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Seminar on Local Government in Malaysia: The Search for New Directions

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***Local government and
public participation: the NGOs***

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Local government and public participation: the NGOs

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INTRODUCTION

In this paper, I will discuss on the need to rethink on the concept of good governance which most local governments in Malaysia believed that this is simply achieved by adopting Local Agenda 21. Yet, at the ground level, there has been a lot of dissatisfaction from citizens. Such criticisms have gained many media front pages, reporting allegations of abuses, corruption, non-accountability and non transparent practices of local government officials.

In Malaysia, the local government has the responsibility for numerous services related to housing, water supply, waste management, taxation, land assessment, and other matters. Its relevance to political empowerment, citizen involvement and the delivery of public services means that local government has become a major arena of policy formation.

Local governments in Malaysia adopted the Local Agenda 21 as the answer to being effective, responsive and accountable to the citizens. Ideally, each local authority would enter into a dialogue with its citizens, local organizations and private enterprises, and adopt "a local Agenda 21". Through consultation and consensus-building, local authorities would learn from citizens and various stakeholders – local and civic communities, business and industrial organizations - to acquire the information needed for formulating the best strategies (<http://www.un.org/esa/sustdev/documents/agenda21/english/agenda21chapter28.htm>).

When Local Agenda 21 was introduced after the Rio Meeting, it complemented the UNDP's call for good governance, where the latter is defined as *"the exercise of political, economic and administrative authority in the management of a country's affairs at all levels. Governance comprises the complex mechanisms, processes and institutions through which citizens and groups articulate their interests, mediate their differences and exercise their legal rights and obligations. Good governance has many attributes. It is participatory, transparent and accountable. It is effective in making the best use of resources and is equitable. And it promotes the rule of law. (UNDP Website: <http://hdr.undp.org>)*.

Good governance, according to UNDP, comprises five principles: legitimacy and voice (participation); direction towards a strategic vision that will bring human development; performance which will bring about effectiveness and efficiency; accountability and transparency; and lastly fairness which is expressed through the rule of law and recognition of the rights of individuals. The key players in the exercise of governance are the state, the private sector and civil society. The state has to create conducive political and legal environment; the private sector generates jobs and income; and civil society facilitates political and social interaction. Good governance assumes that the success of governance will be the constructive interaction among all three.

Certainly good governance and its goals per se are insufficient without it being premised on the principles of democracy and human rights. This means integrating norms, standards and principles of the human rights system into the plans, policies, processes and institutions of local government. The substantive results require positive measures to be taken to ensure that persons from all sections of society have a genuinely equal chance of satisfying the criteria for access to a particular social good. A good example is the consultation of the Kuala Lumpur Draft Plan. While the document is made available (at a whopping cost of RM150 per volume) and the public is given one month to respond, it still does not provide residents equal opportunities as the time given is too short for any substantive feedback. Or another example was when after protest from the Petaling Jaya residents, they were allowed by the then Majlis Perbandaran Petaling Jaya (MPPJ) to review the accounts but they were only given two hours to read the accounts and were not allowed to make copies of the budget for further review.

THE MALAYSIAN SCENARIO: CHALLENGES OF LOCAL GOVERNANCE AND PUBLIC PARTICIPATION

However, besides putting into place processes, institutions, mechanisms and values, there are other external factors which need to be considered as they seriously impede on the rights and freedoms of the citizens. Below are a few challenges that need to be dealt with by national and state government. They are as follows:

– “LIMITED DEMOCRACY”

What are the existing political environment and the democratic spaces available to the civil society?

To date, however, Malaysia has not signed significant international human rights treaty on civil and political rights. In particular, it has not ratified the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights or the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

At the domestic level, Malaysia's democratic spaces are severely limited. We still have a host of repressive laws which restrict basic freedoms of expression, association and public assembly. Critics of the state are still suppressed and quickly disposed of under various laws, the most draconian of which is the Internal Security Act, allowing detention without trial, the Official Secrets Act, sections of the Police Act which curbs freedom of association and assembly and the list goes on.

In short, when we discuss about reforming local government, we have to bear in mind there is still limited democracy as the exercise of freedom of speech, freedom of association, and all attempts to exercise civil and political rights, have to work within repressive constraints. Even though this climate has given rise to alternative forms of promoting democracy e.g. by the increasing use of alternative and on-line media and blogs, the government slams them with the Seditions Act against the bloggers.

– NO PUBLIC PARTICIPATION

The 1993 Vienna Declaration states that “democracy is based on the freely expressed will of the people to determine their own political, economic, social and cultural systems and their full participation in all aspects of their lives.”¹ This is also related to the concept of human rights, where every person has economic, social and political entitlements by virtue of her or his humanity.

Some have argued that one can successfully have good governance which can co-exist with a government that continues to violate human rights. For instance, a local government may

¹ Vienna Declaration and Programme of Action: United Nations World Conference on Human Rights, 48th Session, 22nd. Plenary Meeting, Part I, Paragraph 8.

notify residents of development plans or hold consultations, and yet may not engage critically with the affected public on decisions that affect them.

Closely connected to local governance is the issue of public participation. In Malaysia, public participation is viewed as a privilege and not an inherent right. Malaysians are appointed to be councilors and the public are invited to attend meetings on local budgets and plans, thus limiting the opportunities for public participation.

A 3-year report card was published by the Women's Development Collective and it showed the stark reality of the lack of accountability of local government due to a silenced citizens. Some of the findings include:

i. Councillors were involved in corruption, nepotism and abuse of power

Examples: a) tender processes were bypassed by breaking up tenders to below RM200,000.² The MPPP³ and the MPPJ⁴ insisted that no one could scrutinise the councils' detailed accounts. b) Minister of Transport, Datuk Chan Kong Choy was put in an embarrassing position of having to answer reports about massive cost overruns (to the tune of RM4.6 billion) for the construction of the ambitious Port Klang Free Zone (PKFZ).⁵ There were claims of conflict of interest, and interference by political figures with vested interests, and a dubious land deal⁶ in this controversial project.

ii. Questionable Expenditure of Public Funds

Examples: a) The abuse of funds by the Majlis Perbandaran Selayang in its study tour to Mauritius⁷, and DBKL's accounts showed that it spent a large amount (RM94,000) for a grooming and etiquette course for its staff.⁸ b) The ACA investigated into the RM8 million awarded by the MPPP to 34 contractors for road sweeping, grass cutting and cleaning of drains. What irked residents was that some of the companies were based out of Penang.⁹

² NST, "Tender process bypassed by local authorities", Leslie Andres and Theresa Lim, 5 May 06.

³ The Sun, "Rates needn't always go upwards", 14-15 Jan 06.

⁴ The Sun, "Emperors' defy PM's policies", R Nadeswaran, 3 March 06.

⁵ The Port Klang Free Zone is a 405 ha. facility, located in Pulau Indah, and comprising 512 warehouses, 2,000 covered parking spaces, four office buildings, an exhibition centre and a four-star hotel. (Malaysiakini, "Speaker disallows debate on RM4.6 bil scandal", 7 Aug 07.

⁶ Malaysiakini, "Poser over mega 'ghost town'", 25 Jun 2007.

⁷ The Sun, "Justify study visit, councillors told", Maria J. Dass, 7 Feb 06.

⁸ NST, "City Hall's grooming course under scrutiny", Minderjeet Kaur, 26 June 06.

⁹ The Star, "Council under ACA probe", K Suthakar, 10 Apr 07.

iii. Impunity of Local Councillors and Staff

Example: a) when the landslide in Kampung Pasir, Ulu Kelang, Selangor happened, the former¹⁰ Selangor Mentri Besar blamed the developer for not building a retaining wall, while the developer, in turn, blamed it on "heaven" (natural cause).¹¹ b) the infamous case of Highland Towers where the Majlis Perbandaran Ampang was released from all blame.

iv. Effectiveness of Fulfilling Government Commitments

The public had complained that local government seemed to drag its feet when carrying out its duties. For example, the MPPJ was reproached many times over its handling of an illegal funeral parlour operating in a residential area. Finally, after 13 years of protests against this illegal funeral parlour, the ACA managed to ensure that MBPJ (formerly MPPJ) complied with the Streets, Drainage and Buildings (Amendment) Act, 2007 to close down the funeral parlour. An earlier attempt by the (then) MPPJ to close it down in 2005 was unsuccessful due to political interference.¹²

The number of abuses that took place over the past 20 or more years is evidence that public's voice, opinions and views are immaterial to local governments. There has been much debate on the issue of bringing back local council elections, which was abandoned in 1965. I will not go into the details but by not having elected councilors, this effectively takes away the right of a citizen to have some form of local check and balance. Much has been said about the political affiliations of local councilors and the abuses that take place as they are not accountable to the citizens but their political paymasters.

With the change in government and Pakatan Rakyat playing a lead role in five state governments, there is much expectation for local elections to happen. There has been promises by Selangor and Penang that 2011 is the year that all will happen. Meanwhile, the appointment system stays. The apportionment taken by Penang is disappointing where it is actually saying: Business Rocks in Penang! However, just to make themselves, the Penang

¹⁰ NST, "Warning won't do, crack down hard, says PM", Arman Ahmad, Minderjeet Kaur, Rita Jong, Devinder Singh, Dennis Wong and Lydia Gomez, 2 June 06.

¹¹ NST, "But the hills, they continue to be raped...", Arman Ahmad, Minderjeet Kaur, Rita Jong, Devinder Singh, Dennis Wong, Lydia Gomez, 2 Jun 06.

¹² The Sun, "MBPJ acts, at last!", R Nadeswaran, 17 Oct 07.

State Government, acceptable politically, token recognition was given to civil society members. Selangor has yet to announce their apportionment – will it be better?

However, even if local elections do happen, we still need to remind ourselves – will this mean greater accountability? Election is only a form towards accountability but the substantive change will really depend on how effectively civil society remains the eyes and ears of the councils.

– **PREVAILING PATRIARCHAL VALUES AND ATTITUDES**

Women, much more than men, are subjected to a range of controls over the way they look, behave, dress, talk, or choose to lead their lives. Clearly, women still occupy a secondary position in society. The Women's Agenda for Change reflects this situation when it said:

*... women are heavily under-represented in the political and law making processes in Malaysia, their work and contributions are often less valued than men's, and they generally have less "say" at all levels of society. This has contributed to a situation where, because men "call the shots", women, more than men, are subject to various measures aimed at controlling and regulating their sexual behaviour. At the same time, they have less scope to resist these measures.*¹³

Just after the March 8 election, we witnessed a proposal made by Y.B. Dato' Dr Hassan Bin Mohd Ali, Chair of the Islamic Religious Affairs, Malay Culture, Infrastructure and Public Services, for Muslim women to have a standard of decency, especially on their dressing appearance at public places. Yet such double-standard requirements were not made on Muslim men.

The patriarchal attitude of the government is seen by the appointment of a sexist Member of Parliament, Bung Mohktar as the Deputy Chair of the Backbenchers. The message is that sexism is a non-issue and is not worth considering. This is an insult to the Malaysian voters who had raised serious protests over the sexist remarks made in Parliament.

¹³ Women's Agenda for Change (1999), pp.38. Malaysia.

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The target of 30% women's representation is still an ideal situation. Presently, there is a 1.02% increase in women State Assembly, at 7.92% as compared to 6.9% in 2006. This situation raises pertinent questions: Does increasing the number of women in electoral politics make a difference to political issues given the way political life is propagated in Malaysia? Will women in power have different concerns or behave differently from their male counterparts? If one looks at Nordic countries, where women occupy a relatively high percentage of elective positions in government, one sees that women do make a difference. However, women are subject everywhere, just as men are, to prevailing political practices and to global economic and political forces. These forces hamper or expand their possible options.

In particular, I strongly believe that women's full participation has to be integrated into democratic governance. It is the state's responsibility to ensure that both women and men have opportunities to gain access to information on government policies. This will bring about greater transparency and accountability to governance and civic participation.

EXAMPLES FROM OTHER COUNTRIES – LOCAL GOVERNMENT AND PUBLIC PARTICIPATION

FACTORS INFLUENCING LOCAL GOVERNMENTS' PERFORMANCE

Components	Bolivia	Philippines	India (West Bengal)	Pakistan	Malaysia
Legal Framework	Laws on: Popular Participation (1994); National Dialogue (2001)	Constitution 1987; Local Government Code (1991)	Constitution (73 & 74, 1993); West Bengal Municipal Act (1994)	National Local Government Ordinance (2001)	Local Government Act, 1974
Responsibilities	Primary health & education; infrastructure; local hospitals; local development;	Health; education; housing; social welfare; environment; agriculture; public works; tourism;	Public health; slum improvement; water; sanitation; others	Health; education; water; sanitation; agriculture; soil conservation; others	Housing; social services; environment; tourism; investment; telecommunications; women's affairs; land

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	culture; sports; gender.	investment; telecommunicatio ns			
Revenues	Formula: 20% of national budget; local taxes; international co-operation	Formula: 40% of central government revenue; local taxes; direct loans	Programme based from central and state government revenue; local fees.	Formula: 40% of provincial revenues; local taxes;	Allocation from national budget but not in fixed proportions; local taxes.
Local electoral system	Political parties; independent citizens' coalitions; reserved seats for women (30%) but civic movement presenting a list of candidates must have at least 50% women candidates	Political parties only.	Political parties only; reserved seats – one- third for women at all levels; Other: castes and tribes – number proportional to population	Political parties banned; direct elections at lowest of 3 tiers; reserved seats – one- third for women. Other: 5% minorities; 5% for peasants/work ers. Elimination of separate electorates for non-muslims in 2000	Political parties only. No affirmative action for women and other discriminated groups.
Participation mechanisms	School and health committees, monitoring committees	NGOs and peoples' organisations are granted specific seats in local development councils, local health and school boards	Ward and village assemblies	Citizen community boards; village & neighbourhood	Independent but small number of residents associations. Government formed rukun tetangga. Have no local council representation
Human rights framework	Constitutional protection for health & education; rights of indigenous peoples' women's rights	Constitutional protection for health & education; rights of indigenous peoples; women's rights	Constitution provides economic & social rights (work & education)	Not part to ICESCR. Economic & social rights included in non-binding "Principles & Policy" chapter of the Constitution	Not part to ICESCR.

At a glance, the table reveals the extent of difference and the unique way in which arrangements are combined in each country. Bolivia and Philippines have well-defined fiscal transfers. The variety of participatory mechanisms is particularly well-developed in Bolivia.

WAY FORWARD?

1. **Building parliament and state democracy.** The Civil Society Initiative for Parliament Reform (CSI-P) has called for democratic reform at the Parliament level. Such an initiative can also be extended to the state assemblies. At the state level, there are now opportunities to engage with the newly elected state governments (both BN and Pakatan Rakyat) to facilitate the setting up of institutions and processes which are premised on democratic governance and human rights principles. This will involve:

- i) *Repeal repressive Acts*, amend or enact laws that will secure rights and freedoms of both the individual and the collective.
- ii) *Setting up permanent select committees*¹⁴ at the state assemblies which will review and recommend critical issues for debate at state assembly sessions. Some of the issues which have been suggested by CSI-P is the enactment of the Freedom of Information, and from the Joint Action Group for Gender Equality, a permanent committee on gender equality.
- iii) *Establish a Special Parliamentary Committee on Reform of Local Government with Immediate Effect.* This is specifically to ensure the implementation of legal amendments and changes in policies. It will also include the setting up of an effective monitoring and evaluation mechanism for local authorities that will encompass clear principles in the implementation of a transparent, accountable and participative government. A nationwide study had already been carried out by the government prior to March 8 elections and the report needs to be made available for public debate.

In addition, the Committee will also be tasked to *reinstate local council elections by 2011*.

¹⁴ Adapted from an unpublished paper by Andrew Khoo, Strengthening the Institution of Parliament. 2008.

2. **Monitoring Local Government.** Civil society can jointly establish an **effective complaints mechanism** with State Government to propagate inclusiveness, ie eliminate any discrimination and ineffectiveness in the delivery of services. The mechanism should also monitor delivery of services, with a special section on the needs of marginalised groups.

3. **Capacity Building for Council and Councillors**

Conduct sensitisation training for councillors to internalise the concepts of governance, participatory democracy and gender equality so that these principles can be incorporated into their daily work with their constituencies. The training will help them to be more sensitive to the needs of discriminated groups, especially women.

4. **Effective dissemination of information**

Improve channels of communication between councils and residents and allow residents to have access to information. There is a need to ensure that information especially that concerning decisions, issues, budgets and projects are properly disseminated to the residents prior to their confirmation. This should be done via leaflets and reader-friendly publications distributed to the residents via mail, and public exhibitions of future projects to be displayed at strategic public spaces like parking coupon booths, parks and recreational areas.

5. **Include and Build More Residents into the decision-making process** E.g., set up residents' associations in all residential areas; actively promote LA21 effectively and build residents' capacity to be involved in LA21, particularly at the planning stage.¹⁵

¹⁵ The Star, "Rep's hopes for a better Petaling Jaya", PJ Utara MP Datin Paduka Chew Mei Fun, 6 Feb 06.