**QUESTIONNAIRE**

1. **How is local government organised in your country? Please describe the existing legal framework for the organisation, functioning, competences and financial resources of local government in your country.**

In Malaysia, there are three levels of government, which is the Federal government, State government and the local government, which represents the lowest level of governance. Due to the fact that geographically, Malaysia is made up of Peninsular Malaysia and Eastern Malaysia, i.e. Sabah and Sarawak, the main legislations that provide for the legal framework of the local government varies accordingly:

**Peninsular Malaysia**

* Local Government Act 1976 (Act 171)
* Town and Country Planning Act 1976 (Act 172)
* Street, Drainage and Building Act 1974 (Act 133)

**Eastern Malaysia**

*Sabah*

* Local Government Ordinance 1961

*Sarawak*

* Local Authorities Ordinance 1996 (Chapter 20).

In addition to the above, Article 95 A(1) of the Federal Constitution has also provided for a National Council for Local Government, which consists of a Minister as the Chairman, a representative from each of the States who are appointed by the Ruler or Yang di-PertuaNegeri[[1]](#footnote-1), and representatives of the Federal Government, which should not exceed ten.

As for the purpose of the National Council for Local Government, it is explicitly stated in Article 95 that:

*“It shall be the duty of the National Council for Local Government to formulate from time to time in consultation with the Federal Government and the State Governments a National policy for the promotion, development and control of local government throughout the Federation and for the administration of any laws relating thereto; and the Federal and State Governments shall follow the policy so formulated.”*

In this case, it appears that any matter relating to local government would require the Federal Government and the Government of any State to consult the Council; it would also be the duty of the Council to advise those Governments on any local government matters.

However, it should also be noted that there are exceptions to Sabah and Sarawak. Article 95D of the Federal Constitution states that the Parliament is banned from creating laws pertaining to land and local government for the two states. Furthermore, Article 95E excludes the states from following laws formulated by the National Council for Local Government. However, it is still common practice for both Sabah and Sarawak to send representatives to the consultative meetings of the committee as Observers without any voting rights.

There are currently four types of local governments in Malaysia:

* City - City Hall (*DewanBandaraya*) or City Council (*MajlisBandaraya*), e.g. Kuala Lumpur City Hall
* Municipality - Municipal Council (*MajlisPerbandaran*), e.g. Ampang Jaya Municipal Council
* Rural area - District Council (*Majlis Daerah*), e.g. Hulu Selangor District Council
* Special and modified local authority - Corporation, Development Board, Development Authority or simply *PihakBerkuasaTempatan* (e.g. Putrajaya Corporation)

Among the basic criteria for granting City status on a local government is that it has a minimum population of 500,000 and an annual income of not less than RM 100 million. For a municipal status, the minimum population is 150,000 with an annual income of not less than RM 20 million. These are the latest criteria approved during the State Council Meeting for Local Government in June 2008.[[2]](#footnote-2)

With regard to the functions of the local government, they are responsible for:

* + Maintenance of township, roads, street lights and drains
  + Collection and disposal of solid waste (including sewerage)
  + Trimming of trees and grass cutting
  + Landscaping and beautification
  + Licensing of hawkers and businesses
  + Control of building plans and advertisements
  + Vector control
  + Public recreation facilities (fields, swimming pools)
  + Public housing (only in some places)
  + Pets licensing
  + Public toilets
  + Crematorium
  + Rest houses
  + Car parks
  + Market
  + Enforcement

However, it should be noted that the local government previously had control over a number of other services, which have now been shifted from under their jurisdiction to the federal and state government’s. An example of this would be the fire and rescue services. Through the Federation of Malaya's agreement, the fire and rescue service was handed over to the state governments.[[3]](#footnote-3) The service was then integrated as a federal-level department on 1 January 1976, reporting to the Ministry of Housing and Local Government, which can be witnessed in Article 3 of the Fire Services Act 1988 (Act 341).

With regard to the financial resources of the local government, there are three main income sources, which are rents and fees for services, grants and subsidies from central or state government, and local taxation such as the property assessment tax.

Over the years, it appears that there has been an increase in the centralization process whereby not only has the role and responsibilities of the local government decreased and shifted to the control of the state or federal government, but their ability to make decisions has also been weakened, due to the fact that they are directly answerable to the state government. In Malaysia, there are no local government elections held; State governments appoint them without needing consultation with the Federal government. Hence, this implies that accountability, if any, lies more with the state government and their ability to manage the local government rather than the local authorities themselves.

1. **Is local government in your country required by legislation to promote and protect human rights? Please describe how local government in your country is involved in the implementation of human rights obligations.**

With regard to Malaysian local legislation, there is no explicit reference in the above-mentioned Acts to the role of the local government in the promotion and protection of human rights. In theory, it can be argued that it is not necessary due to the fact that the Federal Constitution of Malaysia guarantees the protection of human rights at all levels. In this sense, it can be assumed that local government is only indirectly required by national legislation to protect human rights.

The role of local government in the preservation of human rights is usually only vaguely highlighted in specific areas. For example, local authorities play an important role in providing public facilities for use of persons with disabilities (PWDs), such as accessible public toilets, public parking spaces, apart from ensuring that buildings to which the public has access (building plans of which require approval of local authorities concerned) must also be accessible by PWDs as required in the relevant Buildings By-laws.

Not only that, in 2008, the Malaysian Parliament passed the Persons with Disabilities Act 2008 (Act 685), which inherently provided legal requirements for the registration, protection, rehabilitation, development and wellbeing of persons with disabilities, the establishment of the National Council for Persons with Disabilities, and for other matters concerning the rights and welfare of disabled peoples.

The Act also goes on to outline the responsibilities of the various key players, such as the Government, its relevant ministries, private sector and non-governmental organizations in the protection of the rights of the disabled peoples. Article 15 refers to the responsibility of relevant ministries whereby: -

*“It shall be the responsibility and obligation of every relevant ministries, government agencies or bodies or organizations:*

*a) to co-operate with and assist the Council in the performance by the Council of its functions under this Act;*

*b) to give due consideration to the national policy and national plan of action of the Government relating to persons with disabilities; and*

*c) to undertake steps, measures or actions required to be taken by it in such form or manner as may be provided for under any other written law or otherwise relating to persons with disabilities.”*

On the other hand, it should be noted that the local government might be required to participate in the implementation of human rights obligations through Malaysia’s signing of three international core human rights conventions, which are:

1. Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)
2. Convention on the Rights of the Child (CRC)
3. Convention of the Rights of Persons with Disabilities (CRPD)

An example of the local government being required to assist in the implementation of human rights obligations can be witnessed through Article 2(d) of CEDAW, which requires States ‘to refrain from engaging in any act or practice of discrimination against women and to *ensure that public authorities and institutions shall act in conformity with this obligations’*.

If the term ‘public authority’ was to refer to any form of authority, which has a legal mandate to govern or administrate a part or aspect of public life such as all branches of the executive power of a state, province, municipality, then the duties of local government in the protection and promotion of human rights are rather direct. However, given that the local government in Malaysia lacks any particularly vital role or even mandate with regard to any form of initiatives, it is clear that it is then the responsibility of the state and federal government to ensure the compliance of the local government in the implementation of its human rights obligations.

1. **Is there any cooperation between local government and the central government in your country regarding the implementation of human rights at local level? If yes, please describe the existing cooperation framework.**

From our observation, there is a level ofcooperation between local government agencies with central governments concerning the implementation of human rights at a local level. An example of this would be the federal government’s initiative, called the ‘E-Kasih 1Azam’ programme, which was aimed at alleviating poverty in rural and urban areas. As with most programmes, national initiatives that are large scale and aimed at civil society, cooperation with the state and local government would be necessary in the form of assisting the central government in the implementation process. Other than that, other forms of cooperation that have been witnessed between the central and local government would be in the form of consultations, for the purpose of engaging and raising awareness amongst civil servants and civil society alike.

However, while SUHAKAM believes that there is a certain degree of collaberation between local government and the central government, we are unfamiliar if there is any particular framework of cooperation utlized when dealing with issues of human rights.

1. **Do you have human rights protection mechanisms at the local level in your country (e.g. ombudspersons, human rights commissions, mediators, etc.)?**

It should be noted that while the local governments have provisions for certain human rights issues, such as the Building By-Laws, which sets out requirements for building plans to include easy accessibility by Persons with Disabilities (PWDs), it lacks the enforcement capabilities to incur any form of punishment or financial penalties. In this case, even if the local governments had the legal rights to enforce these By-laws, SUHAKAM is unaware if there has been any record of the By-laws being properly implemented.

On the other hand, the Human Rights Commission of Malaysia (SUHAKAM) was established by Parliament under the Human Rights Commission of Malaysia Act 1999, Act 597. The Act was gazetted on 9 September 1999. SUHAKAM represents the Government’s initiative in ensuring that Malaysia had its own independent national human rights institution (NHRI). Hence, while there may not be any form of human rights protection mechanisms at the local level, the Commission is tasked in the promotion and protection of human rights at all levels.

The organizational structure of SUHAKAM is one that has allowed accessibility and participation alike, in the pursuit to promote and protect human rights. Hence, specific groups were formed on education and public relations (EPRG), research and policy development (RPDG) as well as on complaints, inquiries and monitoring (CMIG). For instance, under CMIG, SUHAKAM is tasked to inquire into complaints regarding infringements of human rights received from the public, and to investigate complaints and to recommend to the authorities appropriate measures to redress the infringement. Hence, while SUHAKAM represents a national human rights institution, it must be reiterated that our work encompasses all levels, from government to grassroots.

1. **What initiatives have been taken to include human rights mainstreaming in local administration and public services?**

Frankly, it again appears that SUHAKAM is unaware of any specific initiatives by the Government to mainstream human rights in local administration and public services. This may be because the human rights issue as a whole, is a relatively fledgling idea and not particularly high on the national agenda, as compared to other issues concerning economic growth and security, which is generally typical of developing countries.

As of now, the most significant step that the Federal Government has taken with regard to the promotion and protection of human rights is the National Human Rights Action Plan (NHRAP), whereby the framework for the Plan is in the process of being formulated. In this case, a successful NHRAP would require collaboration from state and local governments. Therefore, SUHAKAM is hopeful that the implementation of the NHRAP would indeed include human rights mainstreaming in local administration and public services.

1. **What is the role of civil society in the planning and implementation of activities for the protection and promotion of human rights at local level in your country?**

Similar to other countries, Civil Society Organizations (CSOs) in Malaysia aim to advocate, educate and raise awareness on issues of human rights that are seen to be plaguing our society. The human rights issues covered by CSOs are wide and varied, encompassing rights pertaining to women and children, migrant workers, indigenous peoples, environment, persons with disabilities, and much more.

However, it should be noted that CSOs in Malaysia are rarely consulted and widely ignored by the Government with regard to any initiatives or recommendations to implement activities for the protection and promotion of human rights at any level. It has been observed that there is a lack of recognition by the Government of the important role that civil society should play with regard to any particular human rights issues on the ground.

Also, CSOs in Malaysia tend to operate in a much more restrictive environment than what is guaranteed in the Federal Constitution. They face an array of laws that contravene the fundamental freedoms of association, assembly and expression.

1. **What is the role and programme of your organization for promotion and protection of human rights at local level or in enhancing local governance for human rights?**

Headed by the Education and Promotion Division of SUHAKAM, the Commission extended its Training for Law Enforcement Agencies to include providing its human rights course to enforcement officers from all the local councils in Perak. In previous years, it had conducted courses in Selangor and Penang, working with the Training Centre for Local Authorities. The aim is to sensitise enforcement officials to human rights in performing their tasks.

Lectures also highlight the human rights of the officers themselves, people with disabilities, children and women. Complaints received by the Commission are shared with the local authorities alongside practical solutions to address the issues raised, such as the lack of infrastructure in public places to meet the needs of persons with disabilities.

SUHAKAM has made it a point to ensure that CSOs and local government alike are constantly involved in our efforts to promote human rights at all levels. These activities are not only aimed at educating the public and government agencies on human rights obligations, but also to encourage constructive engagements between all key players.

1. **What are the main challenges faced by local government in your country in the promotion and protection of human rights?**

As mentioned above, the role and duties of the local government only focus on ensuring that the physical development, socio-economic, planning and control of municipal services are a planned and coordinated effort based governance. In this sense, the local governments in Malaysia are witnessed to have rather limited authority and are unable to take initiative with regard to carrying out human rights obligations due to the lack of enforcement capabilities and also because they are directly answerable to the state government.

Other than that, it appears that forms of corruption and inefficiencies have also crippled our local government, which has been highlighted over the last few years. According to the Centre for Public Policy Studies, ‘Transparency international Malaysia Public Opinion Survey, 2001, found that municipal councils were seen as more corrupt than: the land office, judicial office, environment department, health department, police and road transport department.[[4]](#footnote-4)

So far, the issue of human rights in Malaysia as a whole, has not been given its due importance and it is hard to identify clear efforts aimed at the protection and promotion of human rights at all levels. Hence, it is impossible for local authorities to practice or understand human rights obligations pertaining to the public or even themselves, when they have not been provided with proper training or education concerning human rights issues.

1. **Please provide any best practices with regard to the above-mentioned issues.**

One of SUHAKAM’s good practices involves promoting awareness on human rights through education and campaigns, which are held regularly and nation wide. As mentioned above, these activities also involve local authorities. We feel such activities have created greater levels of awareness and understanding, which is the foundation for better compliance with human rights standards.

1. Directly translated as the “head of state” in the Malay language. Refers to the official title of the ceremonial governors of the Malaysian states without monarchs, namely Penang, Malacca, Sabah and Sarawak. [↑](#footnote-ref-1)
2. <http://jkt.kpkt.gov.my/en/main.php?Content=vertsections&SubVertSectionID=65&VertSectionID=43&CurLocation=43&IID=&Page=1> [↑](#footnote-ref-2)
3. The first fire and rescue services in Malaysia (known as Malaya at the time) started in 1883, when Malaysia was still under British colonial rule with the establishment of the Selangor state fire and rescue volunteers squad. [↑](#footnote-ref-3)
4. http://www.cpps.org.my/resource\_centre/Local%20Government.pdf [↑](#footnote-ref-4)