**Input Submitted by the Human Rights Commission of Malaysia (SUHAKAM) on the Effective Implementation of the Right to Participate in Public Affairs**

1. **Introduction**
2. The Human Rights Commission of Malaysia (the Commission) is established by an Act of Parliament in 1999 and is an ‘A’ status national human rights institution.
3. In pursuing the mandate to work on all human rights in Malaysia, the enjoyment of the right to participate in public affairs is one of the cornerstones of a functioning democratic system and is closely linked to other fundamental human rights such as the right to freedom of expression, freedom of peaceful assembly and freedom on information.
4. **Right to Vote**
5. Malaysia is a constitutional monarchy and adopts a Westminster type of parliamentary government. The Federal Constitution is the supreme law of Malaysia, in which the right to vote is enshrined. Article 119(1) of the Federal Constitution stipulates the following:

*‘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.’*

1. While the right to vote is guaranteed under the Federal Constitution, a concern has arisen recently regarding the proposed redelineation exercise, which is to be undertaken by the Election Commission. The Election Commission has announced a review of the delineation of electoral constituencies. According to Article 113 (2) (i) of the Federal Constitution:

*“……………, the Election Commission shall, from time to time, as they deem necessary, review the division of the Federation and the States into constituencies and recommend such changes therein as they may think necessary in order to comply with the provisions contained in the Thirteenth Schedule; and the reviews of constituencies for the purpose of elections to the Legislative Assemblies shall be undertaken at the same time as the reviews of constituencies for the purpose of elections to the House of Representatives.”*

1. Whereas the objective of redelineation, as provided by the Federal Constitution, is to ensure, as much as possible, that each constituency has approximately an equal number of electors, concerns have been raised by various stakeholders including civil society organisations (CSOs) and political parties regarding the current redelineation exercise. The Commission is also concerned that instead of addressing and mitigating malapportionment, the proposed redelineation exercise will create an imbalance in the number of electors in the different constituencies, which contravenes the principles of equal suffrage and one person one vote.
2. In this regard, the Commission has made a submission to the Election Commission, highlighting its concerns and calling on the Election Commission to consider the following:
3. To revise electoral districts and size of constituencies so as not to dilute or discount the votes of any particular groups or areas, and to ensure that international standards relating to equal suffrage are complied with, in line with Article 21 of the Universal Declaration of Human Rights (UDHR).
4. To ensure meaningful consultations with the public and relevant stakeholders during the redelineation exercise.
5. To ensure availability of relevant information to the public and to enhance the procedures for local inquiry to ensure greater transparency.
6. In addition, the Commission has also recommended that all eligible voters should be automatically registered based on the database of the National Registration Department.
7. **Freedom of assembly**
8. The purpose and spirit of the Peaceful Assembly Act, which came into force in 2012, is to enable the people to assemble peacefully and for the authorities to play a facilitative role in terms of ensuring the safety and security of everyone including the participants of the rally/assembly. Certain provisions in the Act, however, appear to limit the right to assemble peacefully and/or allow for a limiting interpretation, in particular the provisions on the absolute prohibition of street protests and the organisation of assemblies by persons below 21 years old; the strict requirement for notification ten days prior to the assembly; and the specified prohibited places of assembly in the Third Schedule. It is recommended that these provisions be reviewed to ensure that the right to assemble peacefully is enjoyed by everyone.
9. This same spirit of freedom of assembly must be carried through during the election campaign period and no unwarranted delays and denial of permits for political parties to speak should be issued by the authority.
10. **Freedom of expression**
11. The Commission reiterates that the freedom of speech is pivotal in a democratic society, and the right of every citizen to freedom of speech and expression under Article 10(1)(a) of the Federal Constitution cannot be unduly restricted. Any restriction must focus on the agenda or objectives of the said speech. However, such freedom of speech and expression must not take the form of hate speech, which has been defined under Article 20(2) of the ICCPR as any advocacy of national, racial, or religious hatred that constitutes incitement to discrimination, hostility, or violence.
12. The Election Commisison should play the role of not restricting this freedom of expression, as it is necessary for all candidates, political parties and voters to have a space to voice their opinions freely, without fear and threats.
13. **Access to media**
14. All parties should have equal access to the media in terms of broadcast time and print space, as well as in timing and placement of their information. Access to media should be non-discriminatory. The media should be allowed to cover the campaigns freely, without interference or unreasonable restriction by the authorities.
15. **Accession to the International Covenant on Civil and Political Rights (ICCPR)**
16. Of the nine core international human rights treaties, Malaysia is only party to three, namely the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Convention on the Rights of the Child (CRC) and the Convention on the Rights of Persons with Disabilities (CRPD). The Commission calls on the Government of Malaysia to accede to the remaining six core international human rights treaties including the International Covenant on Civil and Political Rights (ICCPR), which would specifically pave the way for greater respect and enjoyment of civil and political rights including the right to participate in public affairs, as provided under Article 25 of ICCPR.

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*Submitted on 25 May 2016.*