five local councils were replaced by two boards of management, known as Lembaga Pengurus Kerajaan Tempatan (LPKT), one each on the island and the mainland.
6. The Local Government Act was passed in 1976 that provided for only appointed councillors and presidents and was adopted by the Penang State Government. The State Government then set up Majlis Perbandaran Pulau Pinang (MPPP) and Majlis Perbandaran Seberang Perai (MPSP). All councillors, including the presidents were appointed. With the exceptions of the District Officers, all were nominees of political parties.
7. On March 8 General Elections, the Barisan Nasional lost control of Penang State Government. It was replaced by the Pakatan Rakyat State Government, made up

of Democratic Action Party (DAP), Parti Keadilan Rakyat (PKR) and Parti Islam Se-Malaysia (PAS).

8. In the election campaigns, both the DAP and PKR promised to bring back local government elections if they formed the state government.

### Recommendations

#### **Local Government Elections**

9. Penang must have elected local government. This means that the presidents and councillors must be chosen by the people on the principle of “No taxation without representation”. Since the local councils impose assessment rates (*cukai pintu*) on the property owners and other fees in relations to issuance of licences and permits, the people must choose their representatives in the councils.
10. The Working Group (WG) acknowledges that elected local councils do not necessarily lead to more efficiency or effectiveness as can be seen in the local councils in other countries. But elections ensure accountability. The people have a chance to choose their government.
11. Currently, the existence and power of the local councils are regulated by the Local Government Act of 1976 (LGA). Other major laws related to the workings of local councils include the Town and Country Planning Act of 1976 and Street,

Drainage and Building Act of 1974 and the Uniform Building By-laws. All these laws are parliamentary acts and adopted by the Penang State Government.

12. The LGA was adopted by the Penang State Government in 1976. As stated in the Government of Penang Gazette, “In exercise of the powers conferred by subsection (2) of section 1 of the **Local Government Act, 1976**, the State Authority of Penang, in consultation with the Minister of Local Government and Federal Territory, hereby appoint the 15th December, 1976, as the date on which the said Act shall come into force in the State of Penang”. (Dated this 13<sup>th</sup> day of December, 1976) (Wong Hin Fatt, Clerk of Council, State Executive Council, Pulau Pinang).
  
13. Section 10 of the LGA provides for the state government to appoint the councillors, including the presidents. Quote: “Councillors of the local authority shall be appointed from amongst persons the majority of whom shall be persons ordinarily resident in the local authority area who in the opinion of the State Authority have wide experience in local government affairs or who have achieved distinction in any profession, commerce or industry, or are otherwise capable of representing the interests of their communities in the local authority area” (3).
  
14. Section 15 (1) of the LGA states, “Notwithstanding anything to the contrary contained in any written law, all provisions relating to local government elections shall cease to have force or effect”.

15. There are, however, some authorities believe state government can reintroduce local government elections in the state. For example, according to a lawyer, “the State Government can exempt any area of the local government from Section 10 and Section 15 of the Local Government Act and enact fresh laws providing for local government elections under Article 113(4) and the paragraph 4a of the 9<sup>th</sup> Schedule of the Federal Constitution. Such laws can be similar in substance to the Local Government Elections Act 1960 or in whatever form the State feels is correct” (Fernandez, D. 2008).

16. However, according to the view of M. Murgan, the Director of the Legal Department of the MPPP, “As long as Section 15 and other provisions in the LGA in particular Section 10 remains in the LGA, local government elections cannot be revived” (see Reference to Murgan, 2009).

17. In arriving at the above conclusion, Murgan states “The preamble to the LGA provides that the Act is made for the purpose of ensuring uniformity of law and policy with respect to local government pursuant to the provisions of Clause 4 of Article 76 of the Federal Constitution. Consequently, the LGA is a federal law and not a state law. Any amendment of the LGA has to be approved and passed by parliament and not the state legislature”.

18. In support of his view, Murgan also points to Article 95A of the Federal Constitution. Clause 5 of Article 95A provides that “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 promotion, development and control of local government throughout the Federation and for the administration of any laws relating thereto; and the Federal and State Government shall follow the policy so formulated”.
19. According to Murgan, on 28<sup>th</sup> November 1971, the National Council for Local Government decided that the suspension of local government elections should continue to be in force as elective local government was a late colonial intrusion which did not flourish within the Malaysian political system. Murgan concludes that, “Prior to the passing of the LGA, the State Authority of Penang and other states in the Federation had been consulted about the LGA and have agreed to accept and adopt all the provisions of the LGA. Having agreed, the State Authority of Penang cannot now reconsider and refuse to adopt or follow Section 10, 15 and other relevant provisions in the LGA. To do so, would raise a constitutional crisis and be contrary to Clause 5 of Article 95A which provides *inter alia* that the State Government shall follow the policy so formulated. It would be improper and inappropriate to disregard or to depart or deviate from the agreement or consent reached at the NCLG”.

**The WG agrees that the state cannot hold local government elections without changing the law at the Parliament.**

20. Nevertheless, the WG also recommends that the Penang State Government together with the other Pakatan Rakyat state governments engage a reputable legal firm to write an opinion piece on this matter.

#### Councillors and Presidents or Mayors

21. When elections are reintroduced, on issues related to councillors and presidents, the WG recommends that most of the proposals by the Report of the Royal Commission of Enquiry to Investigate into The Workings of Local Authorities in West Malaysia, better known as the Athi Nahappan Report (1968) be adopted.

22. For example, it is recommended that “party politics should be allowed to continue despite its good and bad aspects and those who wish to stress their faith in non-conformism should have the right to stand as “independent” as in the past.

23. Furthermore: “a councillor should not be required to vacate his seat in a local authority if he resigns from his political party or joins another party”.

24. However, further deliberations are needed.

#### Restructuring of Local Authorities in Penang

25. The WG recommends that if and when local government elections are reintroduced, there is a need to restructure the local authorities, both in its spatial terms and in the roles and functions. Currently, the state government has very little functions *vis-à-vis* the local authorities.

26. However, as this is not the task of this WG, it is recommended that a new working group be constituted to work on this area. As this is a very complicated issue, funds must be provided for the employment of research assistants.

Penang State Government to adopt a resolution calling for local government elections

27. In the meantime, the WG recommends that the Penang State Government pass a resolution in the State Legislative Assembly calling on the Federal Government to bring back local government elections.

28. In this regard, the State Government should also set aside funds for the state and non-governmental organizations to carry out activities to promote the importance of having elected local government.

National Council for Local Government

29. The Penang State Government's representative to the National Council for Local Government (NCLG), namely YAB Lim Guan Eng, or his representative, should bring up the topic of local government elections in this council and argue for

bringing back local government elections. He should also work with other Pakatan Rakyat state governments on this issue.

#### Independent Panel

30. The WG also recommends that until local government elections are held, the selection of councillors in Penang should be done by an Independent Panel of Elders. It is recommended that the Penang State Government appoint a Panel of nine members of senior citizens of good reputations to select councillors and recommend them to be appointed by the State Government. Under this procedure, there is no need to change the law or involve huge sums of expenditure.
  
31. The State Government should draw up the Terms of Reference for the workings of the Panel. These should include clauses to ensure spatial and geographical distribution of councillors, gender participation, ethnic participation and educational level. The Panel must also ensure that the provisions of Section 10 of the LGA are not violated.
  
32. It is also the recommendations of the WG that the Panel be advised to hold “informal” elections for councillors in an area to keep the flames of local democracy alive in Penang. The area chosen for the beginning of “bringing back the third vote” should be one where the local resident association is robust and active, such as in Tanjung Bungah or Bayan Baru.

33. The Independent Panel must be provided with adequate financial resources to carry out its activities and to engage secretarial assistance.

34. The final decision in the appointment of councillor is still in the hands of the State Government.

**Minority Report**

In relation to paragraph 30, YB Liew Chin Tong is of the view :

“The Panel should vet nominees for councillors and not select councillors.”

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