



The Coalition for Clean and Fair Elections (BERSIH 2.0)

Electoral Reform Action Plan

May 2018

1.0 Introduction

- 1.1 The Coalition for Clean and Fair Elections (BERSIH 2.0) is a coalition of 92 non-governmental organisations (NGOs) in Malaysia. Since its founding in 2006, BERSIH 2.0 have been at the forefront campaigning and advocating for electoral reform and democratization in Malaysia. The organisation works closely with a wide array of stakeholders, such as activists, lawyers, academics, and citizens, in developing strategies for electoral reform.
- 1.2 BERSIH 2.0 submits the following Electoral Reform Action Plan (ER-AP) as a roadmap to assist the government and Election Commission (EC) in reforming the electoral processes and system in Malaysia. The ER-AP is based on BERSIH 2.0's cumulative study, consultations, and work in the past ten years on electoral reform. This includes points and recommendations raised in the Parliamentary Select Committee on Electoral Reform (2011), People's Tribunal on Malaysia's 13th General Elections (2014), and BERSIH 2.0's Election Observation (Pemantau) reports.
- 1.3 The following documents are appended and read in conjunction with the ER-AP. These documents provide the full details of the problems and proposal for electoral reform.
 - (i) Appendix 1 – BERSIH 2.0's Demands: Electoral Reforms for the 14th General Elections (April 2017)
 - (ii) Appendix 2 – BERSIH 2.0's Preliminary Report on the 14th General Elections (May 2018)
 - (iii) Appendix 3 – Engage's Analysts Report on Electoral Roll Malpractices (May 2018)
 - (iv) Appendix 4 – Summary of Seven Major Violations by the Election Commission and the Prime Minister in the Redelineation Report (April 2018)
- 1.4 The ER-AP summarizes the key issues, and recommends for the government and EC to institute electoral reform in three stages:
 - (i) Immediate 100 Days Actions
 - (ii) Short-term Electoral reforms
 - (iii) Long-term Electoral reforms

2.0 Immediate 100 Days Actions

- 2.1 Focus for the immediate 100 days must be on restoring the independence and integrity of the EC. The present EC members have lost public confidence and failed in their duties to ensure a clean, free, and fair elections, especially in the 14th General Elections (GE14).
- 2.2 **Resignation or removal of the present EC members:** All seven EC members must resign immediately. If they refuse, the Prime Minister must initiate immediate steps to remove the EC members, by recommending to the Yang di-Pertuan Agong to:
- 2.2.1 in accordance with Article 114(7)¹ of the Federal Constitution – suspend and grant leave of absence to the Chairman and Deputy Chairman of the EC, pending an investigation and full removal process; and
- 2.2.2 in accordance with Article 114(3)² and Article 125 of the Federal Constitution – appoint a tribunal to remove the EC.
- 2.3 **Royal Commission of Inquiry (RCI) on Elections:** An RCI on Elections must be initiated and completed within 6 months. The RCI must investigate any possible criminal misconduct, fraud, or violation of election laws by any persons, including EC members, which happened before, during, and after GE14. The RCI must also inquire into the weaknesses and malpractices in Malaysia's electoral system and processes, paving way for reforms to take place.
- 2.4 **Criminal Investigation and Charges:** Upon the completion and based on the findings of the RCI, a special task force involving the police and Attorney General's Chambers must be set up to execute the recommendations of the RCI to charge any persons, including EC members, who are responsible for electoral fraud or violation of election laws before, during, and after GE14.

¹ Article 114(7) of the Federal Constitution provides: "Where, during any period, the chairman of the Election Commission has been granted leave of absence by the Yang di-Pertuan Agong or is unable, owing to his absence from the Federation, illness or any other cause, to discharge his functions, the deputy chairman shall discharge the functions of the chairman during that period, and if the deputy chairman is also absent or unable to discharge such functions, a member of the Election Commission may be appointed by the Yang di-Pertuan Agong to discharge the functions of the chairman during that period."

² Article 114(3) of the Federal Constitution provides: "A member of the Election Commission shall cease to hold office on attaining the age of sixty-six years or on becoming disqualified under Clause (4) and may at any time resign his office by writing under his hand addressed to the Yang di-Pertuan Agong, but shall not be removed from office except on the like grounds and in the like manner as a judge of the Federal Court."

2.5 **Appointment of Interim EC:** The Prime Minister must recommend to the Yang di-Pertuan Agong to immediately appoint a new EC. The new EC will be on a 2 years interim basis to institute electoral reforms before the next Sarawak State Elections (due by 2021). The interim EC must consist of at least 3 representatives from civil society who have the necessary experience on electoral reform and command public confidence.

3.0 **Short-term Electoral Reforms**

3.1 The following short-term reforms can be instituted within 2 years and requires amendments to the Elections Act and Regulations. No amendments to the Federal Constitutions are necessary.

3.2 **Task Force on Electoral Reform:** a special task force with the necessary legal and technical expertise must be set up within the EC to advise and assist the EC members in carrying out the electoral reforms.

3.3 **Automatic Registration:**

3.3.1 The EC shall deregister all present voters in the electoral roll, followed by an immediate re-registration via automatic voter registration (AVR).

3.3.2 The AVR shall be done using information from the National Registration Department (NRD) and the existing Agency Link-Up System (ALIS) which is already in place.

3.3.3 The Elections (Registration of Electors) Regulations 2002 must be amended or redrafted entirely for this to take effect. The amendment must not contravene the definition of “qualifying date” in Article 119(4)(b) of the Federal Constitution³.

3.4 **Electoral Roll Integrity:**

3.4.1 Upon the re-registration and AVR, an Independent Electoral Roll Auditing Committee shall be established to work with the Chief Registrar of Electors to monitor, investigate, and authorize correction of errors in the electoral roll.

3.4.2 Voters with doubtful details (e.g. incomplete addresses) will be suspended, notified, and requested to correct their details with the NRD before being

³ Article 119(4)(b) of the Federal Constitution provides: “*qualifying date*” means the date on which a person applies for registration as an elector in a constituency, or the date on which he applies for the change of his registration as an elector in a different constituency.

reinstated into the electoral roll. Voters can also submit complaints to the committee.

- 3.4.3 Special attention must be given to with regards to the status of citizenship of as raised by the RCI on Sabah's Illegal Immigrants in Sabah. The Electoral Roll Auditing Committee and Chief Registrar of Electors must work closely with the NRD to ensure only valid citizens are registered as voters.
- 3.4.4 Section 9A of the Elections Act 1958 must be repealed to allow the courts to hear cases involving the electoral roll.
- 3.5 **Election Offenses:** Laws and enforcement on election offenses must be strengthened, especially those involving bribery, corruption, and fraudulent acts to manipulate election (e.g. transferring of phantom voters). Amendments shall be made to the Election Offenses Act 1954 and Malaysian Anti-Corruption Commission Act 2009 to strengthen and determine the enforcement jurisdiction of EC and MACC on election offenses.
- 3.6 **Caretaker Government:** The EC must exercise its power under Article 113(5) of the Federal Constitution to make new regulations on the functions of government and caretaker government at both state and federal level with regards to elections. The regulation must include prohibition and criminalisation of the use of public institutions, resources, and government machineries by the government (outside of election period) and caretaker government (during election period) for political and election campaigns or activities.
- 3.7 **Absentee Voting:** The EC shall abolish domestic Postal Voting and reform Advance Voting. Domestic absent voters shall vote via Advance Voting, and counting will be done immediately at the close of advance polling day. Overseas Postal Voting shall be reformed to ensure better transparency and efficiency.
- 3.8 **Setting of Election Date:** The Prime Minister must inform and table the date of Parliament dissolution in Parliament at least 6 months before it takes place. This is to avoid uncertainty and allow sufficient time for political parties, voters, and election observers to make preparations.
- 3.9 **Minimum 21 Days Campaign Period:** The EC shall amend Regulation 3(1) of the Elections (Conduct of Elections) Regulation 1981 to institute a minimum of 21 days

campaigning period. This is to allow voters more time to receive information and make an informed decision, and for overseas voters to receive their postal ballots in time.

3.10 **Election Observation:** The EC shall allow transparent, comprehensive, and robust election observation which adheres to international standards. This includes open and public applications for accredited domestic and international observers.

3.11 **Free and Fair Access to Media:** The EC shall develop a Code of Conduct for media during elections in consultation with media outlets, civil society, and journalists. The code shall include granting of equal opportunity and treatment to all parties, and ensure impartiality and independence.

4.0 Long-Term Electoral Reforms

4.1 The following long-term reforms will take more than 24 months to implement and requires further study, consultation, or possible amendments to the Federal Constitution.

4.2 Appointment of Election Commission:

4.2.1 Upon the ending of the Interim EC's term (as per 2.3 above), a new EC shall be formed.

4.2.2 Within a year, an Elections Commission Nomination Committee, consisting of representatives from the three branches of government, statutory bodies and civil society representative⁴, shall be set up to receive and screen applicants.

4.2.3 Public hearings will be held for shortlisted candidates, including processes for members of public to view the candidates' CV and submit representations.

4.2.4 The committee will submit its nominated candidates to Parliament for approval by the House of Representative, after which it will be presented to the Yang di-Pertuan Agong for approval and appointment.

4.3 **Monitoring by Parliament:** The EC must answer and report directly to the Parliament. A permanent Parliamentary Standing Committee on Electoral Matters shall be

⁴ The Election Commission Nomination Committee shall consist of: the Prime Minister; the Opposition Leader; chair of the Parliamentary Standing Committee for Electoral Matters; ranking opposition member of the Parliamentary Standing Committee for Electoral Matters; the Chief Justice; the Chairperson of SUHAKAM; the President of the Malaysian Bar Council; an additional civil society representative with knowledge or practical experience in electoral matters.

established to monitor, inquire, and receive reports from the EC. Expenditure reports should also be submitted to the PSC.

4.4 **Lowering age of voting to 18 years old:** The EC and government must seek bi-partisan support in Parliament to lower the qualifying age for voting to 18 years old by amending Article 119 of the Federal Constitution.

4.5 **Fair Electoral Boundaries:**

4.5.1 The new electoral boundaries for Sarawak and Peninsular Malaysia were gazetted in 2015 and 2018 respectively, and therefore can only be redelineated again after 8 years. The EC should explore legal avenues to reform the electoral boundaries. This includes possible amendments to the Federal Constitution, with bi-partisan support, to allow for redelineation before the next general elections.

4.5.2 At the minimum, the EC shall reinitiate the redelineation process for Sabah because the final proposal in 2017 was not passed in parliament.

4.5.3 Any redelineation must adhere to the principles in the 13th Schedule of the Federal Constitution, and a maximum deviation of +15% and -33% from the state average for constituency size. Article 46 of the Federal Constitution should be amended so the number of seats allocated per state is reflective of the number of voters in those states.

4.6 **Alternative Electoral System:** To improve democratic representation and participation, the EC, PSC on Electoral Matters, and government should initiate public consultation to develop a plan and timeline to implement an alternative an electoral system. This includes to improve or change the current First-Past-The-Post (FPTP) system to a Proportional Representation (PR) system, or a mixture of FPTP and PR (mixed electoral system).

5.0 **Conclusion**

5.1 The ER-AP provides a roadmap for the government and EC to begin immediate reforms to the electoral system in Malaysia.

5.2 BERSIH 2.0 reiterates the urgent need to rebuild the integrity of the electoral system as elections are at the heart of the mechanism for accountability and representative democracy.