



**Resolution Adopted at the Extraordinary General Meeting of the Malaysian Bar
(Held Virtually on Saturday, 25 Sept 2021)**

**Resolution on “Party Hopping”, Removal of MPs, and Restoration of the People’s Rights
in Determining Who their Representative MPs and ADUNs Are at All Times**

Whereas:

- (1) Of late, events in Malaysia have raised again the issue of party hopping in Malaysia of elected people’s representatives, which to many is seen to be a betrayal of the people, who many a time voted a particular candidate based on his/her promises and/or positions usually found in the party’s or “coalition of parties” proclaimed promises or undertakings as contained in election manifestos, and/or other public positions taken by the party under whose ticket that particular candidate contested to be elected as the people’s Member of Parliament (“MP”) and/or State Assemblyperson (“ADUN”).
- (2) When the Barisan Nasional (“BN”) MPs hopped over after the 14th General Elections (“GE14”) to parties they contested against during the last General Elections, and thereafter some MPs of the Pakatan Harapan (“PH”) coalition of four parties, or when Parti Keadilan Rakyat (“PKR”) MPs or ADUNs left the party, the voters of the respective constituencies felt betrayed. Voters voted for the BN candidate and against the PH, Parti Islam Se-Malaysia (“PAS”) or other candidates, and now their MP jumps to join one of the PH component parties. The same applies for all party hoppers — the “katak” (frogs).
- (3) The question that reasonably arises is whether these MPs or ADUNs still even have the required support of the majority of registered voters in that particular constituency, to continue to remain as the people’s representative of that particular constituency. It must be noted that the party under which a candidate contests, and the election manifestos made by the said parties/coalitions is an important factor for the voter when it comes to choosing their representative.
- (4) It is unjust, and a denial of people’s rights, to allow any such people’s representative to continue to be the MP or ADUN of the particular constituency, when in fact he/she most likely no longer has the required mandate or support of his/her constituents, and his/her continued functioning as the people’s MP or ADUN is a lie or a farce.
- (5) Therefore, in the event that any MP or ADUN who won an election standing as a candidate of any particular political party or coalition of parties, leaves his/her party to join another party, or to be an independent MP or ADUN, he/she must be considered to

automatically no longer be the MP or ADUN of that particular constituency, and an election shall be called to allow the people in the said constituency to choose again their new people's representative.

- (6) Only an immediate election will suffice, for it is absurd for an MP or ADUN, who has in fact lost the support of his/her constituents, to continue to act and/or speak as though he/she still has the people's mandate and/or support, when he/she reasonably no longer does.
- (7) There is also no justification for the people's monies to be used to pay such an MP or ADUN in the form of salary, allowances and various other benefits. He/she is no longer the people's representative in the Constituency he/she claims to represent, unless a new election proves that he/she still has the support of his/her constituents.
- (8) There may be an exception where the said MP or ADUN did not leave but was expelled by his/her political party, and thereafter chose to remain an independent MP or ADUN still committed to the promises and undertaking of the said party as contained in the former party or coalition of parties' election manifesto and otherwise.
- (9) However, the moment that any such independent MP or ADUN chooses to join or publicly support other parties that were opposed to his/her party or coalition of parties on election day, that MP or ADUN ought to be automatically disqualified, and the people should be given the right to choose their new MP or ADUN for their constituency.
- (10) There shall be no bar for the MP or ADUN, disqualified for these reasons, from contesting again in the election to choose the new people's representative in the same, or another, constituency.
- (11) An example of such provisions that disqualify MPs who jump parties can be seen in Uganda, in Article 83 of their Constitution where it is stated that a member of Parliament shall vacate his/her seat in Parliament in any of the following instances, among others (emphasis added):
 - (a) On resignation in writing to the Speaker;
 - (b) If he/she subsequently ceases to qualify to be a member of Parliament;
 - (c) If he/she is absent from 15 sittings without permission of the Speaker;
 - (d) If he/she is found guilty of violation of the Leadership Code of Conduct;
 - (e) **If he/she joins another party or leaves the party and decides to remain as an independent member;**
 - (f) **If he/she was elected as an independent candidate and then joins a party;** or
 - (g) On appointment as a public officer.
- (12) Thus, a similar law can and ought to be enacted in Malaysia, which will return the power to the Rakyat to choose their new people's representative when their elected MP or ADUN changes his/her party affiliation or status to become independent or no longer be an independent.

- (13) As it is, the Federal Constitution — Article 48 (Disqualification for membership of Parliament) — needs to be amended, specifically Article 48(1), to add on two additional situations that result in disqualification, being new clauses (g) and (h) (emphasis added):

48. (1) Subject to the provisions of this Article, a person is disqualified for being a member of either House of Parliament if—

- (a) he is and has been found or declared to be of unsound mind; or
- (b) he is an undischarged bankrupt; or
- (c) he holds an office of profit; or
- (d) having been nominated for election to either House of Parliament or to the Legislative Assembly of a State, or having acted as election agent to a person so nominated, he has failed to lodge any return of election expenses required by law within the time and in the manner so required; or
- (e) he has been convicted of an offence by a court of law in the Federation (or, before Malaysia Day, in the territories comprised in the State of Sabah or Sarawak or in Singapore) and sentenced to imprisonment for a term of not less than one year or to a fine of not less than two thousand ringgit and has not received a free pardon; or
- (f) he has voluntarily acquired citizenship of, or exercised rights of citizenship in, any country outside the Federation or has made a declaration of allegiance to any country outside the Federation; or
- (g) **if he joins another party or leaves the party and decides to remain as an independent member; or**
- (h) **if he was elected as an independent and then joins a party.**

- (14) Hence, an Act of Parliament alone is insufficient, and there is a need for the Constitution to be amended.

Removal of MP or ADUN by the Constituents

- (15) Now, in Malaysia today, a Prime Minister cannot remain as Prime Minister if he/she has lost the confidence of the majority of MPs.
- (16) Likewise, a similar principle should apply to every people's representative — it must be the people in the relevant constituency who then decide whether the same person or some other person should thereafter be their people's representative in Parliament and/or State Legislative Assembly.
- (17) There can be laws enacted to specifically provide the people, in particular constituencies, the right to remove their elected representative by reasons of loss of confidence and/or support.
- (18) Similarly, registered voters should also be accorded the right to remove their elected MP or ADUN or, at the very least, the right to have another election to choose a new MP or ADUN. This could be by a signed petition submitted by, for example, more than 50%

of the registered voters, or by a number higher than the number of votes obtained by the said MP or ADUN at the last election. On receipt of the said petition by the King, Ruler, Election Commission or some other appropriate person or body, the seat would immediately be deemed vacant and a new election shall be held.

- (19) There should be no bar to any person so removed as MP or ADUN that prevents him/her from contesting again in the elections, to let the people decide who they want as their people's representative.
- (20) Laws that bar resigning MPs or ADUNs from contesting again should be repealed. After all, it is the people who ultimately decide who they want as their MP or ADUN.
- (21) Laws that disqualify persons after they have served their sentence or paid fines following a conviction for any further period, should also be abolished. The people, after all, should be free to elect their representative to Parliament, etc.
- (22) Current election laws also do not give the Election Commission the power to investigate and prosecute, and are lamentable. This should be remedied, and the Election Commission should have the power of investigation and prosecution when it comes to crimes relating to elections and/or elected representatives.

Therefore, it is hereby resolved that:

- (A) Malaysia enact laws now, that automatically disqualify the elected people's representatives, including MPs and ADUNs, who leave political parties or change their independent status, AND thereafter there ought to be a new election giving the people the right to choose their new people's representative;
- (B) Malaysia enact laws that give the people the right to remove their MP or ADUN by reason of loss of confidence, akin to the right of MPs to change the Prime Minister, resulting in an immediate election for the people to democratically choose their new MP and/or ADUN;
- (C) The people's right as to who should be and/or remain the people's representative be respected;
- (D) Malaysia amend and reform current election laws, including repealing existing provisions that bar persons from running for elections for years after they have already served their sentence — be it a prison sentence, payment of the fine or some other sentence as ordered by court — which are not only unjust but also encourage discrimination against ex-convicts after they have already served their sentences; and
- (E) The Election Commission be given the right to investigate and prosecute persons, including subsequently elected representatives, when it comes to crimes relating to elections and/or election laws.