

Comments on the PSC Interim Report of 02.12.11 by pywong

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8.2.3 Allow visually impaired voters to choose whomever they wish to mark their ballot papers. (PSC Interim Report pg 110)

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Submission by Wong Piang Yow

Section 1: Comments on the PSC Interim Report

(Legend: LB pg xxx = Election Law Book by International Law Services page xxx)

1. Indelible ink (PSC Interim Report pg 105)

- ***Indelible ink shall be used to mark voters to prevent multiple voting.***

We suggest that the SPR exercise transparency in the selection and purchase of indelible ink and that it be submitted for independent testing before use.

2. Postal voting (PSC Interim Report pg 105)

- ***Those on duty in remote areas must apply for postal voting, although spouses will not be entitled to such a right.***
- ***2.5 Election Commission staff, doctors, nurses and journalists qualify for early voting. (PSC Interim Report pg 106)***

SPR was set up because a neutral party is needed to conduct elections. Elections can only take place if there are candidates contesting. Candidates need election agents, polling/counting/barung agents, Enforcement Team (Candidates & Agents) to protect their interests during the campaign. This is recognised in the Election Laws & Regulations [EA 1958] S 13, LB pg 12, [EOA 1958] S 2 LB pg 24, S 12 – 17 LB pg 35 – 42, S24B LB pg 48, S26 LB pg 51, S26A LB pg 53, S27A – H, LB pg 54 – 57. How can the provisions of [COE 1981] Regulations & [PV 2003] Regulations be implemented without the participation of Candidates & Agents?

I searched through all the Election Laws and Regulations but couldn't find a single reference to Doctors, Nurses or Journalists and yet these categories are according postal polling privileges but not Candidates & Agents. This is not to say that Doctors, Nurses or Journalists are not important but they are not as critical to the election process compared to Candidates & Agents. So we reiterate our request: Please accord postal polling rights to Candidates & Agents.

- ***2.6 Process for postal voting shall guarantee transparency like normal voting process. (PSC Interim Report pg 106)***

We request that the SPR consult with civil society groups like BERSIH 2.0 on the procedures. In Kota Kinabalu, the SPR officers advised that the postal voter supplementary rolls are issued every quarter. Since this is the case, there is no reason for the SPR not to issue the postal voter roll to the candidates on nomination day. We hope that this can be confirmed in their procedures to avoid confusion in future.

3. Absentee voting for all Malaysian citizens residing abroad.

There were some comments about the cost involved. If poorer countries like Indonesia, Philippines and Thailand can do it, there is no reason why we cannot.

It seems like the PSC does not have unanimity of opinion on this issue. On 8th Dec 11, in this hall, remarks were made such as:

- Overseas Malaysians need to have connectivity with Malaysia before they are given the privilege of absentee voting.
- Overseas Malaysians couldn't care less. Why should they be given the vote?
- If they have not been back to Malaysia for many years, they should not be allowed to vote.
- We can tolerate it if someone comes back every 5 years.

Article 119 (4) (a) of the Federal Constitution refers to an "absent voter" as any citizen who is registered as an absent voter in respect of that constituency. It doesn't say anything about an absent voter having to come back every 5 years to kiss the ground of his constituency.

Also there are suggestions that certain Western countries require that for a voter to be eligible, they do not stay away from their home country for longer than a certain period.

Eg Australia 7 years and Canada 5 years.

Since we are talking about adopting Western standards, we are sure many Malaysians will be very grateful if our SPR can upgrade their performance to the same level as that of Australia and Canada

4. Inter-state voting for East Malaysians residing in the peninsula to be allowed to vote and vice-versa. (PSC Interim Report pg 106)

4.4 Provide voting zones for outstation voters. (PSC Interim Report pg 107)

- We hope to see credible civil society groups given the opportunity to provide polling/counting/barung agents to help the smaller parties and independent candidates who may not have the resources to send agents to monitor the process.

5. Transfer of voting area (PSC Interim Report pg 107)

- **Applications to transfer voting address must include a statutory declaration.**

To save cost, can we suggest that the declaration be included inside the application form for transfer of voting area. Also the authority to process this application be extended to the Assistant Registration Officers and also to allow online applications.

6. Electoral roll audit(PSC Interim Report pg 107)

6.5 The PSC recommends MimosBhd to perform the audit. (PSC Interim Report pg 108)

6.6 For Sabah, the entire electoral roll needs to be vetted.

6.5 RCI on Project IC (PSC Interim Report pg 108)

We notice some back-tracking from certain politicians on this issue. We hope we will not be disappointed.

7. Display of electoral roll(PSC Interim Report pg 108)

7.4. Display period doubled to 14 days.

A minimum of 30 days should be allowed to give the public sufficient time to check. Any objector who is a citizen should be entitled to object, not just a voter in that constituency.

[EA1958] S9A. Certified or re-certified electoral roll shall be deemed to be final and cannot be questioned in court.

It is hard to reconcile the spirit of this Section with *[ROE 2002] R 25A. Chief Registrar may restore name in electoral roll.* That regulation effectively grants the Chief Registrar carte blanche to do anything he likes with the electoral roll. How can a Regulation over-ride an Act. We recommend that any changes made by the Chief Registrar be subject to public scrutiny like that applicable to a supplementary voter roll.

In view of the massive errors committed by the SPR in the electoral rolls, public confidence in the competence and integrity of the SPR is very low. The phrase in S9A "cannot be questioned or appealed against in, or reviewed, quashed or set aside by, any court" should be removed. There should be a provision for the public to challenge the permanent electoral roll later.

7.4b Abolish RM10 fee for objections against each voter.

7.4c Abolish maximum limit of voters which can be questioned by a single complainant.

Clauses 7.4b and c are good. We recommend that the PSC go further. The voter roll should be made available to the public at an affordable rate. Eg Hard copy: 5 cents per page. Soft copy: RM 3 per CD. The SPR should involve the public to assist in checking the voter roll. This will enhance public confidence in the SPR.

8. Transparency of Voting Process (PSC Interim Report pg 109)

8.2 PSC suggested that SPR study efforts to increase transparency of polling process as follows:

8.2.1 Ballot Paper Serial No. Removal of serial numbers on ballot papers and retain it on the counterfoil.

8.2.3 Allow visually impaired voters to choose whomever they wish to mark their ballot papers. (PSC Interim Report pg 110)

8.2.4 Recount Process

8.2.4.3 Allow for recount if at the main tally centre, the difference in votes for the candidate with the highest vote and the second highest differ by 2% or less. (PSC Interim Report pg 110)

Clauses 8.2.1 and 8.2.4.3 have reverted to the old system which had many complaints of ballot stuffing, switching, hijacking of ballot boxes, etc. Why is the PSC going down that path when a very simple procedure has been identified and proposed?

This is how things can go wrong.

[COE 1981] R 25 (5) and Third Schedule (LB pg 172) states that even if there are more ballots than stated in Borang 13 Ballot Paper Statement, the presiding officer can proceed with counting of the votes. We should use serial nos at the start of balloting and at the start of counting to identify valid ballot papers. Any ballot paper outside the range shown in Borang 13 should be rejected. Without this control, there is no way to check on ballot stuffing or switching.

[COE 1981] R 23A (2) Place of counting of votes (LB pg 133) empowers the presiding officer to change the place of counting provided he gives notice 3 days before the commencement of the poll. This can seriously disrupt a candidate's campaign.

Imagine the following:

- a. There is now no control over the identity of the ballot papers,
- b. The Third Schedule empowers the presiding officer to proceed with counting even if there are more ballot papers in the ballot box than shown in Borang 13,
- c. The Returning Officer can up to 3 days before polling choose to change the counting centre to any place he deems fit,
- d. During transit of ballot box from the polling centre to the Main Tally Centre, the candidates and their agents are not allowed to accompany the ballot box in the transport used by the presiding officer. So there is a frantic car chase by the candidate agents to try to make sure that the ballot boxes are not tampered with in transit. Suppose transportation is by speed boat or by helicopter. Can the candidate agents track the ballot boxes? We hear stories of ballot boxes found in the sea after the Batang Ai by-election in February 2009. True or not, those stories create doubts about the trustworthiness of the SPR. Under such conditions, can we guarantee that ballot boxes are not tampered with in transit?

In our training, we mentioned that the PSC has proposed the removal of serial nos from the ballot paper. Almost without exception, the trainees objected strongly.

Recommendation: Retain the serial no. on the ballot paper. Allow the Candidate or their agents to accompany the ballot boxes from counting centre to tally centre.

Recount at Main Tally Centre:

The present procedure for counting in the same location as the polling station provides for very good control. As long don't change the location for counting, it is possible to have a reliable counting process. The candidates should ensure that they appoint trustworthy polling and counting agents.

Consider the situation where you can have a recount at the main tally centre and there is no control over the ballot paper identity such as serial nos. You can be faced with situations like in the past where ballot boxes mysteriously disappear or are switched in transit. This will increase public suspicion of the SPR. We believe this is an unfair burden to be placed on them, given the fact that they are currently facing an uphill battle to regain public confidence.

One bright opposition MP (not from the PSC) suggested that elections be recalled if there is any evidence of ballot box tampering. If there is a hung Parliament for GE 13 and 20 seats have to be recalled because of protests over the voting process, imagine the chaos that will result.

Recommendation:

The issue is fear. Whether anyone really takes the trouble to open the ballot boxes to inspect the ballots is irrelevant. It is a fact that many voters are constrained from voting freely out of fear. We can solve this problem with a few simple procedures:

- a. Randomize the issue of ballot papers –tear 5 or 10 and allow the voter to choose any one. This has been successfully demonstrated to hundreds of civil society participants throughout the country. They are happy with this procedure.
- b. Candidates should be allowed to place their own security seals on the ballot boxes and envelopes holding the used ballot papers, sign on it and take photographs of the signatures.
- c. Candidates and their agents should be required by law to witness the opening of the ballot boxes and envelopes to ensure that the ballot papers are destroyed without anyone scrutinising the serial numbers.

We have this problem of fear not only because the voters don't trust the Ruling Party. They also don't trust the opposition parties to safeguard the secrecy of their votes.

Counting must be carried out in the same location as polling. Delete [COE 1981] R 23A (2) The SPR should not be allowed to change it as this creates room for abuse.

Add at the end of **R 24 (2) Procedure on close of poll** to read: Counting shall commence after all the polling stations in that constituency has closed.

Counting of ballots in the counting centre is final. A recount of a particular ballot box in the Main Tally centre may be approved if there is strong suspicion and proof of tampering with the results shown in *Borang 14 Statement of the Poll after counting the ballots*. For such a case, the Candidate shall be allowed to appoint new counting agents. However, this shall be subject to [COE 1981] Regulation 24A (2)

8.2.2 Rearrange desks in polling centres to allow scrutineers to identify voters easily.

This provides for re-arranging the desks to allow scrutineers to identify voters easily. We suggest that the Polling Agents be seated in a row behind the Kerani SPR. The Kerani desks should be separated with a 6" gap. Scrutineers should be able to follow the ballot paper trail from the moment it is handed over to the voter until it is placed in the ballot box. The present arrangement of the ballot marking counter screen does not allow

that. To have a transparent voting process, the screen should be rotated 180 degrees so that the ballot paper can be seen all the time.

8.2.5.2 SPR shall only accept the marking "X" in a box on the right hand side of the ballot paper in alignment with the candidate's name as a valid vote.

We keep hearing references on the need to respect the intention of the voter. If you are to refer to the **Second Schedule of the Conduct of Elections Regulation 13 (2)**, (LB pg 171) the procedure is very clear:

The title at the very top says:

Directions for the Guidance of Voter to be exhibited outside every polling station.

There are many reports to suggest that the SPR has not complied with their own Regulation. So the first step is for the SPR to follow their own rules.

Further down, it states

"The voter will go into the place reserved for the marking of ballot papers and mark a cross in the space provided for the purpose on the right-hand side of the ballot paper opposite the name of the candidate for whom he votes, thus "X".

This instruction is very clear. The voter shall indicate his intention by marking an "X". It does not say a tick, a moon or any other marking. Surely it is possible to design a cartoon to demonstrate this requirement and the KTM can put it right at the ballot marking screen so that the voter can see it just before he marks the ballot. The solution is education, not assuming the voter is stupid and changing the goal posts to suit him.

9. IMPROVE THE NOMINATION PROCESS (PSC Interim Report pg 111)

9.1 Process for objections on nomination day be cancelled.

9.2 Period for withdrawal of candidacy be abolished.

10. STRENGTHEN SPR

10.1 Strengthen the SPR to improve public confidence.

10.2a Provisions to ensure independence of the SPR have to be clarified under the laws.

10.2b EC must be allowed to enforce election laws. Increase EC resources and make them independent.

We suggest that the PSC should go further. There have been too many complaints about the performance of the SPR. Public statements by the SPR Chairman and his deputy seem to suggest that they are beholden to a particular political party. We

reiterate our suggestion that all the SPR officers from Returning Officer upwards be drawn from the public who do not have any previous or current involvement in Govt or GLC service. Even for the Presiding Officers, at least half of them should be drawn from the public.

The SPR staff and temporary workers should not be afforded immunity or Govt assistance arising from legal suit from candidates or the public for personal violation of the Election Laws and Regulations. This will act as a deterrent against some of the blatant abuse of the laws by some black sheep in the SPR.

The Legal Advisor for the SPR should not be drawn from the AG's Chambers. Rather, they should be recruited from the private sector, preferably an individual vetted by the Bar Council.

All PSC recommendations should be implemented before GE 13. (PSC Interim Report pg 111)

EC must conduct voter education programmes.

We are glad that the PSC recognizes the importance of this programme, which we have been conducting throughout the country. It gives us encouragement to expand our activities in this field. Through our activities, we have been able to gather feedback of the public on the SPR and its performance. Our recommendations are a result of such feedback.

Section 2: Additional Comments:

1. Forms 753, 764, 13, 14, 15, 16 and other Forms as appropriate:

Please add a footnote to the Forms to state that the Presiding Officer or Returning Officer shall issue a signed copy of each of the forms to the candidates or their agents. Candidates or their agents as attend shall sign all the Forms.

2. Malapportionment and Article 116 of the Federal Constitution:

In Kota Kinabalu on 26th Nov, a retiree, Mr. Ng ChakNgon raised the issue of serious malapportionment of voters between the rural and urban areas. Not only that. We have gross disparities due to the carving out of pockets of mono-ethnic groups to create Parliamentary seats. It could be used to create small Parliamentary seats consisting of Ruling Party supporters or to isolate opposition supporters within large Parliamentary seats. It started with the FELDA Schemes in the 1960's. It had small Malay populations.

Then Federal Territories: In 1971, Kuala Lumpur was taken out of Selangor to reduce the number of Chinese in Selangor. Putrajaya was carved out of Selangor with a population of 6,608 mainly Malay voters. This is grossly unjust.

We have traced the problem to an amendment to Article 116 of the Federal Constitution as shown below.

Source:(page 197)

http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---ilo_aids/documents/legaldocument/wcms_125966.pdf

116: See 8th Sch. subsection 4(2); 13th Sch. section 2.

Clause (1): The words "provisions contained in the Thirteenth Schedule" which appear at the end were substituted for "following provisions of this Article" by Act 14/1962, paragraph 22(a), in force from 21-06-1962. The words "a unit of review" which appear after "House of Representatives" were substituted for "the Federation" by Act 26/1963, section 70, in force 16-09-1963.

Clause (2): (a) The words "the provisions contained in the Thirteenth Schedule" were substituted for "Clause (3)" by Act 14/1962, paragraph 22(b), in force from 21-06-1962. The words "in the States of Malaya" were inserted by Act 26/1963, section 70, in force from 16-09-1963.

(b) The words "Article 46 and the Thirteenth Schedule" substituted for "the Thirteenth Schedule" by Art A206, section 14, in force from 23-08-1973. Clauses (3), (4) and (5): These Clauses which read as follows were repealed by Act 14/1962, paragraph 22 (c), in force from 21-06-1962:

"(3) Constituencies shall be allocated to the several States in such manner that the electoral quota of each State is as nearly equal to the electoral quota of the Federation as it can be without causing undue disparity between the population quota of that State and the population quota of the Federation.

(4) Each State shall be divided into constituencies in such manner that each constituency contains a number of electors as nearly equal to the electoral quota of the State as may be after making due allowance for the distribution of the different communities and for differences in density of population and the means of communication; but the allowance so made shall not increase or reduce the number of electors in any constituency to a number differing from the electoral quota by more than fifteen per cent.

(5) In this Article—

(a) "electoral quota" means the number obtained by dividing the number of electors in the Federation or a State by the total number of constituencies or, as the case may be, the number of constituencies in that State;

(b) "population quota" means the number obtained by dividing the population of the Federation or of a State by the total number of constituencies or, as the case may be, the number of constituencies in that State;

and for the purposes of this Article the number of electors shall be taken to be as shown on the current electoral rolls and the population as counted at the most recent census."

Without this Constitutional safeguard, there is nothing to stop a future Government with a 2/3 Parliamentary majority from carving up little pockets of Federal Territories containing primarily of their supporters all over the country and creating a huge advantage as a result.

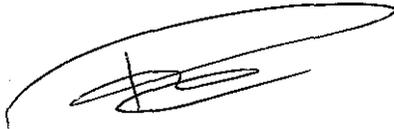
Recommendations:

- a. A precedent has already been set with N 44 SelatKlang in Selangor. It consists of several islands and an isolated pocket of land on the mainland that has the constituency of N 43 Sementa separating it. See Appendix I. The Putrajaya Parliamentary seat should be cancelled and the voter population treated as absent voters of the Federal Territory of Kuala Lumpur. That will reduce the number of Parliamentary seats to 221, which is an odd number, as it should be.

- b. Reinstate Article 116 Clause 4. Further, as we aspire to developed nation status, we should follow the United Kingdom's example. We should reduce the voter deviation to not more than 5% by 2015.

Thank you for your attention.

Regards,

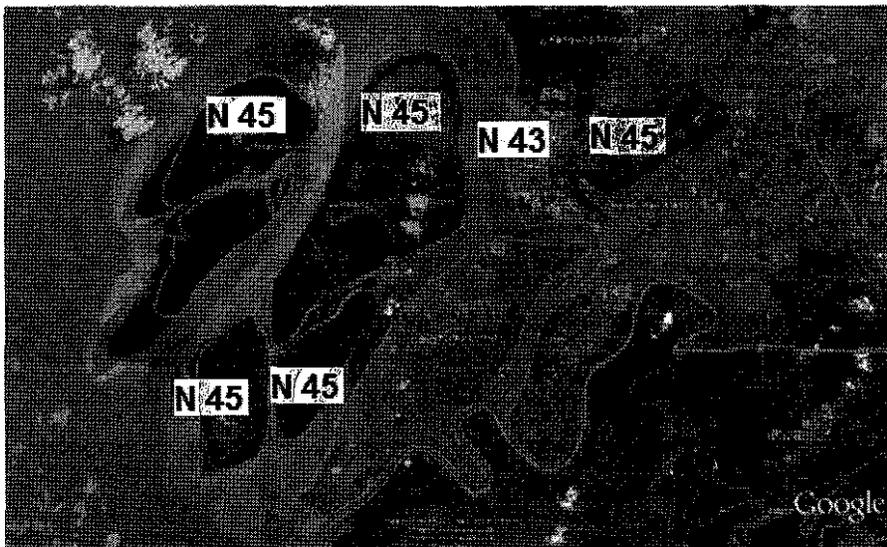


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APPENDIX I: N 45 SelatKlang is isolated by N 43 Sementa



Map 3 Selat Klang (dark green) is a weird combination of islands and township **Source: Wong Chin Huat**