**National Human Rights Institution Input paper on the Right to Participate in Political and Public Affairs**

1. **PARTICIPATION IN THE CONDUCT OF PUBLIC AFFAIRS**

The Human Rights Commission of Malaysia (SUHAKAM)believes that an important element of participation rights concerns efforts from the Government to not only engage with its grassroots society in decision making processes such as national consultations and referendums, but also to accord their citizens a voice, and their rights to freedom of expression, assembly and association. Article 10 in the Federal Constitution of Malaysia dictates that:

**Article 10 (1) – Freedom of Speech, Assembly and Association**

*Subject to Clauses (2), (3) and (4) –*

1. *every citizen has the right to freedom of speech and expression;*
2. *all citizens have the right to assemble peaceably and without arms;*
3. *all citizens have the right to form associations.*

However, it must be noted that the above Clauses state that the Parliament may by law impose restrictions on the rights in paragraph (a), (b) and (c), in the event that it is deemed necessary in the interest of protecting national security, friendly relations with other countries, public order or morality, privileges of Parliament or of any Legislative Assembly or to provide against contempt of court, defamation, or incitement to any offence.[[1]](#footnote-1)

 In this regard, The Commission has observed that there appears to be limitations to the right of Malaysian citizens to participate in the conduct of public affairs, whether directly or indirectly imposed upon by the Government of Malaysia.

1. **Lack of Consultations**

While the Government of Malaysia has conducted a number of national consultations for a variety of national issues, there still exists a **lack of broad and meaningful consultations** with stakeholders including civil society as a whole. An example of this would be the Government’s consultation process in the development of Malaysia’s first ever National Human Rights Action Plan (NHRAP), overseen by the Legal Affairs Division (BHEUU) under the Prime Minister’s Department. It was observed that the Steering Committee for the NHRAP not only did not include stakeholders from Civil Society Organisations (CSOs), but that consultations with CSOs would only take place at a later stage. In this regard, the Commission submitted a Recommendation Paper to the Government of Malaysia, recommending, among others, that CSOs, being key grassroots representatives of society, be made a part of the Steering Committee to ensure that the Malaysian public would benefit from a dynamic and significant Plan.

 There is also a similar lack of engagement with stakeholders with regard to the consultations that the Government should have had with respect to the Universal Periodic Review (UPR). In the course of the briefing sessions on Malaysia’s second UPR that the Commission held nationwide in 2014, it appeared that awareness of the UPR was very varied. Many of the Government and CSO representatives, especially at the State level, were unaware of the UPR process, what it entailed, and the recommendations that were put forth to Malaysia. This shows the limitations to the rights of participation for Malaysian citizens, due to the clear absence of consistent, broad and meaningful engagementments with the Government. Not only that, it also appears that the Government of Malaysia is not giving due consideration to the view of civil society, even concerning issues that are of national interest.

Essentially, the Commission is of the view that there is still much room for improvement with regard to the Government's frequency in engaging with civil society as whole. The principle of meaningful consultations should be entrenched and present in all aspects of the Government's decision-making processes, especially when they concern issues that affect citizens such as the enactment of new laws, the formulation of policies, National Budgets, etc, to ensure that the Malaysian Government’s decisions are in line with the interests of its peoples.

1. **Freedom of Assembly**

The Commission has observed that the Government has not been very forthcoming in promoting the right to freedom of peaceful assemblies, on the pretext of maintaining public order and security. To date, the Commission has carried out seven public inquiries into alleged violations of citizens being denied their right to freedom of assembly.

An example of limitations imposed on the right to participation in Malaysia, especially on freedom of assembly, is the Bersih Public Assemblies, which were organised by the Coalition for Clean and Fair Elections (BERSIH) in 2011, advocating for the Election Commission of Malaysia (EC) to ensure free and fair elections in Malaysia. Police efforts to shut down the assembly were carried out before and during the demonstration, which led to protestors being arrested, doused with tear gas and chemical-laced water and also subjected to the use of excessive force by the police. Based on complaints received, the Commission conducted a public inquiry and subpoenaed approximately 50 witnesses, comprising members of the public, media and police personnel to testify before the Commission.

The general findings concluded from the public inquiries, were that the authorities had not adhered to standard operating procedures, used excessive force in apprehending protestors, wrongfully arrested media personnel as well individuals who were observers of the public assembly and violated the right to assembly of the general public.

As of now, several positive developments have been made with regard to protecting the right to freedom of assembly, whereby in November 2011, the Government tabled and passed the Peaceful Assembly Act, which only requires organisers to notify the police within 10 days before the date of the assembly, instead of having to apply for police permits, which was mandatory previously. In this regard, the Commission has also taken note of the improvements made by all parties, including the police, with regard to recent demonstrations being peacefully carried out and successfully managed, such as the “Himpunan Kebangkitan Rakyat” (People's Uprising Rally) that was held at Merdeka Stadium in Kuala Lumpur on 12 January 2013 and also the “May Day Anti-GST” rally in Kuala Lumpur on 1 May 2014.

1. **RIGHT TO VOTE AND TO BE ELECTED**

The Commission is of the view that the right to vote is the basis of the authority of the Government and that it is the peoples’ choice that would essentially legitimise a ruling Government and uphold democracy. It should be noted that the right to vote is encapsulated in the Federal Constitution of Malaysia, under:

Article 119 (1) of the Federal Constitution, which states that,

*‘Every citizen who— (a) has attained the age of twenty-one years on the qualifying date;(b) is resident in a constituency on such qualifying date or, if not so resident, is an absent voter; and (c) is, under the provisions of any law relating to elections, registered in the electoral roll as an elector in the constituency in which he resides on the qualifying date, is entitled to vote in that constituency in any election to the House of Representatives or the Legislative Assembly unless he is disqualified under Clause (3) or under any law relating to offences committed in connection with elections; but no person shall in the same election vote in more than one constituency.’*

The Commission has observed that the main issue of concern for Malaysian citizens with regard to participation rights involves the ‘right to vote’, more so than the ‘right to be elected’.

1. **13th General Election**

In 2013, the Commission received 59 complaints with regard to the 13th General Election held on 5 May 2013. Of these, three were related to general matters, while 56 were related to procedures and were forwarded to the Election Commission (EC) for further action. A discussion between the Commission and independent observers that were appointed by the EC to monitor the election process, saw eight recommendations being offered:

* There is a need for the EC to improve the electoral roll
* The size of constituencies should be normalised by ensuring that the discrepancy is limited and not more than 15% of the average constituency in each state
* The EC should be independent of the Prime Minister’s Department and its members should be appointed by, and made accountable to, a permanent and bipartisan Special Parliamentary Committee.
* The EC should be accorded the power to recruit its own staff, independent of the civil service.
* The role of a caretaker government should be defined and legislated to ensure that duty-bearers are aware of their role, that is, to ensure the smooth day-to-day administration of the country during a general election
* Persons with disabilities should have the same access to election facilities as other voters
* The appointment of election observers should be made a permanent feature in every General Election; the appointment process should be improved and training provided to emphasise best practices from Asia Pacific countries.
* All elections candidates should have equal access to the Government’s communication channels, which should be non-partisan and unbiased in reporting national matters. All state-owned and government-linked media companies must remain independent in their reporting and cease unsubstantiated attacks against opposition parties.
1. **Universal Suffrage**

The Commission is of the view that while the general adult population in Malaysia do not face challenges or limitations to their right to vote, improvements can be made by the Government to ensure that voting procedures are accessible to all walks of society. For example it is recommended that polling stations be accessible to indigenous peoples (IPs) in remote areas, polling stations to be friendly to the disabled and the elderly and ballot papers in Braille be available to the visually handicapped.

1. **Right to be elected**

In order to understand the nature of Malaysia’s current economic, political and social structure, it is essential to realize that many governmental policies that are undertaken today are partly influenced by embedded historical features. Colonialism in Malaya taught its citizens their main lesson in multiculturalism, that co-operation amongst the three main ethnic groups was in fact attainable, and ideal due to the fact that Malaya achieved its independence in 1957 through a coalition, called the Alliance, which consisted of the three main ethnic-based political parties: for the Malays, the United Malays National Organization (UMNO); for the Chinese, the Malaysian Chinese Association (MCA); for the Indians, the Malaysian Indian Congress (MIC).

With regard to the right to be elected, there is no article in the Federal Constitution of Malaysia, or any law that dictates that political positions - be they Members of Parliament or Members of State Assemblies – are restricted to Malay Muslims. An example of this is the position of the Prime Minister, where the only prerequisites is that the Prime Minister must be a member of the House of Representatives and command the confidence of the majority members; citizen of Malaysia but not by naturalisation. However, while there is no legal impediment for the election of a non-Malay Muslim Prime Minister, this may still prove to be challenging due to the fact that the majority of the country’s citizens are Malays. In Malaysia, race-based politics plays an important role in the right to be elected, due to the fact that political parties are constantly attempting to garner the support of the Malay majority by propagating and/or highlighting the special position and privileges of the Malay people, as accorded in Article 153 of the Federal Constitution of Malaysia, which essentially institutionalizes the immutable status and dominance of the Malay population:

*‘It shall be the responsibility of the Yang di-Pertuan Agong to safeguard the special position of the Malays and natives of any of the States of Sabah and Sarawak and the legitimate interests of other communities in accordance with the provisions of this Article.’[[2]](#footnote-2)*

There is also a perception that historically, ‘even the British recognised Malaysia as the ‘Malay States’ before it achieved independence…due to the fact that the highest rulers of the land before independence were the Malay kings who were Muslims’.[[3]](#footnote-3) In this regard, the position of the Prime Minister may be viewed as a special privilege, exclusively for the Bumiputras of Malaysia, in order to ensure that Malay privileges and interests are protected.

1. **EQUAL ACCESS TO PUBLIC SERVICE**

In Malaysia, there are 1.4 million civil servants in 28 schemes of service under the Public Services Department. They include the federal public service, the state public services, the joint public services, the education service, the judiciary, the legal service, the police and armed forces.[[4]](#footnote-4)

With regard to the right to equal access to public service, The Commission has observed that while all citizens have an equal opportunity to join the civil service, it is largely dominated by the ethnic Malay group, who currently make up 50.4% of the population; a trend that has existed since British colonisation. This has in turn brought about criticisms of racial bias that the civil service is largely dominated by the Malays.

Currently, employment quotas are still generally applied to larger corporations, which require staff composition to reflect the overall ethnic composition of the country. Similar quotas also apply to the membership of boards of directors for a number of firms. According to a study undertaken by the Centre for Public Policy Studies (CPPS), civil service positions are subject to even more stringent quotas; a common and targeted ratio is 4 Bumiputra to 1 non-Bumiputra.[[5]](#footnote-5)

1. Federal Constitution of Malaysia, p. 24 and 25, [*http://www.agc.gov.my/images/Personalisation/Buss/pdf/Federal%20Consti%20%28BI%20text%29.pdf*](http://www.agc.gov.my/images/Personalisation/Buss/pdf/Federal%20Consti%20%28BI%20text%29.pdf) (accessed 10 February 2014). [↑](#footnote-ref-1)
2. Federal Consitution of Malaysia, Article 153, p. 145, [*http://www.agc.gov.my/images/Personalisation/Buss/pdf/Federal%20Consti%20%28BI%20text%29.pdf*](http://www.agc.gov.my/images/Personalisation/Buss/pdf/Federal%20Consti%20%28BI%20text%29.pdf) (accessed 10 February 2015). [↑](#footnote-ref-2)
3. Prof. Emeritus Tan Sri Dr Khoo Kay Kim, ‘Malaysia’s Prime Minister must be Malay Muslim’, <http://www.themalaysianinsider.com/malaysia/article/malaysias-prime-minister-must-be-malay-muslim-says-historian> (accessed 15 February 2015). [↑](#footnote-ref-3)
4. http://www.thestar.com.my/Business/Business-News/2014/01/27/Govt-not-bloated-it-is-looking-at-ways-to-improve/?style=biz [↑](#footnote-ref-4)
5. http://www.cpps.org.my/downloads/factsheets/National%20unity%20factsheet.pdf [↑](#footnote-ref-5)