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# Redrawing The Gerrymandered Electoral Boundaries

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## Executive Summary

- In this paper, we look into the issue of gerrymandering in Malaysia, and how we can resolve the unequal distribution of voters across constituencies at both the federal and state level.
- Recognising the need to resolve this problem, we propose a few solutions. They are as follows:
  - Restructuring the Election Commission (EC) by: (a) establishing a standing committee in Parliament to scrutinise the Election Commission; (b) beginning a process whereby the chairman, deputy chairman and members of the Election Commission are appointed by Parliament after confirmation hearings; (c) enabling the standing committee to summon the Election Commission to testify whenever necessary on matters relating to its work; ensuring that reports on the work of the Election Commission is brought before Parliament for scrutiny; and (d) removing the Election Commission from the purview of the Prime Minister.
  - Equalising the number of voters in each constituency via another round of redelineation by ensuring a much smaller gap between the constituency with the most number of voters and constituency with the least number of voters; ensuring that the number of voters in each constituency is broadly equal; eliminating all mega constituencies; ensuring that the number of voters in each constituency vary by no more than 15%; and prioritising number of voters over land area of constituencies.
  - Eliminating racial factors when drawing constituency boundaries by stopping the conduct of racial redelineation by the Election Commission; and creating more "mixed seats" wherever possible.
  - Due to the prioritisation of number of voters over land area of constituencies, we recommend providing more funding for MPs of large-sized rural constituencies by passing a bill which grants all MPs of large-sized rural constituencies more funding; enabling those MPs to claim expenses for running service centres,

employing staff, living costs and travels; establishing an independent body that regulates the claims and expenses of eligible MPs; and creating a committee in Parliament which will regulate the proposed independent body.

- This is a proposal which will need the cooperation of all sides in order to be implemented. With a new federal government which has promised to carry out bold reforms, if this policy suggestion is taken up, Malaysians will one day be able to enjoy an electoral system that is fair, transparent and not be dominated by the politics of race and religion.

## 1.0 Introduction

- 1.1 The political structure of Malaysia is based on the Westminster parliamentary system. Like the United Kingdom, Malaysia uses the first-past-the-post (FPTP) voting system.
- 1.2 This paper does not intend to address the flaws of the FPTP voting method or suggest the introduction of a new voting system. Instead, this paper will address why the way in which the FPTP voting system is deeply flawed and how we can make the FPTP voting system fairer in Malaysia.
- 1.3 This paper defines gerrymandering as a practice which gives political advantages to a particular party or group by manipulating constituency boundaries. We will be looking at gerrymandering in Malaysia in terms of: (a) vastly unequal number of voters among constituencies; and (b) the drawing of constituency boundaries based on race. The latter point is addressed due to voters voting along racial lines.

## 2.0 The Political Reality

- 2.1 Gerrymandering is a serious problem in Malaysia. This is evident based on the outcome of the 13<sup>th</sup> Malaysian general election in 2013. In the 2013 general election, the Barisan Nasional (BN) coalition won 60% of the 222 seats in the lower house despite receiving just 47% of the popular vote. In contrast, while then opposition Pakatan Rakyat (PR) coalition received the majority of the votes at 51%, it only won 40% of the 222 seats.<sup>1</sup>
- 2.2 For Malaysia to lose its “flawed democracy” image, the Election Commission must carry out major reforms. This paper suggests the following reforms:
  - (a) Revising the composition and appointment of the Election Commission;

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<sup>1</sup> 'What's Malay for gerrymandering?', *The Economist*, 9 August 2014, <https://www.economist.com/asia/2014/08/09/whats-malay-for-gerrymandering>

- (b) Redrawing all federal and state constituencies to equalise the number of voters in each constituency; and
- (c) Eliminating racial demographics as a priority when drawing electoral boundaries.

### **3.0 The Magnitude of Gerrymandering in Malaysia**

- 3.1 Also known as delimitation, delineation is the exercise of drawing electoral boundaries in order to prevent uneven distribution of voters between constituencies. Delineation ensures citizens in each constituency are equally represented. This is to avoid a group of voters in one constituency being entitled to larger representation in government than other constituencies.<sup>2</sup>
- 3.2 As of now, current federal constituency boundaries drawn by the EC range in size from 18,000 voters to 146,000 voters per constituency.<sup>3</sup>
- 3.3 For example, prior to the redelineation exercise passed in the Dewan Rakyat on 28 March 2018, the constituency of Kapar in Selangor had 144,159 registered voters while Putrajaya had a mere 15,791 registered voters.<sup>4</sup> This unfair arrangement in effect gives the constituents of Putrajaya a far larger representation than the constituents of Kapar. The variation between the two is a staggering 912%. This means that one vote in Putrajaya is equivalent to 9.12 votes in Kapar.<sup>5</sup>
- 3.4 Following the redelineation exercise in 2018, the discrepancy in voter size among constituencies became even larger. Focusing on Peninsular Malaysia, the largest federal constituency, Bangi in Selangor has 178,790

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<sup>2</sup> Jia Vern Tham, '5 things you should know about EC's redelineation exercise & how it affects your vote', *Says Malaysia*, 29 March 2018,

<http://says.com/my/news/things-you-need-to-know-about-delineation-of-electoral-boundaries-how-it-affects-you>

<sup>3</sup> 'Malaysia's PM is about to steal an election', *The Economist*, 10 March 2018,

<https://www.economist.com/leaders/2018/03/10/malaysias-pm-is-about-to-steal-an-election>

<sup>4</sup> Lisa Goh, 'Pushing the boundaries', *The Star Online*, 16 June 2013,

<https://www.thestar.com.my/news/nation/2013/06/16/pushing-the-boundaries/>

<sup>5</sup> Ibid at 4.

voters while the smallest federal constituency is Putrajaya with 17,627 voters.<sup>6</sup> The Damansara federal constituency, the second largest federal constituency in the country saw its voter size increased by 80% compared to its preceding seat, Petaling Jaya Utara. Damansara is now about 8.53 times larger than the Putrajaya constituency.<sup>7</sup>

- 3.5 According to the *Malay Mail*, the then-EC chairman Tan Sri Mohd Hashim Abdullah had told the *New Straits Times* in an interview that the commission took both geographical and ethnic aspects in consideration when redrawing the boundaries.<sup>8</sup> He said that they drew constituency boundaries along racial lines as they believed ethnic groups should be kept together.<sup>9</sup>
- 3.6 As a result, the redelineation exercise has seen a reduction in “mixed seats” where no race is particularly dominant in terms of numbers. This is especially true in ethnically diverse Selangor. Selangor was the state that became the most significant victim to substantial alterations to its electoral boundaries at the state and federal level.
- 3.7 Soon after the Election Commission announced its redelineation plans, online news portal *Malaysiakini*'s data analysis stated that during the 13<sup>th</sup> general election, in Selangor, in five seats Malays formed a small minority (less than 20 percent of voters), in 12 a large minority (20 percent to 39.9 percent of voters), 22 with moderate representation (40 percent to 59.9 percent of voters), 13 with a large majority (60 percent to 79.9 percent of voters) and four with a super majority (more than 80 percent of voters).

However, because of the said redelineation, there was an increment by more than two-folds in seats where Malay voters comprise of 60 percent

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<sup>6</sup> Ong Kian Ming, 'Latest electoral roll figures show failure of EC redelineation exercise', *Malaysiakini*, 24 April 2018,

<https://www.malaysiakini.com/news/421321>

<sup>7</sup> George Varughese, 'Press release | Redelineation proposals are fundamentally flawed, inherently unfair, and unconstitutional', *The Malaysian Bar*, 3 April 2018,

<http://www.malaysianbar.org.my/press-statements/press-release-%7C-redelineation-proposals-are-fundamentally-flawed-inherently-unfair-and-unconstitutional.html>

<sup>8</sup> 'EC chief admits racial redelineation, says ethnic groups can't be split', *Malay Mail*, 29 March 2018,

<https://www.malaymail.com/s/1610117/ec-chief-admits-racial-redelineation-says-ethnic-groups-cant-be-split>

<sup>9</sup> Ibid at 8.

to 79.9 percent, from 13 seats to 27 seats. On the other hand, in seats where Malay voters form a small minority at less than 20 percent of the electorate also increased, from five state seats to eight seats.<sup>10</sup> This shows that Malay representation has become either very small or very large in more than half of all the state constituencies in Selangor. This is a clear sign that there are now fewer racially-mixed seats in racially diverse Selangor.

- 3.8 *Malaysiakini's* analysis also indicated that during the 13<sup>th</sup> General Election, in Selangor, Chinese voters were a small minority in 18 seats, followed by a large minority in 21 seats, moderate representation in 12 seats, large majority in three seats and super majority in two seats. Due to the redelineation exercise, seats where Chinese voters comprised of 60 percent to 79.9 percent have increased from 3 to 8.

On the other hand, in seats where Chinese voters make up less than 20 percent of the electorate increased from 18 to 26. These changes occurred at the expense of more racially-mixed seats, where constituencies comprising 20 percent to 39.9 percent Chinese voters have decreased from 21 to 14 while seats comprising 40 percent to 59.9 percent Chinese voters have seen a reduction to 7 from 12.<sup>11</sup> This shows that in about half of Selangor state constituencies, Chinese representation became very large or very small.

- 3.9 This large difference in the number of voters in each constituency creates unequal representation for constituents in different constituencies. It also puts different levels of strain on MPs whereby with limited resources, one MP might have to service many more constituents than another MP.

#### **4.0 Restructuring the Election Commission: Standing Committee on Election Commission**

- 4.1 Article 114(2) of the Federal Constitution states that, "In appointing members of the Election Commission the Yang di-Pertuan Agong shall

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<sup>10</sup> Nigel Aw, 'How S'gor seats will be more racially polarised with EC's redelineation', *Malaysiakini*, 23 September 2016,

<https://www.malaysiakini.com/news/356700>

<sup>11</sup> *Ibid* at 10.

have regard to the importance of securing an Election Commission which enjoys public confidence.”<sup>12</sup> Hence, restructuring the Election Commission is fundamental in ensuring that it becomes a body that is free from any form of political interference that could affect the independence of its work and decisions.

- 4.2 Unfortunately, the independence of the Election Commission has frequently been called into question by both politicians and the public. Factors that have eroded the confidence of the public includes the fact that former EC Chairman, Tan Sri Mohd Hashim Abdullah admitted to once being private secretary to Tan Sri Annuar Musa, a politician belonging to the then-ruling party United Malays National Organisation (UMNO), when the latter was rural development minister.<sup>13 14</sup>
- 4.3 As of now, there are no parliamentary standing committees to scrutinise the Election Commission.<sup>15</sup> Furthermore, the Commission falls under the purview of the Prime Minister’s Department.
- 4.4 The way the Election Commission’s members are appointed and how it is held accountable must also change.<sup>16</sup>
- 4.5 Standing Committee To Appoint Members of the Election Commission
  - 4.5.1 This paper proposes bipartisanship in the composition of the Election Commission. The process of appointment of the members of the Election Commission is proposed to be modelled after the Speaker’s Committee on the Electoral Commission, a

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<sup>12</sup> Article 114(2), Federal Constitution

<sup>13</sup> Syed Jaymal Zahiid, ‘EC bosses admit being UMNO members’, *Free Malaysia Today*, 27 April 2012, <http://www.freemalaysiatoday.com/category/nation/2012/04/27/ec-bosses-admit-being-umno-members/>

<sup>14</sup> Shazwan Mustafa Kamal, ‘New EC chief says has no political ties, not Umno member’, *Malay Mail*, 28 February 2016, <https://www.malaymail.com/s/1069753/new-ec-chief-says-has-no-political-ties-not-umno-member>

<sup>15</sup> The Official Portal of Parliament of Malaysia, *Committee*, n.d. <http://www.parlimen.gov.my/jawatankuasa-dr.html?uweb=dr&>

<sup>16</sup> ‘Promise 17: Ensure Transparency and Robustness of our Election System’, *Buku Harapan*, 2018

statutory body in the United Kingdom (UK) that scrutinises the UK's Electoral Commission.<sup>17 18</sup>

- 4.5.2 The Speaker to establish a standing committee similar to the UK Parliament's Speaker's Committee on the Electoral Commission. The committee shall be chaired by the Dewan Rakyat Speaker, who must retire from active politics and resign from his or her party, and its members be equally distributed among government and opposition MPs;
- 4.5.3 After having discussions with all parties, this standing committee should then nominate a candidate as the chairman and deputy chairman, followed by five other candidates to be members of the Election Commission. The nominees must not be or have been affiliated to any political parties;
- 4.5.4 The standing committee shall summon the nominated candidates for confirmation hearings. Members of this committee can question and seek clarification from the nominees to ensure that they will be impartial in their work at the Election Commission;
- 4.5.5 After the confirmation hearings, the nominees will be put to a vote among members of this committee. The nominees will require a simple majority among members of the standing committee to proceed to the next stage. Nominees who fail to obtain a simple majority at the committee will not proceed to the next stage;
- 4.5.6 Nominees who receive enough votes will then be put to the floor of the Dewan Rakyat. MPs will debate the suitability of the nominees put before them. After the debate, MPs will vote whether to confirm the nominee. To ensure that the chairman, deputy chairman and members of the Election Commission are

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<sup>17</sup> UK Parliament, *Speaker's Committee on the Electoral Commission*, n.d., <https://www.parliament.uk/business/committees/committees-a-z/other-committees/speakers-committee-on-the-electoral-commission/>

<sup>18</sup> UK Legislation, *Political Parties, Elections and Referendums Act 2000*, n.d., [https://www.legislation.gov.uk/ukpga/2000/41/pdfs/ukpga\\_20000041\\_en.pdf](https://www.legislation.gov.uk/ukpga/2000/41/pdfs/ukpga_20000041_en.pdf)

accepted by all quarters, the nominees for positions at the Election Commission will need to secure the vote of two thirds of MPs or 148 MPs to be confirmed.

4.5.7 Successful nominees will then receive an appointment by the Yang di-Pertuan Agong.

#### 4.6 Making the Election Commission Accountable to the Standing Committee and Public

4.6.1 All proposals of the Election Commission will be scrutinised by the same standing committee as mentioned in paragraph 3.5. The chairman or deputy chairman of the Election Commission will have to table all of its proposals before the said standing committee.

4.6.2 Proposals in paragraph 3.6.1 will also have to be published and tabled in Parliament. This will allow MPs who are not members of this committee to scrutinise the proposals of the EC.

4.6.3 At the end of any exercise carried out by the EC, such as redelineation, the Commission will have to publish a report. The report will be scrutinised by this standing committee who may propose changes wherever deemed necessary.

4.6.4 The chairman or members of this standing committee may also summon the Election Commission to testify on any matter. This standing committee has the right to halt exercises and proposals. The Election Commission will have to abide by the decisions of the standing committee.

Overall, these proposed reforms will go some way to ensure the independence of the Election Commission.

## **5.0 Equalising the Number of Voters in Each Constituency**

- 5.1 The size of each constituency should vary by no more than 15%, as initially stipulated in the Federal Constitution prior to several amendments.<sup>19</sup>
- 5.2 The number of voters should be prioritised as opposed to the geographical consideration. This basic rule should apply to state constituencies as well. The largest state constituency in a particular state should only have a maximum of 15% deviation than the smallest state constituency.
- 5.3 In complying with the Federal Constitution's Thirteenth Schedule which states that constituencies ought to be delimited so that they do not cross state boundaries,<sup>20</sup> we propose that the sole federal constituency in the Federal Territory of Putrajaya, P.125 Putrajaya and the sole federal constituency in the Federal Territory of Labuan, P.166 Labuan both be given special exemption status.
- 5.4 The purpose of a special exemption status is to ensure that the federal constituencies of Putrajaya and Labuan will be left untouched, in the event that the number of voters in these federal constituencies are at least 15% smaller than the largest federal constituency in the country after the redelineation exercise.

## **6.0 Eliminating racial factors**

- 6.1 It is proposed that Election Commission no longer uses racial composition as a factor in the redelineation exercise. Racial demographics should no longer be a factor to be considered when drawing electoral boundaries at both state and federal level.

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<sup>19</sup> Ibid at 3.

<sup>20</sup> Thirteenth Schedule, Federal Constitution

- 6.2 Instead, we propose that, where possible, the number of “mixed seats” should be encouraged so that no race is especially dominant in any seats.

## **7.0 Mitigating the Aftermath of Equalisation of Number of Voters in Each Constituency: More Funding for MPs of Large-sized Rural Constituencies**

- 7.1 We understand that if broadly equal number of voters is solely prioritised, constituencies in rural areas could become extremely large in land area as the population in rural areas is sparse and of low density. This would affect the MP’s ability to serve constituents efficiently and incur high travelling costs.

- 7.2 It is recommended that MPs who represent large-sized (in terms of land area) rural constituencies, especially those in the states of Sarawak and Sabah be given substantially more resources and funding.

### **7.3 Case Study – United Kingdom**

- 7.3.1 The Independent Parliamentary Standards Authority (IPSA) is an independent statutory body responsible for the regulation and payment of expenses to Members of the House of Commons of the United Kingdom of Great Britain and Northern Ireland.

- 7.3.2 Alongside an MP’s basic annual salary of £77,379 (from 1 April 2018), MPs also receive expenses to cover the costs of:

- (a) Running an office;
- (b) Employing staff;
- (c) Having somewhere to live in London;
- (d) Having somewhere to live in their constituency; and
- (e) Travelling between Parliament and their constituency.<sup>21</sup>

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<sup>21</sup> UK Parliament, *Pay and expenses for MPs*, n.d., <https://www.parliament.uk/about/mps-and-lords/members/pay-mps/>

- 7.4 Based on the UK model, MPs as stated in paragraph 6.2 should be granted the privilege to claim more expenses for:
- (a) Running several service centres within their larger constituency. This will help constituents throughout the constituency to meet and seek help from their MP more easily without the need to travel for hours to reach the sole service centre in the constituency;
  - (b) Employing more service centre staff;
  - (c) Having places to live in their larger constituency. This will enable the MP to live in the constituency when Parliament is not in session, allowing him or her to be closer in serving constituents when Parliament is not in session;
  - (d) Travelling within their constituency for work; and
  - (e) Travelling between Parliament and their constituency.
- 7.5 The Parliament of Malaysia is suggested to establish a statutory body similar to that of IPSA.
- 7.6 This statutory body will have the power to regulate the resources of MPs that fall under paragraph 7.4. This statutory body shall be chaired by the Dewan Rakyat Speaker and its members equally distributed among government and opposition MPs. It should also be responsible of paying the salaries of the officers of the MPs.
- 7.7 In order to prevent MPs from abusing the expenses, the MPs will be required to publish their monthly expenses.
- 7.8 The statutory body should also have the power to adjudicate on matters relating to MPs' claims, including deciding on what are the unnecessary expenses along with powers to impose fines for any misconduct or abuse of said privileges.

## 8.0 The Budget

8.1 Conducting another round of redelineation will require a bigger budget for the Election Commission.

8.2 Pre-Redelineation Data Collection

8.2.1 We estimate that a sum of RM3,000,000 is needed for this purpose.

8.2.2 This amount can also be used to pay cartographers and carry out satellite mapping to redraw the electoral boundaries using the collected data.

8.3 Traveling Expenses for Purpose of Consultation with Local Leaders

8.3.1 This will allow the Election Commission to be able to identify the concerns of the locals and receive feedback from the locals on how the redelineation will affect them.

8.3.2 We estimate that a sum of RM20,000 is needed for each of the 222 federal constituencies including for the purpose of consultation that is to be done at state constituencies level, totalling to RM4,440,000.

8.4 Standing Committee Budget

8.4.1 It is recommended that the standing committee is allocated RM2,000,000 every year.

8.5 Total Budget Required

8.5.1 As a result, the Election Commission will require an additional budget of RM7,440,000 to conduct redelineation exercise. The calculation is as follows:

$$\text{RM3,000,000} + \text{RM4,440,000} = \text{RM7,440,000}$$

8.5.2 Thus, the overall sum required is RM9,440,000 based on the following:

RM7,440,000 (budget for Election Commission) + RM2,000,000  
(budget for standing committee)  
= RM9,440,000

## 9.0 Conclusion

- 9.1 The problem with Malaysian elections is not the FPTP voting system which we inherited from the British. Countries like the United Kingdom and Canada which also use the FPTP voting system have exemplary rankings for democracy.
- 9.2 With the resounding win of Pakatan Harapan (PH) in the 14<sup>th</sup> general election, Malaysia has a golden opportunity to fix its broken electoral system to pave the way for fairer elections where the value of each vote is equal.
- 9.3 To recap before closing this paper, we propose:
  - (a) Revising the composition and appointment of the Election Commission;
  - (b) Redrawing all federal and state constituencies to equalise the number of voters in each constituency;
  - (c) Eliminating racial considerations as a factor when drawing electoral boundaries; and
  - (d) Providing more funding to MPs who represent large-sized (in terms of land area) rural constituencies.

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