

## **GIAT Good Governance Agenda**

GIAT (Governance, Integrity, Accountability and Transparency) is a coalition of civil society organisations that advocates for good governance at all levels of government. The members of GIAT are the Institute for Democracy and Economic Affairs (IDEAS), Centre to Combat Corruption and Cronyism (C4), Sinar Project, Transparency International-Malaysia, Friends of Kota Damansara, MyPJ and The Society for the Protection of Human Rights (PROHAM).

In light of the upcoming General Elections, GIAT proposes the Good Governance Agenda for Malaysia for all political parties to endorse. There are increasing expectations from the public that government should promote good governance and high standards of integrity in the public service. Every government is therefore obliged to put mechanisms in place that would promote an understanding that it is functioning with integrity.

We implore all political parties to commit and be accountable to the following demands:

- 1. Endorse legislation that will affirm the independence of institutions, most importantly the Malaysian Anti-Corruption Commission (MACC) and the Attorney General's Chambers.**
- 2. Enact a national Freedom of Information law, review the Official Secrets Act 1972 and adopt open data principles.**
- 3. Require by law that all cabinet members, Members of Parliament, elected officials and senior public officials to publicly declare their assets.**
- 4. Improve participatory democracy within all levels of government, including budgeting processes and holding local council elections.**
- 5. Require by law that all political parties publicly declare all forms of income and expenditure.**

**1. Endorse legislation that will affirm the independence of all institutions, most importantly the Malaysian Anti-Corruption Commission (MACC) and the Attorney General's Chambers.**

Strong and independent institutions serve to provide checks and balances to structures of power in any democracy. In Malaysia, absolute independence is absolutely crucial for institutions such as the MACC, the Attorney General's Chambers, the Royal Malaysia Police, the Election Commission and the judiciary.

GIAT considers the Malaysian Anti-Corruption Commission (MACC) to be one of the most crucial institutions that require reform. The position of the Malaysian Anti-Corruption Commission (MACC) should be strengthened by creating the Independent Anti-Corruption Commission (IACC), a constitutional body that is completely independent from the executive. The Prime Minister currently has the power to appoint and remove the Chief Commissioner of the MACC, a significant moral hazard for any political party that plays the role of government. This significantly weakens the ability for the MACC to investigate corruption charges of top officials of the executive. The IACC would be a constitutional commission that has the full autonomy to determine strategy, policy, the recruitment and disciplining of staff in its separate investigative arm, the Anti-Corruption Agency (renamed from the former MACC).

The IACC should also be given its own hiring and firing powers, to enable the best quality staff to be recruited and promoted as it so requires. The new IACC should also consist of at least 40% individuals from civil society and professional bodies. Section 36 of the MACC Act 2009 should also be amended to empower the MACC to investigate public officials who live beyond their means.

The offices of the Attorney-General and Public Prosecutor should be separate and independent of each other. There is an inherent conflict of interest between the AG's role as the government's legal advisor while the Public Prosecutor might at times find it necessary to charge the government. An independent MACC, while necessary, is at risk of incapacitation as the final call to prosecute lies in the office of the AG. Instead, the Director of Public Prosecutions should head the Office of Public Prosecutions.

We also propose the strengthening of the Whistleblower Protection Act 2010 and the Witness Protection Act 2009 to accord better protection for those who disclose corruption scandals, including the media and investigative journalists. For example, whistleblowers should be allowed to disclose information to sources other than the named authorities, and they should also be accorded the same rights as a "witness" as provided for in Section 6 of the Witness Protection Act.

## **2. Enact a national Freedom of Information law, review the Official Secrets Act 1972 and actively practise open data principles.**

There is currently no Freedom of Information (FOI) law at the federal level. Penang and Selangor have FOI enactments at the state level that allow anyone to obtain information owned by the respective state governments. However, these existing enactments face significant barriers due to federal-level restrictions, namely the Official Secrets Act (OSA) 1972 that has the capacity to obstruct information transfer by classifying information as official secrets. This legal barrier alongside the lack of public awareness has made the state FOI enactments weak when it involves federal-level information. In 2015, activist Haris Ibrahim brought a suit against the Elections Commission (EC) that voters had the right to all information relating to changes made to parliamentary and state constituencies. The High Court dismissed the case, affirmed by the Court of Appeal citing that Malaysia did not have an FOI law.

GIAT proposes that an FOI law to be enacted at the federal level, paralleling advances made by democracies worldwide such as India's Right to Information Act enacted in 2005 that coexists with its Official Secrets Act 1923 - the former did not endanger critical documents pertaining to national security protected under the latter such as secret codes and passwords. Rather, documents are streamlined into different levels of confidentiality, permitting some documents to be declassified. Hence, Malaysia's Official Secrets Act 1972 must be reviewed to allow for the declassification of documents that reveal corruption, greater accessibility to state and federal documents, and for all government documents to be open by default.

A comprehensive FOI regime starts with the presumption that all information relating to government administration should be available for public access. Exceptions to this presumption should be clearly defined, narrow in scope and be strictly related to the protection of legitimate State interests. Furthermore, laws that facilitate government-imposed censorship and control of information such as the Printing Presses and Publications Act and the Sedition Act must be repealed.<sup>1</sup>

As of 2016, Malaysia ranked 53 out of 114 countries according to the Open Data Barometer, a global measure of how governments are publishing and using open data for accountability, innovation and social impact. Malaysia's score of 28 is significantly lower compared to East Asia and Pacific average. Malaysia lags behind its ASEAN neighbours Indonesia, Philippines and Singapore. A World Bank report on Malaysia's open data practices in June 2017 advocated for the improvement of data systems and to streamline it according to international standards. Open data enables governments, citizens, and civil society and private sector organisations to make better informed decisions, develop new insights and innovative ideas that can generate social and economic benefits, improving the lives of people around the world.

The International Open Data Charter recommends six principles for the release and use of data:

- Open by Default
- Timely and Comprehensive
- Accessible and Usable
- Comparable and Interoperable
- For Improved Governance and Citizen Engagement
- For Inclusive Development and Innovation

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<sup>1</sup> For the full set of recommendations, refer to "Repeal, Review or Stay? Moving from Secrecy to Open Governance" Policy Paper, Center to Combat Corruption and Cronyism

Furthermore, we implore the federal and state governments of Malaysia to adopt principles of open data, following recommendations to be open by default, to release more datasets that citizens need, to restore or build trust such as budget, spending, contracting and company registers. These are the datasets that are key to combat corruption and enable government accountability. A clear legal and policy environment should also be established to better facilitate dissemination of information.

### **3. Require by law that all cabinet members, Members of Parliament, elected officials and senior public officials to publicly declare their assets.**

Recent corruption scandals involving the siphoning of billions of taxpayers' money is a stark reminder of the lack of mechanisms to ensure public officials do not own and spend beyond their means.

Currently, the asset declaration practice in Malaysia involves ministers and top government officials, members of the civil service, members of Parliament, special officers to the ministers, and State Assemblymen from the Penang and Selangor governments. The different asset declaration practices for these different officials are detailed as below:

- Ministers and top government officials declare their assets confidentially to the Prime Minister annually.
- Members of the civil service are governed by Service Circular Number 3/2002 - Ownership and Declaration of Assets by Public Officials, as well as Section 4 of the Public Officers Regulations (Conduct and Discipline) 1993.
- Members of Parliament, on the other hand, are not legally required to declare their assets. There exists, however, a Code of Ethics that requires MPs to declare their assets every two years.
- As for special officers to Ministers, the Delivery Task Force (DTF) of the Anti Corruption National Key Results Area (NKRA) decided that all ministerial special officers must declare their assets to the MACC.
- The Penang and Selangor governments have no state regulations on asset declaration but some state assemblymen have voluntarily declared their assets.

It is evident that the current asset declaration mechanism is not thorough enough and is unable to adequately prosecute public officials who are living beyond their means. It is difficult for members of the public to assess the integrity of their elected politicians when such figures are kept behind closed doors. While the Prime Minister and MACC are appropriate bodies of accountability, we believe that information available to the public is the most effective form of check and balance against malfeasance. By requiring public officials to adhere to principles of transparency, they are further deterred from committing and accepting graft by allowing scrutiny of their accounts and by being held accountable by politicians from across the aisle.

We propose that a law at the federal level should be enacted to make it mandatory for Ministers, Members of Parliament, and other elected officials to declare their assets to the public. Senior public officials should also be mandated to declare their assets to the MACC. The MACC should be given the mandate to verify and monitor asset declarations by all politicians and civil servants.

#### **4. Improve participatory democracy within all levels of government, including budgeting processes and holding local council elections.**

The International Budget Partnership's Open Budget Survey 2017 report saw Malaysia scoring 46 out of 100 in the Open Budget Index. The survey report noted that the government provides limited budget information to the public, was weak in engaging the public in the budget process (22/100) and weak budget monitoring by the legislature (7/100).

We recommend that elected representatives enforce budget and expenditure transparency at all levels of government by institutionalising best practices not currently implemented such as publication of budget calendar, stakeholders consultation plan, pre-budget financial statements with supporting underlying assumptions, citizens budget, and mid-year reviews. These are budget documents that are internationally recognised as quintessential in ensuring financial transparency in governance.

Furthermore, we also recommend improved public participation within the budgeting process, noting that Malaysia only scored 22 out of 100 in this area in the Open Budget Survey 2017 report. District, state and federal governments should institutionalise formal mechanisms for participatory budgeting, and also create budget monitoring committees which include the public to deliver feedback and participate in audit investigations. Public hearings and surveys should serve as methods to capture participation in a proactive manner.

To institutionalise public participation, the "Guideline on Public Consultation Procedures" produced by the Malaysia Productivity Corporation should be used as an aid to customise public participation for local councils and government agencies and ministries.

GIAT also considers government procurement as central to the issue of budget transparency. GIAT proposes the following steps to improve the current government procurement system:

- New rules should be incorporated into the current system to improve its transparency and accountability including the mandatory requirement to publish a procurement plan, allowing contractors to review the results, and publish more detailed information on awarded contracts
- There should be greater involvement from the public in ensuring transparency and accountability of government contracting, while strengthening investigation processes and punitive actions
- Government electronic procurement platforms should be implemented for all levels of procurement to create a credible, efficient and transparent system
- The professionalism and integrity of procurement officers should be enhanced
- Public private partnership projects (PPPs) should follow the same transparency rules as government contracting

#### **Local Council Elections**

There is a critical need for public representation at the local level. In recent times, there has been an increase in public protests and media complaints regarding environmental destruction, inappropriate developments and abuse of powers in local councils. Councillors that are appointed by political parties are caught in an ethical dilemma between serving their political interests or the people. There is also a problem of councillors not possessing the right skills and expertise to discharge their responsibilities. The

function of managing a town or city is further complicated by climate change and the need for sustainable development which require inputs and feedback from all levels of society.

Local council elections was recommended in the Athi Nahappan Report published in December 1968 at the conclusion of a Royal Commission Enquiry. It is an important pillar towards participatory democracy and restores the third level of government. This right for local representation is critical as a check and balance mechanism and to ensure inclusive and sustainable development.

We propose for:

1. The Federal Government elected into power will immediately move to enact laws to restore local council elections.
2. All State governments elected into power will immediately conduct local council elections and the Menteri Besar will appoint the locally elected representatives as councilors. This is within the powers of the State under existing laws. This will be carried out immediately after the election while waiting for changes in the Federal law.

## **5. Require by law that all political parties publicly declare all forms of income and expenditure.**

There is currently no law in Malaysia that regulates the practice of donating to political parties or politicians. In 2015, a National Consultative Committee on Political Financing was formed amidst growing public interest on the topic and was chaired by YB Senator Datuk Paul Low. The committee was given 12 months to constructively resolve issues and a list of 32 recommendations was formed, including the introduction of a new statute to be named Political Donations and Expenditure Act (PDEA). A cabinet paper is currently in preparation, which would pave a way for setting up a technical committee to draft the law.

The committee's report comprehensively covered nuances of political donation sources and enforcement mechanisms. We fully support and reiterate the recommendation to adopt a law that would require all political parties to publicly declare all forms of income and expenditure. We believe that public scrutiny of political financing is essential for democratic accountability.

One of the committee's key recommendations is to ban all types of State-Owned Enterprises (SOEs) and all their subsidiaries from making direct, indirect or in-kind contributions to politicians or political parties. It was also recommended that punishment should be meted out to both the SOE and the party or politician receiving the support. This recommendation is an important one, considering the extremely close link between business and politics that can give rise to corruption and conflicts of interest.

By ensuring that all forms of income and expenditure of political parties are accessible to the public, members of civil society and the press will be able to act as forces of check and balance. Insofar that permutations of interest groups are still contributing to the running of political parties without public knowledge, it is difficult for the voting demos to ascertain financial-driven agendas and formulate their preferences without full information. Such a law is not to deter political financing per se. Rather, it empowers voters to be able to fully assess political parties in the national landscape that are exposed to incentives to pander to corporate or private preferences to ensure a steady stream of income. Donations can often become a means of buying access or peddling influence, creating disproportionate representation between groups of individuals.

This recommendation does not go unprecedented - in 2014, Sweden passed a law that required political parties to publicly disclose both the amount and the donor identity of donations valued over a certain amount. In the United States, the Federal Election Commission requires candidate committees, party committees, and PACs to file periodic reports disclosing the money they raise and spend. Organisations such as the Center for Responsive Politics in the United States aggregate data on political contributions to provide insight into the influence of various funding groups. The Electoral Commission of the United Kingdom publishes a list of donation and loan reports of political parties quarterly and provides a comprehensive analysis on its website for public access.



