

**Submission To Parliamentary Select Committee on Electoral Reform**

**26<sup>th</sup> Nov 2011**

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### **5. Restriction on power of the EC:**

We note that there are severe restrictions on the ability of the EC to take action against election offences. It appears that this power is vested in the Public Prosecutor. A common sentence we see in the Election Acts and Regulations is: *A prosecution for an offence under this Part shall not be instituted without the sanction of the Public Prosecutor.*

We see this in: page references to Election Laws by International Law Book Services (pg xxx)

#### **a. [Election Offences Act 1964]**

S 6 (4) Offences against this part (pg 30),

S 11 (3) Punishment and incapacities for corrupt practice (pg 35),

S 27 (2) Punishment for conviction for illegal practice (pg 54),

Part V Excuse for corrupt or illegal practice (pg 58),

#### **b. [Election Commission Act 1957]**

S 11 Consent of Public Prosecutor to prosecutions (pg 96)

#### **c. [Control Of Motor Vehicles and Vessels 1959]**

R 10. Sanction of Public Prosecutor. (pg 110)

Two effects have been seen.

1. Candidates in certain parties commit corrupt acts without fear of prosecution,
2. The SPR officers can abuse their powers and act with impunity as they feel that they will be protected from sanction.

Eg: Sibü by-election May 2010: Prime Minister gave his famous "You help me, I help you" speech during a ceramah in Sibü.

Sarawak State Elections in Apr 2011:

- a. SK Tanjong, Batu Danau: KTM was reciting the serial no. of the ballot paper as each voter entered the polling station,
- b. SK Tanjong, Batu Danau: This polling centre had only 1 polling station. According to the Jadual Mengundi issued by the Returning Officer, there was no provision of a Barung. Yet on polling day, a Barung was set up by the SPR and the place was crawling with election workers of one particular party,
- c. KTM at Batu Kawah refused to issue Form 14 to the counting agent.

#### **Proposal:**

1. Power to prosecute should be vested in the Election Commission and not in the Public Prosecutor. All restrictions on such power of the EC to prosecute should be removed.

### **6. Weaknesses in the Election Acts and Regulations?**

Pg 24 [EOA] S3 Offences by any person.

After 50 years, it should be reasonable to expect that the SPR has a complete list of offences that can possibly exist under the sun. Can we ask them to prepare a comprehensive list, consult all the political parties and draft up a Code of Conduct during an election campaign, violation of which will constitute an

There has been many reports of the presiding officer refusing to issue Form 14 to the candidate or agents, far too many. This has to stop. We propose that a sub-paragraph be added:

*(iii) If the presiding officer refuses to issue Form 14 to the candidate or his agent as attend, he shall be arrested immediately and charged under [EOA] S 4 (g) is without reasonable cause guilty of any act or omission in breach of his official duty and this action shall not be referred to the Public Prosecutor for sanction.*

#### **11. Performance of the EC:**

We will be tabling a list of their poor actions in future hearings. As we conduct training courses, we receive complaints from the participants that can be compiled for the consideration of the PSC.

One quick point: In the Apr 2011 State Elections, many constituencies did not get enough Borang Sumpah Kerahsiaan and SPR Tags for PACABA. With more than 50 years of experience, this is not acceptable. One can only conclude that this is deliberate. If they cannot get such a simple requirement right, they have no business to be conducting elections.

#### **12. General: Police Permits**

We cannot accept the interference of police in the conduct of elections. During an election, candidates should not require a police permit to hold any gathering. The presence of police in any political event should be minimal such that they do not appear as a threat to the public.

They shall not be permitted to place impediments such as road blocks to disrupt any candidate's campaign.

To put it simply. They should get out of the way.

#### **13. Postal Voter Rolls**

We are unable to find any procedures for the issue of postal voter rolls. Can we ask the SPR to publish it regularly every quarterly, just like the normal electoral rolls.

Thank you for your consideration.

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