SUBMISSION TO THE PARLIAMENTARY SELECT COMMITTEE FOR ELECTORAL REFORM

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CHAPTER 1

PROPOSED REFORMS OF THE PREPARATION, ORGANISATION AND ADMINISTRATION OF THE ELECTORAL ROLL

BERSIH 2.0 Demand #1: Clean the Electoral Roll

1. An Overall Critique of the Current System

There are three major issues concerning the preparation, organization and administration of electoral rolls:

a. The obstacles to registration of eligible citizens.

b. The obstacles to removing deceased voters, multiple registrations and other fraudulent or erroneous registrations.

c. The obstacles to scrutinise addition to and removal from the existing rolls by the Election Commission (EC).

The first issue stems from the need for eligible citizens to apply to be registered as 'electors' (the term used in the laws for 'voters'). This leads to a lengthy process of data process, verification, inspection, objection and claim before the new applicants can appear as confirmed in the lists of new voters called "supplementary rolls", which are certified every three months. In many cases, the registration process takes more than three months. This results in a slow registration rate of 800,000 voters in 2010, a record high[1], when newly eligible voters increase by 40,000 to 50,000 every year. As it stands, 3.7 million eligible voters are left out of the electoral process. Given the EC's capacity in processing registration applications, at least 3 million voters will still be disenfranchised even if elections are to be held 12 months from now and even if every eligible citizens apply to be registered.

The second issue stems mainly from the EC's failure to fully utilize the Agency Link-Up System (ALIS) to remove the name of deceased voters and multiple registrations and prevent fraudulent or erroneous registrations in the first place, which technically requires only synchronisation of data. Added to this is the legal obstacle for the integrity of the all certified electoral rolls to be challenged in court under Section 9A of the Elections Act 1958, effectively leaving the EC the full power and sole responsibility to clean up the "principal rolls" under Regulations 10 and 25 of the Elections (Registration of Electors) Regulations 2002.

Unlike the preparation of supplementary rolls which requires public inspection and allows objection and claims, Regulations 10 and 25 of the Elections (Registration of Electors) Regulations 2002 respectively allow the Registrar of Electors (state level) to delete names from the principal rolls and the Chief Registrar of Electors (national level) to restore erroneous names and modify the rolls as he deems necessary.

The problems can be addressed in broadly two ways: (a) optimum synchronisation of voters data between the EC database and the National Registration Department (NRD) database, which will minimise the source of all errors to one source: the NRD, since the EC

[1] *The Star (2011)* "800, 000 Registered As Voters Last Year", 14 October 2011, http://thestar.com.my/news/story.asp?file=/2011/10/14/parliament/9694598&sec=parliament, 11 November 2011

(electorate) database should be rightly a subset of the NRD (citizenry) database; (b) improvements in the procedures of registration, deregistration and error correction.

The proposed reforms are as below:

Reform on Database Synchonisation and Electoral Roll Format

- Automatic Voter Registration (AVR)
- Automatic Removal of Deceased Voters and Former Citizens
- Automatic Removal of Multiple Registrations of Service Voters
- Listing of Newly Naturalised Citizens on Electoral Rolls

Online Application for Registration of Voters (Interim Measure before AVR)

Reforms on Revision of the Principal and Supplementary Electoral Rolls

- More Frequent Revision of the Supplementary Electoral Roll
- Public-Friendly Exhibition and Inspection of Revised Supplementary Electoral Roll
- Removal of Unnecessary Restrictions to Objections
- Transparent Revision of Principal or Supplementary Electoral Rolls after Certification

Long Term Enhancement of Integrity and Accuracy of Electoral Rolls

- Independent Electoral Roll Auditing Committee
- Easy and Affordable Access to Electoral Rolls

2. Reform on Database Synchronization and Electoral Roll Format

2.1 Automatic Voter Registration (AVR)

Current:	A citizen must <u>apply</u> to become a voter (also referred to as "an elector"..
Proposal:	Qualified citizens should be automatically registered to vote upon reaching the age of 21

<u>Current Legislative Provisions and Implications</u>

2.1.1 Article 119(1)(a) of the Federal Constitution sets out the qualification of voters by reference to a "qualifying date". A Malaysian citizen must:

- have attained 21 years on the qualifying date;
- be resident in a constituency on the qualifying date,
- be registered in the electoral roll in the constituency in which he resides on the qualifying date.

Note: Various factors disqualifying a person from being a voter are set out in Article 119(3) of the Federal Constitution.

2.1.2 "Qualifying date" is defined in Article 119(4)(b) of the Federal Constitution as either the date on which a person "applies for registration as an elector in a constituency" or the date on which a person "applies for the change of his registration as an elector in a different constituency". The reference to "applies" in Article 119(4)(b) suggests the requirement that a person must apply to become a voter or to change his/her voting constituency.

2.1.3 Article 113(1) of the Federal Constitution provides, among other things, that the Election Commission is to "prepare and revise electoral rolls" for Federal and State Elections.

2.1.4 In line with Articles 113(1) and 119 of the Federal Constitution, Parliament has given the Election Commission power (under section 15 of the Election Act 1958) to make regulations relating to the registration of voters. The relevant regulations made by the Election Commission are the Election (Registration of Electors) Regulations 2002.

2.1.5 The Election (Registration of Electors) Regulations 2002 further reflects the need for a person to apply to be registered as a voter. Regulation 12 for example refers to such an application which must be made in Form A of the Schedule. Under Regulation 12, the application process involves filling in Form A and personally forwarding the same to any Registrar or Assistant Registrar.

2.1.6 It has been reported that as at July 2011, there are about 3.7 million unregistered eligible voters in Malaysia, and a total of about 12 million registered voters.[2] A significant number of otherwise eligible voters in Malaysia are therefore unable to vote at elections simply because they have not applied to do so by submitting Form A to the Election Commission. The situation is untenable given that the requisite database of citizens and the technology to enable automatic registration exists.

Reform Proposal

2.1.7 We would note here that the National Registration Department already has the requisite information on Malaysian citizens which can be used for purpose of automatic registration of voters. Births are required to be reported and registered under the Births and Deaths Registration Act 1957. Registration of citizens is also required under the National Registration Act 1959 (and the regulations made thereunder).

2.1.8 There are many indications that the National Registration Department's database is already being used by the Election Commission:

(i) The Election Commission currently requires, as a matter of procedure, that a person applying to vote produce his or her identity card (issued by the National Registration Department)[2]

(ii) The Election Commission, in its website, refers to its use of its access to the National Registration Department's database through ALIS (Agency Link-up System) to check that the residence stated by the applicant voter is the same as in his/her identity card[3] as well as to check on whether a voter has died.[4]

In these circumstances, the use of the National Registration Department's database to automatically register voters surely cannot be objectionable.

2.1.9 We would further note that an automatic voter registration system is not equivalent to "compulsory voting". A person automatically registered as a voter is not compelled to vote. The Election Commission Chairman's reported view that an automatic voter registration system would infringe on an individual's privacy and personal freedom, is therefore entirely without foundation.[5]

2.1.10 In order to implement automatic voter registration, Article 119 of the Federal Constitution will need to be amended by removing references to "qualifying date" or by amending the definition of "qualifying date". Amendments would also be required to the Election (Registration of Electors) Regulations 2002 which currently sets out the application process.

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[2] SPRM (2011) "Cara Untuk Mendaftar", Malaysia, http://www.spr.gov.my/index.php?option=com_content&view=article&id=141&Itemid=197, 11 November 2011

[3] http://www.spr.gov.my/index.php?option=com_content&view=article&id=184&Itemid=255 - See response to Question 13.

[4] http://www.spr.gov.my/index.php?option=com_k2&view=item&id=5:proses-pilihan-raya-bebas-dan-adil&Itemid=189 – See under "Daftar Pemilih Kotor.

[5] *The Malaysian Insider*, (2010), "Automatic Voter List Violates Free Choice, says EC Head", 25 March 2010, http://www.themalaysianinsider.com/litee/malaysia/article/Automatic-voter-list-violates-free-choice-says-EC-head/, 11 November 2011.

2.2 Automatic Removal of Deceased Voters and Former Citizens

Current:	The Registrar of Elector (of every state) to delete from the principal electoral rolls those names on the electoral rolls who have died or have become disqualified
Proposal:	The list of deceased voters and former citizens should be generated from the National Registration Department (NRD) database

Current Legislative Provisions and Implications

2.2.1 Sub-regulation 10(2) of the EREC stipulates that

> "For the purposes of revision, the Registrar shall, every three months, prepare a list of the names of electors from the principal electoral roll who have died or have become disqualified for registration and the Registrar shall update the principal electoral roll by deleting the names of electors who have died or have become disqualified for registration.have attained 21 years on the qualifying date"

2.2.2 In practice, Registrars of Electors often fail to remove many names of the deceased voters[6].

Reform Proposal

2.2.2 Sub-regulation 10(2) of the EREC should be amended to the effect that the NRD is tasked to prepare a list of all deceased voters and those who have relinquished or have been stripped of their citizenship, on a monthly basis, to the Registrar of Electors. The Registrar of Electors will have to compile the list of other voters who lose their eligibility as voters on the ground of mental health or crimes. Item 4.4 elaborates that the deletion process will have to be subject to public scrutiny.

2.3 Automatic Removal of Multiple Registrations of Service Voters

Current:	Multiple registrations are made possible by the format of electoral roll which lists only the civilian, military or police Identity Card (IC) number of a citizen, and not all three.
Proposal:	The format of electoral roll shall stipulate three columns for the civilian, police or military IC numbers of every person

[6] Refer to Record of "Centenarian" Voters Part 1 submitted by BERSIH 2.0.

Current Practice and Implications

2.3.1 The current practice has resulted in many multiple registrations where, by mistake or by intention, a military or police personnel is registered as a postal voter in one locality using his/her military/police IC number and as an ordinary voter in another locality using his civilian IC or National Registration Identity Card (NRIC) number.

Reform Proposal

2.3.2 The reform does not involve any legal change as it is a purely technical matter. By providing three columns respectively for the civilian, military or police IC numbers, theoretically a person who had served in both the military and police will appear as one name with three IC numbers in the electoral roll, rather than as three names with one IC number. Such multiple registrations will automatically disappear as the system is cleaned up.

2.3.3 For this reform to work, it is necessary to abolish the separation of voters into ordinary voters and postal voters on the electoral rolls. Please refer to the Chapter 2: Proposed Reforms of Absentee Voting.

2.3.4 The additional columns will be left blank for civilian voters and do not result in any inconvenience to them.

2.4 Listing of Newly Naturalised Citizens on Electoral Rolls

Current:	Newly naturalized citizens are not identified on the supplementary rolls. Foreign-born citizens may have unknown country of birth (code 71 in the NRIC).
Proposal:	Foreigners naturalized in past five years are identified on the supplementary rolls. No foreign-born citizens can be registered with unknown country of birth. (code 71)

Current Practice and Implications

2.4.1 All newly naturalized voters are unidentified on the supplementary rolls. This has not helped to refute allegations of en-mass naturalisation of foreigners. The credibility of the National Registration Department and the EC is further at risk with the discovery of 170,818 newly registered voters with unknown country of

birth (NRIC: XXXXXX-71-XXXX).[7] This is a serious issue for the nation, especially Sabah with about one-third of its population being foreigners.

Reform Proposal

2.4.2 The EC should request from the NRD the year of naturalization for all foreign-born voters and publish the full list of those who were naturalized only in the past five years. After the implementation of automatic voter registration (AVR), the list of all foreign-born voters who subsequently enter the electoral rolls later than their attainment of eligibility age can be automatically generated, which must be separately indicated in the inspection process of the supplementary rolls.

2.4.3 The code 71 for country of birth (unknown) should be abolished considering as many as 299 countries or territories are allocated their respective national codes. If there must be residual categories to cover those whose country of birth cannot be possibly known due to specific circumstances like 'war' or 'human trafficking', then the categories should be circumstance-specific and the number of such foreign-born persons must be reasonably tiny.

2.4.4 Amendments need to be made to the Elections (Registration of Electors) Regulations 2002 and the relevant rules and regulations governing the NRD database.

Indonesia	61		Nigeria	85
China	74		Brunei	60
India	75		Singapore	66
Israel	88		Sri Lanka	78
Vanuatu	93		Somalia	85
Brazil	84		Dominica	90

Table 1.1: Some of the 299 codes assigned for country of birth in the NRIC database.

[7] *The Malaysian insider* (2011) "Pemuda PAS: 170,818 Pengundi Tiada Kod Negara",20 September 2011, http://www.themalaysianinsider.com/litee/bahasa/article/pemuda-pas-170818-pengundi-tiada-kod-negara/, last accessed 11 November 2011

3. Online Application for Registration of Voters (Interim Measure before Automatic Voter Registration)

Current:	A hard copy application form to become a voter must be submitted directly to a Registrar or Assistance Registrar.
Proposal:	Implement online voter registration and online tracking system to monitor progress of application

Current Legislative Provisions and Implication

3.1 Under Regulation 12(1)(b) of the Elections (Registration of Electors) Regulations 2002, an application to become a voter must be "personally" forwarded to a Registrar or Assistant Registrar. This results in possible inconvenience to the eligible citizens and unnecessary clerical work on the part of the EC.

Reform Proposals

3.2 The issue would be resolved automatically should automatic voter registration (AVR) be implemented. In the event of any delay to AVR, we propose the EC to implement an online system for registration of voters alongside in-person registration. A system for tracking each application should also be established so that an applicant may easily determine the stage of his/her application, and take steps to report any delays or errors in the process.

3.3 We submit that an online registration system is feasible and is unlikely to lead to any significant abuse relative to the present system. The information submitted online would in any event be checked against the National Registration Department's database, as appears to be the procedure.

3.4 We would further note that in January 2009, the Election Commission itself had stated that it would be introducing online voter registration soon.[8] Almost 3 years after that statement, no such system is in place.

[8] *The Star* (2009), "Go online and register as a voter", 30 January 2009 http://thestar.com.my/news/story.asp?file=/2009/1/30/nation/3156463&sec=nation, 11 November 2011

3.5 Amendments will need to be made to the Elections (Registration of Electors) Regulations 2002 to provide for an online registration system as the current one envisions a hard copy application form (Form A) and a personal forwarding of the same to a Registrar or Assistant Registrar.

4. Reforms on Revision of the Principal and Supplementary Electoral Rolls

Even with Automatic Voter Registration (AVR), there will still be Supplementary and Principal Rolls for the purposes of electoral administration and public scrutiny. The proposed reforms hence apply to both the situations before and after AVR.

4.1 More Frequent Revision of the Supplementary Electoral Roll

Current:	Supplementary electoral roll of a registration area is revised once every 3 months
Proposal:	Revise supplementary electoral roll every month

Current Legislative Provisions

4.1.1 Under Regulation 13(1) of the Elections (Registration of Electors) Regulations 2002, the Registrar shall, once in every 3 months, revise the supplementary electoral roll of the registration area for which he is appointed. A registration area is defined as a Parliamentary constituency (encompassing the State constituency and polling district).

Reform Proposal

4.1.2 We submit that there is no reason why more frequent revisions to the supplementary electoral roll should not be undertaken. Under the current system, a person applying in January of a given year to become a voter may have to wait until 1 April of that year before the revised supplementary roll is displayed for inspection or objection,[9] and thereafter certified. This results in undue delay in an applicant appearing on a certified revised supplementary roll, and thus being entitled to vote at an election.

[9] SPRM (2011), "Tempoh Pendaftaran Suku Tahun Pertama", http://www.spr.gov.my/images/stories/pdf/E1-Tempoh%20Pendaftaran%20Suku%20Pertama.pdf

4.1.3 We propose that the supplementary electoral roll be revised every month. In the absence of AVR, this will reduce the number of applicants who might otherwise be unable to vote when an election is called. In the presence of AVR, the lead time for a citizen upon attaining the age of eligibility to appear on the electoral roll will be just slightly more than a month.

4.1.4 The Elections (Registration of Electors) Regulations 2002 (including Regulation 13(1)) will need to be amended to implement these proposed reforms.

4.2 Public-Friendly Exhibition and Inspection of Revised Supplementary Electoral Roll

Current:	Revised supplementary electoral roll is displayed for 7 days at places determined by the Registrar and notified in a Gazette Notification. Claims and Objections are determined before the entire supplementary electoral roll is certified.
Proposal:	Supplementary electoral roll displayed free of charge - online and on location - for a minimum period of 30 days. The supplementary electoral roll should immediately proceed to certification in respect of the names which have not been objected to.

Current Legislative Provisions and Implications

4.2.1 Regulation 13(5) of the Elections (Registration of Electors) Regulations 2002 provides that the revised supplementary electoral roll may be inspected at the office of the Registrar or at places determined by the Registrar in the relevant Gazette Notification in respect of the exhibition.

4.2.2 A person who claims that his name has improperly been omitted from a revised supplementary electoral roll (a "claimant") or a person who objects to the inclusion of a name in the revised supplementary electoral roll, (an "objector") must make his claim or objection on the prescribed form within seven days of the date on which the supplementary electoral roll is first exhibited.

4.2.3 In practice, this means that a supplementary electoral roll is only exhibited for 7 days. Typically, such roll is displayed at state election commission offices, post offices, government complexes and offices, district offices, municipal and district councils, community and rukun tetangga halls and penghulu offices.

4.2.4 Only when all claims and objections have been determined, the supplementary electoral roll is certified and comes into force, pursuant to Regulation 22. Any delay in the determination of claims and objections results in the certification of the entire supplementary roll being delayed.

Reform Proposal

4.2.5 We submit that to facilitate public participation, a revised supplemental electoral roll should be exhibited online, and free of charge for download, and at location for 30 days for claims and objections to be made. Public scrutiny of the electoral roll is the best safeguard against fraudulent registrations, and the best way of ensuring public confidence in the electoral system, hence the obstacles and cost of public participation in the process must be minimised.

4.2.6 An online exhibition would make it easier and quicker for people to check a revised supplementary electoral roll. As the roll is prepared on a computer system anyway, there should be no difficulty in uploading the same on the Election Commission's website. At the same time, the personal data contained in the electoral roll should not be permitted to be freely distributed and abused for commercial reasons.

4.2.7 We further submit that the claim/objection period must be extended to 30 days. The existing 7-day period is unrealistic and far too short a time to (i) publicise the fact that the roll is open to inspection (ii) peruse and analyse the roll and (iii) obtain information before making an objection to a particular name appearing on the roll.

4.2.8 To avoid administrative delay, all names that are not objected to should be certified as soon as possible after the 30-day period, while the process of objection takes its course. In our submission, there is no reason why names added to the supplementary electoral roll in respect of which no objection received should not be certified at the end of the exhibition period. Only those names which are the subject of claims and objections should be held back from certification until the claims and objections have been determined [for a maximum of 3 months]

4.2.9 These proposed reforms will require amendments to Regulation 13(5) Elections (Registration of Electors) Regulations 2002 and to the timeframes set out in Regulations 14 and 15. Consequential amendments may be made to other regulations to take into account the revised timelines.

4.3 Removal of Unnecessary Restrictions to Objections

Current:	(i) Objection fee of RM10 is payable for each objection (ii) Limit of 10 objections per person (iii) Objections can only be made by persons registered in the same constituency (iv) a compensation up to RM 200 may be imposed on every objection without reasonable cause (v) a 7-day notice is given to a person to whom an objection is made to attend a public inquiry if the objection is not disallowed
Proposal:	(i) The objection fee of RM10 should be refundable for every objection that is allowed or with reasonable cause (ii) Remove limit to number of objections per objector (iii) Objections can be made by any voters, regardless of their constituency, political parties and other organisations (iv) the 7-day notice period for a person to whom an objection is made should be extended to 14 days.

Current Legislative Provisions and Implications

4.3.1 The Elections (Registration of Electors) Regulations 2002 provide for a complex and demanding procedure for the resolution of claims and objections before the supplementary electoral roll is certified. In our submission, these procedures are unduly restrictive and cumbersome.

4.3.2 Regulations 14-20 of the Elections (Registration of Electors) Regulations 2002 govern the submission of claims and objections in respect of the revision of the supplementary electoral roll, and the holding of public inquiries and appeals in respect of the same.

4.3.3 In order to object to the inclusion of a name in the revised supplementary electoral roll, an objector is required to pay RM10 in respect of each objection made (Regulation 15(4)), and is limited to ten objections (Regulation 15(3)).

4.3.4 Regulation 18 of the Elections (Registration of Electors) Regulations 2002 further allows the Registrar of Electors to order an objector to pay compensation not exceeding RM200 to the elector in respect of whom the objection was made, when the objection is disallowed and deemed as "without reasonable cause".

4.3.5 Regulation 17 of the Elections (Registration of Electors) Regulations 2002 stipulates a 7-day notice period for a person to whom an objection is made for his inclusion in the Supplementary Roll to appear in a public enquiry.

Reform Proposal

4.3.6 In our view, the provisions for an objection fee and the limit of 10 objections are unduly restrictive, given the Registrar's existing power under Regulation 18 In our submission, the limit on the number of objections should be removed, and the RM10 objection fee should be refunded where an objection is successful or deemed as 'with reasonable cause' even when disallowed.

4.3.7 These proposals will require amendments to Regulations 15 and 18 of the Elections (Registration of Electors) Regulations.

4.3.8 To give more time for a person to whom an objection is made to receive and respond to the notice to appear in a public inquiry as stipulated in Regulation 17 of the Elections (Registration of Electors) Regulations 2002, the 7-day notice period should be extended to 14 days. As we propose certification of all unopposed names (4.2.8), this will not cause delay in the certification process. It will also correspond with the 14-day notice period we propose in 4.4.5 for any removal mooted by the Chief Registrar of Electors

4.4 Transparent Revision of Principal or Supplementary Electoral Rolls after Certification

Current:	(i) No provision for objections by members of the public in respect of certified supplementary electoral roll or principal electoral roll. (ii) Chief Registrar of Electors has unchecked power to modify electoral rolls
Proposal:	(i) Provision should be made for objection to certified supplementary electoral roll and principal electoral roll. (ii) The power of Chief Registrar of Electors to modify electoral rolls be restricted; (iii) a 14-day notice should be given to the affected person to enable representations to be made; (iv) illegal alteration of electoral rolls by EC officials should be explicitly listed as an offence under Section 4 of the Election Offences Act

Current Legislative Provisions and Implications

4.4.1 Section 9A of the Elections Act 1958 stipulates that certified or re-certified roll shall be deemed as final. There is no provision for any claims or objections. Examples of when such a provision would be needed are, for instance, when a house owner discovers that ten unknown electors are registered at his address, or where a candidate discovers that there are a hundred electors registered at the same address in the constituency.

4.4.2 Meanwhile, Regulation 25 of the Elections (Registration of Electors) Regulations gives broad and unchecked power to the Chief Registrar of Electors to alter the principal and supplementary electoral rolls as he deems necessary for the purpose of inter alia:

- deleting the names of deceased persons
- striking out the names of ineligible persons and superfluous entries
- inserting new particulars in respect of the registration of a person
- correcting errors or omissions
- striking out superfluous entries

Reform Proposal

4.4.3 We submit that Section 9A must be removed or amended to the effect that certified electoral rolls remain challengeable in court.

4.4.4 We further submit that both principal and certified electoral rolls should be subject to the procedures governing claims and objections with regards to uncertified supplementary rolls [except for the part governing inspection period] and the proposed reforms in Items 4.2 and 4.3 here.

4.4.5 This means any restoration of omitted names (claimants) must be displayed online and in-location for public inspection and possible objection.

4.4.6 This means, for all proposed removals of names from the certified rolls, whether initiated by the Chief Registrar of Electors (including the list of deceased voters and former citizens generated by the National Registration Department) or members of the public, a 14-day notice must be served to the affected electors for them to appear in a public inquiry.

4.4.7 The Chief Registrar of Electors shall have the power only to propose restoration and removal of names. Alternation of electoral roll format such as inserting new particulars and error correction involving transfer of voters across constituencies will be transferred to an independent auditing committee stipulated in Item 5.1.

4.4.8 That illegal alteration of electoral rolls be spelled out explicitly as an electoral offence by election officers under Section 4 of the Election Offences Act 1954.

4.4.9 These reforms require amendment to the Elections (Registration of Electors) Regulations 2002 as well as the Election Offences Act 1954.

5. Long Term Enhancement of Integrity and Accuracy of Electoral Rolls

5.1 Independent Electoral Roll Auditing Committee

Current:	All correctional measures are left in the hands of the Chief Registrar of Electors
Proposal:	An independent auditing committee to be set up to maintain and enhance the integrity and accuracy of electoral rolls

Current Legislative Provisions and Implications

5.1.1 Currently there is no specific mechanism to enhance the integrity and accuracy of electoral rolls in the long term except for the broad power given to the Chief Registrar of Electors under Regulation 25 of the Elections (Registration of Electors) Regulations 2002, which is open to abuse.

Reform Proposal

5.1.2 An independent auditing committee should be set up to take over the power of Chief Registrar of Electors to alter electoral rolls beyond routine removal and restoration of names. Alteration of electoral roll format and transfer of voters to correct arbitrary or erroneous registrations in the past must be authorized by this committee. One common problem is that members of a same household registered at the same address are registered for different constituencies, as experienced by the Ong family in Segamat. (Table 1) Correction of such problems involves transfer of voters, which will be open to abuse and harm the credibility of the electoral process if this is left to the sole discretion of the Chief Registrar of Voters. In Hulu Selangor in 2010, the EC transferred 228 voters from Hulu Selangor to Selayang on the ground of mapping error, raising accusations of clandestine gerrymandering. A permanent body to monitor and examine the integrity and accuracy of the electoral rolls will be the best mechanism to deal with such problems.

Address	278-D, . JLN. DATO SYED A. KADIR (140/02/27/001) and (141/03/13/003)	
Parliamentary Constituency	P140 Segamat	P141 Sekijang
State Constituency	N2 Jementah	N3 Pemanis
Polling District	Kampung Abdullah Utara	Kampung Abdullah Selatan
Family Members	Ong Ah Hock (Husband)	Gan Siu Ngo (Wife)
		Ong Seng Huat (brother-in-law)
		Ong Bee Eng (sister-in-law)
		Ong Bee Lan (sister-in-law)
		Ong Guan Soon (brother-in-law)
		Ong Guan Sin (brother-in-law)

Table 1.2 The Ong Family vote in two constituencies despite being registered at the same address.

5.1.2 The independent auditing committee should consist of representatives of all parliamentary parties or groups and civil society groups working on elections, democracy and law, and be chaired by a retired judge.

5.1.3 The independent auditing committee should have full access to the entire electoral database to identify errors and propose recommendations, which should be carried out by the Chief Registrar of Voters.

5.1.4 Amendments will need to be made to the Elections Act 1958, the Elections (Registration of Electors) Regulations 2002 and perhaps even the Federal Constitution.

5.2 Easy and affordable Access to Electoral Rolls

Current:	Electoral roll of each constituency costs RM 200 and above.
Proposal:	Electoral rolls should be made available to the political parties, civil society groups and research institutions at a marginal cost.

Current Legislative Provisions and Implications

6.1 At present, under Rule 28 of the Elections (Registration of Electors) Regulations 2002, the electoral rolls of each constituency are available for purchase from the Registrar for RM200 plus RM0.20 per page of fifty names or less.

6.2 This means a constituency of 50,000 voters will cost RM 400. A full collection of electoral rolls for all the 222 parliamentary constituencies may cost around the range of RM 100,000. Such high cost is completely unjustified.

Reform Proposals

6.3 We submit that all electoral rolls should be made available as an electronic database to political parties, candidates, civil society groups and researchers at a marginal charge.

6.4 In addition, the Election Commission website should allow members of the public to search the rolls online by address as well as by civilian, military and police IC numbers. Wider and cheaper access to the electoral rolls will only help identification of errors and omissions.

6.5 Heavy penalty should be imposed on abuse and distribution of the personal data contained in the electoral roll for commercial reasons.

6.6 Amendments will be required to the Elections (Registration of Electors) Regulations 2002 to enable these reforms.

CHAPTER 2

PROPOSED REFORMS ON ABSENTEE VOTING

BERSIH 2.0 Demand #2: Reform Postal Vote

1. An overall critique of the existing postal voting system:

There are two issues concerning absentee voting, which takes only the form of postal voting in Malaysia:

a. Eligibility of voters

b. Conduct of election

1.1. The Eligibility of Postal Voters

There are two groups of postal voters in the current system that is rather cumbersome, namely, (a) permanent postal voters who are listed separately from ordinary voters; and (b) ordinary postal voters who apply to vote on postal ballots. The separation of postal voters from ordinary voters in the electoral roll is stipulated by Regulation 6 of the Elections (Registration of Electors) Regulations 2002.

1.1.1. Permanent postal voters include (1) **police voters**, by Regulation 3 of the Elections (Postal Voting) Regulations 2003 and (2) **absent voters**, defined by Regulation 2 of the Elections (Registration of Electors), who in turn consist of

a. a serving member of any regular naval, military or air force of Malaysia, the Commonwealth or other country;

b. the spouse of a serving member of any force referred to in paragraph (a), who elects to become an absent voter;

c. in the public service of the Government of Malaysia or of any State or in the service of any local authority or statutory authority exercising powers vested in it by Federal or State law, who is on duty outside the boundaries of Peninsular Malaysia or Sabah or Sarawak;

d. the spouse of a person in the public service of the Government of Malaysia or of any State or in the service of any local authority or statutory authority exercising powers vested in it by Federal or State law who is living with her or his husband or wife outside the boundaries of Peninsular Malaysia or Sabah or Sarawak at the date of application for registration as a Parliamentary or State elector,

e. engaged in full-time studies at any university, training college or any higher educational institution outside the boundaries of Peninsular Malaysia or Sabah or Sarawak; and

f. the spouse of a person engaged in full-time studies at any university, training college or any higher educational institution outside the boundaries of Peninsular Malaysia or Sabah or Sarawak who is living with her or his

husband or wife at the date of application for registration as a Parliamentary or State elector.

1.1.2. Under Regulation 3 of the Elections (Postal Voting) Regulations 2003, ordinary voters who may apply to vote on postal ballots are

a. a person certified by the Election Commission to be an election officer and liable for duties on polling day;

b. a member of any of the public services who on polling day is employed full-time in a post outside Peninsular Malaysia or Sabah or Sarawak;

c. a member of the Election Commission appointed under Article 114 of the Federal Constitution; or

d. a member of any category of persons designated as postal voters by the Election Commission from time to time by notification in the Gazette [Sub-regulation 3(1)(f)]

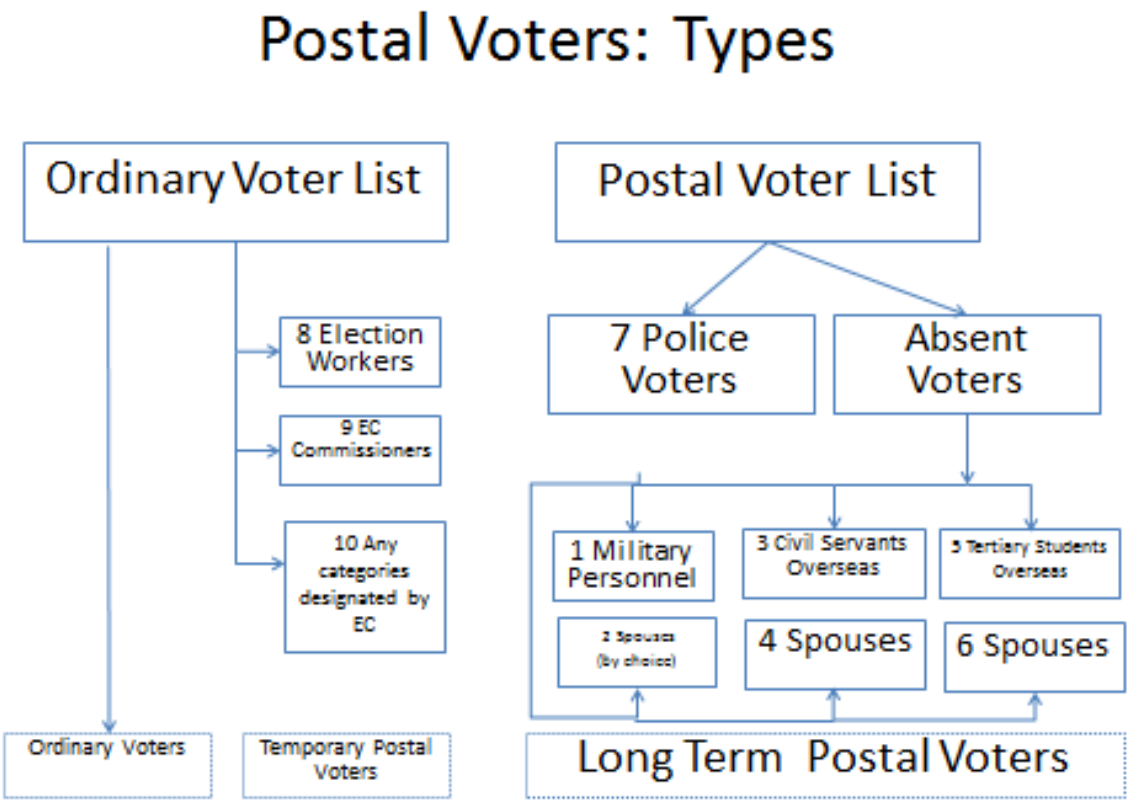

Chart 2.1: The current messy organisation of postal voters

1.1.3. In practice, the EC has utilised registered police spouses as postal voters[10], supposedly under sub-regulation 3(1)(f) of the Elections (Postal Voting) Regulations 2003. The EC has violated the laws in two ways. First, the Certificate under Form 1 required for postal voting right under this sub-regulation stipulates the person to be "liable for duties/employed full-time", which will not qualify police spouses if they are home makers. Secondly, even if police spouses are eligible, they can be registered only as temporary postal voters and not listed together with police voters and absent voters.

1.1.4. The **principal flaws** related to **eligibility and organisation of postal voters** are:

a. It is made **compulsory to all service voters** – personnel of military and police, regardless whether they are on duty. In practice, there have been complaints that military and police spouses have been included involuntarily.

b. It is **not available to all** who are not in the constituency on polling day. The excluded groups are:

   i. Overseas Malaysians who are not civil servants, tertiary education students or their spouses.

   ii. Domestic civilian voters who are out of constituency but are not Election workers, members of Election Commission (EC), or a member of any other groups of voters designated by the EC by notification in the gazette.

c. While overseas absent voters are registered for their home constituencies, the service voters are registered for constituencies where their police stations and military barracks are located in or nearby, rather than their home constituencies. This is particularly unfair for military voters who are recognised as absent voters.

d. The creation of **separate electoral rolls** for ordinary and postal orders, stipulated by Regulation 6 of the Elections (Registration of Electors) Regulations 2002 is undesirable on four grounds:

   i. **Rigidity**: a postal voter cannot vote in the ordinary manner even if s/he does not need the postal ballot facility, who may instead be disenfranchised. A hypothetical but realistic example would be an overseas postal voter who is in the country when the election is called.

   ii. **Multiple registrations:** the existence of two rolls makes possible multiple registrations, whether by intention or by mistake.

   iii. **Unidentifiable Names**: In practice, only the total number of postal voters, and not details of individual voters, is available in the authoritative electoral rolls presented to the candidates on nomination day. Any discrepancy between the authoritative roll and the rolls appearing on ballot

[10] *The Malaysian Insider* (2011) "More Perak Postal Voters as soldiers', cops' wives sign up", 3 March 2011, http://www.themalaysianinsider.com/mobile/malaysia/article/ec-more-perak-postal-votes-as-soldiers-cops-wives-sign-up/, last accessed 11 November 2011.

issuing day would be impossible to resolve. If the EC can provide the total number of postal voters, then not producing their individual details suggest bad faith on its EC. In fact, the EC has been violating Regulation 6 of the Elections (Registration of Electors) Regulations which stipulates the display of the name of all voters, both ordinary and postal, on electoral rolls. The Chief Registrars and Registrars of Voters should all be investigated under Section 4 of the Election Offences Act for breaching their official duty, which carries imprisonment up to 2 years, a fine up to RM 5000 or both.

iv. **Corrupt practices**: The concentration of postal voters in a constituency does not only affect the electoral landscape of the constituency, but also make such a well-defined group vulnerable to manipulation, intimidation or inducement.

1.1.5. The **principal flaws** related to the **conduct** of postal voting are

a. **Timeliness of despatch**: the short despatch period – 4 days before polling day – makes it practically impossible for almost all overseas voters to receive and return their ballots.

b. **Transparency of the voting process**: the practice which allows the postal voters to collect their ballots and return them later makes impossible for scrutiny but possible for intimidation, breach of confidentiality, vote buying and (illegal) proxy voting.

1.1.6. The EC has not done its best to improve the postal voting system and process. The **practical flaws** include:

a. **Flaws in the recording of postal ballot issuance and return**: Form SPR754 to record the issuance and receipt of postal ballots has only one space for date, while it may take a few days after issuance for the postal ballots to be returned. Also, only the Returning Officer need to sign on the form. Such flaws make the process vulnerable to unauthorised amendment of details and confusion over dates. The EC should have Form SPR754 split into two – 754-1 for issuance of ballots and 754-2 for return of ballots – which must be signed by the candidates or their agents in addition to the Returning Officer. Form SPR754-1 can then be made available to the candidates or their agents upon issuance of ballots so that the number of ballots expected to be returned, can be checked against and reconciled with Form SPR754-2, which will be completed and counter signed by all parties when polling stops.

b. **Unilateral record ownership/retention of critical forms:**

Although Form SPR753 which provides the perforation (*corak penindik*) pattern is a critical reference tool during the vote counting process, it does not

provide a space for the candidates/agents to counter sign. Neither is a copy made available to the candidate or his agent.

Two other critical forms

i. Kira-kira kertas undi pos selepas peti undi pos dibuka (Form SPR755)

ii. Penyata Awal Pengiraan Undi Pos (Form SPR764P)

also only require the signature of Returning Officer or even none at all, rather than requiring signatures of the candidates or their agents and providing a copy to the candidates or their agents for record and post-mortem purposes. This is inconsistent with another critical form, Form 15 "Penyataan Pengundian Selepas Pengiraan Kertas Undi Pos" which is to be signed by all parties.

c. **Possible abuse of late-received ballots** – the EC guideline does not order for the late-received envelopes B to be stamped "Rejected", leaving the space for them being recycled and abused.

d. **Inconvenience to the postal voting agents**: The Elections (Postal Voting) Regulations 2003 stipulates that two notices – "Notice of issue of postal ballot papers" (sub-regulation 6(1)) and "Notice of opening of postal voters' ballot box" (sub-regulation 14) – must be served within only 'not less than 24 hours', causing great inconvenience to postal voting agents, who are volunteer workers and have make arrangement to take time off from work or other commitments to observe the issuing process. In implementing postal voting, the EC should show compassion and appreciation to the postal agents, who may need to apply for leave days in advance, by providing a space for the candidates or election agents to counter sign and acknowledge receipt and extending the notice period from 24 hours to 7 days.

2. Proposed Reforms on Eligibility and Organisation of Absent Voters

2.1 In principle, absentee voting should be made **<u>available to all but compulsory to none</u>**. Unless in operation, service voters can conveniently vote in nearby polling stations alongside civilian voters. For instance, army camps such as Kem Wardieburn in Wangsa Maju and Kem Sikamat Seremban are within 2 kilometres of the nearest schools.

2.2 In practice, there will be no permanent absent voters and hence, no need for separation of electoral rolls for ordinary and permanent postal voters.

2.3 This carries an important implication: the actual size of absent voters in a constituency is not known until application is closed. This does away with the expected benefits and incentives for plotting corrupt practices targeting the postal voters.

2.4 The eligible absent voters are those

a. Who apply for absentee ballots **two weeks** before polling day (which requires a minimum campaign period of 21 days to facilitate the administration of postal voting); and

b. Who are already registered voters in one of the following categories:

   i. All members of the military and police (not spouses) who are expected to be on duty on polling day or registered for a distant constituency. (**service absent voters**)

   ii. All Malaysians who are expected to be overseas on the polling day (**overseas voters**)

   iii. All Malaysians who are expected to be out of their constituency and at least 250 kilometers away from the closest absentee voting centre (**domestic absent voters**)

Chart 2.2: The proposed organisation of absent voters

2.5 All **overseas and domestic absent voters** will be registered for their home constituencies. For **service absent voters**, they may apply to be registered for their home constituencies or the constituencies where they serve.

2.6 Spouses for service absent voters who are registered for distant constituencies can apply to vote as domestic absent voters.

3. Proposed Reforms on Conduct of Absentee Voting

3.1 There will be three forms of absentee voting:

a. **Postal voting** – only available for overseas voters except in Singapore and Brunei

b. **Advance voting**[11] – available for service voters and overseas voters except in Singapore and Brunei

[11] The advance voting proposed here goes beyond what was mentioned by EC deputy chairman Datuk Wan Ahmad Wan Omar on July 11, 2011.

He spoke about 'advance voting being experimented and may be expanded nationwide, whereby "at army camps and police headquarters, uniformed officers who had, in the past, managed the election themselves under the

c. **Distance voting**– available for service voters, domestic absent voters and overseas voters in Singapore and Brunei[12]

3.2 Advance voting and distance voting are basically the same, except the latter happens on polling day. The advance/distance polling centres are expected to be larger than ordinary voting centres, where voters will vote by state, resulting in up to 16 ballot boxes for parliamentary contests and 13 ballot boxes for state contests.

3.3 If and when necessary, arrangement for overseas voters may be applicable for service voters stationed overseas such as members of peace-keeping army.

3.4 Postal voting is abolished for all domestic absent voters. It will remain as an option only for overseas voters who live more than 500km from all distance voting centres.

Voting status accorded:

Type of voters	**Postal Voting**	**Advance voting (1 day before polling day)**	**Distance voting (on polling day)**
Service absent voters (Military and police, not spouses)		X	X
Overseas voters in Singapore and Brunei			X
Overseas voters elsewhere	X	X	
Domestic Absent Voters		X	X

3.5 For all service voters in the country, advance/distance polling centres will be set up for two (2) days, on the day before polling day and polling day.[13] The longer voting period is in consideration for change of guards, for example, naval patrol vessels safeguarding our fishermen at high seas. Even if most of the service voters may be registered for the local constituencies, the polling centres will be so designed to cater for ballots cast for distant constituencies.

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supervision of a handful of Election Commission personnel, have been relieved of this responsibility to allow EC officers to run the show independently."

According to him, the system has been tried and tested in several by-elections and "was ready to be carried out on a mammoth scale, involving some 200,000 military and police personnel, who would be casting their votes a few days ahead of the general election". He was quoted to say, "We are all for an efficient and transparent voting system and this is among areas where we do not have to wait for amendments to the laws to be made."

See Farrah Naz Karim, "Postal Voting Overhaul", New Straits Times, July 12, 2011.

[12] Distance voting is specifically provided for overseas voters in Singapore and Brunei on the considerations of distance and electorate size

[13] There will be no normal polling stations for service voters, even though some or even most may be registered for the local constituencies.

a. The polling centres must be located outside the police station or military barrack.

b. The Presiding Officer (Ketua Tempat Mengundi) must be a civilian officer from the EC and not a military/police officer.

c. During campaign period, all candidates must be allowed to campaign within designated area of the camp with equal air time for all candidates.

3.6 Distance voting centres will be set up in

a. Major towns in every West Malaysian state

b. At least a town in every division in Sarawak

c. At least a town in every residency in Sabah

d. Singapore and Brunei

3.7 Advance voting centres will be set up in all foreign missions (except in Singapore and Brunei) and where possible, other arranged overseas locations.

3.8 For all advance/distance polling centres, home or abroad, the following rules apply:

a. All advance/distance polling centres must start and close at the specific times stipulated by the EC for ordinary polling stations.

b. The boxes will be sealed at the end of each advance voting day to prevent potential risk of irregular ballot papers being stuffed into the ballot box in view of the numerous stories of army officers being ordered to mark ballot papers on behalf of hundreds of soldiers. Candidates and agents may guard the ballot boxes 24 hours a day should they so wish.

c. The EC shall ensure that all parties, independent candidates and their Polling Agents, Counting Agents, Booth Agents (PACABA) have free access to the Polling Centre and that Form A on Oath of Secrecy and security tags are issued to them to carry out their duty.

d. Ballot papers will be issued in similar manner as in ordinary polling, where the list of all absent voters from all constituencies must be available to be checked.

e. Every candidate or agent will be given a signed copy of the two final tallying sheet of ballot papers cast, similar to Form 13 and be called Form 13.1P and Form 13.2P, one for the beginning and one for the closing. Form 13.1P and 13.2P shall also be signed by the candidate or his agent.

f. Voters will cast their ballots into the ballot boxes representing each of the state/territory but the ballots in each ballot box will be grouped by constituency before counting begins.

g. Counting should not start before the closing time of the polling day for advance/distance voting centres in Malaysia, Singapore and Brunei. For all other

advance voting centres, counting should start immediately after the closing time at the local time.

h. Counting of votes will be done for each involved constituency in the similar manner like ordinary voting and form 15 will be issued with signatures of the Presiding Officer and the CAs and faxed or emailed to the tally centre in each respective constituency.

i. Ballot boxes are to be retained in the advance voting centre for counting and held there until results are confirmed (ie no recounting required). This security measure will enable the same CA to check signature sealed for each ballot box and will further avoid problem of ballot boxes failing to arrive or delivered late at the respective returning officers constituency office.

CHAPTER 3

INDELIBLE INK AND BIOMETRIC SYSTEM

BERSIH 2.0 Demand #3: Use Indelible Ink

1. The basis upon which BERSIH 2.0 has demanded for the use of indelible ink is to prevent incidences of multiple voting and to increase credibility in the electoral process. This largely stems from the belief that irregularities and fraud plagues the integrity of electoral roll.

   The Election Commission (EC) has previously announced that it will introduce biometric system for voter identification which will enable multiple voters to be detected and eliminated. However, BERSIH 2.0 is of the view that indelible ink is a more viable option as there are many considerations to be made before a biometric system can be implemented.

2. Indelible ink

Indelible ink is one of the most common methods used as a safeguard against multiple voting. The ink is applied on the forefinger of a voter who has casted his or her ballot. Indelible ink is used in many countries such as Afghanistan, Indonesia and the Philippines. The world's largest democracy, India, used indelible ink for many years without any problems.

The use of indelible ink is meant to prevent multiple voting of eligible voters. It is cost effective, relatively easy to transport and the quickest solution to prevent multiple voting.

In 2007, the EC decided to implement the use of indelible ink. RM2.9 million was spent to purchase 47,000 bottles of indelible ink from India. However, on 4 March 2008, four days before polling day on the 12th General Elections, the EC withdrew the use of indelible ink, citing allegations of sabotage and unconstitutionality of denying voters the right to vote based on an ink stain on their finger.

The Attorney-General allegedly claims that the Federal Constitution must be amended before indelible ink can be used. However, indelible ink is an administrative matter which can be implemented by the EC to enforce Section 3(1)(o) of the Elections Offences Act 1954 which prohibits multiple voting by any person.

3. Biometric identification system

Biometrics is a technology by which specific physical characteristics (e.g. a person's face, fingerprint and iris) are attached to the individual's personal data and stored in database. The EC has stated that it intends to implement biometric fingerprint system for voter identification during polling day.

The Immigration Department of Malaysia is currently using a biometric fingerprint system to record all foreigners entering and exiting the country. In addition, the biometric fingerprint system was also used during the recent nationwide registration of undocumented migrants living in the country called the 6P Programme. During the 6P Programme, the

system faced glitches when management companies appointed for the 6P Programme modified the government biometric equipment[14]. This is an indication of the potential problems of implementing such a system.

Advantages	Disadvantages
- Prevents multiple registration and voting - Prevents impersonation - Efficient for voter registration - Efficient for voter identification on polling day (provided system and equipment does not fail)	- Expensive - Requires significant amount of time to set up system and to conduct trial runs - Risk of system failure on polling day - Difficulty of disseminating equipment to rural areas - Requires each polling station to be connected to electricity and possibly online server - Does not prevent fraudulent voters existing in the electoral roll (e.g. migrants and under aged persons)

Table 3.1: Advantages and disadvantages of biometric identification system

4. Comparative analysis

Employing technologically advanced techniques can enable elections to be conducted more efficiently. However, the intentions and principles for introducing new techniques must first be established and the technology in question evaluated against these principles.

The basic principles that should guide every electoral process are, at a minimum, that all electoral processes should be accessible, secure, accountable, auditable, transparent, and sustainable. Assessment of usage of technology for electoral processes must be based on the aforementioned principles.

While a biometric identification system will be able to increase efficiency in conduct of elections, adequate evaluation of the accessibility, security, transparency and accountability of the system must first be conducted. All relevant stakeholders (including political parties, voters' rights groups and voters) must be consulted and informed of the mechanics of the system before any decision to implement the system is made.

Detailed planning and allocated timeframe must be allocated for the implementation of the system including extensive trial runs of the system. Every step of the implementation process must be transparent and voters must be provided adequate information on how the new system affects them.

[14] *Bernama* (2011) "6P Programme: Companies Found To Have Modified Biometric System", 10 August 2011, http://mapo.bernama.com/news.php?id=607416

However, it must be noted that the biometric voter identification system will only be as good as the data fed into it, which in this case is the electoral roll. An example of this is that the biometric system would not be able to prevent fraudulent voters who are wrongly registered (e.g. migrants). The biometric system will only be able to have public confidence if those administrating the system and the electoral roll enjoy public confidence.

In Malaysia where many irregularities in the electoral roll have been exposed and many voters have expressed low confidence in the integrity of the EC, implementation of the biometric system would be highly unadvisable at this current stage.

Therefore, the quickest, cheapest and most reliable solution to prevent multiple voting within a short timeframe is to use indelible ink. In comparison, the use of indelible ink would be less complicated and training of election personnel can be done before any future elections take place.

5. Recommendations

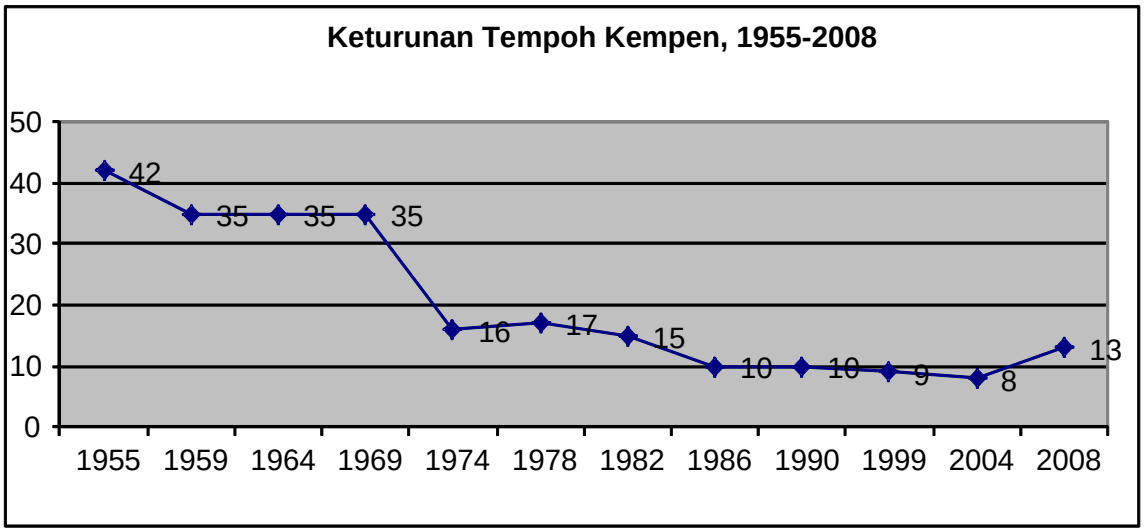
BERSIH 2.0 recommends that the Election Commission makes the necessary administrative arrangement to implement the use of indelible ink for any upcoming elections as the current election laws and regulations do not present any obstacle for the usage of indelible ink.

In addition, the EC should make necessary amendments to the relevant regulations to institutionalise the use of indelible ink during elections. However, we emphasise that the indelible ink can be used immediately even without legal amendments.

CHAPTER 4

MEANINGFUL CAMPAIGN PERIOD

BERSIH 2.0 Demand#4: 21 days Campaign Period



Graph 4.1 Number of days for campaign period

The above graph shows a decline in the number of days and it also indicate arbitrary setting of dates for the campaign period. Short campaign period (between 7-8 days) has effectively handicapped political parties that do not have access to government linked mass media and government institutions in reaching out to the voters.

There had been a campaign for a minimum of 21 days, half the length in 1955, but the Election Commission eventually only provided a short period of 13 days in 2008.

The 21 days proposal is based on the following assumptions on the length of time for overseas voters to be processed and sent back for counting on polling day:

Processes	**Number of days required**
Announcement of Nomination Day	1
Period for objection to nominated candidates	3
Printing of ballot papers Announcement for overseas voters to register for voting	3
Sending the ballot papers overseas via diplomatic pouch	5
Overseas – Distributing ballot papers to voters who reside in locations without consulate or embassies	5
Overseas – Advance voting at consulates or embassies	3 prior to

	polling day
Sending back ballot papers from consulates or embassies (counted at location) Sending back ballot papers from locations without consulate or embassies to own constituency in Malaysia	7
Counting of overseas ballot papers	1

2. Recommendations

Establish a 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 (21) 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.

CHAPTER 5

FREE AND FAIR ACCESS TO MEDIA

BERSIH 2.0 Demand #5: Free and Fair Access to Media

1. One of the most important criteria for a free and fair election is having adequate information so that voters can make an informed choice. This is where the media plays a crucial role in ensuring free and fair elections. The media is one of the pillars upon which democracy stands based on its roles of disseminating information, promoting democratic values and tenets and being the watchdog of the electoral process. Therefore, it is important for the Election Commission and the media to facilitate processes that ensure the media conducts itself in a manner that contributes to ensuring free and fair elections.

2. Access to media in the 12th General Elections

Opposition parties in Malaysia currently and in the past have had poor access to mainstream media in Malaysia. Media watchdog Centre of Independent Journalism (CIJ) conducted a media report exercise of the 12th General Elections in 2008. The report concluded that media coverage of the elections were largely favourable towards the Barisan Nasional (BN). For instance, the most widely circulated English-language newspaper, *The Star*, dedicated 63.12% of its space to pro-BN content; 5.5% were dedicated to pro-opposition stories; while its neutral stories took up 31.31% in space. Malay-language newspaper *Utusan Malaysia* allocated 82.29% space for pro-BN items and 1.89% for pro-opposition stories. Tamil-language *Makkal Osai* recorded 66% for pro-BN items and a markedly higher 23% space for pro-Opposition items[15].

3. Factors contributing to poor free and fair access to media

a. Media ownership

Mainstream media (television stations, radio stations and public newspapers) in Malaysia are either state-owned or privately owned. State-owned media outlets are Bernama and RTM. Privately owned media outlets are owned largely by component parties of the Barisan Nasional (BN) or individuals with close links to BN. This presents a situation where BN holds a monopoly over mainstream media.

The lack of diversity of private ownership of media outlets can be attributed to the Printing Presses and Publications Act 1984, which grants absolute discretionary powers to the Minister of Home Affairs to grant, revoke or suspend licences and printing permits. Any publication that publishes content that is deemed to be critical of the ruling coalition faces the threat of suspension or revocation of permits. The arbitrary use of these powers has contributed to the concentration of ownership by individuals supporting BN.

b. Content control

[15] Centre for Independent Journalism (2008) *Report on the Quantitative Analysis if the Media Monitoring Initiative for the 12th General Elections*, Kuala Lumpur.

Malaysian laws, mainly the Printing Press and Publications Act 1984, Communications and Multimedia Act 1998, Sedition Act 1948, Official Secrets Act 1972 and Internal Security Act 1960, contribute to control of content published in the mainstream media. The laws provide for wide discretionary powers to the Minister for Home Affairs and the Malaysian Communications and Multimedia Commission (MCMC) to regulate content or prosecute any individuals for publishing content deemed to be false or a threat to public order. An example of such a practice is a directive issued by the MCMC on 7 June 2007 ordering private radio and television stations not to broadcast speeches by opposition leaders[16].

Existing laws and the arbitrary and asymmetrical application of the law make it difficult for mainstream media outlets to publish content that is critical of the establishment without the risk of serious repercussion such as prosecution or suspension or revocation of licenses.

Restrictive laws and concentrated media ownership by the ruling coalition contribute to the practice of self-censorship and political bias by media practitioners.

4. Recommendations

a. The Elections Act 1958 should be amended to compel state-owned media to provide reasonably equal free airtime to contesting parties and candidates. In addition, prime ministerial public debates shall be televised.
b. The Election Offences Act 1954 should be amended to ensure fair access to private media for all contesting parties and candidates. This includes fair access to paid advertisements, fair access to news and also fair reporting (with an in-built statutory right to reply). Any media outlets that practise discrimination in access to advertising should be prosecuted.
c. The Election Offences Act 1954 should be amended to make it an offence to deliberately deny any contesting party or candidate the right to reply to any accusations made against them or him/her.
d. At the bare minimum, the Election Commission should establish a code of conduct for media on election coverage.
e. In the longer term, the Printing Presses and Publications Act 1984 and the Communications and Multimedia Act 1998 must be amended to remove restrictions of content regulation and to prevent media ownership monopolies. Repressive laws in contradiction with democratic and human rights principles such as the Sedition Act 1948 and Official Secrets Act 1972 must be repealed, as has been announced in respect of the Internal Security Act 1960.

[16] Dr. Halim Man letter to private television and radio stations (2007) *Ucapan Pemimpin Parti Pembangkang di Stesen Televisyen dan Radio Swasta*, Malaysian Communications and Multimedia Commission, 7 June 2007. See Appendix

CHAPTER 6

PROPOSED REFORMS ON STRENGTHENING PUBLIC INSTITUTIONS INVOLVED IN THE ELECTORAL PROCESS

BERSIH 2.0 Demand #6: Strengthening Public Institutions

1. Introduction

Article 113 of the Federal Constitution gives to the Election Commission the primary responsibility over the conduct of elections in Malaysia.

Article 115(2) of the Federal Constitution also provides that "[a]ll public authorities shall on the request of the Commission give the Commission such assistance in the discharge of its duties as may be practicable". Such public authorities would include the Royal Malaysian Police (PDRM) and the Malaysian Anti-Corruption Commission (MACC).

Further, over the years, other state institutions have been established at different levels by both the Federal and State Governments, ostensibly to improve the production and delivery of public goods and services to the general public. The funding for these institutions comes primarily, if not exclusively, from tax revenues paid by the *rakyat*.

In the discharge of their various roles and functions, all these institutions mentioned are expected to dutifully and responsibly serve the Malaysian public, without regard to ethnicity, religion and political affiliation. They are, in other words, expected to rise above partisan politics and are not supposed to take sides, especially in electoral contests between the different contesting parties.

2. The Election Commission

Article 114(1) of the Federal Constitution states that:

> "The Election Commission shall be appointed by the Yang di-Pertuan Agong after consultation with the Conference of Rulers…."

Article 114(2) goes on to state that:

> "In appointing members of the Election Commission the Yang di-Pertuan Agong shall have regard to the importance of securing an Election Commission which enjoys public confidence."

In order to rise above partisan politics, and in accordance with Article 114(1) of the Federal Constitution, the government of the day should NOT be consulted in the appointment of members of the Election Commission. They are to be independent of the government of the day.

A further measure of their independence is in the provision for their removal from office. Article 114(3) provides that:

> "A member of the Election Commission….shall not be removed from office except on the like ground and in the like manner as a judge of the Federal Court."

Thus it is vital that the Election Commission act independently of the government of the day.

However this is not the case. The most fundamental problem is that the Election Commission does not behave like an independent body. This may originate from the attitude and belief system of the individuals who are key figures in the Election Commission. All the members of the Election Commission are former civil servants. In Malaysia, where we have had only one party forming the government at the federal level since 1955, inevitably, senior civil servants slowly stop making the distinction between the government and the political party. When they are appointed as members of the Election Commission, they continue to act in a manner subservient to the party in power. This attitude was clearly illustrated in an interview by a team of researchers with three senior officials of the Election Commission - the then Chairman, a former Chairman and the then-Secretary of Election Commission. According to Lim (2005):

> "[they] said it is normal for them to see the Prime Minister to get his general views even before constituency reviews were begun. Examples of such reviews include keeping change to a minimum for the 1984 and 1994 re-delimitations and increasing Parliamentary seats for certain seats for the 2003 re-delimitation. The present Chairman added that, as a practical matter, requests for meeting by 'number one and number two' could not be refused, unlike similar requests from lesser political leaders.." (p. 263)[17].

More evidence of the inherent bias of the key officials is given in p. 279 of the same article. In the 6 years since this article was written, the biasness of the EC has become even more evident. In meetings and public forums we have heard how the Election Commission basically operates like another government department, with unhealthy deference being given to the government of the day. This has led to the Election Commission having lost public confidence in it.

The ultimate proof of the public's loss of confidence in the Election Commission is the "Walk for Electoral Reform" on 9 July 2011, and ultimately the convening of this Select Committee.

3. The Royal Malaysian Police (PDRM)

Under our constitution and other relevant laws, PDRM plays an important role in maintaining security and public order in an impartial manner. During an election campaign period, PDRM under current laws has a lot of power to influence the conduct of the campaign. There are at least three areas that can be highlighted.

[17] Lim, HH (2005) "Making the system work: the Election Commission", in Putucheary, M and Othman, N. (ed.), *Elections and Democracy in Malaysia*, Universiti Kebangsaan Malaysia, Bangi, p.263.

The first is that PDRM has the sole power to issue permits to political parties for holding election rallies or *ceramah*. After nomination day, the contesting parties have to apply for police permits to have their *ceramah.* In the award of the permits, the police can impose restrictions on the venue, time, duration, list of speakers, etc. PDRM has often interfered with the conduct of the opposition *ceramah* by preventing certain speakers from speaking or prescribing conditions which are more disadvantageous to the opposition. This biased behaviour has been documented in the various annual reports of the *Malaysian Human Rights Report (MHRR)* published by Suara Rakyat Malaysia (SUARAM). Further, given the fact that the opposition political parties are not given any access to television or radio, greater reliance is placed by the opposition political parties on *ceramah* to disseminate their campaign messages. Thus although on the surface PDRM may appear to be impartial in terms of the allocation of the number of permits for *ceramah*, when the actual restrictive conditions are taken into account, PDRM has effectively contributed to making the electoral playing field uneven.

Secondly, PDRM has to take prompt action in an impartial manner in cases of intimidation or violent acts by party supporters. There are many cases of police inaction on police reports made of intimidation or violence by BN supporters. There are other incidents where the police watched idly when mobs from BN intimidated or committed violence against supporters of Pakatan Rakyat. Again, these are documented in SUARAM's MHHR of 2007, 2008, 2009 and 2010 in the chapter on Free and Fair Elections.

Thirdly, there is the issue of intimidation and violence by PDRM itself. In general elections and by-elections, PDRM has sometimes indirectly intimidated opposition supporters by a big show of force. In the 2007 Ijok by-election, "Water cannons and FRU trucks and personnel were all over Ijok threatening and stopping ceramah on the basis of no permits" (SUARAM, 2007)[18]. In the Sarawak state elections of 2011, Dr Subramaniam Pillay, a member of BERSIH 2.0 Steering Committee, personally witnessed PDRM trying to disrupt a huge PR rally in Kuching on 15 April 2011, i.e., the eve of election day.

4. Agencies of the Federal Government

4.1. Jabatan Penerangan

Jabatan Penerangan comes under the Ministry of Information, Communications and Culture. This department works very closely with all the component parties of the Barisan Nasional (BN). Each component party nominates a few of its party cadres to the

[18] SUARAM (2008) "Free and fair elections", *Malaysia Human Rights Report 2007*, SUARAM, p.203

department for consideration for appointment as field information officers. All constituencies, both state and parliament, will each have one field information officer. his officer is usually, though not necessarily, from the component party that has been allotted the seat to contest in the general election. The duties of these officers are twofold. The first is to gather information from the constituents for feedback to the Jabatan Penerangan at the district level. This district level department will then compile reports based on these feedbacks for submission to the state headquarters. The latter will from time to time submit reports to the respective component parties as to the general mood of the electorate, the critical issues that are making the voters upset, the performance of the elected representatives (if they are from BN) and his or her chances of winning re-election if he or she should run again, in the constituencies relevant to the component parties. The Chief Minister or Menteri Besar will, however, get feedback on all constituencies at both state and parliamentary levels in their respective states. This information, which is available only to BN, is useful in terms of drawing up remedial programmes and the strategies that should be taken in terms of winning support from the voters.

The second important role of field information officers is to organize activities, either on their own or in collaboration with JKKKs, Residents' Associations (RAs) or Rukun Tetangga committees (RTs), in the constituencies for the elected representatives from BN. Funded by taxpayers, these activities include dinners, talks and briefing sessions on current issues, where the main speaker is usually the State Assemblyperson or the Member of Parliament from BN. These activities are carried out from time to time throughout the entire term of the State Legislative Assembly or Parliament. The frequency of such activities varies, depending on the availability of funds and the diligence of the field information officers. Nearing the date of an election or by-election, the frequency of such activities will be stepped up.

From the above description, it is clear that Jabatan Penerangan acts as a propaganda tool for BN, rather than just as a source of information on government policies for the general public. With such huge machinery placed at their disposal, candidates from BN have an unfair advantage over their rivals in an electoral contest in terms of information dissemination, publicity, image building and hence impact on the electorate. Jabatan Penerangan literally campaigns for BN during the period in-between elections and, of course, during the campaigning period between the day of nomination and polling.

Considering that Jabatan Penerangan is a government department that is fully financed by the taxpayers, its use as a propaganda machinery for only BN is certainly a misuse and abuse of state machinery and resources. Such an abuse runs counter to the concept of clean and fair elections, which among others, demands that government institutions should not be mobilized for enhancing the election prospects of the governing party.

4.2. KEMAS

The work of Jabatan Penerangan is complemented by that of KEMAS, which is under the Ministry of Rural and Regional Development. In the run-up to a federal or state

general election or by-election, KEMAS, like Jabatan Penerangan, is mobilized to help candidates from BN. Its target is women voters from the rural areas. Extra funds will be provided for it to organize activities like cooking and sewing classes in government-owned buildings such as community halls and kindergartens run by KEMAS. Sports and other outdoor carnivals with prizes may be organized as well in neighbourhood open fields. Voters, particularly women, will be encouraged to turn up at these activities. The main item in the program at these activities are speeches by the candidate from BN, the chairman of the JKKK, who usually is also the chairman of the local UMNO branch and sometimes even chairman of the divisional UMNO. They usually will use these occasions to make political speeches, often urging those present to support BN in the election. At the end, all present will be entertained to tea and snacks or sometimes, even lunch or dinner.

KEMAS has been set up purportedly to empower women through education and the promotion of entrepreneurship, as well as to democratize pre-school education opportunities among rural children. While it does some of these, it also doubles as a campaign tool for BN during election campaign periods. The mobilization of KEMAS is yet another abuse of state institutions for the purpose of enhancing the electoral prospects of BN candidates, especially in rural and semi-rural constituencies.

4.3. JKKKs

For a long time, candidates from the federal opposition have been further restricted from campaigning in rural and semi-rural constituencies because of yet another institutional obstacle – the Village Security and Development Committees or JKKKs, almost all of whose membership comprises local leaders of BN component parties, in particular UMNO. During their tenure, the chairman and members of these JKKKs, who all receive allowances paid out of public money, will arrange for visits of BN State Assemblypersons and MPs to their respective villages. Allocations for minor development projects must be based on their requests and endorsed/approved by them. Needless to say, such allocations are usually for the areas of supporters of BN. The areas identified to be strongholds of rival parties are denied such allocations. During election campaigns, JKKKs work hand in hand with both Jabatan Penerangan and KEMAS as well as independently to campaign for BN in the villages. JKKKs thus play many useful roles for BN: gathering information on the voting orientation of each and every village household; arranging for visits by State Assemblypersons and MPs from the BN; accompanying candidates from BN to go on house to house visits during election campaign period; and allocating funds only to BN friendly areas while denying them to areas identified as supportive of rival parties. Members of JKKKs are appointed by the state government. With a few states having fallen to the opposition Pakatan Rakyat (PR) after the last general election, these states now have JKKKs comprising members from PAS, Parti Keadilan Rakyat (PKR) and the DAP. However, the BN-controlled Federal Government has also appointed rival JKKKs, called Federal JKKKs, that are financed out of federal funding in all villages in these states.

The pattern of allocation of funds for development in villages in states that are controlled by BN is clearly biased in favour of BN and is deliberately aimed at enticing, if not coercing, people to continue to support BN. Members of JKKKs are party appointees. They will thus be loyal to the party that appointed them rather than serve the larger village population on the basis of need, irrespective of their party affiliation or pattern of voting.

5. The Judiciary

The judiciary is involved in the electoral process in the sense that it is the arbiter of electoral disputes. Challenges to election results are brought before a High Court which sits as an election court.

The issue of the reform of election petition laws is being presented to the Parliamentary Select Committee by other organisations. The process relating to the filing of an election petition is fraught with technicalities and often times petitions are struck out on these ground.

6. Recommendations

Many weaknesses in the electoral process have been identified.

In terms of the Election Commission, some of them arise due to inappropriate federal election laws. However other weaknesses can only be attributed to the way in which the Election Commission operates. The Election Commission must stand up for its legal and operational independence in the face of the government of the day. Members of the Election Commission must come from more than just the ranks of retired senior civil servants or others used to obeying and following the instructions from the government of the day. Other segments of society should also be represented on the Election Commission. If need be, the number of members of the Election Commission can be increased to ensure wider representation and confidence of the public.

The Election Commission also has the power to make rules under Article 113(5) of the Federal Constitution. These rules must prohibit the use of public institutions or government machinery by the government of the day in their political and election campaigns. Failure to do this will mean that in the coming 13th General Election, and in elections to come, these public institutions and government machinery will still be mobilized by the government of the day to help it in its campaign. This was done as recently as the last state election in Sarawak held in April this year. Future elections will therefore still be unfair to parties that do not have access to these institutions. The mobilization of state institutions to help in the campaign for the government of the day in a general election, when these institutions are funded by, and hence expected to serve, the general public, can aptly be described as an abuse of the election process. The Election Commission has to seriously consider ways to

overcome this unfair and biased role of many government institutions if it is genuinely interested in clean and fair elections.

In order that electoral process may be carried out in free and fair environment, the practice of a caretaker government must be adopted and practised in all sincerity. In a system of caretaker government, the party in government relinquishes decision-making powers to a caretaker administration for the duration of the election campaign. No new government funding or policy proposals may be authorised or implemented during this period of caretakership. This is to ensure that the power of incumbency is not abused.

Outside the election campaign period, the principle of civil service and administrative political neutrality must be strictly observed at all times. This includes a cooling-off period whereby senior civil servants shall not be permitted to join political parties within a specified period upon resignation or retirement.

Some of the issues can be addressed by establishing a Code of Conduct as is practised in India. The Election Commission of India has established a code of conduct which sets the standards for all parties and candidates[19].

[19] Election Commission of India (2007) *Model Code of Conduct for the Guidance of Political Parties and Candidates*, India.

CHAPTER 7

CORRUPTION DURING ELECTIONS

BERSIH 2.0 Demand #7: Stop Corruption

1. Incidences of vote buying

Vote buying is the main offence committed prior to and during elections. The Election Commission has not taken substantive steps to address this and has unfortunately in most cases ignored the commission of this offence.

"Vote-buying" may be used to cover three types of undemocratic attempts to affect election outcomes with money:

a. Outright vote-buying where private funds are given in exchange for votes, which directly violates Section 10 of the Election Offenses Act 1954 [Bribery];

b. Treating of voters using private funds, which directly violates Section 8 of the Act [Treating] and may indirectly help to breach the expenditure caps of RM 200,000 for parliamentary contest and RM 100,000 for state contest; and

c. Vote buying with public expenditure, with strings attached, and therefore violates Section 10 of the Act [Bribery].

Of these three, of the greatest threat to free and fair elections in Malaysia is the blatant abuse of public expenditure.

Example 1:
In Sibu, Sarawak, PM Najib Razak pledged first RM 300,000 then RM 50,000 to mitigate a flooding problem in the Rejang Park in a corrupt banner. He openly told the voters to strike a deal: "You help me, I help you."[20]

Example 2:
A year later, the PM's Department replied in written form to the new Sibu MP Wong Ho Leng that "based on previous court judgments, it was found that incentives such as project approvals and promises to build basic infrastructure made during election campaigns is not a form of bribery or inducement because it is in the public interest and not for individual interest."[21]

Example 3:
In a parliamentary reply to Wong Hong Leng in June 10, the PM Department announced that RM 37.72 millions were allocated during the 8-day campaign period in Sibu but claimed that the expenses were pre-planned and not linked to elections. This sum was distributed between 107 allocations in three categories: (a) 66 allocations, costing RM28,674,050.00;

[20] Malaysiakini.tv (2010) *Najib: You help me, I help you*, 15 May 2010, http://www.youtube.com/watch?v=LwNLT428PqU, last assessed on 11 November 2011.

[21] *Malaysiakini* (2010) "PM's Dept: RM5m carrot in Sibu not a crime", 16 June 2010, http://www.freemalaysiakini.com/modules.php?name=News&file=article&sid=14249, last assessed on 11 November 2011.

(b) 40 hardware development projects costing RM8,503,332.00; and (c) 1 community project costing RM550,000.00. Minister of PM Department Nazri Abdul Aziz claimed that no unplanned allocations were ever made during the 8-day election campaign period, as in all other elections.[22]

Example 4:

Treating of voters is a common practice in Malaysian elections even though it explicitly violates Section 8 of the Election Offenses Act 1954 [Treating] but this misconduct took a twist in 2011 as the treating task was taken over by a dubious NGO named "1Malaysia" throwing dinners to win especially the Chinese voters, beginning from the inland constituency of Galas, Kelantan. As many as 1,200 locals in Kampung Baru Pulai were treated to a free dinner with dishes, beer, lucky draws and performances with sexily-dressed dancers. Some local folks shouted "1Malaysia" instead of the traditional "Yum Seng!" (Bottom-up!) before toasting. While no political speech was given, the BN candidate Abdul Aziz appeared in the dinner to shake hands with the attendees. [23] By disassociating from the BN parties while campaigning subtly for them, it was hoped to evade the law.

Example 5:

The outright vote-buying practice too continued alongside with bribery with government funding and treating. In Galas, about 300 people queued up at the BN Bukit Cekati operations room allegedly to collect a reward of RM250 after voting. Tengku Razaleigh, the BN veteran leader who oversaw the campaign dismissed the allegation by saying that these were volunteers, paid for rendering their help in the campaign. The opposition PAS may also be guilty of offering to pay RM 250 per head for out-of-town voters to return home for the polls[24].

Example 6:

Vote buying was rampant during Sarawak state elections as evidenced by a testimony from a Tuai Rumah in Selangau who testified that the local candidate for BN had asked his helper to distribute RM10,000 to each long house chief. He had received it along with other long house folks[25].

Example 7:

Vote Buying Found at Postal Vote Station at Wisma Sanyan Sibu[26].

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[22] See, Lee Wei Loon, Malaysiakini (Chinese), June 23, 2010. http://www.malaysiakini.com/news/135365 and its English translation in Sarawak Indigenous Community News, June 23, 2010. "BN made RM37.72mil allocations during Sibu by-election". http://sarawaknews.wordpress.com/2010/06/23/bn-made-rm37mil-allocations-during-sibu-by-election/ both as assessed on June 26, 2011.

[23] See Malaysiakini, November 2, 2010. "'Reach for the Moon': Guan Eng" http://www.malaysiakini.com/news/147084 as assessed on June 26, 2010.

[24] See Malaysiakini, November 4, 2010. "Brown envelopes provoke suspicions" http://www.malaysiakini.com/news/147324 as assessed on June 26, 2010.

[25] See Malaysiakini.tv, 26 May 2011, "More evidence on alleged vote-buying in Sarawak", http://www.malaysiakini.tv/video/21648/more-evidence-on-alleged-vote-buying-in-sarawak.html or http://www.youtube.com/watch?v=5LeCq_cgO-A (with translation), last accessed 11 November 2011.

[26] http://www.youtube.com/watch?v=x7mrJwlJPA8&feature=related and 2009 http://www.youtube.com/watch?v=TwgM2dmBpeE

Compounded with the above examples is the recent admission of Angkatan Amanah Merdeka (Amanah) deputy president and former tourism minister Abdul Kadir Sheikh Fadzir that it was "common knowledge" that such corrupt practices occurred, especially among his Barisan Nasional (BN) colleagues, must be investigated.

It must be stressed that for many voters, the threat of denial of development benefits is a very real factor especially when there is still the uncertainly that their votes can be identified in a particular village, kampung or several blocks of streets within a constituency. In a visit by BERSIH 2.0 during the Sarawak state elections, it was found that one longhouse was denied of its development funds because it was alleged to have voted for the opposition.

2. Recommendations

a. End all vote buying as defined above and empower the EC to penalize, if not disqualify those who engage in vote buying.

b. Vigilant monitoring mechanisms pre- and during elections on vote buying must be established and a reporting system be set up to allow public to report, with evidences, vote buying.

c. Development projects announced close to and/or during election must not be allowed, unless for emergency and disaster purposes. If for such purposes, then all political parties should share the limelight.

CHAPTER 8

PROPOSED REFORMS ON ENDING DIRTY POLITICS

BERSIH 2.0 Demand #8: Stop Dirty Politics

1. A working definition

We define "dirty politics" broadly to mean the situation when statements that are false or which bear no relevance to policy are made by politicians and intentionally sensationalized and emphasized at the expense of constructive dialogue on important matters. It includes comments that are personal in nature, including comments about family members, where such comments are unwarranted.

2. An overall critique

It may be observed that in Malaysia, dirty politics occurs in various forms such as:

a. Racist threats and statements from various politicians or politically affiliated groups;

b. Violent threats to the safety and security of innocent individuals and organizations;

c. Hate-mongering towards minorities (e.g. women, religious minorities, sexual minorities) and other marginalized groups (e.g. migrant workers);

d. The defamation of the reputation of public figures;

e. The intentional distorting of issues for mischievous or malicious purposes;

f. The deliberate spreading of rumours and lies, and repetition of unproven allegations; and

g. Bribery and corruption.

Each of the above problems can be defined as electoral offences, as classified in the Elections Offences Act of 1954 ("Act"). The Act makes explicit mention of anything done or said that promotes "ill-will or hostility", "false statements" and bribery among other things.

3. Clearer and more comprehensive understanding of what constitutes electoral offences

We call for a clearer and more comprehensive understanding and definition of what constitutes "dirty politics" which ought to be covered by the Act. Alternatively we ask for the establishment of a Code of Conduct as practised in India. These would include the following:

a. No party or candidate shall include in any activity anything which may aggravate existing differences or create mutual hatred or cause tension between different communities, religious or linguistic;

b. Criticism of other political parties, when made, shall be confined to their policies and programmes, past record and work. Parties and candidates shall refrain from criticism of all aspects of private life, not connected with the public activities of the leaders or workers of other parties. Criticism of other parties or their workers based on unverified allegations or distortion shall be avoided;

c. There shall be no appeal to religious or communal feelings for securing votes. Mosques, churches, temples or other places of worship shall not be used as forum for election propaganda;

d. All parties and candidates shall scrupulously avoid all activities which are "corrupt practices" and offences under the election law. For this purpose a wide interpretation should be given to the term "corrupt practices", to include promises of separate rewards, whether to an individual, group, community or constituency, in the event of success in the elections, outside of what is contained in a party election manifesto;

e. The right of every individual for peaceful and undisturbed home-life shall be respected, however much the political parties or candidates may resent his or her political opinions or activities. Organising demonstrations or picketing before the houses of individuals by way of protesting against their opinions or activities shall not be resorted to under any circumstances;

f. No political party or candidate shall permit its or his/her followers to make use of any individual's land, building, compound wall, etc. without that individual's permission for erecting flag-staffs, suspending banners, pasting notices, writing slogans, etc.; and

g. Political parties and candidates shall ensure that their supporters do not create obstructions in or break up meetings and processions organised by other parties. Workers or sympathisers of one political party shall not create disturbances at public meetings organised by another political party by putting questions orally or in writing or by distributing leaflets of their own party. Processions shall not be taken out by one party along places at which meetings are held by another party. Posters issued by one party shall not be removed by workers of another party.

The above has been taken/adapted from the *Model Code of Conduct for the Guidance of Political Parties and Candidates* issued by the Election Commission of India[27].

4. Recommendations

We call upon the Elections Commission to strongly enforce both existing and further enhanced rules against dirty politics during an election campaign. Knowledge of these rules could be disseminated through the publication of a handbook detailing an electoral code of conduct for public awareness.

[27] See Appendix

We urge the Elections Commission to act swiftly regarding this matter. This is because "dirty politics":

a. is anti-democratic. Reasoned and clear debates are required for the *rakyat* to make the best decisions about policies that most affect the country. The attitudes and statements produced by "dirty politics" run contrary to that much needed spirit of debate;

b. creates disharmony among the *rakyat*. When hate-mongering occurs there can be very little trust or mutual respect within the complex racial and religious segments that shape Malaysia. Given the sensitive diversity of Malaysian society, political discussions must be productive, rather than destructive. We must steer our political culture towards fostering a peaceful, rather than a divided and antagonistic society; and

c. ultimately cheapens and devalues the electoral process. Not only does "dirty politics" dishonour the electoral process, in the longer term it undermines support and erodes respect for a democratic system of government.

CHAPTER 9

ELECTION OBSERVATION

BERSIH 2.0 Area of Concern: Election Observation

1. Current Situation

Currently, the EC does not invite observers, comprising respected individuals from the international community, to come and observe the conduct of general elections in our country. The last time the EC invited such an international observation team to observe an election was in 1990. After watching the conduct of the general election in 1990, this team concluded that Malaysian elections were "free but not fair". Perhaps stung by this comment, the EC never again invited an international observation team to observe the conduct of elections.

2. Rationale for Election Observation

We are of the view that the EC must recognize and acknowledge the importance of the right to observe elections by an independent and impartial team of observers. This is because such a practice allows the EC and the Malaysian public at large to get an impartial and independent verdict on the degree of fairness and cleanliness of our elections. This will provide useful feedbacks to the EC on ways to improve the processes and conduct of, as well as laws and regulations governing elections. The legitimacy of our elections will henceforth be enhanced and democratic practices further strengthened. Elections must also not be equated with democracy but be seen as being an element, albeit an important one, of a larger democratic process. Hence, elections are not just one isolated event which takes place on polling day but are part of a longer process that includes many other pre-polling activities such as intra-party selection of candidates, public campaigns, voting, counting and even judicial processes in the event of disputed results. Observation of all these will help draw up better conclusions on whether our elections are indeed clean and fair.

It is to be noted that the EC Chairperson participated in an electoral observation mission during the recent elections in Thailand. This is an indication that the EC Chairperson clearly attributes value to election observation.

3. Recommendation

The EC should make immediate arrangements to invite international election observers and to institutionalize this practice as a norm.

APPENDIX A

Suruhanjaya Komunikasi dan Multimedia Malaysia
Malaysian Communications and Multimedia Commission

63000 Cyberjaya
Selangor Darul Ehsan
Tel : 603-8688 8382
Fax : 603-8688 1009
E-mail : chairman@cmc.gov.my
http://www.cmc.gov.my

Datuk Dr Halim bin Shafie
Pengerusi/Chairman

Ruj. Kami : SKMM(S)09-CRD/220/002(005)/Jld.1(2007)

7 Jun 2007

SILA LIHAT SENARAI EDARAN

YBhg Dato'/Datuk/Tuan/Puan,

UCAPAN PEMIMPIN PARTI PEMBANGKANG DI STESEN TELEVISYEN DAN RADIO SWASTA

Adalah saya dengan hormatnya merujuk kepada perkara tersebut di atas.

2. Adalah dimaklumkan bahawa pihak Kerajaan mendapati bahawa beberapa stesen-stesen TV dan radio swasta telah menyiarkan ucapan dari pemimpin parti pembangkang.

3. Sehubungan dengan itu, pihak tuan adalah diminta untuk tidak lagi menyiarkan ucapan sedemikian di masa akan datang.

Sekian untuk perhatian dan tindakan segera pihak tuan.

Terima kasih.

Yang benar,

DATUK DR. HALIM BIN SHAFIE

s.k. YBhg. Dato' Dr. Halim Man
Ketua Setiausaha,
Kementerian Tenaga, Air dan Komunikasi
Aras 6, Blok E4/5, Parcel E
Pusat Pentadbiran Kerajaan Persekutuan
62662 PUTRAJAYA

Faks: 03-8889 3177

P.1 TO:22892579 FROM: 20-HUG-2002 16:15

APPENDIX B

MODEL CODE OF CONDUCT FOR THE GUIDANCE OF POLITICAL PARTIES AND CANDIDATES

भारत निर्वाचन आयोग
Election Commission of India

Nirvachan Sadan
Ashoka Road, New Delhi-110001

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Tel : 91-11-23717391 Fax : 91-11-23713412 Website : www.eci.gov.in

ELECTION CMMISSION OF INDIA

MODEL CODE OF CONDUCT FOR THE GUIDANCE OF POLITICAL PARTIES AND CANDIDATES

1. General Conduct

(1) No party or candidate shall include in any activity which may aggravate existing differences or create mutual hatred or cause tension between different castes and communities, religious or linguistic.

(2) Criticism of other political parties, when made, shall be confined to their policies and programme, past record and work. Parties and Candidates shall refrain from criticism of all aspects of private life, not connected with the public activities of the leaders or workers of other parties. Criticism of other parties or their workers based on unverified allegations or distortion shall be avoided.

(3) There shall be no appeal to caste or communal feelings for securing votes. Mosques, Churches, Temples or other places of worship shall not be used as forum for election propaganda.

(4) All parties and candidates shall avoid scrupulously all activities which are "corrupt practices" and offences under the election law, such as bribing of voters, intimidation of voters, impersonation of voters, canvassing within 100 meters of polling stations, holding public meetings during the period of 48 hours ending with the hour fixed for the close of the poll, and the transport and conveyance of voters to and from polling station.

(5)The right of every individual for peaceful and undisturbed home-life shall be respected, however much the political parties or candidates may resent his political opinions or activities. Organising demonstrations or picketing before the houses of individuals by way of protesting against their opinions or activities shall not be resorted to under any circumstances.

(6) No political party or candidate shall permit its or his followers to make use of

any individual's land, building, compound wall etc., without his permission for erecting flag-staffs, suspending banners, pasting notices, writing slogans etc.

(7) Political parties and candidates shall ensure that their supporters do not create obstructions in or break up meetings and processions organised by other parties. Workers or sympathisers of one political party shall not create disturbances at public meetings organised by another political party by putting questions orally or in writing or by distributing leaflets of their own party. Processions shall not be taken out by one party along places at which meetings are held by another party. Posters issued by one party shall not be removed by workers of another party.

II. Meetings

(1) The party or candidate shall inform the local police authorities of the venue and time any proposed meeting Well in time so as to enable the police to make necessary arragements for controlling traffic and maintaining peace and order.

(2) A Party or candidate shall ascertain in advance if there is any restrictive or prohibitory order in force in the place proposed for the meeting if such orders exist, they shall be followed strictly. If any exemption is required from such orders, it shall be applied for and obtained well in time.

(3) If permission or license is to be obtained for the use of loudspeakers or any other facility in connection with any proposed meeting, the party or candidate shall apply to the authority concerned well in advance and obtain such permission or license.

(4) Organisers of a meeting shall invariably seek the assistance of the police on duty for dealing with persons disturbing a meeting or otherwise attempting to create disorder. Organisers themselves shall not take action against such persons.

III Procession

(1) A Party or candidate organizing a procession shall decide before hand the time and place of the starting of the procession, the route to be followed and the time and place at which the procession will terminate. There shall ordinary be on deviation from the programme.

(2) The organisers shall give advance intimation to the local police authorities of the programme so as to enable the letter to make necessary arrangement.

(3) The organisers shall ascertain if any restrictive orders are in force in the localities through which the procession has to pass, and shall comply with the restrictions unless exempted specially by the competent authority. Any traffic regulations or restrictions shall also be carefully adhered to.

(4) The organisers shall take steps in advance to arrange for passage of the procession so that there is no block or hindrance to traffic. If the procession is very long, it shall be organised in segments of suitable lengths, so that at convenient intervals, especially at points where the procession has to pass road junctions, the passage of held up traffic could be allowed by stages thus avoiding heavy traffic congestion.

(5) Processions shall be so regulated as to keep as much to the right of the road as possible and the direction and advice of the police on duty shall be strictly complied with.

(6) If two or more political parties or candidates propose to take processions over the same route or parts thereof at about the same time, the organisers shall establish contact well in advance and decide upon the measures to be taken to see that the processions do not clash or cause hindrance to traffic. The assistance of the local police shall be availed of for arriving at a satisfactory arrangement. For this purpose the parties shall contact the police at the earliest opportunity.

(7) The political parties or candidates shall exercise control to the maximum extent possible in the matter of processionists carrying articles which may be put to misuse by undesirable elements especially in moments of excitement.

(8) The carrying of effigies purporting to represent member of other political parties or their leaders, burning such effigies in public and such other forms demonstration shall not be countenanced by any political party or candidate.

IV. Polling Day

All Political parties and candidates shall –

(i) co-operate with the officers on election duty to ensure peaceful and orderly polling and complete freedom to the voters to exercise their franchise without being subjected to any annoyance or obstruction.

(ii) supply to their authorized workers suitable badges or identity cards.

(iii) agree that the identity slip supplied by them to voters hall be on plain (white) paper and shall not contain any symbol, name of the candidate or the name of the

party;

(iv) refrain from serving or distributing liquor on polling day and during the fourty eight hours preceding it

(v) not allow unnecessary crowd to be collected near the camps set up by the political parties and candidates near the polling booths so as to avoid Confrontation and tension among workers and sympathizers of the parties and the candidate.

(vi) ensure that the candidate's camps shall be simple .The shall not display any posters, flags, symbols or any other propaganda material. No eatable shall be served or crowd allowed at the camps and

(vii) co-operate with the authorities in complying with the restrictions to be imposed on the plying of vehicles on the polling day and obtain permits for them which should be displayed prominently on those vehicles.

V. Polling Booth

Excepting the voters, no one without a valid pass from the Election Commission shall enter the polling booths.

VI. Observers

The Election Commission is appointing Observers. If the candidates or their agents have any specific complaint or problem regarding the conduct of elections they may bring the same to the notice of the Observer.

VII. Party in Power

The party in power whether at the Centre or in the State or States concerned, shall ensure that no cause is given for any complaint that it has used its official position for the purposes of its election campaign and in particular –

(i) (a) The Ministers shall not combine their official visit with electioneering work and shall not also make use of official machinery or personnel during the electioneering work.
(b) Government transport including official air-crafts, vehicles, machinery and personnel shall not be used for furtherance of the interest of the party in power;

(ii) Public places such as maidans etc., for holding election meetings, and use of

helipads for air-flights in connection with elections shall not be monopolized by itself. Other parties and candidates shall be allowed the use of such places and facilities on the same terms and conditions on which they are used by the party in power;

(iii) Rest houses, dark bungalows or other Government accommodation shall not be monopolized by the party in power or its candidates and such accommodation shall be allowed to be used by other parties and candidates in a fair manner but no party or candidate shall use or be allowed to use such accommodation (including premises appertaining thereto) as a campaign office or for holding any public meeting for the purposes of election propaganda;

(iv) Issue of advertisement at the cost of public exchequer in the newspapers and other media and the misuse of official mass media during the election period for partisan coverage of political news and publicity regarding achievements with a view to furthering the prospects of the party in power shall be scrupulously avoided.

(v) Ministers and other authorities shall not sanction grants/payments out of discretionary funds from the time elections are announced by the Commission; and

(vi) From the time elections are announced by Commission, Ministers and other authorities shall not –

(a) announce any financial grants in any form or promises thereof; or
(b) (except civil servants) lay foundation stones etc. of projects or schemes of any kind; or
(c) make any promise of construction of roads, provision of drinking water facilities etc.; or
(d) make any ad-hoc appointments in Government, Public Undertakings etc. which may have the effect of influencing the voters in favour of the party in power.

Note : The Commission shall announce the date of any election which shall be a date ordinarily not more than three weeks prior to the date on which the notification is likely to be issued in respect of such elections.

(vii) Ministers of Central or State Government shall not enter any polling station or place of counting except in their capacity as a candidate or voter or authorised agent.

FREQUENTLY ASKED QUESTIONS (FAQs)

MODEL CODE OF CONDUCT

Q. 1. What is the Model Code of Conduct?

Ans. The Model Code of Conduct for guidance of political parties and candidates is a set of norms which has been evolved with the consensus of political parties who have consented to abide by the principles embodied in the said code and also binds them to respect and observe it in its letter and spirit.

Q. 2. What is the role of Election Commission in the matter?

Ans. The Election Commission ensures its observance by political party(ies) in power, including ruling parties at the Centre and in the States and contesting candidates in the discharge of its constitutional duties for conducting the free, fair and peaceful elections to the Parliament and the State Legislatures under Article 324 of the Constitution of India. It is also ensured that official machinery for the electoral purposes is not misused. Further, it is also ensured that electoral offences, malpractices and corrupt practices such as impersonation, bribing and inducement of voters, threat and intimidation to the voters are prevented by all means. In case of violation, appropriate measures are taken.

Q. 3. From which date the Model Code of Conduct is enforced and operational upto which date?

Ans. The Model Code of Conduct is enforced from the date of announcement of election schedule by the Election Commission and is operational till the process of elections are completed.

Q. 4. What is applicability of code during general elections and bye-elections?

Ans.

a. During general elections to House of People (Lok Sabha), the code is applicable throughout the country.

b. During general elections to the Legislative Assembly (Vidhan Sabha), the code is applicable in the entire State.

c. During bye-elections, the code is applicable in the entire district or districts in which the constituency falls.

Q. 5. What are the salient features of the Model Code of Conduct?

Ans. The salient features of the Model Code of Conduct lay down how political parties, contesting candidates and party(s) in power should conduct themselves during the process of elections i.e. on their general conduct during electioneering, holding meetings and processions, poll day activities and functioning of the party in power etc.

ON OFFICIAL MACHINERY

Q. 6. Whether a Minister can combine his official visit with electioneering work?

Ans. No

The Ministers shall not combine their official visit with electioneering work and shall not also make use of official machinery or personnel during the electioneering work.

Q. 7. Whether Govt. transport can be used for electioneering work?

Ans. No

No transport including official air-crafts, vehicles etc. shall be used for furtherance of the interest of any party or a candidate.

Q. 8. Whether Govt. can make transfers and postings of officials who are related to election work?

Ans. There shall be a total ban on the transfer and posting of all officers/officials directly or indirectly connected with the conduct of the election. If any transfer or posting of an officer is considered necessary, prior approval of the Commission shall be obtained.

Q. 9. Suppose an officer related to election work has been transferred by the Govt. before enforcement of model code of conduct and has not taken over charge at new place. Can such officer take over charge of office at new place after announcement of the code?

Ans. No

Status-quo-ante shall be maintained.

Q. 10. Whether a Minister of Union or State can summon any election related officer of the constituency or the State for any official discussion during the period of elections?

Ans. No Minister, whether of Union or State, can summon any election related officer of the constituency or the State for any official discussions anywhere.

If Union Minister is traveling out of Delhi on purely official business, which cannot be avoided in public interest, then a letter certifying to this effect should be sent from the concerned Secretary of the Ministry/Department to the Chief Secretary of the concerned State, with a copy to the Election Commission.

Q. 11. Can an official meet the minister on his private visit to the Constituency where elections are being held?

Ans. No

Any official who meets the Minister on his private visit to the constituency shall be guilty of misconduct under the relevant service rules; and if he happens to be an official mentioned in Section 129 (1) of the Representation of People Act, 1951, he shall also be additionally considered to have violated the statutory provisions of that Section and liable to penal action provided thereunder.

Q. 12. Whether Ministers are entitled for official vehicle during the election?

Ans. Ministers are entitled to use their official vehicles only for commuting from their official residence to their office for official work provided that such commuting is not combined with any electioneering or any political activity.

Q. 13. Whether Ministers or any other political functionaries can use pilot car with beacon lights affixed with siren?

Ans. Minister or any other political functionary is not allowed during election period, to use pilot car or car with beacon lights of any colour or car affixed with sirens of any kind whether on private or official visit, even if the State administration has granted him a security cover requiring presence of armed guards to accompany him on such visit. This prohibition is applicable whether the vehicle is government owned or private owned.

Q. 14. Suppose there is a visit of President / Vice President at any place in the State. Is a Minister allowed to use VIP Car with other protocol?

Ans. Yes

The Minister may leave with VIP car and other protocol from his headquarters to the place of visit of President/ Vice President and return to his headquarters without attending any other function/meeting with any other political functionary. This restriction shall be applicable from the time he leaves the Headquarters and till he reaches back the headquarters.

Q. 15. Suppose a vehicle has been provided to Minister by the State and the Minister is given an allowance for maintenance of such vehicle. Can it be used by the Minister for election purposes?

Ans. Where a vehicle is provided by the State or the Minister is given an allowance for maintenance of the vehicle, he cannot use such vehicle for election.

Q. 16. Whether facility of official vehicles can be withdrawn from those ministers who violate the provisions of Model Code of conduct?

Ans. Yes

The Chief Electoral Officer shall also recover the cost of propulsion from the ministers who may misuse their official position.

Q. 17. Whether there is any restriction or visits of members of National Commission for Schedule Castes or any other similar National/State Commissions?

Ans. It is advised that all official visits of Members of such Commissions shall be deferred, unless any such visit becomes unavoidable in an emergent situation, till the completion of election exercise to avoid any misunderstanding that may arise in any quarters.

Q. 18. Whether members of Finance Commission of Govt. of India can visit State(s)?

Ans. Yes

Provided neither the press briefings nor press notes would be issued, highlighting the achievements of the State or otherwise.

Q. 19. Whether Chief Minister and other Ministers can attend New Year Day function (of the State), which is a State function?

Ans. No

Only Chief Secretary and other officials may participate and no political person including Chief Minister or Minister may participate in such function where Govt. funds are used.

Q. 20. Whether a Chief Minister/Minister/Speaker can attend a "State Day" function of a State?

Ans. There is no objection provided that he does not make any political speech on the occasion and the function is to be conducted only by Govt. officials. No advertisement depicting the photograph of Chief Minister/Minister/Speaker shall be released.

Q. 21. Whether Governor/Chief Minister/Ministers can participate and address the Convocation function of University or Institute?

Ans. Governor may participate and address the Convocation. Chief Minister or Ministers may be advised not to participate and address the Convocation.

Q. 22. Whether "Iftar Party" or any other similar party can be hosted at the residence of political functionaries, the expenses of which will be borne by State exchequer?

Ans. No

However any individual is free by to host any such party in his personal capacity and at his personal expense.

Q. 23. Is there any restriction on address of Governor in the Assembly Session (budget)?

Ans. No

ON WELFARE SCHEMES, GOVERNMENT WORKS ETC.

Q. 24. Is there any restriction on issue of advertisement at the cost of public exchequer regarding achievements with a view to furthering the prospects of the party in power?

Ans. Yes

The advertisement regarding achievements of the party at the cost of public exchequer in the print and electronic media and the misuse of official mass media during the period of election is prohibited.

Q. 25. Whether hoardings/advertisements etc. depicting the achievements of the party(s) in power at Centre/State Governments at the cost of public exchequer can be continued?

Ans. No

All such hoardings, advertisements etc. on display shall be removed forthwith by the concerned authorities. Further, no advertisements should be issued in the newspapers and other media including electronic media at the cost of public exchequer.

Q. 26. Whether a Minister or any other authority can sanction grants/ payments out of discretionary funds?

Ans. No

Ministers and other authorities shall not sanction grants/payments out of discretionary funds from the time elections are announced.

Q. 27. Whether money can be withdrawn from treasury against the sanctioned amount from the discretionary funds of Ministers to prepare draft in the names of beneficiaries which may be disbursed after process of election is completed?

Ans. The funds may either be kept in "Personal Ledger Account" of the concerned Department or the release may be deferred till the completion of elections.

Q. 28. Suppose work order has been issued in respect of a scheme or a programme. Can it be started after announcement of election programme?

Ans. Work shall not be started in respect of which work order has been issued before announcement of election but the work has actually not started in the field. If a work has actually started in the field that can be continued.

Q. 29. Whether fresh release of funds under MPs/MLAs/MLCs Local Area Development Fund of any scheme can be made?

Ans. No

Fresh release of funds under MPs/MLAs/MLCs Local Area Development Fund of any scheme shall not be made in any area where election is in progress, till the completion of the election process.

Q. 30. There are various rural development programmes/ schemes of Central government like Indira Awas Yojana, Sampoorna Grameen Rozgar Yojana, Swaranjayanti Gram Swarozgar Yojana, National Food for Work programme, National Rural Employment Guarantee Act. Are there any guidelines for implementation of these schemes/programmes?

Ans. Yes

Following guidelines shall be followed in respect of each scheme/programme as enumerated below:-

a) **Indira Awas Yojana (IAY)**

Beneficiaries, who have been sanctioned housing scheme under IAY and have started work, will be assisted as per norms. No new constructions will be taken up or fresh beneficiaries sanctioned assistance till the elections are over.

(b) **) Sampoorna Grameen Rozgar Yojana (SGRY)**

Continuing works in progress may be continued and funds earmarked for such works can be released. In case of any Panchayat where all ongoing works have been completed and there is a requirement for taking up new wage employment works and where funds released directly to the Panchayats from the Ministry of Rural Development are available, new works can be started from approved annual action plan for the current year with the prior consent of the District Election Officer. From other funds, no new works shall be started.

c **) Swaranjayanti Gram Swarozgar Yojana (SGSY)**

Only those help groups which have received part of their subsidy/grant will be provided the balance installments. No fresh individual beneficiaries or SHGs will be given financial assistance till the elections are over.

(d) National Food for Work Programme(NFWP)

There is no objection for continuance of old works and sanction of new works in those districts where no elections have been announced. In those districts where elections have been announced and are in progress, only those works may be undertaken that have already started physically on ground, provided outstanding advance given for implementation of such works at a given time shall not exceed the amount equivalent to work for 45 days.

e) National Employment Rural Guarantee Act (NERGA)

The Ministry of Rural Development shall not increase the number of districts in which it is being implemented after announcement of elections. The job card holders will be provided employment in the ongoing work, if they demand work, after announcement of elections. In case no employment can be provided in ongoing works, the competent authority may start new work(s) from the shelf of projects that has been approved and inform the fact to concerned District Election Officer (DEO). No new work shall be started by the competent authority till such time employment can be given in ongoing works. In case no shelf of project is available or all works available on shelf have been exhausted, then the concerned competent authority shall make a reference to the Commission for approval through the concerned DEO. The competent authority shall also furnish a certificate to DEO to the effect that the new work has been sanctioned as no employment can be given to the job card holder in the ongoing work.

Q. 31. Whether a Minister or any other authority can announce any financial grants in any form or promises thereof or lay foundation stones etc. of projects or schemes of any kinds etc.?

Ans. No

Ministers and other authorities shall not announce any financial grants in any form or promises thereof; or (except civil servants) lay foundation stones etc. of projects or schemes of any kind; or make any promise of construction of roads, provision of drinking water facilities etc. or make any ad-hoc appointments in Government, Public Undertakings etc.

In such case, senior Govt. Officer may lay foundation stone etc. without involving any political functionary.

Q. 32. A budget provision has been made for a particular scheme or the scheme has been sanctioned earlier. Can such scheme be announced or inaugurated?

Ans. No

Inauguration/announcement of such scheme is prohibited during election period.

Q. 33. Whether ongoing beneficiary scheme can be continued?

Ans. No

The processing of beneficiary oriented scheme, even if ongoing, shall be suspended during election period. Further, no fresh release of funds on welfare schemes and works should be made.

Q. 34. Suppose work order has already been issued for a scheme. Can work be started in respect of such scheme?

Ans. No work shall be started in respect of which even if work orders have already been issued, if the work has actually not started in the field. Work can start only after the completion of election process. However, if a work has actually started, that can be continued.

Q. 35. Is there any bar to release of payments for completed work?

Ans. There shall be no bar to the release of payments for completed work subject to the full satisfaction of the concerned officials.

Q. 36. How the Govt. may meet the emergency situation or unforeseen calamities, when there are restrictions for announcing welfare measures?

Ans. For tackling emergencies or unforeseen calamities like providing relief to people suffering from drought, floods, pestilences, other natural calamities or welfare measures for the aged, infirm etc., Govt. may do so after obtaining prior approval of the Commission and all ostentatious functions shall be strictly avoided and no impression shall be given or allowed to be created that such welfare measures or relief and rehabilitation works are being undertaken by the Government in office with any ulterior motive.

Q. 37. Whether financial institutions funded, partially or wholly by the Governments can write off loans advanced to any individual, company, firm, etc.?

Ans. No

The financial institutions funded, partially or wholly by the Governments shall not take recourse to writing off loans advanced to any individual, company, firm, etc. Also, financial limits of such institutions, while granting or extending loans, should not be enhanced by issuing of loans indiscriminately to beneficiaries.

Q. 38. Whether tenders, auctions etc. relating to matters such as liquor vends, Tendu leaves and other such cases can be processed?

Ans. No

Processing of such cases should be deferred till the completion of election process in the concerned areas and the Govt. may make interim arrangements where unavoidably necessary.

Q. 39. Suppose contract for Toll Tax is expiring at the end of financial year (31st March of the year), for which auction date has already been proposed/advertised. Whether auction can be held for awarding the contract?

Ans. Yes

Provided the contract is supervised by the Commissioner/Divisional Commissioner or some other senior District Officer directly answerable to the Commissioner/Divisional Commissioner and there is no change in the earlier policy or auction procedure.

Q. 40. Whether meeting of Municipal Corporation, Nagar Panchayat, Town Area Committee, etc. can be convened to review the revenue collection and preparing draft anuual budget etc?

Ans. Yes

Provided that at such meetings only the matters of routine nature relating to day-to-day administration may be taken up and not the matters relating to its policies and programmes.

Q. 41. Whether function regarding "Stop TB" programme can be held which may be inaugurated by a political functionary and whether an advertisement on "World TB Day" can be released and published?

Ans. There is no objection provided –

i. during the inauguration ceremony, no political speeches are made,
ii. no advertisement with photographs of PM and / or any Minister is issued, and
iii. advertisements and speeches are confined to the subject of combating and eradication of TB only.

Q. 42. Whether political functionaries can participate in the celebration of "Sadbhavna Diwas" which is celebrated through out the country?

Ans. The Central Ministers / Chief Minister / Ministers in the States and other political functionaries can participate in the celebration of "Sadbhavna Diwas" subject to condition that the "theme" of their speeches should be confined only to the promotion of harmony among the people' and no political speech should be made. Messages, if any, issued in the name of Minister should be confined to the theme of national integration only and should carry no photograph of the concerned Minister.

Q. 43. Whether State-level functions can be held for observance of Martyrdom of Martyrs which may be presided/attended to by Chief Minister / Minister?

Ans. Yes

Provided that the speeches of the Chief Minister and other Ministers should restrict to the Martyrdom of the Martyrs and praising them. No political speech or speech enumerating or referring to the achievements of the Government or party in power should be made.

Q. 44. Whether birthday celebration of Shri Babu Jagjivan Ram and Dr. B.R. Ambedkar which falls on 5th April and 14th April respectively as a State function may be conducted?

Ans. Yes

Provided it is not used as an occasion for political campaign or highlighting public achievements of the Govt. and also there is no ostentation and no political functionary addresses such meetings. The above restriction shall be equally applicable in all such other functions.

Q. 45. Whether Kavi Sammelan, Mushiaras or other cultural functions can be organized in connection with the Independence Day/Republic Day celebration and whether political functionaries can attend the same?

Ans. Yes

The Central Ministers / Chief Minister / Ministers in the States and other political functionaries can attend the programme. However, it will be ensured that no political speeches highlighting the achievements of the party in power are made on the occasions.

Q. 46. Whether films can be telecast on the occasions of birth and death anniversaries / ceremony anniversaries of prominent leaders in which VVIPs/VIPs may likely to feature?

Ans. May not be telecast, in case the coverage involves VVIPs/VIPs.

Q. 47. Whether media campaign can be made for effective implementation of statutory warnings, etc. on sale of cigarettes and other tobacco products?

Ans. Yes

Provided that photos/messages of political personalities etc. shall not be associated with the campaign.

Q. 48. Whether political advertisements can be printed on back side of the bus-ticket of Govt. owned buses?

Ans. No

Q. 49. Whether Govt. can release convicted criminals on parole after following due procedures?

Ans. If the Govt. feels that the release of any convict on parole is absolutely essential for certain compelling reasons, in that case Govt. shall consult the Chief Electoral Officer before granting parole.

Q. 50. Whether minimum support price of wheat and other agricultural products can be determined?

Ans. A reference in the matter shall be made to the Election Commission.

Q 51. Whether the Government can proceed and act upon the following indicative illustrative list of items, which is <u>not</u> exhaustive, without obtaining clearance/approval from the Election Commission?

(i) Extension of term of an official for further period except officials related to conduct of elections,

(ii) Enhancement of minimum penalty in case of ticket less travel,

(iii) Sanctioning of grants to consumer co-ordination council from consumer welfare fund to organize a conference on world consumer rights day,

(iv) Issuing advertisement regarding pulse polio immunization programme,

(v) Seeking financial assistance from National Calamity Contingency Fund for drought relief measure-deputing of Inter-Ministerial team of officers to visit concerned State,

(vi) Request of the State Govt. for transportation of water and fodder by Rail in areas declared drought affected,

(vii) Promotion of officials by convening DPC and filling regular posts falling due to retirement, deputation, etc.,

(viii) Appointment of persons on compassionate grounds in pursuance of Court's orders,

(ix) Celebration of "May-Day",

(x) Providing additional charge of office of one officer to another one,

(xi) **To call and finalize tenders of routine, repair maintenance, strengthening and upgradation public utilities being run by the local authorities,**

(xii) **Replacement/repair or damaged water supply distribution pipes,**

(xiii) **To issue work order of construction of public facilities and public toilets on BOT basis in pursuance of Court's directions,**

(xiv) **To conduct the election of college students union,**

(xv) **Clearance of unauthorized structure/land as per orders of Court,**

(xvi) **Release of advertisement for activities relating to control of HIV/AIDS,**

(xvii) **Release of advertisement to create awareness about important provisions of labour laws,**

(xviii) **Purchase of uniform clothes and equipments for Police and awarding of Tender thereof,**

(xix) **Commencement of desilting of drain/cattle ponds**

(xx) **Grant of financial upgradation under assured career progression scheme to employees,**

(xxi) **Calling of tenders for work to control mosquitoes**

(xxii) **Transfer/posting of doctors,**

(xxiii) **To shift criminals from one jail to other jail in pursuance of Court's orders,**

(xxiv) **To form Committee for stock of chemical fertilizer for Kharif and Rabi crops ,**

(xxv) **To purchase medicine and equipments for hospitals for which grants have already been sanctioned and tenders for which were already called for.**

(xxvi) **Recruitment rally to enroll youth into the Army,**

Ans. Yes

Provided that no impression is given or created that the same has been done with a view to influencing the electorate in favour of ruling party. Further, in the case of advertisements, photo of Minister/political functionary should not be contained therein.

Q. 52. Whether the Government can proceed and act upon the following indicative illustrative list of items, which is <u>not</u> exhaustive, without obtaining clearance from the Commission?

(i) Issuing sanction orders to out of turn PCO/Telephone connections and to nominate members to various Telephone Advisory Committees which were ordered by the minister before the elections.

(ii) Issue of appointment order to a person as a part time non-official Director on the board of PSU after Cabinet's approval.

(iii) Fixing of tariff for Major Port Trusts by Tariff Authority for major ports.

(iv) Sanctioning of grants From Consumer Welfare fund to eligible voluntary consumer organizations as per guidelines.

(v) Implementation of SEZ rules and regulations

(vi) Publication of a booklet titled "Year of Achievement of the Department" highlighting the salient achievement of the Department,

(vii) Anganwadi Karyakartri Bima Yojana, an insurance scheme under the LIC's social security group scheme for anganwadi workers and helpers,

(viii) Appointment of Central Govt. nominees to the General Council as well as Executive Committee of National Council for Teachers Education,

(ix) Recruitment drive only for wards of serving/retired service personnel as a welfare measures for troops.

(x) Issue of advertisements in newspapers and video & audio spots on generic advertisement of processed food,

(xi) Issue of Notification for setting up a new Promotion Council for pharmaceutical sector,

(xii) Appointment of a person as a Sr. Consultant from a Private Company as Head of the internal system group to review the ongoing projects and E-governance initiatives with the

Ans. No

The processing of aforesaid items may be deferred till the completion of elections.

Q. 53. Whether State Govt. can seek clarification/ clearance/approval in respect of any proposal directly from the Election Commission?

Ans. No

Any proposal from State Govt. for seeking clarification/clearance/approval from the Election Commission should only be routed through Chief Electoral Officer, who will make his recommendation or otherwise in the matter.

ELECTION CAMPAIGN

Q. 54. What are the main guidelines for political parties/candidates while making election campaign?

Ans. During the election campaign, no party or candidate shall indulge in any activity which may aggravate existing differences or create mutual hatred or cause tension between different castes and communities, religious or linguistic. Further, criticism of other political parties, when made, shall be confined to their policies and programme, past record and work. Parties and candidates shall refrain from criticism of all aspects of private life, not connected with the public activities of the leaders or workers of other parties. Criticism of other parties or their workers based on unverified allegations or distortion shall be avoided.

Q. 55. Are their any restrictions in using religious places for election propaganda?

Ans. Yes

Religious places like Temple, Mosque, Church, Gurudwara or other places of worship shall not be used as forum for election propaganda. Further, there shall be no appeal to caste or communal feelings for securing votes.

Q. 56. Can a candidate go to the office of Returning Officer for filing a nomination with a procession?

Ans. No

The maximum number of vehicles that will be allowed to come within the periphery of 100 mtrs. of Returning Officer's office has been restricted to 3 and maximum number of persons that will be allowed to enter the office of Returning Officer has been limited to 5 (including the candidate).

Q. 57. How many persons are allowed at the time of scrutiny of nominations by the Returning Officer?

Ans. The candidate, his election agent, one Proposer and one other person (who can be an advocate) duly authorized in writing by the candidate, but no other person, may attend at the time fixed for scrutiny of nominations by Returning Officer.

(Refer: Sec. 36 (1) of Representation of People Act, 1951)

Q. 58. Are there any guidelines regarding use of vehicles by ministers/political functionaries/candidates, who have been provided security cover by the State?

Ans. Yes

In respect of persons covered by security, the use of State owned one bullet proof vehicle for the particular person (PP) will be permitted in all cases where the security agencies, including the intelligence authorities, have prescribed such use. The use of multiple cars in the name of stand-by should not be permitted unless so specifically prescribed by security authorities. The cost of propulsion of such bullet proof vehicles where such use of bullet proof vehicles is specified will be borne by the particular person. The number of vehicles to accompany the carcade including pilots, escorts etc. will be strictly in accordance with the instructions laid down by the security authorities and shall not exceed them under any circumstances. The cost of propulsion of all such vehicles, whether owned by Government or hired vehicles, will be met by the State Government.

The restrictions do not apply to the Prime Minister whose security requirements are governed by the Government's Blue Book.

Q. 59. Whether there is any restriction for plying of vehicles for electioneering purposes?

Ans. Candidate can ply any number of vehicles (all mechanized/motorized vehicles including two- wheelers) for the purpose of election campaign but he has to seek prior approval of the Returning Officer for plying such vehicles and must display permit issued by Returning Officer in original (not photocopy) prominently on the windscreen of the Vehicle. The permit must bear the number of the vehicle and name of the candidate in whose favour it is issued.

Q. 60. Whether a vehicle for which permission has been taken for election campaign in the name of a candidate, can be used for election campaign by another candidate?

Ans. No

Use of such vehicle for election campaign by another candidate shall invite action under section 171H of Indian Penal Code.

Q. 61. Can a vehicle be used for electioneering purposes without getting permit from the District Election Officer/Returning Officer?

Ans. No

Such vehicle shall be deemed to be unauthorized for campaigning by the candidate and may attract penal provisions of Chapter IX A of the Indian Penal Code and shall therefore be immediately out of the campaigning exercise and shall not be used for further campaign.

Q. 62. Whether there is any restriction on use of educational institutions including their grounds (whether Govt. aided, Private or Govt.) for political campaigns and rallies?

Ans. Use of educational institutions including their grounds (whether Govt. aided, Private or Govt.) for political campaigns and rallies is not allowed.

Q 63. Is external fitting/modification allowed in the vehicles used for campaigning?

Ans. External modification of vehicles including fitting of loudspeaker thereon, would be subject to the provisions of the Motor Vehicles Act/Rules as well as other Local Act/Rules. Vehicles with modifications and special campaign vehicles like Video Rath etc. can be used only after obtaining the requisite permission from the competent authorities under the Motor Vehicles Act.

Q. 64. Is there any restriction or use of rest houses, dak bungalows or other Govt. accommodation for campaign office or for holding any public meeting for the purpose of election propaganda?

Ans. Yes

Rest houses, dak bungalows or other Govt. accommodation shall not be monopolized by the party in power or its candidates and such accommodation shall be allowed to use by other parties and candidates but no party or candidate shall be allowed to use as campaign office.

Further, it shall be ensured that –

(i) no functionary can use the Circuit House, Dak bungalow to set up campaign office as the Circuit Houses/Dak bungalows are only for temporary stay (boarding and lodging) during transit of such functionaries,

(ii) even casual meeting by Members of political parties inside the premises of the Government owned guesthouse etc. are not permitted and any violation of this shall be deemed to be a violation of the Model Code of Conduct,

(iii) only the vehicle carrying the person allotted accommodation in the guest house and not more than two other vehicles, if used by the person, will be permitted inside the compound of the Guest House,

(iv) rooms should not be made available for more than 48 hours to any single individual, and

(v) 48 hours before the close of poll in any particular area, there will be freeze on such allocations till completion of poll or re-poll.

Q. 65. Are there any conditions for getting Govt aircraft/helicopters (including Public Sector Undertakings) by political parties/candidates?

Ans. Yes

While allowing the chartering of Govt. aircrafts/helicopters to political parties/candidates or private companies etc., the following conditions should be followed:-

i There should be no discrimination between the ruling party on the one hand and the other parties and contesting candidates on the other.

ii The payment will be made by the political parties or the contesting candidates and proper record maintained.

iii The rates and terms and conditions should be uniform for all.

iv The actual allotment should be made on the first-come first-served basis. For this purpose, the date and time of receipt of the application should be noted down by the authorized receiving authority.

v In the rare case when both the date and time of two or more applicants is the same, the allotment will be decided by draw of lots.

vi No individual, firm, party or candidate will be allowed to charter the aircraft/helicopter for more than three days at a time.

Q. 66. Is there any restriction on displaying poster, placard, banner, flag etc of the party concerned or the candidate on a <u>public property</u>?

Ans. Candidate may display poster, placard, banner, flag etc of the party concerned or the candidate on a public property subject to provisions of local law and prohibitory orders in force. For details, refer Commission's instructions No.3/7/2008/JS-II,dated 7.10.2008.

Q. 67. If local law/bye-laws permit wall writings and pasting of posters, putting up hoardings, banners etc. on <u>private premises/properties,</u> is it necessary to obtain prior written permission from the owner of the premises/properties?

Ans. Yes

Candidate is required to obtain prior written permission from the owner of the properties/premises and photocopy(ies) of such permission should be submitted within 3 days to the Returning Officer or an officer designated by him for the purpose.

Q. 68. Is there any restriction on displaying/carrying poster/ placard/ banner/flag of the party concerned or of the candidate on the vehicle during the procession?

Ans. Candidate may display /carry one poster/placard/banner/flag of Candidate's party/or his own on vehicle during the procession subject to conformity with the provisions of Motor Vehicle Act and any other local laws/bye-laws.

Q. 69. Whether there is any ban on use of plastic sheets for making use of posters/banners during the election campaign?

Ans. The political parties and candidates should try to avoid the use of plastic/polythene for preparation of posters, banners etc. in the interest of environmental protection.

Q. 70. Is there any restriction on the printing of pamphlets, posters etc?

Ans. **Yes**

Candidate shall not print or publish, or cause to be printed or published any election pamphlet or poster which does not bear on its face names and addresses of the printer and the publisher thereof.

(Refer : Section 127A of Representation of 1951)

Q. 71. Whether there is any restriction on air dropping of leaflets/pamphlets by the Political parties/candidates?

Ans. No

Provided that all the expenses in this regard have been booked against the election expenses of the candidate, on whose behalf the leaflets/pamphlets are being dropped.

Q. 72. Is wearing of special accessories like cap, mask, scarf etc. of a candidate permitted during the campaigning?

Ans. Yes, provided they are accounted for in the election expenses of the candidate concerned. However supply and distribution of main apparels like saree, shirt, etc. by party/candidate is not permitted as it may amount to bribery of voters.

Q. 73. Whether dummy ballot units of EVM can be prepared by the candidate for the purpose of educating the voters?

Ans. Yes

The dummy ballot units may be made of wooden, plastic or ply board boxes, half the size of the official ballot units and may be painted brown, yellow or grey.

Q. 74. Whether there is restriction to display to the public any election matter by means of cinematograph, television or other similar apparatus?

Ans. Yes

Candidate can not display to the public any election matter by means of cinematograph, television or other similar apparatus during the period of 48 hours ending with the hour fixed for the conclusion of poll.

(Refer: Sec. 126 of Representation of People Act, 1951)

Q. 75. Whether a candidate can print and distribute the diary/calendar/sticker depicting his image or image of Gods/ deities etc.

Ans. No

This will amount to bribery under section 171E of Indian Penal Code.

Q. 76. Whether distribution of printed "Stepney Covers" or other similar material containing symbol of party/candidate or without depicting it, is a violation?

Ans. Yes

In case, it is established that such material have been distributed, a complaint may be filed before the area Magistrate by District Administration against the distribution of the said material under section 171 B of the IPC.

Q. 77. Are there conditions/guidelines for setting up and operating of Temporary Offices by Party or candidate?

Ans. Yes

Such offices can not be opened by way of any encroachment either on public or private property/ in any religious places or campus of such religious places/ contiguous to any educational institution / hospital / within 200 meters of an existing polling station. Further, such offices can display only one party flag and banner with party symbol/photographs and the size of the banner used in such offices should not exceed '4 feet *X* 8 feet' subject to the further condition that if the local laws prescribe a lower size for banner / hoarding etc., then the lower size prescribed by local law shall prevail.

Q. 78. Is there any restriction on the presence of political functionaries in a constituency after campaign period is over?

Ans. Yes

After the closure of campaign period (starting from 48 Hrs. before closure of poll), political functionaries etc. who have come from outside the constituency and who are not voters of the constituency should not continue to remain present in the constituency. Such functionaries should leave the constituency immediately after campaign period is over. This will not apply in the case of candidate or his election agent even if they are not voters in the constituency.

Q. 79. Is such restriction applicable in the case of office bearer of a political party who is <u>in-charge</u> of election in the State?

Ans. Yes

However, such restriction is not insisted upon during the general elections to Lok Sabha/State Assembly only in respect of the office bearer who is <u>in-charge</u> of the State during the election period. Such office bearer shall declare his place of stay in the State Headquarters and his movement during the period in question shall remain confined normally between his party office and place of his stay**. The above restrictions will be applicable to all other functionaries in all elections**.

Q. 80. Whether there is any restriction for holding public meeting or taking out processions?

Ans. Yes.

Prior written permission should be obtained from the concerned police authorities for holding of a meeting at any public or private place and for taking out processions.

Q. 81. Whether loudspeakers can be used for public meetings or for processions or for general propaganda without obtaining permission from Police authorities?

Ans. No.

Prior written permission should be obtained from the concerned police authorities for using loudspeakers.

Q. 82. Whether there is any time limit for using loudspeakers?

Ans. Yes.

Loudspeaker can not be used at night between 10.00 P.M. and 6.00 A.M.

Q. 83. What is the deadline after which no public meetings and processions can be taken out?

Ans. Public meetings cannot be held after 10 PM and before 6.00 AM. Further, Candidate can not hold public meetings and processions during the period of 48 hours ending with the hour fixed for the conclusion of poll. Suppose, poll day is 15th July and hours of poll are from 8.00A.M to 5.00 P.M., then the public meetings and processions shall be closed at 5.00 P.M on the 13th July.

(Refer: Sec. 126 of Representation of People Act, 1951)

Q. 84. Whether there are any guidelines for political parties/candidates for issue of unofficial identity slips to voters?

Ans. Yes.

The unofficial identity slip, on white paper, shall contain only the particulars of the voter i.e. name, Serial number of voter, part No. in the electoral roll, s.no. and name of Polling Station and date of Poll. It should not contain the name of candidate, his photograph and symbol.

Q. 85. Is there any restriction on appointment of a Minister/M.P./M.L.A/M.L.C or any other person who is under security cover as an Election Agent/Polling Agent/Counting Agent?

Ans. Yes

A candidate cannot appoint a Minister/M.P./ MLA/MLC or any other person who is under security cover, as an election/polling agent/counting agent, as his personal security shall be jeopardized with such appointment, because his security personnel will not under any circumstances be permitted to accompany him into the 100 meter perimeter of polling stations described as the “Polling Station Neighborhood” and within the polling booth and campus of counting centre and within the counting centre. Also any person having security cover will not be allowed to surrender his security cover to act as such agent of a candidate.

Q. 86. Is a candidate allowed to appoint persons as polling agents from anywhere?

Ans. No

Such person who is appointed by the candidate as a polling agent must be an ordinarily resident and elector of the concerned polling station area only and not from outside the concered polling area. Such person must also have Elector's Photo Identity Card.

However, in the case of polling stations exclusively manned by the women polling personnel, the restriction of resident of same polling area shall not be applied for.

Q. 87. Who is the authority to issue permits to Star Campaigners (Leaders) of the Political Parties who avail benefit under Section 77(1) of R.P Act, 1951?

Ans. In case the mode of road transport is to be availed of by Star Campaigners (Leaders) of political, the permit will be issued centrally by the Chief Electoral Officer. If such party applies for issue of permit for the same vehicle to be used by any leader for election campaigning throughout the State, the same may be issued for such vehicle centrally by the Chief Electoral Officer, which will be prominently displayed on windscreen of such vehicle(s) to be used by concerned leader(s). If different vehicles are to be used by such party leaders in different areas, then the permit can be issued against the name of the person concerned who will display it prominently on the windscreen of the vehicle being used by such leader.

Q. 88. Whether Opinion poll or Exit poll can be conducted, published, publicized or disseminated at any time?

Ans. No

The result of any opinion poll or exit poll conducted shall not be published, publicized or disseminated in any manner by print, electronic or any other media, at any time-

(a) during the period of 48 hours ending with the hour fixed for closing of poll in an election held in a single phase; and

(b) in a multi-phased election, and in the case of elections in difference States announced simultaneously, at any time during the period starting from 48 hours before the hour fixed for closing of poll in the first phase of the election and till the poll is concluded in all the phases in all States.

Q. 89. Whether there is any restriction for transmitting Short Messages Service (SMSs)?

Ans. Yes

Transmitting objectionable messages on SMSs during election is prohibited. For objectionable SMSs which may violate the law and ECI instructions issued in this behalf, the police authorities shall advertise special mobile numbers on which the receiver of such SMS can forward the said SMS with the mobile number of sender. The police authorities shall take action under the law.

POLL DAY

Q. 90. Are there any guidelines for setting up of election booth by candidate/political parties near polling station on the day of poll?

Ans. Election booth can be set up beyond a distance of 200 meters from the polling stations, only with 1 table and 2 chairs with an umbrella or a piece of tarpaulin or cloth to protect the two occupants. Only one banner (3 x $41^{/2}$ feet) can be displayed showing the name of the candidate/ party / election symbol at the booth. However, two election booths can be set up, if more than two polling stations have been set up in a building

Q. 91. Is it necessary to obtain written permission of the concerned Government authorities or local authorities for setting up of election booth?

Ans. Yes

It is necessary to obtain the written permission of the Government authorities concerned or local authorities before setting up of such booths. Written permission must be available with the persons manning the booth for production before the police /election authorities concerned on demand.

Q. 92. Is there any restriction of canvassing in or near polling station?

Ans. Yes

Canvassing for votes etc. within a distance of one hundred meters of polling station is prohibited on the day of poll.
(Refer : Section 130 of Representation of 1951)

Q. 93. Whether the use of mobile phone is allowed in the polling station?

Ans. No person is allowed to either carry or use mobile phones, cordless phones, wireless sets etc. in 100 meter perimeter of the polling stations described as the "polling station neighborhood" and within the polling booth.

Only Observer/Micro Observer, Presiding Officer and security personnel are allowed to carry mobile phone but they will keep their mobile phones in silent mode.

Q. 94. Is there any restriction of going armed to or near polling station?

Ans. Yes

No person is allowed to go armed with arms as defined in Arms Act 1959 of any kind within the neighborhood of a polling station on the day of poll.

(Refer: Section 134B of Representation of 1951)

Q. 95. How many vehicles a candidate is entitled for on the day of poll?

Ans.

(i) For an **election to the House of the People**, a candidate will be entitled to:

(a) One vehicle for candidate's own use in respect of the entire constituency. One vehicle for use of candidate's election agent for entire constituency.

(b) In addition, one vehicle for use of candidate's workers or party workers, as the case may be, in each of the assembly segments comprised in the Parliamentary Constituency.

(ii) For an **election to the State Legislaitve Assembly**, a candidate will be entitled to:

(a) One vehicle for candidate's own use

(b) One vehicle for use of candidate's election agent

(c) In addition, one vehicle for use of candidate's workers or party workers.

Q. 96. If the candidate is absent from the constituency on the day of poll, can the vehicle allotted in his name be used by any other person?

No

Vehicle allotted for candidate's use is not allowed to be used by any other person.

Q. 97. Can any type of entitled vehicle be used on the day of poll?

Ans. No

The candidate or his agent or party workers or workers will be allowed to use only four/three/two wheeler vehicles i.e. cars (of all types), taxis, auto rickshaws, rickshaws and two wheelers. In these vehicles not more than five persons including drivers are allowed to move on the day of poll.

Q. 98. Whether Political Party/Candidate can make arrangements for transporting voter to and from Polling Station?

Ans. No.

Any arrangement, direct or indirect, to carry any voter to or from polling station by any kind of vehicle used for transport is a criminal offence.

(Refer: Sec. 133 of Representation of People Act, 1951)

Q. 99. Whether there are restrictions on plying of Govt./private vehicles on the poll day?

Ans. No

Public transport like buses, minibuses are allowed to ply but it should be ensured that they are not used clandestinely for the conveyance of voters. Further, private cars, taxies carrying passengers to places other than polling booths like hospitals, airports, railway stations, bus stands, friends and relations houses, clubs, and restaurants will be allowed on the road. But they should not be allowed to come clandestinely near the polling areas for the conveyance of voters.

Q. 100. Can a leader of Political party use private fixed-wing aircraft and helicopters for the purposes of supervising and monitoring the polling and counting process on the day of poll and counting?

Ans. No

Leader of a political party is not allowed to use private fixed-wing aircraft and helicopters for the purposes of supervising and monitoring the polling and counting process on the day of poll and counting.

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