

Tindak Malaysia
To Educate, To Empower, To Mobilize, To Act
Equipping PACABA for Free and Fair Elections

**BERSIH 2.0 AND TINDAK MALAYSIA:
PROPOSED REFORMS TO THE ELECTORAL SYSTEM**

FOR IMMEDIATE RELEASE

Kuala Lumpur, March 21, 2012 (Wednesday) – Bersih 2.0, a coalition on free and fair elections, and Tindak Malaysia, an election reform movement, submits a second memorandum to the Parliamentary Select Committee on Electoral Reforms (PSC). This is a follow-up to our first memorandum submitted on March 6, 2012.

Our first memorandum covered 18 Proposed Amendments to the Election Acts, namely:

- Elections Act 1958 (5 amendments) - EA**
- Election Offences Act 1954 (10 amendments) - EOA**
- Election Commission Act 1957 (3 amendments) - ECA**

For completeness, we are including them in this submission also. Further amendments have been made to reconcile them with proposed amendments to the Regulations.

This round we are proposing amendments to the Election Regulations, namely:

- Elections (Conduct of Elections) Regulations 1981 - COE**
- Elections (Registration of Electors) Regulations 2002 - ROE**
- Elections (Postal Voting) Regulations 2003 - PV**
- Elections (Postal Voting) Regulations 2003 by MyOverseasVote UK.**

We are also proposing to create of three new regulations for consideration by the PSC

- Elections (Advance Voting) Regulations 2012 - AV,**
- Elections (Distance Voting) Regulations, 2012 – DV.**

We wish to point out that there is considerable overlap between the 2 new proposals (AV & DV) and the proposed amendment to Postal Voting by MyOverseasVote UK. Further discussions with the PSC and the EC are required to decide which proposal is best and most practical.

We have identified many weaknesses in the Election Regulations that need to be tightened up to create an environment for:

- Free and Fair Elections
- A transparent electoral process
- Greater public confidence in the Election Commission as provided for in the Federal Constitution.

Overview of Proposed Changes

1. To ensure the electoral list is free from phantom voters and is independently maintained:

Appointment of Registrars after nomination by professional bodies and civil societies. EA Section 8

2. To ensure election campaigns are fair:

Appointment of Returning officers and enforcement officers after nomination by professional bodies and civil societies. EA Section 3

3. To ensure that polling day is conducted fairly and independently:

Appointment of half of presiding officers after nomination by Bar council in consultation with professional bodies and civil societies. COE Regulation 12

4. Enable all Malaysians to vote:

Automatic registration upon citizen reaching 21⁺ - ROE Regulation 2.

To allow 1 million Malaysians working overseas postal votes, currently disenfranchised.

Malaysians working in other states and cannot return to their home states to vote. For example : Almost 200,000 East Malaysians working in W Malaysia are disenfranchised to work as they are working in W Malaysia. Many cannot afford to return and neither is there enough flights to enable them all to go back to vote.

5. More transparent elections (not secretive and open to abuse):

Advanced voting for all service personnel ie army, police etc

6. Reduce fraud during voting:

Voting procedures have been improved for greater transparency and accountability.

Form 13 and 14 (tally sheets) have to be signed by presiding officers and agents

Ballots are counting according to serialised numbers.

Use of indelible ink to prevent double voting

Restrict documents of identification to safer NRD identification with photo. And to forbid use of driving license and haj cards.

7. Help for small parties and independent candidates:

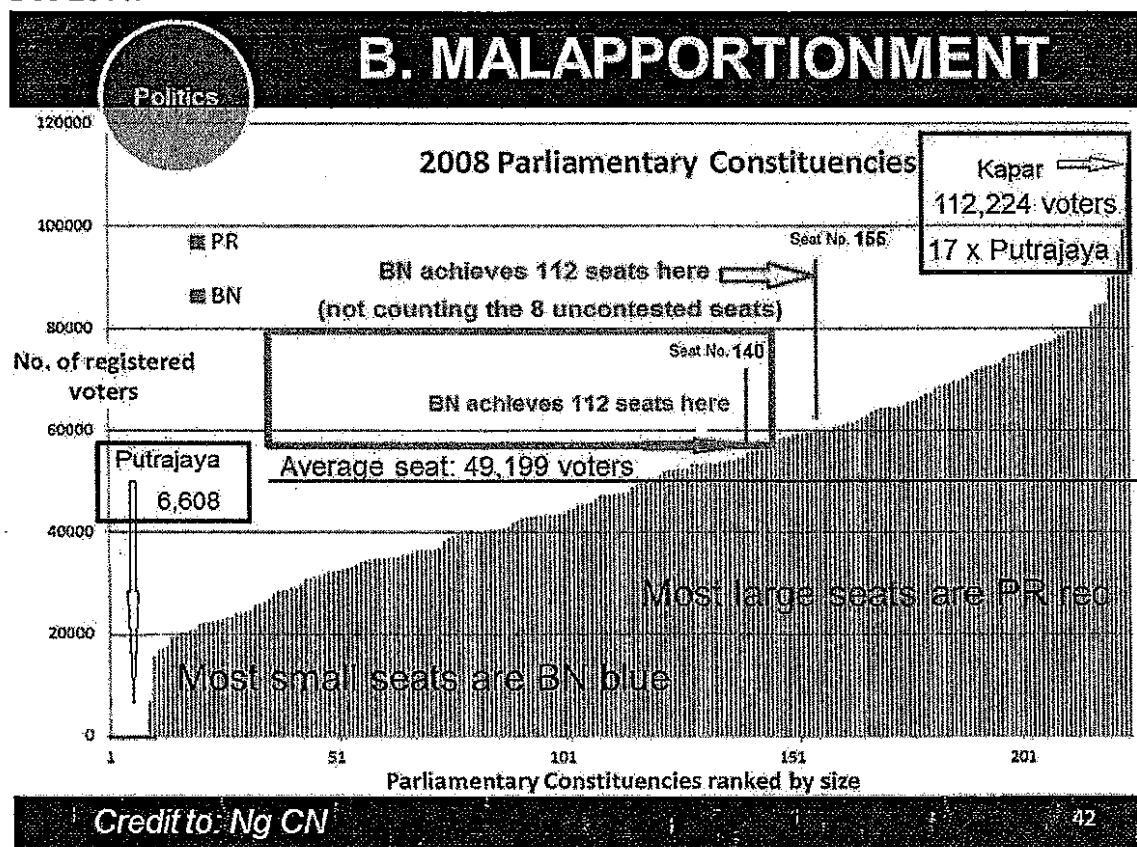
To provide a more level playing field for the small parties and independent candidates, we propose:

- i. a minimum campaign period of 30 to allow them to stretch their resources,
- ii. Ban on advertising in private mainstream media,
- iii. Govt media to be shared proportionately among all parties

30 day campaign period will allow all postal votes to be returned in good time.

8. Malapportionment:

We also wish to address the serious issue of gross seat disparity. Based on the GE 12 electoral roll, Kapar Parliamentary Constituency, for example, has 17 times the number of voters compared to the smallest seat, Putrajaya Parliamentary Constituency. The Election Commission Chairman has claimed that he does not have the resources to conduct a redelineation exercise, which constitutionally, he could have done after Mar 2011. To come up one year later with such a weak excuse is very disappointing. If they had been serious, they could have completed it by Dec 2011.



To help the Election Commission, BERSIH 2.0 and Tindak Malaysia is ready to conduct a nationwide redelineation exercise, provided all the necessary mapping and population information is made available to us. We can do this in 6 months upon receipt of such information

and according to the budget expended by the Election Commission during their last redelineation exercise in 2003.

Attached is a sample of our work for Selangor. It has to be refined to take into consideration administrative boundaries such as local councils and geographical factors. The point is, it is not that difficult given the political will to do it.

If Parliament is not dissolved before Mar 2013, it will be possible to use the new boundaries for the next General Elections.

Is the Government and the Election Commission prepared to take up our challenge? We hope for the sake of the nation, they will.

Conclusion:

We note that things at the EC have got much worse after our rally on 9th Jul 2011. There are hundreds of thousands of suspicious voters added to the electoral roll. We have serious concerns about the competence and impartiality of the EC and wish to put them on notice that if we don't see a dramatic improvement in their performance, we may be forced to consider more drastic measures to put our points across.

In line with our proposals for more active participation by the people in the electoral process, we call for volunteers to be trained as Returning Officers and Presiding Officers.

Recommendations:

- RCI on the National Registration Dept to investigate how citizenship has been granted since 1985.
- RCI on the Election Commission and how the Electoral Roll was prepared since 1985
- Future appointment of Election Commission should be drawn from civil society and exclude current or previous members of the civil service, GLC employees, political parties

BERSIH 2.0

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SCHEDULE A**Elections Act [EA]**

- a. S3(2): Appointment of officers from members of professional bodies and independent civil societies involved in electoral reform, instead of from civil service and are not members of political parties. Apply to Secretary, State Election Officers, Returning Officers and their deputies and assistants.
- b. S4: Technical Advisor
- c. S8(1A) Appointment of officers from public instead of from civil service and are not members of political parties. Apply to all categories of Registrars & Adjudicating Officer. Nominated by professional bodies and independent civil societies involved in electoral reform.
- d. S9A. Electoral roll can be challenged in court.

Election Offences Act [EOA]

- a. S2. Approved company auditor to audit election expenses.
- b. Counting Agent & polling agent operating overseas.
- c. S3(p). offence to shift electors without consent of elector.
- d. S3(q). Indelible ink procedure.
- e. S4. Offences by Election Officers: Immediate suspension by EC for breach upon complaint.
- f. S5(8). Communication among candidates and his agents is permitted.
- g. S6(5), S11(4), S27(3). Offences against this part. Public Prosecutor to report within 8 weeks to the EC and complainant on status of complaints.
- h. S19. Campaign expenses to include political party expenses. Campaign limit raised to RM600,000 for Dewan Rakyat and RM300,000 for Legislative Assembly.
- i. S24B. Candidate or agent not required to apply for police permit for ceramah. Only give prior notice.
- j. S24B (6A). Free advertising and air-time for all candidates on government media in proportion to number of candidates standing.
- k. S24B (6B). To help the smaller parties and independent candidates, election campaign material does not include advertising in private MSM.
- l. 25A. Employers to grant unpaid leave to staff to help in election campaign.
- m. 26A(1). Booths shifted outside of polling centre at the gate.
- n. 26A(1A). Equip with MyKad reader to verify status of electors.
- o. 26A (1B). Voters and doubtful ones without MyKad have to produce a photo for Form 11.
- p. S26A (4) and (5). Increase no. of booth observers and equipment allowed in.
- q. S41. Rejection of ballot paper by RO is not final

Conduct of Elections [COE]

- a. R2: EC not to have power to decide on status of political party,

- b. R3: Polling day extended to 30 days after nomination day
- c. R4: Deposit of Parliamentary candidate reduced to RM 5,000 and State Assemblyman reduced to RM 2,000 to make it more affordable for the Rakyat to contest.
- d. R5: Candidates can challenge RO's decision on nomination papers.
- e. R6. Nomination day extended to 2 days plus 1 hour on 3rd day.
- f. R7(5). Objection to nomination papers. Returning Officer's decision subject to court challenge.
- g. R12(2A) Appointment of presiding officers: From the public who are not members of political parties or members of any of the public services and nominated by professional bodies and independent civil societies involved in electoral reform.
- h. R12A. Appointment of other officers and staff. Non civil-service or office bearers of political parties.
- i. R13. Facilities at polling centres and stations. Layout to be prescribed by EC. Candidates and agents allowed to bring mobile devices, recording devices and computers into the centres.
- j. R13(4) Election shall not be questioned for non-compliance with provisions of paragraph 3 is deleted.
- k. R14A. RO shall issue complete set of electoral roll to candidates including absentee voters at time of last gazette.
- l. R14A(3) Advance voters list to be issued not later than 7 days before polling day. Apply to SPR staff and candidates/agents only.
- m. R15(1). Admittance to polling station. RO authority to issue voting letter is deleted.
- n. R18A. Check receipt of ballot papers, fill Form 13A, sign and make a copy for the candidate/agents.
- o. R19(5A & 5B). Randomization of ballot papers.
- p. R19. Copy of Form 10 to be extended to candidate/agents.
- q. R20(1A) Form 11 require photo of voter.
- r. R20(1B). Voter must prove identity. Current practice: A voter in purdah only need to fill Form 11 without showing face as per EC Buku Panduan for ejen tempat mengundi.
- s. R23. All polling stations in Malaysia shall have the same closing time.
- t. R24. Close of poll: Form 13B. Presiding officer shall issue a copy to candidate/agent. All counterfoil of ballot paper and voter roll shall be inspected to ensure no marking to match voter with ballot paper.
- u. R24(2) Counting immediately – deleted. Presiding Officer shall provide facilities for candidate/agent to accompany ballot box.
- v. R24(3) Failure by PO to comply is an offence.

R25. Counting of votes by presiding officer.

- a. R25(1)(b). PO cannot block counting agent whose name and address has been notified.
- b. R25(2A) EC members cannot interfere in the proceedings.
- c. R25(3) Serialization of ballots before counting to eliminate unqualified ballot papers not complying with serial nos shown in Form 13B.
- d. R25(5) Third Schedule deleted.

- e. R25(7) Ballot paper without serial nos shown in Part B of Form 13B shall be rejected.
- f. R25(8) Validity of ballot paper dictated by Second Schedule.
- g. R25(12) Form 14 and 14A shall be issued by PO to candidates/agents.
- h. R25(14) recount by PO once only.
- i. R25A. Refer to Forms 13A and 13B.
- j. R25(4) For transport by air or water, PO shall arrange appropriate facilities for candidate/agents to accompany the boxes.
- k. R25D(3). EC members shall not interfere.
- l. R25D(5). Form 16 to be backed with a tally sheet. To be signed by candidate/election agents as well as PO. PO to prepare signed copy for candidate/election agents.
- m. R25D(5A). Recount of Tally sheet obligatory for PO if requested by candidate or his agent with due cause.
- n. R25E(1). Disposal of ballot papers within 60 days of expiry of holding period. Seals may be signed by candidate/agents including using own security seal.

Registration of Electors [ROE]

- a. R2. Absent voter includes (g) overseas Malaysians, (h) Sabah and Sarawak electors residing in West Malaysia, (i) West Malaysians residing in East Malaysia.
- b. R5. Automatic voter registration.
- c. R6(3). Procedure for correcting clerical errors to prevent abuse.
- d. R10 (1A) & (1B) Principal electoral roll shall include all details in NRD ID, military ID, Police ID or other official ID for same elector. Postal or absent voters shall have their names crossed out in the principal electoral roll and shown separately in a postal/absent voter roll.
- e. R10(2) Supplementary electoral roll to be issued every 2 months.
- f. R12. Transfer of registration every 2 months.
- g. R12(1)(b) Elector can choose any locality within same State Constituency
- h. R13. Objection period extended to 30 days
- i. R13(5A) Electors who are shifted out of their original locality shall be informed by post.
- j. R15. Objection to supplementary electoral roll – any elector can object and no limit to number of electors objected against.
- k. R15(4) No objection fee to be levied.
- l. R17(3)(c) & (d) Penalty to be applied to EC officers guilty of mal-allocation of electors. Electors who are inconvenienced by such malpractice to be compensated RM 200.
- m. R20(4). Decision on appeal by Adjudication Officer can be challenged in court.
- n. R25. Chief Registrar may correct clerical errors subject to public scrutiny.
- o. R25(6). Changes to the roll shall be published for public scrutiny and objection for 30 days.
- p. R28. Sale of electoral roll – make it affordable to the public to encourage the public to help verify integrity of the electoral roll.
- q. Form A modified for transfer of registration only.
- r. Form AA added for postal voting.

Postal Voter [PV]

- a. 3A. Only armed forces at the border and navy personnel at sea are considered as postal voters.
- b. R12. EC shall provide adequate campaign period for postal voters to reach the voter and come back.
- c. R13. Envelopes received after 5pm on polling day shall be rejected.
- d. R18. More than 1 ballot paper in envelope. Both reject.
- e. R20. RO shall make copies of all forms to candidate/agents.

Advance Voting [AV]:

To cater for:

Absentee voters: Military, All Malaysians overseas

West Malaysians in East Malaysia,

East Malaysians in West Malaysia

Police

(Note: MyOverseasVotes have proposed postal voting for all overseas Malaysians with embassies acting as regional Tally Centres. This is better than our proposal and we are happy to accept it.)

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- 3 Election Commission Act (05 Mar 2012).track-final

Election Regulations:

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- 4 COE Forms
- 5 ROE - Elections (Registration of Electors) Regulations 2002 (20th Mar 2012).track-final
- 5 ROE Forms
- 6 PV - Elections (Postal Voting) Regulation 2012 (20th Mar 2012).track-final
- 7 AV - Elections (Advance Voting) Regulations 2012 (20th Mar 2012).track-final
- 7 AV Forms
- 8 DV Elections (Distance Voting) Regulations 2012 ch OS 20 mar
- 9 PSC.mov.postal.polling