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Electoral court option to address irregularities

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UNLESS there is a timely and satisfactory review and accountability around the alleged electoral irregularities, the 13th General Election (GE13) will not be able to achieve an acceptable closure among a large section of Malaysia's electorate.

Even though several foreign leaders have congratulated Malaysia's new government, the electoral disputes stand to generate negative perceptions externally should the issue catch international momentum.

Hence, the oft-touted explanation that the Malaysian courts have no jurisdiction over matters related to the purview of the Election Commission (EC), needs addressing.

Further in the context of a growing dispute, filing petitions through the High Courts after the electoral results are gazetted and appeals to the Federal Court thereafter can be too long a political time frame.

One policy recommendation is to convene a Special Electoral Court set up via a Royal decree on the advice of the prime minister. This court can be made up of independent judges with powers to review the conduct of the EC and its commissioners.

In addition to dealing with election disputes and irregularities, complaints around election violence can also be addressed. This interim development can later be integrated into Malaysia's electoral law to establish a standing electoral court.

The establishment of a post-election mechanism for dispute

resolution is an important and immediate matter as well as a long-term objective to be considered in Malaysia.

This should be part of a larger process of electoral reform that needs to be undertaken to keep the electoral system contemporary, capture voter sentiments accurately and translate them to adequate representation.

Part of the problem arises from an absence of awareness in Malaysia that formal mechanisms are needed to manage the three distinct phases in elections, the pre-election phase, the election phase and the post-election phase.

Globally, the post-election phase has increasingly become important due to the inability of many countries to technically keep their elections "free and fair" for a number of reasons beyond their control. Hence, post-election mechanisms to resolve electoral disputes are imperative.

There have been ample examples and instances of the establishment and use of electoral courts in several African countries as well as in Latin America. The regulations are different in Thailand where the regular courts there can decide directly on electoral fraud charges.

In the Malaysian case, the urgency behind a government level review lies in the volume and details of electoral irregularities and fraud alleged by a cross section of people from Opposition parties, civil society watchdog groups and lay people making this problem an important consideration.

Otherwise, initiatives led by a range of different groups to address the matter can make complaints arising from GE13 more complicated to manage moving forward.

An electoral court with the full and equitable participation by all relevant stakeholders would be an important step in the right direction.

Thus, calling all parties to simply accept the results and to move on or choosing to criminalise activities that seek redress would appear unsatisfactory to those who feel genuinely aggrieved. Neither is it in keeping with international standards on electoral systems management and administration.

However, there are two key limitations to this policy proposal. In Malaysia, where many things about its election phases are contested, the viability and value of an electoral court to offer redress is likely to be viewed cynically.

On the other hand, the incumbents might not be keen on implementing such mechanisms as it entails risks and exposures that might affect their legitimacy at the polls.

However, notwithstanding these limitations, Malaysia needs to consider how to formalise its post-election phase which is part of a global trend of professional electoral administration and management.

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