

DR. 1 / 2012

DEWAN RAKYAT

PARLIAMENT OF MALAYSIA

REPORT OF SPECIAL SELECT COMMITTEE ON ELECTORAL REFORMS

PART VII

COMMITTEE'S VIEWS AND RECOMMENDATIONS

Upon deliberation on the feedback from individuals, registered association / organization including suggestions from Members of the Committee and also taking into consideration the findings in the Sub-committees and observation from Working Visit, the Committee proposes recommendations to improve the electoral process as follows:

(I) LEGISLATION AND AMENDMENT OF REGULATIONS

1. ALLOWING MALAYSIANS RESIDING OVERSEAS TO VOTE EARLIER AT MALAYSIAN MISSIONS OR THROUGH POSTAL VOTING

- 1.1. The Committee follows-up the recommendations in the Committee Report (DR.3/2011) to allow Malaysians overseas to conduct early voting at Malaysian Missions or via postal vote.
- 1.2. The Committee takes note that to allow Malaysians overseas to vote through Malaysian embassies, it is difficult for the EC to implement it based on the current election system and logistic issues. This view is also shared by the Ministry of Foreign Affairs.
- 1.3. The Committee takes note on the EC's proposal to study the possibility to allow Malaysians overseas to vote via postal voting subject to certain conditions.

- 1.4. The Committee takes note on the conditions proposed by the EC as follows:
 - (a) Already registered as voter; and
 - (b) Must return to Malaysia at least once in five (5) years prior to the date of the application to vote as a postal voter.
- 1.5. The Committees recommends that the EC to hold discussions with parties involved within 3 months from the date of this report being approved by the Dewan Rakyat to ensure that these conditions be enforceable through formulation of related legal framework.
- 1.6. The Committee takes note that this proposal will also involve amendment to Section 16 of the Election Act 1958, Election Offences Act 1954, Elections (Conduct of Election) Regulations 1981, Election (Registration of Voters) Regulations 2002 and Elections (Postal Voting) Regulations 2003.
- 1.7. The Committee recommends that the EC study an alternative procedure which involves the sending of the ballot papers directly to voters overseas and sending back the votes made through Malaysian Missions, where they will be sent directly to the EC's Headquarters for counting of votes and for further process.

2. ALLOWING MEDIA PERSONNEL THE RIGHT TO POSTAL VOTING AND EC OFFICERS BEING ALLOWED TO POSTAL VOTING

- 2.1. The Committee takes note on the suggestions that EC study on the feasibility of allowing media personnel to vote early or to vote by post.
- 2.2. The Committee takes note that procedure of voting for the EC's officers are through postal voting.
- 2.3. The Committee takes note on the statement made by the EC that the media personnel be given the flexibility of postal voting which will be gazette under the Regulation 3(1)(f) Election (Postal Voting) Regulations 2003.
- 2.4. The Committee takes note that all media personnel authorized by their employers to be on duty away from their registered voting locality on election day and wish to vote via post must apply to do so using Form 1 (Application for Postal Ballot Paper) according to Election (Postal Voting) Regulations 2003.

- 2.5. The Committee recommends that the EC appoint more election officers from their voting locality to reduce the number of postal vote.
- 2.6. The Committee recommends that the media personnel be given the option of postal voting according to Election (Postal Voting) Regulations 2003.

3. OUT-STATION VOTERS

- 3.1. The Committee follows-up the recommendations made in the Committee Report (DR.3/2011) that the EC provide means of voting outside of registered area especially to those from Sabah and Sarawak and voters from the Peninsular who are working in Sabah and Sarawak to vote anywhere without having to return to their original registration areas.
- 3.2. The Committee takes note of the EC's difficulties to implement out-station voters to vote outside of his/her registration area as it involves logistic matters, limited manpower and most importantly legal implications does not allow a person to vote in the polling station where his/her name is not registered.
- 3.3. The Committee takes note of the requirements of Article 119 of the Federal Constitution that provides resident in a constituency is entitled to vote in that constituency in any election. While Rule 15 Election (Conduct of Election) Regulations 1981 only allows a voter to vote at the polling station where his/her name has been assigned in the electoral roll.
- 3.4. The Committee takes note that this recommendation requires further study on whether the Federal Constitution needs to be amended regarding the issue of residency and amendments to any other regulations relating to elections.
- 3.5. The Committee recommends that the EC review the available options of voting procedure such as the proposed procedures for Malaysians overseas to vote outside of their registered constituency including advance voting subject to any amendments to related laws.

4. ALLOWING MALAYSIANS REACHING AGE OF 20 TO PRE-REGISTER AS VOTERS

- 4.1. The Committee takes note that Article 119 of the Federal Constitution allows an eligible citizen to apply to be a registered voter only upon attaining the age of twenty one years.

- 4.2. The Committee takes note of the proposal to allow pre-registration of a citizen upon attaining the age of 20 years to be registered as a voter and is only allowed to vote when the person has attain the age of 21 years.
- 4.3. The Committee takes note that to enable these recommendations to be implemented, amendments shall be made to Article 119 of the Federal Constitution.
- 4.4. The Committee recommends that the EC study this proposal for implementation within the period of the Thirteenth (13th) Parliament whether such proposal could be implemented.

5. DISSOLUTION OF PARLIAMENT

- 5.1. The Committee takes note that under Clause (3) Article 55 of the Federal Constitution provides that the Parliament, unless sooner dissolved, shall continue for five years from the date of its first meeting and shall then stand dissolved.
- 5.2. The Committee takes note that proposed date for Parliament to be dissolved is stated in the provision of law to facilitate preparation of all parties involved in the election process.
- 5.3. The Committee takes note that the authority to determine the date of the dissolution of Parliament does not lie with the EC according to the law and, also takes note that the EC's purview is only in determining the date of election after the dissolution of Parliament.
- 5.4. The Committee recommends that Parliament can only be dissolved after standing for 4 years and shall be provided by the law.

6. CARETAKER GOVERNMENT

- 6.1. The Committee takes note on the suggestion to establish a caretaker government other than the existing government immediately after the dissolution of Parliament to ensure the country is governed while new government is being formed.
- 6.2. The Committee recommends that the EC prepares a guideline and code of conduct, within 3 months of the date of this report, which applies to any party that carries the function as the caretaker government until a new government is formed both at the federal and the state level.

7. ENFORCING EXISTING LAWS FOR OFFENCES RELATING TO FALSE INFORMATION

- 7.1. The Committee takes note of the proposal of the enforcement of the existing regulations on offences of giving false information pertaining to an application to register an elector.
- 7.2. The Committee is aware that incidents of false information being given are possible for the following matters:
 - i) change of residential address at National Registration Department; and
 - ii) change of registered address with the EC,of which, are offences under Act 5 and existing regulations.
- 7.3. The Committee takes note that there are provisions in the Election Offences Act 1954 [Act 5] and National Registration Regulations 1990 that make provisions for any person found convicted of giving false information in matters of voter's registration and change of address in identity card respectively.
- 7.4. The Committee takes note that Election Committee, in its enforcement of Act 5, depends on the co-operation from other enforcement authorities such as police.
- 7.5. The Committee takes note that there are provisions under both Act 5 and Rule 25(1) of National Registration Regulations 1990 for offences of giving false information in application for registration and application for change of address in identity card.
- 7.6. The Committee recommends that additional posts should be created in order to set up a special enforcement team under the Election Commission to enforce laws that are under the purview of Election Commission without depending on other enforcement authorities.

(II) ENHANCEMENT OF ELECTION PROCESS

8. LONGER CAMPAIGNING PERIOD

- 8.1. The Committee takes note of the sub-regulation 3(1) Election (Conduct of Election) Regulations 1981 provides a minimum of 7 days for the purpose of campaigning.

- 8.2. The Committee takes note of the proposal that Election Commission should prescribe a longer campaigning period during an election to allow longer time for campaigning while at the same time, for matters of returning of postal votes to be duly implemented.
- 8.3. The Committee takes note of the different opinion that a campaigning period which is too long can cause difficulties to campaigning activities in some remote areas in a constituency besides high costs.
- 8.4. The Committee recommends EC to consider all opinions to prescribe a campaigning period which is not less than 10 days in accordance to the provisions of the laws.

9. FREE AND FAIR MEDIA ACCESS

- 9.1. The Committee takes note of the proposal that free and fair media access should be given to all parties and candidates who stand for election.
- 9.2. The Committee is aware that Ministry of Information, Communication and Culture is ready to give fair access to all parties and candidates under EC's monitoring.
- 9.3. The Committee recommends that EC should look into Clause (2) of Article 115 of the Federal Constitution that EC can request public authorities to give assistance that is practical to the Commission in the discharge of its duties, the public authorities include the Ministry and agency that is related to matters of free and fair media access for all parties and candidates who stand for an election.

(III) ENHANCEMENT OF ELECTORAL ROLL

10. CONTINUOUS CLEANING OF THE ELECTORAL ROLL

- 10.1. The Committee follows up the recommendation in the Committee Report (DR. 3/2011) that MIMOS should verify the electoral roll with the co-operation from Election Commission and National Registration Department.
- 10.2. The Committee takes note that the outcome of the verification done by MIMOS shows that there is a continuous effort of cleaning up the electoral roll by the Election Commission with the co-operation from National Registration Department. The outcome of the verification done

by MIMOS shows that there is no duplication of registration for each 12-digit identity card number (KP12) issued by the National Registration Department.

- 10.3. The Committee takes note that some police and military personnel have not yet applied for MyKad or MyTentera. As at 20 March 2012, there are 483 records of police and 653 records of military personnel in the electoral roll of EC that are yet to have KP12 number.
- 10.4. The Committee recommends that Royal Malaysian Police and Malaysian Armed Forces to monitor and take actions on matters referred to in paragraph 10.3 within 60 days from the date of the tabling of this report in Dewan Rakyat (House of Representatives).
- 10.5. The Committee also recommends that Election Commission should give priority to continuous efforts of cleaning up the electoral roll with the co-operation from National Registration Department to ensure that the electoral roll that is to be used for any election is reliable and of high quality in terms of authenticity and integrity of the information (updated, etc.)
- 10.6. The Committee recommends that an independent agency such as MIMOS should assist in checking the electoral roll continuously in order to enhance the cleaning of the electoral roll.
- 10.7. The Committee recommends that a Parliamentary Select Committee should be set up to monitor and observe all the work of checking and cleaning of electoral roll as proposed in the above paragraph 10.2 and to carry out other duties that are referred to that Committee.

11. MONITORING OF THE ELECTORAL ROLL REGARDING VOTERS WITH THE SAME ADDRESS

- 11.1. The Committee takes note that the outcome of the verification by MIMOS finds that 324 addresses have more than 100 registered voters and 938 addresses have between 51-100 registered voters. In the observation by the Sub-committee of Enhancement of Electoral Roll, the factors contributing to such situations are as follows:
 - i) incomplete address;
 - ii) address that is too general, i.e. the use of 'village', 'flat', 'long-house', 'road' without any detail on house number, most of which, are addresses in rural areas;

- iii) shared address such as address of place of origin/birth or address of rented house which is not updated after moving to another place; and
- iv) “borrowed” address, an address used by a voter to enable him/her to be registered in one particular area that they want to be registered at.

11.2. The Committee recommends that EC should display within the period of 45 days from the date of the tabling of this report the list of voters whose addresses are doubtful to have been used by more than 50 voters using one/same address so the voters involved can be aware of it and come forward to EC to enable updating and cleaning of electoral roll.

11.3. The outcome of the exercise has to be reported to the Committee as proposed in the paragraph 10.7.

12. ALLOWING OBJECTION THROUGH COMPLAINT OR FEEDBACK FROM POLITICAL PARTY, NON GOVERNMENTAL ORGANIZATION AND OTHERS ON THE CERTIFIED ELECTORAL ROLL

12.1. The Committee takes note of the proposal of allowing objections to electoral roll acknowledged through complaint or feedback from political party, non-governmental organization and others.

12.2. The Committee takes note that the existing regulations only allow objection be made against the elector's name that is on display in the Supplementary Electoral Roll.

12.3. The Committee takes note that the electoral roll that has been verified can be removed on the basis of death and stripped or denied of citizenship after the Chief Registrar is satisfied with the reason by the relevant authorities.

12.4. The Committee takes note that the EC has no power to delete names of voters who have been verified from the electoral roll or to transfer voters from one constituency to another merely based on complaints.

12.5. The Committee recommends a provision of the law to empower the EC to remove the names of verified voters from the Principal Electoral Roll (DPI) or to transfer voters of a constituency to another based on the complaint by the public with valid proof.

13. STUDY TOWARDS AUTOMATIC REGISTRATION

- 13.1. The Committee takes note of the proposal to implement automatic voter registration for citizens aged 21 years.
- 13.2. The Committee takes note that the proposal to implement Automatic registration requires amendment of Article 119 of the Federal Constitution and relevant regulations.
- 13.3. The Committee takes note that this proposal has a good basis, but it can only be implemented in the long run in view that overall cleaning of the electoral roll must be conducted first. Further investigation on the dubious electoral roll as raised in Sabah and recommendations by the Committee pertaining to the setting up of the Royal Commission of Inquiry should be implemented to gain the trust by all quarters before implementing the automatic registration.
- 13.4. The Committee recommends that the EC to study and take action within 12 months to allow this proposal to be implemented in the future.

14. ALLOWING USE OF ADDRESS OTHER THAN PERMANENT ADDRESS AS ON IDENTITY CARD TO DETERMINE CONSTITUENCY OF AN ELECTOR

- 14.1. The Committee takes note of the current scenario where the number of voters in rural areas in Sabah and Sarawak has reduced due to migration of youths to urban areas to gain employment.
- 14.2. The Committee takes note of the proposal of using the address other than the address stated in the identity card to determine the constituency of an elector.
- 14.3. The Committee takes note that if the proposal is implemented, the implication are as follows:
 - i) If the address used is different from the address stated in the identity card, there is the possibility that the address cannot be verified by any legal documentation;
 - ii) It is possible that the person who is registered uses the address that he/she does not reside at; and
 - iii) It is possible that there is an increase in protest against the Supplementary Electoral Roll on the grounds that the person is not residing at the registered address if he/she is not using the address stated on the identity card.

- 14.4. The Committee takes note that citizens who are eligible to register have the right to choose to register in any area according to their latest address stated in the identity card. It is the responsibility of any individual to change the address on his/her identity card at the NRD if he/she has moved to another address. EC has no authority to change the registration of any person if the person refuses to change the address on his /her identity card.
- 14.5. The Committee recommends that political parties should play a role in advising the voters to change their address with NRD before registering as new voters or change the address of the polling stations at the EC.
- 14.6. The Committee also recommends that the EC to review procedures and implications of the regulations practiced in other countries that allow voters to choose between a permanent address (village of origin or place of birth) or place of employment as address for voter's registration, particularly in Sabah and Sarawak.

(IV) STRENGTHENING THE EC

15. EMPOWERING THE EC

- 15.1. The Committee takes note of the establishment of the EC under Article 114 of the Federal Constitution which consists of seven (7) members who are appointed by the King, after consultation with the Conference of Rulers', with regard to the importance of securing public confidence.
- 15.2. The Committee takes note of the views and feedback that questions the independence of the EC.
- 15.3. The Committee recommends that in order to counter the allegation that EC is not independent; the appointment of the Chairman, Deputy Chairman and members of the EC shall be conducted similar to the appointments of Federal Court, Court of Appeal and High Court judges.
- 15.4. The Committee also recommends that the EC be given the authority to manage its own budget and be directly responsible to Parliament to ensure its objectiveness is not questioned.
- 15.5. The Committee also recommends a Service Commission to be set up for the purpose of appointing EC's own officers and create a specialized scheme of service.

16. RESTRUCTURING AND STRENGTHENING THE EC

- 16.1. The Committee takes note that the EC, in carrying out the functions under Article 113 of the Federal Constitution, needs the assistance from other authorities. The power to obtain this assistance is provided under Clause (2) of Article 115 of the Federal Constitution and appointment of officers made under the Election Act 1958.
- 16.2. The Committee takes note of the limited human resource in the EC and dependence of the EC on other parties in carrying out its functions.
- 16.3. The Committee takes note of the observations made during its Working Visit to UK, Germany and Denmark, that the three main functions of EC are carried out by separate bodies.
- 16.4. The Committee recommends that based on the extensive work load and functions, EC should be restructured enabling enforcement of election laws by having EC's own enforcement body and reduce dependency on other parties. EC needs to increase its manpower requirements and upgrading of posts and to be provided with adequate financial allocation in line with EC's roles, responsibilities, burdens and current challenges.

17. EXPANDING THE ELECTION ACADEMY

- 17.1. The Committee takes note of the existence of the Election Academy since 2007 with limited human resource, financial allocation and facilities in conducting its functions including education to voters, awareness and training to election officers.
- 17.2. The Committee takes note of the need to enhance the Election Academy by increasing human resources, financial allocation and construction of a building equipped with training facilities similar to other government training centers.
- 17.3. The Committee recommends the Government to increase human resources, financial allocation and facilities to the Elections Academy to ensure its objectives are met effectively and particularly in educating all parties including citizens on their right to vote.
- 17.4. The Committee also recommends that an Advisory Board to consist of representatives from political parties and Non Governmental Organizations should be set up to assist the Election Academy.

18. SEPARATION OF EC's MAIN FUNCTIONS

- 18.1. The Committee takes note that the three main functions of EC under Article 113 of the Federal Constitution are to conduct elections, prepare and revise electoral rolls for such elections and undertake reviews of constituencies.
- 18.2. The Committee recommends that as a long term measure, the proposed three responsibilities of the EC i.e. to conduct elections, prepare and revise electoral rolls for such elections, reviews of constituencies should be handled by three independent bodies.

(V) DELINEATION, POLITICAL FUNDING AND ALTERNATIVE SYSTEMS

19. DISTRIBUTION OF SEATS FOR SABAH AND SARAWAK IN THE HOUSE OF REPRESENTATIVES

- 19.1. The Committee takes note that there was a proposal on the number of seats in the House of Representatives to be balanced between the Peninsular with Sabah and Sarawak as provided in the Inter-Government Committee (IGC) document on the establishment of Malaysia, which stated Sabah, Sarawak and Singapore would have 34 percent of the seats in the House of Representatives for any one term.
- 19.2. The Committee takes note of the proposal that 34 percent allocation of seats in the Dewan Rakyat to ensure a balanced power which can be used by any representative of Sabah and Sarawak to safeguard their voice and interest involving all legislative matters.
- 19.3. The Committee recommends that a detailed study to be conducted on the above proposal for it to be implemented by taking into consideration the principle in the formation of Malaysia.

20. BALANCED DELINEATION OF CONSTITUENCIES

- 20.1. The Committee takes note of the proposed review on delineation of parliamentary and state constituencies by taking into account a balanced number of voters including rural weightage and also to fulfill the principle of 'One Person, One Vote'.
- 20.2. The Committee recommends that the EC reviews the Thirteenth Schedule of the Federal Constitution to give full meaning to the principle of "One Person, One Vote" and restore the rural weightage.

- 20.3. The Committee recommends that the EC determines a fair and equitable formula based on a fixed principle in determining the number of voters in a constituency, to ensure that there are no huge disparities among other areas in the state.

21. ALLOCATION OF FUNDS TO POLITICAL PARTIES

- 21.1. The Committee takes note of the proposal to the Government to allocate funds for political parties according to the number of seats won in the election, in the effort to revitalize democracy in the country and to tackle corruption by politicians during election.
- 21.2. The Committee also takes note that an implementation mechanism needs to be studied thoroughly since it involves financial implications to the Government as well as amendments to the law. This proposal should be given due consideration to be implemented in the long run.
- 21.3. The Committee takes note of the recommendation for each political party to declare any contributions received from any source during the election campaign.
- 21.4. The Committee recommends that the Government allocate funds and formulates an appropriate formula for the political parties and candidates that win in the elections, according to the total number of seats won and number of votes obtained, based on a 50 percent distribution for the seats won and another 50 percent for votes obtained, subject to the amendment of the relevant laws as well as the procedure to be determined.

22. NEW ELECTION SYSTEM

- 22.1. The Committee takes note that the electoral system practiced in Malaysia since Independence until now is Simple Majority System (First-Past-The-Post).
- 22.2. The Committee takes note of the proposal to improve the existing Simple Majority System (First-Past-The-Post) or study any other electoral system such as a mixture of system (First-Past-The-Post and Proportionate Representation) or a Proportionate Representation System.

22.3. The Committee recommends that EC should study how to improve the current simple majority or first-past-the-post system as this proposal involves policy which needs to be considered by the Government and report back to the Committee as in paragraph 10.7.

SUMMARY OF THE COMMITTEE

The Committee proposes that all recommendations contained in this report should be considered to improve the electoral process and strengthen the EC to ensure a free and fair election process.