

Final Report Of PSC Incomplete And Inadequate
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The tabling of the final report of the Parliamentary Select Committee on Electoral Reform ("PSC") in the Dewan Rakyat on 3 April 2012 ought to have been an occasion to highlight the work that had been done in the last six months to investigate weaknesses in our electoral system, identify best practices from around the world, and recommend implementation of the most appropriate solutions in order to strengthen our democratic process.

After the BERSIH 2.0 rally on 9 July 2011 and the manner in which the Government responded to it, the public have come to expect that the establishment of the PSC was an expression of the Government's intention to transform our electoral system, and translate the rakyat's deep-seated desire for change, expressed on that day, into real and permanent reforms.

While the Malaysian Bar acknowledges that some of the 22 recommendations of the PSC are positive, and represent a step in the right direction, the PSC has missed an ideal opportunity to make comprehensive and extensive recommendations to realise Malaysians' aspiration for free and fair elections.

The first and most important weakness of the report is its failure to adequately deal with issues pertaining to the electoral roll. This was the principal and immediate concern that gave rise to BERSIH 2.0. The measures recommended by the PSC in relation to the electoral roll do not engender faith and confidence in the integrity and veracity of the principal electoral roll. Not only must the system of adding new names onto the electoral roll be free from fraud, the list of existing voters needs to be weeded of the results of accumulated erroneous entries.

The PSC made only a nominal nod in that direction by referring to a brief audit of the electoral roll by the government agency MIMOS, which was conducted within very limited parameters. There is a compelling case for a more vigorous and extensive auditing of our electoral roll. In India, for instance, the updating of its electoral rolls is a continuous process, with revisions conducted partly by way of house-to-house enumeration.

The serious and apparently rampant problems with our electoral roll were highlighted in the High Court decision in *Harris Mohd Salleh v Ismail bin Majin, Returning Officer & Ors* [2001] 3 MLJ 433, where the Judge made the following damning findings:

The instances of non-citizens and phantom voters in the electoral roll as disclosed at this trial may well be the tip of the iceberg. ... It is common knowledge that an influx of illegal immigrants has plagued Sabah for some years. It is a well-known fact as it had appeared in the local dailies too frequently. ... The exposure of fraudulent practices such as massive registration of phantom voters is time consuming. However, it has to be done if we wish to defend and preserve the meaningful practice of democracy in Malaysia. As custodians of free and fair elections, the SPR is duty bound to do it.

These problems were acknowledged by the PSC in its interim report, with its recommendation that a Royal Commission of Inquiry be established to look into the situation in Sabah.

Secondly, the PSC's report does not deal with the Election Commission's apparent reluctance to be an agent of change, as evidenced by its rejection of six out of the 10 interim recommendations made by the PSC.

Thirdly, whilst the PSC fixed a deadline of three months for at least three of the 22 recommendations, it failed to prescribe a timeline for nine recommendations. Further, it also failed to propose policies or

details with respect to some of its recommendations, for instance fair access to media.

Finally, it is highly regrettable that the Speaker of the Dewan Rakyat disallowed the introduction of a minority report to the PSC's final report. The PSC comprised nine members, four of whom were not from the governing coalition, including three from Pakatan Rakyat.

A minority report was prepared to draw attention to points of disagreement and dissension. Procedures for Parliamentary Select Committees in other parts of the Commonwealth do provide for the inclusion of minority views in the main report. However, this was not allowed by the majority in the PSC, and as such the preparation of a minority report was justifiable in order to reflect divergent views and an absence of consensus. For the Speaker to have disallowed it means that the PSC's final report fails to reflect the diversity of views expressed within the PSC.

The Malaysian Bar urges the Honourable Prime Minister to consider the weaknesses of the PSC's final report and exercise political will, to pursue holistic solutions towards rectifying the problems of the electoral roll and implement unhesitatingly all the recommendations of the PSC, before the next general elections.

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