

Submission to OHCHR

By the Coalition for Clean and Fair Elections (BERSIH), Malaysia

Introduction

1. The Coalition for Clean and Fair Elections, better known as Bersih¹, is Malaysia's leading voice in electoral and democratic reforms. Bersih's journey has been monumental with five public rallies in 2007, 2011, 2012, 2015 and 2016. Hundreds of thousands of Malaysians took to the streets in support of electoral and institutional reforms, which ultimately paved the way for the first peaceful transition of power through the ballot box in 2018.

2. Now, Bersih comprises 58 Non-Governmental Organizations. We elect our Steering Committee every two years and are supported by our Secretariat, who run the day-to-day operations and implement the projects we undertake.

3 We are nonpartisan and strive to realize a democracy that respects human rights and empowers its citizens, where every voice is heard, and every vote valued. This also necessitates pushing for institutional reforms that can safeguard a mature and viable democracy.

4. In this submission, Bersih refers to Article 21 of the Universal Declaration of Human Rights that highlights the role of periodic and genuine elections in ensuring that everyone is able to participate in the public affairs of his/her country. Further, Article 25 (b) of the International Covenant on Civil and Political Rights (ICCPR) recognises the right to participate in public affairs, which includes three elements: (a) the right to take part in the conduct of public affairs (b) the right to vote and to be elected and (c) the right to have access to public service.

5. Considering the wide scope of the right to participate in public affairs, which includes but not limited to, the rights to equality and non-discrimination, to freedom of opinion and expression and to freedom of peaceful assembly and association, this Submission is not able to cover all and every aspect but focuses on the four main themes as follows. The Submission lays down the issues and makes recommendations for reforms.

¹ Bersih's Official Website: <https://bersih.org/about-us/>

Facilitating access to Voting

6. Article 119 of the Federal Constitution provides for the right to vote. However in reality, there are sizable barriers to voting for certain segments of the population. This Submission will highlight the issues in relation to three categories of voters : overseas voters, outstation voters and People with Disabilities (PWD).

7. All Malaysians who have attained the age of 18 and are eligible, are entitled to vote. For Malaysians residing overseas, postal voting is available to them subject to prior registration and approval by the Election Commission. Based on Bersih's studies and surveys, the postal voting process contains some inherent flaws. In a nutshell, these are the common complaints: - (a) registration process is cumbersome and time frame to apply too short (b) too many administrative errors with the ballot paper and Form 2 (c) not enough time to return the marked ballot paper to the respective Returning Officer at their constituencies before the close of poll (d) costly.

8. Bersih notes that even with the postal voting facility made available to overseas Malaysians, the registration rate is still low, in other words, it has not reached its full capacity. This may be due to lack of awareness and/or lack of trust by overseas Malaysians.

9. Bersih further notes that the current system for handling postal votes is manual. The issuing of the postal ballot and the related documents are filled in and compiled manually, and this inevitably creates unwarranted errors (such as the wrong serial number recorded on the envelope and Form 2) which in turn causes doubts and anxieties amongst the voters. In addition, the manual handling of the postal voting process severely hindered its potential as the Election Commission struggled with the close to one million postal voters.

Bersih's recommendations:-

10. To extend the campaign period to no less than 21 days, in order to have sufficient time for overseas marked ballot papers to return to the respective constituencies in time for counting.

11. Election Commission to overhaul and adopt technologies in handling postal ballot papers to reduce human errors while not compromising the security and secrecy of vote.

12. Election Commission to work with the Ministry of Foreign Affairs on a special project to raise awareness and to provide accurate and timely information on the availability and the process of postal voting to overseas Malaysians.

13. In every election, there are voters who are not able to physically vote on the polling day at the polling station in the constituency for which he/she is a registered voter. For example, election workers, police and media personnel on duty on the polling day are able to utilise advance and postal voting. They are classified by Category 1A (Election workers, police, army and media), 1B (overseas Malaysians) and 1C (agency gazetted by the EC).

14. However, the current special voting arrangements (such as advance voting and postal voting) are rather narrow and left out a significant category of people: the outstation voters. These are voters who, on polling day, are in states other than the one they are registered in as a voter. To vote, they will have to travel back, some across the South China Seas. This is largely due to urbanization and easy mobility which has resulted in significant interstate migration for socioeconomic opportunities. The population census in 2000 showed that half of the people living in Kuala Lumpur were born in other states².

14.1 Ultimately, Bersih argues that the choice should remain with the voter whether he/she wishes to change his/her registered constituency after he/she moving away. For example, a Sabahan voter who is now studying/working in Kuala Lumpur may want to remain a voter in Sabah as it reflects his self-identity, or for him to remain entitled to some privileges accorded by the local laws and regulations to Sabahans only.

15. Bersih's GE15 observation report found that the high costs of air tickets and the proximity of the polling day (November) to holidays such as Christmas made people think twice about buying another air ticket to return home to vote. This issue is especially problematic for Sabahans and Sarawakians working in Peninsula, where air tickets can cost up to RM1500. This cost is even more unbearable for students and thus many give up their vote.

16. Apart from outstation voters, Bersih also recorded a number of complaints from private healthcare personnel, who said that they are unable to vote on the polling day

²Tey, N.P. (2014). Inter-state Migration and Socio-demographic Changes in Malaysia. Malaysian Journal of Economic Studies. https://www.researchgate.net/publication/265331615_Inter-state_Migration_and_Socio-demographic_Changes_in_Malaysia

because of their work duties, but advance voting or posting voting is not available to them.

Bersih's recommendations:-

- 17. To expand the category of absentee vote to include outstation voters.**
- 18. The Election Commission to gazette healthcare personnel working in private hospitals and institutions as persons entitled to vote as postal voters pursuant to Section 3(1)(e) of the Elections (Postal Voting) Regulations 2005.**
- 19. The Election Commission to facilitate outstation voters (upon registration) to vote three days in advance by setting up mega polling stations in each States. In this way, the outstation voters can vote by Advance and Distance Voting.**
- 20. In order to do so, the Election Commission to invoke the powers conferred upon them under Section 16 of the Election Act 1958 to enact Regulations in relation to Advance and Distance Voting for outstation voters. In a nutshell, the proposed regulations should cover the eligibility of applicants, procedure for application, procedures for conducting advance polling, and procedure for closing polling, custody and transfer of ballot till counting of ballots.**
- 21. Consequently, to amend Regulation 15(1) of the Election (Conduct of Election) Regulation 1981 by adding the words “Unless any election law otherwise provides, no person shall...” to pave way for the separate regulation that removes the prohibition for a voter to vote in a polling station other than that of his/her registered constituency.**
- 22. The World Health Organisation (WHO) estimates that 15% of the world population may have disabilities based on certain categories. Despite positive steps taken by the Election Commission, in providing wheelchairs in most of the polling stations, it is insufficient in quantity. , And many other accessibility issues by PWD are still unaddressed.**
- 24. There are different categories of disabilities with different concerns and needs. One issue consistently raised by the PWD community is that the election workers are not trained to identify, communicate and provide the necessary assistance to them in accordance with the different categories of disabilities. We understand that many PWD**

fear going to vote as they face discrimination, apart from the inherent challenges they have.

25. In addition, Bersih found that another major concern is the access to information. PWD often complained that they are not able to access election information, be it political parties' manifesto, election guidebooks, or the Election Commission' website. This hinders them from voting, or making informed choices.

Bersih's Recommendations:-

26. The Election Commission - to provide a special electoral roll and special polling stream for PWD to assist election workers to better identify them and provide the necessary assistance to facilitate PWDs to cast their vote.

27. The Election Commission - to provide a more user-friendly and inclusive guidebook for PWD, in various formats such as Braille, alternate text on social media.

28. The Election Commission - to set up a Special Committee composed of the PWD community to further study and overhaul the election process for the community, including legislative and administrative reforms.

27. A prisoner, who is an eligible voter, is entitled to vote pursuant to Article 119 of the Federal Constitution. However, there are no provisions in the election laws that allow the Election Commission to provide and facilitate the process.

28. In 2015, current Prime Minister Anwar Ibrahim who was then serving a jail term, filed a suit against the Election Commission and government of Malaysia for denying him the right to vote in the Permatang Pauh by-election. The High Court held that he has the right to vote, however, he has to write to the Director-General of the prison department for permission to allow him to travel back to his registered constituency to vote (prohibition in Regulation 15(1) of the Election (Conduct of Election) Regulation 1981).

29. This has de-facto disenfranchised a prisoner from voting.

Bersih's recommendations:-

30. The Election Commission - to conduct a comprehensive study, with meaningful consultations with stakeholders, to look into the legislative and policy reforms in allowing and facilitating prisoners who are eligible to vote.

Respecting people's mandate via Fixed-Term Parliament

31. The power to request for a dissolution of the Parliament rests solely with the Prime Minister. Under the Federal Constitution, a full parliamentary term is five (5) years but the Prime Minister may make a request to the Yang Di-Pertua Agong (YDPA) for dissolution before the term ends, and the YDPA as the constitutional monarch will by convention follow the advice.

32. Parliament is excluded from exercising a crucial role. The political instability in the last few years is the manifestation of the inherent problems where Parliament does not play a role in the formation and dissolution of a government.

32. The political upheavals following a coup in February 2020 shows that the process of government formation has neglected the critical role of the Parliament. Instead, Statutory Declarations (SDs) by individual Members of Parliament were solicited and negotiated in order to determine the confidence of the Prime Minister and his government.

34. Malaysians have been subject to the guessing game as to the election date for a long time which distracts from our daily life. The larger impact of not knowing the election date in advance is that we are not able to plan our life around it in order to avoid being away thus unable to cast our vote. Out-of-state voters are unable to return to their states to vote given the high cost of flights. Many election workers, who are school teachers, police personnel, media personnel are kept in limbo and always on standby in the event of election. Bersih finds that a fixed election date would benefit the Election Commission in preparation for better conduct of election.

Bersih's recommendations:-

35. To enact legal framework, including a Fixed Term Parliament Act and the Parliamentary Standing Orders, to regulate the powers of the Prime Minister in the dissolution of Parliament, which shall include:-

(a) limits on the power to dissolve Parliament mid-term if the PM still enjoys or has yet to lose majority

- (b) Two thirds majority support in the resolution to dissolve Parliament before presenting the request to the YDPA**
- (c) enact specific rules regarding the motion, the notice required, the minimum number of MPs required to bring the motion, as well as the priority of this motion before other matters**
- (d) enact mechanisms and legal frameworks for an investiture vote or vote of no-confidence.**

36. In doing so, the government should conduct meaningful consultations with relevant stakeholders.

Enhancing Fair Media Access

37. Media is essential to democracy in engaging voters and providing them with adequate information about political parties and candidates and their policies and ideologies in order to make an informed choice. And for political parties and candidates to have a level playing field during elections, fair media access becomes crucial.

38. However, over the years, we have witnessed the one-sided and heavy coverage by state media on the incumbent government, while opposition and independent parties and candidates have none or have to rely on alternatives.

39. Unlike many countries where candidates, especially for the top positions, hold open debates during elections, Malaysia has not fully picked up this culture and precedent.

40. Bersih has been calling for and collaborating with three media houses to advocate and provide media access to all political parties and candidates since the state election in Johor, followed by Melaka and Sarawak, and also for the 15th General Election. This is however done through ad-hoc and private initiatives.

Bersih's Recommendations:-

41. The Government, through the Malaysian Communications And Multimedia Commission, organizes Party Political Broadcasts for the party and candidate to freely voice their manifesto during elections.

Legislating for Women Representation

42. Women representation in our legislative houses and executive has been poor even when progressive parties have promised to increase it to a minimum of 30%. Currently (as of 2023), women make up a mere 13.51% of the Lower House in our Parliament. In our various state legislatures, the numbers vary but taking Penang for example, women make up only 16.7% of the elected representatives (as of June 2023).

43. The failure to attain the minimum 30 per cent women's representation in Malaysia's legislatures cannot be simply dismissed as a lack of capable or talented female politicians, but must be recognised as a consequence of existing patriarchal structures and other power dynamics,

44. Nonetheless, there are measures that BERSIH recommends the Government should take to ensure that there is a minimum of 30% women in the legislative space as per the United Nations Beijing Declaration and Platform for Action (1995) and the United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Sustainable Development Goals 2030, specifically SDG 5 on gender equality and SDG 10 on reducing inequalities.

Bersih's Recommendation:-

45. BERSIH recommends a national shift from first-past-the-post electoral system to a Mixed Member Majoritarian (MMM) system, with additional party-list lawmakers elected under multi member constituencies through Closed List Proportional Representation (CLPR) which should include a gender quota.

46. However the above recommendation will involve changes to the Malaysian Federal Constitution as Article 116 states that "The total number of constituencies shall be equal to the number of members so that one member shall be elected for each constituency..." and Article 117 rigidly dictates that the State electoral system must be based on single-member constituencies.

47. Working around these constraints, BERSIH recommends that the provision for Non-Constituency Supplementary Members should be created at the state level to enable the appointment of women, only when the number of women elected members is less than 30% of the total elected members in the legislature.³

³ White Paper on Top Up Women Only Additional Seats; <https://pwdc.org.my/wp-content/uploads/2021/11/TWOAS-White-Paper-Eng.pdf>

Others

48. In 2018, the Government set up the Electoral Reform Committee to conduct comprehensive studies and consultations on electoral reforms. Bersih was a part of this process. The study was completed with 49 recommendations for reform, including electoral system change, reform on Election Commission, issue on gerrymandering, among others. Unfortunately, this report remains an official secret and no further developments were seen after the press conference on 27 August 2020.

Bersih's Recommendation:-

49. **To declassify the ERC's report and make it available to the public as the report contained substantial proposals on electoral reforms.**