

Declaration on Transparent and Accountable Political Funding as the Underlying Framework to Eliminate Corruption and Promote Clean Governance

10 September, 2015

We, concerned citizens of Malaysia from the following NGOs and CSOs, recognise the urgent need for reforms of existing laws governing political funding and all manner of corrupt practices. Eliminating corruption within political parties is fundamental to enable the total rejection of corrupt practices and to allow for the return of a clean government in Malaysia.

Prime Minister Datuk Seri Najib Razak has acknowledged the existence of “donations” from foreign sources to run election campaigns effectively. Our concern with the Prime Minister’s statement is his acknowledgement of two issues that have long been viewed as controversial aspects of the financing of Malaysian politics: First, the existence of secret political funds controlled by individuals or trustees; and second, access to phenomenal foreign funding, which suggests illegal political financing during electoral contests that undermine the legitimacy of parties in power. Our core concern is the need for an independent investigation into allegations of serious misappropriation of 1MDB funds. This investigation should be completed promptly and in a transparent and accountable manner. Meanwhile, given the statements made by the Prime Minister, we also believe that it is imperative to reform existing laws on key aspects of the financing of politics to reinstitute integrity in Malaysia’s electoral system.

The current mode of political funding has cascaded into pervasive rent-seeking practices within the administration, evidenced in interferences with licensing and payments for securing business approvals as well as partnerships with dormant but politically-linked partners. Investments cannot proceed without championing by politically-connected individuals. The mushrooming of a culture of poor accountability, lack of integrity and disrespect for the public and for voters’ expectations of probity and openness has now reached levels that are damaging to investor confidence and leading to economic decadence.

Lack of transparency and the covert nature of political contributions put corporations at a disadvantage, as they are unable to account for these expenditures on their balance sheets. The practice by companies of using funds as CSRs to support political parties results in mis-information to shareholders and may be subject to abuse.

Political funding is closely related to corrupt practices. There is a need to combat corruption and other irregularities in political funding and to establish clean government. Maqasid Shariah says that government must be clean to earn the trust of the people. Moderation in Islam can triumph over extremism when those in power are made accountable for their actions. Similar callings for justice as well as accountable and trustworthy governance are found in the teachings of other major religions. Reforms to improve standards of governance in Malaysia are necessary because a government crippled by corruption is a danger to religion itself.

We believe that political funding reforms are direly needed to:

- enable fair elections in 2018; and Sarawak state election in 2016;
- ensure politicians can act without fear and favour;
- empower a new breed of politicians – with fresh ideas who will also limit the incumbency of those in power – to enter the political system; and
- ensure all political parties have equal access to acceptable financing sources to promote an even playing field in Federal and State elections.

The end result is to return to Malaysia the kind of Parliamentary democracy that is envisaged under the Federal Constitution, through fair elections which guarantee the democratic selection of the government.

We, the undersigned, urge the government to urgently follow-up on the following recommendations:

A. Undertake legislative and institutional reforms to legitimise political contributions under a transparent and accountable regime:

We welcome the longstanding suggestion by the government for the introduction of a Political Parties Act (PPA). This PPA will specify the various disclosure requirements and limits on political contributions from both public and private sources. It will define terms such as “contribution” (which includes cash, benefits in kind such as labour-based services, as well as payments for nominal consideration such as the right to sit at a particular candidate’s dinner table) and “associated entities” which could include businesses owned by political parties and foundations set up in their names.

This PPA differs from, but will be consistent with, the existing *Election Offences Act 1954* in that the PPA defines elements of legal political

contributions, while the Election Offences Act legislates against illegal electoral behaviour, including money politics. The nexus that could be drawn is that any political contribution which does not comply with the requirements of the proposed PPA could be ruled as a transgression under the *Election Offences Act*.

The proposed PPA should incorporate other key aspects on the financing of politics, including the following:

1. Regulations involving the different forms of elections:
 - i) federal and state elections and, in future, local elections;
 - ii) internal party elections;
2. Disclosure and reporting of sources of funds on a quarterly basis during normal times, and on a daily basis during electoral contests with such reports being made available for public scrutiny;
3. Balanced public funding of all parties¹ in Federal and State elections: To reduce reliance on private contributions, which makes political parties more susceptible to wealthy interest groups and to level the playing field for smaller parties and independent candidates, a mechanism should be instituted which provides public funding to ALL parties regardless whether they are in Government or the Opposition². Equal and non-discriminatory funding must be given to Federal and State lawmakers for policy research and constituency development work;
4. Limits on private donations that may be given by both individuals and corporate bodies, as well as a cap on funds received from anonymous donors. Capping the quantum of individual contributions mitigates the risk of policy decisions being dictated by an elite and forces parties to seek funding from a wider support base. To address potential evasion of the limit, donations to local branches of political parties should be treated as

¹ Public funding of parties is imperative as this has numerous benefits. It provides parties with greater autonomy; it helps curb political finance-related corruption; and it facilitates organization and institutionalization of parties, providing them with stability to conduct their activities effectively. Such subvention should be accompanied by tight regulation and effective sanction for breach, which is why we also call for the promulgation of a Political Financing Act, a feature of a number of democracies.

² Funding could be given in terms of post-election rebates for campaigning costs, provided that the candidates meet certain criteria, such as garnering a minimum percentage of eligible votes in the election. Certain benefits in kind also should be provided, such as free air-time on television and radio for political advertising.

- contributions to its parent entity and disclosed/capped accordingly if they exceed the applicable thresholds;
5. Donations channelled via interposing fund-raising managers or foundations also must disclose the original donors' identities rather than be treated as a single sum. Political contributions are not recommended to be tax-deductible;
 6. Ban on foreign donations as it can interfere with the autonomy and sovereignty of domestic politics and the basis on which public policies are promulgated;
 7. Ban on secret political funds held by individuals or trustees;
 8. Limits on expenditure during party and general elections. During Federal and State elections, a cap must be placed on the gross amount of expenditure of each candidate as well as his or her party within a constituency, at state level and nationally;
 9. Creation of a list of permissible and non-permissible funders/donors. The latter will include government-linked organizations and companies privy to public contracts and licenses; and
 10. Ban on parties holding power at Federal and State levels to launch new development programs (from the time Parliament is dissolved as well as throughout an electoral campaign), including those that involve a transfer of cash, material goods or benefits in kind that can be construed as vote-buying.

B. Undertake reforms to ensure the independence of the Election Commission as well as to empower it to investigate and prosecute breaches of regulations related to political funding:

Under the present system, the two major institutions responsible for monitoring elections and political parties are the Election Commission (EC) and the Registrar of Societies (ROS). Political parties are regulated by the Societies Act 1966, which also oversees all welfare and social bodies. The EC is responsible for conducting elections, keeping electoral rolls and reviewing the division of the country into parliamentary and state constituencies.

We note that, currently, the members of the EC are appointed by the DYMM Agong, based on the recommendations of the Prime Minister. The formation and running of political parties are overseen by the ROS, which falls under the jurisdiction of the Minister of Home Affairs. Under such a system, the executive arm of government has direct or indirect control over the governance of political parties and the running of

elections, a core factor that has to be reformed. We also note that civil society and opposition parties have persistently voiced little or no confidence in the EC's ability to fairly re-delineate State and Parliamentary constituencies as well as ensure free and fair elections.

We call for the re-constitution of the EC, as a National Election Commission (NEC), to ensure effective participation of all arms of Government, with the provision that one opposition Member of Parliament must serve in this institution.³ This body will be responsible for the running of elections, re-delineation exercises and the enforcement of legislation pertaining to the running of parties and elections. This independent body will have the authority to oversee and file charges against errant politicians who violate political party, political funding and election laws.

The independent NEC must be empowered to investigate and prosecute alleged breaches in election laws, particularly illegal political contributions. Such powers are now fragmented amongst the EC, the Malaysian Anti-Corruption Commission (MACC) and the Attorney General's Chamber (AGC), hampering speedy and efficient conduct of investigations.

With such powers, the NEC can mandate all parties and related entities to submit to it on an annual basis, all contributions received (in cash and kind) which exceed a pre-determined amount and the source(s) of these funds or benefits, be it public or private, and a detailed breakdown of expenditure towards which the contributions are utilised.

The accounts will be audited by the NEC and made public on its website. This will enable the public to scrutinise material sources of political funding which could enable identification of potential conflicts of interests and improves accountability of fund utilisation.

C. Undertake reforms to promote citizens' right to information and State impartiality:

³ An institutional framework for guaranteeing free and fair elections can be non-partisan, as in Britain, which has an independent Election Commission; or by-partisan, involving members from both main parties, as in the United States; or led by federal judges or an Attorney General independent of the Executive, a method common in Latin America. In Asia, South Korea provides for a National Election Commission (NEC), responsible for monitoring elections as well as political parties. The NEC comprises nine members with three each nominated by the Chief Justice of the Supreme Court, the legislature or National Assembly, and the President. The chairperson is a judge nominated by the Chief Justice.

Political funding reforms are imperative to identify and prevent conflict-of-interest situations, patronage and corruption. The financing of political parties by individuals and groups must be disclosed to ensure that they do not stand to benefit inappropriately from subsequent public decisions. For this, freedom of information legislation must be enacted at Federal and State levels.

Political funding reforms should strive to create a level playing field during electoral contests. This is not possible without State impartiality. For example, individuals and businesses financing Opposition parties should not find themselves being targeted by tax, regulatory or enforcement bodies for investigation. Such acts undermine the principle of transparency, introduced to level the playing field. Deliberate acts by public officials to selectively persecute or harass citizens or businesses on partisan grounds should be criminalized.

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