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# Democratic Breakthrough in Malaysia – Political Opportunities and the Role of Bersih

Chan Tsu Chong

**Abstract:** The 14th general election (GE14) in Malaysia saw a democratic breakthrough as the Barisan Nasional’s uninterrupted rule since independence finally came to an end. This article seeks to analyse the role and impact of the Bersih movement in GE14 by examining the political context of GE14 via three key political opportunities: the 1MDB scandal; electoral fraud and manipulation; and the re-delineation of electoral boundaries. Bersih’s core campaigns, actions, and strategies in response to these political opportunities will be analysed based on information and insights generated from the author’s involvement as a member of Bersih’s secretariat. The political opportunity resulting from the 1MDB scandal gave room for civil society and the opposition to go on the offensive; Bersih took the lead and continued the tradition of coalition-building between civil society and opposition forces, and brought focus to cross-ethnic issues. At the same time, Bersih held firm in its agenda for electoral reform by continuing to consistently monitor and mobilise against electoral fraud and manipulation leading up to GE14. Via the re-delineation exercise, it mobilised and coordinated resistance by increasing civic participation in the constitutional process and created new areas of contestation via the judiciary. In parallel, Bersih’s efforts and strategies towards these political opportunities had created conditions that contributed towards Pakatan Harapan’s victory in GE14.

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**Keywords:** Malaysia, Bersih, Malaysia, electoral reform, political opportunity, 14th general election

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## Introduction

Malaysia's predominant political coalition, Barisan Nasional (BN), held power for over 60 years after the country's independence in 1957. As a competitive authoritarian regime, formal democratic institutions and processes were limitedly present – but were in reality abused and manipulated by the incumbent regime to retain political power (Levitsky and Way 2002). Over the years, therefore, the ruling party in Malaysia had systematically controlled both political and economic power. This was done through constitution amendments, patronage and race-based politics, manipulation of the electoral system, repression of freedom and rights, and the exertion of control over parliament, the judiciary, and the media (Case 2001; Croissant and Lorenz 2018; Lee 2007; Liu 2014).

In particular, elections in Malaysia were not free and fair, and were systematically manipulated to provide an unfair political advantage to the ruling government (Ostwald 2017; Welsh 2014).<sup>1</sup> The Election Commission (EC) was appointed on the binding advice of the prime minister, and lacks independence. Electoral boundaries were heavily manipulated, resulting in severe malapportionment and gerrymandering (Wong 2018). Electoral monitoring groups have documented widespread bribery, fraud, and phantom voters during elections (see for example, Bersih2.0, Komas, and Suaram 2018). The People's Tribunal on Malaysia's 13th general election (GE13) in 2013 – a civil society-initiated inquiry consisting of five non-partisan experts to assess the conduct of this election – concluded in its final report that:

There were multiple failings in the way GE13 was conducted, and that virtually every tenet of a fair election was violated at one place and at some time. (Bersih2.0 2014: 17)

An unexpected breakthrough happened, meanwhile, in the Malaysian 14th general election (GE14), which took place on 9 May 2018. Prior to GE14, the vast majority of political analysts, activists, and opposition politicians were sceptical about the possibility of regime change (Merdeka Center for Opinion Research 2018; Ong and Kow 2018; Kaur 2018b; Yeoh 2018). This was understandable, considering the tight control that the ruling party

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<sup>1</sup> See, for example, Lim (2002); the findings and conclusions of the People's Tribunal on Malaysia's 13th general election (Bersih2.0 2014); and the Election Observation Report of the 14th Malaysian general election (Bersih2.0, Komas, and Suaram 2018).

had over state resources and machinery, prevailing weaknesses and challenges faced by the opposition, and given also the continuing manipulation of the electoral system (Bersih2.0 2018f).

It was, therefore, surprising when GE14 in fact resulted in the end of the BN regime's uninterrupted rule ever since independence. The Pakatan Harapan (PH) coalition won 113 parliamentary seats and formed the government together with its ally, the Warisan Party – who won 8 seats. BN won 79 seats, while the Malaysian Islamic Party (PAS) won 18 seats, the Homeland Solidarity Party (STAR) won 1 seat, and independent candidates won 3 seats (Suruhanjaya Pilihan Raya Malaysia 2018). The PH coalition formed the government in eight states, PAS in two, and BN in three states.<sup>2</sup>

GE14 was also significant because, for the first time in the nation's history, there was a transition of power. This transition was successful and peaceful, without any disruption or violence. The GE14 breakthrough was, by any measure, therefore an amazing feat considering the authoritarian political environment in Malaysia – and also the regional and global context of a “democracy in crisis,” where more countries are suffering democratic setbacks than gains (Freedom House 2018).

## Civil Society and Democratisation

What were the causes of the unprecedented and astonishing event of the BN regime losing the election and power? Many factors were at play here. Voters' frustrations about corruption, especially the 1MDB scandal, and the rising cost of living (Tay 2018) drove public support away from BN – including from its traditional support base. Mahathir Mohamad, previously prime minister for 22 years under the BN coalition before turning and leading the opposition during GE14, was another crucial factor. As the chairperson and prime minister candidate for PH, he provided leadership and stability within the opposition coalition. More importantly, Mahathir provided trust and security among the Malay electorate (Ibrahim 2018) – a crucial voter segment whose support is imperative for victory in Malaysian elections.

Undeniably, one other key factor which contributed to the democratic breakthrough in Malaysia was the role of civil society. Definitions of “civil society” are aplenty, and have evolved continuously over time. In contemporary terms, however, there are several core attributes: independence from the state and private capital; self-organisation; deliberation; and,

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2 This includes the state of Sarawak, which had held its state elections separately in 2016.

civility (Wheatley 2010). Although civil society can both expand and contract democratic spaces, its existence is a necessary condition and one that has been at the forefront of political liberation, political reform, and democratic transitions – such as in Indonesia, the Philippines, and South Korea (Alagappa 2004).

Likewise in Malaysia, civil society has had a long and active role in politics. From a historical-institutionalism standpoint, civil society developed and changed after independence in 1957 via three critical junctures: the period of nation-state-building in 1957; the 1969 communal riots; and, the 1987 Operation Lalang and beyond – including the 1999 Reformasi movement (Giersdorf 2011). In more contemporary times, the rise of people's movements such as the Coalition for Clean and Fair Elections (Bersih), Hindu Rights Action Force (Hindraf), and Himpunan Hijau had created shockwaves and contributed to the “political tsunami” and the opposition's success in both the 2008 and the 2013 general elections.

## Political Opportunities and the Role of Bersih in GE14

This article will take a closer look at the role and impact of one key civil society actor in the democratic breakthrough during GE14: the Bersih movement. Formally known as the Coalition for Clean and Fair Elections, Bersih was founded in 2005 as a coalition by five political parties and 25 civil society groups to campaign for electoral reform. In 2011, Bersih was relaunched as BERSIH2.0 and transformed into a non-partisan movement comprising and led by civil society (Khoo 2016). As of 20 March 2018, Bersih was comprised of 92 endorsing non-governmental organisations working on different issues (Bersih2.0 2018b). Bersih is also the largest people's movement in Malaysia, and is most known for organising five major rallies in the past decade to demand electoral reform and greater democracy for Malaysia. The movement has inspired various “acts of citizenship” and civic participation in political affairs beyond the mere casting of ballot papers every five years (Khoo 2018).

While the impetus behind its founding was the desire for electoral reform, the origins and development of Bersih have also been closely tied to the frustration of the general populace with the BN regime. The success of the first Bersih rally in 2007, for example, was in the context of rising fuel prices and the failure of then prime minister Abdullah Badawi to institute promised reforms (Khoo 2014). In the Bersih 2 and 3 rallies, participation was partly driven by voters' anger about the government's imposed restriction on freedom of assembly and the police's hard-handed

crackdown on protestors. As a movement Bersih provided leadership in advancing democracy in Malaysia, and it became a common platform for citizens to rise up against corruption, the abuse of power, and weak public institutions.

The article seeks to analyse, then, the role and impact of Bersih in GE14, by examining the political context via three key *political opportunities*: the 1MDB scandal; electoral fraud and manipulation; and, the re-delineation of electoral boundaries. “Opportunity” refers to one of the components of collective action and “concerns the relationship between a group and the world around it” (Tilly 1978: 11). The political opportunity approach emerged from decades of research on social movement behaviour and outcomes; although it has been widely researched and used in studies involving social movements and contentious politics, there is, however, no general consensus on the political opportunity concept as it continues to be reviewed, criticised, and developed (see, for example, Meyer 2004; Giugni 2011). Nevertheless, the underlying point of the political opportunity approach is that activists’ goals, strategies, and success are all dependent on the surrounding external context (Meyer 2004) – that is, political opportunities.

In parallel, Bersih’s core campaigns, actions, and tactics in response to these political opportunities will be analysed to determine how they affected GE14. This will provide some detailed insights into the work and strategy of Bersih, and how it contributed to the democratic change witnessed. This is largely based on primary information and observation, given the author’s involvement as a member of Bersih’s operating secretariat. Media reports, press statements, and other information obtained from social media are also used in exploring the political opportunities as well as Bersih’s actions.

## The 1MDB Scandal – Kleptocracy at Its Worst

Dubbed as “kleptocracy at its worst” (*Reuters* 2017), the 1MDB corruption scandal needs no further introduction as allegedly more than USD 4.5 billion of funds were laundered through a series of complex and bogus companies worldwide. Initially set up as a strategic development company wholly owned by the government, 1MDB first came to public scrutiny when Tony Pua, member of parliament for Petaling Jaya Utara, started raising questions in parliament about the company in 2010 (Pua 2010). However, it was not until 2015 that 1MDB would explode into a full-blown scandal following the exposés by whistleblowing site Sarawak Re-

port (2015) and by the *Wall Street Journal* (see Wright and Clark 2015), especially on how MYR 42 million from SRC International (a 1MDB subsidiary company) and USD 681 million from 1MDB had been transferred into Najib Razak's personal bank account.

Internal cracks within Najib Razak's party started to surface, led by then deputy prime minister Muhyiddin Yassin, who broke his silence on the issue, and by former prime minister Mahathir Mohamad, who had in the preceding year withdrew his support for Najib Razak (Yunus 2014). As political and public pressure continued to increase, Najib Razak eventually admitted publicly that MYR 2.6 billion had indeed been transferred into his private account – but justified it as a political “donation” (Hamid and Ariff 2015). A special task force consisting of the attorney general, Central Bank governor, inspector-general of the police, and chief commissioner of the Malaysian Anti-Corruption Commission (MACC) was set up by the government to investigate the matter.

The 1MDB scandal continued to snowball, and Najib Razak then took steps to protect his position. Muhyiddin Yassin, Attorney General Abdul Gani Patail, along with four other ministers who had questioned Najib Razak on 1MDB were all removed from their positions (Teoh 2015). The 1MDB special task force was disbanded, and four members of the Parliamentary Public Accounts Committee who were conducting inquiries into 1MDB were made deputy ministers (Amly 2015). Najib Razak was subsequently cleared by the new attorney general on all corruption charges related to 1MDB.

At the international level, however, the 1MDB scandal continued to simmer as investigations into financial irregularities and money laundering were conducted in at least nine separate countries: Australia, Hong Kong, Luxembourg, Singapore, Switzerland, Thailand, the United Arab Emirates, the United Kingdom, and the United States. In July 2016, the US Department of Justice (DOJ) announced action under the Kleptocracy Asset Recovery Initiative to recover more than USD 1 billion in assets associated with funds laundered from 1MDB (DOJ 2016). Documents filed by the DOJ detailed how the funds were misappropriated and spent on, among other things, luxury real estate properties, a Pablo Picasso painting, a luxury yacht, and the production of *The Wolf of Wall Street*.

## Coalition-Building and Strengthening the Opposition's Position

Bersih played a crucial role in the 1MDB scandal by mobilising citizens to the streets to protest against it. On 29 July 2016, a couple of days after Najib Razak had removed Gani Patail as the attorney general and Muhyiddin Yassin as the deputy prime minister, Bersih responded by announcing its first mass rally since GE13, under the leadership of Maria Chin Abdullah. In a press statement, the movement announced that Bersih 4 would be held on 29–30 August 2016, called for the resignation of Najib Razak as prime minister, and listed four broad demands<sup>3</sup> and 10 key institutional reforms.<sup>4</sup> Following the DOJ's announcement of action against 1MDB in 2016, the movement again called for the Bersih 5 rally – starting with a nationwide “convoy” from October 2017 onwards, and culminating in a mass rally on 19 November 2017. In both of these rallies, Bersih worked closely with the opposition political parties within PH to mobilise and organise logistics.

The increasingly close working relationship between Bersih and opposition political parties, and its decision to make a partisan demand for the resignation of Najib Razak, caused it to be accused of being “pro-opposition” (see, for example, Mustafa 2015; *The Star Online* 2016; Lokman 2016). Critics, including supporters, also pointed out their disagreement with Bersih's divergence from its goal of fighting for electoral reform, and that the rallies were often “hijacked” by the opposition (see, for example, Haleem 2015; Buang 2015; Baharom 2015). The state and mainstream media responded by propagating the idea that Bersih represents a political agenda by the opposition to topple the government (Lim and Wong 2018).

However, cooperation and coalition-building between civil society and opposition political parties in Malaysia is nothing new. In the context of competitive authoritarianism, civil society could challenge the regime in the electoral arena by supporting opposition parties and advocating for

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3 The four demands are: clean elections; clean governments; save our economy; and, right to dissent.

4 The 10 institutional reforms are: electoral reform; making the Election Commission a constitutional party answerable to parliament; barring Prime Minister from simultaneously holding the office of Finance Minister; parliamentary reform; making MACC answerable to parliament; separating Attorney General from the role of Public Prosecutor; freedom of information laws at the federal and state levels; the public declaration of ministers and senior government servants' assets; repeal of amendments to draconian laws; and, the establishment of the Independent Police Complaints and Misconduct Commission (IPCMC).



reform policies (Giersdorf 2011). Coalition capital had historically been developed and utilised in the 1999 general election, where civil society and political society worked together in the Reformasi movement and Barisan Alternatif coalition – making significant opposition gains in the 1999 general election (Weiss 2006). Coalition capital enabled groups to relinquish their narrow interests to focus instead on a broader reform agenda that cut across ethnic and economic lines.

In the case of Bersih, coalition capital and cooperation between civil society and political parties were present from the very beginning – as the movement was founded in 2005 as a coalition by five political parties and 25 civil society groups. Although members of the coalition had different ideals and areas of focus, Bersih concentrated on the common agenda of electoral reform. The close cooperation between civil society and opposition political parties was instrumental in the success of the Bersih rallies and in making electoral reform a mainstream agenda in Malaysian politics during the 2008 and 2013 general elections.

In mobilising citizens to the streets regarding the 1MDB scandal, Bersih continued the tradition of coalition-building between civil society and political society in Malaysia – and, in so doing, strengthened the opposition forces during GE14. The leadership provided by the movement – in being the first to mobilise against the 1MDB scandal during Bersih 4 – was critical, because at that juncture opposition political parties were not in the position to rally supporters and to capitalise on political opportunities because the Pakatan Rakyat coalition was in disarray and in the process of collapsing with the departure of PAS. The Bersih 4 and Bersih 5 protests were critical for the opposition political parties to rally citizens against the 1MDB scandal, to gather popular support, and to maintain political pressure on the regime. The 1MDB scandal, which was at the centre of both rallies in 2015 and 2016, continued to be a key campaign issue during GE14 – one that contributed to the electoral defeat of BN (*FMT Reporters* 2017b).

On 4 March 2016, the Citizen's Declaration was jointly launched to demand the resignation of Najib Razak as well as a series of reforms (Hakam 2016). The Citizen's Declaration initiative was another important step in coalition-building, as it was the first formal platform that brought together previously conflicting political leaders and parties – most notably Mahathir and Anwar Ibrahim – and was the precursor to the formation of PH. Maria Chin Abdullah, then chairperson of Bersih, and Ambiga Sreevasan, former chairperson of Bersih, were among the initial signatories to the declaration and continued to play an important role in asserting demands for institutional reform leading up to GE14.

Similar to the Reformasi movement in 1999 and to the 2008 general election where civil society developed and “exported” new cross-ethnic and cross-religious agendas into the political sphere, the coalition between Bersih and opposition parties in the lead-up to GE14 continued this effect and played an important role in providing an alternative platform – one that was more issue-based than personalistic or ethno-religious-based (Weiss 2009). As highlighted earlier, Bersih’s scope and role expanded to include wider demands – especially on institutional reform. In the Malaysian context, where political contestation has historically predominantly been along ethnic and religious lines and where, post-GE13, religious and ethno-nationalist politics were making a comeback (Noor 2013), this was important for ensuring that progressive voices were present in the public political sphere. It also served as an important platform for the newly formed PH coalition, especially their candidate for prime minister, Mahathir, to demonstrate their commitment to reform to voters sceptical about the PH’s agenda. In an ironic twist of fate, Mahathir was among those who called for support and participated in the Bersih 4 and Bersih 5 rallies (*The Straits Times* 2016) – despite his previously rejection and cracking down on public assemblies during his time as prime minister.

## Electoral Manipulation and Fraud

Democracy in Malaysia has had various labels applied to it – such as quasi-democracy, semi-democracy, soft authoritarianism, illiberal democracy, ambiguous regimes, and electoral regime. Two key ever-present issues are, nevertheless, that elections have not been free and fair and there was never a change in the governing party (Wong, Chin, and Othman 2010). Although there was a “protracted transition” towards electoral democracy in the wake of GE13 (Ufen 2013), underlying structural problems in the electoral system – namely, independence of the EC, malapportionment and gerrymandering, disenfranchisement of voters, access to media, phantom voters, absence of political financing and caretaker government legislations, and lack of enforcement against vote-buying and other electoral offenses – remained and indeed worsened over time (Chan 2018; Bersih2.0, Komar, and Suaram 2018; Bersih2.0 2014).

On the issue of the electoral roll, for example, irregularities and flaws remained as a key issue during GE14 despite having being highlighted for many years – including by the 2011 Parliamentary Select Committee on Electoral Reform. Since 2015 onwards, political parties and civil society organisations such as Bersih detected and documented fraudulent trans-

fers of voters into several constituencies that were won or lost only marginally in the last election (Bersih2.0, Komas, and Suaram 2018). In the federal constituency of Bukit Katil, which had been won marginally by the opposition in GE13, 32 voters were simultaneously transferred into the constituency using identical home addresses, while a further 41 voters were transferred in using incomplete ones (Ho 2017). In 2017 the EC allowed the transfer of 3,724 military voters into three army camps that were still under construction and did not even exist yet. The three camps were “coincidentally” situated in marginal constituencies held by cabinet ministers, including the then deputy prime minister Ahmad Zahid Hamidi (Alhadjri 2017). A week before GE14 polling day, Bersih and Engage released their findings on electoral roll problems. These included, *inter alia*: irregular movement of voters; inconsistencies in personal details; and, incomplete addresses of voters (Bersih2.0 2018e).

The EC also suppressed and disenfranchised voters. Recent elections in Malaysia suggest that higher voter turnout favours PH (Lim 2018; Boo 2014), as it means lower apathy and greater proactivity on the part of voters to go against the regime (Kaur 2018a). Likewise, new voters – a majority of whom are young and first-time ones – are more likely to support the opposition as they have better access to alternative news sources. Most notably, on 10 April 2018, the EC held a press conference in Putrajaya to announce the dates of nomination and polling day. The EC unexpectedly announced 9 May 2018 – a weekday – as the polling day. Although the law provides discretion for the EC to set the polling day, it offered no explanation as to why a weekend – which would have been much more accommodating of voters – was not chosen instead. The EC shockingly refused to answer any questions from reporters, deciding instead to just end the press conference after making the announcements and simply walk away. A weekday polling day would inconvenience an estimated 1.7 million to 3.5 million (Khor 2018) “outstation” voters, meaning those who have to travel back to their hometowns to vote.

Voter disenfranchisement was also practised long before GE14. From 2013 the EC had made it harder for citizens to register as voters, by arbitrarily removing and restricting the appointment of assistant registrar officers (AROs)<sup>5</sup> from political parties and many NGOs – even though they were the most proactive in registering new voters.<sup>6</sup> This resulted in

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5 An eligible citizen must first be registered as a voter before he or she can vote. Voter registration can be done at EC offices, post offices, selected government departments, or directly via AROs appointed by the EC.

6 In 2017, there were 205 AROs from civil society as compared to 5,720 in 2011 (Teo 2017), many of who have been found to have close links to BN (Bersih2.0

4.1 million eligible citizens not being registered to vote, as announced by the EC in March 2017 (Bernama 2017) – constituting some 22 per cent of the total citizens eligible to register and vote in Malaysia. In addition systematic abuse of the voter registration process occurred in targeted areas, especially in Selangor from 2015 onwards. In most cases objections against the registration of new voters were filed by members of United Malays National Organisation (UMNO) randomly based on race and on areas likely to be supportive of PH, while in 2016 the number of such cases were estimated to amount to more than 1,500 for each registration quarter (Ong 2017).

As GE14 drew nearer, incidences of vote-buying increased under the guise of government or welfare programmes (*The Straits Times* 2018). On the same day that parliament dissolved, Najib Razak launched BN's GE14 manifesto and announced significant increases in the government's BR1M cash aid programme – which would cost the government an additional MYR 3.71 billion (*The Star Online* 2018), even though he was only acting in a caretaker government role. Five days later, Najib Razak launched the 1Malaysia taxi aid programme, whereby 67,000 taxi drivers would receive MYR 8,000 each (Zainal 2018). At the local level, vote-buying was the norm as candidates were openly handing out gifts to voters – ranging from essential goods like rice and oil to via more creative means, like prize draws offering electrical appliances and MYR 25,000 cash to voters attending the campaign events (Pemantau 2018).

## Electoral Monitoring and Mobilisation

Electoral manipulation and irregularities, as described above, have been a key political opportunity and were at the forefront of contestation in the 2008 and 2013 general elections. Bersih had capitalised on this opportunity in mobilising for its rallies in 2007, 2011, and 2013, with the EC and the ruling regime, BN, bearing the brunt of the impact because they were targeted as the parties responsible – and also for failing to institute reform. These conditions continued to persist leading up to GE14. Irregularities in the electoral process, as described above and in the following section on re-delineation, were consistently highlighted by political parties and by Bersih. In a survey on youth voters, 80.3 per cent responded that they do not think that the EC is fair and independent (Centre for Public Policy Studies 2018).

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2015). The EC was also lethargic in conducting voter registration exercises on the ground, and expected voters to take their own initiative to register themselves at the post office, EC office, or at selected government departments.

While the Bersih rallies strengthened the sense of citizenry, the movement has also empowered more civic activism beyond just the rallies (Khoo 2018). Political opportunities at the macro level are correlational to collective political action at the micro one, and, as evident in GE13, Bersih had empowered greater electoral mobilisation and activism (Khoo 2016). The political opportunity arising with regards to the flaws in the electoral system and process in the lead-up to GE14 continued such a scenario; Bersih played a key role in monitoring the electoral system. As the primary organisation campaigning for electoral reform in Malaysia, Bersih was at the forefront in challenging and exposing various abuses and attempts at manipulating the electoral system. The Bersih Steering Committee and secretariat played an effective and indeed crucial role as a watchdog vis-à-vis the EC, by monitoring its actions on various fronts such as the electoral roll, voter registration, changes to regulations, and the conduct of electoral commissioners.

At the macro level, electoral irregularities were constantly exposed via both traditional and social media platforms. Sustaining publicity and awareness on electoral reform issues was critical because when BN retained power after GE13, many voters – including Bersih supporters – became increasingly disillusioned and lost hope as they felt that their efforts had not materialised in change. The efforts of Bersih post-GE13 were, therefore, important in keeping the momentum, agenda, and awareness of electoral reform alive throughout the period leading up to GE14. The high level of awareness about electoral fraud among voters was an important factor in influencing voter turnout, because citizens were reminded of the importance of their vote – and it also channelled popular support to PH too, because they backed the electoral reform agenda. The heightened awareness and empowerment resulted in many voters directly participating in protecting the safety of their votes during GE14. This was done in a variety of ways, especially by volunteering as polling and counting agents (PACAs) – who played a critical role in ensuring the safe and proper receipt of Form 14 (Tay and Zainul 2018; Joseph 2018).<sup>7</sup> In one ironic instance, a group of voters who were guarding a polling station conducted a spot check on a policeman and his motorcycle before allowing him to enter, to ensure that he was not carrying any illegal ballots (*Media Baharu* 2018). In another incident, a group of voters mistakenly prevented the EC vehicle transporting ballot boxes containing counted votes to the tally centre, thinking that they were illegal ones (*World of Buzz* 2018).

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7 Form 14 refers to the official statement of the poll after counting the ballots at the polling stream. It is the most important document to prove and prevent manipulation of the final vote tally.

In other, more direct terms, Bersih launched its domestic election observation initiative (Pemantau) on 30 October 2017, in anticipation of the upcoming GE14. Among the stated goals of Pemantau were to prevent electoral fraud and misconduct and to collect evidence for possible legal action (Bersih2.0 2017b). Via this campaign, Bersih conducted nationwide trainings and briefings, and recruited over 100 coordinators and 700 volunteers to observe, document, and report 12 categories<sup>8</sup> of electoral offenses. A total of 1,003 reports were verified by Pemantau coordinators (Bersih2.0, Komar, and Suaram 2018), and periodic exposés were released during the campaign period to name and shame wrongdoers. These revelations were especially critical in directly countering the vote-buying culture and misuse of government resources for campaigning that were widely prevalent throughout the pre-election period, specifically by naming and shaming the offenders (see, for example, *Malaysiakini* 2018).

In response to the large number of unregistered voters existing due to EC's suppression, Bersih launched the Undi (Vote) campaign in early 2017. This was an intensive voter registration drive conducted nationwide together with its network of partners, NGOs, and grassroots volunteers. These individuals were on the ground throughout the campaign period, armed with the necessary forms and equipment so as to register voters in public areas with large volumes of people – such as shopping malls, night markets, and churches. The campaign also required sourcing and working closely with the limited number of available AROs and forms (*FMT Reporters* 2017a). In total, the number of new voter registration applications received by the EC in 2017 was 842,025, which played a key role in securing PH's victory as these were mostly young and first-time voters. The number of individuals registered to vote by Bersih and its partners in 2017 was approximately 100,000 people in total (Hendry 2018).

In addition, Bersih consistently rallied the electorate to exercise their vote in all of its campaigns and actions. Considering that reforms were unlikely to take place, Bersih made the message loud and clear that the only way to defeat and reduce the effects of electoral fraud was by voters coming out to overwhelmingly oust the incumbent party. The call culminated in Bersih's final campaign before GE14, launched on 11 February 2018, “*Satukan Tenaga, Kalahkan Penipuan*” (literally translated as “unite

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8 The 12 categories are: bribery and vote-buying; treating and gifts; undue government handouts/inducement; use of government machinery; excessive spending/lavish events; biased behaviour by public institutions (e.g. EC/police); advanced voting and postal voting; electoral roll problems; problems on voting day; racial politics, for example hate speech and discrimination; political violence, intimidation, and harassment during the campaign; and, other.

forces, defeat cheating”). During the campaign launch, Maria Chin Abdullah gave a keynote speech highlighting Bersih’s journey over the past decade and urged voters to go out and repeat the 85 per cent turnout achieved in GE13 – the highest in the nation’s history (Alhadjri 2018). After all was done and dusted, the final voter turnout for GE14 was in fact 82.32 per cent (Suruhanjaya Pilihan Raya Malaysia 2018).

## Re-delineation Contestation

The delineation of electoral boundaries is one of the key problems affecting the integrity of Malaysia’s electoral system. Amendments to the Federal Constitution with regards to the functions and principles of re-delineation had been made as far back as 1962. In 1974, meanwhile, amendments were made to remove the limit for malapportionment, and every re-delineation exercise since then has only worsened malapportionment and gerrymandering (Wong 2018; Lim 2002). Malaysia ranked last in the district boundaries sub-dimension, with 10 points, in the Perceptions of Electoral Integrity Index (Norris, Wynter, and Cameron 2018). In GE13, BN only won 47 per cent of the popular vote – which translated into 133 parliamentary seats (60 per cent). The opposition coalition, on the other hand, obtained 51 per cent of the popular vote, but this only translated to 89 parliamentary seats (40 per cent).

Constitutionally, the EC can only conduct a re-delineation exercise eight years after the completion of the last one. It was, therefore, widely expected to take place before GE14, as it was long overdue; the previous re-delineation had taken place in 2003. The re-delineation exercise was finally initiated by the EC in 2015 for Sarawak, and in 2016 for Peninsular Malaysia and Sabah.<sup>9</sup> Under the 13th Schedule of the Federal Constitution, the EC must publicly display the new proposed electoral maps for 30 days. Any representations to object to the new maps can be filed with the EC by a group of 100 or more voters in the constituency affected, by the state government, or by the local authority. A local inquiry must then be held for each objection received. The EC then reviews and republishes the new re-delineation proposal for a second time and repeats the process of objection, local inquiry, and revision. Thereafter the final report will be submitted to the prime minister, who will table it – along with a draft order –

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9 Under Article 113(6) of the Federal Constitution, separate re-delineation reviews and recommendations shall be done for the states of Malaya (Peninsular Malaysia), Sabah, and Sarawak.



in parliament, for approval. If approved, the draft order will be submitted to the *Yang di-Pertuan Agong* (head of state) to be brought into force.

The intended purpose of constituency re-delineation is to correct two types of distortion: namely, malapportionment and gerrymandering (Wong, Yeong, and Ooi 2016). This is consistent with the principles that the EC must adhere to, as laid out in the 13th Schedule of the Federal Constitution. Among other things, the key principles are laid out in Section(c) and Section 2(d) of the 13th Schedule, which are essentially provisions against malapportionment and gerrymandering. Section 2(c) requires the number of voters in constituencies to be “approximately equal,” while Section 2(d) stipulates the maintenance of “local ties.”

From the outset, the re-delineation exercise failed to reduce malapportionment. The final proposal passed by parliament resulted, in fact, in worsening malapportionment for federal constituencies in four states – Johor, Kedah, Malacca, and Selangor – based on the ratios between the smallest and largest constituencies (Bersih2.0 2018d). For instance the largest constituency in Selangor is Petaling Jaya with 150,439 voters, in comparison to the smallest one which is Sabak Bernam with 37,126 voters (over four times smaller). Partisan gerrymandering based on historical voting patterns – especially the packing of opposition supporters into super-sized constituencies – and ethnic-based gerrymandering were practised; on the other hand, meanwhile, 59 per cent of parliamentary constituencies were excluded from any such re-delineation (Bersih2.0 2018d).

In 2017, it was clear that the EC and the government were rushing to complete the re-delineation exercise as the upcoming general election loomed nearer. At that point, the re-delineation process for Peninsular Malaysia was being held up by court stay order in the Selangor government’s judicial review of the constitutionality of the EC’s proposal. In spite of the stay order, in March 2017, the EC forcefully proceeded with the second public display for the re-delineation in Peninsular Malaysia by excluding Selangor (Carvalho and Muthiah 2017). Court cases, in particular appeals by the EC against stay orders, were fast-tracked and dismissed by the higher courts, raising questions about the impartiality of the judiciary (Bersih2.0 2017a; Tariq 2017; Lim 2017). In the second public display of Selangor’s re-delineation proposal, the EC hoodwinked voters by proposing minimal changes to avoid having to deal with objections and hold local inquiries – while reverting to and “recycling” their first proposal, in the final report that was tabled in parliament (Bersih2.0 2018d). In addition, the EC also rushed through the second round of local inquiries in Selangor by arbitrarily rejecting the representations by voters (Bersih2.0 2018a). On 28 March 2018, the final re-delineation report was pushed



through and passed in parliament despite the pending court cases (Bersih2.0 2018c).

The EC's and Najib Razak's insistence on bulldozing their way through the re-delineation process and getting it passed before the general election was understandable, as it would strengthen BN's chances of winning in between eight to 12 parliamentary constituencies (Naidu 2018; Teoh 2018). The irregularities within the re-delineation exercise, however, created a political opportunity for opposition parties and civil society, as these shenanigans attracted significant coverage in the media and served to reinforce voters' anger at both the EC and BN.

## Citizens' Objections to and Judicial Contestation of Re-delineation

The political opportunity arising from re-delineation resulted in increased civic activism among voters. For the first time in history, the EC faced strong resistance to and challenges of its conducting and manipulating of re-delineation – primarily due to Bersih. From the outset, the Delineation Action and Research Team (Dart) was jointly launched by Bersih and Engage, in February 2014, as a campaign to educate – and increase the participation of – voters ahead of the re-delineation exercise.

The Dart campaign did what the EC should have done but failed to do. Bersih and the Dart team spearheaded nationwide roadshows, forums, and trainings in each respective state on the issue of re-delineation. Voters were briefed about the importance and process of re-delineation, and how they play a key role in it. Maps of constituency boundaries were digitalised to make them more user-friendly and accessible to voters. In several states, such as Johor, Melaka, Penang, and Selangor, local grassroots teams were formed to follow up on the research and develop alternative mapping proposals. Objection templates and checklists, cross-referenced with the relevant provisions of law and principles, were prepared to assist voters to file objections when re-delineation did eventually start. Bersih and Dart were hands-on in coordinating efforts to assist, collect, and submit objections. In comparison to the previous re-delineation in 2003/2005, the number of representations and objections saw an increase of 408 per cent for Peninsular Malaysia and 139 per cent for Sarawak.<sup>10</sup>

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10 The difference for Sabah, however, could not be ascertained conclusively because no official number of representations were announced – as the final Sabah re-delineation report was never tabled in parliament. It is likely that the number of objections in Sabah increased significantly as well, in line with the trend in Peninsular Malaysia and Sarawak.

**Table 1. Comparison of the Number of Representations Received by the EC during the 2003/2005 and 2015/2016 Re-Delineation Exercises**

Unit of Review	Number of representations received by the EC						% change
	2003/2005			2015/2016			
	1st Public Display	2nd Public Display	Total	1st Public Display	2nd Public Display	Total	
Peninsular Malaysia	285	47	332	804	881	1,685	408
Sarawak	26	10	36	64	22	86	139
Sabah	66	16	82	NA	NA	NA	NA

Source: Author’s own compilation, based on the final report submitted by the EC to the prime minister.

While the EC ignored most of the objections raised by voters vis-à-vis malapportionment and gerrymandering, the high number of ones submitted in the 2015/2016 re-delineation exercise played an important role in pressuring and bringing under scrutiny the conduct of the body – thus deterring it from acting arbitrarily. In previous re-delineation exercises, where minimal objections were raised, the EC had allowed and even concurred with those filed by BN representatives based on political grounds and not principles of law.<sup>11</sup>

In competitive authoritarianism, the judiciary offers a potential arena of contestation for opposition forces to challenge the regime in (Levitsky and Way 2002). The judiciary in Asia has also become increasingly visible (Dressel 2012) in the judicialisation of politics, meaning “the ever-accelerating of reliance on courts and judicial means for addressing core moral predicaments, public policy questions and political controversies” (Hirschl 2006: 721). Part of Bersih and Dart’s strategy to challenge the re-delineation was, therefore, also via legal contestation. Legal research and preparation were conducted by bring together lawyers, academics, and activists. The first re-delineation case was filed in 2015 for the Sarawak one. The judicial review challenge succeeded to obtain a favourable judgement from the Kuching high court in Sarawak. It declared the re-delineation exercise there null and void, for failing to comply with the constitutional requirement to provide sufficient notice to voters.

In 2016, meanwhile, the Selangor State Government filed a judicial review application to declare the re-delineation proposal by the EC there null and void, on the grounds of malapportionment and gerrymandering.

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11 See, for example, the objection filed by Zaini Ismail, secretary of UMNO Kota Melaka in the 2003 re-delineation exercise (Suruhanjaya Pilihan Raya Malaysia 2003).

This was followed by at least 21 other similar cases filed by voters, MPs, state governments, and local authorities to challenge re-delineation at various stages of implementation.<sup>12</sup> Bersih, Dart, and its members were involved in these legal challenges in one way or another; either in spearheading and funding them directly, by acting as counsels, or by providing technical assistance and advice.

Although all of the re-delineation cases were eventually closed in favour of the EC,<sup>13</sup> the large number of legal challenges witnessed was critically important in two aspects. First, these challenges opened up a new dimension and became test cases for the trajectory<sup>14</sup> of the judicialisation of politics in Malaysia from the perspective of elections. The cases challenged and tested the relative power of different institutions – between the EC, the executive, judiciary, and parliament (Welsh 2018). The cases, however, also affirmed that Malaysian courts prefer to exercise judicial restraint (Dressel 2012) in matters of political significance. On the other hand, the re-delineation cases also showed internal differences in the level of judicial restraint exercised across the different court levels (Welsh 2018). While the upper ones – the Court of Appeal and Federal Court – eventually dismissed all the re-delineation-related cases, those in Johor, Melaka, Sarawak, and Selangor were successful in obtaining leave for hearings and stay orders in the high court.

Second, two of the legal cases – namely, those filed by the Selangor State Government and by voters in the state of Melaka – successfully obtained stay orders from the court to prevent the re-delineation exercise from continuing. This indirectly allowed more time for the opposition parties to consolidate and become stronger. The stays tied the hands of the EC as it could only complete the full re-delineation exercise for Peninsular Malaysia in March 2018, 18 months after it had first begun (Welsh 2018).

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12 For a more detailed account of the re-delineation cases, see Welsh (2018).

13 The re-delineation legal cases were dismissed because the courts held the issue to be not for the judiciary but for parliament. Counsels in these cases argued that parliament cannot decide on matters of law, especially involving the interpretation of the constitution. In addition, MPs have a conflict of interest in deciding on re-delineation as it would affect the chances of their party winning. No judgement on the merits of the cases were made, especially with regard to the EC's gerrymandering and malapportionment. In *Kerajaan Negeri Selangor versus Suruhanjaya Pilihan Raya Malaysia & 2 Ors* (WA-25-186-10/2016), the court stated that there was no evidence provided by the EC to refute the allegations of malapportionment and gerrymandering.

14 See Kanagasabai (2012), for the historical development and the patterns of the judicialisation of politics in Malaysia.

As described already, it was apparent by early 2017 that the EC and government were rushing to get it passed before GE14 as they bulldozed their way through the process via a series of questionable manoeuvres. The completion and passing of the new constituency boundaries was one of the key considerations for Prime Minister Najib Razak in determining the election date, as they would provide him with an electoral advantage – via malapportionment and gerrymandering – in numerous constituencies (Bersih2.0 2018d). This meant that the legal cases and stay orders effectively stopped Najib Razak from calling for an early election in 2017; GE14 was eventually held on 9 May 2018, 42 days after the re-delineation proposal was eventually passed in parliament.

The delay in holding the election was a significant factor in PH's victory because it accorded the new-born coalition – which had only been informally created in September 2015 – much-needed time to consolidate and organise. For one thing, Mahathir and his political party, Parti Pribumi Bersatu Malaysia (Bersatu), only officially joined the PH coalition in December 2016. Many other key factors and decisions that contributed to PH's victory – such as the naming of the candidate for prime minister, the manifesto, agreed seat distribution, and the use of a joint logo – only coalesced in early 2018. If the legal challenges and stay orders imposed on the re-delineation exercise had not materialised the new boundaries could have been passed in early 2017, thus paving the way for a possible GE14 in the second half of that year – likely a disastrous outcome for PH.

## Conclusion

There were numerous factors that led to the democratic breakthrough witnessed in GE14. Many of these were accumulated throughout the years of civil and political resistance in Malaysia – such as the build-up of coalition capital between civil society and political parties – while some only took place in recent times before GE14 – such as the affirmation of Mahathir Mohamad as the prime minister-designate. The objective of this article, therefore, has been to suggest that Bersih is not the only or even the primary reason for the fall of the BN government; arguably, no one single factor or entity could reasonably claim to be such.

Nevertheless, Bersih has been a major force in the development of Malaysian democracy for over a decade now, ever since its original founding. It has popularised the colour yellow into a symbol of people power in Malaysia – so much so that the previous government would ban Bersih's

yellow T-shirts and publications. The “yellow wave” and Malaysians’ desire for greater democracy and reform for the country continued into GE14.

The political tsunami experienced in the 2008 general election, where the opposition broke BN’s two-thirds majority hold on parliament and won five federal states, sent a shockwave of excitement throughout Malaysia. The people saw genuine hope for regime change; it did not materialise in GE13, however. As Pakatan Rakyat began to disintegrate after that particular election, Malaysians became increasingly disillusioned and frustrated as years of collective effort in contesting the regime had not born results. Simultaneously, the regime rebounded and cracked down on opposition politicians and activists.

By highlighting and analysing the role of Bersih in responding to the three political opportunities cited in this article – the 1MDB scandal, electoral manipulation, and re-delineation – it is hoped that the role and contribution of Bersih to the recent democratic breakthrough in Malaysia is made clearer. At the most trying of times, Bersih was there to continue the fight. The political opportunity resulting from the 1MDB scandal gave room for civil society and the opposition to go on the offensive, and Bersih took the lead and capitalised on them by serving as the common platform for opposition forces. At same time, Bersih held firm in its agenda for electoral reform by closely monitoring and responding to electoral manipulation. Via the re-delineation exercise, it mobilised and coordinated resistance by increasing civic participation in the objection process and created new arenas of contestation via the judiciary. In parallel, Bersih’s efforts and strategies created conditions that helped contribute to PH’s eventual victory in GE14.

Three general elections after the first Bersih rally was held, a major breakthrough has finally happened. In the context of an electoral authoritarian regime, the role of Bersih as a sustained democratic movement and in making electoral reform a primary point of contestation was key. However, it is yet to be seen whether Malaysia will transition into an electoral democracy. Early signs have been positive; the new government has shown genuine political will to reform the EC, and has announced that the latter will now report directly to parliament. In the meantime, Bersih has also finally been invited and accredited by the EC as observers for several by-elections since GE14. At the time of writing, six members of the EC – including the chairperson – have resigned. In this context, Bersih still has an important role to play in the continuing democratisation of Malaysia, especially with regards to electoral reform.

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