



Malaysian Civil Society's Memorandum on Electoral Reforms in Malaysia 2010

Presented to the Election Commission Initiated by the Coalition for Clean and Fair Elections 2.0 (BERSIH 2.0)

We the undersigned civil society groups hold that the only formula for stability, progress and prosperity in Malaysia is a vigorous and healthy multiparty democracy.

Following the 2008 elections, Malaysia is experiencing a changing style of government, from an authoritarian to a more democratic one. While the public have benefitted from the competition between the BN and PR which brought about some administrative reforms and more inclusive policies, it is still worrying that some quarters may resort to desperate means to influence the election, including the abuse of state apparatus or to change the election outcomes through defection and the deliberate denial of fresh elections when the old mandate is in question.

Come the next general elections, should some political parties refuse to accept “democracy as the only game in town” and attempt to compete for power by rigging elections or rejecting election outcomes, Malaysia may sink into political turmoil.

The role of the Election Commission (EC) in ensuring political stability and democratisation is therefore paramount. Article 114(2) of the Federal Constitution stipulates the expectation of the EC to “[enjoy] public confidence”. This means the Election Commission should conduct elections with integrity and impartiality to ensure universal suffrage, a level playing field for all political parties and candidates, informed choices and facilitation of informed choices and inclusive representation. Bersih 2.0 believes that within the existing provisions of the law, the EC can conduct this important democratic exercise according to the international best-practice standards.

The EC can and must protect multiparty democracy by ensuring clean and fair elections, in their administration and enforcement of relevant laws and also through advocacy of necessary changes to the Constitution, laws and by-laws.

Driven by a common desire for a better tomorrow for Malaysia, we urge the EC bring about the following reforms. We hope the EC will engage us and the larger public for consultation and deliberation. We also call upon the Malaysian public to familiarise themselves with their rights as voters and to advance the reform agenda through their own available channels.

Immediate Concerns:

- **Investigation of Election Offences.** We hold that it is incumbent upon the EC to perform its public duty to cause an investigation of all election offences committed, particularly in the two recent by-elections, pursuant to the Election Offences Act. It would be a dereliction of duty to ignore the numerous reports filed in relation to election offences committed. In order to maintain its independence, the Election Commission should be given the power to prosecute violators of Election Offences Act.

- **Obstruction to voters' registration.** We are alarmed to note the complaints of unreasonable restrictions relating to registration, such as limited forms available to Assistant Registrars in voter registration drives despite the fact that some 4 million eligible voters have yet to be registered. Obstruction of universal suffrage is a cardinal offence against democracy. The EC must immediately remove the resistance to the voter registration drive or risk losing public confidence completely, thus making itself unfit constitutionally. The EC must be seen to be complementing the efforts of all parties towards facilitating (and not obstructing) the efficient registration of voters.

A. Suffrage and Polling

1. Automatic Registration – We hold that all eligible voters should be automatically registered as voters upon eligibility and their status and addresses be updated via the synchronisation of electoral rolls and the national registration database. This would do away with the many flaws in, and complaints relating to, the existing electoral rolls from phantom voters, incomplete addresses, address change to multiple registrations.

We are extremely concerned that the EC has rejected the idea of automatic registration of voters, particularly when this will resolve all complaints about the registration process.

2. Lowering of voting age – We hold that all Malaysians of 18 years old or above have the right to vote and be candidates in parliamentary and state elections. They are mature enough to participate in public life and greatly affected by government policies in education and employment. Nearly 90% of the countries in the world now – including our neighbours Indonesia, the Philippines, Thailand and Cambodia – have adopted 18 years or less as the voting age. There is no reason we should be left behind.

3. Absentee Voting for All – We hold that the current separate postal vote list should be abolished but all voters – civilians or members of security forces, whether home or abroad – should be able to opt for absentee voting if they have valid excuses and apply to do so before nomination day. This is perfectly possible with automatic registration and a longer campaign period. The abolition of separate postal voter lists means the police and military voters can now choose to vote like civilians if they are not on duty on polling days. This will eliminate fears and allegations that secrecy and free will are violated in postal voting.

4. Indelible Ink – We hold that indelible ink should be used in all elections to prevent multiple voting. The Cabinet had in fact made the decision to do this in 2007 and the rumour of sabotage that was used to justify its cancellation has been proven to be completely baseless. The EC risks being seen as covertly allowing multiple voting should it insist on opposing the use of indelible ink.

B. Constituency Redelineation

5. Minimising gerrymandering – We hold that constituencies should be delineated based on the communities of interests, amongst others, defined by administrative boundaries. Therefore, no parliamentary and state constituencies should cross the boundary of local authorities or administrative districts. Similarly, no local communities should be partitioned by electoral boundaries. The Thirteenth Schedule of the Federal Constitution stipulates that local ties should be respected.

6. Minimising malapportionment of constituencies – We hold that the EC must faithfully abide the instruction in Section 2, Part 1 Thirteenth Schedule of the Federal Constitution: “the number of electors within each constituency in a State ought to be approximately equal except that, having regards to the greater difficulty of reaching electors in the country districts and the other disadvantages facing rural constituencies, a measure of weightage for area ought to be given to such constituencies.” The rural weightage is not a licence for the EC to manipulate the constituency size. That 17 out of 56 state constituencies in Selangor or 30% have more voters than Selangor’s smallest parliamentary constituency Sabak Bernam in the 2008 elections shows that the EC has blatantly violated the constitutional provision in the last constituency redelineation exercise. We demand that in the coming redelineation exercise, the EC should ensure that in no instance can any state constituency have an electorate larger than the 50% of electorate of the smallest parliamentary constituency in the same State.

C. Contestation and Media

7. Meaningful Campaign Period – We hold that the EC should stipulate a campaign period of not less than 21 days period. A longer campaign period would not only allow voters more time

to gather information and deliberate on their choices, it would also reduce the election tension as the parties would have to stretch their resources for a longer period. Twenty-one days is not unreasonable as the British Colonial Government granted a campaign period twice as long, 42 days, in the first national elections in 1955. In the future, the EC should propose for the Elections Act to be amended to such effect.

8. Free and Fair Media Access – We hold that for the next general elections, the EC should press for the national broadcaster, Radio and Television Malaysia (RTM) to allocate airtime proportionately for all political parties that contest more than three seats and organise a televised prime-ministerial debate along the lines of what was held in the United Kingdom in May 2010. The EC should propose for the Elections Act to be amended to compel the state-owned media to provide free and equal coverage for all political parties; and private media to provide fair access.

D. Election Finance

9. Control of party expenses – We hold that the EC must propose for the Election Offences Act to be amended so that expenses such as advertising cost incurred by political parties will be accounted for on pro-rata basis as part of the candidates' election expenses.

10. Public Finance of Party Expense – We hold that the EC should call upon the Federal and State Governments to financially support all political parties based primarily on vote share in the previous elections.

E. Multiparty democracy

11. Right to Contest Election after Resignation – We hold that the EC should propose to the Federal and State Governments to remove obstacles in the respective constitutions so that elected representatives may re-contest in elections after resignation. Most elected representatives are elected on party tickets. Should they change their party affiliation, they have the duty to resign and seek a new mandate. Removing these obstacles would take away the excuses of party hopping without resignation by elected representatives.

12. Administrative Neutrality – We hold that the EC must propose for the Election Offences Act to be amended such that no major and non-urgent decision including development projects and funding can be made by Federal, State and Local governments concerning the nation, a state or a parliamentary or state constituency after the Parliament/ State Legislature is dissolved or the seat is declared vacant.

13. Restoration of Local Government Elections – We hold that the EC should cooperate with any interested State governments to restore local elections in the spirit of Article 113(4) of the Federal Constitution. The EC must not act in violation of what the Constitution demands of it.

F. Electoral Administration

14. Full Judicial Scrutiny on Election Petitions – We hold that the EC should propose for the

Election Offences Act to be amended so that election petitions can be filed on all grounds of electoral manipulation. The Act was amended in 2003 to the effect that the integrity of electoral rolls can no longer be challenged in a court of law.

15.Right to Observe Elections – We hold that the EC must prepare a transparent and inclusive guideline for domestic and international observers to be registered for the coming elections. The EC should also propose for the Election Act to be amended to provide for the right to observe elections.

Issued by:

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Chairperson

For and on behalf of BERSIH 2.0 (Coalition for Clean and Fair Elections)

Endorsed by: 1. Aliran 2. Anwar Ibrahim Club (AIC) 3. Amnesty International (Malaysia) 4.
A
Il Women's Action Society (AWAM)

5.
Coalition for Good Governance Penang

6.

Council of Churches Malaysia (CCM) Youth

7.

Centre for Independent Journalism (CIJ)

8.

Child Development Initiative

9.

DEMA (Gerakan Demokratik Belia dan Pelajar Malaysia)

10. Dewan Perhimpunan Cina KL-Selangor (Jawatankuasa Hak Sivil)

11.

Educational, Welfare and Research Foundation Malaysia

12.

Friends in Conversation (FIC)

13.

Federation of Indian Non-Governmental Organisations

14.

Group of Concerned Citizens (GCC)

15.

Indian Malaysian Active Generation (IMAGE)

16.

Independence People Action Committee (IPAC)

17.

Islamic Renaissance Front (IRF)

18.

Jaringan Rakyat Tertindas (JERIT)

19.

Jemaah Islah Malaysia (JIM)

20.

Klang Consumer Association

21.

Komuniti Masyarakat (KOMAS)

22.
Kumpulan Akhbar Independen (KAMI)
23.
Labor Resource Centre (LRC)
24.
LLG Cultural Development Centre.
25.
Majlis Kelab Bell Belia Tamil Malaysia
26.
Malaysian Association of Indian University Graduates
27.
Malaysian Dravidian Association
28. Malaysian Hindu Youth Council
29. Malaysian Indian Development & Unity Association
30. Malaysian Indian Historical Association
31. Malaysian Tamil Forum
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Micah Mandate (The)
33.
National Institute for Electoral Integrity (NIEI)
34.
Oriental Hearts and Mind Study Institute (OHMSI)
35.
Penang Independent Schools Education Society.
36.
Permas
37.
Persahabatan Semparuthi
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Persatuan Alumni Han Chiang, Malaysia.

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Persatuan Alumni Han Chiang, Pulau Pinang.
40. Persatuan Hak Asasi Manusia (HAKAM)
41. Persatuan Kesedaran Komuniti Selangor (EMPOWER)
42.
Research for Social Advancement (REFSA)
43.
Rumah Anak Teater (RAT)
44.
Sahabat Wanita
45.
Saya Anak Bangsa Malaysia (SABM)
46. Sembang-sembang Forum
47. Sisters in Islam (SIS)
48. Solidariti Mahasiswa Malaysia (SMM)
49. Southeast Asian Centre for e-Media
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Students Reserve Unit (SERU)
51.
Suara Rakyat Malaysia (Suaram)
52.
Tamil Foundation Malaysia
53.
Tenaganita
54.
University Malaya Association of New Youth (UMANY)
55.
Women's Aid Organisation (WAO)

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Women in Disability Association

57.

Women Institute for Research Development and Advancement (WIRDA)

58.

Writers' Alliance for Media Independence (WAMI)

59.

Youth for Change (Y4C)

60.

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