

Ideas to enhance electoral democracy
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Since the Election Commission has reportedly said that it is compiling recommendations to improve the running of elections, we would like to put forward the following items as input from the non-partisan election observers.

Institutional framework: A law be introduced so that EC is taken out of the Prime Minister's Department to become an independent statutory body where the appointments of the commissioners are carried out via open hearing, by eminent panels from the relevant legal, political, academic and civil society backgrounds; The term of the EC should be fixed and replacement of half of the EC commissioners at a time should ensure continuity.

Each commissioner should not be appointed for more than two terms consecutively. Independence of the EC should be enforced by a guaranteed budget to remove any possible means of restraining the EC's work. Rationale: there are strong arguments to put the EC beyond political interference to make possible free and fair elections;

Legal framework: EC pursue a two-prong approach to enforce the five laws on elections:

a) There should be an all-party forum to obtain consensus on election regulation so as to create a strong basis for the compliance of an enforceable code of conduct for the elections;

b) The EC should be made, until a case is brought to court, the final arbiter on all election matters. In making a ruling, there can be an open hearing to allow candidates and interested parties to present their case. The police, anti-corruption agency and the public prosecutor should lend their support as arms of the EC in all election matters.

Rationale - the current practice where the different government bodies take away parts of the election administrator's function is causing the constitutional object of conducting free and fair elections to be frustrated with each agency acting only at its own discretion, pace and agenda. The EC should be returned to its apex position as the election administrator – as is the best practice internationally.

Pre-election preparation:

a) **Electoral roll:** a law be introduced to require the National Registration Department to register police and military personnel using the same MyKad system. The current dual registration system allows a period of some confusion when the personnel switch status;

b) **Voter registration:** a law be introduced so that voter registration be shortened to two weeks following international practice of expeditious and user-friendly registration. To stop organised illegal mass migration of voters, names of all new voters along with the national electoral roll, must be displayed on-line to allow public scrutiny.

Rationale - the current practice of putting electoral roll on sale at a prohibitive price is stopping public scrutiny and accounts for the persistence of numerous conscious and unconscious defects on the roll. The prompt display of the roll also allow movement of voters between polling centers to be made known to voters ahead of polling day.

c) **Assistant registrars:** Civil society members should be appointed as assistant registrars who should all be subjected to a performance audit ie, non-performing assistant registrars should be replaced and performing ones should be given better incentives eg, increase the payment for each successfully registered voter to the assistant registrar from the current

RM1 to RM3.

No unreasonable restrictions should be put on the voter registration forms requested by the assistant registrars.

d) Automatic voter registration should be considered as the most cost-saving and most efficient method to enfranchise 4.7mil citizens in one go.

e) Returning officers should not be appointed from the rank of the district officers since the officers work in close proximity with the incumbent parties and therefore find it difficult to keep a distance from their superiors who run in the elections.

Judicial officers from another constituency should be considered for such appointments. Similarly, polling centre chiefs, polling station chiefs and polling clerks should be appointed from people outside the constituency to avoid possible bias;

f) Voter education: voter education should be promoted in schools so that all future generations will be familiar with voter registration, the conduct of the election system, free and fair election standards, election offences and their rights as voters.

4. De-limitation:

a) Demographic information about voters' growth which justify changing of constituency boundaries should be made known to the public ahead of any de- limitation exercise; opportunities and methods of participation should also be publicised to the voters affected in the interests of transparency;

b) To address concerns over gerrymandering, a panel of external auditors should be appointed to review the new boundaries before it is put forward to Parliament for approval;

c) Rural weightage and any other consideration which allows the constituency sizes to deviate from the one person, one vote principle should be made transparent and standardised. Our recommendation - constituency sizes should not deviate from the average by 15% to cap mal-apportionment. A different standard can be allowed for the East Malaysian states in view of their special position.

Nomination: the law be amended so that the current one hour nomination period be extended to one week to avoid the confrontation between party supporters which in turn require expensive policing measures. There need not be any limit on party rallies ahead of nomination so long that they are not allowed to happen on the same day.

The extension also allow a realistic opportunity to voters, as entitled under the law, to scrutinise the candidates' paper. Extended nomination periods are the international norm, eg, Philippines allow for three months for nomination.

Campaign:

a) party registration - the EC should register all parties which wish to contest in the elections. Current practice of registering political parties under the Registrar of Societies allow the regulation of political parties to escape EC's jurisdiction and has failed to safeguard freedom of association for political parties.

b) prompt complaint handling mechanism at all levels of EC - Complaints should all be

uploaded to EC's website so that their status can be monitored by the public, as done in Pakistan. Complaints which do not or not known at the time to affect election results should be entertained rather than being brushed aside as currently done.

c) even-handed enforcement of the election laws with the EC playing the adjudicating role till any case is brought to a court; All government organs are serving under the jurisdiction of the EC on election matters – and not running parallel jurisdiction as currently the case;

d) campaign period: the law should be amended to make the minimum campaign period to be three weeks ie, 21 days for a by-election or one month for a state or general elections.

e) police, military personnel should be accessible to all candidates rather than only being accessible to the incumbent parties;

Election financing:

a) candidate debates: EC should be empowered by appropriate amendment to the law to require candidates to attend public debates between/among candidates if there is a minimum eg 300 voters making such a request. Rationale - this measure will allow voters to question and compare the candidates where currently the voters only get to question the candidates at the discretion of the candidates.

Incidentally such debates in front of the public will also cut off media bias in reporting. Significantly, the candidates' debates will help lower the financial threshold for candidates to project a profile in the constituency and thus reducing candidates' dependence on access to huge financial support. Ultimately, the debate will help steer elections to extended virtuous competition in policy innovations in contrast to current banner wars which are wasteful and not helpful to help voters make informed choices.

b) party's expenses: the law should be amended to make candidates and their party account for their campaign finances just as the appointed agents of the candidates are accountable to their campaign conduct. Current defect is that the parties are not accountable in campaign finance.

c) campaign accounting protocol: a cross-party forum should come out with a consensus accounting method for campaign finance; the financial statement from each candidate should be audited where currently they are not; party expenses should be spread over all the candidates of the same party.

Administrative neutrality: EC should enforce administrative neutrality on all government departments to stop abuse of public facilities, human resource, equipments, vehicles, buildings etc for party campaign purposes. If there is access to any public facilities, the access should be open equitably to all candidates and parties.

Explicit laws should be introduced to penalise offenders in this area. Also, the law should be introduced to prohibit any announcement, promise and actual delivery of public allocations, bonus payments, awarding of tenders, approval of licenses and land titles etc ahead of elections as a way to stop abuses and unfair advantages given to incumbent parties. The cut-off point should be when the likelihood of an election appears eg, as soon as a seat fall vacant;

Media access: the EC should be empowered to suspend any media, as done in Sri Lanka, whether state or private media, if they refuse to give fair coverage to all candidates. Private

media can be exempted only when there is freedom to publish by all media/parties.

Polling day:

a) Universal access: the arrangement of the polling center should provide universal access/ disabled friendly. Voters on wheelchairs should not be made to climb stairs to cast their vote. Wheelchairs should be provided in rural areas;

b) polling stations should be set up in hospitals and prisons to allow eligible voters there to cast their vote - as done in Indonesia and other democracies which respect all their citizens' right to vote.

c) the law needs to be amended to allow postal votes for voters who are not in the constituency on polling day.

d) Early voting can be allowed for police, military and EC staff who are on active duty on polling day; for those who are not they should be allowed to vote in the regular polling stations like any other voters. The law mandating the EC to administer legislative elections should be enforced for early polling - not to allow police or military personnel to administer polling stations as done for postal voters currently.

e) Where there is not a second polling agent in a polling station or counting station, the EC should be legally empowered to make it mandatory to allow election observers or members of the public without conflict of interests to sit in so as to provide important checks in the system.

f) East Malaysians living in Peninsular should be allowed to vote in polling centers set up in major cities of West Malaysia- as done by the Indonesian and Philippines' embassies to facilitate voting by their citizens.

g) The form 14 which certifies counting results at polling stations/streams should be posted outside the polling centers for public information as soon as they are available so as to stop any tampering and mistakes in accumulation or delayed announcement of the election results;

h) Counting of the postal votes should be done earliest to stop any suspicion of any post-polling foul play involving the election results;

i) A law should be introduced to stop any filming or recording of voters at the polling centers; This practice is known to have an intimidation effect on the voters;

j) As far as practicable, the ballots should be counted on site except in interior areas where mobile ballot boxes are involved to stop suspicion of foul play in the transference of ballot boxes; provision should be made to allow polling agents to observe those mobile ballot boxes or where the ballots are not counted on site.

Post-polling:

a) Election report - the EC should answer all queries from the public, candidates and parties in its report on the elections. Current reports don't bother to answer the queries or objections. The reports should be uploaded to the EC website for future reference; the answers

provided to queries can be used in the future vetting process of current or future candidates of the EC commissioners.

b) Election petitions - the election court should take up petitions about the misconduct of the election which do not affect the result of the elections to set standards for future election performance. Currently, the election petitions only deal with petitions which affect the election results thus denying justice to other important aspects of election conduct eg, the conduct of the returning officers or EC, or vote-buying which is below the winning majority.

Observers - A law should be introduced to allow all bona fide non-partisan local and international observers to observe all elections in Malaysia as a way to lend credibility to the local election conduct. In addition, the rights of observers to uninhibited access to all aspects of the election, save that which could violate the secrecy of the vote, should be guaranteed in the law.

The current 20-point conditions which undermine the integrity of the work of the observers eg, no access to inside of polling stations, no access to nomination, counting, accumulation and announcement centers, should be set aside. Accrediting observers under the current 20-point conditions or only accrediting one select group of observers render the accreditation meaningless, capricious and discriminatory.

The writer is a member of the Malaysian Election Observers Network.

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