

An Election Observation Report for GE13

# CLEAN & FAIR?

By Pemantau Pilihan Raya Rakyat (PEMANTAU)



**ONLINE  
VERSION**



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An Election Observation Report of the 13<sup>th</sup> Malaysian General Election  
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PEMANTAU comprises



and  
*ordinary citizens such as yourself*

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## EXECUTIVE SUMMARY

PEMANTAU Pilihan Raya Rakyat (PEMANTAU), a citizens' election observation initiative, was launched in January 2013 by the Coalition for Clean and Fair Elections (BERSIH 2.0), together with Malaysians for Free and Fair Elections (MAFREL) and Pusat KOMAS. It was aimed at reducing or preventing fraud during the 13<sup>th</sup> Malaysian General Election, monitoring all government institutions and agencies, and empowering and upholding people's aspiration for a free and fair election.

Over 2,000 election observers were recruited. They observed 23 Parliament seats on nomination day, 51 seats during the campaign period, and 87 seats on polling day. PEMANTAU also received information from BERSIH 2.0's Special Committee on the Code of Conduct, chiefly on political violence, and through public complaints. Major concerns were:

### **Political Violence, Undue Influence, and the Promotion of Ill-Will and Hostility**

Despite observer reports that security presence was "excessive" in 5 constituencies (22%) during nomination day, with FRU units present in 8 nomination centres (35%) and security roadblocks in 6 constituencies (26%), intimidation and violence were reported to be of concern in 5 constituencies observed (22%).

Incidents of observed violence during the campaign period included acts of intimidation against the public (such as the use of loud motorcycle noises and other disturbances) in 6 constituencies out of the 51 observed (12%). In 5 constituencies (10%), there were acts amounting to undue influence. Acts amounting to the promotion of ill-will were reported in 14 constituencies (27%). In 12 constituencies (24%) racist or racial sentiments were deployed. In 13 constituencies (25%), religious hatred was used as part of campaigning.

On polling day, incidents of intimidation against the public were reported by observers in 13 of the constituencies observed (15%). Acts amounting to undue influence were observed in 15 constituencies (17%).

### **Electoral Roll Irregularities**

Through its observation and information-gathering from polling agents and the public on polling day, PEMANTAU observers were able to document 67 cases. In 12 Parliamentary constituencies observed (14%) there were names missing from electoral roll; in 7 constituencies (8%) a number of voters complained that their polling stations were changed without notice; and in 6 constituencies (7%) a number of voters had either their Parliament or DUN changed without notice.

PEMANTAU also received 592 complaints from the public on irregularities in the electoral roll. 230 reports (39%) were of first time voters who were initially confirmed as registered voters but later their name "disappeared" prior or during polling day. There were 103 reports (17%) of registered voters who have voted before but were then deregistered without their knowledge. PEMANTAU also received 116 reports (20%) from individuals who have not registered as voters but found themselves registered without their knowledge. 54 reports (9%) were of registered voters who were relocated to another voting constituency for GE13.

### **“Indelible” Ink**

PEMANTAU observers received complaints from the public that the ink was easily removed in 21 of the 87 constituencies observed on polling day (24%). In 10 constituencies (11%), voters complained that the application of the ink was inconsistent with EC procedures, and in 2 of the constituencies observed (2%), some voters were told to use the indelible ink on their finger to mark ballot papers. Despite the Election Commission’s promise that the ink will last for at least 7 days, PEMANTAU’s observation showed serious flaws in not only in the implementation but also in the quality of the ink.

### **Bribery**

On nomination day, PEMANTAU observers noted alleged incidences of bribery involving money or other goods in 5 constituencies observed (22%) on nomination day. During the campaign period, bribery involving valuable consideration and other goods were reported by PEMANTAU in almost half of all constituencies observed (23, or 45%) while money was allegedly given out in 19 constituencies (37%). Other hand-outs amounting to bribery include vouchers or tickets (6 constituencies, or 12%) and promises of economic benefit upon the victory of a particular candidate (6 constituencies, or 12%).

On polling day, where PEMANTAU observers reported acts of bribery in 16 of the constituencies observed (18%). Bribery took the forms of cash, cash vouchers, travel allowances or reimbursements, and special claims for voters travelling in from outside the constituency and those who had sworn to vote for a certain party.

### **Treating**

During nomination day, treating was observed in 8 of the constituencies observed (35%), either with food and drink or party merchandise such as fans and umbrellas with party logos. It was also rampant during the campaign period: PEMANTAU observers in 20 of the observed constituencies (39%) reported the distribution of food and drink, as well merchandise in 16 constituencies (31%). Food and drink were distributed to voters in 21 Parliamentary constituencies (24%) during polling day.

### **Personation**

PEMANTAU observers reported suspected personation or “dubious voters” in 24 out of constituencies observed (28%) on polling day.

### **Illegal Campaigning**

In 6 constituencies (26%) observed by PEMANTAU on nomination day, candidates and political parties carried out campaigning activities despite legal prohibitions against campaigning on nomination day and polling day. During polling day, campaigning continued in 38 (44%) out of the 87 Parliamentary constituencies observed.

### **Conveyance of Voters**

Under Section 20 (1) of the Election Offences Act, conveying voters to and from a polling centre “for the purpose of promoting or procuring the election of a candidate at any election” is prohibited. However, on polling day, in 18 of the observed constituencies (21%) political parties, from both BN and PR, were conveying voters to polling centres.

### **Procedural Irregularities**

A number of critical procedural amendments were introduced prior to GE13, including the use of indelible ink, early/advance voting by police and military personnel to replace postal voting, allowing the disabled (OKU) to bring along someone to aid them in the voting process and abolishing the process of protest during nomination and withdrawal of candidacy. Based on information sourced from observers and the public, PEMANTAU raised serious concerns in the media on the poor introduction and implementation of the regulations as they were either last minute, unclear, lacked monitoring and this was not assisted by inert Election Commission's staff.

### **Use of Government Machinery and Property**

The use of government machinery or State property was observed in 11 constituencies during the campaign period (22%). PEMANTAU observed Federal and State caretaker governments utilising government machineries including government-linked corporations and agencies like RISDA and FELCRA, resources, transport and personnel during the campaign period.

### **Harassment of Election Observers**

PEMANTAU observers reported a pattern of harassment and intimidation faced in nomination centres. Namely, they were instructed to provide their personal details, restricted and even stopped from observation, verbally and physically abused and threatened by parties' supporters, and some had their photographs taken by the police. On polling day, PEMANTAU observers reported experiencing restrictions, intimidation and harassment in 21 Parliamentary from a total of 87 seats observed (24%).

The rampant electoral misconduct during GE13 could be attributed to one or more of these three factors:

- the lack of awareness, if not poor knowledge on election laws by political parties, party workers and/or supporters and candidates themselves;
- informed and deliberate actions to gain political mileage; or
- the knowledge that enforcement of the provisions relating to election offences was insufficient.

While legislative reforms were clearly needed, so too was a shift in political culture and a strong message that institutions such as the Election Commission of Malaysia and the Malaysian Anti-Corruption Commission were committed to implementing the law without fear or favour.

Whether the acts of election misconduct, acts of violence and intimidation, alleged bribery and election misconduct observed by PEMANTAU were enough to change the course of GE13 is for the people to decide. What PEMANTAU can conclude is that GE13 did not meet domestic and international standards for clean, free and fair elections.

### **Major Recommendations**

- For Federal and State Caretaker Governments to:

- Strengthen legal and regulatory framework
- Create and maintain enabling environment for voters
- For the Election Commission to:
  - Eliminate disenfranchisement of all voters
  - Strengthen the quality of implementation of election processes
  - Maintain checks and balances through election observation and internal processes
- For the National Registration Department and Home Ministry to:
  - Improve collaboration and synchronise information-sharing with Election Commission on verification of voters' eligibility and registration.
  - Clean up the national registration by investigating allegations of non-citizens given Malaysian identification without proper process.
- For the Police and Security to:
  - Recognise and protect rights of citizens
  - Provide non-partisan and equal protection for all during elections.
- For the MACC to:
  - Thoroughly train officers to understand the application of Election Act and related laws on corruption and financial misconduct so as to eliminate treating and bribery.
- For political parties, candidates and supporters to:
  - Refrain from and condemn the use of violence or threats of violence, especially the use of racist/bigoted/sexist sentiments to influence voters.
  - Publicly declare election expenditure, including donations received and spent.
  - Adhere to fair and ethical standards in campaigning.
- For non-governmental organisations to:
  - Make election observation, polling and counting agents as integral to people's participation in the election processes as they act as independent checks and balances.



## A. INTRODUCTION

The PEMANTAU Report sets out to determine whether—

- the conduct of the participants of the 13<sup>th</sup> General Election (the Election Commission, related state institutions, political parties, candidates, party workers and supporters); and
- the political environment

—were conducive to clean, free and fair elections, based on election observation carried out during the 13<sup>th</sup> Malaysian General Election's nomination day, campaign period, and polling day in 2013. 23 Parliament seats were observed on nomination day, 51 seats during the campaign period, and 87 seats on polling day.

### Background

The PEMANTAU Pilihan Raya Rakyat (PEMANTAU) initiative was launched in January 2013 by the Coalition for Clean and Fair Elections (BERSIH 2.0), together with Malaysians for Free and Fair Elections (MAFREL) and Pusat KOMAS. It was a strategic initiative combining strengths among the organisations concerned. BERSIH 2.0 brings its knowledge in electoral reform and its ability to mass-mobilise. MAFREL has years of experience in observing elections domestically and internationally, and Pusat KOMAS has the capacity to establish effective online portals to promote voters' education.

PEMANTAU's key role was to be an independent watchdog to ensure clean, free and fair elections in Malaysia. The experience of election observers worldwide is that independent election monitoring and observation will ensure the integrity of elections and strengthen accountability in government and parties competing. Similarly, non-partisan election observation and monitoring initiated and managed by citizen organizations have emerged as one of the most tangible and significant dimensions of democratic development around the globe. According to the Global Network of Domestic Election Monitors (GNDEM), this has contributed to safeguarding genuine elections, mitigating potentials for conflict, and promoting accountability and democratic development.<sup>1</sup>

Election observers were present in previous general elections in Malaysia, the most recent prior to 2013 being the 2008 12<sup>th</sup> General Election, monitored by the Malaysian Election Observers Network (MEO-NET), Sibu Election Watch (SEW), My Election Watch (MEW), MAFREL, Aliran and the Center for Independent Journalism (CIJ). However, the election observation work done so far was relatively minor compared to other countries. PEMANTAU was the largest ever mobilisation of election observers nationwide, recruiting citizens as unaccredited observers on the belief that the full participation of citizens as observers will help shape the election as platforms where citizens can take some ownership of the election processes.

GE13 took place in a context of heightened civil society calls for electoral reforms and increasing public doubt over the integrity of the electoral process in Malaysia. In 2007, 2011 and 2012, massive rallies called for reforms to the electoral process. The 2011 and 2012 rallies revolved around eight demands by the Coalition for Free and Fair Elections (BERSIH 2.0): a clean-up of the electoral roll, a reform to the postal ballot, the use of indelible ink, a campaign period lasting for a minimum of 21 days, free and fair access to the media, a strengthening of public institutions, a stop to corruption, and a stop to dirty politics.

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<sup>1</sup> Global Network of Domestic Election Monitors (GNDEM) <[www.gndem.org](http://www.gndem.org)>. GNDEM has facilitated millions of people in 90 countries over 5 continents to conduct independent election monitoring.

These demands were based on long-standing allegations that elections in Malaysia were neither free nor fair. The 2012 Malaysian Electoral Roll Analysis Project (MERAP)<sup>2</sup> found numerous irregularities within the electoral roll, including problems related to postal voters. Its report alluded to the possibility that the electoral process was vulnerable to “phantom voters” and multiple voting.

Testimonies by former government officials before the Sabah Royal Commission of Inquiry, which commenced in 2013 before the general election, alleged that the National Registration Department and the Election Commission were complicit in awarding citizenship and identification documents to thousands of non-Malaysians without proper process. These “new citizens” were then allegedly planted in constituencies across the state, with as many as 100,000 tilting the balance of votes since the 1990s. In 2001, former chief minister Yong Teck Lee vacated his Likas state seat after a Kota Kinabalu High Court judge ruled that constituency’s electoral roll was illegal, after evidence of “phantom voters” and non-citizens on the roll was presented in court.

The transparency of postal voting has also been a point of contention, as well as the very limited eligibility of postal voters.<sup>3</sup> The process of postal voting made it impossible to scrutinise, and vulnerable to possible intimidation, breach of confidentiality, vote buying, proxy voting, and – as raised by the MERAP study – multiple voting due to the organisation of the electoral roll.

Concerns over the electoral roll and postal voting are made more serious by questions over the ability of the Election Commission of Malaysia (“the EC”) to carry out its role as an independent, non-partisan election management body to safeguard the integrity and transparency of the electoral process.<sup>4</sup> All members of the Election Commission are retired civil servants who, it is alleged, continue to operate as if the commission is a government department rather than an independent body. The decline in the length of election campaigning period can be seen as a symptom of this: a shorter election period favours the incumbent party and handicaps political parties that do not have access to public funds, government-linked mass media, state institutions and government machinery.

Whether the Malaysian political environment was conducive to the conduct of clean, free and fair elections is a point of contention. Racism, bigotry and hate-mongering towards minorities are common headlines in the media, fanned by both political parties and non-state actors during the election period as a tactic to frighten voters or to convince them to take a stand against an imagined enemy through the ballot box. There are allegations as well that cash, election promises, and goods are routinely handed out in the lead-up to an election.

Further, government control over mainstream media in Malaysia, either through laws such as the Printing Presses and Publications Act 1984 or ownership over media outlets (directly or through component political parties of the ruling coalition), has been cited as a barrier against full access to information that enables voters to make free and informed choices. Opposition parties have poor access to the mainstream media to present their policies and election coverage in mainstream media tended to heavily favour Barisan Nasional (BN).<sup>5</sup>

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<sup>2</sup> The Malaysian Electoral Roll Analysis Project (MERAP), “Malaysian Electoral Roll Analysis Project (MERAP) Final Report”, October 2012, <http://malaysianelectoralrollproject.blogspot.com/2012/10/merap-final-report-and-recommendations.html> [accessed 13 August 2013]

<sup>3</sup> Before GE13, postal voting was restricted to uniformed personnel, civil servants, tertiary students studying overseas, and these categories’ spouses.

<sup>4</sup> Lim Hong Hai, “Making The System Work: The Election Commission”, in *Elections and Democracy in Malaysia*, eds. Mavis Puthuchery and Noraini Othman (Bangi: Penerbit Universiti Kebangsaan Malaysia, 2005), 249-291.

<sup>5</sup> Info Pilihanraya Malaysia, “Watching the Watchdog GE13”, <http://pilihanraya.info/bilikmedia/wtw> [accessed 16 July 2013]

There were initial high hopes over the formation of a Parliamentary Select Committee (PSC) on Electoral Reform in 2011 as an impetus for full reform. Though its recommendations fell short of civil society expectations, they still addressed some key areas of electoral reforms. However, the EC publicly committed to only three reforms: the use of indelible ink in GE13, the implementation of advance voting for service voters, and an audit of the electoral roll by MIMOS Berhad.

A 2012 survey of 1019 voters by Merdeka Center found that 49 percent of respondents do not trust that the electoral process is free from irregularity and 48 percent believe that the electoral roll contains irregularities. 92 percent thought that government should clean up the electoral roll before calling for the election and 51 percent thought that the postal voting system lacked transparency and was open to political interference.<sup>6</sup> In this regard, while PEMANTAU's election observation cannot provide answers for questions beyond the scope of its work, it attempts to provide a comprehensive assessment of the conduct of the elections.

## Conceptual Framework

The PEMANTAU's framework for the right to clean, free and fair elections is derived from a number of international commitments and domestic legislation. Where there is a recognised right, there is a corresponding state obligation to promote, protect and fulfill this right.

In the Malaysian context, domestic legislation that protect the right to clean, free and fair elections include the Federal Constitution, the Elections Act 1958, the Election Offences Act 1954 and the Election Commission Act 1957. Other legislation such as the Penal Code and the Malaysian Anti-Corruption Commission Act 2009. The Malaysian Federal Constitution and election laws aims to protect the liberty and rights of citizens to participate freely in any elections. Commitments and implementation from the government and its agencies were important and these form part of PEMANTAU's monitoring.

Therefore, PEMANTAU's election observation is based on the following principles:

**Protecting Civil and Political Rights of Citizens.** Elections are part of citizens' fundamental human rights and, more specifically, civil and political rights. The authority to govern shall be based on the unhindered free will of the people as reflected and expressed in by-elections and General Elections. These fundamental principles of a free and fair election is recognised as universal of a responsible democratic government which encompasses the ability of everyone to take part in the government of his/her country to vote in elections, to have equal opportunity to become a candidate for election and put forward his/her political views, individually and/or in association with others.

Citizens must be able to exercise their legitimate rights participate in a democratic process determine their own government and participate in the process of electing a new government without any restriction, perceived obligation to the administrative government of the day, undue influence, threats of repercussions, intimidation, and harassment. They shall have every opportunity to exercise their free will in performing the same, all in a democratic, safe and enabling environment with full access to information.

Election observation therefore contributes to the overall promotion and protection of these rights.

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<sup>6</sup> Merdeka Center, "National Public Opinion Survey on Electoral Process in Malaysia", 2012, [http://www.merdeka.org/pages/02\\_research.html](http://www.merdeka.org/pages/02_research.html) [accessed 13 August 2013]

**Democratic Governance and Freedoms.** The government and its agencies need to develop an enabling environment that will ensure a genuine democratic election process. This includes putting into place substantive laws and policies that will bring about confidence, transparency, accountability respect for freedom of expression and free media; freedom of association, assembly, and movement; adherence to the rule of law; the right to establish political parties and compete for public office; non-discrimination and equal rights for all citizens; freedom from intimidation; and a range of other fundamental human rights and freedoms.

Election observation, therefore, enhances accountability and transparency, boost citizens' confidence in the process.

**Rights and Responsibilities of Stakeholders.** Every candidate, party worker and supporter shall conduct themselves with the highest standard of ethical behaviour. They have an unequivocal right to safety and security in respect to their lives and/or properties and shall be recognized and protected by the State. Political parties and candidates also have the responsibility to ensure the safety of others, including that of the public and their political opponents, and to ensure that their supporters do not engage in acts of political violence.

**State Obligation and Commitment.** The State, which here refers to both the Federal and state governments, shall make no law or policy or action that restricts and/or threatens the exercise of free will by its citizens as expressed in by-elections and the General Election. The election management body responsible for overseeing the conduct of the elections, law enforcement authorities, and other monitoring bodies shall conduct themselves with impartiality, independence, and non-partisanship.

## Scope of Work

Election observers under PEMANTAU's key tasks were to observe, record and report on electoral processes during nomination day, the 14-day campaign period, and polling day. This was aimed at:

- reducing or preventing fraud during GE13.
- monitoring all government institutions and agencies.
- empowering and upholding people's aspiration for a free and fair election.

A Steering Committee comprising of BERSIH 2.0, MAFREL and Pusat KOMAS headed the massive nationwide effort, with State Coordinators mobilising and coordinating election observers at the state level. PEMANTAU observers generally worked in groups organised by Parliament Coordinators, who reported back to State Coordinators. PEMANTAU had originally planned for 10,000 citizen observers to observe 70 Parliament seats out of the 222 seats being contested. The 70 seats were selected based on five criteria:

- Marginal seats
- Constituencies where there were high numbers of new voters
- Constituencies where incidents of electoral misconduct, violence and bribery were reported
- Seats contested by key politicians
- The availability of election observers who are voters in these constituencies

While PEMANTAU was not accredited by the Election Commission (EC), the coalition was aware that observation is a citizens' right. PEMANTAU was cognisant of its complementary role as non-

accredited observers and did not seek to supplant PEMERHATI, which was made up of eleven EC-accredited non-governmental organisations (NGOs).<sup>7</sup>

In preparation for the run-up to polling day, PEMANTAU made all efforts to ensure its observation was independent, transparent and evidence-based. It was bound by a code of conduct common to domestic election observers around the world, which included a pledge of neutrality and non-partisanship. Observers were expected to report on what they observed, without fear or favour, whatever their personal political beliefs. The message was carried through in PEMANTAU's nationwide recruitment and publicity.

Over a four-month period, PEMANTAU held briefings around the country and mobilised more than 2,000 volunteer citizen observers selected based on a number of criteria. PEMANTAU followed clear criteria for selection of our PEMANTAU. Any Malaysian citizen can be a PEMANTAU citizen election observer if he or she:

- is above 18 years old and have no criminal record;
- agrees to adhere to election laws and other laws in Malaysia;
- agrees to adhere to the PEMANTAU Pledge and Code of Conduct; and
- is not a political party worker or campaigner.

All PEMANTAU citizen observers were required to sign a pledge that they would adhere to a code of conduct for election observation while performing their duty.<sup>8</sup> The code of conduct reaffirms PEMANTAU's commitment towards its non-partisan position vis-à-vis political party affiliations, and sets out standards on accountability, impartiality and transparency. This code of conduct was printed in a handbook with guidelines and information on election observation, distributed to PEMANTAU volunteers.

## Methodology

**Documentation by Election Observers.** PEMANTAU observers were required to fill in a series of questions related to election offences and irregularities in observation forms covering different periods of observation, i.e. nomination day, campaign period and polling day. Three options were provide to the PEMANTAU to file their observations with the PEMANTAU Steering Committee:

- hard copies of the observation forms printed and distributed by State Coordinators,
- online forms at a website accessed via a username and password; and
- an Android smartphone application.

Effort was made to ensure smooth sharing of observation reports. The structure for reporting back adopted by PEMANTAU was as follows:

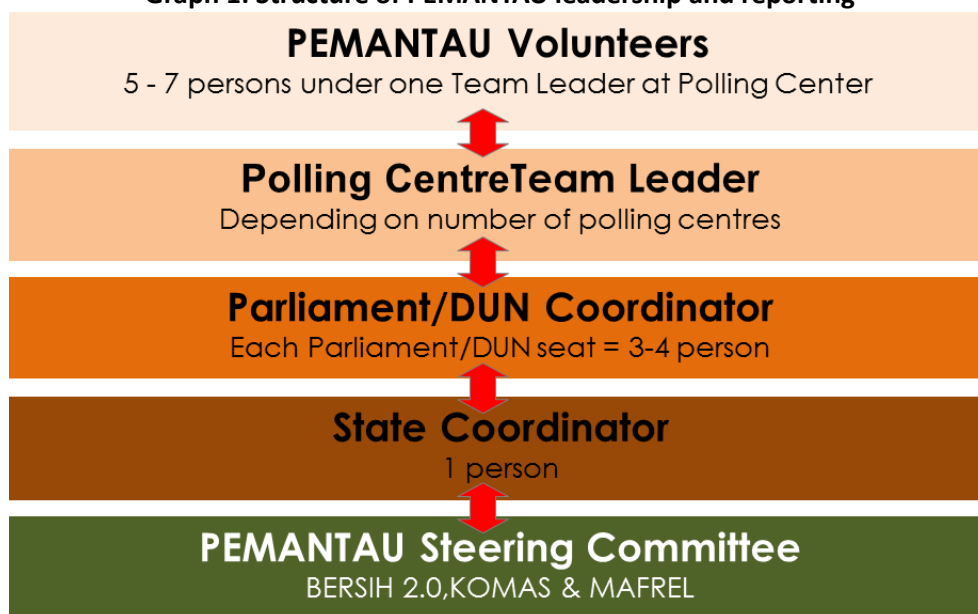
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<sup>7</sup> BERSIH 2.0, "Pemantau Pilihan Raya Rakyat – A Citizen's Initiative for GE13", 8 January 2013 <http://www.bersih.org/?p=5706> [accessed 16 July 2013]

<sup>8</sup> See Appendix 002.



Graph 1: Structure of PEMANTAU leadership and reporting



The structure allows for decentralisation of election observation forms collection and a quick verification of reports by observers on the ground. State Coordinators and PEMANTAU observers in each state were given leeway to decide on Parliamentary constituencies to be observed, based on the criteria above.

**Public Complaints.** PEMANTAU enabled the public to send in complaints and reports of election irregularities through an online form at *pru13.info*, SMS, phone call and e-mail. Public complaints and reports submitted online are displayed at *pru13.info/aduan/reports*. Complaints were also received by BERSIH 2.0 before and during the election period.

**Media Monitoring.** BERSIH 2.0's Special Committee on the Code of Conduct monitored the media for breaches of BERSIH 2.0's *Code of Conduct for Participants of the 13<sup>th</sup> General Election and Caretaker Government Guidelines*.<sup>9</sup> The monitoring revolved around the issues of political violence and abuses by caretaker governments at Federal and State level. A more comprehensive media monitoring was conducted by The Centre for Independent Journalism, together with the University of Nottingham Malaysia Campus's (UNMC) Centre for the Study of Communications and Culture and the School of Modern Languages and Cultures.<sup>10</sup>

## Limitations

<sup>9</sup> BERSIH 2.0, "Code of Conduct for Participants of the 13th General Election and Caretaker Government Guidelines", 4 April 2013, <http://www.bersih.org/?p=5914> [accessed 16 July 2013]

<sup>10</sup> Info Pilihanraya Malaysia, "Watching the Watchdog GE13."

As PEMANTAU is an unaccredited election observation group, it was unable to enter nomination and polling centres. Observers had to abide by the 50-metre restricted zone outside these centres. Due to these limitations, PEMANTAU observers cannot observe the entirety of the electoral process during polling day, including the counting of ballots.

PEMANTAU was also unable to meet its target of 10,000 citizen observers. While the number of Parliament constituencies observed exceeded PEMANTAU's original goal of 70 seats, the spread of observers were uneven and tended to be concentrated in urban and semi-urban areas, with the highest number of observation reports filed during polling day. In a number of constituencies, the low number of PEMANTAU citizen observers necessitated the use of mobile teams moving from one polling centre to another on polling day, thus affecting the thoroughness of their observation.

In addition, the PEMANTAU secretariat had to reject observation forms that were incorrectly filled, where the observers were unable to be contacted for clarification. Thus, a number of reported incidents cannot be included towards the conclusions made in this report.

This final report is representative of election observation made within these limitations. While the general points made in this report may be applicable across the board to a majority of the 222 Parliamentary constituencies, the specificities of local issues need a more nuanced approach.

## B. FINDINGS

Incidents quoted from reports by PEMANTAU election observers are footnoted with their individual observer codes and Parliamentary constituency. Incidents quoted from the media are footnoted as such.

### **Political Violence, Undue Influence,<sup>11</sup> and the Promotion of Ill-Will and Hostility<sup>12</sup>**

GE13 saw an unprecedented and alarming swell in both political violence and election spending, despite Prime Minister Najib Tun Razak making a pre-election public declaration to uphold integrity and reinforcing his commitment to fight corruption in the upcoming polls. He also signed the Transparency International (TI) Election Integrity Pledge, which carries this objective.<sup>13</sup>

The spate of political violence begun before the announcement of the dissolution of Parliament in a number of constituencies, such as P121 Lembah Pantai. Tensions were heightened by allegations that the Home Ministry and the police took a lackadaisical approach to reports of violence in these constituencies. The then-Home Minister Hishamuddin Hussein blamed the opposition for the rise of violence and lack of police officers on the ground.<sup>14</sup> At this point, it was possible to argue that these were isolated cases of political violence, however the violence spread to more constituencies as campaigning began in earnest.

The perpetrators of acts of political violence ranged from unknown individuals, supporters of political parties as well as contesting candidates against both opposing candidates, party workers and supporters and media personnel. BERSIH 2.0, through its Special Committee on the Code of Conduct also monitored the media for incidents of political violence during the campaign period.

**Excessive Presence of Authorities on Nomination Day.** Security was reported to be “excessive” in 5 constituencies (22%), with FRU units present in 8 nomination centres (35%) and security roadblocks in 6 constituencies (26%). This is despite the fact that Malaysia does not historically suffer from

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<sup>11</sup> S9 EOA 1954 provides: “...Every person who, before, during or after an election, directly or indirectly, by himself or by any other person on his behalf, makes use of or threatens to make use of any force, violence, or restraint, or inflicts or threatens to inflict, by himself or by any other person, any temporal or spiritual injury, damage, harm, or loss upon or against any person in order to induce or compel such person to vote or refrain from voting, or on account of such person having voted or refrained from voting, at any election, or who by abduction, duress, or any fraudulent device or contrivance impedes or prevents the free exercise of the franchise of any elector or voter, or thereby compels, induces, or prevails upon any elector or voter either to give or refrain from giving his vote at any election, or who directly or indirectly interferes or attempts to interfere with the free exercise by any person of any electoral right shall be guilty of the offence of undue influence...”

<sup>12</sup> S4A EOA 1954 provides the definition of feelings of ill-will and hostility: “...Any person who, before, during or after an election, directly or indirectly, by himself or by any other person on his behalf, does any act or makes any statement with a view or with a tendency to promote feelings of ill-will, discontent or hostility between persons of the same race or different races or of the same class or different classes of the population of Malaysia in order to induce any elector or voter to vote or refrain from voting at an election or to procure or endeavour to procure the election of any person shall be liable, on conviction, to imprisonment for a term not exceeding five years or to a fine not exceeding ten thousand ringgit or to both such imprisonment and fine...”

<sup>13</sup> Zuhri Azam Ahmad, “Najib sets the tone for clean elections,” *The Star*, 21 February 2013, <http://www.thestar.com.my/News/Nation/2013/02/21/Najib-sets-the-tone-for-clean-elections.aspx> [accessed 13 August 2013]

<sup>14</sup> Leven Woon, “Hisham blames Pakatan for political violence,” *Free Malaysia Today*, 24 March 2013, <http://www.freemalaysiatoday.com/category/nation/2013/03/24/hisham-blames-pakatan-for-political-violences/> [accessed 16 July 2013]

frequent election-related violence. At this point, the political violence that marred the campaign period is not yet a significant threat outside of Parliamentary constituencies such as P121 Lembah Pantai.

PEMANTAU observers noted the use of iron bars, barbed wire, and razor wire barriers around a number of nomination centres, despite a SUHAKAM recommendation that dannert or razor wires not be used during peacetime. Authorities deployed to ensure peace and order at nomination centre varies from officers from the police, the Federal Reserve Unit (FRU), Light Strike Force, auxiliary police and members of RELA.

The presence of FRU personnel was observed in P026 Ketereh, P039 Dungun, P047 Nibong Tebal, P107 Subang and P179 Ranau. In P179 Ranau at Dewan Masyarakat Ranau, approximately 200 police personnel were on site armed with M-16s and MP-5s. Approximately 10 FRU members were on guard within 50 metres from the nomination centre together with a parked FRU truck and about 50 RELA members.<sup>15</sup> In P025 Bachok at Pejabat Tanah Jajahan Bachok, PEMANTAU observed excessive presence of RELA personnel together with the police.<sup>16</sup>

Several nomination centres had used barbed and dannert wire as a means to ensure peace and order, namely P021 Kota Bharu, P022 Pasir Mas, P024 Kubang Kerian, P025 Bachok, P026 Ketereh, P027 Tanah Merah, P029 Machang, P032 Gua Musang and P107 Subang.

**Harassment, Intimidation and Violence against Candidates and Party Supporters.** Intimidation and violence were reported to be of concern in 5 constituencies observed (22%) during nomination day. In P022 Pasir Mas, at the Pejabat Pasir Mas nomination centre, three groups of supporters were present: BN (including members of PERKASA, a right-wing ethno-nationalist group), Pakatan Rakyat (PR), and a smaller group of supporters for an independent candidate. At or about 10:18AM, supporters of the independent candidate allegedly joined forces with BN supporters and PERKASA. They were then reported to have climbed and sat on the barrier separating them from PR supporters.

Verbal exchanges of slogans then took place between both sides. The shouting match extended to supporters at a restaurant adjacent to the nomination centre, causing anxiety to members of the public. The police intervened to order an unruly group of alleged BN supporters to leave the veranda of the restaurant.<sup>17</sup>

Provocative words were exchanged between supporters of BN and PR in P039 at Pejabat Daerah Dungun. Shouts from PR supporters, "*Rosli pengkhianat*" and from BN supporters, "*Pembanggang bodoh sokong Ambiga*", "*Ambiga ni bapa Kristian*" were observed by PEMANTAU onsite.<sup>18</sup>

In P037 at Pejabat Daerah Marang whereby at or about 9:30AM, a group of BN supporters allegedly harassed and intimidated a group of supporters of a PR component party, Parti Islam Se-Malaysia (PAS). The PAS supporters were reported to be attempting to make their way through an area where BN supporters had gathered. The police were forced to intervene and diffuse the situation by escorting the PAS supporters away from the BN group.<sup>19</sup>

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<sup>15</sup> S8004, P179 Ranau

<sup>16</sup> D1754, P025 Bachok

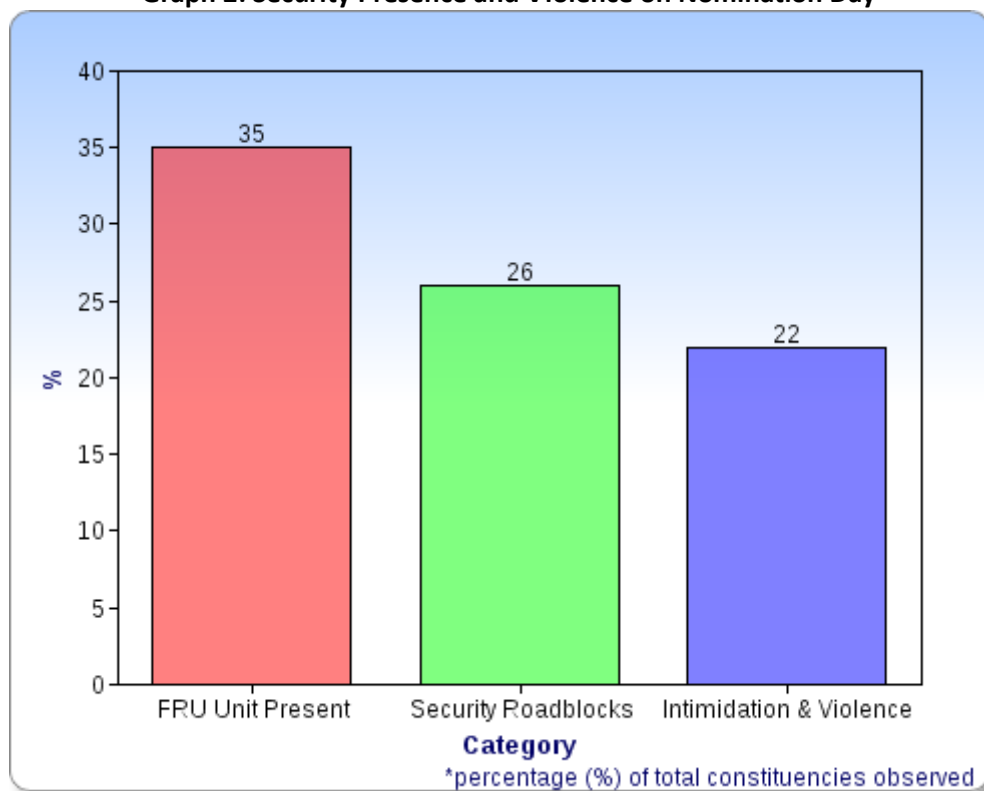
<sup>17</sup> D1736 and D1769, P022 Pasir Mas

<sup>18</sup> T8582 & T8580, P039 Dungun

<sup>19</sup> T8510, P037 Marang

PEMANTAU observed an assault on PR candidates in P047 at Dewan Serbaguna Jawi by a faction from a PR component party. PAS supporters, allegedly from PAS Youth, attempted to prevent PR candidates Badrulhisham Shaharin and Datuk Mansor bin Othman from entering the nomination centre. Badrulhisham Shaharin was reported to be physically assaulted by PAS supporters.<sup>20</sup>

**Graph 2: Security Presence and Violence on Nomination Day**



During the campaign period, PEMANTAU observers recorded an incident in Johor where PR campaign workers were harassed and threatened by a group of youths wearing BN t-shirts on motorbikes while distributing leaflets in P162 Gelang Patah (28 April 2013). One of them carried a steel bar, and the group kept pressing their motorbikes close to the campaign workers to make them leave.<sup>21</sup> In P104 Kelana Jaya at Desa Mentari on 27 April 2013, PEMANTAU observed a disruption to the speeches delivered by PR leaders. At or about 10:30PM, there were a group of motorcyclists revving and honking their machines outside the campaign site creating a noisy and uncomfortable atmosphere. No police on duty were sighted at the site.<sup>22</sup>

At a campaign event organized by PR on 22 April 2013 in P121 at Apartment Mutiara, Kampung Pasir, a group of men clad in UMNO attire jeered when Nurul Izzah Anwar was speaking at or about 10:00PM. The group was believed to have come from a BN operation centre located nearby the campaign site. The group was seen carrying bags full of food taken from the nearby UMNO operation centre.<sup>23</sup>

On 30 April 2013, at a PR event in P121 Lembah Pantai at Lucky Garden, Bangsar, disruption to political speeches was observed. In between 10:00PM and 11:00PM, it was reported that a fire

<sup>20</sup> P6613, P047 Nibong Tebal

<sup>21</sup> SC017, P162 Gelang Patah

<sup>22</sup> B0581, P104 Kelana Jaya

<sup>23</sup> W777, P121 Lembah Pantai



brigade truck together with a police patrol car were seen driving past the campaign site with blaring sirens at the time when lawyer Tommy Thomas took the stage to address the crowd. Later, when Nurul Izzah Anwar (the PR candidate for Lembah Pantai) was speaking, another fire brigade truck passed the site again with blaring sirens.<sup>24</sup>

On 1 May 2013, at or about 11:00PM in P121 at Pantai Dalam, PEMANTAU observed that there were about 10 motorcyclists revving and honking their machines when Nurul Izzah Anwar was addressing the crowd. Anxiety and fear were observed from the crowd.<sup>25</sup>

Observations by PEMANTAU noted a pattern of disturbing campaign speeches by placing loud speakers near to an on-going campaign event. In P152 Kluang at Taman Makmur, a group of men allegedly from Barisan Nasional mounted loud speakers and blasted loud music and recordings throughout the duration of an ongoing *ceramah* nearby.<sup>26</sup>

On polling day, acts of intimidation and harassment against party workers and candidates were reported in 8 constituencies (9%). In P037 Marang at Sekolah Kebangsaan Gelugor, a fist fight was reported. At or about 2:00PM, the son of an outgoing Senator, Abdul Rahman Bakar, arrived at the polling centre together with seven other friends. PAS supporters, approximately 20 persons, saw individuals alleged to be non-citizens and confronted them. As the situation worsened, a fistfight ensued between PAS and BN supporters until the two sides were separated by security personnel. BN supporters retreated to Balai Polis Bukit Payung to make a police report on the assault. What transpired after that was not observed by PEMANTAU observers.<sup>27</sup>

In P119 at Sekolah Rendah Jenis Kebangsaan (Tamil) Kampung Pandan, groups of party workers from PAS (approximately 35 metres from the polling centre) and BN (approximately 25 metres from the polling centre) hurled provocative words at each other. According to PEMANTAU observers, the incessant shouting from both PAS and BN was so loud it created a chaotic environment. Because both parties were raising flags and chanting slogans within the restricted zone, it created unnecessary tension.<sup>28</sup>

### **Political Violence against Candidates, Party Workers and Supporters in the Media**

During the campaign period, there were numerous media reports on political violence collected by BERSIH 2.0's Special Committee on the Code of Conduct. These included arson and other forms of property damage. On 25 April 2013, a car belonging to PR candidate Dr Xavier Jayakumar's daughter was torched and burnt by unidentified persons at his home. The neighbour who tried to raise alarm was also threatened.<sup>29</sup> A BN operation centre at Sungai Sibuga escaped destruction by fire after two individuals on duty at the centre smelled something burning.<sup>30</sup>

Other incidents include molotov cocktails being thrown at campaign or operation centres of political parties that were part of Barisan Nasional or Pakatan Rakyat. Among those reported in the media are

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<sup>24</sup> W9181, P121 Lembah Pantai

<sup>25</sup> W9423, P121 Lembah Pantai

<sup>26</sup> J3764, P152 Kluang

<sup>27</sup> T8527, P037 Marang

<sup>28</sup> B0915, P119 Titiwangsa

<sup>29</sup> Mazlinda Mahmood, "PKR candidate daughter's car razed", *New Straits Times*, 25 April 2013, <http://www.nst.com.my/latest/pkr-candidate-daughter-s-car-razed-1.264745> [accessed 16 July 2013]

<sup>30</sup> *The Borneo Post*. "Markas jentera BN di Kg Padas Sandakan cuba dibakar", 25 April 2013, <http://www.theborneopost.com/2013/04/25/markas-jentera-bn-di-kg-padas-sandakan-cuba-dibakar/#ixzz2eCxDTpQv> [accessed 16 July 2013]

BN's operation centres at Sekinchan (23 April),<sup>31</sup> Jelapang (25 April),<sup>32</sup> and Kg. Manggol, Kg. Gelam, Kg. Machang, and Kampung Padang (27 April).<sup>33</sup> A PAS operation centre at Seri Iskandar, Perak (16 April) was reported to be burnt in the early hours of the morning.<sup>34</sup> A PR van which party flags were kept was also set on fire and burned by two unknown motorcyclists in Bukit Mertajam.

The windows of a campaign van belonging to the PR candidate for Bakri, Er Teck Hwa, was found smashed by suspected thugs (24 April).<sup>35</sup>

On 3 May 2013, a bomb was found at a DAP election campaign site in Jinjang.<sup>36</sup> An explosion occurred in Nibong Tebal (23 April) during a BN ceramah whereby a man sustained injuries. The police also found a second bomb near to the BN operation centre in Nibong Tebal.<sup>37</sup>

Physical violence and threats of violence were frequently reported in the media. The then-caretaker Chief Minister of Penang, Lim Guang Eng received a death threat against his family via SMS.<sup>38</sup> Similarly, a call (27 April) to DAP's headquarters with a similar threat against his son was also received.<sup>39</sup>

On 2 May 2013, PR candidate Nasrudin Hassan found a plastic bag filled with chicken head and blood thrown into the porch of his accommodation. A threatening note which read "*Take this pig's blood*" also accompanied that bag.<sup>40</sup> In a similar incident later in the same day, a chicken head with a threatening note was also delivered to BN State Chief of Penang, Teng Chan Yeow. The accompanied note read "*If you refuse to withdraw from the election, this is what you and your family will face.*"<sup>41</sup>

It was also reported that the Barisan Nasional candidate for Batu Gajah, Dato Hamidah Othman allegedly pulled the collar of Parti Keadilan Rakyat candidate Lee Boon Chye. She further confiscated a camera belonging to a party worker and threw it on the ground during a scuffle (25 April).<sup>42</sup>

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<sup>31</sup> *ABN News*, "GE13: Two petrol bombs thrown at BN operations room in Sekinchan", 24 April 2013, <http://news.abnxcass.com/2013/04/ge13-two-petrol-bombs-thrown-at-bn-operations-room-in-sekinchan/> [accessed 16 July 2013]

<sup>32</sup> *Malaysian Digest*, "Molotov Cocktail Thrown At BN Ops Centre In DUN Jelapang", 25 April 2013, <http://www.malaysiandigest.com/news/36-local/326352-molotov-cocktail-thrown-at-bn-ops-centre-in-dun-jelapang.html> [accessed 16 July 2013]

<sup>33</sup> Kang Soon Chen, "GE13: 3 BN district election centres in Kubang Pasu torched", *The Star*, 28 April 2013, <http://www.thestar.com.my/story.aspx?file=%2F2013%2F4%2F28%2Fnation%2F20130428180157&sec=nation> [accessed 16 July 2013]

<sup>34</sup> Siti Safa Mohd Nor, "Markas Pas terbakar didakwa angkara khianat", *Sinar Harian*, 16 April 2013, <http://www.sinarharian.com.my/mobile/politik/markas-pas-terbakar-didakwa-angkara-khianat-1.150402> [accessed 16 July 2013]

<sup>35</sup> *Malaysiakini*, "Police stop DAP ceramah at KK - location 'unsuitable'", 23 April, <http://www.malaysiakini.com/news/227711> [accessed 16 July 2013]

<sup>36</sup> Farik Zolkepli and M. Kumar, "GE13: Parcels with explosives found in DAP centre in Kepong, food stall in Seri Kembangan", *The Star*, 3 May 2013, <http://www.thestar.com.my/story.aspx?file=%2F2013%2F5%2F3%2Fnation%2F20130503124509> [accessed 16 July 2013]

<sup>37</sup> *The Sun*, "Explosion rocks BN operations centre", 24 April, <http://www.thesundaily.my/node/199541> [accessed 16 July 2013]

<sup>38</sup> *Sin Chew*, "林冠英接死亡恐嚇", 26 April 2013, <http://news.sinchew.com.my/topic/node/378077> [accessed 16 July 2013]

<sup>39</sup> *China Press*, "林冠英接恐嚇短訊。 檳火箭總部 1 天接 3 恐嚇電話", 27 April 2013, <http://www.chinapress.com.my/node/416898> [accessed 16 July 2013]

<sup>40</sup> Anisah Shukry, "'Pig's blood' hurled at Nasrudin's house", *FMT*, 2 May 2013, <http://www.freemalaysiatoday.com/category/nation/2013/05/02/%E2%80%98pig%E2%80%99s-blood%E2%80%99-hurled-at-nasrudin%E2%80%99s-house/> [accessed 16 July 2013]

<sup>41</sup> *Malaysiakini*, "Police escort for Waytha after Johor ceramah", 2 May 2013, <http://www.malaysiakini.com/news/228753>

<sup>42</sup> *The Star*, "GE13: PKR man alleges assault by BN woman candidate", 23 April 2013, <http://www.thestar.com.my/News/Nation/2013/04/23/GE13-PKR-man-alleges-assault-by-BN-woman-candidate.aspx> [accessed 16 July 2013]

Party workers and supporters faced physical violence. In one incident, a party worker was seriously injured in Terengganu when he was reportedly stabbed and assaulted by a group of men when putting up flags. It was also reported that those who attempted to assist him were threatened with violence.<sup>43</sup> On 22 April 2013, several individuals broke chairs at PKR's operation centre at DM12, PJS 4. Party workers and supporters present were also threatened.<sup>44</sup>

Cases of violence were particularly notable in the Lembah Pantai constituency, where PR candidate Nurul Izzah Anwar made numerous police reports with regards to disturbances and threats of violence occurring in the constituency. In one incident, reported on 13 April 2013, a campaign worker of PKR was threatened with a machete.<sup>45</sup>

**Intimidation of the Public and Undue Influence.** Incidents of observed violence during the campaign period included acts of intimidation against the public (such as the use of loud motorcycle noises and other disturbances) in 6 constituencies (12%). In 5 constituencies (10%) there were acts amounting to undue influence.

Of special note is the alleged use of native customary rights and livelihood as threats against voters in East Malaysia, all reported to be by BN. Some threats were made in combination with promises of benefits in the event that BN is victorious. Examples observed by PEMANTAU were:

- On 30 April 2013 in P170 Tuaran, at or about 8:30AM, N9 Sulaman BN candidate Datuk Haji Hajiji and *Ketua Anak-Anak Negeri* allegedly threatened village chiefs and the Village Security and Development Committees (JKKK) against voting for opposition parties: *"...kalau kamu tidak undi BN, kami akan ambil tindakan..."*

At or about 9:00PM, P170 Tuaran candidate, Datuk Welferd Madius Tangau from UPKO allegedly promised that, *"... Jika kamu undi BN, tanah kamu akan diurus. PTI akan dihapuskan, menghapus kemiskinan..."*

At or about 11:00AM, the speakers reportedly told the participants that if BN won in Sabah, each of the participants will receive RM1,000.00 from *Bantuan Rakyat 1Malaysia*.<sup>46</sup>

- On 4 May 2013 in P174 Penampang at Kampong Babagon, at or about 1:00PM, the JKKK President announced to the participants that a bridge connecting Babagon to Timpangoh will be constructed if BN was given the mandate to govern Penampang.<sup>47</sup>

On 27 April 2013, it was reported by the media<sup>48</sup> that the then-caretaker Prime Minister made a statement in Lubok Antu that voters will lose their dignity and self-worth if they were to vote for Sarawak Workers' Party candidate, Larry Sng. BN candidate for Mambong, Datuk Seri Dar James

<sup>43</sup> Sidiqin Omar, "Penyokong Umno tetak petugas Pakatan, letak parang di kepala", *Keadilan Daily*, 15 April 2013, <http://www.keadilandaily.com/penyokong-umno-tetak-petugas-pakatan-letak-parang-di-kepala/> [accessed 16 July 2013]

<sup>44</sup> Arif Juhani, "Samseng BN serang penyokong KEADILAN Taman Medan, pecah kerusi", *Keadilan Daily*, 27 April 2013, <http://www.keadilandaily.com/samseng-bn-serang-penyokong-keadilan-taman-medan-pecah-kerusi/> [accessed 16 July 2013]

<sup>45</sup> Koh Jun Lin, "End political violence in Lembah Pantai, pleads Nurul", *Malaysiakini*, 14 April 2013, <http://www.malaysiakini.com/news/226748> [accessed 16 July 2013]

<sup>46</sup> S8114, P170 Tuaran

<sup>47</sup> S8061, P174 Penampang

<sup>48</sup> *Borneo Post*, "Larry Sng not BN-friendly candidate in Lubok Antu, says Najib", 28 April 2013, <http://www.theborneopost.com/2013/04/28/larry-sng-not-bn-friendly-candidate-in-lubok-antu-says-najib/> [accessed 16 July 2013]

Dawos also made an accusation that voting for PR will lead to the abolishment of the indigenous peoples' special rights.<sup>49</sup>

On polling day, incidents of intimidation against the public were reported by observers in 13 of the constituencies observed (15%). Acts amounting to undue influence were observed in 15 constituencies (17%).

In P037 Marang at Sekolah Kebangsaan Merchang, at or about 11:45AM, tents erected and excessive campaigning by both BN and PR caused congestion the main road and a small adjacent road leading to the main gate to the polling station.<sup>50</sup>

In P119 Titiwangsa at Sekolah Menengah Kebangsaan Cochrane Perkasa, at or about 3:30PM, a voter approached PEMANTAU and claimed that he was forced to vote for a certain party. He had come out of the polling centre yelling and trading vulgar remarks. When approached by PEMANTAU observers, he claimed that EC officials in the polling centre told him to vote for a certain party though it was not clear who they persuaded him to vote for. But he felt that his right to suffrage was undermined. He was advised to lodge a complaint to the relevant authorities.<sup>51</sup>

Media reports of violence were not limited to candidates, party workers and supporters: an EC officer lodged a police report after he and his colleagues was threatened while on duty upon arriving at an operation centre in his vehicle.<sup>52</sup> An 11-year old boy was allegedly kicked and suffered injuries by unidentified supporters of the opposition for admitting that he supported BN.<sup>53</sup> On 16 April 2013, a hawker in Penang was attacked and beaten when he attempted to remove 1Malaysia flags which was put up within his house compound.<sup>54</sup>

Throughout GE13, instances of violence and threats against journalists were also reported in the media. Prior to nomination day, a reporter from *Malaysiakini* was threatened when he made a query on the use of government's agencies (Information Department) at a BN campaign event (8 April).<sup>55</sup>

On 21 April 2013, a reporter from *Nanyang Siang Pau* was threatened by workers at a BN operation center in Indera Mahkota while she was covering BN's election preparation work.<sup>56</sup>

In Gelugor (24 April 2013, Penang), a photojournalist from *China Press* was punched by a man from a group of bikers wearing 1Malaysia t-shirts when they were disrupting a *ceramah* by DAP.<sup>57</sup>

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<sup>49</sup> Jacob Achoi, "Vote BN to protect our special rights, says Dawos", *Borneo Post*, 28 April 2013, <http://www.theborneopost.com/2013/04/28/vote-bn-to-protect-our-special-rights-says-dawos/> [accessed 16 July 2013]

<sup>50</sup> T8510, P037 Marang

<sup>51</sup> W9402, P119 Titiwangsa

<sup>52</sup> *New Strait Times*, "EC officer lodges police report over threat", 27 April, <http://www.nst.com.my/latest/ec-officer-lodges-police-report-over-threat-1.265735> [accessed 16 July 2013]

<sup>53</sup> Utusan Malaysia, "Budak 11 tahun disepak kerana sokong BN", 26 April, Page 6.

<sup>54</sup> Chan Wei See, "Chinese Press: Two beaten up while removing 1Malaysia flag", *The Edge*, 17 April, <http://www.theedgemaalaysia.com/political-news/236226-ge13-chinese-press-two-beaten-up-while-removing-1malaysia-flag.html> [accessed 16 July 2013]

<sup>55</sup> Koh Jun Lin, "Info Dept vehicles used at BN Batu ops centre launch", *Malaysiakini*, 8 April 2013, <http://www.malaysiakini.com/news/226098> [accessed 16 July 2013]

<sup>56</sup> Chan Wei See, "Chinese Press: DAP says Dong Zong petition meaningless", *The Edge*, 24 April 2013, <http://www.theedgemaalaysia.com/political-news/236953-ge13-chinese-press-dap-says-dong-zong-petition-meaningless.html> [accessed 16 July 2013]

<sup>57</sup> Susan Loone, "Kumpulan ganggu ceramah DAP, jurugambar ditumbuk", 25 April 2013, <http://www.malaysiakini.com/news/227951> [accessed 16 July 2013]

**Statements Promoting Hostility and Ill-Will.** Acts amounting to the promotion of ill-will were reported in 14 constituencies (27%) out of the 51.

On 22 April 2013 in P119 Titiwangsa at a BN operation centre in Jalan Wira, Taman Maluri, BN candidate Johari Ghani accused Parti Keadilan Rakyat (hereinafter referred to as “PKR”) of encouraging students not to repay PTPTN study loans and mocked Anwar Ibrahim’s alleged dream of becoming Prime Minister. He also accused Tindak Malaysia and BERSIH 2.0 of intending to cause chaos on polling day and thus discouraging voters from casting their votes on polling day.<sup>58</sup>

In P119 Titiwangsa at Setiawangsa on 3 May 2013, the then-caretaker Prime Minister Najib Tun Razak allegedly claimed that voting for the opposition will lead to uncertainty or chaos similar to Egypt. Statements amounting to unfounded allegations were made against PR parties, juxtaposed against claims boosting the contribution and achievements made by BN to the country.<sup>59</sup>

**Statements Laced with Racial Undertones.** In 12 constituencies (24%) racist or racial sentiments were deployed during the campaign period. These ranged from subversive advertisements on billboards by Barisan Nasional which attempted to indicate that the opposition supports violence as well as printed advertisements by MCA in the local newspapers which attempted to instigate racial fear. Statements amounting to racial and religious sentiments were observed largely in speeches and flyers by BN.

On 26 April 2013 in Gelang Patah, Johor, individuals identified as BN party workers distributed leaflets alleging that DAP candidate Lim Kit Siang was responsible for the May 13 incident, at a night market during a walkabout by PR candidates Lim Kit Siang and Salahuddin Ayub.

The leaflets had claimed that Lim Kit Siang’s complicity in May 13, distributed in the same Parliamentary constituency, also contained the phrase: *“Renungilah... Satu undi untuk DAP/PKR/PAS bermakna merestui penghinaan terhadap Islam, asas kenegaraan dan orang Melayu.”*<sup>60</sup>

Also on 26 April 2013, a PEMANTAU observer in P121 Lembah Pantai received a mass SMS from an unknown person with probable malice intent. The SMS reads as follows:

*“...Jadi kaya semua cina. Kacau hak Melayu. Kerajaan BN takut pada cina. Melayu yg susah! Mari kerjakan cina!! Sebarkan SMS. Seumah ke masa hadapan...”*<sup>61</sup>

There were also other reports received by PEMANTAU in the same constituency whereby similar racist SMSes were received. One of the noted racist SMSes reads as follows:

*“...Saya kena buang kerja pasal cina tunjuk kuasa. Hantar cina ke Lahad Datu atau bawa kiram ajar cina!! Melayu jadi kuli ditempat sendiri! Apa nak jadi? SMS kawan2...”*

On 30 April 2013 at a BN event in P121 Lembah Pantai in Bangsar, the speakers alleged that PR did not support Indian-Malaysians, and the reason given was that there were no Indian representatives in DAP’s Central Executive Committee (which was untrue). The speakers alleged that this was also the reason why HINDRAF had joined BN.<sup>62</sup>

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<sup>58</sup> W9253, P119 Titiwangsa

<sup>59</sup> W9255, P119 Titiwangsa

<sup>60</sup> SC017, P162 Gelang Patah

<sup>61</sup> W9121, P121 Lembah Pantai

<sup>62</sup> W9181, P121 Lembah Pantai



On 2 May 2013 in P117 Segambut at Sri Hartamas, PEMANTAU observers received a leaflet distributed by a team comprising of male and female young individuals. These individuals claimed that they were from an NGO called SEDAR and were carrying out an academic survey related to their studies. The leaflets were dropped on car windscreens along Jalan Sri Hartamas 11. Judging by their appearance and the numerous grammatical mistakes on the flyers, the individuals were believed to be students employed by BN to carry out a smear campaign against PR.

The flyer contained the statement as follows (spelling corrected):

*“Kit Siang adalah bekas setiausaha Lee Kuan Yew... Chinese and Indian have to give full support for Gerakan, MCA, MIC & PP if they don’t want their opinion to be abandoned and became a minority in BN & the Government... Orang PAS harus sedar menyokong DAP adalah satu kesilapan!...”*

It contained images of DAP and PAS with the wording *“logo mereka sama”* and a photoshopped picture of Lim Guan Eng in a pastor’s robe titled *“Father Joseph Lim Abdul Aziz.”*<sup>63</sup>

**Statements Laced with Religious Bigotry.** In 13 constituencies (25%) observed during the campaign period, religious hatred was used as part of campaigning.

Statements promoting religious bigotry and intolerance are often combined with racist sentiments. In an event organized by Najib Razak on 29 April 2013 in P162 at Southern College, Skudai, leaflets containing racial and religious sentiments were distributed.<sup>64</sup>

In P174 Penampang at Kampung Tomposik, on 3 May 2013, between 10:45PM and 11:15PM, Tan Sri Bernard Dompok (the BN candidate for P174) claimed if the participants of the event voted for the PR, Sabah would become a *hudud* state.<sup>65</sup> Also in P174 at Kampung Nampasan, speakers Philip B. Lasimbang (BN candidate for Moyog, a state seat within P174) and Beatrice Sogondu warned of the perils of a victory for PR as it would bring trouble and hardship to Sabah should *hudud* be implemented upon PR’s victory.<sup>66</sup>

**Statements Deploying Insults based on Sexuality and Misogyny.** At a PR event in P121 Lembah Pantai at Kuala Lumpur Selangor Chinese Assembly Hall on 27 April 2013, two speakers invoked former minister Chua Soi Lek’s sex scandal. PKR member Low Chee Chong had reportedly stated *“...unlike CSL who does not have any clothes on...!”*<sup>67</sup>

In P125 Putrajaya at Presint 16 Putrajaya on 1 May 2013, in a BN event, “Exposing the Pakatan Leaders”, sex videos and audio recordings alleged to be linked to Anwar Ibrahim and Mustaffa Ali were played to the crowd. Inappropriate comments were made in regard to the two PR leaders’ credibility, morality and private lives.<sup>68</sup>

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<sup>63</sup> W9181, P117 Segambut

<sup>64</sup> SC015, P162 Gelang Patah

<sup>65</sup> S8169, P174 Penampang

<sup>66</sup> S8100, P174 Penampang

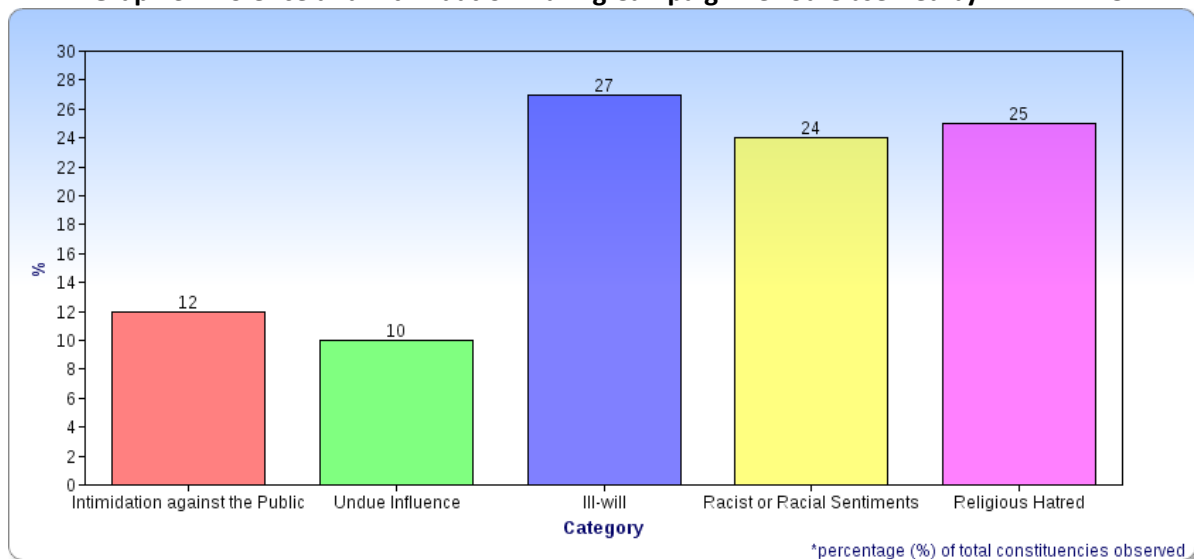
<sup>67</sup> W9198, P121 Lembah Pantai

<sup>68</sup> W9254, P125 Putrajaya

The media reported that misogynistic and sexualised smear messages were deployed against female candidates. On 27 April 2013, the PR candidate for Kuantan, Fuziah Salleh filed a police report over an SMS which carried sexual connotations.<sup>69</sup>

The PR candidate for Kulai Parliamentary seat, Teo Nie Ching, was subjected to misogynistic pamphlets distributed to members of the public in Kulai during the campaign period. The Chinese-language pamphlet depicted her deserting her constituents to nurse her baby. In one of the captions contained in the pamphlet, she was portrayed as telling her baby that she would be back to suckle the child after she had finished hoodwinking her constituents. There was also a caption that appeared to be a statement from her constituents: “You’re going back to suckle. If we have a problem, whom should we look for?”<sup>70</sup>

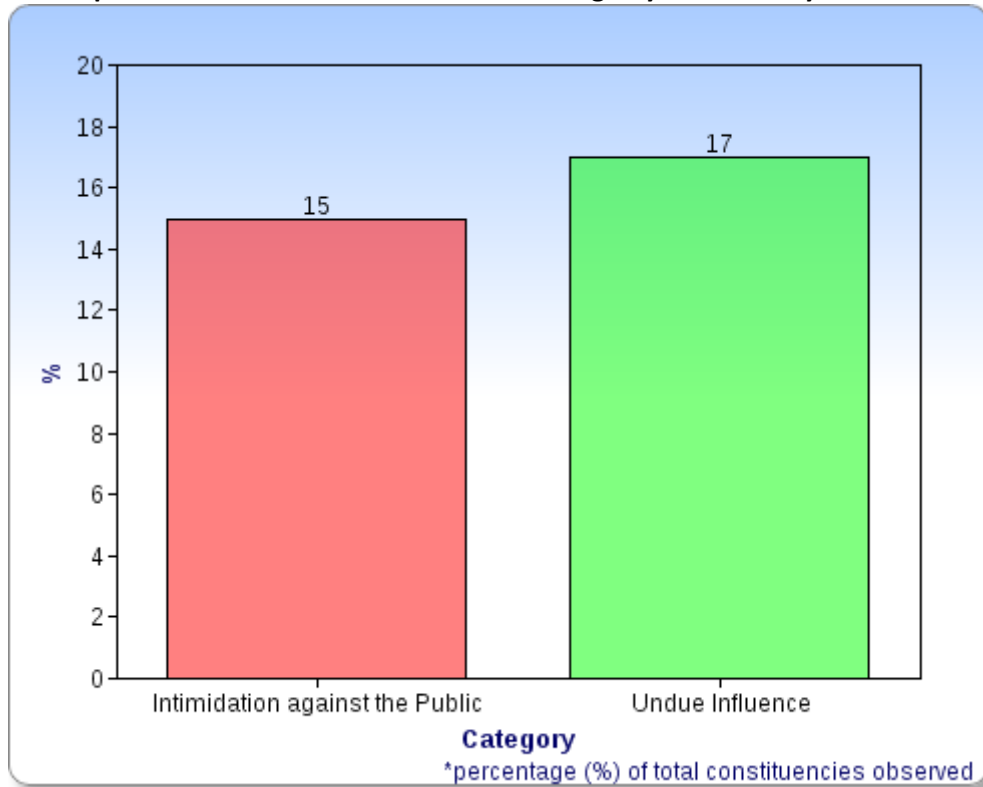
**Graph 3: Violence and Intimidation During Campaign Period Observed by PEMANTAU**



<sup>69</sup> Erma Yusnida Jusoh, “SMS lucah, Fuziah buat laporan polis”, *Sinar Harian*, 28 April 2013, <http://www.sinarharian.com.my/politik/sms-lucah-fuziah-buat-laporan-polis-1.154749> [accessed 16 July 2013]

<sup>70</sup> Leven Woon, “Obscene pamphlets target DAP’s woman candidate”, *FMT*, 25 April 2013, <http://www.freemalaysiatoday.com/category/nation/2013/04/25/obscene-pamphlets-target-dap%E2%80%99s-woman-candidate/> [accessed 16 July 2013]

**Graph 4: Violence and Intimidation on Polling Day Observed by PEMANTAU**



**Response from Election Participants.** Politicians further fuelled the violence by making inappropriate public statements clearly aimed at gaining political mileage, regardless of the consequences. Politicians also sought to blame their political rivals, instead of working together to investigate and condemn the violence. For example the MCA President, Chua Soi Lek, claimed that the violence was caused by the Opposition sowing hatred among the voters and supporters.<sup>71</sup>

The PDRM was quick to respond to some of the incidents, such as in Terengganu and Penang, with a number of perpetrators taken to court. However, other incidents were not addressed including the continuing violence within the P121 Lembah Pantai constituency.

Despite the assurance from the then-IGP Tan Sri Datuk Utama Haji Ismail bin Haji Omar on 3 April 2013 that the police force will ensure things were peaceful and controlled throughout the election period,<sup>72</sup> violence continued. The police also stated that they would use the Security Offences (Special Measures) Act 2012, a law that later drew criticism from SUHAKAM on human rights grounds,<sup>73</sup> to investigate those arrested during the election period. The police regularly updated the public on incidences of political violence through mass and social media; though it was not consistent towards the end of the election period. An update was announced on 26 April 2013, citing 1,056 cases recorded since parliament dissolved. Another announcement made on 27 April 2013 stated

<sup>71</sup> *The Star*, "GE13: Chua blames violence on politics of hatred by opposition". 27 April 2013, <http://www.thestar.com.my/story.aspx?file=%2f2013%2f4%2f27%2fnation%2f13033277&sec=nation> [accessed 16 July 2013]

<sup>72</sup> *The Star*, "GE13: Sosma to be used to ensure smooth running of polls", 11 April 2013, <http://www.thestar.com.my/News/Nation/2013/04/11/GE13-Sosma-to-be-used-to-ensure-smooth-running-of-polls.aspx> [accessed 16 July 2013]

<sup>73</sup> Jarni Blakkarly, "Suhakam: Sosma could violate human rights", *Malaysiakini*, 10 July 2013, <http://www.malaysiakini.com/news/235281> [accessed 16 July 2013]

that 1,166 number of cases were recorded since nomination day.<sup>74</sup> It was noted though that the PDRM made an announcement on 3 May 2013 that approximately 35 individuals have been charged in court pertaining to the incidents.<sup>75</sup>

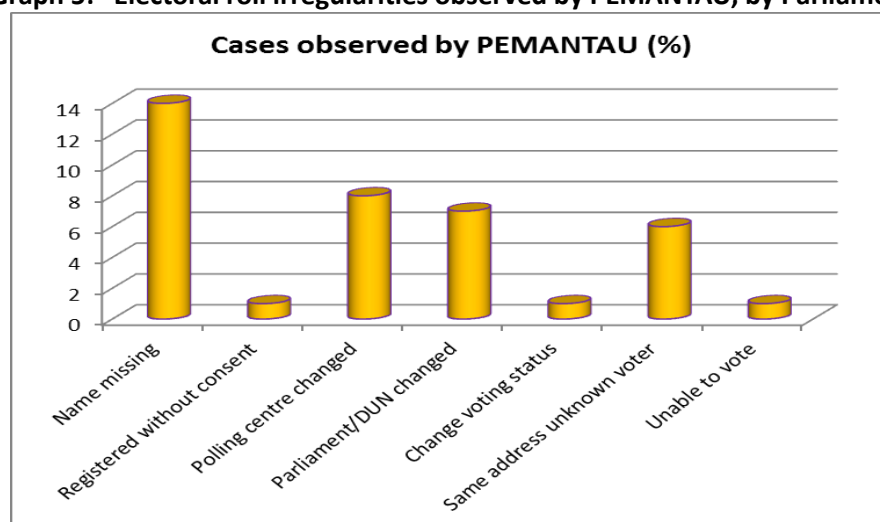
While candidates and party workers and supporters appeared to be the main targets of political violence during GE13, it should be emphasised that the use of political violence also affects the ability of voters to make free and informed choices. A culture of violence is detrimental to democratic processes and, ultimately, victimises voters.

## Electoral Roll Irregularities

The powers, duties and responsibilities of the EC are set out in the Election Act, Section 3-5 and are guided by Regulations 25(2)(b) , 25(2)(c) , 25(2)(d) , 25(2)(e) , 25(2)(f) , and 25(2)(g) of the Elections (Registration of Electors) Regulations 2002. These are important laws and regulations that allow the EC to protect the integrity of the electoral roll.

PEMANTAU observers documented 67 cases on electoral roll irregularities (see Table 1) on polling day.

**Graph 5: Electoral roll irregularities observed by PEMANTAU, by Parliament**



In 12 constituencies (14% of Parliamentary constituencies observed) there were names missing from the electoral roll; in 7 constituencies (8%) a number of voters complained that their polling stations were changed without notice; and in 6 constituencies (7%) a number of voters had either their Parliament or DUN changed without notice.

Examples of cases observed were:

- In P47 Nibong Tebal, at Sekolah Jenis Kebangsaan Yok Eng, two registered voters were not allowed to vote and records of them having voted before did not show up on the EC website.<sup>76</sup>

<sup>74</sup> Farik Zolkepli et. al., "GE13: More incidents of violence reported", *The Star*, 27 April 2013, <http://elections.thestar.com.my/story.aspx?file=/2013/4/27/nation/13031550#.UilWcZmj0t> [accessed 16 July 2013]

<sup>75</sup> Malaysian Police Youtube Channel, "#PRU13 #GE13: Sidang Media KPN 3 Mei 2013 Part 2", <http://www.youtube.com/watch?v=61Z3DrZtQFg> [accessed 16 July 2013]

<sup>76</sup> P6654, P047 Nibong Tebal

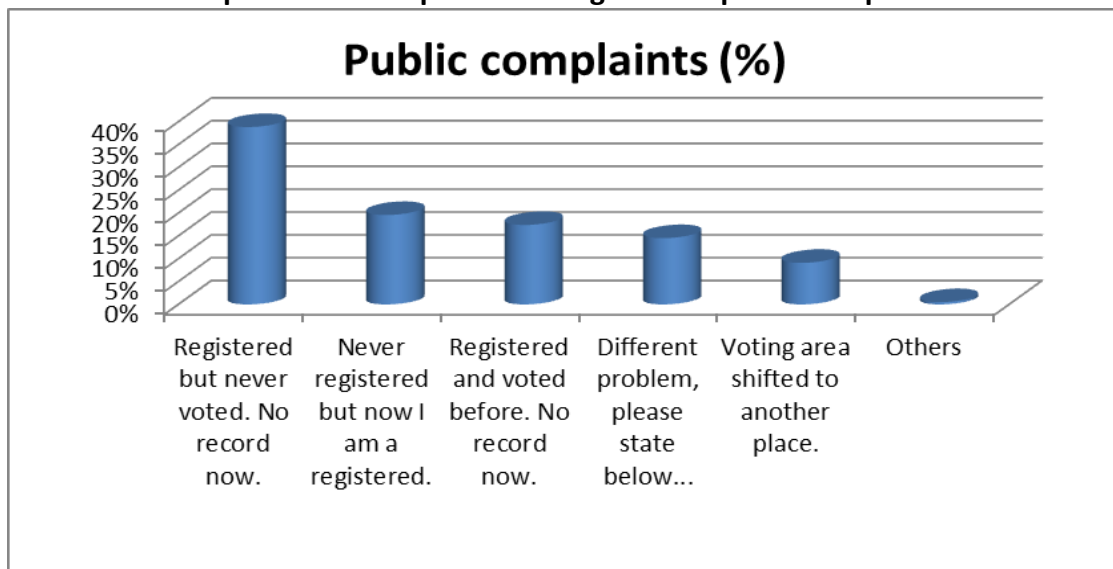
- In P170 Tuaran at Sekolah Jenis Kebangsaan (Cina) Chen Sin, a voter's name was missing from electoral roll, even though he had voted in two previous general elections.<sup>77</sup>

A number of voters found that records at polling stations showed they have “already” voted. This could be due to errors, or other individuals voting using their identities. Please refer to the *Personation* section.

Such irregularities can be further illustrated with public complaints received by PEMANTAU, where a total of 592 reports were received. The highest number of irregularities was registered voters who found their names missing from the electoral roll (see Table 2):

- Voters who had voted in the past but their names were missing, and this stood at 103 cases comprised of 17%.
- 230 reports (9%) were reported by those who had never voted previously.

**Graph 6: Cases reported through online public complaints**



The geographical breakdown showed Johor with 115 cases (19%), followed by Penang with 87 cases (15%) and Wilayah Persekutuan with 80 cases (14%) of the total reports received.

These complainants were made by young citizens, aged 20-29 years old who reported 211 cases (36%); and followed by 208 cases (35%) from those aged 30-39 years old. 318 (54%) females made up most of the complainants while male complainants lodged 44 reports (46%).

Through PEMANTAU online public complaints, the following issues were reported:

**Registered as a voter but never voted before and then deregistered.** PEMANTAU received 230 reports (39%) where first time voters were initially confirmed as registered voters but later their name “disappeared” prior or during polling day. In February 2013, a registered voter checked her status online and was affirmed that she was still a voter but when she re-checked on 29th April 2013, her record was found.

<sup>77</sup> S8057, P170 Tuaran

**Registered and voted previously, now deregistered.** There were 103 reports (17%) who were registered and had voted before but were then deregistered without their knowledge.

A voter from Kuala Lumpur complained that she had voted at all previous elections, the latest being in 2008. When she had checked her status in September 2012 it was still intact but her name went missing in 2013 electoral roll.

Another voter from Kuala Kangsar, who had voted before, reported that when he checked in March 2013 using his own NRIC number, a Malay name with a residing address at Kem Tentera Sg Besi appeared. When he contacted EC, they could not find this “pseudo person and there was also no record of the voter nor any showing that he had ever voted.

**Never registered but was registered without their knowledge.** PEMANTAU received 116 reports (20%) where voters who did not register but found themselves registered without their knowledge. Such “automatic” registration happened both domestically and to Malaysians overseas.

One such voter was a permanent resident in Saudi Arabia who had never registered nor voted, but found that she was already a registered voter. She was very concerned that someone else could be voting on her behalf.

This also happened to a Malaysian residing in Singapore who was registered as an advance voter in P125 Putrajaya; and to another voter from Segambut, Kuala Lumpur, who was registered as a voter in P172 Kota Kinabalu, Sabah.

One complainant was a citizen of the United Kingdom and a holder of a United Kingdom passport who found herself registered as a voter without her knowledge in the constituency of P071 Gopeng. When she lodged a police report, she was informed by the police officer: *“Where were you raised? Don’t you know that once you’re 21 you are automatically registered?”* But automatic registration is not a procedure accepted nor implemented by the Election Commission.

**Registered voters who were relocated to another voting constituency for GE13.** PEMANTAU have 54 reports (9%) where registered voters were “automatically re-designated” to other parts of the country, where they have never resided before. A voter said, “I am 81 years old and have lived at Bangsar Baru since 1973 and this is the registered address in my NRIC, so why am I registered to vote in Segambut and not Lembah Pantai?”

Another Kuala Lumpur-based voter was “relocated” to Kota Kinabalu to vote in GE13. A voter from Johor Bahru found he was registered to vote in Bukit Mertajam. He had not heard of the place before, let alone resided there. When he complained to EC, he was told they was nothing they could do as it was too late and that if he really wanted to vote, he could travel to Bukit Mertajam or wait until GE14 to vote, provided he changed his voting constituency from Penang to Johor Bahru.

**Dead voters in the electoral roll.** Dead voters were still found in the electoral roll which the EC claimed they had cleaned. Some of the cases are as follows:

- A deceased woman who died in 1990 was still on the electoral roll. Strangely, the records showed she was registered with her new NRIC number. However, the new NRIC policy had not even been tabled and implemented during her so-called registration.

- Another deceased person's name was discovered in the electoral roll and is certified to be an eligible voter in P159 Pasir Gudang. He had passed away seven years ago.
- A deceased woman who passed away in 1981 had her name registered on the electoral roll. There was a voting card sent by Barisan Nasional to her residential address at Ladang Tanah Merah calling her to vote for Barisan Nasional's candidates in Johor.

These concerns are not new and were highlighted in a 2012 study conducted by Dr. Ong Kian Ming, then-director of the Malaysian Electoral Roll Analysis Project (MERAP), who raised concerns over some suspicious voters who were still in the electoral roll. They were as follows:

**1. 1,062 voters over the age of 100**

A study conducted at the third quarter of 2011 revealed a surprising 3,926 registered voters who are over the age of 100. Record shows that on average, these voters had registered at the age of 84, mainly from Sabah, who topped the chart with 1,062 voters. Trailing behind Sabah is Sarawak with 475 cases followed by 426 from Johor.

For instance, a Penang voter, Koay Hung Chin@Koay Cho Nam was 116 years old and another K. Shaik Dawood a/l Kalandan Sahib was 115 years old at the time of study.

**2. Inexplicable high number of similar names in the electoral roll**

900 multiples of "Fatimah binti Ismail" were found in Kedah, 206; Kelantan, 230; Pahang, 104 and Terengganu, 360. Three other names shared by coincidence or otherwise 412 "Ismail bin Ahmad" and 352 "Fatimah binti Ahmad" in Kedah and 360 while "Fatimah binti Ismail" in Terengganu. 29,377 of voters with similar names were registered with incomplete addresses.

MERAP study revealed that there were 28 "Fatimah binti Ismail" with the same exact date of birth of which 20 "Fatimah binti Ismail" had the same constituency codes mostly from Terengganu, Kelantan and Kedah.

The electoral roll revealed an approximate 263 voters in Malaysia with the same name and date of birth of which 101 of these voters returned a blank address and 107 with incomplete addresses while only 55 voters had complete addresses in the electoral roll.

**3. Dubious names of foreigners registered as voters**

A total of 28,593 foreigners were registered as voters in Malaysia with Indonesians topping the chart at 13,585, followed by Filipinos at 8,358, Pakistanis at 6,491 and Bangladeshis at 159. Sabah, recorded the highest number of foreign voters at 55.6% of the total of foreign voters registered in the electoral roll.

Incomplete names such as "Jamal", "Hasrul" and "Suwanto" were found in the electoral roll apart from other discoveries of foreigners being postal voters with local State Codes.

**4. Retirees qualified to vote as absent and postal voters**

There were questionable individuals being registered as postal voters mainly from the police and military. A police personnel from Pulai, Johor was registered as a postal voter at the age of 82. The records also revealed a total of 623 postal voters in the police force and 172 postal voters from the military were retirees but were still allowed to vote as postal voters.



Absent voters were defined as those who were on duty and service on polling day, out of jurisdiction or engaged in full time studies at any universities, colleges or any higher learning institutions pursuant to S2 of the Elections (Register of Electors) Regulations 2002 revealed 447 (15%) of the total of 2,981 absent voters, were over the age of retirement. One absent voter was even registered at the age of 92. There were also cases of the voters applying to be absent voters at the age of over 70 years old.

Issues raised in the study were not fully resolved as PEMANTAU found similar cases during their observation. Much work needed to be carried out on the electoral roll. Yet time and again the EC Chair and his deputy defended the roll and brushed aside serious concerns over these discrepancies. What were even more worrying were testimonies presented before the on-going Royal Commission of Inquiry on illegal immigrants in Sabah,<sup>78</sup> which strongly suggested that the electoral roll in Malaysia needed to be cleaned up.

PEMANTAU's observation and the on-going Sabah inquiry suggest that these irregularities cannot be entirely blamed on mere administrative errors or failure of the voters to regularly check on their electoral registration. Furthermore, the legal framework to address electoral roll is weak and creates a barrier to any challenges on the electoral roll. Section 9 A of the Election Act, 1958 prohibits any legal challenge to the electoral roll, after it had been gazetted.<sup>79</sup> There are also no measures or penalties to deal with anyone who may have tampered with the electoral roll.

On 24 August 2013, the Deputy Chair of the Election Commission stated that its priority was to clean the electoral roll.<sup>80</sup> This must be carried out. The issue of a voters' roll is a question of democracy that the Election Commission and the government need to answer as a nation. Just like in any other country, a clean electoral roll is critical and attempts to clean up must be done by the book, transparently and accountably, otherwise elections will forever be plagued with a questionable electoral roll.

## **"Indelible" Ink**

PEMANTAU observers received complaints from the public that the ink was easily removed in 21 of the 87 constituencies observed (24%). In 10 constituencies (11%), voters complained that the application of the ink was inconsistent with EC procedures, and in 2 of the constituencies observed (2%), some voters were told to use the indelible ink on their finger to mark ballot papers.

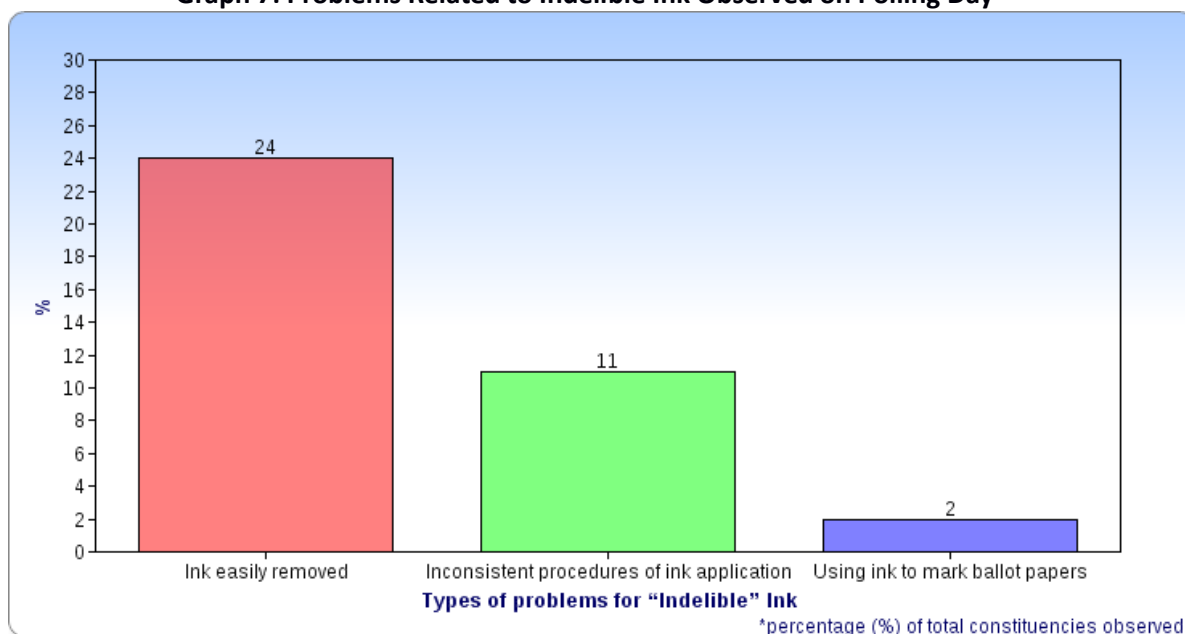
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<sup>78</sup> Boo Su-Lyn, "100,000 ICs given to immigrants in 1993, RCI told", *The Malaysian Insider*, 17 January 2013, <http://www.themalaysianinsider.com/malaysia/article/100000-ics-given-to-immigrants-in-1993-rci-told> [accessed 16 July 2013]

<sup>79</sup> Election Act, 1958 (Act 19), Section 9A Certified or re-certified electoral roll shall be deemed to be final, p. 11. (as at 15 March 2013), International Law Book Services. Petaling Jaya.

<sup>80</sup> L. Suganya, "EC: Priority now is to clean the electoral roll", *The Star*, 25 August 2013, <http://www.thestar.com.my/News/Nation/2013/08/25/EC-electoral-roll.aspx> [accessed 16 July 2013]

**Graph 7: Problems Related to Indelible Ink Observed on Polling Day**



The following cases show that the EC had misrepresented, if not fraudulently represented to the public that the ink would be indelible for at least seven days after its initial application:

- In P047 Nibong Tebal, at about 12:00PM, a voter showed his index finger to PEMANTAU observers, demonstrating that it was free from any residue from the indelible ink.<sup>81</sup>
- In P053 Balik Pulau at Sekolah Kebangsaan Sungai Rusa, a voter demonstrated that the indelible ink applied to his index finger was removed after washing with water at the polling centre.<sup>82</sup>
- At least two individuals had complained to PEMANTAU observers on the failure of indelible ink at or about 3:00PM in P053 Balik Pulau at Sekolah Menengah Kebangsaan Teluk Kumbar 2.<sup>83</sup>
- In P119 Titiwangsa, at or about 12:25PM, two voters informed PEMANTAU observers that the indelible ink could be removed by using wet tissues.<sup>84</sup>
- At least 13 voters complained to PEMANTAU observers on the failure of the indelible ink between 9:40AM to 12:00PM in P124 Bandar Tun Razak at Sekolah Menengah Kebangsaan Seri Permaisuri. Many proceeded to lodge formal complaints with the police at Salak South Police Station but were allegedly given the run-around by the officers at Salak South. All indelible ink complaints were allegedly re-directed by the Salak South Police Station to Sergeant SM Nagarajan of Pudu Police Station although the reasons for singling out indelible ink complaints and re-directing the complaints were undisclosed.<sup>85</sup>

<sup>81</sup> P6506, P047 Nibong Tebal

<sup>82</sup> P6617, P053 Balik Pulau

<sup>83</sup> P6771, P053 Balik Pulau

<sup>84</sup> W9344, P119 Titiwangsa

<sup>85</sup> W9293, P124 Bandar Tun Razak

The above cases were documented, verified and supported by photographic evidence. It was clear that the indelible ink was indeed removable and the EC had misrepresented if not fraudulently represented to the public of its indelible nature to prevent multiple voting.

The removable ink complaints were not unexpected as hours after advance voting on 30 April 2013, PEMANTAU already received numerous complaints from Kelantan, Kuala Lumpur and Sarawak stating that the ink was removable using hand sanitizer, alcohol swabs, petrol or mere soap.<sup>86</sup>

Following reports in the media, EC Deputy Chairman, Datuk Wan Ahmad Wan Omar affirmed that the ink could not be removed totally but conceded that the ink can be removed save for the stain around the fingernail.<sup>87</sup> The EC claimed there was nothing wrong with the ink if used correctly. However, the EC conceded that there was negligence on the part of the EC officers applying the ink because the indelible nature of the ink depended on the thorough shaking of the ink prior to its application.

EC Chair Tan Sri Abdul Aziz Mohd Yusof further defended the ink by stating that the amount of silver nitrate used in the ink was in compliance with the Ministry of Health's order whereby if the ink contained more than one percent of the chemical, it could cause cancer or kidney damage. However, dispute arose as to the veracity of the order as there were no evidence that *AgNO3* i.e silver nitrate was carcinogenic, according to a Material Safety Data Sheet.<sup>88</sup>

In June 2013, following GE13, Minister in the Prime Minister's Department, Datuk Seri Shahidan Kassim in an answer to a question by Segambut MP Lim Lip Eng in Parliament revealed that the main reason for the easy removal of the ink was due to the use of food colouring in the ink instead of silver nitrate. Shahidan, in a written reply, disclosed that a total of RM7.1 million was spent on the ink with RM6.9 million spent on the purchase of the ink and another RM200,000 spent on transportation, packaging and storage.<sup>89</sup>

**Voting by Pencil or Smudging.** Grave procedural irregularities were reported in several polling centres. Pens were not supplied at the polling booths and worse, voters were asked to use either the ink on their finger to vote, notwithstanding that it would smudge the ballot paper and result in a spoilt vote, or was given a pencil to vote instead of a pen.

PEMANTAU received complaints on these irregularities in at least 15 polling centres:

1. P014 Merbok at Sekolah Agama Daris;
2. P107 Subang at Sekolah Menengah Lembah Subang Jaya Kelana Jaya;
3. P009 Alor Setar at Sekolah Menengah Kebangsaan Al-Bukhary;
4. P174 at Sekolah Menengah Kebangsaan Datuk Peter Mojuntin;
5. P107 Subang at Sekolah Menengah Kebangsaan Bandar Utama;

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<sup>86</sup> PEMANTAU, "Indelible Ink", 30 April 2013, <http://pru13.info/2013/04/30/indelible-ink-30-april-2013/> [accessed 16 July 2013]

<sup>87</sup> *Malaysian Digest*, "Indelible ink will not wash off 100 percent – EC", 30 April 2013, <http://www.malaysiandigest.com/news/36-local/2331732-indelible-ink-will-not-wash-off-100-percent-ec.html> [accessed 16 July 2013]

<sup>88</sup> *Malaysiakini*, "Silver nitrate not carcinogenic, voter tells EC", 17 May 2013, <http://www.malaysiakini.com/news/230449> [accessed 16 July 2013]

<sup>89</sup> MD Izwan, "Indelible ink was actually food colouring, Shahidan tells MP", *The Malaysian Insider*, 26 June 2013, <http://www.themalaysianinsider.com/malaysia/article/indelible-ink-not-what-it-was-made-out-to-be-ec-admits-in-parliament> [accessed 16 July 2013]

6. P196 Stampin at Sekolah Kebangsaan Garland;
7. N14 Ampangan at Sekolah Kebangsaan King George V;
8. P15 Sungai Petani at Sekolah Kebangsaan Patani Jaya;
9. P129 Kuala Pilah at Universiti Teknologi MARA;
10. P009 Alor Setar, DUN N12 Bakar Bata at Sekolah Kebangsaan Taman Uda;
11. P128 Seremban at Sekolah Rendah Jenis Kebangsaan (Cina) Pei Hua;
12. P106 Petaling Jaya Utara, DUN N36 Damansara Utama at Sekolah Menengah Kebangsaan Tropicana;
13. P161 Pulaui, N47 Kempas at Sekolah Menengah Kebangsaan Seri Rahmat Johor;
14. P014 Merbok at Sekolah Menengah Sains Sultan Muhammad Jiwa; and
15. P164 at Sekolah Kebangsaan Bandar Pontian.

Voting by pencil or smudging with ink present two major risks:

1. Erasable; and
2. Spoilt vote.

In both cases, the negligence or poor management of the EC resulted in questionable standards of integrity and professionalism within the EC, not to mention the obvious risk of ballot tampering. This breach could have nullified the results of constituents affected and warranted fresh polls pursuant to Regulation 24A(1)(b) of the Elections (Conduct of Elections) Regulations 1981.<sup>90</sup>

## Bribery

Bribery is defined in Section 10 of the Election Offences Act 1954 as the corrupt practice of “offers, promises, or promises to procure or to endeavour to procure, any money or valuable consideration to or for any elector or voter, or to or for any person on behalf of any elector or voter or to or for any other person, in order to induce any elector or voter to vote or refrain from voting”, or any acts of the same “on account of any elector or voter having voted or refrained from voting at any election.”

Despite an assertion to the contrary by an officer of the MACC<sup>91</sup> in February 2013, these acts need not be committed for the benefit of specific, individual candidates before they become an offence: these are offences regardless of who committed them and for whose benefit, when they are committed for the purpose of corruptly influencing any person’s vote or inducing the person to refrain from voting.

During PEMANTAU’s election observation briefings, experiences related by members of the public point to ignorance of election laws criminalizing bribery and a widespread belief that acts amounting to bribery was an intrinsic part of election campaigning. This is due to the habitual use of cash handouts or promises of the same, and other valuables to “buy” votes.

<sup>90</sup> “...any such error, irregularity or defect in procedure as is likely to affect the validity of the poll occurs at a polling station...”, Election Laws, International Law Book Services, as at 15<sup>th</sup> March 2013, Regulations 24A (1)(b) of the Elections (Conduct of Elections) Regulations 1981 at page 135. See also: <http://www.parlimen.gov.my/images/webuser/jkuasa/memorandum/BERSIH%202.0/Election%20Regulations%201981.pdf> at page 21

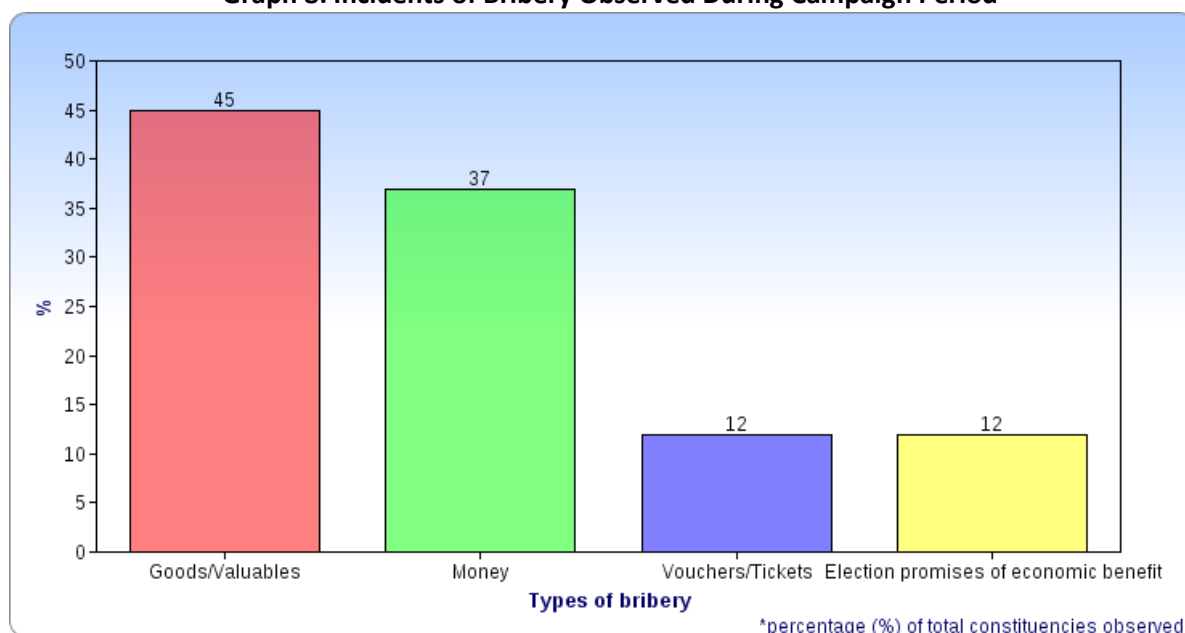
<sup>91</sup> PEMANTAU, “Election Misconduct and the Need for Election Observation”, 19 February 2013, <http://www.bersih.org/?p=5799> [accessed 16 July 2013]

This remained unfortunately true during the observation period in GE13. PEMANTAU observers noted alleged incidences of bribery involving money or other goods in 5 constituencies observed (22%) on nomination day. There were reports of alleged incidents of agents from the BN handing out RM20 to members of the public in P032 Gua Musang at Pejabat Tanah Gua Musang between 9:00AM to 12:00PM.<sup>92</sup> In P047 Nibong Tebal at Dewan Serbaguna Jawi, it was reported that there were incidents of BN handing out cash and umbrellas to the members of the public at or about 8:45AM.<sup>93</sup>

In P083 Kuantan at Block C of Wisma Sri Pahang, at about 9:30AM to 10:00AM, BN supporters together with a sizeable number of school children were alleged to have been transported to the nomination centre in buses provided by BN. PEMANTAU observers reported that cash in the amount of RM30 was given to the supporters together with BN paraphernalia and food and drinks provided for by two lorries.<sup>94</sup>

In both of these cases, bribery took the form of cash handouts. However, this was not always the case. During the campaign period, bribery involving valuable consideration and other goods were reported by PEMANTAU in almost half of all constituencies observed (23, or 45%) while money was allegedly given out in 19 constituencies (37%). Other hand-outs amounting to bribery include vouchers or tickets (6 constituencies, or 12%) and promises of economic benefit upon the victory of a particular candidate (6 constituencies, or 12%).

**Graph 8: Incidents of Bribery Observed During Campaign Period**



Below are some examples recorded by PEMANTAU observers:

- On 24 April 2013 in P107 Subang at Bandar Utama Central Park, PR candidates promised to provide RM50 allowance each month for housewives, and to reduce petrol and car price.<sup>95</sup>

<sup>92</sup> D2237, P032 Gua Musang

<sup>93</sup> P6517, P047 Nibong Tebal

<sup>94</sup> C1290, P083 Kuantan

<sup>95</sup> B0941 & B1192, P107 Subang

- On 29 April 2013 in P174 Penampang at Kampung Kipouvo, Bryan Matasing of *Unit Pemimpin Kemajuan Rakyat* (N20 Moyog) told the crowd that a high school would be built in Kipouvo and that the measurement and ownership procedures of the land were already in progress. A *Mahkamah Anak Negeri* in Penampang was already in progress in Kibabaig.<sup>96</sup>
- On 2 May 2013 in P107 Subang at Choong Foong Seafood Restaurant, N39 BN candidate, Halimahton Saadiah Bohan and P107 BN candidate, Prakash Rao promised to grant permanent land titles for the TOL occupiers of Subang Heights and Jalan 3D; build a new school for Kampung Baru Subang, a Chinese temple, build 1Malaysia clinics, a community hall in Mutiara Subang; help single mothers through subsidies; help poor family with four to eight children; and to lower the assessment and quit rent for the constituency should the mandate be given to BN.

At or about 8:35PM, Halimahton reportedly told the crowd, *"...if you give me mandate, give me victory, we can together 'selesai masalah'..."* and that *"...we in BN want rakyat to be 'senang'. I promise we want to help... give me your mandate and we can sit down and settle..."*

At or about 8:42PM, she further said, *"... I want to help you but you must help me... you must vote for BN... Najib says if BN wins, cukai pintu will automatically go down. If I win as wakil rakyat, we can settle one at a time. Not within one month, give me time..."*

At or about 9:25PM, Prakash Rao allegedly informed the crowd that he had met Najib Tun Razak the week before and that the Prime Ministry agreed to build a school which would cost RM800,000 and a road expansion in Sungai Buloh. He reportedly went on to say *"If we win, we can do... if I lose, all cannot be done... school, temple, road all cannot. You help me, I want to help all..."*<sup>97</sup>

- On 3 May 2013 in P174 Penampang at Kampung Notoruss, election promises were made to participants at a gathering by the JKKK president Alex Ginsai. He allegedly told the participants that the tarred road to Sosopan-Notoruss was already in the pipeline together with a steel bridge. He claimed that letters of tender were already distributed and announced that licensed contractors should snap up the offer immediately. However, BN had to be elected in order to complete the works.<sup>98</sup>
- In P217 Bintulu, it was alleged that a representative of the Niahmas palm oil plantation treated the residents of a longhouse to a meal on 3 May 2013, before dividend cheques of shares in a joint venture on NCR land were handed out by a representative of the Kemena ADUN, Dr Stephen Rundi ak. Utom. Food items such as noodle packs were also distributed. The PEMANTAU present questioned why the dividends were given out during the campaign period. The observer also noted that there had been allegations of wrongdoing: the plantation owners claimed that it made no profit even after decade, resulting in the residents getting nothing, and it was later found that the NCR land had been quietly changed to the status of state-owned land. Residents formed protests and blockades, and eventually the plantation settled out of court.<sup>99</sup>

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<sup>96</sup> S8061, P174 Penampang

<sup>97</sup> B0681, P107 Subang

<sup>98</sup> S8061, P174 Penampang

<sup>99</sup> Q7040, P217 Bintulu

A number of “creative” forms of bribery were noted by PEMANTAU during the campaign period, including the use of lucky draws. At an event organized by Kongress Indian Muslim Malaysia (KIMMA) in P121, Bukit Angkasa, Lembah Pantai on 1 May 2013, material gratification to the participants was observed. The KIMMA president offered lucky draws for all newly signed-up KIMMA members and each new member was offered and given a bladeless fan.<sup>100</sup>

Political candidates and individuals affiliated with political parties were also observed to have accused each other of practicing bribery. For example, in P125, TEKUN Nasional organized an event titled “Majlis Perjumpaan Usahawan TEKUN Putrajaya” on 1 May 2013. Putrajaya BN candidate Tengku Adnan accused PAS of being “*Parti Anak Syaitan*” and alleged that PAS workers took *pil kuda* (methamphetamine) to be able to stay up late and work continuously. He had also accused PAS of paying bribe money in the amount of RM500.00 for Kelantanese and RM250.00 for non-Kelantanese.

His message was however undercut by the fact that the CEO of TEKUN Nasional reportedly told the crowd to register as a member of TEKUN Nasional, a microlending institution funded by the Federal government, and that he would approve the registration in two to three days. “...*Isi pagi, petang boleh dapat kelulusan...*”<sup>101</sup>

The parade of bribes continued to polling day, where PEMANTAU observers reported acts of bribery in 16 of the constituencies observed (18%). Bribery took the forms of cash, cash vouchers, travel allowances or reimbursements, and special claims for voters travelling in from outside the constituency and those who had sworn to vote for BN by signing Letters of Undertaking.

Below are some of the alleged incidences reported:

- In P037 Marang, at about 2.40PM, BN party workers were reported to have distributed RM50 to voters on the spot at a Balai Raya nearby to Sekolah Kebangsaan Bukit Jelutong. Voters were asked to swear upon the al-Qur’an that they would support UMNO. A dissatisfied voter on the scene reported to PEMANTAU that he was promised RM200 but was not given the stipulated amount.<sup>102</sup>
- In P039 Dungun at Sekolah Kebangsaan Dendang, cash was reportedly given to voters outside the polling centre at BN’s pondok panas at or about 11:00AM. Several pieces of red notes were given to voters who were present at the pondok panas.<sup>103</sup>
- In P047 Nibong Tebal at Sekolah Menengah Tun Syed Shah Barakbah, transportation was allegedly provided for voters to and from the polling centre by BN. Blue vouchers were handed out to voters, likely to be transportation vouchers. BN party workers were seen campaigning at the front gate of the polling centre, interacting and giving drinks to voters. The transportation of voters by BN was witnessed by EC officials but no action was taken.<sup>104</sup>
- In P097 Selayang, at or about 4:30PM, voters were allegedly directed to a BN booth that were giving out *Borang Pengesahan Pengundi Luar* for special claims at a BN office near Selayang Hospital.<sup>105</sup>

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<sup>100</sup> W9102, P121 Lembah Pantai

<sup>101</sup> W9499, P125 Putrajaya

<sup>102</sup> T8512, P037 Marang

<sup>103</sup> T8521, P039 Dungun

<sup>104</sup> P6505, P047 Nibong Tebal

<sup>105</sup> B1195, P097 Selayang

- In P107 Subang at Sekolah Menengah Kebangsaan Sri Damansara 2, alleged members of Wanita BN were openly requesting bank account details from voters at a *pondok panas* opposite the main gate of the polling centre in what appeared to implicit offers of money in exchange for the consideration of a vote for the BN.<sup>106</sup>
- In P121 Lembah Pantai at Sekolah Kebangsaan Bangsar Kuala Lumpur, at or about noon, it was reported that BN workers were handing out vouchers to voters at the polling centre.<sup>107</sup>
- In P159 Pasir Gudang at Taman Molek, at or about 1:00PM, distribution of cash was reported at Pejabat UMNO Bahagian Pasir Gudang at No. 2, Jalan Molek 1/28, Taman Molek, 81100 Johor Bahru.

Voters were observed to have queued at the office to obtain a reimbursement for travel expenses up to RM100. However, some voters were seen queuing without the required form for reimbursement.

At about 3:00PM, a member of the public made an allegation to PEMANTAU observers that BN set up a booth at No. 20, Jalan Bunga Mawar, Plentong and was distributing cash up to RM100 about 250 metres away from Sekolah Agama Tun Hussein Onn, Plentong.<sup>108</sup>

- In P161 Pulau at Sekolah Kebangsaan Nong Chik, voters were allegedly transported by BN members' vehicles to the polling centre. At or about 8:20AM, a woman holding a form with the BN logo approached a PEMANTAU observer and enquired where she could get reimbursements for travel expenses. The woman claimed that she was originally registered in Pasir Gudang but was transferred to Pulau.

Later at or about 9:00AM, observers spotted a nearby dwelling that was transformed into a BN operation centre. It was observed that the centre deals specifically with complaints and transportation issues. There were name cards of candidates found at the reception table at the operation centre.<sup>109</sup>

- In P168 Kota Marudu at Sekolah Kebangsaan Tigaman, a PEMANTAU observer reported that BN was handing out cash to voters who had pledged allegiance to vote for BN. A list of names was sighted containing the names of the voters who would vote for BN. The voters were paid in cash after voting.<sup>110</sup>
- In P170 Tuaran at Sekolah Kebangsaan Tiong Perungusan, BN workers from UPKO were alleged to have handed out cash in the amount of RM50 for voters who had voted for BN after exiting the polling centre. Transport allowances were also reportedly given to voters who had travelled from outside jurisdiction to vote in the constituency in between 10:00AM to 4:00PM.<sup>111</sup>

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<sup>106</sup> B0661, P107 Subang

<sup>107</sup> W9076, P121 Lembah Pantai

<sup>108</sup> J3802, P159 Pasir Gudang

<sup>109</sup> J3985, P161 Pulau

<sup>110</sup> S8119, P168 Kota Marudu

<sup>111</sup> S8114, P170 Tuaran



- In Sekolah Kebangsaan Tiong Perungusan in P170 Tuaran, a STAR politician who visited the polling centre allegedly campaigned for votes by treating voters to DeStar alcoholic beverages and handing out cash in the amount of RM200 to voters.<sup>112</sup>
- In P172 Kota Kinabalu, at or around 4:50pm, PEMANTAU observers reported a long queue of people outside the UMNO branch office in Wisma YAKIM, Kota Kinabalu. There were uniformed personnel supervising the queue. When asked, one of the uniformed personnel explained that the office was giving out *duit tambang* for people who voted in DUN Api-Api. Another uniformed personnel confirmed this, and also said that the amount given was RM100 per person.<sup>113</sup>
- At or about 9:00AM, cash in the amount of RM50 and RM100 were reportedly given to voters P191 Kalabakan at Sekolah Kebangsaan Kampung Mentadak Baru. The cash was given in a folded envelope with a letter pleading for voters to vote for BN. A PEMANTAU observer himself received the letter and money. However, he alleged that letter was later retrieved by BN workers for fear of leaving a trail of evidence.<sup>114</sup> Also in the same constituency, at Sekolah Menengah Kebangsaan Merotai Besar, cash in the amounts of RM50, RM100 and RM500 were reportedly given out by BN workers, including the Kalabakan BN head at the BN operation room as well as near the polling centre.<sup>115</sup>

Overall, observations by PEMANTAU affirmed the history of allegations of bribery and money politics that have long marred elections in Malaysia. PEMANTAU noted that all instances of alleged bribery on nomination day and polling day happened in broad daylight, in public or semi-public settings. During the campaign period, election promises and handouts that could amount to bribery were common content in speeches and other campaign events.

Bribery is a form of corruption that chips away at public trust in their elected representatives. More importantly, the buying of votes through bribery is a violation of the fundamental right of voters to exercise their choice at the ballot box unimpeded. This further lowers public trust in the process and outcome of the elections as a democratic institution that best expresses the free will of the people.

Section 11 of the Election Offences Act 1954 sets down the punishment for individuals convicted of corrupt practices. Every person convicted of “the offence of personation, or aids, abets, counsels or procures the commission of the offence of personation” and “the offence of treating, undue influence or bribery” can be imprisoned for a term not exceeding two years and fined not less than RM1,000 and not more than RM5,000.00 Article 115 of the Federal Constitution makes it mandatory for all public authorities to assist the EC with the discharge of its duties upon request, including the police and other investigatory bodies, giving the EC wide-ranging powers to investigate and prosecute allegations of bribery.

PEMANTAU is impelled to question, then, why there are not more investigations and prosecutions related to the use of bribery in elections. The entrenched nature of a culture of money politics in Malaysia, and the open manner with which cash and other valuables were handed out points to a failure in the exercise of duty by institutions empowered to safeguard the integrity of elections in Malaysia.

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<sup>112</sup> S8114, P170 Tuaran

<sup>113</sup> SC013, P172 Kota Kinabalu

<sup>114</sup> S8098, P191 Kalabakan

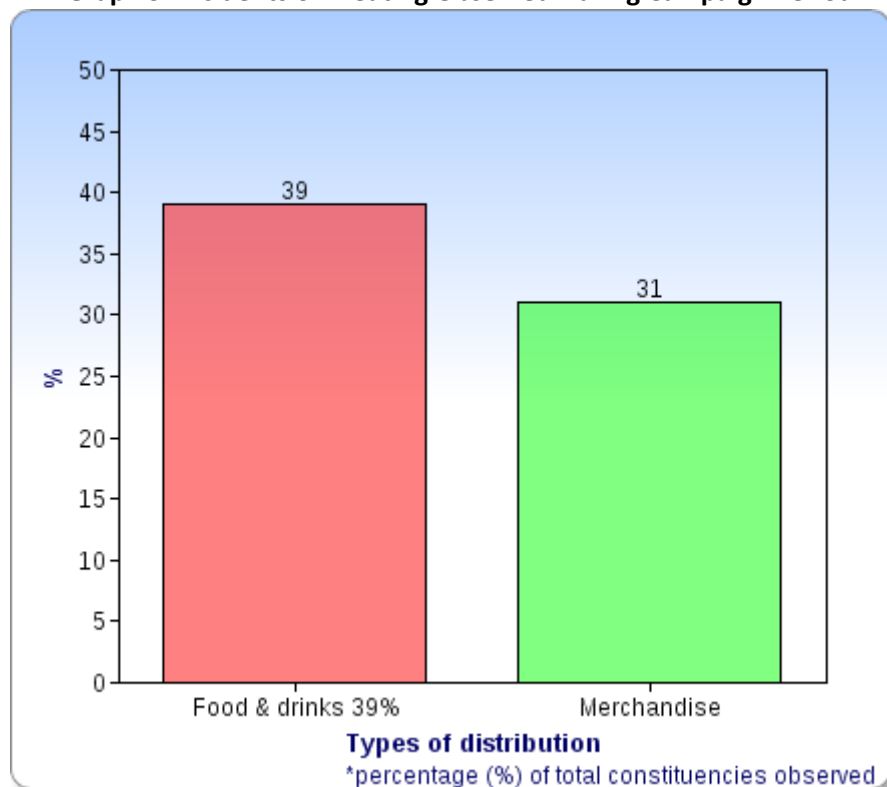
<sup>115</sup> S8129, P191 Kalabakan

## Treating<sup>116</sup>

Treating was by far the most common election offence observed during GE13. It is so widespread, in fact, that many Malaysians including candidates and party workers were not aware that treating is an election offence. During nomination day, treating was observed in 8 of the 23 constituencies observed (35%), either with food and drink or party merchandise such as fans and umbrellas with party logos.

It was also rampant during the campaign period: PEMANTAU observers in 20 of the observed constituencies (39%) reported the distribution of food and drink, as well merchandise in 16 constituencies (31%). Food and drink were distributed to voters in 21 Parliamentary constituencies (24%) during polling day.

**Graph 9: Incidents of Treating Observed During Campaign Period**



Treating as a campaign strategy by BN was observed to have largely taken the form of lavish dinners with political speeches and entertainment, social events, marathon and even award presentations by government agencies and machineries such as RISDA and TEKUN Nasional. Usually, in these events, attendees would be given door gifts, lucky draws and performances by artists engaged by

<sup>116</sup> Defined in Section 8 of the Election Offences act as “...every person who, corruptly, by himself or by any other person, either before, during or after an election, directly or indirectly gives or provides or causes to be given or provided, or is accessory to the giving or providing, or pays or engages to pay wholly or in part, the expense of giving or providing any food, drink, refreshment or provision, or any money or ticket or other means or device to enable the procuring of any food, drink, refreshment or provision, to or for any person for the purpose of corruptly influencing that person or any other person to give or refrain from giving his vote at such election or on account of any such person or any other person having voted or refrained from voting or being about to vote or refrain from voting at such election, and every elector or voter who corruptly accepts or takes any such food, drink, or refreshment or provision or any such money or ticket or who adopts such other means or device to enable the procuring of such food, drink, refreshment or provision shall be guilty of the offence of treating..”

party workers, including minors who were often tasked with works related to setting up of the venue to serving food. Treating sometimes took place in conjunction with hand-outs, offers or promises amounting to bribery. Food, drinks, BN paraphernalia, goodies, hampers, cash vouchers, travel claims<sup>117</sup> and even raincoats<sup>118</sup> were distributed to the participants during the campaign period.

Below are examples of treating observed by the PEMANTAU team:

- In P009 Alor Setar at Kompleks Belia dan Sukan Kedah, at or about 8:50AM, PEMANTAU observers witnessed a lorry loaded with mineral water, food, T-shirt, BN flags, hats, umbrella and other paraphernalia being distributed to supporters and members of the public on nomination day. At or about 10:25AM, the lorry drove into the restricted zone where mostly BERJASA supporters had gathered but was swiftly shown the exit by the police.<sup>119</sup>
- BN supporters were seen distributing T-shirts, fan, and mineral water with “*Undilah BN*” motifs to the public in P037 Marang at Pejabat Daerah Marang on nomination day.<sup>120</sup> Similarly, in P039 Dungun at Pejabat Daerah Dungun, these standard items were treated for supporters and members of the public.<sup>121</sup>

At or about 10:15AM at the same nomination centre, PAS supporters were seen distributing mineral water to people who had gathered and marched with the party supporters.<sup>122</sup>

There were numerous reports of treating during the campaign period. Some of the reported incidents were:

- In P117 Segambut, at a Sambutan Hari Keluarga Penduduk Taman Bukit Maluri on 26 April 2013, the usual door gifts, food and drinks were observed to be distributed by Persatuan Inspirasi Wanita Taman Bukit Maluri, believed to be in support of BN.<sup>123</sup>
- On 27 April 2013 and 3 May 2013, at Kuala Lumpur Selangor Chinese Assembly Hall, mineral water with PAS and DAP logos were distributed to the participants. DAP had also distributed cheering materials i.e clapsticks.<sup>124</sup>
- In P104 Kelana Jaya at Kampung Lindungan Petaling Jaya on 28 April 2013, an event organised by PR saw food and drinks being served for breakfast for the participants.<sup>125</sup> At another speech organised by the PR, food and drinks were also offered by an NGO, Malaysian Tamil Today, believed to be in support of PR.<sup>126</sup>
- In P107 Subang at Choong Foong Seafood Restaurant in Kampung Subang on 2 May 2013, about 70 tables of participants were treated to an eight course Chinese dinner and entertained with lucky draws with a comprehensive list of electronic appliances. Prizes were

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<sup>117</sup> S8114, P170 Tuaran

<sup>118</sup> W9160, P118 Setiawangsa

<sup>119</sup> K5056, P009 Alor Setar

<sup>120</sup> T8510, P037 Marang

<sup>121</sup> T8582, P039 Dungun

<sup>122</sup> T8530, P039 Dungun

<sup>123</sup> B1183, P117 Segambut

<sup>124</sup> W9255 & W9198, P119 Titiwangsa and P121 Lembah Pantai

<sup>125</sup> B0581, P104 Kelana Jaya

<sup>126</sup> W9198, P115 Batu

presented by community leaders, school principals together with the party candidates. Two RM300 mock cheques were given to a single parent and a female kidney patient.<sup>127</sup>

Treating continued on polling day to entice voters:

- In P047 Nibong Tebal at Sekolah Menengah Kebangsaan Tun Syed Shah Barakbah, on polling day, BN workers were seen at the main gate of the polling centre interacting with voters. Mineral water with BN logo was handed out to voters. PEMANTAU had also observed what appear to be vouchers being distributed to voters by BN workers. There were also incidents transporting voters to the polling centre. EC officers present did not react to stop the questionable activities.<sup>128</sup>
- In P107 Subang at Anjung Bestari Politeknik Sultan Salahuddin Abdul Aziz Shah, observation made by PEMANTAU revealed that drinks, food and freebies were handed out to voters by BN workers on polling day.<sup>129</sup>
- In P107 Subang at Sekolah Kebangsaan Bukit Lanjan, at or about 8.30AM, representatives of the Orang Asli Affairs Department (JAKOA) was seen giving free packet drinks and food to Temuan indigenous peoples who have voted for BN. These voters were ushered to BN pondok panas for food and drinks after voting. Upon questioning by PEMANTAU, JAKOA reportedly answered that the treating was for charitable purpose since the indigenous peoples were often marginalised by the government.<sup>130</sup>

In all of these reported instances, treating was done in the open. While treating may be perceived to be less serious than bribery, it creates a political environment conducive to public expectation of election sweeteners, and where political parties and candidates feel that they are not bound by election laws in handing out the same. The same punishment proscribed in the Election Offences Act for bribery also applies to treating, which implies that the drafters of the law viewed treating to be a corrupt practice on the same level as bribery.

The lack of censorious response by the EC on the widespread treating strengthens perceptions of it as a “toothless” commission subservient to the ruling party (given the numerous instances of treating by BN), and that it is either unable or unwilling to discharge their duties as an election management body. As with bribery, the EC cannot be excused on the grounds that it lacks legal backing to investigate and prosecute alleged offenders, given enabling provisions within election laws and the Federal Constitution.

## Personation

Of particular concern are reports of suspected personation or “dubious voters” in 24 out of constituencies observed (28%) on polling day. The veracity of these reports must be further investigated as, in combination with existing concerns over the integrity of the electoral roll, they could indicate widespread voter fraud.

Section 7 of the Election Offences Act 1954 stipulates that: “...every person who at an election applies for a ballot paper in the name of some other persons, whether that name be that of a person

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<sup>127</sup> B0642 & B0681, P107 Subang

<sup>128</sup> P6506, P047 Nibong Tebal

<sup>129</sup> B0585, P107 Subang

<sup>130</sup> B0557, P107 Subang

*living or dead, or of a fictitious person or who, having voted once at any such election, applies at the same election for a ballot paper in his own name, shall be guilty of the offence of personation...”*

PEMANTAU observers reported the following incidents. In a number of cases, voters found that someone else had voted on their behalf:

- In P037 Marang at Sekolah Kebangsaan Bukit Jelutong, at least one incident of multiple voting was reported. A woman who had voted at a nearby polling station was allegedly seen walking into another polling centre to vote for the second time.<sup>131</sup>
- In P047 Nibong Tebal, at Sekolah Jenis Kebangsaan Yok Eng, a woman found out at the time of voting that her name had already been crossed and another individual had voted on her behalf. She requested for Form 11A but the EC refused to respond to her demands. She had since lodged a police report against the fraudulent voter and the EC's non-response.<sup>132</sup>
- In P053 Balik Pulau at Sekolah Kebangsaan Sungai Pinang, a voter complained that his name was used by another voter earlier.<sup>133</sup>
- In P090 Bera at Sekolah Menengah Kebangsaan Triang, a registered voter was told by the EC that his NRIC had already been used to vote earlier by another individual.<sup>134</sup>
- In P119 Titiwangsa at Sekolah Jenis Kebangsaan (Tamil) Kampung Pandan, one voter discovered that his NRIC was used earlier by an unknown individual to cast a vote. The voter insisted on voting as his finger was unmarked by ink. After numerous complaints, the EC allowed him to cast a vote. However, it was procedurally flawed because his vote may have been cancelled out by the person who used his NRIC.<sup>135</sup>

Other reported incidents were:

- In P039 Dungun, two foreign nationals suspected of being phantom voters were apprehended by the public. One had indelible ink on both index fingers.<sup>136</sup>
- In P174 Penampang at Sekolah Menengah Tinggi Kota Kinabalu, an individual was asked to produce his NRIC by a security personnel at the polling station. He was denied entry to vote but returned shortly with another NRIC. PEMANTAU interviewed the security personnel, who revealed that the first NRIC showed a Tawau address but the second contained a Penampang address.

Upon questioning by the public, the individual admitted that the second NRIC with a Penampang address was given to him at an undisclosed campsite on the same day. He was then asked to leave the polling station by the members of the public. The police present however, did not make any arrest.<sup>137</sup>

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<sup>131</sup> T8512, P037 Marang

<sup>132</sup> P6654, P047 Nibong Tebal

<sup>133</sup> P6560, P053 Balik Pulau

<sup>134</sup> C1215, P090 Bera

<sup>135</sup> B0915, P119 Titiwangsa

<sup>136</sup> T8626, P039 Dungun

<sup>137</sup> S8024, P174 Penampang

- In P175 Papar at Sekolah Rendah Kebangsaan St Mary, a suspicious voter with a registered address at Kampung Gersik Lama in the Federal Territories of Labuan was observed to be voting at P175 Papar.

PEMANTAU observers noted that the above voter had with him a *Surat Pengesahan Pengundi Luar* issued by *Pengarah Jentera Barisan Nasional Kawasan P166 Labuan*.<sup>138</sup>

PEMANTAU presents the above cases with caution, as further investigation are needed. In the case of the incidents reported in Sabah, given the testimonies before the Sabah RCI and the 2001 Likas case, it has been established that “phantom voters” were on the electoral roll in Sabah. As discussed above in *Electoral Roll Irregularities*, however, the overall integrity of the roll nationwide is under question.

The EC has a duty to maintain the electoral roll under Regulations 25(2)(b)<sup>139</sup>, 25(2)(c)<sup>140</sup>, 25(2)(d)<sup>141</sup>, 25(2)(e)<sup>142</sup>, 25(2)(f)<sup>143</sup>, and 25(2)(g)<sup>144</sup> of the Elections (Registration of Electors) Regulations 2002. Pursuant to Article 115(2) of the Federal Constitution, the EC is also empowered to request that the police assist it in discharging its duties, including a full and thorough investigation into allegations of personation and phantom voters. These allegations are a severe breach of public trust, and deserve nothing less than such an investigation.

## Illegal Campaigning

The Election Offences Act 1954 stipulates that campaign activities can be only be carried out within a period set by the EC, excluding nomination day and polling day. Campaigning for the 13th General Election was started even before the parliament was dissolved in April 2013. Party flags from all quarters were seen throughout the country in anticipation of the upcoming general election, prior to the announcement of the official campaign period.

**Campaigning on Nomination Day.** In 6 constituencies (26%) observed by PEMANTAU, candidates and political parties carried out campaigning activities despite a legal prohibition against campaigning on nomination day, under Section 24A of the Election Offences Act 1954. Campaign materials were also observed to have been brought into the 50-metre restricted zone outside nomination centres.

Campaign materials were distributed openly to all participants at the nomination centres where BN candidates were contesting. In P009 Alor Setar at Kompleks Belia dan Sukan Kedah, at about 9:00AM, BN posters, flags and banners were seen fixed and displayed within the 50 metres restricted zone (hereinafter referred to as “restricted zone”). At the same time, food, water and party paraphernalia were distributed to members of the public, which constitutes the election offence of treating.<sup>145</sup>

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<sup>138</sup> S8024, P175 Papar

<sup>139</sup> “correcting any error or omission with regard to the particulars of the registration of any person”

<sup>140</sup> “inserting any new particulars with regard to the registration of any person”

<sup>141</sup> “striking out any superfluous entry in the principal electoral roll or the supplementary electoral roll”

<sup>142</sup> “deleting the name of any person who the Chief Registrar is satisfied is dead”

<sup>143</sup> “striking out name of any person who has renounced, or who has been lawfully deprived of, his citizenship”

<sup>144</sup> “striking out the name of any person who, in the opinion of the Chief Registrar, is not entitled, for any reason, to remain or be in the principal electoral roll or the supplementary electoral roll”

<sup>145</sup> K057, P009 Alor Setar

In P039 at Pejabat Daerah Dungun at or about 9:05AM, about 20 BN supporters, including the wives of candidates were seen breaching the restriction zone with BN flags and party uniform, walking past police officers on duty. However, at or about 9:17AM, upon police instructions, the group left the restricted area.<sup>146</sup>

In P047 Nibong Tebal at Dewan Serbaguna Jawi, Penang, at or about 9:30AM, PEMANTAU observed that there were BN banners and flags affixed at the nomination centre's fence. A BN flag was also hoisted up a flag pole at an adjacent hall next to the nomination centre. However, PEMANTAU also sighted a PAS supporter delivering political speech within the restricted zone.<sup>147</sup>

In P107 Subang at Bandar Utama 3 Community Centre, EC officials refused a PR candidate entry to the nomination centre on the grounds that the candidate was wearing a party uniform. Entry was granted after a 10-minute protest and negotiation.<sup>148</sup>

The use of musical instruments and loud speakers were prevalent among the party workers and supporters in general, predominantly by BN in observed areas. For instance, a loud hailer was used in P027 Tanah Merah at Pejabat Tanah dan Jajahan Tanah Merah<sup>149</sup> by BN supporters, creating a disruption at the nomination centre. There was verbal provocation from both supporters from the opposing parties. A Loud hailer was also used in P039 at Majlis Perbandaran Dungun by PR supporters from PAS.<sup>150</sup>

On the issue of crowding at nomination centres, the Chair of the EC, Tan Sri Abdul Aziz bin Mohd Yusof, made a statement that the commission could not stop the presence of excessive numbers of supporters. He said: "We must change the culture. I am merely appealing to the parties because, under the law, I do not have the power to stop such a practice but if too many supporters throng the nomination centres, it will give the local authorities a difficult time to control the crowd."<sup>151</sup>

However, Article 115 of the Federal Constitution empowers the EC to request for help from any public authority to control situation, and if need arises, to investigate and prosecute breaches of election laws. Under Section 24A(3) of the Election Offences, any person who contravened provisions limiting campaign activity on nomination day was liable, upon conviction, to imprisonment for a term not exceeding one year or to a fine not exceeding three thousand ringgit, or to both such imprisonment and fine.

**Campaigning on Polling Day.** In 38 (44%) out of the 87 Parliamentary constituencies observed, campaigning continued on polling day despite legal prohibition in Section 26 of the EOA. In 22 constituencies (25%), campaigning was carried out within the 50-metre boundary.

In P009 Alor Setar at Sekolah Jenis Kebangsaan (Cina) Pumpung, PEMANTAU observed the use of loud hailers and party flags and banners by both PR and BN party workers in the restricted zone. The situation turned aggressive and almost erupted to a fight until an elderly woman warned them to stop because a group of PEMANTAU observers in yellow vest were approaching to investigate the situation.<sup>152</sup>

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<sup>146</sup> T8580, P039 Dungun

<sup>147</sup> P6503 & P6517, P047 Nibong Tebal

<sup>148</sup> B0685, P107 Subang

<sup>149</sup> D2127, P027 Tanah Merah

<sup>150</sup> T8530, P039 Dungun

<sup>151</sup> *New Straits Times*, "EC calls for healthy election campaign", 16 April 2013, <http://www.nst.com.my/latest/ec-calls-for-healthy-election-campaign-1.256567> [accessed 16 July 2013]

<sup>152</sup> K5012, P009 Alor Setar

In P053 Balik Pulau at Sekolah Menengah Kebangsaan Bayan Lepas, PEMANTAU observed a woman in BN attire roaming about within 30 metres of the polling centre and appeared to be ushering voters and campaigning at or about 10:30AM.<sup>153</sup>

In P097 Selayang at Kompleks Dewan Sri Siantan, Lembah Mutiara, a group of women believed to be BN supporters acted as ushers, greeting voters at the main gate. Subsequently, a BN candidate entered the polling centre, not to cast his vote but to campaign in the polling centre.<sup>154</sup>

In P107 Subang at Sekolah Jenis Kebangsaan Tamil Saraswathy, PR candidate Sivarasa Rasiah was observed interacting and shaking hands with voters inside and outside the polling station.

A BN booth was spotted just outside of the polling centre. A woman holding a sheet of paper was observed to be dealing with a BN worker holding a sheaf of green paper believed to be vouchers. A voter in blue was seen waiting to be handed documents, possibly vouchers, from another BN worker at the BN booth.<sup>155</sup>

Both BN and PR were observed to be campaigning outside the polling station. Tables were set up by both BN and PR with the purpose of checking voters name against the voters' list. A BN tent was seen outside the polling station. Water was distributed to the voters. However, the tent was closed upon instructions from the police.<sup>156</sup>

Both BN and PR had set up tents within the restricted zone for campaigning, with both sides cheering at passing vehicles. Traffic was slightly obstructed outside the polling centre due to both sides' campaigning activities.<sup>157</sup>

Vehicles adorned with BN motifs were also observed at the polling station believed to be conveying voters to the polling centre.<sup>158</sup>

In P107 Subang at Sekolah Kebangsaan Lembah Subang, one vehicle adorned with BN logos were seen driving into the 50-metre restricted zone. Voters were transported to the polling centre. These vehicles were also used to drive voters who had gone to the wrong polling centre to their proper polling centre.<sup>159</sup>

In P169 Kota Belud at Sekolah Kebangsaan Chung Hwa, BN members allegedly handled the EC counter for checking voter registration. Some were reported to have attempted last-minute campaigning on voters who came to the counter. The PEMANTAU observer concerned reported to have recognised them as BN members as they were personally acquainted since young. The BN members handling the counter were wearing EC attire.<sup>160</sup>

In P177 Beaufort at Sekolah Kebangsaan Kilugus, a polling agent was observed to be using an umbrella with the BN logo at the polling centre. Leaflets and booklets containing highly defamatory

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<sup>153</sup> P6677, P053 Balik Pulau

<sup>154</sup> B1195, P097 Selayang

<sup>155</sup> B1245, P107 Subang

<sup>156</sup> P6506, P47 Nibong Tebal

<sup>157</sup> B1238, P107 Subang

<sup>158</sup> B1238, P107 Subang

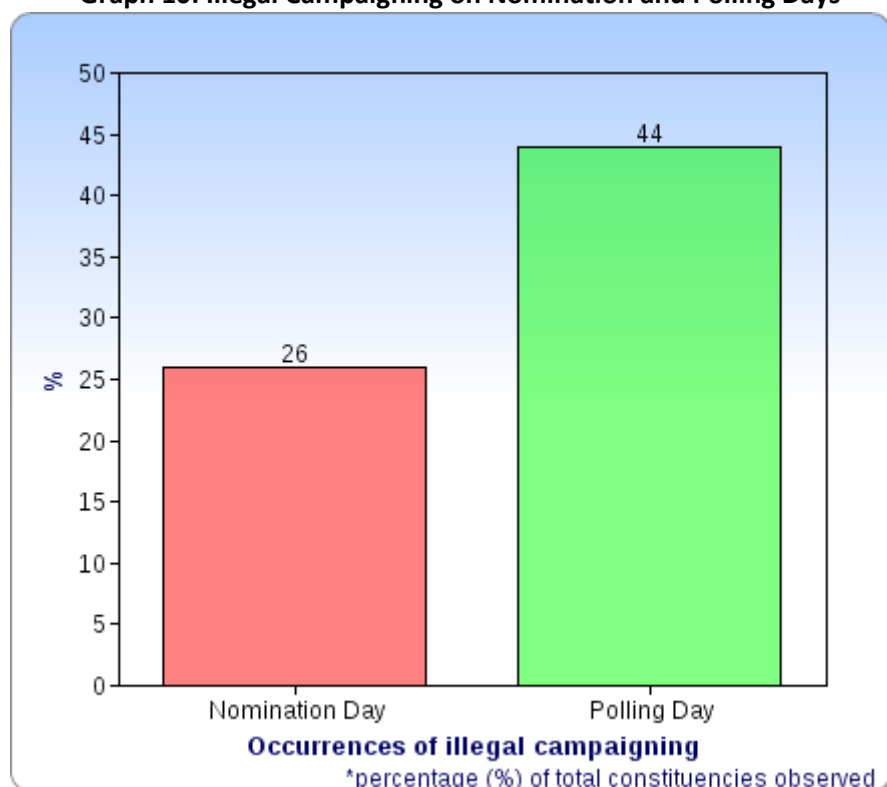
<sup>159</sup> B0590, P107 Subang

<sup>160</sup> S8134, P169 Kota Belud



and unsubstantiated allegations against Dato' Seri Anwar Ibrahim and Lajim Haji Okin were also observed to be made available everywhere on polling day.<sup>161</sup>

**Graph 10: Illegal Campaigning on Nomination and Polling Days**



**Recruitment of Minors for Political Campaign.** The preamble to the Child Act 2001 acknowledged that *“a child, by reason of his physical, mental and emotional immaturity, is in need of special safeguards, care and assistance, after birth, to enable him to participate in and contribute positively towards the attainment of the ideals of a civil Malaysian society.”*<sup>162</sup> However, a line has to be drawn between informed democratic participation and contribution by children, and the recruitment, employment or use of children for political activities that do not meaningfully contribute to the children’s understanding of democratic processes.

The following cases were reported:

- On 26 April 2013 in P117 Segambut at a field adjacent to Bukit Maluri school, BN had organized a social event titled *Sambutan Hari Keluarga Penduduk Taman Bukit Maluri*. There were reported use of minors namely government school children and teachers, believed to be from the Bukit Maluri school, for the purpose of performing a variety of entertainment for the attendees. There were performances of Malay traditional dance, opera singing, ballet dancing, magic show, the 1Malaysia dance, yoga performance and lucky draws.<sup>163</sup>

<sup>161</sup> S8002, P117 Beaufort

<sup>162</sup> Child Act 2001, <http://www.agc.gov.my/Akta/Vol.%2013/Act%20611.pdf> [accessed 16 July 2013]

<sup>163</sup> B1183, P117 Segambut

- On 29 April 2103 in P162 Gelang Patah at Southern College, Skudai, PEMANTAU observed that official government vehicles and National Service buses were utilized. Children clad in BN attire were also seen to be holding BN posters and banners.<sup>164</sup>
- Children clad in BN attire were seen distributing free T-shirts to the public in P110 Klang on 30 April 2013.<sup>165</sup>
- Children clad in BN attire were seen holding flags, banners and posters in P102 Serdang at Bukit Belimbing on 1 May 2013.<sup>166</sup>

While it can be argued that flag-waving is not harmful to children, the use of children in political campaigning is at the very least unethical as they cannot give consent, nor are they in a position to easily resist adult authority even when unwilling.

## Conveyance of Voters

Under Section 20 (1) of the Election Offences Act, conveying voters to and from a polling centre “for the purpose of promoting or procuring the election of a candidate at any election” is prohibited. However, on polling day, in 18 of the observed constituencies (21%) political parties, from both BN and PR, were conveying voters to polling centres. Vehicles bearing party flags and/or logos were seen picking up and dropping off voters at the polling centre.

- In P009 Alor Setar at Sekolah Menengah Kebangsaan Sultanah Bahiyah, between 2:50PM to 3:25PM, vehicles adorned with BN logos were seen transporting voters to the polling centre. According to PEMANTAU observers on the ground, one particular vehicle ferried voters into the polling centre and waited until the passengers finished voting before transporting them out. It is unclear however, where the passengers were transported to after voting.<sup>167</sup>
- In P053 Balik Pulau at Sekolah Kebangsaan Titi Teras, at least 30 vehicles adorning BN motifs were seen transporting voters to and from polling station since 10:30AM. About six vehicles adorning PR motifs were also seen on the site.<sup>168</sup>
- In P053 at Sekolah Menengah Kebangsaan Sungai Rusa, transportation was provided for the voters by BN. BN workers were observed to be wandering in and outside the polling centre, possibly campaigning or act as transportation ushers for the voters. The back gate of the polling centre was open.<sup>169</sup>
- In P097 Selayang at Sekolah Menengah Kebangsaan Rawang Semekar, vehicles provided by BN were seen to convey voters right into the polling centre. No security was sighted at the main gate however, there was only one police officer standing by at the open area outside the voting streams. One voter was turned away because the location of his polling centre was changed without notice.<sup>170</sup>

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<sup>164</sup> SC015, P162 Gelang Patah

<sup>165</sup> SC015, P110 Klang

<sup>166</sup> W9081, P102 Serdang

<sup>167</sup> K5061 and K5078, P009 Alor Setar

<sup>168</sup> P6558, P053 Balik Pulau

<sup>169</sup> P6617, P053 Balik Pulau

<sup>170</sup> B0946, P097 Taman Templer

- In P107 Subang at Sekolah Kebangsaan Lembah Subang, it was observed that BN workers were escorting voters from the car to entrance of the polling station with umbrellas and ponchos with BN logos.<sup>171</sup>
- In P107 Subang at Sekolah Menengah Kebangsaan Damansara Damai 1, transportation was provided by BN to convey voters to the polling centre. A BN worker was seen ushering a voter into the provided vehicle.<sup>172</sup>
- In P124 Bandar Tun Razak at Sekolah Kebangsaan Bukit Jalil Kuala Lumpur, BN workers were seen transporting elderly voters to the main gate of the polling centre. An elderly woman whom a PEMANTAU observer interviewed asked the observer to vote for and show support for BN.<sup>173</sup>
- Vehicles bearing party flags, mostly from BN were seen conveying voters to the polling centre at Sekolah Menengah All Saints in P171 Sepanggar.<sup>174</sup>

Acts of voter conveyance during GE13 were observed to take place in conjunction with other offences, as noted in the previous section on *Bribery*. Party workers/campaigners were also seen to be campaigning for their respective party while ushering voters to/from vehicles at the entrance of polling centres.

## Procedural Irregularities

A number of critical procedural amendments were introduced prior to GE13, including the use of indelible ink<sup>175</sup>, early/advance voting by police and military personnel to replace postal voting, the inaction of the EC to resolve problems, and abolishing the process of protest during nomination and withdrawal of candidacy (see Table 3). However, it is observed that the disabled were allowed to bring along someone to aid them in the voting process. These rules came into force following amendments to the General Election Regulations (Process of General Election) 1981 (Amendment) 2012 and General Election Regulations (Postal Voting) 2003 (Amendment) 2012, which were gazetted in 2012.

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<sup>171</sup> B0590, P107 Subang

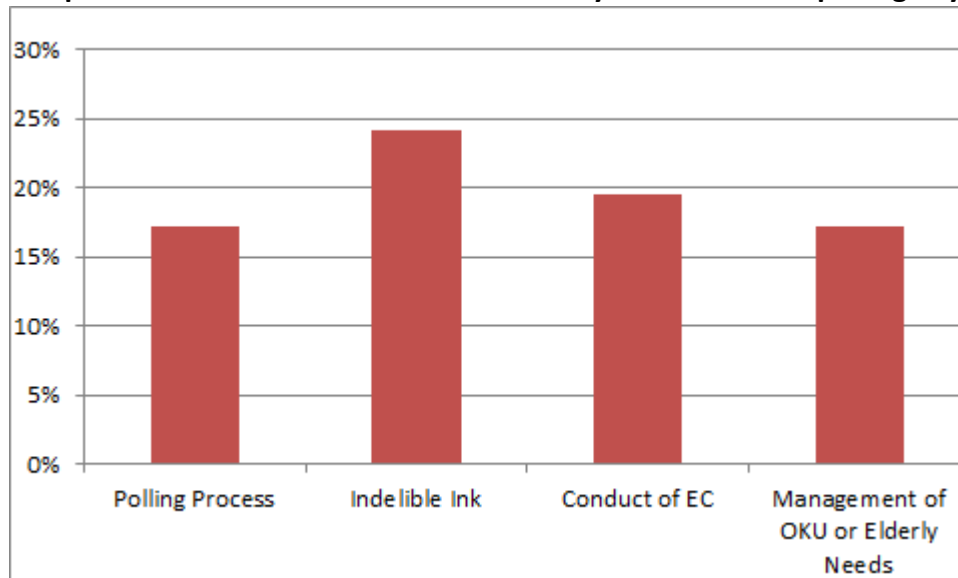
<sup>172</sup> B1158, P107 Subang

<sup>173</sup> W9032, P124 Bandar Tun Razak

<sup>174</sup> SC013, P171 Sepanggar

<sup>175</sup> Indelible ink was gazetted under Gazette PU (A) 43/2012 dated 13 February 2012.

**Graph 11: Procedural concerns observed by PEMANTAU on polling day**



PEMANTAU raised serious concerns in the media on the poor introduction and implementation of the regulations as they were introduced at the last minute with unclear guidelines, lacks monitoring and were not assisted by inert Election Commission's staff. These observation were received from two sources, namely, direct from PEMANTAU observers and online public complaints.<sup>176</sup> After the election, face-to-face interviews were conducted with 15 candidates and 2 party agents from 14 constituencies to document election activities. The findings were as follows:

**Advance Voting.** The introduction of advance/early voting processes for military and General Operations Force (and their spouses), EC personnel, as well as police personnel unable to vote on polling day, involved 275,341 advance voters comprising 161,251 military and personnel and their spouses; 111,136 police personnel and their spouses and 2,954 absentee voters who lived abroad<sup>177</sup>. According to Election Commission deputy chairperson, Wan Ahmad, he included EC personnel as advance voters<sup>178</sup>. Media personnel were given the option to apply as postal voters. However, PEMANTAU observed the following discrepancies by which advance voting was conducted:

- After voting, PEMANTAU received reports from Tapah that the advance voters' ballot boxes were being shifted out of the police stations before 5 May 2013. Photos below showed the boxes being shifted by the EC officer with the assistance of Land and Municipal Council staff, Batang Padang, Tapah on 2 May 2013 at 11.30 a.m. and the candidate was not informed of the venue.<sup>179</sup>

<sup>176</sup> PEMANTAU online public complaints on electoral processes for GE13. <http://pru13.info/>

<sup>177</sup> *Malaysian Digest*, "The Wait is over, Malaysians to vote on May 5", 10 April 2013, <http://webcache.googleusercontent.com/search?q=cache:cTdhTt454GcJ:www.malaysiandigest.com/top-news/311322-the-wait-is-over-malaysians-to-vote-on-may-5.html+&cd=1&hl=en&ct=clnk> [accessed 16 July 2013]

However, the numbers of advance voters were differently reported in *The Star*, "GE13: Election Commission to implement more than 10 new measures for transparency", 3 April 2013, <http://www.thestar.com.my/News/Nation/2013/04/03/GE13-Election-Commission-to-implement-more-than-10-new-measures-for-transparency.aspx> [accessed 16 July 2013]

<sup>178</sup> *The Edge*, "GE13: Don't confuse postal and advance voting", 25 April 2013, <http://www.theedgemaalaysia.com/political-news/237163-ge13-ec--dont-confuse-postal-and-advanced-voting.html> [accessed 16 July 2013]

<sup>179</sup> Report and evidence submitted to PEMANTAU by the Tapah candidate on 27 May 2013..

- It was reported in the media that some party agents claimed that they were denied access to check on advance ballot boxes as had happened in Kuantan, Pahang.<sup>180</sup>

**Voters' franchise.** In addition, postal voting was introduced to Malaysians living abroad. To be eligible, they have to be registered voters and had been in Malaysia not less than 30 days in five years prior to the dissolution of Parliament or state assembly. However, Malaysians living in southern Thailand, Singapore, Brunei and Kalimantan in Indonesia are unable to make postal votes and have to return home to cast their vote.

The gazetted restrictive conditions were unconstitutional as they denied voters to have the option to choose their voting status, especially for those from the above-mentioned countries. It was estimated that 400,000 Malaysians work in Singapore alone who could. As this was a "last minute" announcement, the regulation itself had disenfranchise voters as there was no time for Malaysians overseas to register as ordinary voters as this was a necessary pre-condition prior to the application to be postal voters.

Overseas election observation for postal voting was limited to designated party agents. The short timeframe had imposed limitation to the appointment of party agents as they have to be approved by the Election Commission in Putrajaya. Overseas PEMANTAU were not allowed to observe.

**Irregularities in ballot papers.** In P124 Bandar Tun Razak at Sekolah Menengah Kebangsaan Seri Permaisuri, voters complained of unstamped ballot paper. Many have proceeded to lodge formal complaints to the police at Salak South Police Station but were given the run-around by the officers at Salak South between Pudu Police Station and Salak South Police Station.<sup>181</sup>

PEMANTAU observers at P047 Nibong Tebal in Sekolah Jenis Kebangsaan (Cina) Yok Eng Sungai Udang also reported that ballot papers were unstamped when voters voted between 9:00a.m. to 4:00p.m. When complaints were made to the EC officer at the polling centre, he stated that "unstamped ballot papers will be taken into account, regardless."<sup>182</sup>

There were serious inconsistency in the application of procedures, and these include "last minute" changes to the rules of postal and advance voting which caused great deal of confusion among voters and creating barriers to voters' choice in determining their voting status; tampering with ballot boxes and seemingly according to the discretion of the EC staff; and inconsistency in the stamping of ballots, and voters' denied of their voting rights. These problems were unaddressed by the EC staff who were on duty. Such inactions may have adversely affected the election and disenfranchised Malaysian voters.

It was also disappointing to observe that the court rejected most of the election petitions which were brought to court to challenge the validity of the election results and processes. The Election Offences Act, 1954 (Act 6), Section 32 allowing for the following grounds for avoidance of election on the election petition:

"The election of a candidate at any election shall be declared to be void on an election petition on any of the followings only which may be proved to the satisfaction of the Election Judge:

<sup>180</sup> *Malaysiakini*, "Doubts on security of ballot boxes for early votes", 8 May 2013, <http://www.youtube.com/watch?v=esjKWVQKUW4> [accessed 16 July 2013]

<sup>181</sup> W9293, P124 Bandar Tun Razak

<sup>182</sup> P6654, P047 Nibong Tebal

- a. That general bribery, general treating or general intimidation have so extensively prevailed that they may be reasonably supposed to have affected the result of the election.
- b. Non-compliance with any written law relating to the conduct of any election if it appears that the election is not conducted in accordance with the principles laid down in such written law and that such non-compliance affected the result of the election.
- c. That a corrupt practice or illegal practice was committed in connection with the election by the candidate or with his knowledge or consent, or by any agent of the candidate.....”<sup>183</sup>

## Use of Government Machinery and Property

On 9 April 2013, Dato’ Seri Utama Rais Yatim justified the use of vehicles from the Information Department for a BN campaign event as acceptable as the official campaign period had not started yet.<sup>184</sup> His statement implied that it would stop once the campaign period started, however this was not the case.

The use of government machinery or State property was observed in 11 constituencies during the campaign period (22%). PEMANTAU observed Federal and State caretaker governments utilising government machineries including government-linked corporations and agencies like RISDA and FELCRA, resources, transport and personnel during the campaign period. A common abuse noted by PEMANTAU observers is the use of government property including school halls. This included a lunch event on 28 April 2013 at Sekolah Jenis Kebangsaan (Cina) San Yuk, Selayang with the then-caretaker Prime Minister.<sup>185</sup>

On 24 April 2013 in P102 Serdang at Taman Sungai Besi, at or about 10:00PM, PEMANTAU observed that Tan Sri Khalid Ibrahim utilized his official vehicle bearing vehicle registration number BFH 888. However, the State ownership of the vehicle was disputed as it was his private vehicle, but maintained and serviced by the State’s fund.<sup>186</sup>

On 21 April 2013 in P115 Batu, PEMANTAU observers reported that a car with a *Yang Berhormat* (hereinafter referred to as “YB”) plate was seen in convoy behind Gobind Singh Deo’s car (Gobind Sing Deo was the PR candidate for Puchong). Another car with a YB plate was spotted in the compound of a car park however it was not clear if it was used as part of the convoy.<sup>187</sup>

On 3 May 2013 in P118 at Setiawangsa, in an event titled “*Himpunan Rakyat 1Malaysia*”, PEMANTAU observed that Najib Razak arrived with police escort and there was a sizeable number of RELA members on the campaign site.<sup>188</sup>

## Harassment of Election Observers

<sup>183</sup> Election Offences Act, 1954, Section 32 (a-d), p. 62, (as at 15 March 2013), International Law Book Services. Petaling Jaya.

<sup>184</sup> Ahmad Fadli KC, “Rais: Okay to use gov’t machinery for campaigns”, *Malaysiakini*, 9 April 2013, <http://www.malaysiakini.com/news/226316> [accessed 16 July 2013]

<sup>185</sup> B0945, P097 Selayang

<sup>186</sup> W9020 and W9066, P102 Serdang

<sup>187</sup> W9198, P115 Batu

<sup>188</sup> W9160, P118 Setiawangsa

The Federal Constitution and international human rights instruments recognize that the authority to govern derives from the free will of the citizens expressed in a free and fair election. Malaysia, as a member of the United Nations and its Security Council, has a duty to recognise and implement fundamental principles in accordance with Article 21(3) of the Universal Declaration of Human Rights:

*“...The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret ballot or by equivalent free voting procedures...”*<sup>189</sup>

The ACE Electoral Knowledge Network’s *Declaration of Principles for International Election Observation*,<sup>190</sup> endorsed by the United Nations, provides that a genuine democratic election is an expression of sovereignty, which belongs to the people of a country, the free expression of whose will provides the basis for the authority and legitimacy of government. Citizens therefore have the right to participate fully in the electoral process, and the EC is obliged to provide full opportunity without unreasonable restrictions for citizen monitoring.

Unfortunately, PEMANTAU observers reported being harassed during nomination day and polling day, by both state and non-state actors. PEMANTAU observers reported a pattern of harassment and intimidation faced in nomination centres. Namely, they were instructed to provide their personal details, restricted and even stopped from observation, verbally and physically abused and threatened by parties’ supporters, and some had their photographs taken by the police.

Some incidents reported on nomination day were:

- PEMANTAU observers were stopped and questioned by the police outside the 50 metres restriction zone in P009 Alor Setar at Kompleks Belia dan Sukan. They were instructed to provide their names and “EC’s observer tags” despite repeatedly informing the officer that they were PEMANTAU observers.<sup>191</sup>

When the police were told that the observers were from BERSIH 2.0, a cameraman, believed to be from the police, took photographs of observers. Subsequently, the police disallowed observers from the vicinity of the nomination centre. Other observers at the same nomination centre experienced similar restrictions from the police.<sup>192</sup>

- In P025 Bachok at Pejabat Tanah Jajahan Bachok, PEMANTAU observers were chased out of the nomination centre after their IC numbers were recorded.<sup>193</sup>
- In P039 Dungun at Pejabat Daerah Dungun, PEMANTAU observers were harassed by BN supporters. The supporters reportedly taunted the observers with, “...PEMANTAU ni nak cari kesalahan kita... tulislah banyak banyak!...”<sup>194</sup>

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<sup>189</sup> Article 21(3) of the Universal Declaration of Human Rights,  
[http://www.ohchr.org/EN/UDHR/Documents/UDHR\\_Translations/eng.pdf](http://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf)

<sup>190</sup> “Declaration of Principles for International Election Observation and Code of Conduct for International Election Observers” at: <http://aceproject.org/electoral-advice/election-observation/declaration-of-principles-for-international> [accessed 16 July 2013]

<sup>191</sup> K5003, P009 Alor Setar

<sup>192</sup> P6613, P047 Nibong Tebal

<sup>193</sup> D1754, P025 Bachok

<sup>194</sup> T8577 and T8521, P039 Dungun

- In P109 Kapar at Pejabat Daerah dan Tanah Klang, a group of PEMANTAU observers were harassed and assaulted by supporters of BN. At or about 9:30AM, the group of observers were confronted by the supporters and one of the observer was threatened and asked to remove his BERSIH 2.0 adorned hat.

At or about 10:00AM, an officer, believed to be from the police's Special Branch recorded the personal details of the above observer, namely his name, NRIC numbers, home address and his mobile number.

At about the same time, the supporters began to threaten the observers by saying that the safety of the observers cannot be promised and guaranteed. The supporters apprehended the above observer and asked him to remove his BERSIH 2.0 T-shirt and given him a BN T-shirt. Fearing for their safety, the group of observers finally left the supporters zone after being questioned on their neutrality as observers. As they were leaving, the supporters threw a water bottle towards the group of observers and one of them was hit with the bottle.<sup>195</sup>

- A similar incident occurred in P121 Lembah Pantai, where PEMANTAU observers were threatened and asked to remove their BERSIH T-shirt by BN supporters. The supporters claimed that the observer team was carrying false identification tags and asked the observers to leave the nomination centre. One BN supporter even asked an observer to show him the observation form and the comments failing which he would not allow the observers to continue their observation.<sup>196</sup>

During the campaign period, PEMANTAU reported being harassed in P115 Batu. At a Sentul PR event on 21 April 2013, three youths appearing to be PR supporters approached PEMANTAU observers and questioned their presence and authority. When told that their observations were confidential, the supporters threatened, "...kita suruh orang lain tak mahu cakap dengan kamu kalau kamu tak beritahu apa yang dipantau..."<sup>197</sup>

PEMANTAU observers reported experiencing restrictions, intimidation and harassment in 21 Parliamentary from a total of 87 seats observed on polling day (24%). Some reported incidents were:

- In P053 Balik Pulau at Chin Hwa School, Pantai Aceh, PEMANTAU observers were threatened by a group of BN workers outside the polling station. Pictures of the observers were taken and one of the workers threatened to publish the pictures in *Nanyang Siang Pau* to shame PEMANTAU.<sup>198</sup>
- In P082 Indera Mahkota at Sekolah Kebangsaan Balok Makmur, PEMANTAU observers were harassed and intimidated by a group of BN workers. The observers were on their way back from observation when they walked past a BN booth after briefly observing PR's booth. One BN supporter rushed out of the booth. He reportedly accused PEMANTAU of not being fair and independent, together with a barrage of vulgar statements. The observers left the area immediately to avoid potential crisis.<sup>199</sup>

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<sup>195</sup> B0833, P109 Kapar

<sup>196</sup> W9105, P121 Lembah Pantai

<sup>197</sup> W9198, P115 Batu

<sup>198</sup> P6545, P053 Balik Pulau

<sup>199</sup> C1230, P082 Indera Mahkota



- In P116 Wangsa Maju at Sekolah Menengah Jenis Kebangsaan (Cina) Chong Hwa Kuala Lumpur, at or about 3:00PM, candidate Dato Dr Haji Mohd Shafei together with an entourage of about six to seven approached a PEMANTAU observer and questioned his intention as a PEMANTAU observer at the polling centre. The group had warned and threatened to resort to physical violence in the event the PEMANTAU observers do not disperse from the polling centre.

It was reported that Dato Shafei had pointed at one observer and reproached him, “Who asked you to come? Who asked you to be PEMANTAU?” Subsequently, a group of motorcyclists, believed to be acting under Dato Shafei’s instructions, arrived and took turns to harass the observers in an interval of about 15 minutes for at least three successive rounds. In one particular incident, one motorcyclist had attempted to hit the observers with a wooden stick.

The harassment lasted from about 2:30PM to 3:30PM.<sup>200</sup>

- In P124 Bandar Tun Razak, small group of teenagers adorned with BN paraphernalia were roaming outside Sekolah Rendah Agama Al-Zamakhshari on their motorcycles, where PEMANTAU observers were stationed for observation. The motorcyclists were campaigning for the BN candidate.

During this period, PEMANTAU observers recorded a separate incident where a PR supporter were seen waving a PAS flag at the school. The supporter later confronted the PEMANTAU observers about the reporting. During the exchange between the PR supporter and the observers, a few BN supporters approached the PEMANTAU observers to enquire on what was taking place between them and the PR supporter.

The BN supporters began to take turns taking photographs of the PEMANTAU observers. Encouraged by the BN supporters’ actions, the earlier group of motorcyclists returned and revved their machines creating a noisy and chaotic environment. Worried for their safety, PEMANTAU observers quickly left the area of observation.<sup>201</sup>

A number of PEMANTAU observers were arrested on polling day. At 3:45PM in P137 Bukit Katil, two PEMANTAU observers were arrested at Sekolah Rendah Jenis Kebangsaan (Cina) Bukit Beruang, Ayer Keroh and were brought to Melaka District Police Headquarter for questioning.<sup>202</sup> At 4:30PM in P116 Wangsa Maju, another five PEMANTAU observers were arrested at SRJKC Nan Yek Lee Rubber and were investigated under S341 of Penal Code. Their requests for legal representation were denied under S28A of the Criminal Procedure Code. They were detained and questioned at Taman Setapak Police Station for more than five hours.<sup>203</sup>

As well as physical and verbal threats, PEMANTAU faced harassment online. On 2 May 2013, at about 9:30PM, PEMANTAU websites, *pru13.info* and *pru13.info/aduan* were blocked and made inaccessible to users within Malaysia. PEMANTAU’s website was only accessible at or about 12.30AM on 3 May 2013. An initial diagnosis from our independent IT technician had confirmed the

<sup>200</sup> W9491, P116 Wangsa Maju

<sup>201</sup> B1110, P124 Bandar Tun Razak

<sup>202</sup> *Malaysiakini*, “Pemantau: Seven observers arrested, denied legal aid”, 6 May 2013, <http://www.malaysiakini.com/news/229264> [accessed 16 July 2013]

<sup>203</sup> PEMANTAU arranged legal representation for the five upon notification of their arrest.

presence of a blocking filter set up in the local Internet Service Provider network infrastructure which prevented users from accessing the websites.<sup>204</sup>

The above cases were direct violations to the fundamental rights of citizens to partake in a democratic exercise of a free and fair election.

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<sup>204</sup> PEMANTAU, "PEMANTAU 'blindfolded' by major internet service providers", 3 May 2013, <http://www.bersih.org/?p=6094> [accessed 16 July 2013]

## C. CONCLUSION AND RECOMMENDATIONS

The practice of direct and/or indirect violations of the provisions of EOA 1954 was so rampant during GE13 that the causes of these violations could be attributed to one or more of these three factors:

- the lack of awareness, if not poor knowledge on election laws by political parties, party workers and/or supporters and candidates themselves;
- informed and deliberate actions to gain political mileage; or
- the knowledge that enforcement of the provisions relating to election offences was insufficient.

The widespread use of bribery and treating constitute a serious challenge to the integrity of GE13. In combination with the use of government machinery for political campaigning, they also contribute to the perception that there are no lines to be drawn between political parties and the government, and that voters ought to expect “goodies” as a matter of course during an election period. The campaign period also saw a worrying trend in the use of violence as a political strategy, as well as racist sentiments and religious bigotry.

Political parties and other participants of GE13, including party workers and supporters, have much to answer for in these instances. It can be said that they have taken full advantage of lapses and gaps in the implementation of election laws. These threaten the very foundation of elections as a democratic process. The conduct of political parties and caretaker governments point to a need not just for legislative reform, but also a shift in political culture.

The acts of election misconduct observed by PEMANTAU are symptoms of a grossly uneven electoral playing field exacerbated by a “power at all costs” mentality and a lack of genuine political commitment to democratic principles. Malaysian voters are making choices at the ballot box in an environment where the exercise of free will is hampered by bribery, violations of the law and ethical principles, acts of intimidation and violence, and a blurring of lines between an administrative government and a political party.

Concern must be raised over the effectiveness of state institutions such as the MACC and the EC in their respective role as watchdogs. For example, in February 2013, a deputy chief commissioner of the Malaysian Anti-Corruption Agency (MACC). The official was quoted as saying, “If the motive of dishing out money or a gift...to voters is to win support for a certain political party, but not a specific candidate, then it is not an offence.”<sup>205</sup> This is misleading as sections 8, 9 and 10 of the EOA does not make the acts of treating, undue influence, or bribery contingent upon perceived benefits of an individual candidate before they become an offence. That a highly-placed officer in the MACC could not interpret the law correctly brings into question the adequacy of training and legal education within the MACC.

The conduct of the EC must be singled out for special attention. The failure of the indelible ink raised serious concerns over the possibility of multiple voting. The subsequent parade of ludicrous excuses have, in the post-election period, worsened public perception of the EC as an institution. However, the indelible ink issue overshadowed the fact that the EC’s actions over the entire course of GE13

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<sup>205</sup> PEMANTAU, “Election Misconduct and the Need for Election Observation,” 19 February 2013, <http://pru13.info/2013/02/20/election-misconduct-and-the-need-for-election-observation/> [accessed 16 July 2013]

brought the integrity of the institution into question. During the election period, the EC consistently avoided responsibility to act on established concerns such as the integrity of the electoral roll<sup>206</sup> and flagrant violations of the EOA,<sup>207</sup> and instead sought to place blame on their critics. In addition, its hasty, disorderly implementation of new regulations on postal voting for overseas Malaysians and advance voting disenfranchised large numbers of Malaysians and left open the possibility of electoral fraud.<sup>208</sup> These institutional failures are a betrayal of public trust and dishonours the EC's responsibility as an election management body.

Whether the acts of election misconduct, acts of violence and intimidation, alleged bribery and election misconduct observed by PEMANTAU were enough to change the course of GE13 is for the people to decide. What PEMANTAU can conclude is that GE13 did not meet domestic and international standards for clean, free and fair elections. Without comprehensive reforms to the law, state institutions and political culture, it is unlikely that the upcoming GE14 will be any freer or fairer.

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<sup>206</sup> BERSIH 2.0, "BERSIH 2.0 Responds to the Election Commission"

<sup>207</sup> BERSIH 2.0, "Reject Racism in Election Campaigns", 30 April 2013, <http://www.bersih.org/?p=6077> [accessed 16 July 2013]

<sup>208</sup> BERSIH 2.0, "Bersih 2.0 Statement on Election Commission's Changes to Postal Voting Regulations", 6 February 2013, <http://www.bersih.org/?p=5753>

## Recommendations to Stakeholders of the Malaysian Electoral System

### Government

Actors	Recommendations	Timeframe
Federal and State Caretaker Governments	<p><i>Strengthen Legal and Regulatory Framework</i></p> <ol style="list-style-type: none"> <li>1. Legal and regulatory framework and its implementation must strengthen to ensure the guarantee of universal and equal suffrage to all voters.</li> <li>2. Review and amend to introduce essential transparency requirements for public accountability of all components of the election administration.</li> <li>3. Review and amend to reflect the rights and freedoms guaranteed in the Federal Constitution, domestic laws and international human rights instruments and treaties, including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the Convention on the Elimination of All Forms of Discrimination against Women.</li> <li>4. Implement the recommendations made by the Parliament Select Committee, 2012<sup>209</sup> as well as from non-governmental organisations (see Appendix 003)</li> </ol> <p><i>Specifically:</i></p> <ol style="list-style-type: none"> <li>i. Remove Section 9A of the Election Act, 1958 to allow healthy debates on the integrity of the electoral roll.</li> <li>ii. A moratorium on financial handouts, land titles, and other financial benefits once Parliament and State Assemblies have been dissolved.</li> <li>iii. Government machinery and property should not be used for campaign purposes</li> <li>iv. Stricter penalties for treating, bribery and political violence.</li> <li>v. Election date to be fixed to allow for a more regular election cycle and publicly announced.</li> <li>vi. Campaign period to be fixed for 21 days to allow for substantial, policy-based campaigning.</li> </ol>	<p>Within a year</p> <p>Next parliament seating</p> <p>ii-vi Implemented at least one year ahead of the elections</p>
	<p><i>Enabling environment</i></p> <p><i>Structural reform of the Election Commission</i></p> <ol style="list-style-type: none"> <li>5. Reform the Election Commission to establish a structure with institutions that are independent and autonomous from the government but may be accountable to the legislature and the judiciary.</li> <li>6. Re-appoint Election Commissioners who enjoy public confidence, have integrity, independent mind, and will uphold rights and democratic principles when overseeing the administration of elections.</li> </ol>	<p>Immediate</p> <p>On-going</p>

<sup>209</sup> Parliament of Malaysia, Report of Special Select Committee on Electoral Reforms, 2012, [http://www.parlimen.gov.my/images/webuser/jkuasa/DR\\_%201%20YEAR%202012%20-%20PART%20VII.pdf](http://www.parlimen.gov.my/images/webuser/jkuasa/DR_%201%20YEAR%202012%20-%20PART%20VII.pdf)

	7. Election Commissioners must include non-governmental organisations, professionals and/or personnel who will uphold and believe in the independence and integrity of the election processes.	During elections
	8. Enabling environment	
	9. Establish a neutral and fair environment to allow voters to cast their votes without fear or favour and safely.	During elections
	10. Establish an independent and fair caretaker government prior to election period and set out guidelines, roles and responsibilities for implementation.	Immediate
	<p><i>Specifically:</i></p> <p><b>Safeguard the independence and de-politicise</b> the Election Commission to ensure neutrality, fairness, transparency and accountability.</p>	Immediate

### Election Commission

Actors	Recommendations	Timeframe
Election Commission	<p><i>Eliminate disenfranchisement of all voters</i></p> <p>10. Maintain and monitor the electoral roll to ensure its high quality and eliminate irregularities.</p> <p>11. Adopt automatic registration of all voters when voters come of age.</p> <p>12. Conduct concerted and well-communicated voters' education to re-establish voters' confidence in roll's accuracy and integrity. This includes clear and accessible information to enable overseas postal voters to register on time and vote.</p>	Immediate
	<p><i>Strengthen the quality of implementation of election processes</i></p> <p>13. Review and recommend amendment all procedures and regulations to ensure uniform, fair and transparent implementation of procedures. These must be applied to early/advance voting, nomination day, campaign period and polling day. Include non-governmental organisations in the review process at all levels.</p> <p>14. Proper and professional training of election officers so that they understand voters' rights and fair and uniform implementation of procedures.</p> <p>15. Ensure use of high quality indelible ink and publicly make known its costs and sources of procurement so as to regain public's confidence.</p> <p>16. Eliminate postal voting and only have early/advance voting. Counting must take place on the same day, upon completion of the advance voting. This eliminates controversies over ballot boxes.</p> <p>17. Improve counting and consolidation procedures. These must be regularised and standardise through better training for election officers.</p>	Immediate
	<i>Maintaining checks and balances</i>	Within 18

	<p>18. Promote and develop international and domestic observation through an open and transparent process and establish election observation as integral part of the election processes. This will secure check and balance in the administration of the election processes.</p> <p>19. Take responsibility to provide clear and precise information on roles and responsibilities of polling and counting agents so that they can be the secondary check on counting and results.</p>	months prior to any elections
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### State Institutions

Actors	Recommendations	Timeframe
National Registration Department and Home Ministry	20. Improve collaboration and synchronise information-sharing with Election Commission on verification of voters' eligibility and registration.	Immediate
	21. Clean up the national registration by investigating allegations of non-citizens given Malaysian identification without proper process. This includes Peninsular, Sabah and Sarawak.	Within one year
Police and Security	<p><i>Recognise and Protect rights of citizens</i></p> <p>22. Recognise and protect the legitimacy of citizen observers exercising their rights to participate in democratic processes</p> <p>23. Refrain from using dannert or barbed wire as a form of barricade around a nomination or polling centre, especially when other government institutions, like SUHAKAM had rejected the use of dannert wire during peacetime.</p> <p>24. Establish effective efforts and measures to stop political violence, regardless of political affiliations.</p>	During any elections
	25. Provide non-partisan and equal protection for all during elections.	During any elections
MACC	26. Thoroughly train officers to understand the application of Election Act and related laws on corruption and financial misconduct so as to eliminate treating and bribery.	On-going
MCMC	27. No internet censorship or filtering, whether openly or secretly so as to protect citizens' freedoms and rights.	Immediate

### Political Parties, Candidates, Supporters, Party Machinery

Actors	Recommendations	Timeframe
Political Parties, Candidates and	28. Refrain from and condemn the use of violence or threats of violence, especially the use of racist/bigoted/sexist sentiments to influence voters.	On-going
	29. All media must be given equal access to political parties and	On-going

Supporters	candidates	
	30. Public declaration of election expenditure, including donations received and spent.	During elections
	31. Thorough and long-term training of PACAs in election laws and processes.	
	32. Adhere to fair and ethical standards in campaigning	On-going and especially during elections

#### Media

Actors	Recommendations	Timeframe
Media	30. Equal access and coverage to all candidates and parties running for election	Election periods
	31. Adhere to ethical standards in reporting or accepting advertisements from political parties and candidates	Election periods

#### Non-governmental organisations and citizens

Actors	Recommendations	Timeframe
<b>Non-governmental organisations and citizens</b>	32. Make election observation, polling and counting agents as integral to people's participation in the election processes as they act as independent check and balance.	Election periods



## APPENDICES

### Appendix 001: Parliamentary Constituencies in Malaysia

#### Perlis

P001 Padang Besar  
P002 Kangar  
P003 Arau

#### Kedah

P004 Langkawi  
P005 Jerlun  
P006 Kubang Pasu  
P007 Padang Terap  
P008 Pokok Sena  
P009 Alor Setar  
P010 Kuala Kedah  
P011 Pendang  
P012 Jerai  
P013 Sik  
P014 Merbok  
P015 Sungai Petani  
P016 Baling  
P017 Padang Serai  
P018 Kulim-Bandar Baharu

#### Kelantan

P019 Tumpat  
P020 Pengkalan Chepa  
P021 Kota Bharu  
P022 Pasir Mas  
P023 Rantau Panjang  
P024 Kubang Kerian  
P025 Bachok  
P026 Ketereh  
P027 Tanah Merah  
P028 Pasir Puteh  
P029 Machang  
P030 Jeli  
P031 Kuala Krai  
P032 Gua Musang

#### Terengganu

P033 Besut  
P034 Setiu  
P035 Kuala Nerus  
P036 Kuala Terengganu  
P037 Marang

P038 Hulu Terengganu  
P039 Dungun  
P040 Kemaman

#### Penang

P041 Kepala Batas  
P042 Tasek Gelugor  
P043 Bagan  
P044 Permatang Pauh  
P045 Bukit Mertajam  
P046 Batu Kawan  
P047 Nibong Tebal  
P048 Bukit Bendera  
P049 Tanjong  
P050 Jelutong  
P051 Bukit Gelugor  
P052 Bayan Baru  
P053 Balik Pulau

#### Perak

P054 Gerik  
P055 Lenggong  
P056 Larut  
P057 Parit Buntar  
P058 Bagan Serai  
P059 Bukit Gantang  
P060 Taiping  
P061 Padang Rengas  
P062 Sungai Siput  
P063 Tambun  
P064 Ipoh Timor  
P065 Ipoh Barat  
P066 Batu Gajah  
P067 Kuala Kangsar  
P068 Beruas  
P069 Parit  
P070 Kampar  
P071 Gopeng  
P072 Tapah  
P073 Pasir Salak  
P074 Lumut  
P075 Bagan Datok  
P076 Telok Intan  
P077 Tanjong Malim

**Pahang**

P078 Cameron Highlands

P079 Lipis  
P080 Raub  
P081 Jerantut  
P082 Indera Mahkota  
P083 Kuantan  
P084 Paya Besar  
P085 Pekan  
P086 Maran  
P087 Kuala Krau  
P088 Temerloh  
P089 Bentong  
P090 Bera  
P091 Rompin

**Selangor**

P092 Sabak Bernam  
P093 Sungai Besar  
P094 Hulu Selangor  
P095 Tanjong Karang  
P096 Kuala Selangor  
P097 Selayang  
P098 Gombak  
P099 Ampang  
P100 Pandan  
P101 Hulu Langat  
P102 Serdang  
P103 Puchong  
P104 Kelana Jaya  
P105 Petaling Jaya Selatan

P106 Petaling Jaya Utara

P107 Subang  
P108 Shah Alam  
P109 Kapar  
P110 Klang  
P111 Kota Raja  
P112 Kuala Langat  
P113 Sepang

**Federal Territory of Kuala Lumpur**

P114 Kepong  
P115 Batu  
P116 Wangsa Maju  
P117 Segambut  
P118 Setiawangsa

P119 Titiwangsa  
P120 Bukit Bintang  
P121 Lembah Pantai  
P122 Seputeh  
P123 Cheras  
P124 Bandar Tun Razak

**Federal Territory of Putrajaya**

P125 Putrajaya

**Negeri Sembilan**

P126 Jelevu  
P127 Jempol  
P128 Seremban  
P129 Kuala Pilah  
P130 Rasah  
P131 Rembau  
P132 Telok Kemang

**Melaka**

P134 Masjid Tanah  
P135 Alor Gajah  
P136 Tangga Batu  
P137 Bukit Katil  
P138 Kota Melaka  
P139 Jasin

**Johor**

P140 Segamat  
P141 Sekijang  
P142 Labis  
P143 Pagoh  
P144 Ledang  
P145 Bakri  
P146 Muar  
P147 Parit Sulong  
P148 Ayer Hitam  
P149 Sri Gading  
P150 Batu Pahat  
P151 Simpang Renggam

P152 Kluang  
P153 Sembrong  
P154 Mersing  
P155 Tenggara  
P156 Kota Tinggi  
P157 Pengerang  
P158 Tebrau  
P159 Pasir Gudang  
P160 Johor Bahru

P161 Pulai  
P162 Gelang Patah  
P163 Kulai  
P164 Pontian  
P165 Tanjung Piai

**Federal Territory of Labuan**

P166 Labuan

**Sabah**

P167 Kudat  
P168 Kota Marudu  
P169 Kota Belud  
P170 Tuaran  
P171 Sepanggar  
P172 Kota Kinabalu  
P173 Putatan  
P174 Penampang  
P175 Papar  
P176 Kimanis  
P177 Beaufort  
P178 Sipitang  
P179 Ranau  
P180 Keningau  
P181 Tenom  
P182 Pensiangan  
P183 Beluran  
P184 Libaran  
P185 Batu Sapi  
P186 Sandakan  
P187 Kinabatangan  
P188 Silam  
P189 Semporna  
P190 Tawau

P191 Kalabakan

**Sarawak**

P192 Mas Gading  
P193 Santubong  
P194 Petra Jaya  
P195 Bandar Kuching  
P196 Stampin  
P197 Kota Samarahan  
P198 Mambong  
P199 Serian  
P200 Batang Sadong  
P201 Batang Lupar  
P202 Sri Aman  
P203 Lubok Antu  
P204 Betong  
P205 Saratok  
P206 Tanjung Manis  
P207 Igan  
P208 Sarikei  
P209 Julau  
P210 Kanowit  
P211 Lanang  
P212 Sibu  
P213 Mukah  
P214 Selangau  
P215 Kapit  
P216 Hulu Rajang  
P217 Bintulu  
P218 Sibuti  
P219 Miri  
P220 Baram  
P221 Limbang  
P222 Lawas

## Appendix 002: PEMANTAU Pledge and Code of Conduct

### Pledge as a PEMANTAU

I, the undersigned, hereby pledge that:

I will serve as a non-partisan election observer at the 13th General Election (hereafter referred to as GE13). I am neither a candidate nor a political party worker/campaigner and will remain impartial to activities concerning the election process.

I will work in support of a genuine democratic election process, regardless of who wins or loses.

I will put aside my personal views about those seeking public office or issues presented in GE13, except when I exercise my right to cast a ballot in the secrecy of a polling booth.

I will respect and protect the integrity of the non-partisan election observation organisation, including by following this Code of Conduct, any written instructions and any verbal instructions from the organisation's leadership.

I will refrain from making any personal comments about my observations to the news media or members of the public before the election observation organisation makes a statement.

I will attend all required domestic election observation and training sessions. I will strive to become familiar with the election law and regulations and other relevant laws as directed in the training workshops.

I will fully adhere to the methodologies employed by the organisation and will act in all domestic election observation activities to the best of my abilities.

I will report impartially, accurately (including positive as well as negative factors) as a non-partisan election observer.

I hereby vow that I have carefully read and fully understand the Code of Conduct for Non-partisan Election Observers and Monitors. I agree to promote its goals and principles and to comply with its requirements.

I further vow to resign from my role as an election observer or monitor if I should develop any conflicts of interest that would hinder me from fulfilling impartially, accurately and in a timely manner my non-partisan election observation activities or if I should violate the requirements of this Code of Conduct.

### PEMANTAU Code of Conduct

**Neutrality:** Observers must be non-partisans and independent. This includes working independently from government in support of a genuine democratic election process, regardless of who wins or loses.

**Peace:** Observers must maintain strict adherence to the principle of non-violence. An observer is forbidden to carry weapons, explosives, or any hazardous substance in the course of his/her observation.

**Compliance:** An observer must comply with all applicable laws and regulations of the election and not participate in any act that interferes with the conduct of elections.

**Integrity and honesty:** Observers must obtain and report, without fear or favour and with complete transparency, surveillance data compiled in a way that meets the standards of the organisation.

**Objectivity:** Observers must report both the positive and negative, with sufficient documentation of all serious problems to permit verification of the events so as to provide an impartial and accurate picture of what took place.

**Responsibility:** Observers must perform tasks in line with the objective and purpose of the observation mission.

**Transparency:** Observers must be transparent and willing to testify about the methodology, data, analysis and conclusions related to their observation reports.

**Confidentiality:** Observers must be prepared to take an oath of confidentiality and will not do anything forbidden by Section 5 of the Election Offences Act 1954.

**Discipline:** Observers must endeavour to maintain a degree of selfdiscipline and avoid from engaging in any act that may jeopardize the reputation and integrity of PEMANTAU.

## **Appendix 003: Malaysian Civil Society's Memorandum on Electoral Reforms in Malaysia 2010**

*10 July 2010*

*Initiated by the Coalition for Clean and Fair Elections 2.0 (BERSIH 2.0)*

[BERSIH 2.0 presented and held a roundtable discussion with the Election Commission on 9 November 2010]

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:*

**Dato' Ambiga Sreenevasan**

*Chairperson*

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

#### **Endorsed by:**

- |  |   |
|--|---|
| 1. Aliran  | 10. Educational, Welfare and Research Foundation Malaysia |
| 2. Amnesty International (Malaysia)                            | 11. Friends in Conversation (FIC)                         |
| 3. All Women's Action Society (AWAM)                           | 12. Federation of Indian Non-Governmental Organisations   |
| 4. Coalition for Good Governance Penang                        | 13. Group of Concerned Citizens (GCC)                     |
| 5. Council of Churches Malaysia (CCM) Youth                    | 14. Indian Malaysian Active Generation (IMAGE)            |
| 6. Centre for Independent Journalism (CIJ)                     | 15. Independence People Action Committee (IPAC)           |
| 7. Child Development Initiative                                | 16. Islamic Renaissance Front (IRF)                       |
| 8. DEMA (Gerakan Demokratik Belia dan Pelajar Malaysia)        | 17. Jaringan Rakyat Tertindas (JERIT)                     |
| 9. Dewan Perhimpunan Cina KL-Selangor (Jawatankuasa Hak Sipil) | 18. Jemaah Islah Malaysia (JIM)                           |
|  | 19. Klang Consumer Association                            |
|  | 20. Komuniti Masyarakat (KOMAS)                           |

21. Kumpulan Akhbar Independen (KAMI)
22. Labor Resource Centre (LRC)
23. LLG Cultural Development Centre.
24. Majlis Kelab Bell Belia Tamil Malaysia
25. Malaysian Association of Indian University Graduates
26. Malaysian Dravidian Association
27. Malaysian Hindu Youth Council
28. Malaysian Indian Development & Unity Association
29. Malaysian Indian Historical Association
30. Malaysian Tamil Forum
31. Micah Mandate (The)
32. National Institute for Electoral Integrity (NIEI)
33. Oriental Hearts and Mind Study Institute (OHMSI)
34. Penang Independent Schools Educataion Society.
35. Permas
36. Persahabatan Semparuthi
37. Persatuan Alumni Han Chiang, Malaysia.
38. Persatuan Alumni Han Chiang, Pulau Pinang.
39. Persatuan Hak Asasi Manusia (HAKAM)
40. Persatuan Kesedaran Komuniti Selangor (EMPOWER)
41. Research for Social Advancement (REFSA)
42. Rumah Anak Teater (RAT)
43. Sahabat Wanita
44. Saya Anak Bangsa Malaysia (SABM)
45. Sembang-semang Forum
46. Sisters in Islam (SIS)
47. Solidariti Mahasiswa Malaysia (SMM)
48. Southeast Asian Centre for e-Media
49. Students Reserve Unit (SERU)
50. Suara Rakyat Malaysia (Suaram)
51. Tamil Foundation Malaysia
52. Tenaganita
53. University Malaya Association of New Youth (UMANY)
54. Women's Aid Organisation (WAO)
55. Women in Disability Association
56. Women Institute for Research Development and Advancement (WIRDA)
57. Writers' Alliance for Media Independence (WAMI)
58. Youth for Change (Y4C)
59. Media Action Group

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