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### The Implementation of Parliamentary Special Select Committees (Ad-Hoc) 2004-2012: An Important Lesson to Learn for Effective Checks and Balances in Future Parliament

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#### Abstract

In modern legislative institutions rely on Parliament to oversee government action, particularly through select committees (PSCs). PSCs are used in democratic parliaments to achieve good governance and hold the ruling government accountable. Nonetheless, the inadequacy of the current structure hinder the PSCs from operating effectively and efficiently. Therefore, the main objective of this article is to critically analyse the practices of the PSCs in the Parliament of Malaysia during *Barisan Nasional* from 2004 – 2012. This article adopts a qualitative approach of parliamentary ethnography through analysing documents as instruments in collecting data and library research. This study critically assesses the composition, membership and chairperson of the PSCs based on the provisions in the Standing Orders and other relevant statutes that govern parliamentary select committees in the Parliament. Based on the analysis, the article concluded that the composition of members and chairperson of PSCs during *Barisan Nasional* (2004 -2012) should be revisited and improved for future practice. Unlike the standards indicated in the Commonwealth Parliamentary Association (CPA) Recommended Benchmarks for Democratic Legislatures, 2018, the study found several areas that need revisiting, including composition, membership and chairperson of PSC.

**Keywords:** Barisan Nasional, checks and balances, parliament, select committee, scrutiny

#### Introduction

Parliamentary Committees in Malaysia may be classified into three types: 1) standing committee; 2) special select committee, 3) special select committee (ad-hoc). Special Select Committee (SSC) is defined as a select committee other than the Standing Committees, namely the Public Accounts Committee (PAC), Selection Committee, Standing Orders Committee, House Committee and Committee of Privileges (SO 81(1); Md Yusof, 2021; Malaysian Economic Association, 2017). For clarity, Standing Committees are permanent committees and remain in existence throughout a parliamentary term to consider matters that fall under its thematic purview (Wong Chen, n.d.). Standing committees are relatively older than Special Select Committees, as they were established in 1959.

As for now, there are two types of SSC that had been established in Parliament. The first type of SSC refers to the SSC that had been established when needed or on an ad-hoc basis (Wong Chen, n.d.). These committees serve for a limited time and cease to exist when they finish the task assigned to them and submit a report (Malaysian Economic Association, 2017). The second type of SSC is known

as the permanent SSC that is formed to exercise oversight function over the operations of ministries. Their composition and authority are very similar to those of standing committees. It was stated that the fundamental job of parliamentary committees in the Australian Parliament is to conduct inquiries that include fact-finding, examine witnesses, evaluate evidence, and draft conclusions (Elder, 2018).

This article aims to critically review the implementation of the Parliamentary Select Committees (ad-hoc) in Malaysia's Parliament during the *Barisan Nasional* (BN) era from 2004 to 2012. This critical assessment examines the membership and chairmanship of the PSCs based on regulations set forth in the Standing Orders and in other applicable legislation. The analysis is very important to empower PSCs as a mechanism of checks and balances in the Parliament of Malaysia. This paper will significantly contribute to institutional reform and the development of a democratic parliament.

## Literature Review

The motivations for this article stem from the lack of research that has arisen as a result of numerous critical restrictions in prior works of literature concerning parliamentary select committees in Malaysia. Previous studies have indicated that several improvements should be made to ensure effective oversight function and transparency. For instance, Faruqi (2020) suggests several ways in which Parliament's special select committees should be improved, including the independence of the committees. Md Yusof (2020) discusses the parliamentary select committees, including the standing committees and the special select committees, during the *Pakatan Harapan* administration. The study by Hassan et al., 2021 looks at a proposal for improvements, including parliamentary committee systems. Nevertheless, these studies do not dwell on the Special Select Committees (ad hoc) in the *Barisan Nasional* government. Additionally, Malaysian Economic Association (2017) and Wong Chen, n.d.) conduct in-depth analyses on Malaysia's special select committees prior to the formation of *Pakatan Harapan* and proposes a considerable number of reforms to the committee system in the Malaysian Parliament. The research, however, places a lesser emphasis on the Special Select Committees (ad hoc) during the *Barisan Nasional* era.

According to the international standards, the CPA Recommended Benchmarks for Democratic Legislatures 2018 advise that in terms of select committee organisation, the Parliament's assignment of Committee Members to each Committee should reflect the Parliament's political composition. Parliament shall create and adhere to a transparent procedure for appointing or electing Committee Chairs. All Committee votes and substantive conclusions, as well as the Committee's reasoning, are made accessible and timely to the public (CPA Recommended Benchmarks for Democratic Legislatures 2018). Additionally, in terms of the committee's oversight functions, the Parliament shall have systems in place to acquire information from the Executive branch adequate to enable it to carry out its oversight responsibilities in a relevant and timely way. There shall be clear and effective mechanisms requiring the Executive to respond promptly to oral and written queries, as well as findings and recommendations of Parliamentary Committees (CPA Recommended Benchmarks for Democratic Legislatures 2018). To encourage good governance, oversight committees should offer minority and opposition parties and independent members the opportunity to conduct meaningful oversight of government expenditures.

In the Malaysian context, the membership in the committee, in particular, SSC, consists of 7 members, inclusive of the chair (Md Yusof, 2021). The members of the SSC are appointed by the Selection Committee, and it was stated under SO 82(1) that the membership should so far as practicable reflect the balance of parties within the House. However, the composition of members in these nine SSCs shows that there has been a clear breach of SO 82(1) (Balakrishnan, 2021). Under SO 82(1), the members of SSC has the power to elect its own chairperson. To ensure a democratic and fair election of chairpersons, it was suggested that the practice of the UK should be modelled as prescribed under SO 122 B House of Commons (Hassan et al., 2021). Besides, it is an uncommon practice for a minister to be given any position in the committee as the SSC should perform its function independently without interference from the Executive (Hassan et al., 2021). As argued in Hassan et al. (2021), the opposition should be given the opportunity to chair certain committees. For example,

nine of the ten SSCs were led by a government backbencher, while an opposition MP led only one (Wong, 2020). The practice in Legislative Yuan is that multiple conveners take turns chairing weekly meetings, implying that the chair of each committee is not held exclusively by the majority party in the House (Huang & Sheng, 2020).

With regards to power, the SSCs are allowed to gather evidence pertaining to their inquiries by summoning witnesses and request the production of documents and records that are relevant to the inquiries (SO 83(2); Md Yusof, 2021). With regard to that, the Parliament has the authority to punish any person who refuses to attend or produce documents or paper before the committee under Section 9 of Houses of Parliament (Powers and Privileges) Act. This shows that the SSC has the authority to compel any person to any person to appear and request documents and papers to be produced before them, which is a potentially powerful tool to increase the government's accountability (Khoo, 2020). However, it was argued that, in practice, there had been limited use of the SSCs to facilitate the Parliamentarians in undertaking their functions (Khoo, 2020). In addition, a lot of important bills are rarely forwarded to the SSCs for scrutiny (Khoo, 2020; Malaysian Economic Association, 2017). According to Faruqi (as cited in Malaysian Economic Association, 2017; Khoo, 2020), approximately 80 per cent of bills introduced by the Executive is passed without amendment, 15 per cent receive minor amendments, and 5 per cent are withdrawn by the Executive.

As a result of the debate above, it is worth emphasising that existing works of literature lack in-depth research of parliamentary select committees (ad-hoc) during the *Barisan Nasional* from 2004-2012. As such, this study seeks to address the gaps and inadequacies in previous research by conducting a comprehensive examination of the parliamentary select committees during the *Barisan Nasional* and developing more comprehensive solutions for the democratic oversight function of PSCs.

## Methodology

This study employs a qualitative approach of parliamentary ethnography through analysing documents as instruments in collecting data. Parliamentary ethnography means the use of ethnography for studying Parliament. This method has been used by scholars such as Crewe (2016) to study the UK's House of Commons, particularly the work of a Member of Parliament (MP) in Parliament and their respective constituencies between 2004-2012. Similarly, Adiputri (2019) also uses this method to study parliamentary institutions in Indonesia, Malaysia, and Singapore. The justification for employing parliamentary ethnography in this study is that it provides a well-rounded perspective of PSCs. To collect data through parliamentary ethnography, we have conducted interviews with MPs, non-governmental organisations (NGOs), international academic experts and parliamentary officers. Due to limited references on Special Select Committees (ad-hoc) during *Barisan Nasional* (2004-2012), the findings of this research is entirely based on the primary sources, namely Hansard and investigation reports presented by the SSCs to the House.

To triangulate the data collected from these interviews, we used document analysis by studying primary and secondary textual documents. They provide holistic views and detailed explanations on the background of the Parliament and the works of select committees. The primary sources were from Malaysian parliamentary statements such as Standing Orders, Hansard and committee reports, while secondary sources were selected from various publications such as academic journals and official government websites. Thematic analysis was implemented to analyse the data.

## Result

Previously, the Parliament established several special select committees under SO 81 (1) DR to encourage open and free debate among the Executive, backbenchers, and opposition. In 2016, Parliament proposed in its transformation agenda the formation of nine Special Select Committees and three Committees: 1) the Committee for Consideration of Bills, 2) Committee for Allocation of Expenditure, and 3) Committee for Meeting Management, which was later rejected by the Cabinet

(Penyata Jawatankuasa Dewan, Majlis Mesyuarat Dewan Rakyat, DR. 6, 2016). The following are the nine Special Select Committees:

- i. Committee on Transportation and Cities;
- ii. Committee on Foreign Affairs;
- iii. Committee on Education;
- iv. Committee on Food and Health;
- v. Committee on Energy, Environment and Water;
- vi. Committee on Rural Well Being;
- vii. Committee on Economics;
- viii. Committee on Women Affairs;
- ix. Committee on Integrity.

However, this article focuses on the Special Select Committees (ad-hoc) during *Barisan Nasional* from 2004-2012. The term 'ad-hoc' refers to committees that are frequently formed with a very specific mandate for a very specific period of time. Every Special Select Committee has its own elected members, defined terms of reference and activities. While Standing Order 74 (1) of the *Dewan Negara* permits the establishment of a select committee, the current study focuses on PSCs in the *Dewan Rakyat*. The Special Select Committees are regarded as ad-hoc committees because they were established on a temporary basis and for a specific purpose. The SSC (ad-hoc) are shown in Table 1.

Table 1: Special Select Committees during *Barisan Nasional* (2004-2012)

No.	Special Select Committee	Year formed	Period
1.	Special Select Committee on Unity and National Service	2004	Two years
2.	Special Select Committee on reviewing Penal Code and Criminal Procedure Code	2004	Two years
3.	Special Select Committee on Electoral Reform	2011	Six months
4.	Special Select Committee on the Lynas Advanced Materials Plant (LAMP)	2012	Three months

### Special Select Committee on Unity and National Service

On December 14 2004, the *Dewan Rakyat* approved the establishment of the Special Select Committee on Unity and National Service to scrutinise the following:

- i. To examine and discuss issues pertaining to national unity and that have relevance and impact on national development policies;
- ii. To recommend amendments to the current development policies and propose new strategies to strengthen the ties among the people in the country;
- iii. To investigate and scrutinise acts that are relevant to the national unity program like Essential (*Rukun Tetangga*) Regulations 1975, National Service Training Act 2002, and discuss the views put forth by the public to propose amendments for the current law;
- iv. To propose recommendations for policy changes and amendments to laws for scrutinisation and consideration.

The Special Select Committee had conducted public hearings, site visits and attended lectures carried out by relevant agencies. In addition, several issues were raised by the witnesses during the public hearing, including those pertaining to the economy, politics and education. As indicated in Table 2, the Special Select Committee had eleven members, nine from the government and two from the opposition. In addition, a cabinet minister presided over the Committee. However, in the absence of the chairman, the members may elect a chairperson from among those present to preside over the meeting for the day.

Table 2: Members for Special Select Committee on Unity and National Service

No.	Constituency	Party	Capacity
1	MP for Kota Marudu (Chairman)	BN	Minister in the Prime Minister's Department
2	MP for Kuala Pilah	BN	Government Backbencher
3	MP for Alor Gajah	BN	Government Backbencher
4	MP for Kapit	BN	Government Backbencher
5.	MP for Kelana Jaya	BN	Government Backbencher
6.	MP for Segambut	BN	Government Backbencher
7.	MP for Subang	BN	Government Backbencher
8.	MP for Lanang	BN	Government Backbencher
9.	MP for Tuaran	BN	Government Backbencher
10.	MP for Batu Gajah	DAP	Opposition Backbencher
11.	MP for Kubang Kerian	PAS	Opposition Backbencher

Source: Laporan Jawatankuasa Pilihan Khas Dewan Rakyat mengenai Perpaduan dan Khidmat Negara, Majlis Mesyuarat Dewan Rakyat (DR. 1, 2007).

### Special Select Committee on reviewing Penal Code and Criminal Procedure Code

On May 8 2004, the Special Select Committee on reviewing Penal Code and Criminal Procedure Code was set up to examine current legislation and propose amendments for the Parliament's consideration. The Special Select Committee consisted of seven members, of which six were from the government and just one from the opposition. A cabinet minister chaired the Committee as indicated in Table 3.

Table 3: Members for Special Select Committee on reviewing Penal Code and Criminal Procedure Code

No.	Constituency	Party	Capacity
1.	MP for Kangar (Chairman)	BN	Minister in the Prime Minister's Department
2.	MP for Santubong	BN	Government Backbencher
3.	MP for Gelang Patah	BN	Government Backbencher
4.	MP for Penampang	BN	Government Backbencher
5.	MP for Cameron Highland	BN	Government Backbencher
6.	MP for Pasir Puteh	BN	Government Backbencher
7.	MP for Seputeh	DAP	Opposition Backbencher

Source: Laporan Jawatankuasa Pilihan Khas Dewan Rakyat untuk Mengkaji Rang Undang-Undang Kanun Keseksaan (Pindaan 2004) dan Rang Undang-Undang Kanun Tatacara Jenayah (Pindaan) 2004, Majlis Mesyuarat Dewan Rakyat (DR. 1, 2004).

### Special Select Committee on Electoral Reform

The 'Bersih 2.0 rally' took place on July 9, 2011, with participants calling for free and fair elections. As a result, former Prime Minister Najib Razak announced the formation of a Special Select Committee on Electoral Reform to investigate the following issues:

- i. The rules and laws pertaining to elections in Malaysia;
- ii. The electoral process;
- iii. To improve the registration of voters' system;
- iv. To strengthen the Election Commission (EC);
- v. To study alternate systems to hold elections.

During the six months, the Special Select Committee convened 13 times and created five subcommittees. The Committee held several meetings and public hearings in various constituencies with numerous stakeholders, including *Majlis Belia Selangor*, *Transparent International-Malaysia*, *Putera MIC*, etc. The public hearings took place at the Parliament building and in Kota Kinabalu. The Special Select Committee had nine members, five from the government, three from the opposition, and one independent, as specified in Table 4. It demonstrated that the members were chosen using a proportional representation system. The chairman of this Special Select Committee, on the other hand, was a cabinet member who formerly chaired the SSC on Unity and National Service, namely the MP for Kota Marudu.

Table 4: Members for Special Select Committee on Electoral Reform

No.	Constituency	Party	Capacity
1	MP for Kota Marudu (Chairman)	BN	Minister of Science, Technology and Innovation
2	MP for Kangar	BN	Government Backbencher
3.	MP for Alor Gajah	BN	Government Backbencher
4.	MP for Kapit	BN	Government Backbencher
5.	MP for Hulu Selangor	BN	Government Backbencher
6.	MP for Gombak	PKR	Opposition Backbencher
7.	MP for Rasah	DAP	Opposition Backbencher
8.	MP for Kuala Krai	PAS	Opposition Backbencher
9.	MP for Wangsa Maju	Independent	Backbencher

Source: Laporan Jawatankuasa Pilihan Khas berhubung dengan Penambahbaikan Proses Pilihan Raya, Majlis Mesyuarat Dewan Rakyat (DR. 1, 2012).

The Special Select Committee presented 22 recommendations based on the investigations to enhance the electoral process and system. These proposals were included based on feedback from the public hearing sessions, committee members' input, a summary of the subcommittee's findings, and observations from on-the-job inspections. It was reported that the Special Select Committee received recommendations from 106 associations, registered organisations and individuals. Some of the recommendations enumerated in the report are as follow:

- i. Use indelible ink;
- ii. The Election Commission (EC) be afforded the power to have its own budget and be directly responsible to Parliament to ensure that its objectiveness is not questioned;
- iii. A service commission be set up for the EC to appoint its own officers;
- iv. Independent bodies like *Mimos Bhd* should be established to help clean up the electoral roll, and another PSC to monitor the electoral roll;
- v. The Election Commission should allow postal voting.

### Special Select Committee on Lynas Advanced Materials Plant (LAMP)

Concerns were increasing regarding the government's decision to move forward with the LAMP project, which involves radioactive material that could potentially endanger the population of Gebeng, Pahang. The *Dewan Rakyat* passed a motion by the Prime Minister's Department to establish a Special Select Committee on LAMP on March 20, 2012. As a result, the LAMP Committee was formed to examine the following objectives:

- i. To examine the safety, health and environmental issues with regards to the LAMP project;
- ii. To investigate the process and award a license if the plant complies with all the applicable laws as well as safety standards.

According to reports, the Special Select Committee held a total of six meetings. The Committee held three public hearings in Kuantan and Kuala Lumpur to gather information from individuals, interest groups, and specialists. In addition, on May 10, 2012, the Committee visited the plant in Gebeng, Pahang.

The Special Select Committee comprised a total of six members, of which 5 of the members were from the governing party. In addition, a minister served as the Committee's chairman. According to the terms of reference in the report, the Committee should have consisted of nine members, with five from the government, three from the opposition and one independent. Nevertheless, according to the report, the actual memberships of the Committee are as specified in table 5.

Table 5: Members for Special Select Committee on Lynas Advanced Materials Plant (LAMP)

No.	Constituency	Party	Capacity
1.	MP for Pasir Gudang (Chairman)	BN	Minister of Higher Education
2.	MP for Kota Belud	BN	Government Backbencher
3.	MP for Tebrau	BN	Government Backbencher
4.	MP for Batang Sadong	BN	Government Backbencher
5.	MP for Simpang Renggam	BN	Government Backbencher
6.	MP for Kulim-Bandar Baharu	Independent	Backbencher

Source: Laporan Jawatankuasa Pilihan Khas Mengenai Projek Lynas Advanced Materials Plant (LAMP), Majlis Mesyuarat Dewan Rakyat, (DR. 3, 2012).

It was reported that the Special Select Committee had awarded a temporary operating license (TOL) as the plant had complied with all safety standards and regulations. The Committee listed out 31 recommendations, including stringent rules for the plant. A few recommendations are as follows:

- i. A monitoring committee to be established to continuously oversee the plant's operations;
- ii. An environmental audit to be conducted by a third party registered with the Department of Environment every six months when the plant is in operation to ensure that it complies with the Environmental Quality Act 1974;
- iii. MITI or MIDA should consider imposing public engagement conditions to companies for their projects that involve radioactive substances subject to the RIA requirements endorsed by AELB at an early stage;
- iv. RIA to be updated from time to time according to the recommendations of the International Atomic Energy Agency (IAEA) report;
- v. LAMP should allow the public, stakeholders, NGO, and professional bodies to have access to information to enhance transparency.

## Discussion

According to the Special Select Committee's (ad-hoc) practice, regardless of SO 82(1) DR, the Committee's membership should reflect balance; the analysis discovered that the Special Select Committee's (ad-hoc) selection of members was not proportionate. For example, the Special Select Committee on LAMP was composed of 80 per cent members from the government side and one independent member. There were no opposition representatives on this Committee, which is in contravention of the CPA's 2018 Recommended Benchmarks for Democratic Legislatures.

In the Special Select Committee on reviewing Penal Code and Criminal Procedure Code, only one member from the opposition was appointed whereas, in the Special Select Committee on Unity and National Service, there were only two opposition MPs from eleven members, which we believe is unbalanced and unjustifiable. However, it is worth highlighting that the composition in the Special Select Committee on Electoral Reform was fairly balanced in accordance with SO 82 (1) DR, with five members from the government, three from the opposition, and one independent member.

Additionally, it is critical to emphasise that each ad-hoc Committee was chaired by a minister. While there was no clear restriction against a minister chairing the Special Select Committee, it is common for ministers to abstain from chairing parliamentary committees, and the Committee's work should be independent of the Executive. To maintain an impartial decision-making process and openness, ministers should not be allocated a role in PSCs, as advocated by Hassan et al. (2021). As a matter of fact, the CPA Recommended Benchmarks for Democratic Legislatures 2018 recommends that the parliament design and adopt a transparent process for selecting or electing the Chairs of Committees.

On the technical side of things and the implementation of the methodology in SSC, the Committee carried out its mandate in accordance with the terms of reference. In reality, the Committee's recommendations were based on evidence gathered through public hearings, site visits, and feedback from a wide range of organisations, professionals, and private citizens. The Committee on Electoral Reform's decision to designate subcommittees to which it will transfer responsibility is also noteworthy in and of itself.

To ensure that there is a gender balance in the SSCs, there were a total of four female MPs appointed in the SSCs during *Barisan Nasional* (2004-2012), with one female MP appointed in the SSC on Unity and National Service and in the SSC on the Lynas Advanced Materials Plant (LAMP), while the remaining two MPS were elected in the SSCs on reviewing the Penal Code and the Criminal Procedure Code, respectively. However, there were no female members of Parliament nominated to the Select Committee on Electoral Reform. This demonstrates that women's involvement in SSCs has been at a low rate. More female members of Parliament should be appointed to committees in order to promote inclusive representation and the promotion of women's engagement in the Parliamentary process.

## Conclusion

Transparent and effective PSCs are imperative to warrant an inclusive and sustainable Parliament. It is vital that the PSC fulfils its mandate of overseeing policy implementation and holding the executive accountable to the public for national development. As a result, both Parliament and parliamentarians should carry out their roles in PSCs to ensure the successful implementation of all government plans, strategies, and programs. PSCs should provide a safe space for members to discuss and debate policy formulation while setting aside their political disagreements.

In conclusion, the parliamentary reform to institutionalise the parliamentary select committees (PSCs) in order to strengthen the oversight function in the Malaysian Parliament is praiseworthy. Since the PSC system is at its infancy stage, there are some aspects that require improvement to empower the current system. It may take years for the SSCs to provide a systematic or comprehensive check on the government; however, the Malaysian Parliament is taking the right steps to strengthen the checks and balances system and hold the Executive accountable by institutionalising a parliamentary select committee (PSC) system. Fundamentally, for PSCs to be effective, political will and government cooperation must be well established within Parliament.

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