

BERSIH 2.0's Preliminary Post-Election Findings on Malaysia's 14th General Elections

14 May 2018

Malaysia's 14th General Elections (GE14) were rife with corruption, fraud and malpractice. Election laws were ignored or enforced in an arbitrary and often biased manner. This preliminary post-election report is a snapshot of the issues observed in the 14th General Elections. These findings are based on over 1,000 complaints made to BERSIH 2.0 on the conduct of GE14.

This summary includes complaints that have gone through preliminary checks for validity, but have not yet been fully verified by our PEMANTAU coordinators. BERSIH 2.0 is also still receiving reports and encourages members of the public, election workers, candidates and polling and counting agents to lodge reports online at aduan.pemantau.org, via WhatsApp (011-17721546) or phone 03-79314444.

Pre-Polling Day Bias and Fraud

BERSIH 2.0 reiterates its Preliminary Findings on GE14 issued on 6 May 2018 (Appendix 1). The pre-election findings were based on ongoing monitoring of the electoral system since 2006 and observation of election offenses from 1 November 2017 – 6 May 2018.

The Election Commission was found to have failed to command public confidence in managing the electoral process and system of Malaysia and ruined the integrity of GE14. This was namely through:

1. Unconstitutional redrawing of election boundaries that was designed to unfairly benefit Barisan Nasional.
2. Failure to clean up the electoral roll and prevent phantom voters,
3. Failure to prevent disenfranchisement of voters through an antiquated voter registration process.
4. Setting polling day on a Wednesday.
5. Setting the bare minimum campaign period of 11 days.
6. Arbitrary disqualifications and prevention of nominations of candidates.
7. Failure to take action on election offences, including rampant vote buying, treating and corruption, or take a position on the conduct of caretaker governments.
8. Making arbitrary and unreasonable election regulations at the last minute, including preventing the face of now-Prime Minister Mahathir Mohamad to be displayed on campaign materials.
9. Failure to reform the postal and advance voting system, allowing phantom voters to be registered as advance voters in uncompleted army camps and preventing transparency in the postal and advance voting process.

10. Failure to allow meaningful election observation, including blocking the Malaysian Human Rights Commission (Suhakam) from carrying out accredited observation work and giving accreditation to the Malaysian Youth Council, which openly campaigned for Barisan Nasional.

Irregularities on Polling Day

Polling Day for GE14 took place on 9 May 2018. According to the EC, the number of voters who voted in GE14 was 12,299,514 out of the total number of 14,940,624 registered voters (82.32%).

This table summarizes the complaints BERSIH 2.0 received on polling day, relating to the conduct of elections:

Polling Day Issue	Number of cases
1. Vote buying on polling day and the eve of polling	6
2. Form 13 and Form 14 not correctly completed and issued	8
3. (a) Impersonation and phantom voters	36
3. (b) Refusal to properly cross names off electoral roll	37
4. Voters unknowingly registered as postal voters or postal voters' names not crossed off electoral roll	10
5. (a) Ballot papers with markings	23
5. (b) Ballot papers issued without the official Election Commission stamp or serial numbers	28
5. (c) Refusal to issue a fresh ballot despite spoiling ballots	11
6. Ballot boxes for Parliament and State being wrongly labelled	62
7. Biased behavior by election officials and workers	6
8. Police recording race of voters	2
9. Difficulties in access to polling stations and difficulties in voting for OKU	11
10. Polling stations closing at 5pm	19
11. Campaigning on polling day	19
Total	278

BERSIH 2.0 reiterates that these complaints are those received as at 10 May 2018. BERSIH 2.0 believes that similar incidents are more widespread across the country and encourages members of the public, election workers, candidates and polling and counting agents to continue lodging reports online at aduan.pemantau.org, via WhatsApp (011-17721546) or phone 03-79314444 so that they can be included in the final report.

1. Vote buying on polling day and the eve of polling

BERSIH 2.0 has verified that on the eve of polling, cash was given out to voters by Barisan Nasional in P185 Batu Sapi and P191 Kalabakan in Sabah. On polling day, BERSIH 2.0 confirmed cash handouts were given by Barisan Nasional in P196 Stampin. These reports were in line with what BN candidate for Semporna, Ramlee Marhaban told *The Star* newspaper in the lead up to the election, that money is handed out continuously in the 48 hours before polling.

Cash was also handed out to voters after voting in Keningau, Tawau and Pensiangan, Sabah, by Barisan Nasional. In Keningau, this was claimed as a 'travel allowance'.

BERSIH 2.0 also reiterates its findings in its Preliminary Findings on GE14 issued on 6 May 2018 where over 400 election offenses involving bribery and vote buying, treating, gifting, and misuse of caretaker government powers were recorded before and during the election period. The EC has failed to prevent, stop, or take action against these widespread election offenses.

2. Form 13 (Ballot Paper Statement) and Form 14 (Statement of the Polls after Counting the Ballots) not issued according to regulations

Numerous reports were sent to BERSIH 2.0 from polling agents that they were not allowed to inspect the ballot papers before issuance. This makes it impossible to properly ensure Form 13 was completed accurately.

Counting agents in some locations were refused copies of Form 14 by the head of the polling stations, an offence under Section 4(g) of the Election Offences Act. In many instances, after pressure from counting agents, these forms were handed over. However, there are reports from Selangor, Perak, Johor and Sabah that some counting agents were unable to get their copies of this form.

3. Impersonation and phantom voters

Twenty-five individuals reported to BERSIH 2.0 that they were unable to vote because a person had already voted for them. This is in addition to over 500 copies of Form 11 (confirmation of identity in the case of dubious voters) which were issued in the constituency of Wangsa Maju. This was due to people attempting to vote, despite not being

resident in the constituency, some of whom admitted to being paid money to transfer their voting address to Wangsa Maju.

In Klang, at least 20 people whose IC numbers have been classified as “Nombor yang tidak diiktirafkan” (Numbers not recognised) by the National Registration Department due to falsified citizenship documents, were allowed to vote after being escorted in to the polling station by Election Commission officers.

There were further reports of names not being crossed off the electoral roll, either in part or fully. Given the frequency of these complaints, it appeared Election Commission officers were poorly trained or had been informed that crossing names off the roll was not necessary. Regulation 19(5) of the Elections (Conduct of Elections) Regulations 1981 requires a mark to be made against the number and name of the voter. There was one case reported by a voter in Gombak who went to the wrong polling station to vote. The voter’s finger was marked with indelible ink before her name was checked on the electoral roll, making her ineligible to vote at her correct polling station.

4. Voters unknowingly registered as postal voters or postal voters’ names not crossed off electoral roll

Voters were unable to cast their ballot after turning up at their polling station and being told they had been classified as postal voters, despite never making such an application. These people were therefore unable to vote.

These cases show there were inadequate safeguards put in place to ensure people were made aware of their postal vote applications and such applications could not be fraudulently submitted on a person’s behalf. As these people never received postal ballots, it suggests these ballots were sent to those committing the fraud.

There were also reports of postal voters whose names were not crossed off the polling day electoral roll.

This is in addition to the duplicate postal ballots that were issued to many voters, demonstrating the complete failure of the processes and mechanisms of postal voting in GE14.

5. Ballot papers with markings or no stamp or serial number

Ballot papers were issued to voters in at least 16 schools without being stamped by the Election Commission workers. Only when individual voters protested did the EC workers agree to stamp the ballots. Regulation 19(6) of the Elections (Conduct of Elections) Regulations 1981 requires the ballot paper to be stamped with the official mark before issued to the voter.

All ballots in certain books had markings on them, for instance, dots around the names of candidates and ink smudges in the voting boxes. This raised concerns that these votes could be classified as spoilt according to the EC's own guidelines on spoilt ballot papers.

There were also cases of EC officials refusing to issue replacement ballots to voters who had inadvertently spoilt their ballots. Voters were told there were not enough ballot papers to issue them with a fresh ballot.

6. Ballot boxes for Parliament and State ballots labelled in the wrong colours

All ballot boxes, except for those in Federal Territories and Sarawak (without state elections), were marked either as "Parliament" or "Negeri". However, in many places throughout the country, the colours of these labels did not match the colours of the ballots papers, leading to many votes being placed in the wrong ballot boxes. The detailed labels also did not match the large "PARLIMEN" and "NEGERI" labels. In one instance, Election Commission workers were so concerned, they attempted to rip these labels off the box to rectify the problem.

While this would not have affected the results of the elections as ballots are sorted before counting, it caused great anxiety because voters were concerned their ballots would not be properly counted.

7. Biased behavior by election officials and workers

Reports have been received that Election Officials instructed voters on who they should vote for while in the polling station. This was especially the case for elderly or disabled voters.

8. Police recording race of voters

Police stationed outside voting streams were seen recording the race of the voters as they entered the room. When asked about this, the police told voters it is standard procedure.

9. Difficulties in access to polling stations

Several voting streams for the elderly were not placed on the ground floor of voting stations, with no access except for staircases. Parents with their children were refused entry to the polling station. Election Commission officials also acted against regulations pertaining to assisting the elderly, pregnant women and persons with disabilities to vote. In some cases, they marked ballots for these voters and in other cases they took ballot papers down to the ground floor to pass them to the voters.

Despite the EC's assurance there was no dress code for voting, voters were still denied entry to polling stations for wearing shorts or slippers.

10. Polling stations closing at 5pm

Voters were en masse disenfranchised by the Election Commission Chairperson Hashim Abdullah's refusal to allow those in line still waiting to vote at 5pm to cast their ballot. Voters complained about the slowness of the voting process. In some schools, voters had queued for over two hours before being told they could not vote and one voter waited for six hours. Many polling streams were oversized, with over 700 voters allocated.

11. Campaigning on polling day

SMS messages were sent out to voters on polling day urging them to support Barisan Nasional. In addition, there were a number of cases of campaigning within 50m of polling stations, which was allowed by Election Commission officials on duty. In Sarawak, a candidate in Sarawak was seen giving a speech in front of a polling station. In Sungai Besar, BN candidate Budiman Mohd Zohdi was allowed to vote wearing a shirt with the Barisan Nasional logo, while voters elsewhere were refused entry to the polling station for wearing Bersih T-shirts.

Positive Improvements

1. Indelible ink

After the fiasco of the 13th General Elections removable "indelible ink", BERSIH 2.0 received no complaints that the ink was easily removable in this election.

2. The removal of "pondok panas" (campaign booths)

In previous elections, all parties were allowed, and even encouraged, to flout election laws by setting up campaign booths outside polling stations on polling day. The Election Commission made it clear this was not allowed during this election. This likely contributed in the reduction of incidents of violence and harassment of voters in this election.

However, there were still some instances of these "campaign booths" being used to campaign for Barisan Nasional and Parti Warisan Sabah, but no action was taken by EC officials on the ground.

Conclusion

BERSIH 2.0 condemns the Election Commission for its complicity in the attempts to obstruct democracy and the people's right to vote.

The polling day complaints BERSIH 2.0 received, together with the crimes of pre-polling day manipulations clearly show the Election Commission worked tirelessly to pursue its goal of ensuring victory for Barisan Nasional.

In their focus on manipulating boundaries, abetting phantom voters, obstructing voter registration and introducing new regulations favourable to BN, the Election Commission appeared to neglect the proper training of election workers and the satisfactory preparation of election materials.

Cases, such as access to polling stations for the elderly, persons with disabilities, likely occurred due to lack of information and training for election workers.

The biased behavior of some officials in instructing voters to vote for certain candidate, together with the refusals to issue copies of Form 14 to counting agents have left many election workers open to criminal charges.

These incidents throughout the country are reflective of the attitude of the Election Commissioners themselves. In their conduct, they have created an atmosphere of impunity among those that break election laws, particularly in favour of Barisan Nasional.

As an immediate response to these findings, BERSIH 2.0 demands:

1. Immediate resignation of all seven Election Commissioners. If the commissioners refuse to resign, a process for their removal must be immediately initiated.
2. Charging all the election commissioners and some election officers (see above) for contraventions of the law before, during and after the 14th General Elections. Special task forces must be set up within the police and Attorney Generals Chambers to ensure this is accomplished.
3. Initiation of a Royal Commission of Inquiry into the electoral system to pave the way for reforms;

The above actions must be completed within the next 100 days,

BERSIH 2.0 will be issuing a comprehensive report on the 14th General Elections in the coming weeks. This report will include a comprehensive analysis of the fairness of GE14 and recommendations for reforming Malaysia's electoral system. The report on GE14 will add to the many existing reports, proposals and memoranda awaiting implementation by the Election Commission and the government of the day.

Reports of election offences or misconduct can still be submitted to BERSIH 2.0 online at aduan.pemantau.org, via WhatsApp (011-17721546) or phone 03-79314444.

Prepared by:-

The Coalition for Clean and Fair Elections (BERSIH 2.0)

APPENDIX 1

Statement and Preliminary Findings on the 14th General Elections 6 May 2018

The Ten Crimes of the Election Commission – Voters Must Vote Overwhelmingly to Overcome Electoral Fraud

As an electoral reform group and the largest peoples' movement in Malaysia, The Coalition for Clean and Fair Elections (BERSIH 2.0) have been monitoring the electoral system and process since its founding in 2006.

While many flaws and manipulation were exposed before – in particular via the historic 2013 People's Tribunal on Malaysia's 13th General Elections – BERSIH 2.0 is extremely concerned about the problems that continue to affect the upcoming 14th General Elections (GE14).

BERSIH 2.0 hereby announces its preliminary findings on the integrity of the electoral process and system in the 14th General Elections (GE14). These findings are based on its ongoing monitoring of the electoral system since 2006 and the PEMANTAU (Election Observers) campaign which focuses on election offenses in the past six months.

BERSIH2.0 concludes that Election Commission (EC) of Malaysia has failed to command public confidence in managing the electoral process and system of Malaysia, in particular for GE14. The seven members of the EC – Mohd. Hashim bin Abdullah, Othman bin Haji Mahmood, Md Yusop bin Haji Mansor, Abdul Aziz bin Khalidin, Sulaiman bin Haji Narawi, Bala Singam a/l Karupiah, Leo Chong Cheong – have committed ten serious crimes against the voters in Malaysia, and in so doing has ruined the integrity of GE14.

The ten crimes are:

(1) Gerrymandering, Malapportionment, and Abuse of the Redelineaiton Process

The EC has abused the redelineation process by worsening malapportionment and facilitating partisan gerrymandering. The final redelineation report passed by parliament has worsened malapportionment and created super-sized constituencies by packing together opposition supporters, thus violating the principle of "one person one vote". The partisan gerrymandering and malapportionment will unfairly swing approximately 15 parliamentary constituencies in favour of Barisan Nasional (BN) in the elections.

The EC has also disregarded due process by rushing through the redelineation in unprecedented speed. It was clear that the EC, government, and Yang Di-Pertua Dewan Rakyat were adamant to pass the redelineation report at all cost before GE14. The Attorney General's Chambers (AGC) is complicit for stopping voters from challenging the constitutionality of the redelineation in court.

(2) Failure to Clean up the Electoral Roll and Preventing Phantom Voters

The EC has failed to maintain a clean and accurate electoral roll. Approximately 15% of voters (2,123,973 voters) in the electoral roll have incomplete or no addresses. Many voters were deliberately and illegally transferred to marginal constituencies by political parties to sway the results, causing abnormally high number of voters being registered using similar or non-existing addresses (estimated over 500,000 voters).

These irregularities continue to persist although the 2011 Parliamentary Select Committee (PSC) on Electoral Reform has affirmed the problems and recommended for SPR to clean up the electoral roll.

In the past three weeks, many voters have discovered problems with their registration in the electoral roll upon checking. Voters have found that they were removed or missing from the electoral roll, transferred to other constituencies without their knowledge, registered without their consent, and names of those deceased were still in the electoral roll.

Such flaws in the electoral roll allows opportunities for irresponsible parties to organize phantom voters to illegally vote during election day. Complaints were filed to the EC, but no action were taken to remedy the situation. The EC and AGC continue to use Section 9A of the Elections Act 1958 to deny the right of voters to challenge the integrity of the electoral roll in the courts.

(3) Voter Registration

The EC has failed in its duty to register eligible voters and caused widespread disenfranchisement of voters. Approximately 3.8 million Malaysians (20% of total eligible voters) remain unregistered and are unable to vote in GE14. The EC has deliberately made it more difficult for voters to register since 2013 by removing the appointment of Assistant Registrar Officers (ARO) from political parties. Meanwhile, the SPR approved AROs from BN and government-friendly organisations.

The EC did not take action to stop the abuse of the registration objection process under Regulation 15 of the Elections (Registration of Electors) Regulations 2002. On one hand, frivolous and random objections by irresponsible parties were allowed. While on the other hand, genuine objection against phantom voters who were illegally transferred were disallowed.

(4) Setting Polling Day on a Wednesday

The EC is suppressing voter turnout by deliberately setting polling day on a Wednesday, without providing any reasonable explanation to the decision and as to why a more accommodating date was not set. Analysis on past elections have shown that voter turnout will be lower when elections are set on a weekday.

This unreasonable and unexplained decision will cause massive inconveniences to millions of voters who needs to travel home to vote, especially those working outstation or overseas.

(5) Setting the Bare Minimum Campaigning Period

The EC has deliberately set only 11 days for the campaigning period, which is the bare minimum as required by law. Again, no reasonable explanation was provided.

It is believed that this is done to suppress the scope of election campaign and voter outreach, especially by the opposition political parties who have limited access to mainstream media. In effect, voters are denied adequate time to receive information to make an informed decision.

(6) Arbitrary Disqualification and Prevention of Nominations

The EC has gravely violated the right of citizens to be nominated as election candidates, and by extension the right of voters to vote for their preferred candidate, as provided by the Federal Constitution.

On 28 April 2018, two persons were denied nomination. In the case of Tian Chua, the EC has acted against a court ruling which declared that Tian Chua is not disqualified as a Member of Parliament and is eligible to stand for elections. In the case of Streram Sinnasamy, the police and election officers physically prevented him from entering the nomination centre because of a trivial administrative issue which has no legal basis.

(7) Failure to Take Action against Election Offenses

Over 400 election offenses involving bribery and vote buying, treating, and gifting have been recorded before and during the election period. The EC has failed to prevent, stop, or take action against these widespread election offenses. As such, the EC has cultivated and allowed for a crippling and corrupt election culture, where money and gifts are condoned and openly used as part of campaigning activities to win votes.

The EC has also failed to set appropriate guidelines on caretaker government despite repeated calls by civil society to do so. This has resulted in the Federal Government, State Governments, caretaker Ministers, and caretaker Exco Members to openly misuse government machinery, power, and resources for their election campaigning purposes.

(8) Making Arbitrary and Unreasonable Election Regulations

Instead of focusing on the other serious offenses, the EC chose to focus on making arbitrary and unreasonable election regulations at the very last minute without adequate public consultation.

In particular, the EC has suppressed the freedom of expression of political parties and candidates by ruling that campaign materials can only contain photos of the candidates and the main leaders of their party. The ruling is a clear attempt to target and limit the opposition from advertising their Prime Minister candidate.

The EC has no business in regulating the content of campaign materials and activities unless they are malicious or promotes ill-will. Even so, such actions must be proportionate, reasonable, and enforced equitable against all candidates and political parties.

(9) Irregularities in Advance Voting and Postal Voting

The EC has ignored calls to abolish the postal voting system and reform the advance voting system. This has resulted in irregularities concerning the transparency and integrity of the Advance Voting and Postal Voting systems.

The EC has allowed for the registration of over 3,500 phantom advance voters in three military camps that have yet to be completed. In the past week, Polling Agents have discovered several cases where duplicate postal ballots were issued to a same postal voter. The EC has yet to announce the finalized number of domestic postal voters in each constituency despite repeated calls to do so. Meanwhile, many overseas postal voters have complained that they received ballot papers late resulting them being unable to send back their votes in time for the election.

(10) Failure to Allow Meaningful Election Observation

Despite announcing that 14 countries and 14 local organisations have been appointed as Election Observers, the EC has failed to provide any further information on the substance of the election observation. No information is provided on the process, scope, and terms of reference of the Election Observers. In an incident, Majlis Belia Malaysia (MBM), one of the local organisation appointed as Election Observer, was found organising an event promoting BN candidates.

On the other hand, the EC has also denied the application of other more experienced and legitimate Election Observer organisations and the Human Rights Commission of Malaysia (SUHAKAM).

Conclusion

Having taken into account all of the above and the multiple failures in the electoral process and system, BERSIH 2.0 inevitably concludes that the upcoming 14th General Elections is already not clean, free, or fair even before the polling day.

BERSIH 2.0 holds the EC responsible and guilty for the ten crimes above as they are the primary body responsible to manage and conduct elections in Malaysia. BERSIH 2.0 is compelled to do so to highlight the severity of the problems surrounding GE14.

At this point, BERSIH 2.0 would also like to address the voters of Malaysia.

To all voters of Malaysia:

The EC has failed us and has not uphold the integrity of our elections. Although GE14 will not be clean, free, or fair, BERSIH 2.0 believes that you will play an important role in the upcoming elections. It is now up to you. The electoral fraud and manipulation can only be overcome if you and all Malaysians turn up to vote as we have all done in 2008 and 2013. BERSIH 2.0 therefore calls upon all voters to vote against electoral fraud and manipulation on 9 May 2018. As a sign of protest and solidarity, BERSIH 2.0 also encourages all Malaysians to wear yellow, tie yellow ribbon, paint your Facebook yellow two days before the polling day, on May 7 and 8.

Issued by:
The Steering Committee of BERSIH 2.0