



G25 Statement: Proposal for the setting up of Parliamentary Select Committees

We, members of G25, have often stressed in our public statements the importance of good governance and of maintaining the image of Malaysia as a well administered country. In view of recent developments, including the 1MDB controversy, we had issued several public statements to remind the authorities of the need to uphold and respect the independence of our public institutions in carrying out their functions under the Federal Constitution and the respective legislations.

2. In this statement we are highlighting the role that Parliament should play in the overall system of governance. Malaysia is a parliamentary democracy and the Federal Constitution establishes Parliament as one of the three institutions (the legislature, the executive and the judiciary) to govern the country at the federal level. Considering the imperative need for proper and effective checks and balances so as to safeguard public interests against the abuse of power, we believe that Parliament should be more dynamic in its role in overseeing the functions of the Government, particularly, with regard to the operations and performance of the ministries and departments. In this regard, we are proposing that Parliament carries out its oversight function on a regular basis through the establishment of parliamentary select committees.

3. Currently, the oversight role by Parliament takes the form of raising questions during question time and debating issues. There is also the monitoring by Parliament on the workings of the Government on financial matters when the Parliamentary Public Accounts Committee ('the PAC')

sits to consider the Auditor General's reports or any other specific issue relating to financial matters. However, the quality of the discussions in the PAC depends on the issues raised in the Auditor General's reports and the extent to which the civil servants are able or willing to respond to the queries raised by the PAC. The content of the reports is about financial management and it highlights instances of mismanagement for which the civil servants are held accountable, being the controlling officers under the Financial Procedure Act 1957 and the Treasury Instructions. However, we always note with dismay from the reports that Ministers who might have misused their powers in the decision making process are not called upon to testify on the scandals in which they are either involved in or held responsible.

4. Presently, the Standing Orders of the Dewan Rakyat provides for the establishment of five Select Committees, namely, -

- (1) Committee of Selection (Ord. 76);
- (2) Public Accounts Committee (Ord. 77);
- (3) Standing Orders Committee (Ord. 78);
- (4) House Committee (Ord. 79);
- (5) Committee of Privileges (Ord. 80).

However, we wish to point out that there is Order 81 of the Standing Orders that empowers the Dewan Rakyat to establish a Select Committee (or Committees) other than the five Committees that we have just mentioned. Such a Committee is called the Special Select Committee. The purpose of the Special Select Committee is to inquire and deliberate on such matter as determined by the House. The members of the Special Select Committee

are nominated by the Committee of Selection. Thus there is already in place a legal mechanism for Parliament to appoint select committees to inquire into specific issues whenever it deems fit to do so. Unfortunately, we note that in practice Special Select Committees are rarely appointed. Even important or controversial Bills are rarely sent to a Special Select Committee.

5. We are respectfully proposing that Members of Parliament as the representatives of the people carry out their duty more effectively in the administration of the country. They should play the role of a watchdog, keeping the ministries and departments constantly on their toes, especially on matters pertaining to financial management of budgetary allocations. Members of Parliament should monitor and ensure that the ministries and departments do follow the right procedure in departmental spending and the procurement of goods and services. For example, a Minister who spends the whole of the ministry's travelling budget within the first few months of the year, or who takes a large delegation to an international conference without prior clearance from the Federal Treasury, must be made accountable for his conduct. In our system of parliamentary democracy the only authority that can question the Minister's lavish spending is Parliament.

6. In the United Kingdom, even the sovereign knows that when it comes to spending public monies it is subject to Parliamentary control and scrutiny, a principle inherited since the days of Magna Carta.¹

¹ The Magna Carta was first agreed by King John in 1215 and is still held in great respect by the British, American and Commonwealth legal fraternities. Lord Denning described it as 'the



Parliament being the highest legislative authority in the governmental hierarchy, it is incumbent upon the elected representatives to play their proper role as the guardian of the people's interest and rights. This is what good governance, transparency and accountability is all about. In a parliamentary democracy, as the people have given their trust to the political leaders, the latter, in turn, must honour this public trust and must make themselves accountable to the citizens.

7. The setting up of parliamentary select committees will also enable non State actors such as civil society organisations to play a constructive role in promoting good governance by assisting their representatives in Parliament perform their duties and obligations as Members of Parliament. This will indeed be consistent with the concept of democratic governance, transparency and accountability.

8. In the United Kingdom as well as in other democracies, the detailed surveillance, monitoring and review of individual ministries are done through standing or select committees. The practice is for the select committees to be appointed on a permanent basis and to specialise in their areas of responsibility such as finance and economic management, law and order, defence and security, and social services like education, health, and transport. In Malaysia, apart from these sectoral portfolios, there is also a need for select committees to deal with sensitive matters such as race relations and interfaith consultations on religious issues.

greatest constitutional document of all times – the foundation of the freedom of the individual against the arbitrary authority of the despot.'

9. Select committees are particularly useful when Members of Parliament want to investigate something rather than merely debating on it. In a brief guide on the role and functions of select committees issued by the United Kingdom's House of Commons, it states –

A select committee is a cross-party group of MPs or Lords given a specific remit to investigate and report back to the House that set it up. Select committees gather evidence from ministers and officials, the public and organisations outside Parliament. Their reports are published and the Government must respond to their findings. Select committees are one of the key ways in which Parliament makes sure the Government has to explain or justify what it is doing or how it is spending taxpayers' money.²

10. In the United States congressional committees are powerful bodies that monitor very closely the White House's administration of the country, not only at the inception of the President's legislative programme, but also in the course of implementing the budgetary expenditures approved by Congress. The monitoring process is continuous and the committees hold public hearings on any matter of wide public concern. It can either be a governmental issue or a private sector problem, but Congress will act whenever the public is concerned about how their lives will be affected by the problem. Thus, when the 2007/2008 Wall Street financial meltdown happened and shook the whole world, and millions of Americans were worried about losing their jobs, houses, savings and

² Brief Guide, House of Commons Select Committees by House of Commons Information Office, August 2011.



investments, Congress stepped in to investigate the cause of the financial crisis and to recommend the corrective measures. Several top bankers were indicted following the congressional hearings.

11. We are of the opinion that it is time now for Malaysia, after more than 58 years of independence, to have this participatory approach in formulating and implementing the country's economic and financial policies in the form of Parliament overseeing and monitoring the ministries and departments in carrying out their responsibilities. For instance, a select committee can be appointed to investigate the issues surrounding the 1MDB controversy by holding a public inquiry that allows experts and professionals to give testimony or to raise questions on how the alleged investments were made and how the extremely huge debts were incurred. The experts should be given access to the Auditor General's reports to enable them to comment. The existence of a Select Committee on External Debt, for example, could have avoided the 1MDB fall-out as questions raised on its foreign currency debt could have led to a more prudent financial operation of the company. Another example of a matter of public interest that calls for parliamentary inquiry is the environmental disaster on the coastal beaches of Kuantan. The purpose of the inquiry will be to find out who are behind the approval of the bauxite mining licences and whether there is any corruption involved. Similarly, Parliament should play the role of providing for a consultative process that oversees the administration of Islam in this country to ensure that religious authorities operate within the powers as specified under the Federal Constitution, and that the *fatwas* and the respective State



Syariah Enactments give due regard to the fundamental rights of the citizens and the multicultural nature of Malaysian life.

12. When the public has no other hope of resolving a long standing issue in the courts of law, or when the public has serious misgivings about the abuses of power and corruption at the highest levels of power, the only avenue open to address the public frustration and anger is by holding a parliamentary inquiry conducted by a select committee that is open to all those who have the relevant information they want to share with the committee members and the public.

13. In the United Kingdom select committees normally announce in advance that they intend to conduct an enquiry into a particular matter by publishing the terms of reference. They will at this stage invite the public to submit any relevant evidence that will help them in their inquiry and they will contact various interested groups and bodies to submit written submissions. Having considered the written submissions, the committees will then notify the groups or individuals, including ministers and civil servants, to appear before them to be questioned in public. They have the legal powers to compel the attendance of those called to testify before the committee.

14 For the parliamentary select committees to function professionally and with credibility, they should be provided with full-time paid qualified staff to undertake research and support the work of the Select Committees. The committees should be empowered to recruit the staff themselves. The staff must be persons of high calibre, able to prepare well researched reports and craft appropriate and intrusive questions when the committees



call the ministers, the civil servants and the relevant representatives from the public or civil society to testify before them. The staff should be recruited from amongst professionals such as lawyers, accountants, economists and engineers, who will serve the committees as full time paid professionals. In addition, the committees may hire law, accounting firms or senior professors to be their consultants in preparing special reports that they want to use in their investigations. Like the practice in the United States and the United Kingdom, the committees must produce their reports to be tabled in the full Houses of Parliament for debate.

15 The parliamentary select committee system that we are now respectfully proposing will certainly involve additional operating costs. However, in our view it is worth the investment as it can help to save billions of ringgit that otherwise will be lost through poor management in the ministries and departments and, worse still, through the unethical conduct of ministers and civil servants. The existence of these committees with authority to question any minister or Government official at any time will have the salutary effect of making everyone holding decision making power to be more responsible and accountable in his/her official or private life as his/her conduct can be subject to parliamentary inquiry. Further, parliamentary select committees with powers to hold public inquiries will give the citizens the opportunity to hear fact-based testimonies by credible witnesses and independent professionals on issues of wide public concern, instead of merely relying on social media reports which may be false or inaccurate and unfair to the Government Ministers or officials concerned. Thus, the select committee system is often the best way for the Government to prove its transparency and accountability or to prove its

innocence and maintain its reputation. It is, therefore, in the interest of the Government to adopt the proposed system in governing the country.

Legal Notes on Proposal to Establish Parliamentary Select Committees in Malaysia

1. The Malaysian Parliament is not only a legislative body but also serves as an institution where the Government is held responsible for its policies, and where matters of national importance are scrutinized.
2. The Federal Constitution establishes three institutions to govern the country at the federal level. These institutions are Parliament, the Executive and the Judiciary. Parliament makes laws; the Executive carries out the laws; and the Judiciary interprets and enforces the laws. Consistent with the doctrine of separation of powers, as implicit in the Federal Constitution, these three institutions are co-equals and they check and balance one another. No one institution is supreme: only the Federal Constitution is supreme.
3. Parliamentary proceedings in the Dewan Rakyat are governed by the Standing Orders of the Dewan Rakyat. The Standing Orders are made pursuant to the Article 62 (1) of the Federal Constitution that states –

62. (1) Subject to the provisions of this Constitution and of federal law, each House of Parliament shall regulate its own procedure.

4. The Standing Orders of the Dewan Rakyat provides for the establishment of five Select Committees, namely, -

- (1) Committee of Selection (Ord. 76);
- (2) Public Accounts Committee (Ord. 77);
- (3) Standing Orders Committee (Ord. 78);
- (4) House Committee (Ord. 79);
- (5) Committee of Privileges (Ord. 80).

Except for the Committee of Selection, the members of the above Select Committees are nominated by the Committee of Selection. The members of the Committee of Selection are appointed by the House.

Except for the Public Accounts Committee ('the PAC'), each of the above Committees is chaired by the Speaker. The Chairman and Deputy Chairman of the PAC are appointed by the House.

5. Order 81 of the Standing Orders empowers the Dewan Rakyat to establish a Select Committee (or Committees) other than the five Committees mentioned in paragraph 4 above. Such a Committee is called the **Special Select Committee**. The purpose of the **Special Select Committee** is to inquire and deliberate on such matter as determined by House. The members of the **Special Select Committee** are nominated by the Committee of Selection. However, a **Special Select Committee** shall have the power to elect its own Chairman.

6. A Select Committee shall have the power to compel any person to appear before it and to ask for documents and papers to be produced before it.

7. In the Malaysian Parliamentary practice, unfortunately, no great use of Parliamentary Select Committees has been made. Bills are rarely sent to a **Special Select Committee**. The Public Accounts Committee is chaired by a Government member, contrary to the Westminster convention, under which this Public Accounts Committee is chaired by an opposition member.

G25 Malaysia

Kuala Lumpur

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