

## **Part 1 – Introduction: Why do we need to reform Political Financing and how does that affect us?**

*In a time of universal deceit, telling the truth becomes a revolutionary act.*

- George Orwell

The exercise of democracy in modern political systems has become inseparable from the role that political parties play in popular representation. Today, substantial resources need to be mobilised to participate in the political process, making political parties a dominant force in the political landscape of governance. As a result, political parties have come to exert much influence on society and its institutions, affecting the way democracies function. This has had implications on basic democratic principles such as geographical representation, majority rule through a government of elected representatives and contestation by a diversity of political parties. In aggregate, therefore, political parties have assumed the role of being the central actors of competitive politics.

In this milieu, the crucial importance of political party funding and campaign financing has been contextualised thus:

*All the undertakings necessary to bring democracy to life, certainly a most noble ambition of human society, turn indispensably on the most base of commodities: money.*

*No matter how lofty the political ambition, democracy in mass societies requires resources, and not just resources in the abstract, but the ability to raise money and spend it to further political aims.*

The debates on political financing cannot occur independently of the institutions that govern the electoral system, the nature of political parties, their access to the media, the rules that govern party funding and the stakeholders who are affected by the outcomes of political decisions.

Among the salient points of this discussion are the issues of justice, equal opportunity and equitable resource allocation and how these principles are eroded by political corruption and money politics. Notwithstanding the avowed idealism of the actors in the democratic system, it is necessary to put a premium on transparency and accountability about party finances, donors and spending to ensure that all parties and candidates can benefit from fair electoral competition.

### **How does Corruption in Political Financing Affect Us?**

A leading politician from California in the 1960s described money as “the mother's milk of politics,” signifying that it is the political resource that matters most. Anti-corruption activists today say that money politics is the mother of all corruption.

The connection between corruption, including its political forms, and poverty is a central theme in Transparency International's work. Corruption denies citizens full participation in society and diverts public resources into private hands. Income inequality is increased and a state's governing capacity is reduced, particularly when it comes to attending to the needs of the poor.

Corruption undermines the pillars of development, the human rights of individuals and the legal frameworks intended to protect them. In countries where governments can pass policies and budgets without consultation or accountability for their actions, undue influence, unequal development and poverty result. People become disempowered politically, economically and socially and, in the process, further impoverished. Leakages through corruption compromise a country's economic growth, investment levels, poverty reduction efforts and other development-related advances.

### **Corruption in Malaysia**

The Malaysian public has for far too long tolerated corruption. We have enjoyed good times and we often have a “give and take” attitude of tolerance towards corruption. We accept that it is alright for someone to be corrupt as long as we ourselves are getting something or are comfortable. Therefore we often close an eye to political corruption in all forms, and ignore lack of accountability and governance in the stewardship of national resources, as long as political leaders are delivering economic benefits to the society, however meagre or disproportionate the amount of the benefits may be compared to the leakages.

Consequently, opacity in government procurement and granting of licences and concessions and other forms of political patronage increase the burden on taxpayers and the public. In 2008, the World Bank estimated that corruption in Malaysia could cost up to RM10 billion a year. More seriously, the Auditor-General reported in 2009 that RM28 billion was misspent in government procurement in the previous year.

This translates into higher cost of living and inefficient delivery systems. Worse, it funds and safeguards the interests of highly influential persons who abuse their power. Similarly, enforcement institutions can be subjected to undue influence to act in a manner that compromises their independence and professionalism. All these can cause the nation to decline into an abyss of hopelessness that is characteristic of a failed state.

Transparency International (TI) and Gallup International in 2003 and 2004 identified political parties as the most corrupt institution in three out of four countries surveyed. Similarly, in TI's Global Corruption Barometer (GCB) 2009 report on the perception of the Malaysian public on institutional sector integrity, about 42% of respondents thought that political parties are the most corrupt group. It is very alarming if politicians who are elected to serve the people are perceived as corrupt.

As such, there is an urgent agenda for reform in political financing in the country. This is in view of the growing concern about the seriousness of the phenomenon of money politics and the real danger it poses to destroy public confidence in the democratic process. The consequences of an erosion of trust in the legitimacy of government and its attendant implications on the key institutions that uphold the principles of democratic governance are indeed dire as described by the political scientist Norani Othman:

*... The electoral system is currently facing a crisis of credibility and unless something is done quickly to address that erosion of public confidence, the electoral system and the indispensable political legitimation that government relies upon it to render are in danger of being severely strained. Such a compromising of the sources or diminution of the possibilities of its own legitimacy is something that no government or ruling authority can afford or contemplate with equanimity.*

The roles of institutions and electoral politics in ensuring representative democracy need to be strengthened in order to prevent this downward trajectory from becoming a self-fulfilling prophesy. It is through the steadfast pursuit of this agenda that free and fair elections and active citizen participation in the political process can be ensured. In order to establish these features of a healthy democratic environment, it is important to ensure that the conditions that are conducive for a level playing field in the political arena are maintained. This agenda is based on the premise that there is a commitment on the part of government, political parties and civil society for reforms in political financing.

## **Part 2 – Definition of Political Financing and Political Financing in Malaysia**

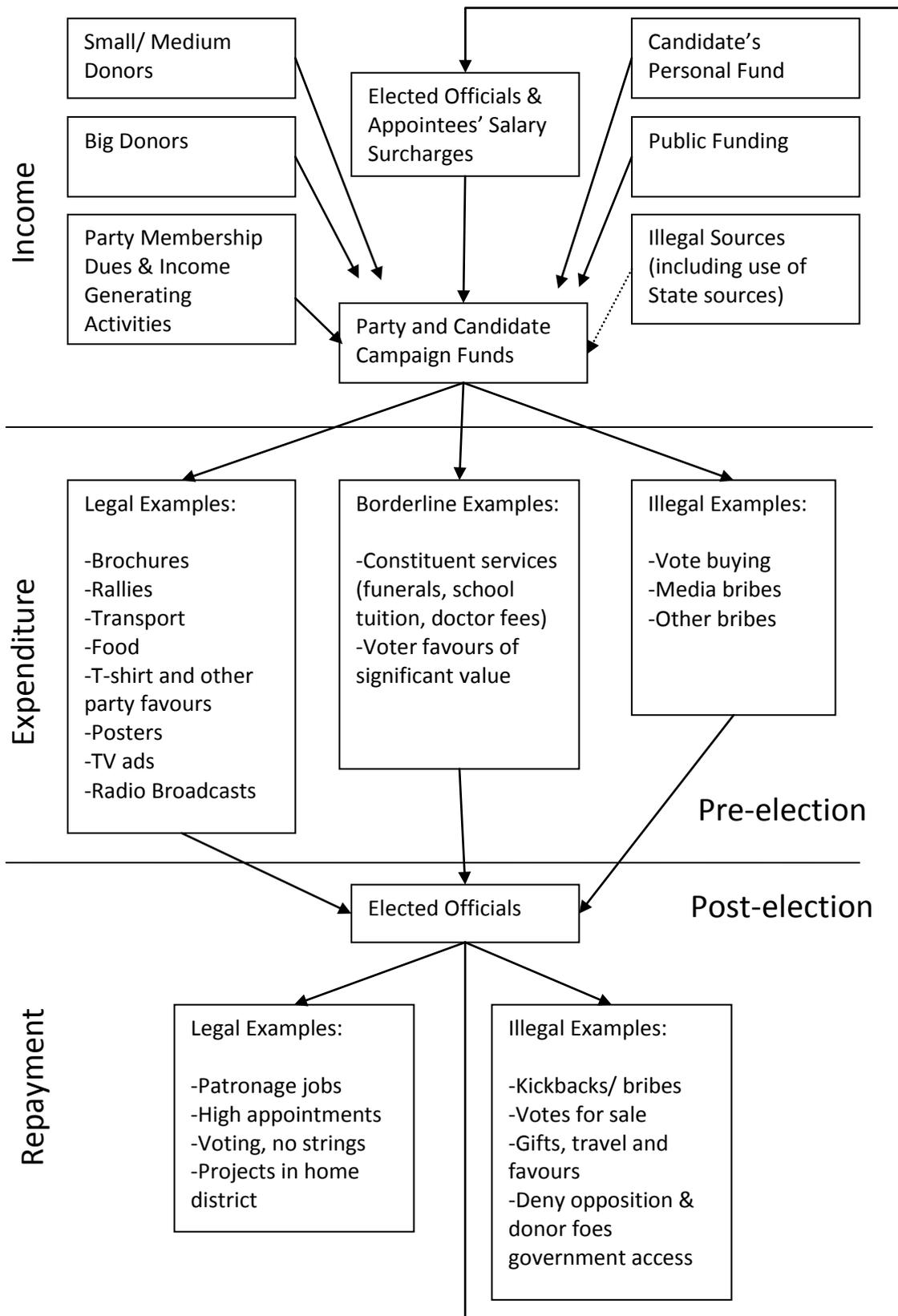
### **Definitions of Political financing**

Definitions of political financing tend to be limited primarily to the funding of parties and electoral campaigns. Michael Pinto-Duschinsky, an American scholar notes that, in its most narrow definition, political financing is seen as “money for electioneering”, but adds that it includes fundraising for party activities such as the costs of maintaining permanent offices, carrying out policy research, conducting polls and political education, running advertising campaigns about their policies and mobilising voters during elections.

Figure 1 provides an indication of a party or candidate’s appropriate and inappropriate sources of income and expenditure during an electoral campaign. It also offers examples of paybacks by elected parties and candidates, an indication that disclosure of sources of funds is imperative in the financing of politics. Excessive funding by business or the flow of money from illegal sources can lead to payback of campaign debts that can foster corruption.

The primary reasons why an individual or firm provides political funds are, first, to support a particular ideology or ideal. For example, private firms are known to enthusiastically fund parties that endorse neo-liberal policies that advocate little government intervention in an economy. A second reason for funding parties is what has been termed “financial” factors, involving an attempt to obtain material benefits, such as contracts or licences, from the government. A third reason is “social”, pertaining to an attempt by individuals to secure access to government or to obtain public honours. These reasons indicate cogently that the sources of funds of a party can determine or actively shape public policies and legislation as well as influence the manner of distribution of government concessions.

Figure 1: How money can influence politics



Source: Carlson, Jeffrey and Marcin Walecki. 2006. *Guide to Applying Lessons Learned*, USAID: Money and Politics Program (MAP).

## Political Financing in Malaysia

In Malaysia, the term “money politics” is used to describe the buying of votes during party and general elections. It also refers to the disbursement of contracts, licences, shares, development funds and other benefits. Money politics can take the form of political patronage and abuse of power involving favouritism, nepotism and conflict-of-interest in the award of government concessions. In addition, the phrase “money politics” is regularly used in reference to the phenomenon of “political business”, a concept used to describe the links between politics and business, specifically party ownership of corporate entities, the direct and indirect control of companies by politicians and political parties and the direct and indirect interference of political parties and politicians in the corporate sector.

Some of the concerns expressed over the financing of political parties in Malaysia include:

- a) the poor regulatory regime of political financing;
- b) an uneven playing field during federal and state elections as some parties have more access to funds than others, which undermines fair electoral competition;
- c) allegations of covert funding of politicians, which can contribute to influence peddling and the abuse of government resources; and
- d) serious factionalism that is not based on differing ideological or political viewpoints but on who among political leaders has the greatest capacity to distribute funds to capture grassroots support. Money-based factionalism is threatening the existence of parties and undermining public confidence in government leaders.

Malaysia is one of very few countries where political parties own corporate enterprises. These companies include the publishers of the leading English, Malay, Chinese and Tamil newspapers; these parties also have direct or indirect stakes in the leading television and radio firms. Another concern is the manner of funding electoral campaigns in party elections. The volume of funds distributed during party elections is reputedly more than the amount of money spent during general elections.

The advantages of incumbency are illustrated by Dr Mahathir Mohamad in his interview with TI-M:

*... The President, the Chief Ministers, they can raise funds. And people in Malaysia, don't need much persuasion. They believe that if they contribute, they might get some leverage. So when election time comes, people just come ... and the money taken is sometimes without receipt, so it depends upon whether you are going to be honest or not.*

Former Auditor-General Ahmad Noordin, who won the Magsaysay Award, had expressed concerns during the 1980s on the nexus between politics and business because by then political parties in Malaysia, had begun to own businesses.

Ahmad Noordin's concerns related to the levels of transparency built into existing legislation, such as election laws, the pattern of financing of political parties and electoral campaigns and the institutional capacity of the relevant regulatory bodies to ensure fairness and accountability during elections.

### **Part 3 – Is the Current Regulatory System Working?**

*The key role of an electoral system is “to select and render legitimate the nation’s government, mainly by deciding between the contesting claims to power of the ambitious, charismatic and well-connected, who, in every society, both jostle over the possibility and compete for the right to rule others.”*

The integrity of the decision making process in a democratic society can be assured only if key institutions like the Election Commission (EC), Judiciary and Malaysian Anti-Corruption Commission (MACC) are independent, accountable and functioning effectively and efficiently, i.e., doing the right things and doing things right. Therefore, the roles of these institutions in ensuring that free and fair elections are held cannot be overstated. It is of fundamental importance then that the basic principles of democracy are upheld in the implementation of laws concerning elections and in the administrative actions of the EC.

Clearly, institutions like the EC have the responsibility of ensuring that elections are free of irregularities and abuses. This is crucial because a free election ensures the free participation of all qualified citizens as voters and contestants, while a fair election ensures their participation on a level playing field. An independent EC and the fair application of electoral laws help to prevent electoral corruption, electoral manipulation or the abuse of money to gain office.

#### **The Election Commission (EC)**

##### ***Autonomy and Impartiality***

The autonomy and the impartiality of the EC are crucial for ensuring that the EC is capable of safeguarding democracy and the integrity of the electoral process. However, it is debatable whether the EC enjoys the public’s confidence in its impartiality. Under Article 114 of the Malaysian Constitution, the Chairman of the EC shall “*have regard to the importance of securing an EC which enjoys public confidence*” and can only be removed from the office “*on the like grounds and in the like manner as a judge of the Supreme Court*”. Although this Article aims to ensure the autonomy and impartiality of the Commission, an interview with a former EC Chairman by political scientist Lim Hong Hai of Universiti Sains Malaysia, suggests that the appointment of the EC Chairman violates this constitutional safeguard. Lim states that,

*The Prime Minister is likely to pick and appoint as members and especially as Chairman (or the Commissioner) of the EC those retired civil servants whom he personally knows and believes can be relied upon to be responsive to his wishes and the interests of his party.*

This view is confirmed by a former EC Chairman, “*It would be surprising if he didn’t*”. It raises serious doubts that the Commission is able to act impartially in electoral matters, given the way the EC Chairman is appointed.

Public confidence in the EC is undermined by events that do not support the image of the institution as an impartial entity. Doubts about the autonomy and impartiality of the EC firstly centre on concerns about constituency delimitation and efforts to curb money politics. A clear sign that public clamour was growing for the EC to act impartially was seen in November 2007 when a demonstration called by the Coalition for Clean and Fair Elections (BERSIH) before the 12<sup>th</sup> general election of March 2008 resulted in an unprecedented turnout. In a detailed memorandum that was handed to the King, the coalition sought for, among other things, the restoration of the autonomy and impartiality of the EC .

Serious and long standing doubts about the EC’s impartiality concerning its role in constituency delimitation have been raised. The EC’s proposals on the delimitation of constituencies have to be submitted to the Prime Minister, who would then table the proposals „with or without modifications” for approval by a simple majority of the total

Members of Parliament who are present in the sitting. The impact of such a practice, which is provided for in Section 9 of the Thirteenth Schedule of the Malaysian Constitution, clearly undermines the ability of the EC to make independent decisions.

### **Limitations in enforcing the law**

Speaking at the TI-M National Conference on Institutional and Legislative Reforms on Political Financing in Malaysia (the “TI-M Conference on Political Financing”) in November 2009 the Deputy Chairman of the EC, Wan Ahmad Wan Omar stated:

*Though the EC is the management body in charge of elections, the power to investigate any wrong doings by parties/ candidates relating to campaigns and against illegal campaign activities, including monitoring political financing and corrupt practices, is not with the EC but other authorities. This is one of the constraints that the EC has to accept and it is a challenge when it comes to facing complaints and criticism from parties and the public at large.*

Wan Ahmad referred to the thousands and millions of ringgit that are spent during the campaign period, but the sources of the money and the actual expenditures remain unknown “except to the candidate himself”.

The Deputy EC Chairman further stated:

*It seems that until now, political parties or candidates or even registered voters in the constituencies do not care much about abuse or violations of Section 19(1) of Election Offences Act in regard to declaration of election expenses. Perhaps their tolerance on this issue is due to the fact that complaints regarding excess spending in elections are hard to prove and not worth the effort.*

Clearly, the authority to investigate violations of election laws is very important for the EC to be able to conduct free and fair elections. One example of an election monitoring body which has the investigative authority is the National Election Commission (NEC) in South Korea. As pointed out by Yoon Jongbin, a South Korean academician, “the NEC’s continuous efforts to enforce the law in a very neutral manner have gained credit for the commission and the respect of ordinary citizens.” The NEC’s strong commitment to enforce the law impartially was clearly shown, he said, when the NEC declared that ex-President Roh Moo-hyun had violated the election law.

The South Korean experience shows that without the political will for reforms, progress towards free and fair elections will remain a distant goal.

### **Constitutional provision for a caretaker government**

There is a lacuna in the Malaysian Constitution on the matter of a caretaker government that needs to be addressed. The lacuna is noted by the constitutional lawyer Shad Saleem Faruqi: “*The Constitution does not spell out the role of the caretaker government, how it functions, its duties, whether it is simply to perform the basic essential functions or possesses the normal powers of a government. It relies on the Commonwealth convention that the government does not have to be reappointed once Parliament is dissolved.*”

The incumbent government therefore assumes the role of the caretaker government. This makes violations of the Election Offences Act 1954 difficult to define as it would be unclear whether a promise involving public expenditure given in an election campaign is made on the government or political party platform.

## **Part 4 – Problems and Limitations of the Existing Legislation in Dealing with Corruption in Political Financing.**

### **Conduct of General Elections**

In Malaysia, the conduct of general elections and by-elections is regulated under the Elections Act 1958, Election Offences Act 1954 and a host of subsidiary Election Regulations. The main authority responsible for enforcing election laws is the Election Commission, which has autonomy in overseeing the conduct of elections. The analysis that follows focuses on three main issues in political financing, namely, expenditure limits, disclosure of financial reports, and abuse of state resources during general elections.

#### ***Expenditure Limits***

The limitation of candidates' expenditure is the primary measure for ensuring a level playing field in an election. This is reflected in the detailed attention devoted to regulating such expenditure in the Election Offences Act 1954. The legislation, however, contains loopholes that render it ineffective in checking corruption in political financing. For instance, the existing laws regulate only the candidate's expenditure and not the party's expenditure. An important reason for the rampant monetisation of politics is that there is no institution or legislation regulating the amount that a political party spends.

Another loophole is that the candidates' expenditure limit applies only to the period from nomination day to polling day. This allows candidates to spend on campaign paraphernalia before the nomination day. As the ruling government enjoys an advantage in deciding on the date of the general election, its candidates can have a head start in campaign preparations and a further advantage if the campaign period is short. (Under the Malaysian political system, the ruling government has the absolute authority to dissolve Parliament at any time during its five-year tenure.)

Unequal access to funds among political parties in Malaysia is a major factor in creating an uneven playing field in elections. The opposition parties have long criticised such practices as covert funding, which can be seen in the amount of money spent by BN parties in elections. Although the Election Offences Act 1954 imposes ceilings on candidates' expenditure and candidates are required to file with the EC the returns of election expenditure incurred, there have been numerous allegations that the money spent was far in excess of the permitted amounts.

Campaign paraphernalia, including for example, huge and full colour banners, flags, posters and propaganda material, if included into the candidate's expenditure account, would clearly exceed the expenditure limit imposed by the Act. As the BN parties have more access to funds than the opposition parties, they easily outspend their opponents.

#### ***Disclosure***

The core mechanism for creating a level playing field in political financing is centred on disclosure requirements. The legislation, especially the Election Offences Act 1954, pays close attention to the issue of disclosure. The candidate's election agent has a key role in this matter as the official conduit for the receipt and payment of all election funds. All election expenditure must be authorised by the election agent. Core disclosure issues include the sources of income and the expenditure for elections. The statement of accounts must be disclosed in detail, if necessary and itemised where practical.

The Election Offences Act 1954, under section 23, merely requires the candidate to submit the return of election expenditure to the EC. The law does not impose a legal obligation on the EC or its officers to assist in the inspection of the returns. The onus of ensuring probity in declaring the actual expenditure incurred is not ascribed to any of the candidate, his or her party or the regulatory authorities.

As noted by the Deputy Chairman of the EC, Wan Ahmad Wan Omar at the TI-M conference on political financing in 2009, the EC *“has to accept the Statements of Election Expenses as per se. The EC will have to leave it to candidate’s opponents to investigate the authenticity of facts and figures in the Statements, and to file complaints (through election petitions) in Court to disqualify the winner.”* The disclosure of the candidates’ expenditure appears to be for cosmetic purposes only. The measure is inadequate to curb money politics. The investigation of any suspicion of fraud or misbehaviour, if solely left to the ordinary public, is too burdensome for ordinary voters, considering the cost and procedures involved. Therefore, the checking mechanism on a candidate’s election expenditure is hobbled not by law, but by practical difficulties.

Another major area relating to public disclosure of political financing concerns the disclosure by political parties. Although all political parties are required under the Societies Act 1966 to hold annual meetings and submit audited accounts to their members and the ROS, there are no requirements for political parties to disclose the sources of donations received.

If money politics is to be curbed, political parties must be required by law to be transparent about the sources of their revenues and donations.

### **Laws Regulating Party Activities**

Political parties come under the purview of the Societies Act 1966. The ROS, a body under the ambit of the Ministry of Home Affairs, may refuse registration of a political party if the application is deemed to be “used for unlawful purposes or any purpose prejudicial to or incompatible with peace, welfare, security, public order, good order or morality in Malaysia”. The Act groups political parties with other forms of civil society organisations. This grouping of political parties and civil society organisations is problematic in terms of the implementation of the Act.

#### ***Conduct of Party Elections***

All political parties must register with the ROS. Party elections are held in accordance with their party constitutions and the Societies Act 1966. These elections are left entirely to the management bodies of the political parties. Problems arise due to the lack of supervision of the conduct of party elections by the ROS or other appropriate management bodies. With factionalism rife in parties in both the ruling and opposition coalitions, and further exacerbated by money politics, it is crucial to consider measures, such as legislation on political financing, to assist parties in reforming party systems to address corruption. Through enhanced democracy, accountability and transparency within party structures and in decision-making processes, election of leaders can be based on merit.

#### ***Disclosure of Candidates’ Party Election Financial Accounts***

Party representatives frequently cite financial management and fundraising processes as the areas that are easiest to abuse. It is extremely difficult for leaders to keep track of all the money flowing in and out of the parties, particularly with offices and members spread across the country. Donors can also present problems for parties by

demanding rewards in return for their support. Within parties, during electoral campaigns to select their leaders, there is a need for greater disclosure of funding sources as well as ethical employment of such money, including ensuring that votes are not bought.

In more developed democracies, very few parties still allow a small number of members to determine all the candidates for election or to select officials for party posts. The leadership-driven and top-down practices of the past are being phased out by involving more members in the determination of party leadership. There are indications that political parties in Malaysia are slowly moving towards this concept. This is important as one politician acknowledged in an interview with Transparency International – Malaysia:

*(There is) no cap on donations and donors are generous because they believe you can deliver certain things which are beneficial to them – horse-trading. The party members don't know and do not ask for information on who the donors are. As long as there's money, why should they ask? The information is privy to top leaders because people who donate want to remain anonymous. Among party members, allegations of money politics are always there because if a candidate loses they will accuse those who won as practising vote-buying. They never look into a mirror and evaluate themselves. In Malaysia, politicians do not fear a bad reputation for accepting donations of some specific sources. But donors do fear finding themselves involved in political scandals (that is why they want to be anonymous) because the government may use the information on donations against the opposing parties and the donors themselves.*

## Part 5 – Reform Agenda (1): Institutional Reforms

It is important to recognise that the monetisation of politics is a widespread phenomenon in Malaysia and that it contributes to the cancer of corruption. To address this challenge, it is imperative to undertake deep reforms of the institutions and legislation relevant to political financing.

Nevertheless, the use of money in politics is a constituent element of democracy, specifically in order for parties to function effectively. However, the financing of politics has to be fully disclosed publicly and subject to effective governmental and social oversight mechanisms.

The reforms proposed herein are intended to improve public disclosure in the financing of politics, promote autonomous and effective enforcement by regulatory regimes and encourage the de-linking of politics from business, whether directly or indirectly.

The proposed reforms focus on several key areas. Institutions of governance, in particular the Election Commission (EC), have a central place in the proposals. Legislative changes are a second major area. Thirdly, media reforms are proposed, recognising their pivotal role in ensuring that elections are free and fair. Finally, measures that will enhance the social environment are discussed.

**Table: List of Recommendations in Reforming Political Financing**

Number	Recommendations
1	<i>Review the provisions in the Malaysian Constitution and the legislation governing the Election Commission to enhance its autonomy and independence.</i>
2	<i>Introduce appropriate mechanisms to enhance the independent functioning of the Election Commission.</i>
3	<i>Make it mandatory for the election expenses of political parties and candidates to be independently audited by certified auditors before submission to the Election Commission.</i>
4	<i>Build the capacity of the Election Commission to verify the reporting of campaign financing.</i>
5	<i>Base the limit of candidates' and political parties' expenditures on the geographical area of the constituency and size of the electorate.</i>
6	<i>Introduce a mechanism for establishing a neutral caretaker government after elections are called.</i>
7	<i>Enact a new legislation, the Political Parties Act, to govern and regulate the functioning of political parties.</i>
8	<i>Register political parties with the Election Commission instead of with the Registrar of Societies.</i>
9	<i>Regulate internal party elections under the Political Parties Act.</i>
10	<i>Make it mandatory for disclosure of all sources of financing and expenditure by the political parties.</i>
11	<i>Amend the Election Offences Act 1954, which only regulates expenditure incurred between nomination day and polling day, to reflect all expenses incurred for general elections.</i>
12	<i>Prohibit the use of covert funding such as slush funds.</i>

13	<i>Prevent organisations linked to political parties from being used as conduits for political funding.</i>
14	<i>Impose a limit on contributions by individuals to political parties.</i>
15	<i>Prohibit political parties from receiving foreign donations.</i>
16	<i>Impose an expenditure limit on the electoral activities of political parties.</i>
17	<i>Prohibit parties from owning, directly or indirectly, and being involved in business.</i>
18	<i>Include all shareholders group in company decisions for political contributions.</i>
19	<i>Introduce direct state funding for political parties to finance their electoral and non-electoral activities.</i>
20	<i>Prohibit ownership of the media by political parties.</i>
21	<i>Repeal the Printing Presses and Publications Act (PPPA) 1984.</i>
22	<i>Allow equal and free access to the public media for all interest groups under the Political Parties Act.</i>

### **Institutional Reforms**

Institutional reforms are imperative to promote probity of the democratic process, transparency, accountability and fairness in election campaigns. These reforms, however, would need to involve the devolution of power to agencies responsible for oversight of the management of political parties and the conduct of parliamentary and state elections.

Therefore, the composition of the key institutions concerned needs to be reviewed to ensure that their institutional autonomy is preserved. Additionally, some of the functions of the institutions need to be re-evaluated to enhance their independence, transparency and accountability.

***Recommendation: Review the provisions in the Malaysian Constitution and the legislation governing the Election Commission to enhance its autonomy and independence.***

*Rationale:*

The EC, consisting of a Chairman and six members appointed by the King after consultation at the Conference of Rulers, is mandated by the Malaysian Constitution to function as a completely impartial and independent body. To guarantee its autonomy from the Executive, the Malaysian Constitution provides safeguards to ensure that members of the EC cannot be removed from office, except under very specific conditions, similar to those for the removal of a member of the judiciary. In 1962, however, the government amended the Constitution to reduce both the powers and independence of the EC. The EC's power to change constituency boundaries was reduced to making recommendations to parliament, which under the 1962 amendment, became the final arbiter by means of a simple parliamentary majority.

Under the amended Constitution in 1962, the Prime Minister can make revisions to the EC's recommendations before submitting or re-submitting them to parliament for its approval.

The need for the EC to be enabled to execute its functions unfettered was emphasised by the deputy chairman Wan Ahmad Wan Omar at the TI-M conference on political financing in November 2009: *“As the EC is the body in charge of elections, it must be provided adequate authority under the law to carry out its constitutional functions, in dealing with money politics during elections.”*

*“If the EC is empowered with proper legislation and authority to combat illegal practices relating to political financing, the task of ensuring its transparency at all levels would be easier.”*

Areas that require attention include the selection of EC members to ensure a high quality of candidature and broad representation to foster democratic governance. The credibility of the commission’s members should also be carefully evaluated.

Another important concern is the reporting mechanism, which should be designed to ensure the independence of the EC through parliamentary oversight. Also, it will be crucial to ensure that public confidence in the chairperson is preserved at all times.

In South Korea, the members of National Election Commission are appointed by the President, National Assembly and the Chief Justice. The members of the Commission are chosen from three different bodies of government and are led by a member of the Judiciary.

In Malaysia, the Parliament and the Judiciary should also play a role in the appointment of the members of EC.

***Recommendation: Make it mandatory for the election expenses of political parties and candidates to be independently audited by certified auditors before submission to the Election Commission.***

*Rationale:*

The EC does not have strong mechanisms to ensure transparency and accountability in the funding process during elections.

In response to TI-M’s questionnaire on political financing, the EC said that it *“has no control over political accounting”*, and secondly, there are no provisions for auditors to undertake financial report analyses of political parties and candidates. Thirdly, the EC does not carry out investigations on political accounting.

The Election Offences Act 1954 provides for the submission of statements of expenditure by political parties and candidates and the burden of accountability is placed on the aggrieved political parties or voters. As such, members of the public who wish to verify the returns of expenditure of an election candidate have to bear the costs of investigating the returns. This is a very burdensome undertaking, considering the amount of documentation involved, and effectively prevents meaningful scrutiny of the returns.

## **Part 6 – Reform Agenda (2): Legislative Reforms**

### **Legislative Reforms**

Legislative reforms must be undertaken in a context of a fully functioning democracy so that all stakeholders can be confident that legislation will not be restrictive and impede the functions and freedom of political parties. Conversely, a lack of democratic freedoms will affect confidence in the legislative measures that are adopted.

It is imperative therefore that the independence of key institutions, including the EC and judiciary, is ensured.

### **Recommendation: Enact a new legislation, the Political Parties Act, to govern and regulate the functioning of political parties**

#### *Rationale:*

A Political Parties Act is required for several key reasons:

- To uphold the principle of “separation of powers” so that the Executive does not influence the operations of political parties, that are currently regulated by the Registrar of Societies, which is under the purview of the Home Ministry,
- The monetisation of politics is increasing and it has important repercussions on the well being of the nation
- Political parties and mutual societies are quite different entities and therefore need different rules for their regulation.

A new legislation should include provisions for disclosure of the sources of funds, including regulating or banning foreign funding of domestic politics. Other issues of concern include corrosive money, which donors give to control candidates or their parties. Remedies may involve measures such as the placement of a cap on donations from individuals, corporations and trade unions.

The selection of a model for a Political Parties Act requires in-depth and open discussion. Among the models proposed is the “promotion model”. Under this model, the Political Parties Act, through favourable legislation promotes the activities and creation of political parties. The rationale is that it will not distort the freedom of political parties to campaign on particular interests as long as they do not threaten national security.

A Political Parties Act would separate political parties from other organisations, unlike the current Societies Act, which does not make such a distinction. A separate Act would allow rules to be introduced specifically for regulating political financing, and to prevent political parties from being monetised. Such an Act would also regulate the electoral and non-electoral activities of political parties to ensure that good governance and fair play prevail. Further, a Political Parties Act can ensure that party organisation and behaviour are compatible with democratic norms.

Well defined ceilings on expenditure for electoral campaigns are imperative in this legislation. It is important to monitor the internal affairs of the political parties to prevent the unethical use of money in politics, especially during party elections. Oversight is necessary since political party ownership of corporate enterprises can distort democratic processes. In particular, party ownership of media companies tends to have a marked effect on equal access to audiences.

The Political Parties Act is a two-edged sword. On the one hand it can promote greater democracy in political parties, and on the other, it can distort the practice of democracy in these parties. The Act must not take a draconian form where it regulates the functioning of political parties too rigidly, distorting their purpose.

The following recommendations will constitute the major components of the Political Parties Act:

***Recommendation: Make it mandatory for disclosure of all sources of financing and expenditure by the political parties.***

*Rationale:*

In Malaysia, the Societies Act 1966 requires all organisations registered under the Act, including political parties, to submit annual audited financial reports, but public disclosure of the report is not required. Political parties should be required by law to be open about the amounts and sources of their revenues and donations.

There must be a public right of inspection of political party accounts. As Edmund Terence Gomez has pointed out, the funding of parties in Japan, Taiwan, South Korea and Singapore is subject to legal scrutiny. Malaysia can emulate this through the Political Parties Act.

Transparency in finances encourages more informed voters to exercise their rights in a democracy. Additionally, the media and civil society are empowered to “follow the money”, thereby keeping a check on politicians. The logic is that openness is the antidote to the influence of big money, and to the secrecy that enables illicit funding or unsavoury donations.

All corporate donations to political parties or for political purposes should be subjected to a duty of disclosure and openness.

During non-election periods, parties must be required to publish donations received, on a regular basis, namely quarterly, but daily disclosure should be required during election periods.

***Recommendation: Impose a limit on contributions by individuals to political parties.***

*Rationale:*

Political parties finance their activities through various means such as membership fees, private donations and corporate donations.

Setting a ceiling on contributions to political parties is a widely applied and effective mechanism for curbing political corruption. Contribution limits serve as the best mechanism to check the capacity of private individuals to influence election outcomes or public policy if the candidate or party supported takes control of the government. Conversely, knowledge about the financial backers of a candidate or party may influence voting decisions.

Regulating the amount of political contributions involves setting legal limits on the size of each donation. In some countries, permissible donors are identified, while others identify non-permitted donors.

When there are limits on donations, political parties will be encouraged to diversify their sources of income by engaging with the public. It provides a good incentive for the parties to raise funds from a broad, and therefore, democratic base.

A major loophole that has emerged regarding contribution limits is that they can be circumvented by breaking donations into smaller amounts, sometimes called “bundling”, or donating in the names of others. Contribution limits also encourage wealthy candidates to self-finance their own campaigns.

Another issue of concern is that a loan can be given by an individual or company to a candidate which is by definition not a donation. This loan can remain as one for an indefinite period.

In Malaysia donors whether corporate or individual have no duty to publicly disclose donations.

***Recommendation: Prohibit parties from owning, directly or indirectly, and being involved in business.***

*Rationale:*

Legislation dealing with the financing of politics should deal with the issue of political party ownership of business enterprises. This, however, should not deny political parties the right to establish and run their own news organ. In most democracies, it is common for political parties to run enterprises involved in the sale of party newspaper and literature. Parties are known to own travel agencies, recreation centres, sports teams, banks and property development and construction firms. Since a number of these ventures are seldom profit-making, parties may be tempted to explore other businesses which are potentially more attractive. In Austria, for example, political parties have developed commercial activities in areas such as marketing, shopping outlets and house construction through companies owned wholly or partly by the party. In Taiwan, however, following much public pressure and a series of controversial scandals, the KMT has begun divesting its corporate assets.

A related problem with party ownership of business is that these assets have been transferred to private hands. This has enhanced personalised politics, with those leading a party, such as UMNO and MCA, having most access to media enterprises through direct or indirect control. Ownership of businesses by political parties and politicians has led to major controversies, including allegations of corruption, patronage, nepotism, conflicts-of-interest and abuse of power, particularly by those who have control over these enterprises. Another allegation is that politicians with control over these firms have a source of direct funding not available to other members of their party. In the case of firms that are publicly-listed, another set of issues arise, including accountability to minority shareholders in terms of how company funds are channelled to parties.

## **Part 7 - Reform Agenda (3): Direct State Funding**

### ***Direct State Funding***

Public financing of politics in some form or the other is growing in democracies worldwide. In a study conducted by International Institute for Democracy and Electoral Assistance (IDEA) in 2003, which covered 111 countries, 65% of these countries provide direct state funding to political parties while 71% of these countries provide indirect state funding to political parties.

One assumption is that public funds help ensure that candidates, especially those representing the opposition, have sufficient resources to run viable campaigns. The use of public money presumably requires accountability and therefore enhances disclosure.

Forms of public funding can include money to political parties, funding for candidates, tax incentives and free or discounted use of the media. In Germany, for instance, the financing of politics is sourced from three main areas, namely, public financing which is largely based on previous election results, annual membership fees of political parties and individual donations.

The allocation of public financing should be adjusted annually based on the country's inflation level. The appropriate amount of public financing should be determined by an autonomous and credible independent committee, preferably comprising representatives from both the ruling and opposition coalitions in Malaysia, representatives from the public service, election observers, academicians and civil society organisations. This can be done by trial and error until an appropriate amount of public financing is achieved, which will neither enrich nor deprive the political parties of legitimate support.

In countries where public financing of politics is permitted, the rules on financing parties and election campaigns are generally based on the following principles: a reasonable balance between public and private funding, fair criteria for the distribution of government contributions to parties, strict rules concerning private donations, a threshold on parties' expenditure linked to election campaigns, complete transparency of accounts, the establishment of an independent audit authority under a newly-reconstituted Election Commission and meaningful sanctions for parties and candidates who violate the rules.

Public financing of elections, however, requires adequate regulations and monitoring to guarantee that there is minimal, if not zero abuse of such support. These regulations should include barriers to check parties or individuals entering the electoral process even though they lack sufficient support or credibility.

### ***Issues and Challenges in Direct State Funding***

However, while public funding has been introduced in a number of countries, Casas-Zamora notes that the dynamics of the party system are too complex a phenomenon for them to be uniformly affected by direct state funding. This is the case even though direct state funding has three primary benefits. First, it provides politicians with greater autonomy and helps curb political finance-related corruption; second, it encourages equality of political opportunity and with that encourages real competition during elections; and finally, it facilitates the organisation and institutionalisation of political parties, providing them with the stability they require to conduct their activities effectively.

Critics of direct state funding challenge all three notions, arguing, among other things, that this form of political financing ossifies the party system, leads to a decline in party membership, weakens the spirit of voluntarism in donating to parties and jeopardises the social embeddedness of parties.

Recognising this cautionary note, reforms involving political financing need to be divided into regulations and subventions, an issue acknowledged and adopted in a number of countries. Most democracies restrict the use of at least some sources of private donations, either by banning them or by setting contribution ceilings. Restrictions on donations are aimed at preventing parties and candidates from obligating themselves to private interests.

More effective formulae for public control of political money seem to require the existence of a comprehensive system of political finance based on three main pillars: full disclosure, an independent enforcement agency, and reasonable public funding. Disclosure requires systematic reporting, auditing, public access to records and publicity. The objective of disclosing political finances is to make the accounts of politicians a subject of public knowledge and political debate. Enforcement demands an independent agency endowed with the necessary legal powers to supervise, verify, investigate and if necessary, institute legal proceedings.

Transparent public funding is seen as one of the options for combating the practices of abusing state resources and plutocratic funding that fuels the financial corruption of politics.

Another point of importance to be noted when considering political financing reforms is that every regulatory regime must strike a balance between the fundamental freedom of election candidates to communicate with the voters and of adequate and equal access to money during campaigns to effectively convey their manifestos. Different democratic societies have come to opposing conclusions as to the most appropriate balance within their particular cultural and constitutional context. There is, therefore, a need to control both the *supply* (where the funds come from) and the *demand* (the amount that can be collected by parties or politicians).

## **Part 8 – Reform Agenda (4): Media Reforms**

### **Media Reforms**

The mass media, like any other social institution, does not operate in a social vacuum. The state, political parties, corporations, lobby groups and civil society groups, among others, interact with the media, each trying to gain access to it in the hope of exercising influence and control.

In countries where democracy is fragile, the relationship between the state and the mainstream mass media has become so strong over the years that it threatens media freedom and credibility.

Implementing reforms in the media environment would be challenging as major media outlets in Malaysia are owned or controlled directly or indirectly by BN component parties or their leaders. One immediate measure to address the unequal access of political parties to the mass media is to mandate all taxpayer-supported media, including TV and radio channels and the Ministry of Information, to act impartially during elections and to give all competing organisations equal weightage. Violation of this requirement should amount to a corrupt electoral practice.

#### ***Recommendation: Prohibit ownership of the media by political parties.***

##### *Rationale:*

Currently there is no regulation controlling the ownership of the media by political parties. Although major media groups are currently no longer directly owned by political parties, they are believed to have close links with influential politicians. Among the exceptions are the Star, which is owned by the MCA's investment arm, Huaren Holdings and Utusan Malaysia, which is majority-owned by UMNO. The opposition parties own their party organs such as the Rocket (DAP), Harakah (PAS) and Suara Keadilan (PKR). As such, the major political parties are able to carry out year round campaigning and continuously provide partisan information.

Political parties should be banned from owning media, other than their party organs, in order to ensure a level playing field during elections. Parties that own media organisations have an unfair advantage as they can exert a disproportionate influence on voters. In the interests of fair play, regulations pertaining to the media should be uniformly applied. Efforts to enhance journalistic ethics should be increased in an environment where the media is constantly vulnerable to influence by vested interests, including politicians. For example, media organisations should uphold the right to reply by aggrieved parties as a basic tenet.

The Kuomintang (KMT) party in Taiwan lost the presidential elections in 2000 and 2004 as a result of public concern over political corruption arising from its ownership of media and other businesses. There was also public pressure for the party to sell its businesses. Subsequently, the Democratic Progressive Party (DPP) passed legislation banning political parties from owning businesses. The KMT is in the midst of divesting its assets and returning the cash to the Treasury.

#### ***Recommendation: Allow equal and free access to the public media for all interest groups under the Political Parties Act.***

##### *Rationale:*

It should be noted that the restrictions imposed by non-electoral laws and most of the disadvantages faced by the opposition in campaigning are not necessarily supported by the EC. "Situations may appear very oppressive", a

former chairman of the EC noted with evident disapproval, “when on certain occasions, certain rules may have been bent for certain parties ... and imposed differently on different groups and persons. The EC has tried to nudge the government to alleviate unfair campaign practices. It has proposed to the Cabinet that political parties be allocated airtime during the general election based on the number of candidates fielded by the political parties.

In Latin America, almost all countries ensure free access to the media during elections and there are procedures in allocating airtime and space in printed media, thus creating a level playing field for parties. However, there is a ban on paid advertising by political parties and candidates during elections in the media.