

Submission To Parliamentary Select Committee on Electoral Reform in Johore Bahru 12th Jan 2012
Hearing No. 5

By Wong Piang Yow

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1. Make-up of Election Commission

Part VIII of the Federal Constitution of Malaysia provides for the formation of an Election Commission to conduct elections. In a democracy, the Election Commission is a very important body to ensure that competing political organizations have a fair and equal chance of winning in an election.

Article 114. Constitution of Election Commission states that the Yang di-Pertuan Agong after consultation with the Conference of Rulers, shall appoint a chairman, a deputy chairman and five other members with regard to the importance of securing an Election Commission which enjoys public confidence.

Since public confidence is given such importance in the selection, it would be logical to expect that the Yang di-Pertuan Agong will have consulted with the public to secure their views before making his choice. However, currently the Agong appoints the Election Commission based on a list submitted by the Prime Minister. We consider this a conflict of interest as the political party that administers the Government has a vested interest in proposing members that are aligned towards them. This can be seen in the fact that all appointees are ex-civil servants.

(Reference: Malaysia's reform system by Associate Professor Tay Tsun Hung)

Proposal:

Providing for an Independent Election Commission

- **Article 114 (2). Constitution of Election Commission** shall be amended to read: *In appointing members of the Election Commission the Yang di-Pertuan Agong shall regard to the importance of securing an Election Commission which shall conduct Elections in a free and fair manner, and is independent of the Administration of the Government.*
- Bearing in mind the importance of appointing an Independent Election Commission that enjoys public confidence and a separation of power between the Election Commission and the Administration of the Government, all future appointments shall be drawn from members of civil society who have no previous service in Government, Government-linked companies nor should they be members of any political party.
- The present Election Commission has not performed in a way that commands public confidence as attested by the fact that BERSIH 2.0 had to carry out a public protest on 9th Jul 2011 and the fact that Parliament had to set up a Parliamentary Select Committee on Electoral Reform in response. The present Election Commission and all the officers identified in the Elections Act 1958 (Act 19) and the Election Commission Act 1957 (Act 31) shall be

replaced with members of civil society as described above, before the next General Elections.

- To enable financially-independent people to serve on the Election Commission, *Article 114 (4) (b) engages in any paid office or employment outside the duties of his office; or of the Federal Constitution, shall be deleted.*
- All sections of the Law and Regulations that constrain the power of the Election Commission to prosecute any violation of the Election Offences Act shall be removed, in particular those that require the sanction of the Public Prosecutor.
- Members of the Election Commission and their officers shall not enjoy legal immunity in their actions where it is seen that their actions appear to be a violation of their duties.

2. Election Officers and Presiding Officers to come from civil society

In our training of civil society conducted across the country, we keep receiving complaints of biased actions by the Returning Officers and Presiding Officers during elections. As can be seen in the Report of the 12th General Elections prepared by the Election Commission Malaysia, Tables 4.3 and 4.4 (see Appendix) all these officers are drawn from the civil service or local councils. There is inherently a conflict of interest as such personnel will be seen to be beholden to political parties.

- To avoid such problems in future, we propose that all such officers appointed during an election be drawn from civil society as described in the 1st paragraph of this proposal. As shown in Table 4.2, there were 2,459 Election Officers and 21,164 Presiding Officers employed during the 12th General Elections. The Election Commission should start identifying and selecting such people and train them in preparation for the coming 13th General Elections, which is due by March 2013.

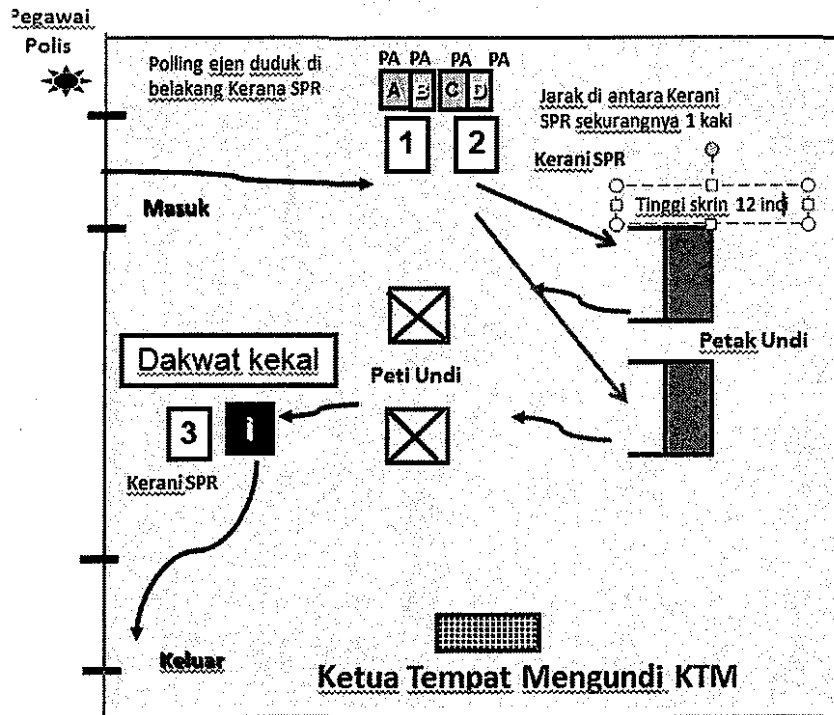
3. Independent Commission of Enquiry

We propose that an Independent Commission of Enquiry (ICE) be set up to investigate malpractices by the Election Commission and also objections to the voter rolls. The ICE shall be appointed by the Yang di Pertuan Agong and made up of reputable and knowledgeable persons from civil society recommended by the Bar Council and NGOs with interests in Elections.

4. Polling Station Layout

Taking into consideration the introduction of indelible ink and the need for polling agents to be able to observe the voter closely before he is issued with a ballot paper, we propose the layout of the polling station below. At the ballot marking counter, we propose that the screen be set 12 inches high to allow the voter to be observed at all times from time of collection of ballot paper until dropping of paper into the ballot box. This is to avoid concerns with voters bringing in ballot papers from outside the polling station.

CARA MENGUNDI



Kerani SPR 1 checks voter against voter roll.

Kerani SPR 2 perforates and issues ballot paper to voter.

Voter goes to ballot marking counter (screen height 12 inches), mark ballot, then drop into ballot box. Voter then goes to **Kerani SPR 3** to dip finger in indelible ink. (To avoid smudging the ballot paper.)

Polling agent sit behind **Kerani SPR 1 & 2** to monitor voter and compare with **MyKad** if desired. They can follow paper trail until the ballot box.

Tempat Memangkah Undi

Ballot Screen 12" high



5. Form 13 Statement of Ballot Paper

We have seen the new form prepared by the SPR. While it is an improvement over the old form, it does not go far enough. We propose 2 forms to replace that as detailed below.

- **Borang 13 Penyata Pembukaan Kertas Undi**

This form is prepared before polling starts. It is a statement of the ballot papers received by the Presiding Officer from the Returning Officer. It also includes the sample of perforation of ballot paper. **Borang SPR 753 Contoh Corak Penindik** can then be dispensed with. It shall be signed by the Presiding Officer and all the polling agents present. The Presiding Officer shall prepare sufficient copies to issue to all the polling agents present or to the Election Agents.

- **Borang 13 Penyata Penutupan Kertas Undi**

This form is prepared at the end of polling and is a statement of ballot papers issued during polling. It shall be prepared by the Presiding Officer, signed by him and all the polling agents present. The Presiding Officer shall prepare sufficient copies to issue to all the polling agents present or to the Election Agents.

Borang 13.1 Penyata Pembukaan Kertas Undi

[Subperaturan 24 (1)]

Nama Pusat Mengundi:

No. Tempat Mengundi (Saluran):.....

Nombor Kod Daerah Mengundi:

Bahagian Pilihan Raya:

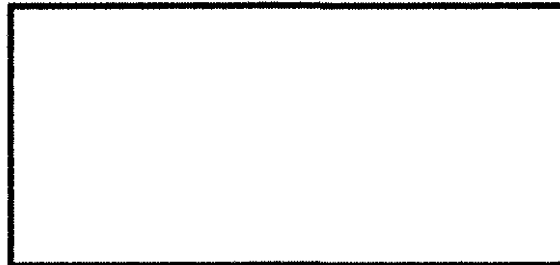
A - Bilangan kertas undi yang diterima daripada Pegawai Pengurus

Bilangan Kertas
Undi

No. Siri Kertas Undi		Bil. Kertas Undi	No. Siri Kertas Undi		Bil. Kertas Undi
Dari	Hingga		Dari	Hingga	
Jumlah (a)			Jumlah (b)		

A. Jumlah kertas undi yang diterima (a + b)

Contoh Corak Penindik

(Ganti Borang SPR 753
Contoh Corak Penindik)

Saya memperakui bahawa penyata di atas adalah betul

Bertarikh pada:

.....
Tandatangan.....
Nama Ketua Tempat Mengundi

Nama Calon atau Ejen Pilihan Raya atau Ejen Tempat Mengundi	No. KIP	Parti/ Bebas	Tandatangan

(Ketua Tempat Mengundi wajib keluarkan satu salinan sah kepada semua calon, wakil calon atau ejen)

Borang 13.2 Penyata Penutupan Kertas Undi

[Subperaturan 24 (1)]

Nama Pusat Mengundi:

No. Tempat Mengundi (Saluran):.....

Nombor Kod Daerah Mengundi:

Bahagian Pilihan Raya:

B - Bilangan kertas undi yang dikeluarkan kepada pengundi

Bilangan
Kertas
Undi

No. Siri Kertas Undi		Bil. Kertas Undi	No. Siri Kertas Undi		Bil. Kertas Undi
Dari	Hingga		Dari	Hingga	
Jumlah (c)			Jumlah (d)		

B. Jumlah keseluruhan kertas undi yang dikeluarkan kepada pengundi ((c) + (d))

C - Bilangan "kertas undi rosak" (Kertas undi yang dipulangkan kepada ketua tempat mengundi yang telah dibatalkan dan ditanda "ROSAK" oleh ketua tempat mengundi dan tidak dimasukkan ke dalam peti undi)

Tolak

D - Bilangan kertas undi yang tidak digunakan (D = A - B)

E - Ringkasan kertas undi

Jumlah kertas undi yang patut berada di dala (E = B - C)

Saya memperakui bahawa penyata di atas adalah betul

Bertarikh pada:

.....
Tandatangan.....
Nama Ketua Tempat Mengundi

Nama Calon atau Ejen Pilihan Raya atau Ejen Tempat Mengundi	No. KIP	Parti Bebas	Tandatangan

(Ketua Tempat Mengundi wajib mengeluarkan satu salinan sah kepada semua calon, wakil calon atau ejen.)

6. APPENDICES

Tables 4.1 to 4.5 of Report of the 12th General Elections 2008 prepared by the Elections Commission Malaysia.

Table 4.1
Number of Election Management Venues by State

State	Nomination Centres	Polling Centres	Polling Station(Stream)	Centralised Counting Centres	Official Vote Tallying Centres
Perlis	3	85	242		3
Kedah	15	650	1770		15
Kelantan	14	524	1548	1	14
Terengganu	8	308	978		8
Penang	13	335	1327		13
Perak	24	763	2316	1	24
Pahang	14	497	1190	2	14
Selangor	22	801	2987		22
F.T. Kuala Lumpur	11	186	1124		11
F.T. Putrajaya	1	3	12		1
N.Sembilan	8	310	881		8
Malacca	6	201	689		6
Johor	26	882	2590	1	26
F.T. Labuan	1	13	39		1
Sabah	25	675	1635	20	25
Sarawak	31	1717	2494	28	31
Total	222	7950	21822	53	222

Source: Report of the 12th General Elections, prepared by Elections Commission Malaysia, page 96

Table 4.2
Category of Election Personnel by State

State	Number of Personnel Appointed																		Grand Total
	Election Officers					Election Staff						Assistants to Returning Officers							
	RO	ARO	ECET Team Leader	Members of ECET	Total	PO	PC/CC	PVC	ERCC	PCU	Total	EA	TP	GW	R	D	Total		
Perlis	3	20	3	15	41	256	1024	36	233	193	1742	21	9	75	6	9	120	1903	
Kedah	15	70	15	75	175	1769	7076	172	1612	1341	11970	56	45	180	30	45	356	12501	
Kelantan	14	64	14	70	162	1477	5967	260	1722	1354	10780	73	28	225	56	42	424	11366	
Terengganu	8	43	8	40	99	951	3804	122	773	773	6423	43	17	120	34	45	259	6781	
Penang	13	63	13	65	164	1272	5151	150	1080	880	8533	66	13	130	26	52	287	8974	
Perak	24	98	24	120	266	2238	8952	536	1855	1666	15247	107	72	223	72	72	546	16059	
Pahang	14	66	15	75	170	1186	4744	240	944	930	8044	71	28	210	28	42	379	8593	
Selangor	22	110	22	110	264	2985	11940	204	2589	2068	19786	118	66	66	44	280	574	20624	
F.T. Kuala Lumpur	11	22	11	55	99	1092	2184	388	983	703	6350	33	11	110	22	22	198	5647	
F.T. Putrajaya	1	2	1	5	9	11	22	3	10	8	54	3	1	7	2	2	15	78	
N.Sembilan	8	52	8	40	108	848	3392	152	659	630	5881	52	16	180	16	24	288	6077	
Malacca	6	44	6	30	86	666	2664	140	378	449	4297	40	12	140	12	18	222	4805	
Johor	26	93	26	130	275	2499	9996	284	2184	1856	16819	108	104	280	52	78	622	17716	
F.T. Labuan	1	2	1	5	9	39	117	32	33	29	250	1	1	5	1	3	11	270	
Sabah	25	95	25	125	270	1592	6368	228	1216	1152	10556	85	85	300	85	75	630	11456	
Sarawak	31	86	31	124	272	2283	4572	264	1003	2194	10316	75	31	310	310	3923	4649	15237	
Total	222	930	223	1,084	2,459	21,164	77,973	3,211	17,274	16,226	135,848	952	539	2,561	796	4,732	9,580	147,887	

Note:

RO	Returning Officer	PCU	Polling Centre Usher
ARO	Assistant Returning Officer	EA	Election Assistant
ECET	Election Campaign Enforcement Team	TP	Typist
PO	Presiding Officer	GW	General Worker
PC/CC	Poling Clerk / Counting Clerk	R	Receptionist
PVC	Postal Voting Clerk	D	Driver
ERCC	Electoral Roll Checking Clerk		

Source: Report of the 12th General Elections, prepared by Elections Commission Malaysia, page 99

Table 4.3
Breakdown of Returning Officer by Their Substantive Post, Department and State

State	District Officer	Assistant District Officer	Mayor of City Council / President of Municipal / District Council	Secretary / Officers of City / Municipal / District Council	Education Officer	Irrigation Dept. Officer	Agriculture Dept. Officer	Other Govt. Officer	Total
Perlis					1			2	3
Kedah	11		1	1				2	15
Kelantan	11		1					2	14
Terengganu	7		1						8
Penang	4	3		1	2			2	13
Perak	9	10	3	1		1		1	24
Pahang	11		2						14
Selangor	9	1	11	1		1			22
F.T. Kuala Lumpur			8		2			1	11
F.T. Putrajaya			1						1
N.Sembilan	7							1	8
Malacca	3	3							6
Johor	8	3	5	2				8	26
F.T. Labuan					1				1
Sabah	16			4	1		1	3	25
Sarawak	22	1		4				4	31
Total	118	21	33	14	7	2	1	26	222

Source: Report of the 12th General Elections, prepared by Elections Commission Malaysia, page 101

Table 4.4
Breakdown of Assistant Returning Officers by Their Substantive Post, Department and State

State	District Officer	Assistant District Officer	Mayor of City Council / President of Municipal / District Council	Secretary / Officers of City / Municipal / District Council	Education Officer	Public Works Dept. Officer	Irrigation Dept. Officer	Health Dept. Officer	Agriculture Dept. Officer	Forest Dept. Officer	Other Govt. Officer	Total
Perlis					7			1			12	20
Kedah		28		12	1						29	70
Kelantan		37		7	1	3	8		1		7	64
Terengganu		25		6							12	43
Penang		20		5	13	2	6				17	63
Perak		26		24	17	6	1				24	98
Pahang		34		10	1	2	8				11	66
Selangor		35	4	51	8	6	2				4	110
F.T. Kuala Lumpur			16		4						2	22
F.T. Putrajaya			2									2
N.Sembilan		23	2	1	1	3					22	52
Malacca		14		5	5	1					19	44
Johor		19		22	4	6	1				41	93
F.T. Labuan					2							2
Sabah	4	37		14	7	9			7	2	15	95
Sarawak	5			14							67	86
Total	9	298	24	171	71	38	26	1	8	2	282	930

Source: Report of the 12th General Elections, prepared by Elections Commission Malaysia, page 102

Table 4.5
Briefing and Training for Returning Officers,
Assistant Returning Officers and
Election Campaign Enforcement Teams

State	Dates
Perlis	29 and 30.1.2008
Kedah	29 and 30.1.2008
Kelantan	2 and 3.12.2007
Terengganu	4 and 5.12.2007
Penang	13 and 14.12.2007
Perak	31.1.2008 and 1.2.2008
Pahang	6 and 7.12.2007
Selangor	17 and 18.1.2008
F.T. Kuala Lumpur	29 and 30.11.2007
F.T. Putrajaya	29 and 30.11.2007
N.Sembilan	17 and 18.12.2007
Malacca	15 and 16.11.2007
Johor	4 and 5.2.2008
F.T. Labuan	2 and 3.1.2008
Sabah	2 to 8.1.2008
Sarawak	21 to 26.1.2008

Source: Report of the 12th General Elections,
 prepared by Elections Commission Malaysia, page 104