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MESSAGE FROM THE COMMITTEE

The Prime Minister formed the National Consultative Committee on Political Financing amidst growing public interest in the topic. The task is daunting but it is also an important step forward in realising the Prime Minister's aspiration to see improvements in our democratic system. We were given 12 months to find ways to resolve issues that have built up over decades. We are pleased to now submit our full set of recommendations to the Prime Minister and the Cabinet.

The membership of this Committee is diverse. We have representatives from government, academia, think tanks, as well as from the younger generation. We consulted an even wider cross section of stakeholders, including Malaysian political parties, international experts, and NGOs. The experience has been a challenging but fulfilling one for us.

After careful, and sometimes heated deliberations we concluded our work by producing this report. In this report we identify key guiding principles that must underpin all the steps to be introduced, and we outline specific steps that must be taken to correct weaknesses and to create a healthier ecosystem for democracy to

flourish in Malaysia. We believe political parties are vital components of healthy democracy and we want to make things easier for them to operate in a transparent and accountable environment. Thus the rules and regulations that we propose are aimed at encouraging positive civic participation to support the growth of political parties, not curtail it.

We understand that these new rules may become additional bureaucratic burden to political actors. But the political "game" must be regulated to ensure a level playing field and to guarantee true choice for the electorates. Although the rules may be burdensome at the start, we hope eventually they will become a norm and all political actors will embrace them as part of modern day practices.

Adopting our recommendations is only the first step. While we are able to recommend the rules for the game, actual improvements will only come when there is a change of attitude and culture among political players and society at large. Our work as a Committee may end with the publication of this report. But the journey towards perfection will never end. As a nation, we must continue this journey together.

29 August 2016

PART A

BACKGROUND INFORMATION

LIST OF MEMBERS

MAIN COMMITTEE

Y.B. Senator Datuk Paul Low Seng Kuan (Chairman)
Dato' Sri Idris Jala (Deputy Chairman)
Dr Anis Yusal Yusoff (Secretary)
Tan Sri Johan Jaaffar
Prof. Ulung Datuk Dr. Shamsul Amri Baharuddin
Prof. Emeritus Tan Sri Dr. Sharifah Hapsah Syed Hasan Shahabudin
Tan Sri Abdul Rashid bin Abdul Rahman
Tan Sri Rastam bin Mohd Isa
Dato' Akhbar Haji Satar
Prof. Dr. Sivamurugan Pandian
Prof. Madya Dr. Madeline Berma
Prof. Madya Dr. Mohd Azizuddin Mohd Sani
Encik Gan Ping Sieu
Encik Wan Saiful Wan Jan
Encik Richard Y. W. Yeoh
Encik Jufitri Joha
Encik Akram Yusof
Encik Syed Saddiq bin Syed Abdul Rahman (Until 9 August 2016)
Encik Akmal Saufi bin Dato' Seri Mohamed Khaled

SECRETARIAT

Encik Amerul Muner Mohammad (Head)
Encik Mohd Hafizdi Che Md Akhir
Encik Abdul Rahim Ahmad Damanhuri
Cik Anis Azira Abdul Aziz
Dr. Manimaran Govindasamy

TECHNICAL COMMITTEE

Dr Anis Yusal Yusoff (Chairman)
Dato' Sri Haji Mustafar bin Haji Ali
Dato' Wira Wan Ahmad bin Wan Omar
Dr Ahmad Fadzli bin Ahmad Tajuddin
Dato' Haji Noordin bin Che Ngah
Encik Nizam bin Mohd Ali
Dr. Muhammad Fathi bin Yusof
Encik Daniel Lo
Encik Ravindran Devagunam
Encik Kamal Baharin bin Omar
Encik Nik Mohd Hasyudeen Yusoff
Puan Nor Azimah Abdul Aziz
Puan Shuhairoz binti Mohamed Shukeri
Puan Rafidah binti Datu Derin
Puan Noor Ruwena binti Dato' Mohd Nurdin
Encik Ahmad Razif bin Mohd Sidek
Puan Suhara Abdul Rahman
Encik Mohd Hafizdi Che Md Akhir

TERMS OF REFERENCE

The Consultative Committee on Political Financing (JKNMPP) was launched on 14th August 2015 by the PM to provide a people consultative forum for members of the civil society to discuss ways to improve the transparency, accountability and integrity compliance of political parties and politicians in the securing of funds for the purpose of political activities.

1. To identify, discuss and address the issues of political financing of political parties and politicians;
2. To examine and evaluate comparative best practices, legal and regulatory mechanism that are in used in other countries to curb abuses and prevent corruption in political financing;
3. To examine and evaluate suitable institutional support or framework to supervise and monitor political financing to political parties and politicians;
4. To formulate appropriate legal and regulatory requirements to facilitate oversight, transparency and accountability;
5. To consult interest groups and other stakeholders on the matter;
6. Finally, to make recommendations to the Cabinet concerning the necessary legislation, regulations and institutional support to administer and monitor compliance.

Method of Working:

1. The Committee shall meet as and when necessary and shall complete its task with one year by August 31, 2016.
2. The committee shall be served by a secretariat managed by the Malaysian Institute of Integrity.
3. A technical team consisting of experts will provide the necessary research and drafting of any legislation that may be required to support the recommendations made by the Committee. The President & Chief Executive Officer of Malaysian Institute of Integrity will chair this technical team.
4. Interest Groups may be formed to facilitate consultation with political parties and politicians and other interested members of the civil society
5. The Committee can invite written submissions and may hold special public forum for discussion and to reach out to other interest groups.

SUMMARY OF RECOMMENDATIONS

We propose that the following be made guiding principles for a holistic reform of political financing in Malaysia.

Principle 1: Supremacy of the rule of law.

Principle 2: Enhancement of civic participation

Principle 3: Protection of civil rights

Principle 4: Transparency

Principle 5: Accountability and integrity

Principle 6: Healthy political competition

Our recommendations can be summarised as follows:

Recommendation 1: The implementation must be forward-looking and not clouded by the desire to name and shame previous deeds.

Recommendation 2: The implementation must be gradual but fast.

Recommendation 3: The guiding principles outlined in Chapter 6 must guide the process to design detailed rules, regulations and steps in reforming political financing in Malaysia.

Recommendation 4: A new Political Donation and Expenditure Act (PDEA) should be introduced and it must include robust provisions to cater for all the considerations in this report.

Recommendation 5: The guiding principles outlined in Chapter 6 should be included as preamble in the Act itself.

Recommendation 6: The PDEA must impose the same level of scrutiny, transparency and accountability on the income and expenditure of political parties at all levels (national, state, division, branches) and for all purposes

Recommendation 7: An Office of the Controller of Political Donations and Expenditure must be created.

Recommendation 8: The Controller should be overseen by a Board comprising credible and trusted figures with no active politicians.

Recommendation 9: A Parliamentary Standing Committee on Political Financing should be created.

Recommendation 10: The rules stipulated in the PDEA should cover bank accounts held by political parties and politicians in Malaysia and abroad.

Recommendation 11: Donation is defined to include direct, indirect and in-kind contributions.

Recommendation 12: Donations can be made to legitimate political parties or to individual politicians.

Recommendation 13: Cash donations from foreign sources to a political party or politician should be banned.

Recommendation 14: Donations to individual politicians must be robustly regulated.

Recommendation 15: Donations to political parties must be robustly regulated.

Recommendation 16: Donations to political parties should be tax-deductible.

Recommendation 17: "Third party" support is regarded as an income

Recommendation 18: Money from unknown sources must be confiscated.

Recommendation 19: The rules on donation cover all direct, indirect and in-kind donations regardless of the purpose of the donation.

Recommendation 20: There shall be no cap on the amount that can be donated to a party or a politician.

Recommendation 21: All expenditure must be recorded and the accounts must be audited and reported to the Controller.

Recommendation 22: "Third party" support that are (a) valued at more than RM3,000 or (b) cumulatively above RM3,000 per annum from the same source or (c) cumulatively above RM3,000 from multiple sources for the same activity, must be disclosed.

Recommendation 23: Limits on party or candidate spending should be removed.

Recommendation 24: All donations to a party or politician that are (a) above RM3,000 or (b) cumulatively above RM3,000 per annum from the same source or (c) indirect or in-kind donation valued at above RM3,000, must be reported to the Controller with details of the donor(s) within 30 days of

receiving the support.

Recommendation 25: Only the offending layer of the party or individual will be subject to sanction.

Recommendation 26: The implementation of the rules on disclosure should be gradual, with full implementation aimed for GE15.

Recommendation 27: State-funding should be provided to support the effective operations of the constituency offices of elected Members of Parliament and elected State Legislative Assembly members.

Recommendation 28: State-owned enterprises of all types, be it at federal, state or local (if any) level, and all their subsidiaries, are banned from making direct, indirect or in-kind contributions to politicians or political parties.

Recommendation 29: Companies receiving government contracts or concessions should be banned from making direct, indirect or in-kind political contributions.

Recommendation 30: Steps should be taken to criminalise discrimination or victimisation of donors and a mechanism should be created to enable donors who feel they have been unfairly treated to seek justice.

Recommendation 31: Government contracting processes should be reformed to remove possibilities of political favours

Recommendation 32: There must be visibly greater commitment to inculcate integrity into the political system.

CHAPTER 1

INTRODUCTION

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INTRODUCTION

INTRODUCTION

1. This report is the product of work by the National Consultative Committee on Political Financing (the Committee) that took place between August 2015 to August 2016.
2. There is no comprehensive laws or regulations governing the conduct of political parties and politicians with respect to raising and spending money to fund their political work. In fact, in 2009, the Prime Minister called for better regulations on political financing. This committee was formed as a continuation of that proposal.

WIDER POLICY CONTEXT

3. The formation of this committee is part of the wider effort of the government to strengthen check and balance mechanism in the country. As part of the Government Transformation Programme (GTP), various steps have been taken to improve the way government works and governance processes in Malaysia. This initiative to improve political financing should be seen as one step out of many other steps to transform Malaysia into a developed country by 2020.
4. The desire to see a higher level of integrity in the Malaysian political system is not at all new. It was

already stipulated in Vision 2020 that, one of the key challenges we face as a nation “is the challenge of establishing a fully moral and ethical society, whose citizens are strong in religions and spiritual values and imbued with the highest of ethical standards.”¹ This idea was further refined by the National Integrity Plan in which it was stated that there should be a concerted effort to build integrity in political institutions in the country. Specifically, the National Integrity Plan stated that we must work towards creating a “practice of politics based on integrity and the promotion of healthy, ethical and democratic political culture in accordance with our own mould”²

ADDRESSING PUBLIC SCEPTICISM

5. During the course of our work, the Committee was fully aware that there is a lot of scepticism about this initiative. Nonetheless we decided to soldier on, and we tried as much as we can to tackle the doubts by having direct engagements with key stakeholders and those who have been vocal in the issue of political financing.
6. We fully appreciate that we will not be able to please everyone, but pleasing everyone has never been our intention anyway. The Committee decided quite early on that we will take all the

¹ Speech by former Prime Minister Tun Dr Mahathir Mohamed on 28 February 2001 to the Malaysian Business Council.

² National Integrity Plan (Institut Integriti Malaysia, 2004), page 127.

valuable inputs from interested parties, and our real job is to sift through those ideas and then carefully find the balance between idealism and practicality.

7. It must also be said that interest in the issues surrounding political financing has increased over the last year. There have been many questions raised by various sections of society on the sources of funds received by political parties and whether or not the money is spent in an ethical way.
8. THE PROBLEM OF MONEY POLITICS
- The monetisation of politics has led to an unequal playing field for the political parties. A party with a large membership is not necessarily better financed than those with smaller membership. The smaller party may be part of ruling coalition be it at federal or state level, and in the absence of a strong political finance regulatory system, their access to power could create an unfair advantage in raising funds for their political work. This could be even worse for bigger parties who are also in power. The Committee decided to not go down the path of investigating this situation, but based on the inputs
9. that we received, we took note that there is widespread suspicion among the public about the possible linkages between power and party financing.
- There is widespread concern about the risk of foreign threat to our national sovereignty when political parties or politicians receive money from abroad. This concern was also brought up when the Prime Minister confirmed that he received a donation from Saudi Arabia in the lead up to the 13th General Election. However, the reality is, at the moment there is no law preventing foreign donations to Malaysian political parties or politicians.
10. The issue of political financing in Malaysia is not just about the movement of cash to or from a political party or a politician. There is also the indirect form of financing that is also a cause for concern. In fact some may argue that the indirect form of funding is a bigger cause for concern because the size is unknown, the value is difficult to determine, and the sources are not easily defined or identified. A quick look at the conducts of political actors in the last general election is Malaysia can showcase this problem.
11. For example, a report produced by an accredited³ election observation body stated that⁴:

³ The Election Commission accredited the following organisations to observe Malaysia's 13th General Election in Peninsular Malaysia: the Institute for Democracy and Economic Affairs (IDEAS), Centre for Public Policy Studies, Merdeka Centre for Opinion Research, Malaysian Youth Council, and Malaysian Confederation for the Disabled.

⁴ Was GE13 Free and Fair? (IDEAS, 2013) Report prepared by the Institute for Democracy and Economic Affairs (IDEAS).

- a. The media was heavily biased towards Barisan Nasional (BN)
 - b. Government and armed forces facilities were repeatedly used during the official campaigning period
 - c. The EC's impartiality and competency were repeatedly questioned
 - d. The integrity of the electoral roll continues to be questioned
 - e. The Registrar of Societies is viewed as not free from partisan interference
 - f. The delineation of constituencies is too unequal
12. At first glance, we can deduce that none of the above observation involved physical movement of cash into the coffers of any party or politician. But it does involve the making available of resources that gives additional advantage to one side and not the other. The problems were seen not just at federal level, but at the state level too, including states governed by (then) Pakatan Rakyat (PR). But there are many grey areas when evaluating this issue because there is no physical movement of cash to or from political parties or politicians. In fact it is not even clear if anyone made any immediate monetary gains from these actions. The only thing
- certain is that they all contributed to unfair political advantages for one side only.
13. The same election observation report also made a specific comment about political financing. It stated that⁵:
- Both BN and PR recognised fighting corruption as an important issue in GE13. Principles such as "transparency", "accountability" and "integrity" were widely mentioned in their respective election manifestos. However, we noted numerous examples that highlighted the need for urgent political financing reform. They include:
- It was not possible to verify that campaign expenditure did not exceed the limits set by the Elections Act (RM200,000 for Parliamentary and RM100,000 for State seats) Use of government assets and machinery during the campaign period
 - Lack of clear guidelines on the role of a caretaker government, thereby allowing the incumbent to enjoy many privileges
 - The EC's lack of power to investigate and enforce rules during the campaign period
 - Lack of clear and transparent

⁵ Was GE13 Free and Fair? (IDEAS, 2013), page 21.

procedures to identify sources and quantum of party contributions

The campaigns that took place during GE13 was visibly expensive for all sides but it was not possible to ascertain who paid and what the total cost was:

- some campaign events catered for audience in the tens of thousands
- flights were chartered to ferry voters paid for by third parties
- various letters and leaflets were sent by post to voters
- there was heavy use of text messaging to canvass and campaign.

14. Similar observations was made by the Secretariat of this Committee who visited Sarawak to conduct a field study during state elections in May 2016.

ABOUT THIS REPORT: APPROACH AND LIMITATIONS

15. In outlining our thoughts in this report, the Committee was fully aware of the sentiment of the

public and the criticisms voiced by stakeholders. We consulted a wide range of stakeholders and we noted the issues raised by the public in mainstream, online as well as the social media. We believe that the consultative approach employed by this Committee has resulted in proposals that provide a balance between the ideals that can only be achieved in the longer term, and the immediate changes that must be made, especially as we are heading fast into the 14th General Elections.

16. When the Prime Minister announced⁶ the formation of this Committee, he also instructed that we produce an action plan to create a political financing system that has integrity that can be implemented before GE14. We are now submitting this plan for consideration by the Cabinet, while at the same time reminding them of this call for urgency by the Prime Minister. We would like to see the majority of our recommendations implemented before the next General Election.

17. In this report, we define political financing in the same way as it has been defined by the International Institute for Democracy and Electoral Assistance (IDEA), which is⁷:

⁶ <https://www.najibrazak.com/bm/blog/penubuhan-jawatankuasa-konsultatif-nasional-mengenai-pembiayaan-politik-jknmpp/> (accessed 13 August 2016)

⁷ 'Regulating political party financing: Some insights from the praxis' by Augustine Magolowondo, Elin Falguera and Zefanias Matsimbe (International IDEA and NIMD, 2013), page 7.

Political party financing refers to financial resources or money that is provided to political parties, in between or during elections periods, to cover different political activities such as electoral campaign costs and day-to-day functioning.

18. This internationally accepted definition provides a clear parameter to our work. Readers are urged to bear in mind this definition when going through our comments and proposals. It is very easy to veer off topic when discussing such a hotly contested issue, especially if the parameters are not clear. This report touches only on issues that sit within the confines of the definition above, even though we fully appreciate that the creation of political integrity would require a much wider approach covering many areas that are not within our parameters.
19. Readers are also urged to remember the Terms of Reference given to this Committee. Valuable inputs were received from many parties but some suggestions are not within the confines of our Terms of Reference. As stipulated in the Terms of Reference, this report is confined to making "recommendations to the Cabinet concerning the necessary legislation, regulations and institutional support to administer and monitor compliance." We will, however, make some brief comments on the wider issues in

throughout this report.

20. This report is structured in the following way:

It is divided into two parts. Part A (Chapters 2 to 5) provides the context for this report, explaining the background situation and how this committee works. Part B (Chapter 6 and 7) provides an outline of how best to move forward with our recommendations.

Chapter 2 explains the existing regulations that govern political financing in Malaysia today. It provides an outline of the existing laws and regulations so that readers can appreciate the real regulatory environment as it is now.

Chapter 3 provides a description on how political parties currently operate in Malaysia, with a specific focus on the raising and spending of money by political parties. The current practices surrounding these are described and the strengths and weaknesses are discussed.

Chapter 4 describes how selected countries regulate their political financing. The key elements are described to enable us to draw lessons from existing practices.

Chapter 5 explains briefly what the committee did and the methodology of our work.

Chapter 6 is the beginning of

our suggestion on how to move forward. It describes the key principles that the Committee has agreed to adopt as the guiding principles for all our recommendations.

Chapter 7 brings together our ideas into concrete recommendations that must be taken to enhance the integrity of our political financing processes.

CHAPTER 2

THE LEGISLATIVE FRAMEWORK IN MALAYSIA

CHAPTER 2

THE LEGISLATIVE FRAMEWORK IN MALAYSIA TODAY

21. This chapter is presented in two parts. The first part describes the relevant laws as they are today. The second part outlines the thinking of the Committee.
- THE LAWS TODAY
22. The Malaysian Federal Constitution does not have a specific clause about political financing but as the supreme law of the land it provides the source of power for all agencies and all laws. The Federal Constitution, via Article 114, provides for the creation of an independent Election Commission (EC) as the sole election management body to oversee the whole electoral system.
23. The Election Commission's operations are guided by several Acts and Regulations. The followings are related to the administration of electoral processes:
- a. Election Act 1958
 - b. Election Commission Act 1957
 - c. Election (Conduct of Elections) Regulations 1981
 - d. Elections (Registration of Electors) Regulations 2002
 - e. Elections (Postal Voting) Regulations 2003
24. The only Act that has specific provisions relating to political financing is the Election Offences Act 1954. The Act covers various issues ranging from the prohibition of treating and bribery during campaign period, to punishment for corrupt practices to the processes to submit records of campaign expenditure. All these can be found mainly in sections 8 to 24 of the Act. There are several other provisions that touch on administrative matters, including on the establishment of enforcement teams, the steps to file an election petition and the administration of its trial. Section 19 of the Act also provides a campaign spending limit for every candidate of RM200,000 for a parliamentary seat, RM100,000 for a state seat, RM10,000 for a local authority seat other than local council, and RM3,000 for a seat in the local council.
25. However, the Election Offences Act 1954 only governs the spending by individual candidates, not the political party as a whole.
26. The parties are governed by the Societies Act 1960, which contains provisions that cover the conduct of political parties. All political parties are required to submit their annual report and audited financial statement to the Registrar of Societies (RoS). This is the only financial reporting obligation today.
27. Even though the EC is the sole election management body in the country, the power to investigate violations of electoral laws exists in other authorities too. For example, depending on the nature of the

alleged offence, the relevant bodies might be the Royal Malaysia Police or the Malaysian Anti-Corruption Commission. These violations may fall under the purview of various other laws such as the Police Act 1967, the Printing Presses and Publications Act 1984, the Official Secrets Act 1972, or the Malaysian Anti-Corruption Commission Act 2009⁸.

VIEWS OF THE COMMITTEE

28. The multiple jurisdictions over political financing issues have created situations whereby the EC is consistently made the target of anger by those who allege that a wrongdoing has been committed. The anger is understandable because the EC is the most obvious target. But there are times when it is misdirected because the EC may not have the powers to take action on the complaint or there might not be a law to govern such actions. Parallel to that, the actual agency that is supposed to take action is not called into the picture because not many realise that the complaint really should be channelled towards that agency. Ultimately, the issue is not addressed but anger continues to build up.
29. We also note that the EC itself, when faced with criticisms, has repeatedly

had to clarify their jurisdictions, particularly to explain that they do not have powers over certain complaints.

30. We acknowledge that the EC plays a crucial role in the administration of the whole electoral process. However, as will be clearer later in this report, we are proposing a mechanism that can operate independently of the EC. Therefore, while we support efforts to strengthen the EC with greater resources, we will not make any specific recommendations on this matter.
31. At the same time, the RoS is required to receive audited financial statements from political parties every year. However we discovered that a very low number (28.6 percent) of political parties submit the required annual returns⁹. The RoS unfortunately does not have sufficient resources or capabilities to act on this problem and as a result the monitoring of political finances remain weak. The Committee feels that the RoS needs to be strengthened with greater resources. However, this issue is outside of our Terms of Reference. We believe it is more appropriate that this issue is considered in greater depth by those working on the topic.

32. The Election Offences Act 1954 only

⁸ Reforming Political Financing in Malaysia (Transparency International – Malaysia, 2010), page 55.

⁹ Study by the Performance Management and Delivery Unit (PEMANDU), 2013

covers spending by the candidate during the official campaigning period, i.e.: between nomination day and polling day. It does not cover financial activities outside of this small window nor does it cover spending by individuals and organisations other than the candidate that benefit the candidate. Our laws and enforcement mechanisms on political financing are simply not robust enough. The only law that exists today is about spending by the candidates during the official campaign period and there is no law on donations.

33. The Committee also acknowledges that many parties and politicians feel the current spending limit is too low and unrealistic. The limit should be lifted, while the emphasis should be given on transparency and accountability.
34. The Committee feels that there is a need to centralise regulations, monitoring of compliance and enforcement. There is a need to set up an Office of Controller of Political Donation and Expenditure (the Controller), whose responsibility is to oversee the enforcement of all the laws relating to the income and expenditure of political parties. Some of the powers that now rest with the RoS should be transferred to this Controller, especially the powers to receive financial reports and enforce compliance, including sanctions. It is also important that the annual financial statements submitted by the national, state, division or branch level

to the Controller are independently audited by a certified auditor so that the reports submitted by the political party or politician can be verified, and these reports should be made public.

35. Even though there will always be more than one law that relates to political financing, we also feel that it is important to centralise as much as we can the rules and regulations under one umbrella. The Committee recommends the introduction a new Political Donations and Expenditure Act (PDEA) for this purpose. This Act will outline, among others, the powers vested in the Controller and the mechanisms for the Controller to operate.
36. To ensure holistic oversight of money in politics, we recommend that the Act and the Controller are also given powers to oversee all types of donations to political parties at all levels (national, state, division and branches) and politicians for all types of activities, be it for day to day operations or for internal party elections. There should be no distinction based on the purpose of the donation. The rules and powers should be robust enough to be applicable to holistically. Money politics is not just about winning seats into legislative bodies but it can also be a major factor in winning leadership positions in the political parties themselves. If money politics is not curbed starting from within the party, it is difficult to see an end of this problem in the wider political environment.

37. In making these recommendations, we understand that there are improvements that need to be made to the RoS and the EC in terms of improving their independence, transparency, and credibility in the public eyes. There have also been comments made on the roles of the Attorney General who, at the moment, has sole power to decide whether or not to prosecute a case including those related to political financing. We acknowledge the submissions made to us on these issues as well as the wider debate that is taking place in society today, urging us to deliberate holistically.
38. However, since the Committee is proposing for all powers relating to political financing be transferred to the Controller and governed by the PDEA, and due to the parameters as described in Chapter 1, transforming these institutions fall outside of our purview and is not examined in detail in this report.

CHAPTER 3

HOW THINGS ARE TODAY

CHAPTER 3

HOW THINGS ARE TODAY

39. This chapter groups together the Committee's findings on the practices today. The findings are presented together with some commentaries from the Committee.

THE PUBLIC HAS VALID CONCERNS

40. It goes without saying that political parties need to raise money and that they also spend money. The funds are not just for campaigning prior to elections. Money is needed to run their party machineries, pay for staff and volunteers, hold events, conduct media offensives to spread their message and to challenge their opponents, and many more. These are all legitimate usage of funds and they occur on daily basis even when there is no election. Advancing their political agenda is the *raison d'être* of political parties, their main purpose of existence.
41. Among a large section of the public, there is a widespread sentiment that money is also used to buy votes. Not just for seats in legislative assemblies but in some cases, for leadership positions in political parties too. While this sentiment exists, not many have been proven in the court of law and most of them remain only as allegations. Regardless of whether or not vote buying actually occurs, there is a need to improve public confidence in our systems so that elections and party operations are seen as credible and trusted by the population. In fact, even political

parties and politicians have admitted the existence of "politik wang" in our political system. The Committee takes the view that it is unnecessary for us to investigate each claim one by one. Instead, we take it as granted that public perception must be improved to ensure our political financing systems are trusted.

42. The issue of integrity is not just about what can be proven in the court of law. It is also about public perception. The adage "justice must not only be done but it must also be seen to be done" applies in the context of political financing too. Currently the perception is that "politik wang" and corruption is widespread. We must take urgent steps to rectify this situation while at the same time encourage positive and healthy citizen participation in our democratic processes, including through making legitimate donations for causes that they support. The improvements must be done, and must be seen to be done.

HOW PARTIES AND POLITICIANS RAISE MONEY

43. Political parties and politicians raise money through various ways. We discuss some of them in the sections below.
- Direct funding
44. Subscription or membership fees is the most common method to generate income. All parties impose

a fee for joining and maintaining membership. Almost all parties charge the fee either on an annual basis or by offering a lump sum fee for life membership. Parties have different ways of distributing that money. They either channel all fees to their national office or they allocate it for sub-national office(s), or a combination of the two by dividing the amount between the various layers of party hierarchy. The membership fee is usually low, ranging from just a few ringgit for an annual subscription to just a few hundred ringgit for life membership.

45. Membership fee is unlikely to be a major source of income for political parties. They need to keep the fee low in order to attract members from all walks of life and to prevent their parties from being an exclusive club of wealthier people. So while membership fee exists, it is not a major portion of party income.
46. Donations form a significant portion of party's income. Donations can come from private individuals, or companies or not-for-profit entities. Political parties conduct various forms of fundraising activities to attract donations. Additionally, not all donations go into a party's account. There are also donations that are made directly to politicians as individuals.
47. Fundraising dinners and events are becoming more common lately. Parties and politicians raise money
48. Some political parties and politicians collect cash during their public talks (ceramah). They simply pass around boxes or pouches and audience are invited to put in money as donation. Many times, the person handling these boxes and pouches while the money is being physically collected are not necessarily officials of the party.
49. Some political parties and politicians have started using online methods to raise funds via crowdfunding. The amount of money that have been raised by Malaysian political parties using this method is unknown, but a scan through their official party websites show that the practice is not yet widespread. However, there are individual politicians who utilise this method, usually to fund their own operations or projects that they want to run.
50. More organised form of fundraising are conducted by party offices or senior officials of the parties. These are usually targeted at companies, inviting them to make a corporate contribution to specific party activities or to the general operations of the party.
51. Despite the various fundraising mechanisms, the field continues

to be unlevel. Some parties find it easier to raise funds compared to others. The Committee received various inputs on why this is the case and concluded that there are two main reasons:

- a. There may be a hidden and unseen link between political donations and patronage-type favours. The perception is that larger donations are made only when the donor feels that there will be benefits from the donation. There are also allegations that some donors donate to multiple parties from different sides in order to “hedge” their bet. It is not easy to prove or disprove this “money-for-favours” allegation and they may well be nothing but plain allegations. But it must be acknowledged that the perception does exist.
 - b. There is fear of reprisal among our citizens. They worry that if their donation becomes public knowledge, the “other side” may discriminate against them, be it as individuals or as a company. For example, companies may fear that if their donation to a state of federal opposition party is known, the “other” party who may be in power at the state, or other states, or at the federal level may discriminate against them when they bid for public contracts. Similarly, an individual may fear that they will be discriminated against when they apply for assistance if they donate to the “wrong” side.
52. It is important to note that in 2009 the Prime Minister personally proposed for a reform of Malaysia’s political financing system. However, political parties from all sides did not warm to the idea. Potentially, the political parties prefer to avoid the additional administrative burden associated with compliance. Additionally the above two factors may contribute to the parties’ cold response to the Prime Minister’s proposals. The parties may fear that their larger donors would not want to donate because the public may assume it is corruption. The parties may also be concerned that their donors will stop donating because improved transparency or disclosure will subject the donors to potential reprisals from the “other side”.
 53. None of these direct donations currently qualify for tax exemption because political parties are not tax-exempt entities.
 54. The way private individual donations are currently made makes it impossible to assure transparency and accountability. Since the transactions occur in cash, there is no way to know if the full amount raised are put into party accounts or if they go into the personal accounts of individual party leaders, or if the money is strictly spent on party affairs only. Official receipts are almost never issued.

55. The whole mechanism operates solely based on trust by the donors towards party officials or the person collecting the money. While it is good that supporters have trust in their party leaders, this practice also opens the door very wide for breach of trust and potential corrupt practices. It also creates doubt about the accuracy of the financial records submitted by political parties to the RoS because some money may not reach party accounts at all. However, current regulations are not robust enough to monitor all these.
56. If the money is meant for the individual politician, the situation becomes even more blurred. The politician could simply put the money into his personal account, and even his own party may not be aware about the money he had raised and what he spent it on. The tax status of the donations are unclear and there is no obligation whatsoever for the politician to declare the money. He is not even required to keep any record of spending.
- Indirect funding and in-kind donations
57. There also exists indirect forms of funding, where money are not paid to the party or politician but the party or politician benefit from certain support nonetheless.
58. A good example is when an organisation other than the political party organises an event to promote the party or politician. The organisation may be a company or a non-profit organisation. In fact there has been allegations that some non-profit entities were set up by political actors for the specific purpose of creating a grey area vis a vis the funding of their political activities.
59. Access to media is a form of indirect funding too. Certain political parties may have greater access in the media, especially if the media is linked to a particular party or to the federal or a state government. The party may get preferential rates for their advertisements, or they may get more positive coverage compared to their opponents. Or, it can simply be the case that a separate organisation or individual pays for political advertising to promote a political party or a politician.
60. In both the examples above, the political party or politician does not receive actual cash. There is no direct transfer of money in the transaction to the political party or politician. Money is paid by a different entity directly to vendors, and the transaction is not registered in the party's or the politician's records, but the beneficiary is still the party of the party or the politician.
61. The situation gets even more questionable when it comes to state-owned or state-funded media platforms. The party in power may be given preferential coverage in news that are printed or broadcasted

by the state-owned platforms, and their opposition may be given mostly negative coverage. Or the preferred party may simply be given more airtime or column centimetres to publicise their agenda. This is particularly problematic because the media platforms are funded by taxpayers money, which means people regardless of their political leanings contribute to the operation of those media platforms, but their reporting may be biased in favour of the party in power only. Again, a party or a politician benefits from “advertisements” without having to pay.

Political parties in business

- 62. The linkages between political parties and business could result in the supply of resources to political parties, directly or indirectly. The nexus between politics and business is a complex one to unravel because it can exist in many ways. In this section we will highlight only some of them to make the case.
- 63. The Malaysian economy is dominated by state-owned enterprises (SOEs) which include government linked investment companies (GLICs) and government linked companies (GLCs). Both the federal and state governments own SOEs in various sizes.
- 64. We noted that there were allegations that some staff of SOEs conduct tasks for political parties during

work hours. This means the party gets manpower paid for by the SOE. There are also anecdotes of how company procurements have been channelled to politically-linked contractors, and that corporate social responsibility (CSR) funds or company assets are used to support activities beneficial to a party or politician. All these are forms of indirect funding to political parties.

- 65. At another level, politicians or political proxies are regularly appointed into the Boards of SOEs. There are allegations that some of them donate their allowances to their respective parties, thereby creating a question on whether the appointment was made because of merit or because the party knows the person will obediently channel money to party coffers. And, by having political appointees into SOE Boards, there is an increased risk of preferential treatments being given to party-linked entities for contracts and CSR activities as described above. Again, all these create situations where political parties can obtain indirect funding through having control at the SOE’s Board level.
- 66. In discussing the SOEs, it is important to note that not all SOEs allow themselves to be abused for political purposes. Many of the bigger SOEs, especially those that are listed, have strong governance that makes it difficult for abuses to take place. But there are also many SOEs, be it at the federal or states level, that do not have sufficiently

- strong policies and procedures to prevent political interference or corruption.
67. Outside of the SOE universe, the business-politics relationship is equally complex.
68. Several political parties in Malaysia actually own businesses. The challenge is when the ownership is hidden from public knowledge through the creation of corporate or individual proxies. The party may appoint trusted individuals to act as proxy shareholders of a company who in turn is made a holding company for the party's indirect ownership of various other companies through shareholding. When the latter companies issue their dividends, the holding company will benefit and the funds are then be channelled to pay for the party or party work or even an individual politician, while at all time the public is kept blind from these transactions.
69. Take another example of a political party that either directly or indirectly owns buildings and premises, or owns a company that owns buildings and premises. If they are in power, they can instruct government agencies to rent these premises. The rent is paid from government coffers to a company owned by the party. The conflict of interest is obvious because the decisions these politicians take in government give direct financial benefits to companies that they have interest in.
70. Of course the most obvious example of a corrupt practice is if a company were to make a political contribution while expecting certain favours in return, or they factor in the political contributions when bidding for contracts. Government procurement could be influenced by political considerations if government procurement system is not transparent and competitive.
- Foreign donations
71. Currently there is no restriction on foreign donations. Political parties and politicians are free to raise money from any source, including from outside of the country.
72. Foreign support can occur as direct or indirect funding. Foreign donors may donate cash directly to a political party or a politician, or they may go through a local intermediary. Additionally, they can also provide indirect funding by providing support such as trainings, payment of travel expenses or subsistence, or sponsorship of events that promote a particular party or politician whether at home or abroad. There can be more examples that fall into this category.
73. Foreign supports for Malaysian political parties are quite widespread. There are many international organisations that provide support for our political parties, with some of them even having offices in Malaysia. This is normal for a developing

country like ours. Similar practice exists in almost all developing countries around the world.

74. The provision of trainings and capacity building activities by international bodies are normal and not a very big concern. Party activists and party leaders still have full control of their own parties after such engagements.

75. The worrying situation is when a party or politician receives foreign cash donations, especially if it was done covertly. It creates a risk of foreign interference in issues of national sovereignty.

HOW PARTIES AND POLITICIANS SPEND THEIR MONEY

76. Candidate spending during the official campaigning period is governed by the Election Offences Act 1958. This has been discussed in Chapter 2.

77. Political parties and candidates do not only spend during campaign period. They need to continuously employ staff, run activities and hold events, conduct trainings, produce publications, and many more. All these involve spending money.

78. But these spending are not clearly regulated and the enforcement of the limited existing rules are weak.

79. The only obligation at the moment is for political parties to submit their

financial statements to the RoS on annual basis. The financial statement should include information about expenditure. However, compliance is weak and the rules are hardly enforced with no penalty being imposed on those who fail to comply.

80. There is no regulations or mechanisms of transparency and accountability around spending by individual politicians.

VIEWS OF THE COMMITTEE

81. The Committee feels that donations, direct or indirect, are a positive sign of a healthy and competitive political environment if governed properly and practiced with integrity.

82. Political parties and politicians play important roles in the governance of our country. As citizens, every individual should have the freedom to associate with causes that they support, including political causes, and they must feel secure when exercise that freedom, including when they make political donations. The role of government is to ensure this civil right is protected.

83. The governance of political financing must be guided by the desire to create a healthier political competition and guaranteeing individual freedom to exercise their civil rights. Hence the key guiding principles should include transparency and accountability that are implemented in such a way that

will encourage civic participation.
(See Chapter 6)

84. All steps must be taken to reduce risks to national sovereignty. Political donations from foreign sources should be banned. But we noted that there are legitimate and worthy cooperation with international bodies for capacity-building purposes and this should not be prevented.
85. There needs to be more robust regulations surrounding business and politics. The problem is not about the involvement of political parties and politicians in business per se. But it is about the possibility of conflict of interests whereby government or the politician might make decisions to benefit individuals, special interest groups and businesses that funded them. This would lead to policy capture whereby government policies and procurement processes might be biased for the benefit of the donors.
86. In this context, it should be borne in mind that, in its broadest sense, government contracting takes place in two forms:
- a. Government Procurement that is handled by the Treasury at the Federal level as well as by the State and Local governments. The processes of government procurement is subject to rather comprehensive rules stipulating that the process must be competitive and transparent, despite several weaknesses
87. The Committee noted that individual politicians might have priorities that are different from his party. For example, a politician may want to help people who are not living in his constituency as part of his wider work, while his party divisional office may want to only spend money in their constituent only.
88. Both political parties and individuals politicians should be allowed to raise and spend money as long as both are subjected to the same principles of transparency and accountability. It is not necessary to make it compulsory for all donations to be paid into organisational bank accounts. It is acceptable to pay money into the politicians personal bank account as long as it is a dedicated account for political purposes as long as it is a dedicated account.
89. Individual politicians should be required to create a separate bank account that is used solely for his political activities and not
- in the implementation that still require rectification.
- b. Public Private Partnerships that is currently handled by the Prime Minister's Department. PPP contracting is not always competitive or transparent, and could be vendor-driven. Unless more stringent rules are introduced to bring more market discipline to the PPP contracting processes, there could be rooms for manipulation here.

mixed with his personal or family expenditure. For this purpose, we define “political activities” as any activities that give the party or politician political benefits. All donations and expenditure will be to and from this account only. He will be subjected to the same level of scrutiny imposed on political parties. This means his political income and political expenditure must be recorded, independently audited by a certified auditor, and submitted to the Controller of Political Donations and Expenditure annually for scrutiny and public disclosure.

90. We also note that some political party or politician may hold bank accounts outside of Malaysia. This is not illegal but we must make sure that if that account is used for political purposes then they are subject to the same rules and regulations to ensure transparency and accountability.
91. There needs to be more concerted effort to create a more level playing field between political parties and preventing the capture of political parties by a small group of elite donors.
92. For this reason, the Committee feels that there should be state-funding for legitimate activities of elected Members of Parliament. A robust formula for the allocation should be formulated, taking into consideration the level of support received by each party and the size of the constituency.
93. The financial allocations are meant to support the operations of the constituency offices of elected Members of Parliament (from the federal budget) and State Legislative Assembly members (from state budget). This should be allocated directly to the elected member’s constituency office and their spending should be subjected to the same scrutiny and discipline imposed on political donations to individual politicians.
94. There must be safeguards to ensure state-funding is not abused to sustain a party that has no or very little support from the electorates. The Committee noted that, unless the rules are robust enough, there is a risk that opportunistic politicians will abuse the system in order to get the state-funding. The qualification test therefore must be the level of support from the electorates, as this can ensure state-funding is only given to legitimate and serious contenders. The state-funding can cover both party operations and campaigning. State-funding should be given only to legitimate political parties on organisational basis.
95. There is also the issue of “third party” activities for the benefit of political parties and politicians. These are activities run or funded by entities, be it individuals or organisations, other than the party of the politician himself. For example, an NGO might be set up to run or fund activities benefitting a party of a politician. Currently there are

no rules to record or report these support. The new rules must ensure that these support or activities are declared and published too.

96. The Committee noted that an effective Shadow Cabinet will help enhance the check and balance role of the Parliament. We feel that there should also be financial allocations to fund the efficient operations of a Shadow Cabinet, both at the federal level (from the federal budget) as well as in all state legislative assemblies (from state budget). Parliament and the respective State Legislative Assemblies should exercise the monitoring and scrutiny of the spending. However, this is not within our Terms of reference and although we note this idea in this part of the report, we will not make a specific recommendation on this matter. We believe it is more appropriate that those working on Parliamentary reform consider this issue in greater depth.
97. The Committee also noted the Parliament or State Legislative Assemblies play almost no role in ensuring the accountability and integrity of political financing in Malaysia today. A parliamentary committee should be set up for this purpose. State Legislative Assemblies may want to consider a similar set up too.

CHAPTER 4

COUNTRY COMPARISON

CHAPTER 4

COUNTRY COMPARISON

	South Korea	Indonesia	Mexico	Taiwan	Canada
Regulations on income					
Allow individual donations?	Yes	Yes, annual limit of Rp. 1 billion	Yes, subject to limit	Yes	Yes
Allow corporate donations?	No	Yes	No	Yes	No
Allow donations from companies with overnment contracts?	No	Yes	No	Not to political parties. Yes if directly to candidates	No
Allow anonymous donations?	Not to parties Yes if directly to candidates, but only for amounts below 100,000 Won at a time, or 1.2 million Won annually	No	No	No	Yes if under \$20 only.
Allow foreign donations?	No	No	No	No	No
Allow donations into party accounts?	Yes	No	Yes	Yes	Yes
Allow donations into personal accounts?	No	No	No	Yes. Must be dedicated	Yes. Must be dedicated account
Maximum amount an individual can donate?	Data not available	Rp. 100 million per year	Data not available	<20% of income and \$11,000	\$1500 per year
Maximum amount a corporation can donate?	Data not available	Rp. 7.5 billion per year	Data not available	<10% of incomes and \$168,000	In total \$1,525

	South Korea	Indonesia	Mexico	Taiwan	Canada
Regulations on income					
State funding for political party?	No	Yes	No	No	No
State funding for shadow cabinet?	No	No	Yes	No	Yes
State funding for elected representatives constituency operations?	No	No	No	No	No
Regulations on spending					
Limit on party spending?	Yes, based on population size in electoral area	No	Yes	No	Yes, \$0.735 multiplied by the number of names on the preliminary lists of electors
Limit on individual candidate spending?	Yes, based on population size in electoral area	No	Yes, limit varies for each federal public office	Yes, based on the number of elected persons	Yes, based on the number of names on the preliminary or revised lists of electors.
Monitoring and compliance					
Who monitors spending and expenditure?	Election Management Body	Election Management Body	Election Management Body	Tax Authority, Township Offices	Election Management Body
Frequency of report	Annually	Annually	Quarterly	Annually	Annually
Requirement for party to report?	Yes	Yes	Yes	Yes	Yes
Requirement for individual candidates to report?	Yes	Yes	Yes	Yes	Yes

	South Korea	Indonesia	Mexico	Taiwan	Canada
Monitoring and compliance					
Requirement to disclose identity of donors?	Yes for all contributions exceeding USD3600 (currency?)	Yes	Yes	Yes	Yes for all contributions exceeding \$200
What are the sanctions for non-compliance?	Fines, imprisonment, forfeiture, loss of public funding, loss of political rights, etc	Fine, imprisonment	Fines, loss of public funding, deregistration of party, loss of political rights, etc	Fines, loss of nomination, loss of political rights	Fines, imprisonment, deregistration of party, community service
Are the reports made public by the authority?	Yes	Yes	Yes	Yes	Yes

CHAPTER 5

WHAT THE COMMITTEE DID

CHAPTER 5

WHAT THE COMMITTEE DID

98. The Prime Minister officially announced the formation of the Committee on 14 August 2015.
99. The Chairman and the Secretary conducted preliminary consultations and held meetings with various individuals and groups immediately after the announcement was made. This led to the formation of the full Committee and the first meeting was held on 3 November 2015.
100. Since then the full Committee met regularly to deliberate on inputs from various stakeholders and decide on the direction of work.
101. A Technical Sub-Committee was formed to provide the Committee with research services on issues that were being deliberated. Members of the Technical Sub-Committee conducted their work when instructed by the Committee.
102. The team invited submissions from stakeholders, conducted interviews with relevant experts, and participated in relevant meetings and seminars organised throughout the year.
103. The International Conference on Political Integrity: Reinforcing Transparency in Political Financing in Malaysia was held on 24 and 25 May 2016. The conference served as a benchmarking process, whereby experts from Mexico, South Korea, Indonesia, and Taiwan were invited to share their experience in managing political financing so that important lessons can be learnt.
104. All inputs are processed by the Secretariat and submitted to the Committee for debate, leading to the recommendations that are presented in this report.
105. Among the key activities undertaken by the Secretariat of the Committee and the Committee are as follows:

Date	Activity
12 Aug 2015	Discussion on Political Financing mechanism between INTEGRITI, PEMANDU, TI-Malaysia, C4 dan IDEAS.
14 Aug 2015	Meeting with political parties on Political Financing. 11 political parties attended (UMNO, MCA, Gerakan, PAS, DAP, PBS, PBRS, UPKO, LDP, SUPP and SPDP)
28 Aug 2015	Meeting relating to the appointment of the members of the Committee
13 Oct 2015	Meeting to formulate Communication Strategy for JKNMPP
3 Nov 2015	Committee Meeting No 1
3 Nov 2015	Meeting with Solidariti Anak Muda Malaysia (SAMM)
7 Dec 2015	Round Table Discussion with Majlis Belia Malaysia

Date	Activity
8 Dec 2015	Meeting with Mdm Lourdes Sosa Marquez, Deputy Head of Mission, Embassy of Mexico in Malaysia
9 Dec 2015	Technical Committee Meeting
16 Dec 2015	Meeting with Mr. Timothy Mackey, Counselor (Political), High Commission of Canada in Malaysia
5 Jan 2016	Committee Meeting No 2
8 Jan 2016	Meeting with Mr. Ivanpal Singh Grewal, Parti GERAKAN
14 Jan 2016	Meeting with Datuk Ahmad bin Abd Talib (former Group Editor Media Prima)
21 Jan 2016	Meeting with the former Secretary General of UMNO, Tan Sri Radzi S. Ahmad
12 Feb 2016	Meeting with Dr. Dzulkefly Ahmad (AMANAH)
26 Feb 2016	Meeting with Dr. Reevany Bustami (USM)
26 Feb 2016	Meeting with Dato' Dr. Anwar Fazal (Social Activist)
26 Feb 2016	Meeting with Y.B Zairil Khir Johari (DAP)
27 Feb 2016	Meeting with Y.B Dato' Hj Mohd Rashid bin Hasnon, Deputy Chief Minister of Penang
14 Mar 2016	Committee Meeting No 3
4 Apr 2016	Committee Meeting No 4
5 Apr 2016	Meeting with Tan Sri Datuk Seri Pandikar Amin Hj. Mulia, the Speaker of Dewan Rakyat
21 Apr 2016	Technical Committee Meeting
26-27 Apr 2016	Discussion with Institute of Development Sabah relating to Survey on Stakeholders in Sabah
4-8 May 2016	Field Studies on Pilihan Raya Negeri Sarawak (N.3 Tanjung Datu, N.4 Pantai Damai N.9 Pandangan, N.10 Pending, N13 Batu Kawah, N.47 Bawang assan, N.48 Pelawan dan N.49 Nangka)
23 May 2016	Committee Meeting No 5
24-25 May 2016	International Conference on Political Integrity: Reinforcing Transparency in Political Financing
7 Jun 2016	Meeting with Electoral Reform Society United Kingdom
8 Jun 2016	Meeting with Chairman of Committee on Standards in Public Life, British Parliament, Lord Bew

Date	Activity
8 Jun 2016	Meeting with Electoral Commission United Kingdom
14 Jul 2016	Committee Meeting No 6
12 Aug 2016	Editorial Team Meeting
17 Aug 2016	Editorial Team Meeting
19 Aug 2016	Committee Meeting No 7

PART B

MOVING FORWARD

CHAPTER 6

GUIDING PRINCIPLES FOR POLITICAL FINANCING REGULATIONS

CHAPTER 6

GUIDING PRINCIPLES FOR POLITICAL FINANCING REGULATIONS

106. Principle 1: Supremacy of the rule of law – All rules and regulations on political financing must be equally applicable to everyone involved in political competition. The rules must not discriminate against or favour any party, politician, ideology, group, race, religion or gender. All actors are subject to the same set of law, which must be clearly stipulated and consistently executed by credible independent bodies without fear or favour. No one is above the law and winners abide by the same laws as losers. The rules must also be easily understood so that there is no confusion about the meaning, with the actual text of the law being easily accessible to everyone.
107. Principle 2: Enhancement of civic participation – Regulation of political financing must be designed in such a way that civic participation, including by donating to political causes, is encouraged and enhanced. The rules should not make it difficult for people to donate to the political causes that they feel deserve their support. Instead, the rules should facilitate the creation of an environment where more people participate in the political process. Equally important is to ensure that steps are put into place to prevent discrimination or victimisation of donors when their donations are made public.
108. Principle 3: Protection of civil rights – Freedom of expression, freedom of assembly, freedom of the press, and freedom of association are integral components of a healthy democracy.
- No one should be victimised for exercising their civil rights, including when they donate to a political cause that they support. Nor should anyone be forced to support or reject a particular political cause. The rules and the implementation of the rules must be such that everyone can exercise their individual freedom to choose and to support whichever side that they want, without fear of reprisals.
109. Principle 4: Transparency – The electorates have a right to know who might be influencing their politicians so that it would be possible for them to make informed choices at the ballot box. For this to happen, there must be full disclosure of the political income and expenditure of political parties and politicians who are contesting in elections. The information must be provided ahead of the voting, in a way that is easily accessible and easily understandable to all voters. It must be presented in a format that would enable the data to be analysed by members of the public and civil society. Modern technology should be used to assist in dissemination of information. The information must be independently verified to ensure credibility.
110. Principle 5: Accountability and integrity – Those contesting for public office must open themselves for appropriate scrutiny by the public. The regulations should ensure

political actors take all necessary steps to be accountable for the financing of their work, including by keeping accurate and credible records and documentations of their income and expenditure. There should not be any attempt to hide information or run away from being made accountable. Any such attempt should be deemed as a corrupt practice, punishable in the same way as corruption. There must also be effective enforcement of the rules.

111. Principle 6: Healthy political competition – Regulations should be designed in such a way that it encourages healthy and vigorous competition between political parties and politicians at all levels so that individuals can exercise their freedom to choose. Regulations should be robust but not burdensome or overly bureaucratic to the extent that it stifles competition. A healthy political competition is imperative for a functioning democracy. The rules should lead to the creation of a level playing field, where the barrier to entry into the political arena is not too high, while at the same time allowing groups who fail to gain political support to die their natural death.

CHAPTER 7

RECOMMENDATIONS

CHAPTER 7

RECOMMENDATIONS

RECOMMENDATIONS ON THE IMPLEMENTATION PROCESS

Recommendation 1: The implementation must be forward-looking and not clouded by the desire to name and shame previous deeds. We are aware that our proposals require political buy in from all parties. To ensure political parties and politicians do not reject our recommendations simply on the basis of inability to account for previously collected and spent money, we feel it is unnecessary to demand that previous donations received from “ceramah”, fundraising dinners, or other donors, as well as previous expenditures, to be appraised. Knowing about previous activities is not integral to the successful implementation of our recommendations.

Recommendation 2: The implementation must be gradual but fast. We urge that the vast majority of our recommendations are implemented immediately, before the coming GE14. However, we acknowledge that to ensure that nothing is rushed and everything is carefully thought out, some of the steps will take longer than others to implement.

Recommendation 3: The guiding principles outlined in Chapter 6 must guide the process to design detailed rules, regulations and steps in reforming political financing in Malaysia. The guiding principles embody the spirit of all our recommendations and they must be adhered to when the reform is being rolled out.

RECOMMENDATIONS FOR A NEW LAW AND ITS CONTENTS

Recommendation 4: A new Political Donation and Expenditure Act (PDEA) should be introduced and it must include robust provisions to cater for all the considerations in this report. In drafting the PDEA, the drafters must analyse all the laws governing electoral conducts as well as the Police Act 1967, the Printing Presses and Publications Act 1984, the Official Secrets Act 1972, the Malaysian Anti-Corruption Commission Act 2009, and any other laws that may be relevant. Items that are currently covered by all the different laws must be pulled together into the PDEA so that the Controller has holistic power of oversight on political financing, complete with the authority to sanction offenders or initiate proceedings to take them to court.

Recommendation 5: The guiding principles outlined in Chapter 6 should be included as preamble in the Act itself. This will guarantee permanence of the guiding principles.

Recommendation 6: The PDEA must impose the same level of scrutiny, transparency and accountability on the income and expenditure of political parties at all levels (national, state, division, branches) and for all purposes, be it for electoral campaigning, internal party campaigning, party operations, or the organisation of educational or charitable activities by the party. As long as it is a donation to a political party or a politician, the rules apply.

Recommendation 7: An Office of the Controller of Political Donations and Expenditure must be created. The PDEA should include a provision to create this office. The PDEA should outline the

Controller's powers, jurisdiction, process of appointment, term of office, and other matters relating to the exercise of its functions. The PDEA should also provide for mechanism to ensure the independence of the Controller and the ability of the Controller to exercise his duties without fear or favour.

Recommendation 8: The Controller should be overseen by a Board comprising credible and trusted figures with no active politicians. The processes to appoint the Controller, the internal governance mechanism, and the relationship between the Controller and the Board, as well as between the Controller and the Board with other stakeholders, should follow a model that is respected by the Malaysian public. We propose that a mechanism similar to that employed by Bank Negara Malaysia be employed for this purpose.

Recommendation 9: A Parliamentary Standing Committee on Political Financing should be created. The role of this Standing Committee is to scrutinise the work of the Controller on behalf of Parliament. The Standing Committee should comprise of representatives from all sides of the political divide as appointed by Parliament itself. As a Standing Committee, it should be a permanent entity that operates continuously. To ensure greater accountability, it is good practice that the Chair of such committee should come from the Opposition.

Recommendation 10: The rules stipulated in the PDEA should cover bank accounts held by political parties and politicians in Malaysia and abroad.

Content of the Act relating to political donations and its administration

Recommendation 11: Donation is defined to include direct, indirect and in-kind contributions. For the purpose of disclosure, indirect and in-kind contributions must be translated into a ringgit value by using the most logical and most credible estimate possible. Indirect and in-kind contributions must be disclosed too, in the same way that cash donations are treated below.

Recommendation 12: Donations can be made to legitimate political parties or to individual politicians. Some donors may not want to support a party, preferring instead to support a specific politician. This freedom to choose is a fundamental civil right and must be respected. However, there must be robust regulations that impose the same demands for transparency and accountability to both, and all donations must be receipted either by the party or by the individual politician. For political parties, the rules must apply at all levels of operations, be it national, state, division or branch.

Recommendation 13: Cash donations from foreign sources to a political party or politician should be banned. This includes donations from individuals, companies, foundations, organisations, associations, or any registered or non-registered entities that are not domiciled in Malaysia.

Recommendation 14: Donations to individual politicians must be robustly regulated. Individual politicians who want to solicit donations must have a bank account that is used exclusively to receive and spend money for his political work. This bank account can be, but not

necessarily be, under his personal name but he is responsible for all transactions using the said account. The politician is personally responsible for the detailed recording, documentation and reporting of all income and expenditure into and from this account. The politician is also personally responsible to obtain the services of a certified auditor to audit his records and prepare an audited annual financial statement for submission to the Controller before 30 June every year for the period covering January to December in the previous year. Failure to submit on time will be considered as a corrupt practice and will automatically be subject to the laws surrounding gratification. The financial statement shall be made public by the Controller within 2 (two) weeks of receipt using a method that is easily accessible by the public.

Recommendation 15: Donations to political parties must be robustly regulated. Political parties must have an organisational bank account at all levels of party operations (federal, state, division and branches). The party, at their respective levels, is responsible to keep detailed records and documentations of all income and expenditure into and from this account. The party, at their respective levels, is responsible to obtain the services of a certified auditor to audit their records and prepare an audited financial statement for submission to the Controller before 30 June every year for the period covering January to December in the previous year. Failure to submit on time will be considered as a corrupt practice and will automatically be subject to the laws surrounding gratification. The financial statement shall be made public by the

Controller within 2 (two) weeks of receipt using a method that is easily accessible by the public. However, it is important to note here that only the relevant level of the party shall be made accountable for any failure to fulfil their reporting obligations and not the layer(s) above or below that level. For example, if a branch fails to submit their report as required by law, only the branch will face the consequences, not the division, state or federal structures. This may require the RoS to examine and amend the rules relevant to this matter.

Recommendation 16: Donations to political parties should be tax-deductible. This will encourage greater civic participation, create a sense of citizen-ownership on the political parties, and it will also encourage transparency because the donor are incentivised to demand for disclosure in order for them to enjoy the tax benefits. However, it is not practical to allow this facility for individual politicians as this will open the door too wide for abuses and therefore this recommendation is only applicable to political parties.

Recommendation 17: “Third party” support is regarded as an income but since money does not reach the political party or politician directly, it will be treated under rules for expenditure. This is described below in Recommendation 22.

Recommendation 18: Money from unknown sources must be confiscated. A mechanism must be created by the Controller so that if a political party or politician cannot identify the origin of money they received, then this money should be confiscated and out into a fund that is managed by the Controller

for activities to strengthen democracy in Malaysia. Some donations, such as online donations, may be difficult to track but inability to track the source must not be accepted as an excuse for non-disclosure. The confiscated money must not be used by the party or the politician but must be transferred to this fund instead.

Recommendation 19: The rules on donation cover all direct, indirect and in-kind donations regardless of the purpose of the donation. The support may be used for campaigning to the public, campaigning within the party, party operations, charitable work by the party, or for any other purposes, but all are covered under the rules with no exceptions and must be disclosed when the threshold is reached.

Recommendation 20: There shall be no cap on the amount that can be donated to a party or a politician. Successful political parties and politicians are likely to be able to raise more money. The effort to create a level playing field should not include steps to bring everybody down to the lowest common denominator. Instead, to create a level playing field, competitors should rise up to the challenge and garner more support for their work. At the same time, the ultimate decider should be the voters. With greater transparency, voters will know the amount of money that has been given to the party or politician. Voters can decide if the party or the politician has been "bought" and make the corresponding choice at the ballot box.

Content of the Act relating expenditure

Recommendation 21: All expenditure must be recorded and the accounts must

be audited and reported to the Controller as stipulated in Recommendations 14 and 15 above.

Recommendation 22: "Third party" support that are (a) valued at more than RM3,000 or (b) cumulatively above RM3,000 per annum from the same source or (c) cumulatively above RM3,000 from multiple sources for the same activity, must be disclosed. A "third party" can be a registered or non-registered entity or an individual, Activities that are run or funded by a "third party" for the political benefit of a political party or politician are considered as part of political expenditure even if no money reaches the political party or politician. The key criteria here are the political benefit derived by the political party or the politician. The organisation or individual making that donation has the onus to report the monetary value his support, with any in-kind donation converted into a credible monetary value, to the Controller within 30 days of the said activity.

Recommendation 23: Limits on party or candidate spending should be removed. With the higher emphasis on transparency and accountability, there should be no cap on spending by political parties and politicians, including during campaigning.

Content of the Act relating to disclosure

Recommendation 24: All donations to a party or politician above RM3,000 or cumulatively above RM3,000 per annum from the same source or indirect or in-kind donation valued at above RM3,000 must be reported to the Controller with details of the donor(s) within 30 days of

receiving the support. Failure to submit on time will be considered as a corrupt practice and will automatically be subject to the laws surrounding gratification. This information shall be made public by the Controller within two (2) weeks of receiving such information using a method that is easily accessible by the public. Donations below RM3,000 (Ringgit Malaysia Three Thousand) does not have to be published.

Recommendation 25: Only the offending layer of the party or individual will be subject to sanction. In the case of political parties, it is important to note that only the relevant level of the party shall be made accountable for any failure to fulfil their reporting obligations and not the layer(s) above or below that level. For example, if a branch fails to submit their report as required by law, only the branch will face the consequences, not the division, state or federal structures. This may require the RoS to examine and amend the rules relevant to this matter.

Recommendation 26: The implementation of the rules on disclosure should be gradual, with full implementation aimed for GE15. This is as an acknowledgement to the fact that some donors may fear of retribution and this may negatively impact the legitimate incomes of political parties and politicians if disclosure is enforced without proper preparation. Full disclosure of donor identity to the public should only be made compulsory before GE15. For GE14 (ie: the next general election), it would be sufficient for donor identity to be disclosed to the Controller.

Content of the Act relating to state-funding of political activities

Recommendation 27: State-funding should be provided to support the effective operations of the constituency offices of elected Members of Parliament and elected State Legislative Assembly members. The money should come from the federal budget and state budget respectively. This fund can be administered by the Federal Parliament and the State Legislative Assemblies respectively, and the monitoring of expenditure should be undertaken by the Controller.

Content of the Act relating to regulating the relationship between politics and business

Recommendation 28: State-owned enterprises of all types, be it at federal, state or local (if any) level, and all their subsidiaries, are banned from making direct, indirect or in-kind contributions to politicians or political parties. Should this occur, punishment should be meted out to both the SOE and the party or politician receiving the support.

Recommendation 29: Companies receiving government contracts or concessions should be banned from making direct, indirect or in-kind political contributions. This applies to all layers of government: federal, state and local. To facilitate compliance, government contracts at all layers of government must be published in an easily accessible and searchable way. If it can be proven that a company receiving government contract is financially supporting a party or a politician, punishment should be meted out to both

the company and the party or politician receiving the support. For the purpose of this recommendation:

- Companies incorporated in Malaysia with foreign shareholders shall be treated as a Malaysian company
- If a Malaysian individual or Malaysian company has control over a foreign incorporated company, the foreign incorporated company is considered as foreign and banned from political donations to Malaysian political party or politician. However, the Malaysian owner (individual or company) can make donations using their Malaysia-based entities or by making personal donations.

RECOMMENDATIONS ON WIDER AND LONGER TERM ISSUES

Recommendation 30: Steps should be taken to criminalise discrimination or victimisation of donors and a mechanism should be created to enable donors who feel they have been unfairly treated to seek justice. This may include the introduction of provisions in existing anti-discrimination laws or the introduction of a completely new law.

Recommendation 31: Government contracting processes should be reformed to remove possibilities of political favours. Government contracting, including government procurement and Public-Private Partnerships (PPP), should be transparent and competitive, with consistent and clear rules based on open-tendering process. In the decision-making process, discretionary elements

should be kept to an absolute minimum and technology can be utilised to reduce human contacts between bidders and the agency. The details of the winning bidders should be published as soon as the award is made to enable scrutiny of the decision. The rules should include a clear statement disallowing favours or discrimination based on political factors.

Recommendation 32: There must be visibly greater commitment to inculcate integrity into the political system. The building of political integrity requires long term, persistent, and structured commitment. Integrity cannot be built through legislation and enforcement, but through well-strategised and continuous public education. The Malaysian Institute of Integrity (Integriti) should be strengthened with more resources to enable it to galvanise work on this area.

LIST OF WRITTEN SUBMISSIONS FROM STAKEHOLDERS

- G25: Political Financing Reforms – Reforms for transparent & accountable political funding in Malaysia.
- Institute for Democracy and Economic Affairs (IDEAS) - The principles of political finance regulations
- Parti Gerakan Rakyat Malaysia: Memorandum to National Consultative Committee on Political Funding
- Solidariti Anak Muda Malaysia (SAMM): Blueprint Jalur Tuntutan Negara Perubahan.