



RESPONSE FROM BERSIH 2.0 TO THE RECOMMENDATIONS OF THE PARLIAMENTARY SELECT COMMITTEE ON ELECTORAL REFORM

The Parliamentary Select Committee on Electoral Reform has formulated 22 recommendations to improve the electoral system in Malaysia.

Overall, BERSIH 2.0 notes that many of the recommendations involve the Election Commission implementing the proposed reforms or undertaking further study into various matters, and reporting back to a Parliamentary Select Committee to be established to monitor the implementation of the recommendations.

This has 2 obvious drawbacks. Firstly, it relies on the existing Election Commission carrying out these recommendations. Time and again, the existing Election Commission has shown itself to be incapable or unwilling to initiate reforms of the electoral system. We question whether the existing Election Commission has sufficient credibility to commit itself to undertaking the proposed recommendations.

Secondly, BERSIH 2.0 is of the belief that many of the recommendations made by the Parliamentary Select Committee can be immediately implemented. We do not see the need to provide for a lengthy implementation period. We reiterate that BERSIH 2.0 has demanded that reforms should be implemented BEFORE the 13th General Elections are held.

We note that while some recommendations do provide for a time-frame to report back, many others do not. The lack of a time-line merely prolongs the dissatisfaction and lack of confidence in the electoral system, and adds to the frustration of the rakyat.

Specifically, BERSIH 2.0 would make their initial response to the 22 recommendations as follows:-

1. OVERSEAS VOTERS

The main proposal, namely to allow overseas voters to vote, should be immediately implemented. The right to vote should be unconditional, and any imposition of conditions would be unconstitutional.

BERSIH 2.0, Tindak Malaysia and Malaysian Overseas Voter have submitted detailed proposals as to how voting for overseas Malaysians may be carried out, and we do not see the need for further study on this matter as it will only serve to delay implementation. If the Election Commission is unable to handle the voting by Malaysians living abroad, civil society organisations are prepared to do it on the Election Commission's behalf, so long as they are adequately resourced financially.

Provisions already exist to allow Malaysians living overseas to register as voters. Malaysian missions abroad should be immediately instructed to receive such applications, and to comply with a standardised procedure that needs to be urgently clarified.

2. POSTAL VOTING FOR ELECTION COMMISSION STAFF AND THE MEDIA

The current categories of permissible postal voters in respect of those living within Malaysia – police/ military personnel and their spouses, staff of the Election Commission - should be re-classified as advance voters. Advance voters should only be allowed to vote in the constituencies in which they are registered by the Election Commission and gazetted.

BERSIH 2.0 and Tindak Malaysia have suggested that the category of advance voters should be extended to election candidates, election agents, polling agents, counting agents, booth observer and candidates' nominees on the Election Commission enforcement teams.

Personnel on duty at polling stations should come from a mix of Election Commission staff and members of civil society/the public resident in that constituency.

We do not agree that members of the media enjoy the right to be registered as postal or advance voters.

It is noted that the question of the integrity of the postal vote system has not been thoroughly examined. The postal vote system has in the past created a great amount of suspicion. One would have thought that it is best for transparency that the categories of advance voters and postal voters be reduced, not increased.

3. DISTANCE VOTING

We are in favour of distance voting. The logistics relating to distance voting are not too difficult provided there exists the requisite political will.

BERSIH 2.0 and Tindak Malaysia have already submitted proposals and logistical solutions to the issue of distance voting, via the Second Memorandum to the Parliamentary Select

Committee, on 21 March 2012. We do not see the need for further study. The provisions to permit distance voting can be implemented once the relevant regulations are amended. Our Second Memorandum already contains the draft amendments to the existing regulations.

4. PRE-REGISTRATION OF CITIZENS AS VOTERS ON REACHING THE AGE OF 20 YEARS

We are of the view that this is not necessary. Focus instead should be placed on automatic registration of voters when they reach the age of 21. Attention should also be paid to our proposal to reduce the qualifying age for voting to 18 years.

5. DATE OF DISSOLUTION OF PARLIAMENT

We are of the view that in a functioning democracy, provision has to be made for circumstances in which the government of the day may lose a motion of no confidence. Introducing provisions that Parliament can only be dissolved after the completion of at least 4 years of a 5-year term of office may lead to an unpopular government being allowed to cling onto power.

6. CARETAKER GOVERNMENT

We wholly support the concept of a caretaker government, but do not feel that this is within the ambit of the Election Commission. There must be political consensus on the aim of

implementing the concept of a caretaker government – to achieve political neutrality during the election campaign period, with no new spending commitments, no new projects announced. There will also have to be political agreement on its composition

7. ENFORCEMENT OF EXISTING REGULATIONS IN CONNECTION WITH THE OFFENCE OF GIVING FALE INFORMATION IN REGISTRATION MATTERS

All the necessary information to be provided during the registration of new voters or registration of a change of address should be based on the particular contained in the MyKad or the relevant change of address notification issued by the National Registration Department. There is no need for any additional information.

We are more concerned about what has not been addressed by the Parliamentary Select Committee, which is more critical, namely the existence of false and duplicate identities within the database of the National Registration Department. This raises questions about the integrity of the National Registration Department's database, upon which the Election Commission relies.

8. EXTENDING THE CAMPAIGN PERIOD

We have called for a minimum campaign period of 21 days.

In determining the minimum campaign period, consideration must be given to the number of days required in order to allow an overseas voter to receive his/her ballot paper, mark it, and return it by post to the Returning Officer of his/her voting constituency before 5pm on election day. Any campaign period less than the number of days required for this to be reasonably undertaken would make a mockery of the right of overseas voters to cast postal ballots. This should be one of the minimum criteria to determine the length of the campaign period. A decision on the campaign period, which we would remind is something that is decided by the Election Commission, should also take into consideration the provision of sufficient time for election candidates to disseminate their election messages to the electorate and for the voter to consider the issues.

The argument of the costs associated with a prolonged election campaign period is a false one. The bulk of the labour costs of carrying out an election is not dependent on the length of the campaign period. Such costs would be incurred on polling day itself, however long or short the campaign period is. Other fixed costs would remain unchanged, and so are also not dependent on the length of the campaign period.

In any event, elections are of sufficient importance that the cost of carrying one out should not be a primary consideration.

The costs incurred by political parties and election candidates should not be a consideration. Where candidates are concerned, existing regulations already prescribe financial limits for election campaign-related expenditure.

9. FREE AND EQUITABLE MEDIA ACCESS

There should be fair and equitable coverage of the election campaign of candidates and political parties, and no biased reporting. This recommendation can and must be implemented immediately. There must be a public commitment by the relevant Ministry that this be done. We are pleased that the Parliamentary Select Committee has made reference to Article 115(2) of the Federal Constitution and has called upon the Election Commission to exercise their power under these provisions.

10. ON-GOING MONITORING OF THE ELECTORAL ROLL

Currently the postal voter roll is separate from the principal electoral roll. This should be unified so that duplication of electors cannot arise.

The work done by MIMOS in electronically interrogating the electoral rolls has been too simplistic, resulting in minimal errors being identified. It appears that only a comparison of the 12-digit MyKad numbers was carried out.

The testing of the data requires more thorough and detailed parameters. For example, testing should be done to see if there is a duplication of the old NRIC numbers. Testing should also be done to search for identical names, and a high degree of matching of the 12-digit MyKad numbers to eliminate for possible duplicate registrations.

For police and military personnel, the 12-digit MyKad numbers and the numbers of military or police identity card should also be listed to check for possible duplicate registrations. This does not appear to have been done either.

Postal addresses should be complete. It is the duty of the Election Commission to ensure that all data are comprehensively entered. We are disturbed that the Election Commission has cited clerical errors to explain away discrepancies in the electoral roll. Entry checking by 2 separate personnel should have been undertaken to eliminate clerical errors. Physical site verification of addresses of new voters should also have been carried out.

Minor variations in how postal addresses are entered into the database have also led to duplicate registration of electors.

The monitoring of the work of the Election Commission with respect to the electoral rolls should be performed by an independent audit committee.

It is disappointing that the Parliamentary Select Committee has not addressed its mind fully to the instances of fraud that have been highlighted publicly to-date. The Election Commission ought to have been taken to task over this and immediate steps must be taken to address this vital issue. As it stands, BERSIH 2.0 is of the view that we cannot proceed to the 13th General Elections based on this electoral roll.

11. INSPECTION OF THE ELECTORAL ROLL FOR ADDRESSES WITH MULTIPLE ELECTORS

We question why inspection should only begin for addresses that have more than 50 registered electors. Since this inspection is undertaken in order to identify addresses with multiple electors, inspection could just as easily start for addresses with more than 11 electors. More work would have to be done, but as the intention is to identify addresses for further investigation, a lower number would generate more addresses for which electors may be verified.

There is no need to allow for a period of 45 days to complete such investigations. A period of 21 days would suffice.

12. OBJECTIONS TO VALIDATED ELECTORAL ROLLS

The Chief Registrar already has adequate discretionary power under Regulation 25 of the Registration of Electors Regulations to cause the registration of suspicious electors to be investigated even after the electoral rolls have been validated. There is no need to study the granting of additional powers.

13. STUDYING AUTOMATIC VOTER REGISTRATION

We have called for the automatic registration of electors upon their attaining the age of 21 years. There is no reason for any delay in implementing this. If the government is of the view that an amendment to the Federal Constitution is required in order to achieve this, this can be speedily accomplished if there is sufficient support for this proposal from all political parties represented in Parliament.

14. UTILISATION OF AN ADDRESS OTHER THAN THE ADDRESS ON THE IDENTITY CARD TO DETERMINE A PERSON'S ELECTORAL CONSTITUENCY

This deals with the question of which constituency a person should vote in, in cases where a person does not reside at the address contained in his MyKad.

BERSIH 2.0 and Tindak Malaysia have already proposed solutions to the Parliamentary Select Committee on this issue, namely the various alternatives of advance voting, distance voting and postal voting for overseas Malaysians. Instead of adopting the solutions offered, the Parliamentary Select Committee appears to be skirting the issue.

The decision on which constituency a voter should be registered in must be based on the address shown on the MyKad or on any change of address notified to the National Registration Department.

Apart from advance voting, distance voting and postal voting, BERSIH 2.0 and Tindak Malaysia have suggested that an elector may register with the Election Commission his or her choice of which polling station at which to vote, so long as it is a polling station within the same constituency. In cases of large geographical constituencies, this may make it easier for a person to cast his or her vote, rather than having to return to the polling station nearest the registered residential address.

15. STRENGTHENING THE POSITION OF THE ELECTION COMMISSION

Members of the Election Commission must enjoy public confidence, and must be able to ensure that elections are carried out in a free and fair manner. In the event that they cease to enjoy public confidence, they should resign or be removed.

The Election Commission supervises the election of members of Parliament and state legislative assemblies. As such, the Election Commission should be independent of Parliament. The Election Commission should have and manage its own budget, which should not be scrutinised by Parliament, but audited by the Auditor-General.

There should be a committee comprising non-politicians charged with the responsibility of receiving nominations for membership of the Election Commission and which would make recommendations to the Yang DiPertuan Agong. Past and present members of political parties and serving or retired civil servants should not be eligible to be nominated as members of the Election Commission. The non-involvement of the Prime Minister in the appointment process should be emphasized in order to ensure that the Election Commission is independent.

16. STRUCTURING AND STRENGTHENING OF THE ELECTION COMMISSION

A detailed study of the human resource capacity and performance of the Election Commission is needed before any recommendation of an increase in its staff numbers can be accepted.

In any event, if the recommendation to separate the 3 main functions of the Election Commission is accepted (see item 18 below), then the number of Election Commission staff could actually be reduced, rather than increased. We are deeply alarmed by reports that there has been an increase in the number of staff of the Election Commission by 100,000 people, to 240,000. This in itself is a sizeable block of postal voters that gives cause for grave concern.

The staffing of the Election Commission should be independent of government. Commission should have its own funding, staff and salary scheme.

17. WIDENING THE WORK OF THE ELECTIONS ACADEMY

Although the Election Academy has been in existence since 2007, there is no evidence of active voter education programmes carried out by the Election Commission. On the other hand, civil society organizations have been active and have taken the lead in voter education.

It would be preferable if the government provides funding for civil society to continue with their voter education programmes, instead of continuing with the Elections Academy.

18. SEPARATION OF THE MAIN FUNCTIONS OF THE ELECTION COMMISSION

We concur with the recommendation that the 3 main functions of the Election Commission be separated and distributed to 3 separate bodies.

19. DISTRIBUTION OF SEATS IN THE HOUSE OF REPRESENTATIVES FOR THE STATES OF SABAH AND SARAWAK

This issue should be deferred until the Royal Commission of Inquiry has completed its investigations and delivered its findings into the systematic abuse of the granting of citizenship to foreigners, otherwise known as “Project IC”, in Sabah.

20. BALANCED ELECTORAL DELINEATION

Each electoral constituency should consist of approximately the same number of population. There should no longer be any need for any rural weightage in this day and age. The principle of “one person one vote” should be upheld without exception.

21. PROVISION OF FUNDING TO POLITICAL PARTIES

Election funding to political parties should be provided based on the proportion of the popular vote obtained by each political party in the previous general election. Political parties should not be allowed to utilize any other funding for an election campaign.

22. NEW ELECTORAL SYSTEM

We agree that studies should be carried out on alternative electoral systems.

CONCLUDING REMARKS

BERSIH 2.0 is disappointed that the following key issues were not with dealt with at all or were not dealt with in sufficient depth:-

- a) The instances of manipulation of the electoral roll by removing names, changing polling station boundaries, and other such obvious discrepancies. A thorough study ought to have been conducted into the processes of the Election Commission and the National Registration Department.

- b) No reference whatsoever is made in the report about foreigners being given citizenship for their vote in Semenanjung Malaysia. Whilst the problem is acknowledged to exist in Sabah, there is no reference to Semenanjung Malaysia, where the issue is also of relevance.

- c) Nothing is said in the Parliamentary Select Committee's report about election offences and the enforcement of the Election Offences Act 1954 as it now stands. There ought to also have been a study into the types of such offences being committed, and recommendations on how to prevent them. Although there is a suggestion that the Election Commission be given more powers to deal with such issues, the Parliamentary Select Committee does not seek to identify the problems and the clear infringements of the Act.

d) There is no mention of how to stop dirty politics save for a reference to a Code to be drawn up in relation to a Caretaker Government. In fact there ought to be a code of conduct in relation to all candidates and political parties. An example of such a code of conduct, from India, was given by BERSIH 2.0 to the Parliamentary Select Committee.

e) There is no reference to the inviting of International Observers. Malaysia was recently invited to send election observers to observe the recently-concluded by-elections in Myanmar. On a previous occasion Malaysian observers were invited to observe the general elections in Thailand. If we subscribe to and endorse the principle of having international observers by our participation in such missions, then Malaysia's reticence in inviting international observers is wholly inexplicable.

f) We are shocked at the manner in which the Parliamentary Select Committee's report was received and adopted by the Dewan Rakyat on 3 April 2012, without any debate. Further, we deplore the decision by the Speaker of the Dewan Rakyat not to permit the inclusion of a Minority Report together with the Parliamentary Select Committee's report. The continued lack of respect of contrary views bodes ill for the development of a strong and vibrant Parliamentary democracy in Malaysia. The fact that there was no debate on the Parliamentary Select Committee's report suggests that the majority in Parliament are none too concerned about the nature and extent of fraud and other irregularities in connection with the electoral rolls and the conduct of elections in Malaysia. The majority in Parliament do not appear to appreciate the need to strengthen the electoral process in Malaysia.

g) Given thus, BERSIH 2.0 is of the view that it is highly likely that the electoral fraud and other irregularities that are currently being perpetrated in Malaysia, and which have been and continue to be the concern of decent, fair-minded and peace-loving Malaysians, will continue unabated. A golden opportunity to right the wrongs and do something good for the benefit of Malaysians now and in the future has sadly been missed.

Salam BERSIH 2.0

Steering Committee, Coalition for Clean and Fair Elections (BERSIH 2.0)

The Steering Committee of BERSIH 2.0 comprises: Dato' Ambiga Sreenevasan (Co-Chairperson), Datuk A. Samad Said (Co-Chairperson), Ahmad Shukri Abdul Razab, Andrew Khoo, Arul Prakash, Arumugam K., Dr Farouk Musa, Liau Kok Fah, Maria Chin Abdullah, Richard Y W Yeoh, Dr Subramaniam Pillay, Dato' Dr Toh Kin Woon, Dr Wong Chin Huat, Dato' Yeo Yang Poh and Zaid Kamaruddin, Hishamuddin Rais, Niloh Ason, Awang Abdillah, Matthew Vincent, Anne Lasimbang, Andrew Ambrose.