

# **Spirit of Merdeka Movement Declaration on Restoring Democracy and Advancing Freedom in Malaysia**

**6 September 2007**

## **Preamble**

We, the undersigned civil society organizations, have come together on the occasion of our fifty years of independence in Peninsular Malaysia and 44 years of independence in Sabah and Sarawak to celebrate our nationhood and to rededicate ourselves and our members to the advancement of democracy and freedom.

Today, key democratic and basic freedoms that all Malaysians fought so hard to attain are under siege or are in decline. Our mission is not only with the restoration of democratic norms and practices. It is also to reaffirm our commitment to the safeguarding and support of vital institutions and processes that are the hall mark of vibrant and flourishing democratic systems.

We call on all Malaysians to support this cause and to join us in promoting a strong democracy in which the separation of power of the executive, legislative and judiciary is maintained, and checks and balances preventing the monopoly or abuse of power by the executive branch are in place. The alternative is to see our nation and people be driven down the road of authoritarianism towards an illiberal and shackled society.

## **Mission Program**

Our mission program is focused on the preservation and enhancement of human rights and basic freedoms that are based upon values of participation, accountability, transparency, equality and diversity. These rights, freedoms and values need to be constantly monitored and safeguarded by committed and autonomous institutional stakeholders and the citizenry. Besides the active functioning of established political institutions of Parliament and the Government of the day, the judiciary, the media, and civil society organizations have important roles to play in advancing the cause of democracy in Malaysia.

There are six areas in which progress towards a strong and resilient democratic system should be focused on. These are:

### ***1. Upholding Constitutional Rights by Rescinding Authoritarian Legislation***

Our constitutional rights include the right to personal freedom, freedom of thought, conscience and religion; freedom of peaceful assembly; freedom of expression and information; freedom of association; and equality before the law without discrimination. Various articles of the Malaysian Constitution provide a sound basis for these basic freedoms and liberties. However, these provisions have been considerably weakened in

the past fifty years, especially under the emergency laws that have long outlived their purpose.

To uphold these rights in the original spirit of our Federal Constitution, we call for the repeal of the following legislation

- Internal Security Act 1960.
- Public Order (Preservation) Act 1958.
- Prevention of Crime Act 1959.
- Emergency (Public Order and Prevention of Crime) Ordinance 1969.
- Emergency (Essential Powers) Ordinance 1970.
- Essential (Security Cases) Regulations 1975.
- Dangerous Drugs (Special Preventive Measures) Act 1985
- Restricted Residence Act 1933

The Federal Constitution has been amended innumerable times since independence. This has diluted tremendously the spirit of the original document. Important parts of the original Constitution, such as *jus soli* (right of birth) citizenship, a limitation on the variation of the number of electors in constituencies, and Parliamentary control of emergency powers have been modified or altered by amendments with the result that the present Federal Constitution bears little resemblance in many key areas to the original version

We call for the review of various constitutional amendments that have effectively abrogated other constitutionally protected fundamental freedoms and rights. The rescinding of these amendments is a crucial step in the restoration of our democratic rights and freedoms.

We also call for the ratification of among others, the International Covenant of Civil and Political Rights, the International Covenant of Economic, Social and Cultural Rights and the Convention on the Elimination of Torture, and Other Cruel, Inhuman and Degrading Treatment or Punishment and the incorporation of their principles into the Federal Constitution and national laws.

## ***2. Restoring the independence of the Judiciary***

Separation of power of the main branches of the state is a core characteristic of all genuine democracies. Adherence to this key concept is also critical to the protection of constitutional rights in Malaysia. The drafters of our Constitution had envisaged “the supremacy of the law and the power and duty of the Courts to annul any attempt to subvert any of the fundamental rights [contained in the Constitution] whether by legislative or administrative action or otherwise” (Reid Commission Report, para 161).

Since 1988 however, the independence of the judiciary has been compromised by numerous actions aimed at undermining its powers and circumscribing its responsibility to protect, preserve and defend the Constitution from legislative and other pressures.

To restore the independence and integrity of the judiciary, we call on Malaysians to support the following measures:

- Upholding the rule of law and the supremacy of the Federal Constitution
- Establishment of an Independent Judicial Commission to ensure transparency and objectivity in the appointment and promotion of judges and to protect judicial integrity
- Ensuring the Judiciary has the exclusive authority to decide whether an issue submitted for its decision is within its competence as defined by law.
- Requiring all executive decisions to be subject to judicial reviews.

All Malaysians must exercise vigilance so that there is no inappropriate or unwarranted executive interference with the judicial process. A manipulated and dependent judiciary can only lead to a weakened democracy.

### ***3. Ensuring Fair and Free Elections***

True democracy not only requires that Malaysians have the right to elect and dismiss their leaders but it also requires that the electoral process provides genuinely free and unbiased choices in the election of parties and political leaders at national, state and local levels.

In our country, at the national and state levels, the manipulation of electoral boundaries; the vast disparity of voter numbers among the constituencies, use of the governmental machinery in support of various political party candidates; the growing incidence of phantom, postal and absentee voters; and various other irregularities and unethical practices have debased the credibility and legitimacy of the electoral process and the outcomes.

Local government forms the underpinning of democratic values and public accountability at the grassroots. On March 2, 1965, local government elections in the nation were suspended with the promise of its restoration “the very moment peace is declared and the emergency regulations are withdrawn”. This promise has yet to be honored. Today, the need for reform to the present unelected form of local government is urgent in the wake of the systemic wastage, mismanagement and corruption found in many local councils.

To ensure a free and fair choice of the country’s elected representatives by Malaysians, we call for the following reforms:

- Reintroduction of local elections, which can be done by either the Federal Government or individual state governments under Article 113(4) of the Federal Constitution.

- Upholding the principle of “one person one vote”, by either restricting the disparity in constituency sizes and prohibiting gerrymandering; or introducing the elements of Proportional Representation (PR) into the electoral system.
- Adherence to the principle of administrative neutrality, by barring ruling parties from buying votes through development pledges and misusing public service facilities and apparatus for electioneering purposes.
- Ensuring free and fair access to mass media by all parties.
- Elimination of polling irregularities by cleaning up the electoral roll, abolishing domestic postal voting and employing indelible ink.
- Introduction of senatorial elections as part of the parliamentary reform agenda.

Finally, to protect the integrity of the electoral system and process, the 1962 amendment to the Constitution which abrogated the Electoral Commission’s right to enforce fair delineation of constituencies should be repealed. At the same time, the Electoral Commission should be granted full power to enforce its decision and should be made free from any form of political pressure or influence.

#### ***4. Advancing Media Freedom and Independence***

The growth on an independent and impartial media in Malaysia has been constrained by coercive legislation as well as by the ruling coalition parties’ control over the ownership of the major news outlets and publications. Increasingly too, journalists have become victims of the controls exerted by the political leadership and their business partners, or have engaged in biased reporting.

Numerous calls have been made for the repeal of the Printing Presses and Publications Act, Official Secrets Act, and national security laws introduced during the colonial period. All such legislations has long outlived their usefulness and should be replaced by a new Freedom of Information Act that enshrines key principles of media freedom and independence and removes the impediments to media independence and freedom, whilst ensuring appropriate social responsibility.

To ensure the independence and integrity of our mass media we call for the establishment of a Parliamentary Select Committee for Media Law Reform to look into

- Repealing all legislation which curb media freedom including:
  - Printing Presses and Publication Act 1984.
  - Sedition Act 1948.
  - Official Secrets Act 1972.
- Enactment of a Freedom of Information Act to enhance the public’s right to public information and to protect whistle-blowers.
- Introduction of effective anti-monopoly mechanisms to protect the pluralism of ownership and control in the media industry.

#### ***5. Fostering civil society participation and a culture of transparency and accountability***

Civil society plays a crucial role in a democratic system, especially in the context of Malaysia where legislative power cannot effectively control the executive. Today, despite the presence of repressive legislation and limitations to democratic space, numerous civil society organizations have emerged to pursue the cause of fundamental rights and freedoms in the civil, political, economic, social, and cultural fields. Through activities aimed at a culture of participation, transparency and accountability and the raising of public consciousness, civil society organizations are playing a vital role in issues of public interest and by providing important resistance to coercive elements seeking to undermine democratic norms and practices.

To enable a vibrant and critical civil society to take root, freedoms of expression, association and assembly must be respected. We call for the repeal of the Universities and University Colleges Act 1971, the Universiti Aku Janji policy and Section 27, 27A-C of the Police Act, 1967 on the right to peaceful assembly. We further call for the reforms of the following laws:

- Societies Act 1966
- Trade Unions Act 1959
- Police Act 1967

We call on all Malaysians to stand up for civil society organizations that are facing threats to their freedom of association and organization, assembly and expression.

## ***6. Protecting and celebrating the nation's diversity***

Malaysia is a nation of diverse ethnic groups, religions, cultures and languages. In recognition of the difficulty of building a resilient democratic system where wide disparities exist amongst communities derived from geographical, ethnic, socio-cultural and other differences, we call for the acceptance of four general principles that can contribute to building a resilient democracy in our plural society.

These are:

- No citizen should suffer unjustified discrimination in economic and educational opportunities on the grounds of ethnicity, religion, gender, class, disability, age or lifestyle.
- The state should invest sufficiently in education, healthcare and other public services so that the marginalized and poorer segments of society are provided opportunities to improve themselves and we can more quickly reduce the disparities that are found in the nation's economy.
- All individuals, groups and communities should respect one another as equal fellow citizens with constitutionally-enshrined rights and duties.
- Elimination of the scourge of corruption which has taken deep root and is acting to destroy the moral and ethnical basis of the nation, whilst rewarding the greedy, unscrupulous and unworthy.

1. Alaigal
2. All Women's Action Society (AWAM)
3. Aliran Kesedaran Negara
4. Bar Council Human Rights Committee
5. Centre for Environment, Technology & Development Malaysia (CETDEM)
6. Centre for Independent Journalism (CIJ)
7. Centre for Orang Asli Concerns (COAC)
8. Chinese Language Society, University Putra Malaysia (UPM)
9. Chinese Language Society, University Malaya (UM)
10. Chinese Student Association, University Utara Malaysia (UUM)
11. Chinese Student Council, University Technology Malaysia (UTM)
12. Citizen Think Tank
13. Civil Rights Committee of The Kuala Lumpur and Selangor Chinese Assembly Hall, (CRC-KLSCAH)
14. Community Action Network (CAN)
15. Community Development Center (CDC)
16. Council of Churches of Malaysia (CCM)
17. Food Not Bomb
18. Gabungan Anak Muda dan Pelajar (GAMP)
19. Gabungan Mansuhkan ISA (GMI)
20. Gabungan Rakyat Membantah US-Malaysia FTA
21. Gerakan Mahasiswa Maju University Putra Malaysia (GMMUPM)
22. Group of Concerned Citizens (GCC)
23. Institut Kajian Dasar (IKD)
24. Jaringan Rakyat Tertindas (JERIT)
25. Jawatankuasa Kebajikan Mahasiswa-Mahasiswi, UKM (JKMI)
26. Komuniti Seni Jalan Telawi (KsJT)
27. Labour Resource Center (LRC)
28. Lim Liong Gek Cultural Foundation
29. Malaysia Youth and Student Democratic Movement (DEMA)
30. Malaysian Voters Union (MALVU)
31. Monitoring Sustainability of Globalisation (MSN)
32. National Human Rights Society (HAKAM)
33. Penang Watch
34. Penang Youth Graduate Association
35. People's Parliament
36. Persatuan Alumni LiHua PBTUSM Kuala Lumpur dan Selangor
37. Persatuan Masyarakat Selangor Dan Wilayah Persekutuan (PERMAS)
38. Persatuan Sahabat Wanita Selangor
39. Pusat Janajaya (EMPOWER)
40. Pusat Khidmat Pekerja Tanjung
41. Pusat Komuniti Masyarakat(KOMAS)

42. Rakan Perjuangan Peneroka Bandar (RAKAN)
43. Research for Social Advancement (REFSA)
44. Sarawak Dayak Iban Association (SADIA)
45. Save Our School Damansara (SOS DAMANSARA)
46. Save OurSelves (SOS) Penang
47. Sisters in Islam
48. Solidarity Mahasiswa Putra (SMP)
49. Solidarity Mahasiswa Malaysia (SMM)
50. Student Progressive Front, University Science Malaysia (SPFUSM)
51. Suara Rakyat Malaysia (SUARAM)
52. Tamil Foundation
53. Tenaganita
54. The United Kingdom and Eire Council for Malaysian Students (UKEC)
55. University Malaya Association of New Youth (UMANY)
56. Women's Development Collective (WDC)
57. Writers Alliance for Media Independence (WAMI)
58. Yayasan Kajian & Pembangunan Masyarakat (YKPM)
59. Youth for Change (Y4C)
60. Youth Section of The KL & Selangor Chinese Assembly Hall (KLSCAH-Youth)