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Electoral Corruption – Irregularities or Inadequate Laws?**The Fourth International Malaysian Studies Conference (MSC4)****Panel : Designing Electoral (Mis)management (IKMAS panel)****Date: 4th August, 2004****Time: 11:30-1:00****Venue: Room 1****WONG, Chin-Huat****IKMAS, UKM / University of Essex****Abstract:**

This paper argues that violations of the freeness and fairness in elections should be viewed beyond legally-defined irregularities and encompassing the inadequacy or excess in laws that lead to such violations. It assesses the 2004 general election from three aspects, vote options, vote choice and electoral administration. Based on a normative framework stressing the freeness and fairness for both contestants and electorate, it lists some of the weakness in the existing legislations and practice, calling for rethinking in new directions: from holding parties as accounting unit for electoral expenses to replacing bureaucratic electoral commission with a multipartisan one. With a deductive framework, it suggests eight forms of electoral irregularities that might distort if not deny the electorate's choice, six of which were empirically examined with reported allegations in the media or by the parties, as well as suspicious patterns in election data.

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1 Free and Fair Election: A Normative and Empirical Framework

More than any of the ten before, the 2004 general election attracted attentions and concerns about the integrity of election as the manifestation of democracy, not least because of the chaos on the polling day as well as the irregularities occurred before and after. There are however more problems than violations or non-compliance of the laws. In many cases, the laws itself is the problem. The case for free and fair election must not take a pure legalistic approach, but essentially to press the questions why elections need to be free and fair, and how they can be.

Insofar we accept the principles of popular sovereignty, representative democracy and equal citizenship, elections will be the most essential process in a political community. Elections determine not only who should rule on the behalf of others, but also over what they may rule. That constitutions and legislations, the basis of rule of laws, are usually to be made and amended by the elected representatives, elections may also have great indirect impact to the limits of government power. Measurable by the twin principles of popular sovereignty and limited government, the vibrancy of any liberal democracy hence lies in the probity of its elections.

As men on the street would understand, election is about citizens as voters making choices. However, meaningful vote choices require in the first place freely-available options to vote for, in which the media representation is crucial. Meanwhile, how individual citizens' vote choices should be aggregated is the question of electoral system, whose answer begs normative criteria and which in turn structures both vote option and choice. Here legislations set the rules of the game for electoral systems, vote option and vote choice. All these factors however would also be determined by the interpretation and implementation of the laws, which the electoral authority is tasked, the judiciary may arbitrate and civil society may monitor.

More often than not, attentions on electoral manipulations are focused on only two elements, on how laws being compromised by the electoral authority and how voter choice being tempered by contestants and/or the authority. However, more serious infringement of voters' choice, via restricting the vote options and manipulating the systems, may be perfectly legal and easily escape scrutiny if a pure legalistic perspective is employed. This paper argues, inadequate or restrictive legislation could do as much harm as the non-compliance of a well-designed piece of laws. Any agenda of electoral reforms in Malaysia must recognize this.

Based on observation, interviews and analysis of legal provisions, the next section will present the problems in limited vote options, which is mostly caused by inadequacy of laws; the third section problems in tampered vote choice, which is more the result of violation and non-compliance of laws. In the last section before conclusion, it questions the relevance of the present bureaucratic formation of Election Commission, since the Malaysian political culture has failed to produce administrative neutrality. Fairness of electoral system is consciously left out as that should rightly be a subject by itself. (For an insightful introduction, see Horowitz (2003)) For the rest of this section, I shall present a host of concrete criteria for free and fair election in different stages of vote option, vote choice and electoral administration.

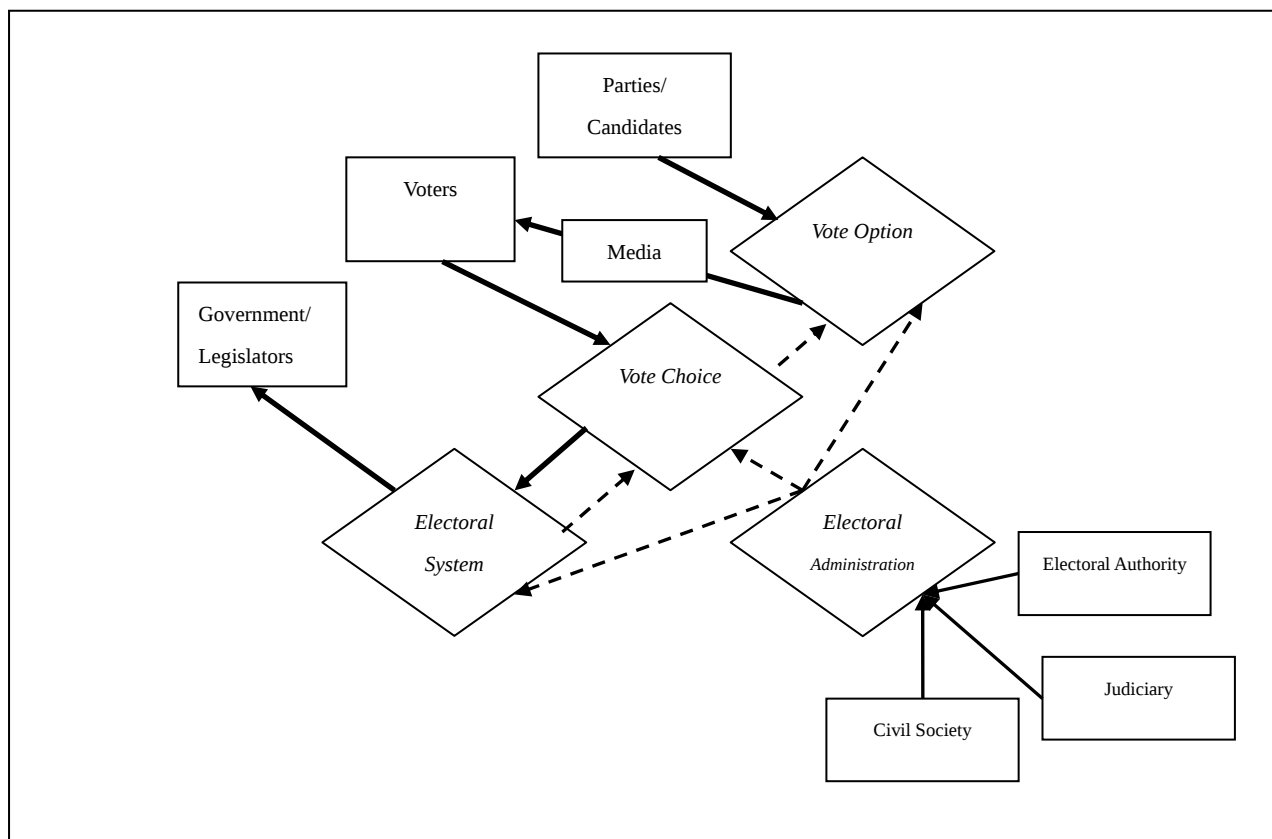


Figure 1 Four Elements of the Electoral Process: Vote Option, Vote Choice, Electoral System and Electoral Administration.

This paper is interested in, not merely whether the electoral laws have been complied, but whether elections have been free and fair. ‘Freeness’ and fairness of elections must cover both the right of citizens to choose and be chosen as holders of public office. A free election ensures free participation of all qualified citizens as voters and contestants while a fair election their participation on ‘level playing field’. Any violation of these twin principles of ‘freeness’ and ‘fairness’, by any state or non-state player, could then be conceptually termed as ‘electoral corruption’ (Birch, 2003:7) or ‘electoral manipulations’ used interchangeably. The term ‘electoral irregularities’ would be used exclusively for instances where laws have been violated or not enforced, where the intention is unascertained. Where the intention is clearly to steal the election, ‘electoral fraud’ would be used.

Conceptually, ‘electoral irregularities/fraud’ is therefore a subset of ‘electoral corruption/manipulation’. The two would be identical if (a) all corruption/manipulation would be against the laws; (b) no corruption/manipulation is attempted although not outlawed; (c) where (a) is not true, (b) is always the case. In reality, some forms of electoral corruption/manipulation would always be ill-defined, unconstrained by laws and hence happening, be it pork-barrel politics, misuse of public office, or partisan-motivated institutional changes. However, the extensiveness and intensity of such corruptions vary across countries and regions. In established democracies, pork-barrel politics may be part and parcel of national politics as in America, but misuse of state apparatus or outright discrimination against political opposition is seldom

tolerated, by the political culture if not by laws, and therefore rarely attempted. Hence, Nixon's resignation after the Water-gate scandal. Another example is the high level of trust the British electoral authority places on voters (and indirectly the parties) in registration where the voters' words are commonly just taken as true.

In contrast, Montenegro, democratizing in the aftermath of Yugoslav disintegration, has to make detailed and unambiguous provisions on the availability of electronic state-wide electoral rolls, free access to state media, and state funding for campaign activities. (OSCE, 1998) Any informed observer could see why political culture cannot be taken for granted as the guarantor of level playing field in democratizing states. Before becoming internalized, respect and commitment for democracy need to be habitualized through explicit rules and reward-punishment mechanism. It is therefore flawed to argue in some pseudo-liberal pretension as if the maturing of Malaysian electoral democracy does not need positive legislations and could be left to the citizenry who are trapped or alienated by the undemocratic practices.

Vote Option

Vote Option concerns four elements of electioneering: nomination, campaign freedom, media, campaign financing. Temporally, this covers the period from nomination throughout the campaign period up to the moment before the voter cast his/her ballot. A free and fair election means first free and equal opportunity for contestants to offer themselves, and then information and freedom on the voters' part so that they may eventually make an informed choice closest to their interest.

Nomination of candidates should pose only reasonable and minimum requirements. Disqualification should be clearly defined to avoid inconsistency across constituencies and over time. Striking off contestants on technical grounds in fact has been the modus operandi of rigging elections in some Trans-Caucasian and Central Asian republics. Options can also been effectively limited if all or some parties are not allowed, and their members have to stand as independents or under other parties' ticket. Party labels act both as policy cue and coordination device in elections (Cox, 1997: 159-60), deprivation of which certainly disadvantage some contestants and reduce the options available to the whole electorate. Assessment of freeness and fairness in nomination must cover the laws and practices governing parties and organizations, even if they do not fall within the jurisdiction of electoral law and authority.

Campaign opportunity concerns not only the form of campaigns, but also its depth and length. Free choice means no bloc of contestants should be systematically advantaged over others to the extent the society's choice is distorted if not denied by predetermination. Limitations for all contestants to promote their offers and attack their rivals' ones should be minimum and equally applied when inevitable. Bribery and coercion must be curbed for such corrupt practices systematically benefit contestants with more monetary and coercive resources rather than those win the hearts and minds of voters. The likeliest beneficiaries of uneven competition are the incumbent or those candidates backed by the state. That electoral publicity cannot be perfectly separated from official responsibility leaves all incumbent parties a natural

and inevitable advantage. Successful promotion of free and fair competition thus lies in two factors: (a) the length of campaign period that make explicit to voters all campaigning, including that of incumbents; (b) the constraints upon caretaker governments during the campaign period. The first question is usually well-addressed in presidential states where the dates of both executive and legislative elections are fixed and known to all parties. In parliamentary systems, the executive's power to dissolve the parliament whenever it sees fit naturally disadvantages the oppositions, and an adequate length of campaign period becomes all more important. Meanwhile, blurring of state and party lines by the incumbents is indeed a major threat to integrity of elections in many democratizing states.

As information is essential to democratic choice, media has played an increasingly important role in representing information to voters, often reaching more and with higher effectiveness than canvassing, rallies or other direct campaign methods would do. Access to media however could never be equal to all contestants in natural settings both for the discretionary nature of media representation, which is vulnerable to the ideological disposition of the practitioners and the intervention of state or media owners, as well as its costliness, even when media space and airtime may be purchased. Rational choice accounts since Downs (1957) have established that, the higher the cost of information, the less likely an instrumentally rational voter will seek information. She may not even bother to turn out at polling booth. Free and fair media access to contestants of all political dispositions in the society will therefore requires (a) a representative pluralism in the media industry that all views would be covered; or, (b) short of that, the provision of free access and subsidizing for paid access to contestants, in proportion to their vote share, membership, donations or other objective criteria. Failing both, a battle in ballots might simply be predetermined by a battle of media bosses.

Lastly, the question of campaign finance looms large in modern elections as both media and physical campaigns are necessary but costly. A sufficiently better-financed campaign may break a tie or even turn the table for a contestant who might otherwise be defeated. Deductively, any election might be bought with a sufficiently large media advantage. Perhaps save for extreme libertarians, few would cherish such fruitfulness of political participation by the rich. To ensure political contestation is not a prerogative of a small segment of the society, free and fair elections require some if not all of these measures: (a) limiting allowable electoral expenses, in total or on purposes; (b) regulating big sum and corporate/group donations, with caps on donor/recipients or compulsory declaration; and (c) public subsidizing of parties' campaign or even operation costs on certain criteria. While getting more popular, the last measure is not uncontroversial with frequent criticisms on two different grounds: (i) that taxes paid by citizens are being used, without their consents, to sponsor political causes including those they may disapprove; (b) that public funding unfairly benefits the existing political parties on the expense of new political forces that have yet to meet whatever criteria of receiving subsidies. In comparison, challenge to the other two measures is rather straight forward: how could spending and donation be effectively monitored so that violations will be penalised? However strict the punishment may be, electoral law that fails to promise monitoring will not work at all.

Vote Choice

Central to the probity of vote choice is not only about (i) whether voters can make their choices without fear of harms or retribution (the ‘freeness’ and secrecy of polling), but more fundamentally (ii) whether the choices are made only by those eligible (the validity of electoral roll and its use) and (iii) whether their choices are duly recognised (the probity of counting, tabulation and announcement). ‘Stealing’ election at the vote choice stage is necessary only if manipulation of vote options has failed, suggesting the desperation of the possible losers. Overt electoral frauds hence receive most condemnation. However, we must always remember that they are nevertheless a sufficient but not necessary evidence of electoral corruptions. As tampering with voters’ choices is unjustifiable by any ground, the reference framework we need is not a normative but an empirical one, to cover stages from compilation of electoral rolls, to polling, counting and tabulations of vote and eventually announcement of the results.

How many ways are there to literally steal an election? These papers suggest at least eight possible ways of electoral irregularities, denoted here as EI-1, EI-2, EI-3..., for electoral thefts and robbers to use in singularity or in combinations. Conceptually, an election is valid only if these conditions are simultaneously satisfied: (1) all genuine voters are registered if they so wish; (2) all registered voters are genuine; (3) all votes are cast only by genuine voters; (4) all votes are correctly counted. Phrased otherwise, the two equations for a perfectly valid election are:

- ‘Outcome-determining votes’ = ‘All genuine voters who opts to register and vote’.
- Misrepresentation of voter choice = 0.

Electoral irregularities simply mean various ways to violate these two equations at three stages: electoral roll, voting, counting and tabulation. At the first stage, validity of electoral rolls can be compromised by manufacturing (a) ‘voter disappearance’ (EI-1); and (b) ‘contaminations’, with dead, moved, multiply-registered or even fictitious voters. ‘Phantom voters’, as how electoral roll contaminations are commonly known, may emerge merely for technical reasons such as failure or errors in data up-keeping. If no ballots are collected and cast on behalf of the ‘phantoms’, the Effect of such contaminations is academic, affecting only data accuracy of electorate and turnout. However, if followed up with personation, contamination deliberately created may well be the most commonly employed form of irregularities (EI-2). The third and fourth types of fraud happen at the voting stage where registered voters may be (c) obstructed from voters via misinformation (EI-3); or (d) personated by others (EI-4).

The remaining four forms of irregularities take place at the last stage of counting and tabulation. Genuine ballots cast may be discarded (EI-5) or extra ballots may be stuffed into ballot boxes (EI-6). Ballot discarding and stuffing may also happen without actual transfer of ballot papers, by adding and subtracting the vote total on the tabulation sheets. The technical challenge involved in these two methods is of course in tallying the number of ballots issued, ballots cast and parties’ vote totals, which cannot always look perfectly seamless. The last two methods involved misrepresentation of voters’ choices, by either miscounting (EI-7) or deliberately spoiling the ballots (EI-8). These two methods may not be successful if the counting agents are vigilant. The last method may also leave as clue excessively high number of rejected

votes. (Table 1 & Figure 2)

Code	Forms of Irregularities	Stage
EI-1	Voter Disappearance	Electoral Roll
EI-2	Contamination-Personation	Electoral Roll and Voting
EI-3	Voter Obstruction	Voting
EI-4	Personation	Voting
EI-5	Ballot Discarding	Counting and Tabulation
EI-6	Ballot Miscounting	Counting and Tabulation
EI-7	Ballot Spoiling	Counting and Tabulation
EI-8	Ballot Stuffing	Counting and Tabulation

Table 1 Eight Ways of Electoral Irregularities at Different Stages

	Voters							Non-Voters	
Electoral Roll	Voter Disappearance (EI-1)	Genuine Voters						Contamination and	
Voting		Voter Obstruction (EI-3)	Genuine Votes				Personation (EI-4)	Personation (EI-2)	
Counting and Tabulation			Ballot Discarding (E1-5)	Correctly-counted Votes	Ballot Miscounting (EI-7)	Ballot Spoiling (EI-8)		Ballot Stuffing (EI-6)	
Outcome of Irregularities	Disenfranchised Voters						Disenfranchised Voters		
				Misrepresented Choices			Unqualified Votes		
				Outcome-determining Votes					

Figure 2 **Eight Ways of Electoral Irregularities**

In term of our equations above, electoral irregularities change them in one of these ways: (a) excluding eligible voters from ‘outcome-determining votes’ (EI-1, EI-3, EI-5); (b) adding unqualified votes into ‘outcome-determining votes’ (EI-2, EI-6); (c) both (EI-4); and (d) misrepresenting voters’ choice (EI-7, EI-8). Whether irregularities may change the outcome depends on the relative size of ‘correctly counted votes’ and the total of excluded voters, unqualified votes and misrepresented ballots. The degree that ‘efforts’ in electoral corruption will produce desired ‘results’ depend on a host of factors, including the skills and resources of those involved. (Birch, 2003:7)

One may argue, if the ‘efforts’ do not materially affect the election outcome, then the probity of the election is intact. Malaysian laws in fact accord the judges the liberty to “absolve corruption, bribery, intimidation and non-compliance of law if, in the subjective view of the judge, the offence did not materially affect the outcome of the elections.” (Puthuchearry and Norani, 2003:32) This paper argues against such position on two grounds. Empirically, even if an instance of irregularity will not by itself affect the outcome, it is impossible to ascertain if it exists in isolation to support such conjecture. In fact, isolated individuals have little incentives to plan and execute frauds. Normatively, it is unjustifiable to dismiss a criminal case simply because the attempt has failed – if one has everything to gain when a scheme of crime works and nothing to loose when it fails, the environment is actually signalling her to commit the crime.

Electoral Administration

In a free and fair process of electoral administration, one would expect (i) the electoral laws are interpreted and adhered to consistently and impartially; (ii) administrative decisions are made with impartiality, and where possible, with maximum consultations of contestants; (iii) the administration is transparent and accountable.

For both the first and second criteria, impartiality or the perception thereof is a key question. While a partisan authority is detrimental to public confidence, there is no single formula of best composition. Where bureaucracy is well-established, as in many Commonwealth countries, electoral commissions are frequently run by presumably non-partisan bureaucrats, often with independent tenures similar to judicial officers. In other countries, including many former one-party states, the decision-making body of electoral administration is explicitly multi-partisan instead of non-partisan to ensure inclusion and impartiality, supported by some permanent or ad-hoc congregation of civil servants. Hungary and Romania, for example, has a multiparty Election Commission appointed by the Parliament and parties, and a bureaucrat-run Election Office.

With relation to the first criteria, there should be adequate channel for complaints and appeals regarding the administration of elections, with legal provisions for timely decisions. It is important that at least the final appeal rests with the judiciary, so that any decisions by the electoral authority can be externally challenged. Meanwhile, to promote transparency and credibility of elections, the right to observe by the international and civil societies is gradually developing into an international norm. Provision of such right will be used as the operationalized

measure of the third criteria.

2 Vote Option: Inadequacy/Excess of Laws

Despite an average of 2.1 candidates for the 202 contested constituencies, vote option is actually quite limited in the 2004 election. The major problems lie in campaign opportunity, media access and campaign finance, most of which can be attributed to the inadequacy of laws. The lesser problem is on nominations, where the electoral laws have not been observed consistently, in addition to some controversial changes in the regulations. The discussions below shall follow this order.

Campaign Opportunity

The problems with uneven campaign opportunity can be grouped into three: (a) over-restrictive laws and inconsistent/partisan enforcement/interpretation; (b) a short campaign period; (c) the misuse of state apparatus by the caretaker government.

None of these is really new but all point to the inadequacy or excess of laws. While lifting the ban on public rallies^{*}, new amendments to Election Offences Act 1954 (EOA1954) have further curbed the freedom of speech[†]. The Election Commission also reminded candidates via its Candidate Guidebook (p 46-7) of other legislations in force, including the Sedition Act 1969 and Internal Security Act 1960 (ISA1960). After the election, three USM students were issued show-cause letters by the university authority for helping in political campaigns, an offence under the Universities and University Colleges Act 1971, if without the vice-chancellor's permission.

By the joint effect of Article 55 (4) of the Constitution and Section 2 of the EOA1954, campaign period (defined as from the closing of nomination to the eve of polling day) may range from 6.5 days to 55.5 days. History however witnesses only a shortening trend, from 41.5 days (1955), 34.5 days (1959-1969), 14.5-16.5 days (1970s), 8.5-9.5 days (Mahathir's Era) to now the shortest of 7.5 days for this election, only one day more than the effective minimum. With such short campaign period, it is impossible for the resource-poor opposition parties to effectively get their messages to voters while the incumbent BN has campaigned all year long in its governing capacity. As argued in Section 1, parliamentary systems particularly need a sufficiently long campaign period, to limit the disadvantage on opposition of allowing the executive to dissolve parliament at its best timing. Therefore, one of the first priorities for any electoral reforms is to explicitly provide for a minimum campaign period, of a month or so, in the Constitution or

* Many opposition candidates complained that nothing has changed as their rallies were denied police permits on various grounds. Meanwhile, BN candidates would have no problem to campaign in functions organized by government agency or grassroots organizations.

† Under Section 4A, anyone found promoting 'feelings of ill-will, discontent or hostility between persons of the same race or different races or the same class or different classes' in campaign are liable to a maximum punishment of five year term and RM 10,000 fine. S/he would also be barred from voting or contesting for five years from conviction, having his/her seat vacated if elected.

electoral laws.

Misuse of state resources by caretaker governments, by both federal and State, BN and PAS, is common place. Not only caretaker ministers campaign in their official capacities, development projects have also been promised by caretaker state governments to court votes. At the highest level, the caretaker prime minister, Abdullah Badawi, has the state and private radios to frequently replay for days his message of urging voters to poll. Although he did not campaign explicitly, the message was intertwined with his campaign slogans. Also, half a million letters without postal marks, titled *Pesanan dari Pak Lah (A Message from Pak Lah)*, to voters who stayed out their constituency, as revealed by media, using the service of Pos Malaysia. (Malaysiakini, 2004-03-19)[‡] However, none of these electoral corruptions would violate EOA1954 or other electoral laws. Any electoral reforms would be meaningless if the conduct of caretaker government remains unregulated by laws.

Media Access

Media has long been seen as one of the 3Ms characterizing BN's electoral hegemony, the other two being money and machinery. The Commonwealth and ANFREL observer missions for the 1990 and 1999 elections both found the media bias against the opposition. Nothing changes to be better for this election. All mainstream media, printed and broadcasting, exercise self-censorship and showed bias towards the incumbent government, partly because of restrictive laws such as Printing Presses and Publications Act 1984 (PPPA1984), Communication and Multimedia Act 1998 (CMA1998), Official Secrecy Act 1972 (OSA1972), ISA1960, partly also because they are now all owned or controlled by one of the ruling parties. That ownership control is possible however also owes much to PPPA1984 and CMA1998 which create entry barrier in the press, radio or TV industries and prevent market-induced media pluralism.

While general changes in media legislations are essential, specific changes should also be pursued in electoral laws. Free access to state media, equal paid access to private media and the right to reply to defamatory coverage are increasingly popular, including many newly democratizing states. While such provisions have never existed in Malaysian laws, such practice, albeit much limited and less fair, did once. In 1990 when Dr Mahathir faced his then most serious political challenge, radio political broadcasts were allowed for presentation of party manifestos for half an hour after every news programme. A total of three or four broadcasts were provided everyday seven days before the polling.[§] (Commonwealth Secretariat, c1990: 15) The ANFREL Observer Mission for the last election has recommended that 'Malaysian electoral law provide for fair media access by candidates and parties' (c1999:19). Such calls should be renewed by popularizing the support for free and fair media access as part of the electoral process.

[‡] According to Keadilan's Tian Chua, in Kubang Rotan, Kedah, the police even instructed the local authority to remove Keadilan posters along the route Abdullah was to pass by.

[§] Only BN, DAP, Semangat 46 and PAS were qualified under the requirement of contests in minimum 20 parliamentary constituencies, or about 11% of the total. Opposition leader also complained that the national radio did not the parties to broadcast 'live'.

Campaign Finance

Campaign finance is arguably the weakest link of the electoral process in the stage of vote option. EOA1954 (Section 19) allows a parliamentary candidate to spend only up to RM 200,000 and a state candidate RM 100,000. It is a common knowledge that these caps are too low to be taken seriously. According to some estimate, since the late 1980s, RM 2 Million has to be spent for every parliamentary contest and RM 1 Million for a state constituency by BN. (Chin, 2002:222)

Why has campaign finance failed to be controlled? Is it mere failure in implementation? I would argue that the existing law (EOA1954) has flawed in at least two senses. Firstly, it has wrongly taken candidates as the only accounting unit. In reality, parliamentary and state candidates of the same party will put up a joint campaign with many resources directly paid for by the party. National media campaigns are certainly paid for centrally. Many BN candidates may literally claims that they have not spent beyond the cap, as most expenses are in fact spent by their party or supporters. If the law requires the parties to declare their electoral expenses including donation in kind, BN's national allowable expenditure would have been kept at a total of RM 89.7 million, PAS at RM 43.3 million, Keadilan at RM 29.9 million and DAP at RM 19 million.** This would have substantially reduced the amount allowed for every seat, after deducting the heavy advertisement cost on broadcast and print media by the parties. Secondly, the onus of inspecting or scrutinising the return rest not with the EC, but with any candidate or his/her agent who wish to so do. (Abdul Rashid, 1994:131) Expectedly, few would so do, certainly not those winning candidates or those loosing with a substantial margin who has nothing to gain.

These two flaws are best demonstrated by the recently exposed scandal of 'donated posters' worth RM 100 million, involving amongst others Johor Baru MP Shahrir Samad and a UMNO-linked company Elegant Advisory Sdn Bhd. The amount RM 100 million has exceeded RM 89.7 million all 695 BN candidates in contested constituencies are allowed to spend! And, such amount of donation in kind, if true, may not have violated EOA1954.

A proper regulation of electoral finance needs not only better monitoring of expenses and donations, but also considering the introduction of state financing. State financing may reduce parties' dependence on private funding as well as encourage them to involve more citizens in the political process (by linking the funding to their vote gain, memberships or small-sum donations).

Nomination

The contentions related to nomination of candidates are on a few issues: (1) shortening of nomination times; (2) increase in deposits; (3) disqualification by convictions; (4) withdrawal provisions; (5) party registration.

** BN campaigned in a total of 202 parliamentary seats and 493 state seats, giving it a total cap of $(202 * \text{RM } 200,000) + (493 * \text{RM } 100,000) = \text{RM } 89.7 \text{ Million}$. PAS fought in 84 parliamentary seats and 265; Keadilan 59 and 121; DAP 44 and 102 respectively.

The shortening of the nomination process from two hours to one, together with inconsistent interpretation/enforcement of laws by some returning officers, have been criticized by some as a deliberate attempt to disqualify opposition candidates. Eventually a few opposition candidates and a BN candidate were disqualified, leading to some walkover victory.

Deposits have been raised from RM 3,000 for state seats and RM 5,000 for parliamentary seats to RM 5,000 and RM 10,000. While the increase may not been large enough to deter entry, some claims this measure has tied up more funds of resource-poor opposition from campaign use.

The Electoral Commission (EC) stopped three Keadilan leaders from contesting in the election on the ground they have been convicted. The contention is that they are still pending for appeals and should be treated like a parliamentarian in similar cases, who can keep her seat until the appeal is disposed. Such pre-mature disqualification would have denied their rights to stand even if they win their appeals later on, which happens to be the case for one of the trio, Ezam Mohamad. In hint sight, restrictive interpretation of laws by the EC was not justifiable on the ground of free and fair elections.

One of the new amendments to Election (Conduct of Election) Regulation 1981 allows a candidate to pull out within three days after nomination. Where there are only two candidates, one such withdrawal results in another's uncontested victory. BN has bagged a few seats in this way and was accused of bribing candidates. While the accusation might be true, such withdrawal provision is flawless in principle.

Lastly, Parti Socialis Malaysia (PSM) again has to have its candidates standing under the ticket of other opposition party because its application to register as a party has been rejected for years. This suggests, for the election to be truly free and fair to citizens of all dispositions, the Societies Act 1966 needs to be amended to allow free formation of parties.

3 Vote Choice: Violations of Laws

In contrast to vote option, the problem of vote choice lies more in the violations of laws than their inadequacy. For the least, all forms of electoral irregularities discussed in Section 1 violate EOA1954. The inadequacy of laws is more in their limitations to monitor and correct such irregularities. Below I shall examine first the freeness and secrecy of voting, then the possible occurrence of electoral irregularities in the stages of electoral roll, voting, counting and tabulation.

Freeness and Secrecy

While voting in Malaysia is generally free, secrecy is more in question. Only secrecy can ensure a voter fear no retribution and feel no obligation in making her choice. While my visit to some polling stations reveals that the physical setting may fail to protect voters from being peeped by others, the main threat to secrecy is the state itself. The practice of EC clerk writing down voter's

electoral number on the counterfoil of ballot, a requirement of Sub-regulation 19(3), ECER1981, creates a false impression that their choices are traceable. To defuse this fear, Abdul Malek Hussin, the chairman of Malaysian for Free and Fair Elections (MAFREL) suggests to have the serial number printed only on the counterfoil but not the ballot paper itself.

Even if individual choices are not traceable, collective choice of a settlement or a constituency always will be. The fundamental way to remove such fear is to have a government respecting democracy and not penalising those who vote against it. Technically, centralized counting for the constituency would be better than the existing method of decentralized counting at every polling station.

Examining Electoral Irregularities: Electoral Rolls

To what extent our electoral rolls are free from problems of missing voters and contaminations? A sampled survey by MAFREL in P98 Gombak and P121 Lembah Pantai suggest a picture far from rosy. (Table 2) 'Phantom voter pools', namely voters with (a) traceable address but unidentified identity; or (b) untraceable address, make up a shocking high percentage of 50% to 70% of the names surveyed. This might simply be due to failure or errors in updating data, keeping in the electoral rolls those who have deceased or moved, or whose addresses have even disappeared as a result of redevelopment.

Such explanation may not explain all instance of phantoms. Keadilan's candidate for Lembah Pantai, Dr Sanusi Osman, reported the existence of 39 'phantoms' in five houses there, ranging from 5 to 13 in one house. (Parti Keadilan Rakyat, 2004: 10) I was told by a voter, Mohd Amin Bin Abu Tahir, that he was unknowingly and involuntarily transferred from Baling, Kedah to the constituency with which he has no association whatsoever. Meanwhile, six Chinese and Indian names were found registered in an all-Malay village in Gombak. Five Chinese and one Malay 'phantoms' were even found in the house of the former state assemblyman Mohamed Azmin Ali's mother. (ibid: 9) These instances of irregularity were unlikely to be unintended error, and if indeed not so, possibly just the tip of the iceberg.

Table 2 The Findings of MAFREL's Electoral Roll Verification Exercise

Constituency (State)	P098 Gombak (Selangor)		P121 Lembah Pantai (Kuala Lumpur FT)	
Electorate Information (From Electoral Rolls)				
Electorate	91,033		56,442	
Voters With Incomplete Address (No House Nombor)	7.82%		1.83%	
Address with				
(a) 2-5 voters	17,835	91.84%	9,709	92.63%
(b) 6-10 voters	1,387	7.14%	649	6.19%
(c) 11-19 voters	184	0.95%	88	0.84%
(d) 20 and more voters	14	0.07%	35	0.33%
Total = (a)+(b)+(c)+(d)	19,420	100.00%	10,481	100.00%
Highest number of voter under 1 single address	71		156	
Sample Profile				
No. of Sampled Data	1,000	1.10%	1,000	1.77%
No. of Returned Data	994	1.09%	824	1.46%
No. of Accepted Data	965	1.06%	796	1.41%
Profiles of Voters in the Sample				
Voters with Address Identity				
(a) Traceable Accurate	668	69.22%	380	47.74%
(b) Traceable Inaccurate	46	4.77%	116	14.57%
(c) Traceable Identified	482	49.95%	214	26.88%
(d) Traceable Unidentified	232	24.04%	282	35.43%
(e) Untraceable	251	26.01%	300	37.69%
Total = (a)+(b)+(e) = (c)+(d)+(e)	965	100.00%	796	100.00%
Phantom Voter Pool = (d) + (e)	483	50.05%	582	73.12%
Profile of Addresses in the Sample				
Type of Addresses				
(a) Homes	697	97.62%	376	75.81%
(b) Shophouses	4	0.56%	4	0.81%
(c) Government Offices	3	0.42%	38	7.66%
(d) Business Offices	1	0.14%	0	0.00%
(e) False/Unknown	9	1.26%	78	15.73%
Total = (a)+(b)+(c)+(d)+(e)	714	100.00%	496	100.00%
Phantom Address Pool = (c) + (d) + (e)	13	1.82%	116	23.39%

Source: MAFREL (2004)

We must however remember, 'contamination' only constitute an irregularity if it is followed by 'personation'. Hence, identification of the irregularity EI-2, ('Contamination and Personation') can only be carried out in next stage when we look at voting. Nevertheless, the EC has the responsibility to clean up and update the rolls. Sub-regulation 13(2) of Elections (Registration of Electors) Regulations 2002 (ERER2002) in fact has accorded the registrar of electors to make house-to-house inquiry in her constituency when necessary. However, exercise of such power has

yet to be known to have happened.

How about irregularity EI-1, where some voters were involuntarily disappeared from the rolls or unknowingly moved to other constituencies? In N44 Sungai Pinang, Selangor, the DAP candidate's agent complained that the names of 2,000 voters might have been missing at polling streams in the Sungai Pinang Utara polling district registered with 3,580 voters, when the three classrooms assigned for voting only have about 1,200 names in total.^{††} (Sin Chew, 2004-03-21) Individual cases of missing voters were reported in P115 Batu amongst others. To give the benefit of doubts, their names could have been mistaken as deceased or disqualified, and subsequently deleted by the Registrar of Electors in her quarterly update operation. It should be noted that such deletion is not subject to inspection and objection, which may explain the constant problem of 'missing voters' in this and previous elections. To overcome 'voter disappearance', ERE2002 must be amended.

The ultimate solution to inaccuracy of electoral rolls perhaps just lie in the better use of ICT technology. Ng Lip Yong MP (P115 Batu, BN-Gerakan) suggested the EC to link its electoral roll database with that of National Registration Department (NRD). Long queues could have been avoided if Malaysians could just swipe their MyKad^{‡‡}, at the EC booth to get an advice slip printed with electoral number and the polling stream. Former Supreme Court judge Tan Sri Harun Hashim has long advocated automatic registration using the NRD database, where young Malaysians could hope to get a birthday card from EC upon their 21st birthday congratulating on their eligibility as voters. NRD could also inform the EC to delete the deceased voters and transfer the registration of those voters who have changed their address. (Nanyang Siang Pao, 1999-07-04) In such case, any invalidity of electoral roll would have one single source, namely the NRD database.

Examining Electoral Irregularities: Voting

From Section 1, we know that three forms of irregularities could happen at the stage of voting: Contamination and Personation (EI-2), Voter Obstruction (EI-3), Personation of Genuine Voters (EI-4). Two cases of EI-2 were reported in Gombak and Simpang Empat, Perlis, where votes were cast on behalf of dead persons, constituting an offence under Section 7 EOA1954. A case of EI-4, Pn Normah binti Baharom of Bandar Sunway was disenfranchised because someone else has voted on her behalf. (Parti Keadilan Rakyat, 2004: 8-9)

Whether intended or not, the polling day chaos has effectively led to Voter Obstruction (EI-3) in at least 17 out of 21 parliamentary constituencies in Selangor: P92 Sabak Bernam, P93 Sungai Besar, P95 Tanjung Karang, P96 Kaula Selangor, P97 Selayang, P98 Gombak, P99 Ampang, P100 Pandan, P101 Hulu Langat, P102 Serdang, P103 Puchong, P106 Petaling Jaya Utara, P107 Subang, P108 Shah Alam, P109 Kapar, P112 Kuala Langat and P113 Sepang. It also affected, albeit in lesser degree, three constituencies in Kuala Lumpur: P114 Kepong, P115 Batu and P116

^{††} The opposition won this state seat at the end of the day, but not the other problematic ones from Pandan to Gombak.

^{‡‡} The integrated smart card incorporating NRIC and others.

Wangsa Maju. (Malaysiakini, 2004-03-21; Sin Chew Jit Poh, 2004-03-21; Parti Keadilan Rakyat, 2004:3. For details of the chaos, see Wong, 2004.) Unable to find their polling stations, voters were sent around and ended up in long queues or quitted voting. How many voters have been disenfranchised because of the chaos is hard to estimate. The extension of polling for another two hours in some constituencies, albeit arguably unlawful, might have prevented some instances of disenfranchisement.

The measure however has also been alleged by some as part of the scheme to facilitate personations (EI-2 and EI-4). No evidence has been provided to support such allegations. What seems interesting is that Selangor has recorded rather high turnout despite the chaos. Sixteen of its 22 parliamentary constituencies enjoyed turnout rate more than 70%, the highest was 77.80% at P93 Sungai Besar. Of the other six constituencies, turnout was nevertheless above 65% with exception of P96 Kuala Selangor with a striking low at 31.82%. In contrast, turnout was surprisingly lower at Kuala Lumpur where polling was more orderly. Only four out of 11 constituencies saw turnout above 70%.

What have caused the chaos in the first place? It is technical in some cases, where computer hardware, software or CDs were either absent, under-supplied or mal-functioning. In most of the cases, the cause was both procedural and principal, concerning the validity and legality of the electoral rolls used. That names are found in some source electoral rolls (EC website, SMS, EC booth, party advice slip) but not in others, clearly suggest the use of double if not multiple electoral rolls for a constituency. Tan Sri Abdul Rashid Abdul Rahman, the EC chairman, was reported to have admitted that “the position of the voters became different when the document used was amended.” (Sun, 2004-03-24)

According to Regulation 14A of ECER1981, the authoritative text of the electoral roll shall be the one given to the candidates on the nomination day. Those used by polling agents in the polling streams should presumably be the authoritative hard copies, mostly gazetted on either 2nd or 3rd of March. In P100 Pandan, the MCA Division Wanita Chief revealed that, many voters found their names in fact appeared in the electoral roll at the EC booth as well as those with both the BN and Opposition polling agents, but only missing in the electoral roll of presiding officer and EC clerk in polling streams. EC officers were reported to bring a new electoral roll from the local authorities MPAJ and display it for the voters to check themselves. In N44 Sungai Pinang, Selangor, the Deputy Returning Officer Azlina admitted that the electoral roll she has gotten from the State Election Office on 20th March was different from the authoritative text. (Sin Chew Jit Poh, 2004-03-21) This suggests that the Elections may have been conducted in some constituencies with unlawful electoral rolls.

What could be more disturbing is that within the same constituency, different version of electoral rolls might have been used in different polling districts. Keadilan claimed that an electoral roll dated 16 March 2004 was used in three polling districts along with the 3rd March version in others in N20 Lembah Jaya, P99 Ampang. (Parti Keadilan Rakyat, 2004:5) In P98 Gombak, a voter Azli bin Ismail I have interviewed in Sekolah Kebangsaan Sri Gombak II polling centre said the electoral roll used there was dated 16th of March while the one in Sekolah

Menengah Hillcrest polling centre dated 5th of March. If true, forget about legality, now even basic data like turnout rate would be flawed as the correct number of electorate indeterminable. Multiple voting (a form of EI-2) would also have been possible.

The most shocking possibility of irregularity, however, is not that EC might have unlawfully used some non-authoritative but nevertheless gazetted rolls, but that those rolls used may well be not gazetted at all as claimed! A careful study of ERE2002 suggests a lawful revision would take at least 11 days from completion of revision to certification, assuming 1 day for the first notice of inspection in the Gazette, 1 day for the inspection, 7 days for objection period, then no claim, objection and appeal whatever being made, 1 day for the certification and 1 day more for the second notice of inspection in the Gazette. (Table 3) If a roll was indeed gazetted for use in 16th March, it would need to be displayed for inspection latest on 7th and the notice for the inspection published on 6th. If the previous revision has been certified on 3rd, this mean the latest revision took only 2 days to complete. Could this be possible or necessary? Have the public been informed about any inspection of electoral rolls after the parliamentary dissolution on 4th? A search on the Gazette for the publication of inspection notices in the period from 3rd to 20th of March 2004 for various constituencies should reveal the answers.

Examining Electoral Irregularities: Counting and Tabulation

Four types of irregularities may happen in the last stage of counting and tabulation, namely: Ballot discarding (EI-5), Ballot Stuffing (EI-6), Ballot Miscounting (EI-7) and Ballot Spoiling (EI-8).

By their very nature, EI-7 and EI-8 will usually either succeed unnoticed or not be attempted. No complaint on these two irregularities was known to have been made. A speculative clue for EI-8 is to look at the number of rejected votes. Forty nine constituencies recorded more than 3% of rejected votes. In eight constituencies, rejected votes exceed the majority. No patterns can be identified and no conclusion drawn.

A case of Ballot Discarding (EI-5) was reported in P92 Sabak Bernam, where a sealed plastic envelope containing 17 unopened postal ballots were found in a dustbin. The Keadilan candidate Dr Badrulamin Bahron took the EC to task but the EC Chairman Tan Sri Abdul Rashid Abdul Rahman dismissed it as 'dirty tricks' to tarnish the commission's image. (Malaysiakini, 2004-03-31; 04-13; 04-14) No report of ballot stuffing (EI-6) was known.

However, unusual patterns of electoral data, a possible indicator of ballot discarding and stuffing, are found in some constituencies. These cases are presented below, together with the alternative explanations.

Some constituencies have recorded extremely high rates of issued ballots. A total of thirteen constituencies have issued ballots to more than 85% of registered voters, when the national average is only 72.85%. Other than P125 Putra Jaya, they were all located in the three northern states where UMNO and PAS have close fights: Terengganu, Kelantan and Kedah. (Table 4) This

pattern might be perfectly reasonable, without employing any conspiracist theory of electoral frauds, because voters do have more incentives to turn out at polls when their votes are more likely to make a difference.

What puzzles the analyst is the high number of unreturned ballots in P036 Kuala Terengganu (10,254) and P039 Dungun (1,598). Another seven constituencies too recorded more than 1,000 unreturned ballots. (Table 5) Where have the ballots gone? Have they all been discarded as in Sabak Bernam? Or, may some ballots have been issued in advance for preparation of ballot stuffing but eventually unused?

Table 2 The Procedure of Supplementary Electoral Roll Revision
(Regulations 11-22, Elections (Registration of Electors) Regulations 2002)

Application for New/Transferred Registration – Form A											Revision				
Revision															
Notice for Inspection in Gazette															
Inspection															
Claims – Form B (<=7 days)							Objections – Form C (<=7 days)								
List of Claimants (<=7days)															
No Objection (<=7 days)			Request for Information				Objections – Form C (<=7 days)		Request for Information			Notice of Objection - Form D			
Claims Allowed			Notice of claim disallowance		Notice of objection disallowance				Objection Disallowed		Furnishing of Requested Information (<=7 days)				
			Furnishing of Requested Information (<=7 days)		Objection Disallowed		Notice of Hearing Request (<=7days)		Notice of Objection - Form D						
	Claims Allowed		Notice of Claim Disallowance		Objection Disallowed				Notice of Hearing – Form E						
									Notice of Hearing – Form E						
Public Inquiry (>=7 days)															
Claims Disallowed		Claims Disallowed		Claims Allowed		Claims/Objections Disallowed		Claims/Objections Allowed		Claims/Objections Disallowed		Claims/Objections Allowed			

Appeal (<=10 days)	Appeals (>=15 days)
Written Notice for Appeal Hearing	
Hearing of Appeal (>=4 days)	
Certification – Form F	Certification
Notice for Inspection in Gazette	Certification

* The number of days in parenthesis is the distance required/allowed from the previous stage.

	Actions/Notice by Voters (Claimants, Objectors, Persons Objected)		Actions by Adjudicating Officer
			Favourable Decisions by Registrar of Elector
	Actions/Notice by Registrar of Elector		Unfavourable Decisions by Registrar of Elector

Tan Sri Abdul Rashid Abdul Rahman, the EC chairman, has two interesting explanations to offer. First, some voters are ballot collectors, even though such hobby is against the laws. What this ‘collector theory’ fails to explain are (1) why such collectors are disproportionately concentrated in only some constituencies, making up to 40% of electorate in the case of P96 Kuala Selangor, even more than those who eventually vote? (2) why are some collectors interested only in collecting the parliamentary ballots and not the state ballots, as 10374 more ballots are collected for the parliamentary seat of P36 Kuala Terengganu than the total of its state seats?

On the case of P74 Lumut, he offered another theory of ‘sailing away’, “more than 5,000 postal ballot papers had not been returned by the navy base.” (Malaysiakini, 2004-04-13) However, postal ballots normally reach the postal voters three to four days before the polling day. Did he mean that all 5,000 navy officers have sailed away for half a week?

Table 4 Constituencies with High Rates of Ballot Issuance and Turnout

Code	Constituency	State	Winner	Ballot Issuance %	Ballot Unreturned	Turnout %
P036	Kuala Terengganu	Terengganu	BN-UMNO	98.39%	10,254	84.20%
P125	Putrajaya	FT, Putra Jaya	BN-UMNO	91.79%	8	91.63%
P028	Pasir Puteh	Kelantan	PAS	90.17%	266	89.71%
P039	Dungun	Terengganu	BN-UMNO	90.12%	1,598	87.25%
P038	Hulu Terengganu	Terengganu	BN-UMNO	89.62%	56	89.49%
P037	Marang	Terengganu	BN-UMNO	88.84%	331	88.33%
P035	Kuala Nerus	Terengganu	BN-UMNO	88.71%	140	88.45%
P040	Kemaman	Terengganu	BN-UMNO	88.02%	273	87.61%
P025	Bachok	Kelantan	BN-UMNO	86.79%	0	86.79%
P007	Padang Terap	Kedah	BN-UMNO	86.68%	21	86.61%
P033	Besut	Terengganu	BN-UMNO	86.49%	0	86.49%
P011	Pendang	Kedah	PAS	86.03%	0	86.03%
P013	Sik	Kedah	BN-UMNO	85.54%	0	85.54%

Table 5 Constituencies with High Numbers of Unreturned Ballots

Code	Constituency	State	Winner	Ballot Issuance %	Ballot Unreturned	Turnout %
P096	Kuala Selangor	Selangor	BN-UMNO	74.87%	17,960	31.82%
P036	Kuala Terengganu	Terengganu	BN-UMNO	98.39%	10,254	84.20%
P074	Lumut	Perak	BN-MCA	73.23%	5,486	65.22%
P106	Petaling Jaya Utara	Selangor	BN-MCA	71.19%	1,640	69.03%
P039	Dungun	Terengganu	BN-UMNO	90.12%	1,598	87.25%
P081	Jerantut	Pahang	BN-UMNO	79.12%	1,427	76.03%

P130	Rasah	Negeri Sembilan	BN-MCA	73.71%	1,306	71.71%
P068	Beruas	Perak	BN-Gerakan	69.52%	1,046	67.04%
P060	Taiping	Perak	BN-PPP	68.91%	1,027	67.33%

4 Electoral Administration

The freeness and fairness of electoral administration is evaluated on three aspects: the impartiality and accountability of the EC, the channels for complaints and appeals, and the right and opportunity for observation.

Impartiality and Accountability of EC

The polling day chaos has reduced the credibility of EC to its lowest point, with fires coming from politicians from both sides of the political divided. The employment of internal probe, instead of independent reviews, on the fiasco has not helped at all in damage control. Prior to the chaos, EC has been accused of breaking the laws and deliberately disadvantaging the opposition in the 11th hour change on regulations on 'pondok panas'. Last year, PAS condemned EC's plan to employ the members of UMNO's female youth wing Puteri as part-time administrative assistants.

In an interview, the EC chairman claimed that the independence of EC depended on the ruling party. He also claimed that the Commission was meant, by the letters of the Constitution, not to be independent but to enjoy the public confidence. (Malaysiakini, 2003-09-08, 09, 10)

While bureaucrats-run election authorities have been the standard model of Commonwealth countries, it is perhaps time to consider a rethinking. Bureaucrats can only be non-partisan where the government is constrained by a democratic political culture. Many former one party states have opted for a multi-partisan election commission to ensure more inclusion, impartiality and legitimacy. In virtual one-party state like Malaysia, this is perhaps the right direction. Parties passing certain threshold of popular support should be invited to appoint its members to the decision-making body of electoral administration, not only at the federal, but also at state and constituency levels.

Election Petitions and Redress

On the surface, channels of electoral redress is sufficiently provided for with a High Court Judge to hear election petitions that may lead to (a) the election being declared as void; (b) the election result being overturned; or (c) a scrutiny. The Judge's decision may further be appealed to the Federal Court. In addition, the laws stipulate a period within which the petitions and appeals must be heard and ruled.

There are, however, major limitations to the effective recourses available. Firstly, the validity of electoral rolls, so vital to the probity of election, is beyond challenge. The law provides for no inspection and objection on deletion of names from principal electoral rolls. The decision of the EC-appointed Adjudicating Officer is final regarding any claim or objection in the revision of supplementary electoral roll. Once certified and published in Gazette, electoral rolls are not to be questioned, appealed against, reviewed, quashed or set aside by any court under Section 9A of EA1958.

Secondly, an election may be declared void, with regards to corrupt practices and non-compliance of law, if only such practices and non-compliance have affected the result. (Section 32 of EOA1954) Even if the petition proved the case, s/he may not win the relief if the evidence is not sufficient to prove its pivotal effect. Thirdly, the EC officers have final decisions in some other matters. Under Section 41 of EOA1954, the decision of RO or PO on rejected votes is final and unquestionable. Similarly, the decision of the enforcement team leader, when consensual decisions could not be made, is final and binding on all team members under Sub-section 27G(4).

Fourthly, none of the Election laws provides specifically for channels of complaint, appeals and recourse on the decision or conduct of media, police and other institutions. Such decision or conduct that may have immense implications on the freeness and fairness of campaign but the candidate simply cannot do anything during or after an election to change the election outcome. Lastly and fundamentally, the prospect of judicial review relating to elections, however, has not been encouraging so far. (See Puthuchearry and Noraini, 2003: 34-36)

Hence, this election although has seen the greatest number of election petitions, many were thrown out of the court house in great speeds. So far, one petition has been ruled in favour, to UMNO, but many suspect it was a political deal between UMNO and PAS.

The Right to Observation

Malaysian laws have no provision for the right of electoral observation for either international community or civil society. The EC has neither been cooperative to such observational efforts. Local watchdogs like MAFREL and Malaysian Voters Union (MALVU) have however initiated many monitoring and educational works despite limitations in resources and access. Civil society in fact can help the electoral authority in providing a facilitative environment for free and fair election. Establishing the right to observation with accreditation procedures should be part of the efforts towards more free and fair election in Malaysia.

5 Conclusion

Electoral corruption covers wider than electoral irregularities or frauds, because often what violates the freeness and fairness of election may not be outlawed. In established democracies, such corruptions are arrested by the political culture, rendering extensive legislation unnecessary. In democratizing states, the laws must play a larger role to cover where the domestic political culture may fail.

Based on the normative and empirical framework spelled out in Section 1, I examine the electoral process in three aspects: the availability of vote option, the probity of vote choice and the quality of electoral administration. For irregularities, I focus on the vote choice and have identified six common ways how electorate's choice might have been distorted. Instances of Voter disappearance (EI-1), Contamination-Personation (EI-2), Personation (EI-4) have been documented from media, NGO and party documents as well as interviews and observations. Based on information from observation, media report and analysis of legal texts, I argue that the polling day chaos has effectively caused Voter Obstruction (EI-3), questioning whether some of the electoral rolls problematically used in Selangor have actually been gazetted. Lastly, employing electoral data, I present some possible cases of electoral frauds, possibly through

ballots discarding or ballot stuffing, with the competing explanations.

The more serious threats to free and fair election in Malaysia are those limiting vote options, which is mostly the consequence of inadequate positive legislations. I propose the measures below to be included in a meaningful agenda of electoral reforms:

- Providing for a minimum length of campaign period, of one month or so;
- Outlawing misuse of state resources for partisan purpose;
- Breaking down the legal entry barrier in media industries;
- Providing for free and fair media access to parties during campaign period;
- Requiring parties, and not only candidates, to declare all expenses and donations;
- Subsidizing campaign finance of parties based on some objective criteria;
- Ensuring the freedom of forming parties by amending or overruling the Societies Act 1966;
- Counting votes centrally for a constituency to maximize secrecy of vote choice;
- Changing the organizational character of Election Commission from non-partisan bureaucrat to multi-partisan representatives;
- Recognizing the right of accredited NGO to observe elections.

For democratization to be possible in Malaysia, the way elections are administrated must first change. I hope this paper has contributed its share of worth to the discussion.

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