

3c: Judiciary Reform

Preamble

The public must have confidence in the judges and the highest legal officers of the government who make the decisions that affect their day-to-day lives.

I: Judicial Independence

Justice, fairness and equality are central values in the law which should be reflected in the composition of the judiciary itself. As stated in Principle IV of the Latimer House Principles: “An independent, impartial, honest and competent judiciary is integral to upholding the rule of law, engendering public confidence and dispensing justice.”

1. Reverse the amendment of Article 121(1) of the Federal Constitution which has made judicial powers subservient to laws passed by Parliament.

2. Amend the Federal Constitution to separate the subordinate judiciary from the civil service and make it an independent service or part of the overall Judiciary.

The subordinate courts—Sessions and Magistrates—are still part of the Judicial and Legal Service, i.e. part of the Executive branch of government.

3. Amend the Federal Constitution to replace the role of the Prime Minister in the process of appointing judges with that of the Judicial Appointments Commission.

(G25 Malaysia, Proposal 3C-1)

This is necessary to maintain the separation of powers between the Judicial, Executive and Legislative branches of government.

4. Amend the Judicial Appointments Commission (JAC) Act 2009 to strengthen its independence.

(G25 Malaysia, Proposal 3C-1)

- i. The JAC must have representation of various stakeholders from within the judicial system so that there is meaningful consultation with other concerned parties in the judicial appointment process.
- ii. There must be accountability of those involved in the process.
- iii. The Act must also clearly define the criteria for the selection and promotion of judges.
- iv. Instead of reporting to the Prime Minister, the JAC should be under a duty to ensure its independence from the Executive.
- v. The JAC should be allowed to determine its own procedures without interference from the Executive.
- vi. The four eminent persons who are allocated seats in the JAC are the nominees of the Prime Minister. The selection of eminent persons leaves open the possibility that former members of the executive and public service, members of Parliament and other politicians may sit on the JAC. These persons ought to be expressly excluded.
- vii. Exclude any and all sitting judges from JAC. Include representatives from the legal profession (Malaysian Bar, Sabah Law Society and Advocates Association of Sarawak), the office of the three (3) Attorneys-General, academia/national profession of teachers of law and civil society.
- viii. Members of the JAC must be persons who are able to provide a civil society perspective, or contribute to specific expertise in another relevant discipline, or be chosen in a way that reflects the composition of the community, in terms of gender, ethnicity, and social groups in the country.
- ix. Increase the membership of the JAC commensurate with its expanded tasks.
- x. The JAC should report to a specific parliamentary select committee on key matters of appointment and remuneration to ensure accountability, checks and balances.

5. Transfer the jurisdiction and oversight of judicial training from the Judicial Academy to the Office of the Chief of Registrar.

The Judicial Academy is parked under the Prime Minister's Department to oversee the training of the superior judiciary. To ensure there is no Executive influence in the training, the Office of the Chief Registrar should take over the role under the Chief Justice.

II: Strengthening Prosecutorial Independence/Governance

The posts of the Attorney General and the Public Prosecutor are not independent of each other despite being vastly different and possessing purposes and interests that may even clash. The Attorney General is the chief legal adviser to the government of the day, whereas the Public Prosecutor acts as the principal prosecuting authority of the country, acting independently in criminal cases. Although the Federal Constitution allows for a civil servant or non-member of Parliament to be the Attorney General, Section 376 of the Criminal Procedure Code, against the spirit of rule of law, actually specifies that the Attorney General shall be the Public Prosecutor. Over the decades, this two-in-one position has created problems with accountability, transparency and anti-corruption efforts.

6. Amend Article 145 of the Federal Constitution to separate the function of the Public Prosecutor from that of the Attorney General.

(G25 Malaysia, Proposals 3C-2 & 3C2-3); Andrew Khoo)