

The March to Putrajaya

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The Author

Kim Quek is a Malaysian political commentator who has been keeping a very close watch on the fast moving political development in Malaysia. His frequent writings on the local scene appear regularly in many local websites including the popular *Malaysiakini* and *Malaysia Today*.

His articles are typically factual and analytical and no-holds-barred when it comes to commenting on the incessant scandals of corruption and abuse of power involving the high hierarchy of the ruling Barisan Nasional that have increasingly dominated Malaysian politics. As such, his writings are a useful counter-balance to the notoriously one-sided narration of the Malaysian mainstream media which are hopelessly manipulated by the incumbent federal power. He hopes to offer readers, through his writings, a view of the other side of the coin, so to speak.

In a sense, this book is a sequel to Kim Quek's previous best seller "*Where to, Malaysia?*" which recorded the disastrous Mahathirist rule and the early auto-pilot reign of Abdullah Badawi.

Preface

This is a unique time in the history of Malaysia.

For the first time, the people have a real choice when they go to the polls. Unlike in the past when going to the polls meant choosing a stronger or a weaker opposition, this time around, people will vote with the understanding that they will be deciding which political alliance will rule this country.

This option is made available thanks to the political tsunami that swept in during the 12th general elections held in March 2008.

It is obvious that after garnering half of the popular votes in the last elections and after ruling five important states for two years in a manner that has earned the approval and respect of the people, the political alliance of PAS-PKR-DAP, known as Pakatan Rakyat, is well poised to challenge in the next general elections the incumbency of Barisan Nasional (BN), a coalition of 14 essentially race-based parties led by Umno. The incumbent power has ruled the country without interruption since Independence in 1957.

This real option to the people has come at an opportune time indeed, for the development of the country has reached a critical point, both politically and economically.

Politically, the racial and religious fault lines that have always existed in the past seem to have widened to an alarming expanse under the racial hegemony of Umno, while public institutions have declined to a state that they have ceased to command public trust and respect.

Economically, the country has reached a dead end, unable to compete at the existing outdated economic model of low-cost, low-productivity, low value-added structure and yet incapable of transforming the economy to the high-value added chain of the fast- growing knowledge and information-based industries.

It is not an exaggeration to say that Malaysia has come to the edge of a precipice, and moving forward in the same direction may mean a fast descent. Obviously, this calls for a change of direction to avoid impending calamities.

Barisan Nasional has vowed to make changes, but is it capable of veering the nation off that abyss, with Umno absolutely dominating the coalition with its racist ideology intact?

On the other hand, Pakatan Rakyat has promised to institute thorough reforms to remove racism and restore democracy and good governance, thereby rejuvenating the economy. Can it be trusted to move the nation onto the right path of integration and growth?

Or should we also ponder the next equally important question: Do we still have the choice of not changing the incumbent ruling power?

The electorate's answers to these questions will decide the outcome of the next general elections which will in turn determine the fate of the nation for quite some time to come.

I have written this book with the purpose of offering commentaries and insights that are otherwise hidden by the notoriously biased and sycophantic local press and television channels, but may be important for the making of balanced judgment.

The book essentially consists of a currently written analysis of the present political scenario under the heading "Making the right political decision", and a selection of the past articles I have written on important issues of the day since the publication of my last book "Where to, Malaysia?" in late 2005. These past articles are grouped into eleven sections according to subject matters that encompass the infamous power grab in Perak, Najib's premiership, the rise of Pakatan Rakyat, and major scandals such as the Mongolian Altantuya murder, Teoh Beng Hock's tragic death and the re-enactment of the universally condemned trumped-up sodomy charge against Anwar a decade ago.

In my current analysis, I outlined the bleak political and economic picture, traced the root causes, and assessed BN and Pakatan's capability respectively to turn this country around. I also dwelled on the political scenarios of the important states of Sabah and Sarawak, where key electoral battles will be fought that may decide the outcome of the entire elections.

It is my earnest hope that this book will contribute towards a more in-depth understanding of the true state of our nationhood at this moment, and what really has been preventing this nation from moving forward. It

is only when the majority of the people are aware of the truth that a truly dedicated leadership can emerge to lead the nation out of the present predicament.

Kim Quek

January 2010

Acronyms

ACA	: Anti-Corruption Agency, now replaced by MACC
BN	: Barisan Nasional (National Front)
BTN	: Biro Tata Nasional (National Civic Bureau)
DAP	: Democratic Action Party
GTP	: Government Transformation Program
ISA	: Internal Security Act
KPI	: Key Performance Index
MACC	: Malaysian Anti-Corruption Commission
MCA	: Malaysian Chinese Association
NEP	: New Economic Policy: an affirmative action policy formulated in the aftermath of the May 13 th racial riots in 1969 with the twin objectives of eradication of poverty irrespective of race and the restructuring of economic imbalance among the races.
NGO	: Non-Government Organisation
NKRA	: National Key Results Area

PAS : Parti Islam SeMalaysia (Pan-Malaysian Islamic Party)

PBB : Parti Bumiputra Bersatu Sarawak

PBDS : Parti Bangsa Dayak Sarawak

PBS : Parti Bersatu Sabah

Petronas : Petroleum Nasional (National Petroleum Corporation)

PKR : Parti Keadilan Rakyat (People's Justice Party)

PRS : Parti Rakyat Sarawak

Reformasi : The political and economic reform movement to eradicate corruption and restore democracy, started by Anwar shortly before his arrest in September 1998.

SNAP : Sarawak National Party

SPDP : Sarawak Progressive Democratic Party

UMNO : United Malays National Organisation

USNO : United Sabah National Organisation

Making The Right Political Decision

The 8th of March 2008 is a memorable date, for on that day, almost everyone was shocked by the unexpected results of Malaysia's 12th general elections.

The incumbent Barisan Nasional coalition suffered the worst electorate set back since it started ruling the country upon Independence half a century ago. In addition to losing its traditional two third majority in Parliament, Barisan Nasional (BN) lost control of four state governments to the opposition in addition to PAS retaining Kelantan.

And the popular votes were split at half-half. Given the swing of another 6% across the board, which means the cross-over of only 3% from BN, the opposition would have captured the federal government.

This BN electoral debacle suddenly woke Malaysians up to the stark reality that the mighty BN fortress, hitherto assumed to be impregnable, was not invincible after all.

But how will that momentous event be etched in history? Will it be remembered as a landmark election that marked the beginning of regime change that ushered in a new era for the nation? Or will it be just a footnote in the long reign under the hegemony of Umno? The answer, of course, depends on the outcome of the next general elections.

If BN wins again, the opposition grouping of Pakatan Rakyat (PR) as it is known today is unlikely to mount a challenge of similar magnitude to BN again in the foreseeable future. The reason is that Umno will not likely allow PR to sail through to another general elections without wrecking the latter's deck, given the incumbent's awesome totalitarian powers via the myriad of repressive legislation and its illegitimate grip on the country's institutions – virtually all of which have been perverted to serve the parochial interests of Umno.

In the event of a BN win, instead of revolutionary changes, we will see political evolution.

The state of the country will continue to decline steadily as the decadent and antiquated Umno-led coalition fails to grapple with the constantly evolving new challenges thrown in by this new age. However, we will not see the eclipse of this totalitarian regime, not until our economic malaise has deteriorated to such a wretched state that it is found unbearable by the masses. That day, however, will surely come, when our petroleum reserve, which has been our main lifeline, has dwindled to a level that can no longer prop up the country's endless annual budget deficits. By all accounts, that day is not too far off.

But by then, it may be too late to save this country from the fate of prolonged poverty and miseries that perpetuate themselves in vicious cycles such as that suffered by some of the failed states in Africa.

Economy in bad shape

That our economy is in bad shape is best illustrated by the hyper-sensitivity with which Malaysians react to the slightest indication of impending tax increase or price hike, whether it is the proposed introduction of GST (goods and services tax) or price increases for petrol or sugar, or hikes in the charges for public utilities such as electricity and water.

The common people are simply at their wit's end as to how to cope with these additional financial burdens now that their effective incomes have already been badly eroded by spiraling prices and stagnant wages in recent years. Vast sections of the populace have in fact been struggling to make ends meet due to their low income.

And this is the consequence of an economy that has remained stagnant while the world passes us by in a fast-moving global economy.

That Malaysia has long been deserted by investors by the droves is evident from the fact that our private investment rates have been hovering around the lowly 10% of GDP (gross domestic product) since the Asian financial crisis of 97/98, plunging from the pre-crisis peak of 37%, which was then the highest among regional peers, according to a World Bank country report on Malaysia.

Its inaugural issue of 'Malaysian Economic Monitor' released in November 2009 is the product of several years study of the Malaysian economy involving some twenty economists. The report further pointed out that since this dramatic plunge, Malaysia's private investment in relation to GDP never rebounded, in contrast to other countries in the region. It now ranks among the lowest in Asia.

Consonant with this trend, and further aggravating Malaysia's economic woes, the country faces a worrisome FDI (foreign direct investment) outflow. According to World Investment Report 2009 by UNCTAD (United Nations Conference on Trade and Development), Malaysia has a negative FDI inflow (or net outflow) - a rare phenomenon among developing countries. This net outflow, which started with a drip in 2006, quickly swelled to a torrent of 70% of FDI inflow in 2008 (FDI inflow of USD8.1 billion vs FDI outflow of USD14.1 billion).

Some government leaders have given a positive spin to this development as the maturing of the Malaysian economy. But in reality, it bears more resemblance to a capital flight, as even Malaysian investors are forsaking the country in flocks to seek greener pastures abroad – a sure sign that Malaysia is no longer an investors' haven.

That this distressing economic scenario is not due to external factors but our own making is evident from the contrasting picture in our neighbour Singapore. An island state with a tiny domestic market and a country whose economy is far more advanced, there should be much greater compulsion for Singapore investors to expand abroad, and yet in 2008, the country still managed to chalk up a hefty FDI inflow of USD22.7 billion that far exceeded its outflow of USD8.9 billion. Similarly, Thailand also had a healthy inflow of USD10.1 billion compared to the outflow of USD2.8 billion the same year.

Without the injection of fresh private investment, especially FDI, which brings in the much needed new technology and international marketing network in addition to capital, our economy loses the opportunity to upgrade, evolve and expand in tandem with the demand of the new economy. The World Bank has aptly captured this economic malaise in the said November report in the following words:

“In spite of its past successes, Malaysia's growth performance has lagged behind that of other regional economies. The economy seems to be caught in a middle-income trap – unable to remain competitive as a high-volume, low-cost producer, yet unable to move up the value chain and achieve rapid growth by breaking into fast growing markets for knowledge and information-based products and services.”

Significantly, the World Bank also commented that while Malaysia has a high proportion of high-tech exports, it served only as a low-skilled assembler of imported parts, “rather than a creator of technological and product innovations”.

This truthful statement basically exposed the country's fundamental weakness – our populace doesn't have what it takes to move up the economic ladder. It means we haven't learned the tricks of the trade despite two decades of robust high-tech exports to the world. We simply do not have the requisite skilled manpower and indigenous technological base to make the transformation.

This is of course a severe indictment on the major failure of the Malaysian government which has for more than two decades implemented the skewed policy of squandering immense wealth and resources on vanity mega projects and hemorrhaging the country through massive corruption along the way, while neglecting to develop the country's manpower along lines of excellence that will enable them to cope with the challenges of our globalised age.

These dim views of the Malaysian economy were surprisingly echoed by a minister in his candid speech of honest appraisal and self-criticism – a rarity among Barisan Nasional leaders. Delivering the keynote address at the National Economic Outlook Conference 2010-2011 on 1 Dec 2009, Second Finance Minister Husni Hanadziah said:

“Malaysia is trapped in a low-value-added, low wage and low productivity structure. While Singapore and Korea's nominal per capita GDP grew within the last three decades by 9 and 12 times, respectively, ours only by a factor of 4.

“Our economy has been stagnating in the last decade. We have lost our competitive edge to remain the leader of the pack in many sectors of the economy. Our private investment has been steadily in decline.”

Husni admitted that Malaysia's GDP growth is near the bottom among its peers, and that the manufacturing sector is not investing up the value chain while the outflow of capital continues. He further admitted that there have been too many leakages and unproductive spending in the past.

And what is the remedy?

Husni said Malaysia must transform into a high-income economy, and the private sector must be returned as the primary engine of growth, for which confidence in the leadership and governance must be restored.

To achieve that, Husni called for sweeping reforms in the usual praiseworthy rhetoric that we are all familiar with, such as: doing away with negotiated contracts, giving all Malaysians equal opportunity to participate in the economy, eliminating the “Ali Baba” syndrome, improving transparency in governance, increasing level of competition in the economy

and education, and strengthening public institutions.

Husni is not the first to talk about reforms, of course. Ever since the traumatic electoral setback at the March 2008 general election, almost all the Umno top leaders have been talking about nothing but “reforms” and “change” (perhaps cashing in on Obama’s successful election campaign catchphrase?), culminating in Prime Minister Najib Razak’s ‘1Malaysia’ slogan that capped them all.

False promises of reforms

But what is the reality? Have we seen any change?

After dumping millions of taxpayers’ money on the publicity for 1Malaysia, we have only seen deterioration in all fronts: corruption, crime and abuses by the public institutions – judiciary, attorney general’s chambers, police, MACC, election commission. And none of the repressive legislation, which is the legal back-up to corrupt authoritarianism, has been removed; neither is our mass media unchained to play the role of public watchdog to safeguard against corruption and abuse of power.

Public scandals of all sorts involving the authorities seem to be a daily affair, whether these relate to corruption, plundering the public coffers, violation of human rights, transgression of justice in the courts, abuse of power or breaches of law by the high and mighty. The eruption of these scandals are so frequent and omnipresent that it is akin to the wildfire spots that splattered across Kalimantan and Sumatra during the haze menace wreaking havoc to the region almost every year.

These abject failures of government would have embarrassed any conscientious political leadership, but not Umno leaders. They seem to have honed the art of political hypocrisy to perfection – while they sing the tunes of reforms and change, they commit acts of the exact opposite nature at the same time without any sense of incongruity.

Take the case of promises to replace direct negotiation with open tenders for government procurement and infrastructure projects that Husni mentioned in his speech. This is an old defect that Najib himself had repeatedly vowed to rectify as far back as 2004 when he became deputy prime minister, and as recently as 20 April 2009 when he again stressed the importance of open tenders to curb corruption and regain public confidence. But almost at the same time of Husni’s speech, the government glaringly awarded a mega privatization project without tender to a politically favoured company.

The project is the proposed Matrade Expo Centre, which will be constructed by awardee Naza TTDI Sdn Bhd at an estimated cost of RM628 million in exchange for the adjacent 65 acres of prime state land, which will be developed by Naza TTDI into a private RM15 billion commercial and residential complex. The 65 acre land is estimated by valuers in the market to be worth 1.5 billion, more than twice the estimated construction costs.

Naza TTDI Sdn Bhd is owned by the Naza group, which gained notoriety as an “AP King” for having profited billions from the privilege of being granted hundreds of thousands of APs by MITI (Ministry of International Trade and Industry) for import of foreign cars.

And which is the authority that decided on the project? It is the Prime Minister’s department, which handles all privatization projects.

Why was there no open tender? International Trade and Industry Minister Mustapa Mohamed explained that it was because Naza TTDI was the first to make the project proposal. The absurdity of this answer is so self-evident that it needs no elaboration.

The policy of open tenders has been touted as a key reform platform and the cornerstone of government’s strategy to reduce operating expenditure by 15% to contain its bulging deficit to within 5.4% of GDP for the 2010 budget. If the Prime Minister cum Finance Minister and his Finance Minister II could so casually make such a serious breach of their reform undertaking, what hope is there for Barisan Nasioanal to deliver the rest of the promises?

Little wonder that Pakatan Rakyat leaders had already expressed concern over what might come with the “second wave of privatization” announced by Najib in his recent budget speech. The worry is that this Matrade project may be just the fore-runner that signals the return of the golden era of crony capitalism under Najib’s mentor former Prime Minister Mahathir Mohamad, when a whole host of mega projects were dished out without tenders to agents and cronies of the ruling elite under the name of privatization.

Peddling racist state propaganda

Let us look at another case of *bikin tak serupa cakap* (say something, do another) – the recent controversy of Biro Tata Negara (BTN), or National Civics Bureau, which ostensibly is an organization that conducts courses to imbue patriotism but in fact does the opposite. It is Umno’s covert program to indoctrinate civil servants and university students with racist ideology to

uphold Umno's political hegemony. It teaches distorted and biased history and inculcates racist ideology to enhance false racial superiority and racial hatred, while attempting to instill loyalty to Umno as the permanent ruling power that purportedly protects the Malays against their so-called enemies.

There is no doubt that BTN, which has trained more than a million people over the decades according to some estimates, has contributed in no small measure to the worsening racial polarization and 'umno-nisation' of the civil service and public institutions under the BN rule. The great irony is that the government is illegitimately spending more for this anti-national organization than legitimately spending for the running of Parliament, as the 2009 budget for BTN is RM74 million while that for Parliament is only RM70 million.

The PR state governments have rightly banned such a course for public servants and students under their control. Encouragingly, many student leaders in the public universities have also voiced their disapproval to this course.

But top leaders of Umno rose to vigorously defend this course, chorused by the Umno controlled media.

It boggles the mind as to how these Umno leaders could merrily sing the tune of 1Malaysia, which invokes fraternity and equality, while at the same time perpetuate "*ketuanan Melayu*" (Malays the master) which advocates race superiority and discrimination, as signified by the BTN course.

Such vocal defence of the racist program is, however, not to be taken lightly, as it indicates that despite Najib's 1Malaysia push to soften Umno's racist image and entice a return of non-Malay support, the bulk of Umno's top hierarchy is not prepared to make any change in substance to its core racist values.

This is reflected in the last minute scuttling of the 1Malaysia section in the exhibition on Dec 17 & 18, 2009 known as the "Government Transformation Programs" (GTP) showcasing various measures under the NKRAs (National Key Result Area) which form the mainstay of Najib's reform thrust to transform this country. The 1Malaysia exhibition which was supposed to be the star attraction highlighting racial harmony and solidarity had to be abandoned due to strong opposition from Umno ministers during the cabinet meeting held shortly before the exhibition, according to local reports.

This turn of event carries serious implications, of course. Apart from telling the world that 1Malaysia is a bluff – something meant for the non-

Malay suckers, not for the umnoputras – it confirms that Umno is not prepared to take the first important step, which is the change of mindset on race relations. For these Umno elites, Malays must remain aloof and distinct, so that the power and wealth enjoyed by the Umno hierarchy can remain intact through the perpetuation of the doctrine of Malay special privileges which has so beguiled Malays for decades.

Umno can't change

Some may be wondering why the umnoputras should refuse to abandon its conservative stance on race to move towards the centre, knowing that such recalcitrance may cost them the next election. Haven't they learned anything from the bitter lessons of the last general elections? Don't they know that unless they carry out serious reforms and regain non-Malay support, they might be ousted from power soon?

The answer is: the spirit is strong, but the flesh is weak. It is not that they don't know, it is that they can't help it.

As Muslims, they know that it is sinful to discriminate against other races. It is also sinful to commit acts of corruption. But long period of hegemonic political power has managed to work on the human mind and blur the line separating right from wrong. The worldly luxury and comforts that come easily with the abuse of such power have dulled their conscience and helped them to rationalize their wrong doings through self-deception.

The Umno today is a totally different political animal from the Umno at Merdeka (Independence). Then it was a movement to protect and advance the interests of Malays. Today it is to preserve the power and wealth of the leaders and their cronies. This Umno culture of greed flowered under Mahathir, continued under Abdullah Badawi, and now looks set to perpetuate under Najib.

It is obvious from the policy pursued so far that the Umno elite have decided to protect their illegitimate luxurious lifestyle at all costs. And that can only be guaranteed by winning in general elections. But they can't compete with Pakatan Rakyat on good governance and equitable policies that are favoured by the masses, because BN's political leaders and public institutions are already corrupted to the core. So what options do they have except to fall back on the time-tested formula of racial politics – *Ketuanan Melayu* and racial segregation?

But how can they win back the electorate that has run off (constituted mainly by non-Malays) to the opposition in the last general elections

without reforms in governance and changes in its racist policy?

In other words, how can they have the cake and eat it? Answer: just give the impression of change, but not actually changing.

That explains why top Umno leaders have been shouting at the top of their voices to advocate “change”, and the government also spared no cost to award a multi-million contract to APCO Worldwide, a Washington-based global public relations operator, who has been mainly responsible for the recent publicity drive sprucing up the Prime Minister’s image and trumpeting the 1Malaysia hype while details of the concept remain obscure.

The hype on change, however, has not been matched by real changes on the ground. Instead of improvement, our public institutions are accelerating their downward slide as indicated by Malaysia’s worst ever plunge in the Transparency International Corruption Perception Index ranking and score, falling from No. 47 to 56 in ranking and from 5.1 to 4.5 in score from 2008 to 2009.

The lack of reforms at the institutional level while intensifying reform rhetoric has only rendered the government’s campaign for change to look rather surreal.

Take the recent Government Transformation Program (GTP) exhibition mentioned earlier where the government boasts of “7,000 activities along with over 2,000 projects and 100 programs”. Fighting corruption is ranked among the top of the six National Key Results Areas (NKRA) earmarked for intensive reform efforts. Listed as key anti-corruption strategies to be considered are: “completion of corruption trial within one year”, “creating database for convicted offenders”, “study to revamp political funding” etc.

These suggestions sound outright trivial and amateurish when incidences of huge corruption scandals involving BN leaders are incessantly staring at our face without any effective action from the totally discredited and impotent Malaysian Anti-Corruption Commission (MACC), the country’s main corruption buster. The latter lately has been engaged in a series of scandalous abuse of power to harass and persecute Pakatan Rakyat politicians with the intention to destabilise PR state governments. As a result, the organization is now known more for its prowess as hatchet man for Umno’s anti-PR agenda than for its sworn duty to combat corruption without fear or favour

If MACC has been an honourable corruption fighter, how does it justify the torment of PR political aide Teoh Beng Hock? Teoh, who was called in only as a witness to assist MACC in its investigation into an alleged

misappropriation of a paltry RM2,400 based on petty hearsay, met with a tragic and untimely death. Meanwhile the agency plays deaf and blind to reports of unaccounted-for asset acquisition by former Selangor Menteri Besar, Umno stalwart Khir Toyo, in the form of his palatial mansion reputed to cost RM24 million.

Why had MACC and police been keeping mum on the PKFZ (Port Klang Free Zone) scandal all these years despite several reports lodged since 2004, until recent revelation by independent auditors of incontrovertible evidence of massive frauds and gross mismanagement that caused the project costs to balloon from RM1.9 billion to RM4.6 billion with potential to reach RM12.5 billion eventually? And even when the Attorney General instituted criminal charges in response to mounting public pressure, these were directed at only the fringe players, leaving the main beneficiaries – who are BN top leaders – untouched to date.

This came as no surprise as no prominent BN leader has ever been successfully prosecuted. Although there have been numerous high-profile scandals involving BN politicians that have surfaced over the decades, they are apparently untouchable despite the overwhelming incriminating evidence.

Since all the big crooks from BN are free to loot the nation's wealth at will and with impunity, doesn't it look rather silly to talk about secondary issues like studying political funding, speeding up corruption trials or creating database for convicted offenders (what offences? Who?) as vital strategies to fight corruption?

Full range of institutional rot

In fact the entire chain of law enforcement bodies from police and MACC to Attorney General to the judiciary has been so emasculated through long period of BN's corrupt, authoritarian and racist rule that it is now hopelessly inept and completely mistrusted by the people to maintain law and order. These bodies are not only deeply rooted in corruption but have now become part of the command chain of Umno in furtherance of the party's political hegemony.

The extra-constitutional roles that these bodies have been playing can well explain the worrying and worsening phenomena of police wantonly violating human rights to suppress legitimate dissent, MACC assuming a novel role as scrutineers and harassers of PR politicians, attorney general covering up BN crimes while unjustly prosecuting BN opponents, and the

judiciary trampling on the Constitution and law to rule in favour of BN.

Thus it should come as no surprise that the song-and-dance by Najib and Co. on 1Malaysia, GTP, NKRA & KPI (Key Performance Index) is mere public relation exercise.

It is too idyllic to believe that sweeping reforms that will save the country from its political turmoil and economic malaise will be carried out – not when scenarios anathema to these touted reforms are being enacted concurrently, such as:

- **Anwar sodomy II.**

Police, attorney general's chamber and judiciary have been hounding parliamentary opposition leader Anwar Ibrahim with sodomy accusation that is universally recognized as politically motivated trumped-up charges. Despite the lack of evidence to support the sex offence charge, and in spite of Anwar's iron-clad proof of innocence in the form of medical reports and alibi, the police and prosecutors, who were largely the same personnel who persecuted Anwar ten years ago on similar charges, have relentlessly pursued Anwar from one court to another, seemingly hell bent to get him convicted (no doubt encouraged by the new DNA legislation that was obviously rushed through Parliament recently for the specific purpose of using it to nail Anwar in the upcoming sodomy trial proper.)

- **Perak constitutional crisis.**

Following the ugliest power grab in memory staged by Najib in February 2009, the judiciary – particularly the court of appeal and federal court – has paraded a shameful series of judgments that are blatantly biased in favour of BN. These judgments violated the constitution and breached the principle of separation of power, thus damaging our polity of constitutional monarchy. And the police repeatedly took on the role as Umno's security guards to rough up and block PR assemblymen from gaining access to the assembly to convene their meetings as Perak's lawmakers.

The combination of judicial and police abuses in flagrant contempt of the constitution have no doubt thwarted PR's legal challenge to the illegitimate BN Perak state government; but this came with a heavy price. In addition to depriving the people of Perak of effective government with its corollary of economical retardation, the country's system of

constitutional rule has also been badly eroded and its international image further defiled.

- **Lingam video clip scandal.**

In May 2008, the Royal Commission of Inquiry, which probed the unlawful interference of judicial appointment and tampering of justice revealed by the Lingam video clip, identified six culprits that included former chief justices Ahmad Fairuz and Eusoff Chin and former premier Mahathir Mohamad in addition to senior lawyer VK Lingam. The Commission recommended that punitive action be taken against these six culprits for offences against the *Sedition Act*, *Official Secrets Act*, *Penal Code*, *Prevention of Corruption Act* and the *Legal Profession Act*.

But a full year on, the Attorney General quashed these recommendations on ground that the MACC could not find “sufficient evidence” to institute prosecution. The claim of insufficient evidence is perceived as an outrageous lie as the month-long inquiry by the Commission had unearthed a mountain of improprieties. Tellingly, the AG failed to respond to an offer by a PR leader and lawyer Karpal Singh for him to conduct the prosecution.

These instances of abdication of the rule of law are not only serious violations of the constitution, but are also outright criminal offences for which the offenders ought to be charged and convicted – for prosecuting with false charges, obstructing elected representatives from attending legislative assembly and protecting criminals by feigning lack of evidence to proceed with charges.

In any democracy, these offenders would have faced public pressure for punitive action against them or at least calls for their resignation. However, in the corrupt autocracy that BN-ruled Malaysia undoubtedly is, their activities appear to be the norm that has hardly attracted any public censure in the mass media, which are almost completely BN- controlled. In fact, such repressive and regressive acts have escalated conspicuously since Najib took over effective control of this country at the beginning of 2009.

It is completely amazing how Najib could maintain his split-personality act with ease – going on the stump for his smoke-and-mirror Malaysia while perpetrating values that are completely opposed to those enshrined in the founding of this nation – as eloquently proclaimed by the Father

of Independence Tunku Abdul Rahman during the proclamation of Independence, that this nation was “*founded upon the principles of liberty and justice and ever seeking the welfare and happiness of its people*”.

With the people stripped of their democratic rights, and the innocent prosecuted while the guilty roam free with impunity, where is the beloved country of “liberty and justice” that our beloved Tunku proclaimed on that sunny day half a century ago? Will we ever reclaim that country of noble values?

One often wonders, aren’t the Prime Minister and his colleagues ever concerned that there may be many decent-minded people left among the masses who are abhorred at the atrocities committed almost on a daily basis against the fundamental values of goodness and decency that most Malaysians still cherish?

If BN is sincere about reforms, why hasn’t it repealed or amended meaningfully any of the myriad of repressive laws that have strangled democracy in violation of our constitution? Why hasn’t the mass media been freed to play its role as truthful disseminator of news and information to the people? Why are the police increasingly perceived as oppressors rather than protectors of the people? Why is MACC increasingly viewed as political lapdog rather than fearless graft-buster? Why has public perception of the election commission as tools of Umno strengthened? Why is the image of the judiciary and attorney general as defender of the constitution going down the drain faster than ever?

Instead of moving the country upscale, Malaysia under Najib has obviously slipped badly in every aspect of democratic rule and public governance.

Status quo means hopelessness

By now it should be as clear as daylight that there is no hope of the present Prime Minister turning this country around to achieve prosperity and happiness as hyped with whatever slogans and acronyms he might choose to propel his political campaign with, as Umno is incapable of self-reform in its present position of hegemonic power. Without self-reform, the status quo of governance of the country will stay.

When the entire system of government is as rotten as it is today, what is needed is fundamental changes of that system, not skirmishes with the bureaucracy to achieve ad hoc improvement here and there as the BN leadership is trying to do now – as if all the faults lie with the bureaucracy.

To get to the bottom line of what really ails the nation, and what the real solutions are, we have to ask these hard questions:

- Can Umno really give up its corrupt way of life fed on government largesse?
- Can it be re-educated to accept a political level-playing field as demanded by democracy?
- Is it willing to submit itself to operating within the confines of the constitution?
- Can it give up racism to start rebuilding a united nation?

With Umno expected to give a negative answer to every one of these questions, I think the conclusion that must be drawn on the party is obvious.

Then, what are the consequences of the prolongation of the status quo?

We should expect the continued downward slide of the rule of law with increasing crimes and corruption.

Integrity of public institutions will not improve.

Quality of education and the civil service will remain mediocre for lack of meritocracy.

The brain drain that is taking place now at a horrifying pace will continue. According to Deputy Foreign Minister Kohilan Pillay, Malaysians who have moved abroad and registered with Malaysian embassies had accelerated to 210,000 from January to August 2009. That works out to be almost 1,000 per day. According to the Malaysian Employers Federation, two thirds of Malaysians working overseas are professionals. Without doubt, this accelerating mass exodus of talents is a fatal blow to the country which is already suffering from a heavy deficit of skilled manpower to make the critical transformation of its economy to the higher value notch.

Racism will continue to plague the country with racial polarization, economic stagnation and accelerating brain drain.

Confidence in the federal government and public institutions will continue to be lacking.

Economic competitiveness will continue to decline when compared to our neighbours.

Investors' confidence remains elusive.

In short, the doomsday scenario indicated by me at the outset of this article will become reality sooner than many people think, as our oil

reserves dwindle in tandem with rising consumption.

Indeed we are now at a critical juncture of our history when the people must decide, and decide wisely, which direction the country must take to avert further decline. Should we choose a decisive change from the past by handing the management of the country to a new team of leaders of vastly different caliber with a new platform and a new vision, or just keep the status quo?

If the obvious choice is to dump Umno/BN, then what next?

Assessing Pakatan Rakyat

Will Pakatan Rakyat make the grade? Will the country be better off under PR? Can PR bring the transformation that we yearn for?

To answer these questions, we have to look at the quality of its leaders, its political platform and the track record of the states under its rule.

But before we do all these, let us recall what these three parties – PKR, DAP & PAS – promised us before the last general election in March 2008.

All of them in their election manifestos promised to wipe out corruption and bring transparency and integrity to the government. They wanted to restore democracy by repealing or amending draconian laws, and clean up the police force by forming the IPCMC as recommended by the Royal Commission on police reforms. In one voice, they wanted to eliminate racism, replace the NEP – symbolic of corruption and cronyism – with a need-based affirmative action policy to uplift the have-nots of all races.

But how have they fared since the last elections? Have they brought improvement in governance and restore integrity to their governments? Are their leaders up to the mark to lead the country to a better future?

Let us first look at what our Auditor General has to say, who routinely scrutinizes and reports on the financial management of the federal and state governments and their subsidiary bodies.

In the Auditor General Report 2008, which as usual uncovered numerous instances of spending excesses that amounted to billions of ringgit resulting from breaches of regulation, abuse of power, corruption and sheer incompetence, the AG's favourable comments on the PR state governments came as a pleasant relief.

The state governments of Selangor, Perak (while under PR rule in 2008), Penang and Kedah were praised for their prudent financial management. This is the result of cost cutting measures and conscientious spending. As an example, the AG Report attributed the surge of Penang's consolidated

fund by 21% to RM1 billion (the first time for the state) to savings in hotel and traveling expenses, freeze on new asset purchase and new employment except critical vacancies, priority spending only on people-centric programmes, etc.

The better shapes of these state finances could also undoubtedly be attributed to diligent implementation of open and transparent tenders for awarding state contracts for projects and procurement. These measures, which have enabled the state governments to save millions of ringgit by eliminating inflated pricing and corruption, have enabled them to increase their spending on what really benefit the people.

That the political leadership of these states have been free of corruption scandals, despite the MACC breathing down their necks to the extent of often sounding the sirens of corruption when there is none, is the best testimony that PR has kept its promise to work towards a corruption-free rule.

One minor exception was the corruption charge against the two errant Perak PR assemblymen whose defection had triggered Najib's infamous power grab in Perak. But even that corruption charge appeared to be dubious as the subsequent trial, which is still ongoing, has revealed that it was not so much an attempt at seeking corruption as an entrapment by MACC using a paid agent provocateur to induce acceptance of what was apparently a political donation to the then Permatang Pauh by-election campaign and later claiming it to be a bribe.

Constraints and spoke in the wheel

One sometimes hears the complaint that PR has not brought on much economic transformation in the PR-controlled states. This is of course a valid concern and an important issue that should be deliberated.

However, the issue cannot be properly analysed without an understanding of the structure of government and federal-state relations.

Malaysia's governance is highly centralized, with the federal government controlling practically all the finances and development functions, leaving the state governments to administer land matters and local authorities. Thus, I will not be surprised if the combined total revenues of all the states in the country are well under ten percent of the total federal revenue. Similarly, all major infrastructure projects, agriculture, industries, defence, security and social services such as education and health are all under the jurisdiction of the federal government.

Take the case of Penang, a leading industrial state. Its budget for 2009 is only RM477 million (or RM0.48 billion), which is 0.2% of the federal budget of RM216 billion. Even for the most developed and the richest state of Selangor, the 2008 budget of RM1.4 billion is only 0.6% of the federal budget. With these meager budgets, the capacity of state governments to drive economic expansion is limited.

Added to the fact that only the federal government has the authority to decide on policy and approve industrial and major infrastructure projects, the driver of economy has to be the federal government.

Worse to come, is the BN federal government's policy to constrict PR state governments through lopsided allocation of development funds. A glimpse of such unfairness was highlighted by Selangor Menteri Besar Khalid Ibrahim who pointed out that while a total of RM16 billion in taxes is taken from the state, only RM400 million (or RM0.4 billion, a mere 2.5%) is returned as federal allocation.

And even over such meager funds that are allocated, BN plays dirty politics by trying not to channel these funds directly to the state governments but to either existing or newly created federal agencies to take on the task of deciding on projects and disbursing the funds. These unethical practices serve two political objectives. First, starve PR government of funds so that it will be blamed for not carrying out development projects and eventually where the funds are spent, the credit accrues to BN. Second, finance the local Umno war lords to sustain the party's patronage system that feeds local leaders and cronies as much of this spending is under their control.

The casualty of these constitutionally questionable practices is of course the common people. But it will be futile for PR to seek redress through the courts, knowing the latter's political partisanship. Only the electorate is capable of meting out the punishment through the ballot box. The people will have to decide whether a governing power which sacrifices the people's welfare for self-serving political interests deserves to be given the mandate to govern again.

Another important factor that hinders PR's efforts to reform is the bureaucracy inherited from BN. Apart from having to face the hostility, harassment and even persecution from the police, MACC and other law enforcement bodies, PR has to overcome the resistance and even sabotage from the Umno-nised civil service, which often can't distinguish between loyalty to the country and loyalty to Umno.

A prominent example is the recent power grab in Perak, when the state secretary, state assembly secretary, state legal advisers, MACC, police

and judges worked in collusion with Umno to unconstitutionally topple the democratically elected PR government, and thereafter, to continue to illegally frustrate efforts by PR to seek constitutional redress.

Having been subjected to Umno's corrupt, racist and feudal dominance for so many decades, it will naturally take some time for PR to re-educate the civil service to understand, accept and practice true democratic and universal values.

It is also seen that with a political power like Umno holding the rein of federal government, it is unrealistic to elect a state government from the opposing camp and expect it to bring sweeping changes, least of all a dramatic economic uplift to the state.

In other words, a state in Malaysia, even governed by good leaders, cannot possibly hope to enjoy peace and prosperity while the country languishes in miseries under a corrupt and autocratic federal power.

If Malaysians want fundamental reforms to move the country decisively upwards, the solution is to change the federal government; split voting that results in BN loosing the states but retaining the federal government wouldn't do.

Returning to the issue of whether PR has done well in the PR-controlled states, there is no doubt that the answer is yes – despite the adverse conditions heaped upon it by BN. PR has walked the talk to bring clean and transparent governance and has performed to the satisfaction of the people, according to general feedback. This tallies with opinion polls which show high approval ratings for the four PR state governments.

Can Pakatan helm the nation?

The next question is: can PR be entrusted to run the federal government as well? Is the leadership sufficiently cohesive and competent to take on the larger job of managing the entire country?

It appears that on this matter, the people are less ready to answer in the affirmative as they do in approving the state governments. This hesitation is in large part attributed to the damage inflicted on the image of PR as result of public squabbling and differences publicised in the media in recent months. But before we discourse into these differences, let us take a look at two factors which could have distorted our judgment.

First, the Malaysian media.

All local media are pro-BN, for reasons of ownership by BN and its cronies

and government control via the repressive legislations (exceptions being PR party organs and the cyberspace). Most of these media unabashedly serve as political propaganda tools, routinely glorifying BN and denigrating PR.

So when the recent differences within PR surfaced, BN propagandists took advantage of these and played up the issues to the fullest in the media to undermine public confidence in the coalition. The human mind being product of input into it, and overwhelming majority of Malaysians being dependent on TV and newspapers for their source of news, it was inevitable that many people began to question whether there was sufficient cohesion and single-mindedness in the PR alliance to endure the challenge of national stewardship.

It is not to say that these PR dissensions were not real or not matters that deserved public concern. Far from it, these were substantive issues that ought to be dealt with promptly and effectively before they became unmanageable. But would the public have conceived such an unfavourable view on PR arising from these incidents if the Malaysian media had been as free and independent as they should be in a democracy – such as in Japan or Australia for instance? I am quite sure that if we had such independent media, these hyped-up defects of PR would have been dwarfed and overshadowed by the life-threatening intra-party split and inter-party dissension that had been going on in BN concurrently.

Second, double standards of public.

Decades of incessant mega scandals of all sorts involving BN have immunized Malaysians to shock and indignation over such incidents. And when PR suddenly emerged as a viable power that could replace BN, public aspirations and expectations of PR were high, and people were subconsciously setting up new standards by which to judge PR leaders. All of which is, of course, right and proper. So, when blemishes began to show, there was the feeling of disappointment. And when more serious defects surfaced – especially after being blown up in the manipulative media – disappointment turned into anger and repudiation and eventually, loss of confidence.

This is akin to the Biblical parable of the prodigal son. The father took the devotion of the dutiful son for granted and never expressed appreciation or rewarded him. But when his wayward son who left home to indulge in vices and squandering away money, and eventually returned home broke, the father was overjoyed, embraced him warmly and gave a big feast to celebrate the occasion.

Such double standards are reflection of common human behaviour. We are all human after all. There is nothing wrong with setting up a high standard to measure PR. In fact, it is a sign that people have high regard and high expectations of PR, just like how the dutiful son in the Bible is taken for granted. But when it comes to deciding who to entrust the destiny of the nation, we must be mindful of this common human failing of double standard and minimise its irrational influence on our decision-making process to avoid catastrophic consequences.

Having looked at these two distorting factors, we could perhaps now examine PR's squabbling with greater objectivity.

Pakatan's image damaged

The infighting can be classified into two categories. The first is the normal kind of bickering among leaders common in political parties, and the second is the problem arising from the ethno-centric faction in PAS making moves that affected the solidarity of the political alliance and eroded electoral support.

Isolated bickering in PR took place among leaders within the same parties as well across parties, and these were confined to the lower echelons, caused by personal animosity or egoistic impulses. Though not serious in nature, these public airing of differences had no doubt affected the coalition's image after being amplified by the constantly hounding media. And PR's leadership council had since dealt with this problem by tightening discipline and setting up in-house mechanism to iron out such differences.

It is the second category of problem that had raised concern within the coalition and among the general public.

The first major commotion was caused by the raising of PAS-Umno unity talks during the annual general assembly of PAS in June 2009. This was later followed by an errant PAS leader in the Selangor state cabinet carrying out a series of acts that damaged the image of the coalition.

During the PAS assembly in June, party president Hadi Awang raised the prospect of talks with Umno over a unity government concept, which was enthusiastically echoed by the deputy president Nasharudin Mat Isa, who was returned to the post during the freshly concluded party elections. The idea of co-operation with Umno was however slammed by other PAS leaders and delegates who abhorred any liaison with Umno on moral ground. Party spiritual leader Nik Aziz Nik Mat, in particularly, strongly criticized the idea of such talks as "nonsense and rubbish".

The very mention of “PAS-Umno unity” had immediately triggered an alarm among the non-Malay community which felt a deep sense of betrayal. It was precisely because of their rejection of Umno’s racist policies and appalling corruption that they switched their votes to PAS in the last elections, and now PAS is joining hands with Umno in the name – of all things – racial unity? Unity against whom? Who else, if not the non-Malays?

They were puzzled. Isn’t it a fact that PAS has just achieved its historical breakthrough of having successfully spread its wings across the country due to the unprecedented non-Malay support on the basis of its repudiation of racism? Then why on earth should it make a reverse turn now to court the devil that it has been demonizing all this time, and risk going back to square one?

Umno in the meantime was overjoyed, and doggedly pursued this overture, despite rejection by PAS hierarchy and grass roots except for some leaders spearheaded by Nasharudin, whose enthusiasm did not seem to wane.

In fact, in all probability, Umno could have covertly engineered such a move as a lifeline to the sinking political party which had recently suffered a continuous series of humiliating defeats in by-elections in Peninular Malaysia. The “unity talks” was undoubtedly a masterstroke that could have reversed Umno’s political fortunes if allowed to proceed, as it would surely have dealt a great blow to the PR alliance.

Thanks to the sterling leadership of Tok Guru Nik Aziz who sternly warned Nasharudin to back off, and the solid and principled stand taken by PKR and DAP, the fire stoked by the “unity talks” was doused.

But no sooner had the “unity” commotion subsided, Selangor PAS chief Hassan Ali stirred up a series of storms that hit the PR-controlled Selangor state government, of which he is a cabinet member. Known for his ethnocentric and pro-Umno tendency, he hit the headlines by calling on a DAP colleague Ronnie Liu to quit over the latter’s intervention in the illegal confiscation of beer by local officials in Shah Alam. He also called for the banning of beer and alcohol sales “to protect Islam” – a move not even contemplated under 50 years of BN rule - hitting the raw nerves of non-Malays and moderate Muslims alike.

Hassan got away with this mischief against his own government relatively unscathed. Perhaps emboldened by his ‘success’, he bit off more than he could chew when he launched a strident attack against the State Assembly’s Select Committee on Competency, Accountability and

Transparency known as Selcat. The committee had been holding a series of hearings on the irregular and quick spending of public funds allocated to former BN elected representatives shortly before the last general elections. The hearings had exposed serious misappropriation of such funds by these BN politicians with improper co-operation from top civil servants of the state, who were naturally embarrassed by the unprecedented exposure.

Selcat's attempt to unearth and expose these irregularities and its effort to rectify the administrative weaknesses with a view to avoid their recurrence has naturally won the applause of the people who have been yearning for this kind of reforms.

Then out of the blue, Hassan criticized Selcat for being too harsh and having degraded the dignity of these high officials. He called for a total revamp of Selcat with retired judges replacing the current members and change of procedure to closed-door hearings. His treacherous outburst immediately attracted a chorus of counter-attacks from his colleagues in PR across party lines, some calling for disciplinary action or his resignation. Again, the top leadership of PAS kept mum, and in fact Nasharudin even said he saw nothing wrong with Hassan's conduct.

Hassan might have escaped punishment from his party, but his series of disloyal acts did not escape the attention of the people as reflected in the Bagan Pinang by-election that soon followed. PAS took a resounding beating in the poll, which showed a massive return of Chinese and Indian votes to the BN fold.

There is no doubt that the series of unprincipled acts by the pro-Umno faction within PAS had damaged its own image, and by extension, undermined public confidence in the soundness of the entire PR alliance and its resolve to bring reforms. The persistent interest by top PAS leaders to join hands with Umno despite the latter's horrid morality was seen as betrayal of its religious and moral principles by the public, and a double-crossing by its allies. And the quiet acquiescence by top leaders of PAS to Hassan sabotaging his own state government was seen as reflecting a weak and morally dubious leadership.

PAS reiterated solidarity with Pakatan

Obviously prompted by the determination to arrest this decline, spiritual leader Nik Aziz once again exerted his charismatic leadership to boldly call for a special general assembly to weed out the problematic leaders including Nasharudin and Hassan and revitalize the party with clarity of purpose to regain public support.

Though the proposed special assembly was later substituted by a special seminar to strengthen the party and enhance its participation in PR, the party's central committee and state commissioners held a special meeting, during which it resolved to permanently close the door on unity government, while stepping up efforts to fortify the PR partnership. The meeting also resolved to ask the party's disciplinary committee to investigate the troublemakers in Selangor. Up to the time of writing, this investigation is still on-going.

In the special PAS seminar, attended by 1,000 delegates, where a wide spectrum of views were expressed, there was unanimity that co-operation with Umno was no go. On the party's participation in PR, certain delegates expressed concern about the future of Islam and the party in the PR alliance. Nonetheless, there was no mistaking that the vast majority recognised the political reality that the party could only achieve its political objectives through the PR coalition, and they fully endorsed their active participation in it.

Pakatan reached consensus on policies

Prior to the last general elections, no one would have dreamed that PAS and DAP could sit down together and run the affairs of a few state governments. But the political tsunami on 8th March 2008 had thrust a political partnership overnight onto these two diverse parties which had hitherto held their distance. Together with PKR, the hurriedly formed 3-party coalition took over the running of the freshly captured west coast states of Selangor, Perak, Penang and Kedah, and has since been successfully running these state governments except for Perak, which was forcibly taken over by BN in an unconstitutional power grab.

That these PR states have been well run despite the vicious political and economic sabotage perpetrated against them speak well of the PR leaders. They have remained united and their integrity intact despite numerous attempts to bribe and to threaten them. The enduring quality of this political partnership was most exemplarily illustrated in Perak, where the seamless PR partnership stood as one monolith to fight with grit and determination to defend its constitutional rights against the whole weight of the obnoxious federal government machinery bearing down on them. In fact, through these continuous trials and tribulations, the entire PR partnership has matured as a political organization with greater mutual understanding and trust.

This is not to say that there are no inter-party as well as intra-party problems. Due to differences in ideology and personal styles, friction does occur from time to time, and when played up by the media, they become formidable dark spots that could undermine public confidence, as depicted earlier.

Mindful that these weaknesses had given rise to doubts over its cohesiveness and unanimity in policy to take on the task of running the entire country, the coalition had jointly worked out a consensus on policies covering all aspects of federal and state governance. It had also applied to the registrar of society to register as a formal political coalition.

This consensus is a remarkable achievement, considering the differences of ideology and party philosophy of these parties over the intertwining complexity of race, religion, culture and language. It also speaks well of the political maturity, tolerance and understanding of leaders of these diverse parties. That they could see eye to eye on a full spectrum of policies is something that the BN coalition of racial parties has never attained in the past and will never achieve in the future. Therein lies a fundamental difference between these two adversaries. One is the political movement of the present and the future, with the multiracial approach to build a united nation. The other is a spent political force of the past, with its racial segregation policy that will ensure that Malaysia will forever remain a nation of racially segregated groups.

The consensus, known as the Common Policy Framework (CPF), was unveiled during PR's inaugural convention on 19th December 2009, attended by 1,500 delegates from the three parties.

In his opening speech, Anwar Ibrahim, the man responsible for forging this alliance and now its de facto leader, stressed on the overarching mission of the movement to break free from the narrow sectarianism that has imprisoned the mindset of people. He said:

“The basic principle of Pakatan Rakyat is to, firstly, melt down the narrow sectarianism. We will not succeed if we continue to defend outdated sectarianism and neglect the principle of being fair to all.”

Anwar also asked for special focus on the young people, who, he said, gave their support to the opposition pact. He said:

“There is a newfound confidence from the young generation of various races. And because of this confidence, we based our principle on which we are presenting today at this convention.”

Top leaders of the three parties delivered spirited speeches that signaled their determination to pursue the common cause, and this was followed by the unanimous approval to the CPF. Judging from the high morale and unity of purpose that filled the hall, one was left with the unmistakable impression that Pakatan Rakyat has finally come of age, fully geared to fulfill its historical mission.

The Common Policy Framework (CPF)

The CPF document, which was hailed by its main architect Zaid Ibrahim as the first step to “liberate Malaysia from 50 years of Umno/BN misrule”, contains policies that call for sweeping reforms that will rectify the past misdeeds and put Malaysia on a road map to become a progressive country built on sound democratic principles and universal values.

These reforms when fully implemented will see the restoration of democracy and separation of power, reinstatement of integrity to the institutions, forging of enduring racial and religious harmony, the attainment of social justice, creation of a vibrant economy and restoration of rights and benefits due to Sabah and Sarawak.

Some of the important reform measures are briefly introduced as follows:-

Restoration of democracy and rehabilitation of the institutions

- Judiciary: Restore integrity to the judicial system. Transparency and full independence for the Judicial Appointment Commission.
- Key institutions: Direct accountability to Parliament of bodies such as the Election Commission, Anti-Corruption Commission, Human Rights Commission, Petronas, Khazanah and others.
- Key appointments: Inspector General of Police, Attorney General, Anti-Corruption Commissioner and Auditor General to be appointed only with approval of Parliament.
- Repressive laws: Abolish the Internal Security Act and other laws that allow for detention without trial. Amend all other oppressive laws and regulations. All existing emergency declarations to be rescinded.
- Free media: Amend the Printing Presses and Publications Act 1984. Enact a Freedom of Information Act.
- Electoral system: Clean up the electoral roll. Abolish postal voting except for citizens who are overseas. Re-delineate constituencies to reflect the principle of one citizen- one vote. Enact effective laws to eliminate

corrupt practices. Lower voting age to 18. Automatic registration.

- Local government: Strengthen local government democracy and guarantee transparency at all levels.
- Federal-State relationship: In recognition of the rights of states to make decisions on their development strategy to fulfill their own requirement, adequate financial allocations will be given to render meaning to this principle. Guarantee to state governments a royalty of 20% from petroleum income. Increase capital grants for states.

Decentralisation of power to state governments

Implementation of development and infrastructure projects will be devolved to the state governments to improve the delivery system and achieve more effective spending, for which, higher grants will be allocated in a formula determined by factors such as demography, economic and social factors, geography etc.

Such decentralization of power will bring positive structural changes that will uplift the economy through a more efficient use of resources as well as ensuring a more equitable distribution of development and resources.

Affirmative Action Policy

The much abused New Economic Policy will be replaced by a need-based affirmative action policy.

The Economy

The economy will be given an uplift through the elimination of corruption, abuse of power and cronyism, and the full practice of accountability and transparency.

- Tenders: The tender system will be reformed to become open, transparent and fair to give best value for the people's money.
- Privatisation: No more privatization that burdens the people. All unfair concessions and contracts that favour cronies, including IPPs, highway tolls and water infrastructures will be renegotiated.

Race Relations

- Eliminate racial discrimination. Enact a Race Relations Act to safeguard harmony and unity.
- Eliminate racial politics through education, mass media, dialogues and consultations.

The Police Force

- Restore professionalism to the force. Revert the force to its original mission of combating crime and ensuring public safety.
- Shift the deployment to ensure sufficient manpower to combat crimes.
- Implement all the recommendations of the Royal Commission to Enhance the Operation and Management of the Police, including the IPCMC.

Labour

- Introduce minimum wage for all Malaysian citizens.
- Defend workers' rights to form trade unions according to their needs and choice, in keeping with international standards.
- Introduce an Equal Opportunity Act to ensure that work opportunities are open to all.
- Set up a National Retrenchment Fund to provide temporary assistance to those who have lost their jobs, subsidy for on-the-job training and retraining of workers.

Universities

- Amend the University and University Colleges Act 1974 to restore academic freedom, and grant university autonomy to allow our universities to develop academic excellence, in keeping with the rest of the world.
- Appoint vice chancellors, rectors, and other high ranking academic officials based on qualifications and academic merits.

Religion

- Organise dialogues and consultations between cultures and religion in order to strengthen the understanding between them.
- Set up a comprehensive mechanism to provide just resolution to cases which involve the overlap of civil and Syariah laws, including a Royal Commission to deeply study all the relevant issues.

Sabah and Sarawak

The spirit of the Malaysia Agreement 1963 will form the foundation for a just relationship between the Federation and Sabah and Sarawak. By restoring the balance of power that has been concentrated with the central government, Pakatan Rakyat promises to make a fair and open assessment

of the principal issues that are preventing political and socio-economic progress in both states in East Malaysia.

- Guarantee Sabah and Sarawak's wealth are enjoyed fully by their people. Royalty from the petroleum income will be increased to 20%.
- Set up a Royal Commission to find the best resolution of the immigrant issue.
- Guarantee the Native Customary Land Rights are not violated by any party.
- Stop immediately the oppression against those living in the interior areas caused by unethical economic activities.

Any observer of politics who has carefully read through the above listed policy measures will have realized that these are exactly the kind of remedies needed to cure the existing ills plaguing the country. As these proposed reforms deal with the root cause, which is the corrupted system of governance. Only by taking the holistic approach (pardon the medical jargon), which means the overhauling of laws and institutions, will the national health be restored, unlike the BN formula which treats only the symptoms but not the cause.

Building up the Pakatan image with Anwar in the lead

Now that PR has taken the important step of achieving consensus of policies, which should dispel doubts over the coalition's unity of purpose, perhaps it should now adopt a few strategies to further enhance its public image. Strategies that will narrow the credibility gap between the high appraisal of its performance in the states and the uncertainty of its competence to run the federal government. Some suggestions:

- I. Project the name of Pakatan Rakyat by using it as much as possible in place of individual component party names wherever and whenever deemed appropriate and acceptable, such as using it in ordinary conversation, ceramah, forum, dialogue, meeting, press conference and public statement.
- II. Appoint a common spokesman for Pakatan Rakyat for press conferences and press statements to announce on stand on important issues already agreed to by the three parties.
- III. Create a common logo, which will be widely used for printed materials, paraphernalia, flags, etc.

IV. Keep public squabbling to the absolute minimum.

One handicap of PR in the publicity war with BN is the lack of the equivalent of a prime minister, as the position carries with it authority and prestige and is good for publicity making.

Anwar Ibrahim was publicly recognized and often referred to in the media as the prime minister-in-waiting in the run-up to 16th September 2008, the date by which he said he could take over federal power. Since his failure to achieve that, he has receded from the limelight and has seldom been referred to as such. Unless some one can suggest a better candidate, the three component parties should now openly declare their support for him to be their choice of prime minister, and step up publicity to project his image as such. That would help the building up of public recognition of PR as the ruling party-in-waiting, in addition to fostering greater unity within the coalition.

Anwar's international recognition easily exceeds that of Najib, even though the latter has been the leader of the Malaysian government for almost one year. Anwar's stint as Finance Minister from 1991 to 1998, a period that saw strong economic growth and budget surpluses, earned him recognition and respect internationally, and was lauded as "Finance Minister of the Year 1996" by the prestigious Asia Money, and "Asian of the Year" by Newsweek International 1998. The friendship of world leaders he cultivated in those days in the fields of politics, finance and the Islamic academia in East and West remains steadfast.

His international exposure remains high, often speaking in international forums on civilizational dialogue apart from the usual subject of economics and politics; and he is recognized as an important bridge between the West and the Islamic World. He was recently named one of the "Top 100 Global Thinkers" by the prestigious Washington-based publication "Foreign Policy" (ranked 32nd), alongside other world leaders such as Barack Obama (2nd), Hillary Clinton (6th) and Gordon Brown (74th). His citation, titled "For challenging the Muslim world to embrace democracy", reads:

"Two decades ago, it would have been impossible to imagine Anwar pulling together rural Malays, ethnic Indians and Chinese, and Islamists into a coherent political bloc. Back then, Anwar was deputy prime minister in a de facto single-party state that espoused preferential treatment for ethnic Malays. It was a policy that Anwar had pushed from his days as a youth leader right up until 1997, when he denounced his patron, then-Prime Minister Mahathir Mohamad, for corruption. He would spend the next

six years in solitary confinement on trumped-up charges for that political betrayal. And he would leave jail in 2004 with a bold message for change in a country now at the forefront of the struggle for democracy in the Muslim world. Today, Anwar's political career is blossoming, despite a new, politically motivated indictment. Abroad, he has become an outspoken advocate of religious tolerance."

Anwar's international standing aside, he remains at home Malaysia's charismatic leader who can pull huge crowds of all races and keep them spellbound with his oratory that delivers the message of reforms wherever he goes.

Unlike the Reformasi heyday ten years ago when his massive support was derived from mainly the Malays while the Chinese conspicuously remaining cool, the Chinese and Indians now have been turned into his ardent admirers, spontaneously pouring out their warmth and affection whenever he appears in their midst. The reason is simple; Anwar has proven by words and deeds that he is a man of principle, that he sings the same tune of *Ketuanan Rakyat* whether he is in a Chinese marketplace or in a Malay kampung, unlike BN leaders who speak with forked tongue to different racial groups. And most important of all, his clarion call to save the country from the BN misrule strikes a chord with the common people who have suffered under such misgovernance.

Anwar Ibrahim was the single biggest factor in pulling off the political miracle of 8th March 2008. Not only for his role as the unifier of the three parties, but also for his unique appeal among the Malays. When Anwar was persecuted ten years ago, the millions of Malays who turned their back against Umno did so out of fury and indignation, but today, they do so because they have been enlightened to the fact that they have been taken for a ride by Umno. They realize now that if Malays are found wanting in progress and affluence, it is not due to them being robbed by the Chinese and Indians, but due to the greed and corruption of Umno. That message was driven home loud and clear when Anwar stomped the whole country from north to south and from east to west, delivering a dozen speeches a day during the campaign that led up to the last general elections.

It is hence altogether fitting that as the coalition matures as a unified political movement with the adoption of the common policy platform, the time has come for the projection of a common leader spearheading the movement. In doing so, there is gain for Pakatan Rakyat while there is no loss for PAS or DAP, unless of course someone else aspires to be the prime

minister. Any gain for Pakatan Rakyat is one step closer to Putrajaya. And when that destination is reached, all the three parties will have achieved what they have been fighting for all along – the remaking of Malaysia into a better home for all.

Anwar sodomy II is a poisoned chalice

The benefit of raising Anwar's image as the standard bearer of coalition is actually twofold. Apart from raising public confidence, it may be helpful to Anwar in his present struggle against the legal onslaught waged by BN over his sodomy case.

While Anwar's common leader status may make him a bigger catch (which also means a bigger loss for PR) upon his conviction, it can also make such fishing exercise more risky for BN. A more popular and a higher-status Anwar will invoke greater anger not only among the three component parties, but also among the masses across the nation when he is convicted on such a glaringly connived charge. Even if the BN government is not immediately toppled by public fury, the loss of public support could be so pervasive and enduring that BN would have virtually forfeited its chance of surviving the next general elections.

While Mahathir could survive the backlash ten years ago (thanks to the massive Chinese swing in his favour then), it is unlikely that Najib can have the same luck, with the Internet playing such a vastly increased role in politics and the people so much more enlightened. At any rate, Malaysia's international image would have sunk so low, that FDI would have virtually dried up, plunging Malaysia into a deeper economic abyss. That may be the knock-out blow to a BN whose principal partners of MCA, MIC and Gerakan have already entered the mode of self-destruction.

Ten years ago there was only one fledgling Party Keadilan fighting for an Anwar whose only position was the former deputy prime minister. Today, there will be three parties each with strong grassroots fighting as one body for the leader of Pakatan Rakyat which is in control of four state governments strongly supported by the people. Anwar of ten years ago was at Mahathir's mercy; will the Anwar of today be at the similar mercy of Najib? Can Najib survive the combined onslaught of Pakatan Rakyat and the people, who are now a vastly smarter crowd?

Even at the worst case scenario of Anwar being jailed, the political momentum gathered for change is so strong that there is no way Umno, fighting virtually alone now with immaterial support from its faded

partners, can stop Pakatan Rakyat from marching towards Putrajaya.

Keep in mind that each of the three component parties of Pakatan Rakyat – PKR, PAS, DAP – are strongly led by seasoned veterans and talented second echelon leaders, who are driven by political ideals, not by greed and self interests like BN. It is the convergence of these ideals, which is to reclaim Malaysia from the corrupt clutches of Umno/BN, that had brought them together under the galvanizing influence of Anwar. During the almost two years of comradeship, fighting shoulder-to-shoulder to ward off the incessant underhanded offensives from BN, their bond of friendship and mutual understanding and trust has grown and matured. Driven passionately by a common objective, they are well poised to take on new challenges from BN.

Under the circumstances, any unjust incarceration of Anwar will not only fail to cause disarray in PR, but will, on the contrary, strengthen their resolve to intensify their political struggles. And no one can predict what the public wrath following such heinous violation of justice will lead to this time around. Whatever it is, one thing is sure, the eclipse of BN will be hastened. The difference is between an abrupt cessation of power or a slow decline until the day of reckoning at the next general elections.

In fact, any prolongation of the current series of trials will only drag the judiciary, attorney general's chamber and the police to a deeper quagmire of shame and disrepute, fatally demolishing the moral standing of the BN leadership.

Needless to say, a replay of the ugly scenes of ten years ago at this advanced Internet age will inflict damage to our international image many times more serious than it was ten years ago. This time, the name of Malaysia may be so blotted by this infamy that people around the world may begin to refer to Malaysia in the same breath as they talk about other notorious violators of democracy and human rights such as Myanmar and Zimbabwe. How then could the Prime Minister of Malaysia hold his head high on the international stage? Is he prepared to face the embarrassment when the topic is critically raised in the respectable company of world leaders or when facing unforgiving questions from the international media? If he doesn't mind, Malaysians do.

Extending battleground to Sabah and Sarawak

Looking back at the poll results of the last general elections, it is not difficult to see that the East Malaysian states of Sabah and Sarawak had played a

vital role in the preservation of the BN rule. Without its near monopoly of parliamentary seats in those two states, BN would have teetered on the brink of defeat.

The combined total number of parliamentary constituencies in these two states of 56 seats (Sabah: 25, Sarawak: 31) amount to one quarter of the total number of 222 for the entire country. Out of these 56 seats, BN won 54. Discounting these 56 East Malaysian poll results, the political scenario of Peninsular Malaysia would have been BN: 86 vs PR: 82, a margin so narrow that it would have triggered an instant mass exodus of the long repressed BN component partners over to the Anwar Ibrahim led coalition.

In view of the importance of this monolithic block of East Malaysian seats to the present power formula, it is obvious that if PR wants to win, it has got to make substantial inroads into these two territories.

Any Internet reader keen on news on these two states will have found out that the people there are full of grouches against the central government.

They feel betrayed by a central government which has robbed them of the autonomy that was guaranteed under the 1963 Malaysia Agreement. They are angry that Barisan Nasional has unfairly treated them by not equitably returning to them the revenue derived from their rich natural resources, by marginalizing them in the public services, by illegally displacing them from their ancestral land, by allowing massive influx of illegal immigrants (mainly in Sabah) and by neglecting economic and infrastructure and educational development resulting in hundreds of thousands of their youth having to leave their homes to seek economic survival in the Peninsula and Singapore.

In short, they want to claim back the homeland that rightly belongs to them.

The truth is, in addition to a raw deal from the unjust Umno-led central government, these two states have been devastated by prolonged corrupt rule, the quantum of which runs into astronomical scales. Due to these factors, the common people of these two states that are richest in natural resources have become the poorest in the country.

Pakatan Rakyat is fully cognizant of these facts, and has vowed to deliver justice to the people there. As spelled out in the CPF document which is titled "Policies of Pakatan Rakyat", PR will restore the political balance as guaranteed under the Malaysia Agreement and carry out full review of the chronic ills that have plagued these societies. Specifically, PR will implement these clear-cut measures: increase petroleum royalty from 5% to 20%,

restore the Native Customary Land Rights, halt the intrusion against rural people in the interior and form a Royal Commission of Inquiry to seek a just solution to the illegal immigrant menace.

Can PR be trusted to deliver these goods? To answer this question, we have to firstly look at the leaders and secondly look at their track records. The stalwarts of DAP, PAS and PKR are seasoned leaders whose incorruptible image and unshakable political principles have withstood the test of time. Nik Aziz's absolutely unquestionable moral principles and integrity is best manifested in the squeaky clean record of the Kelantan state government that he has run for the past twenty years. Anwar Ibrahim's stature as a statesman has grown instead of diminished in the face of incessant defamation and vicious legal assault against him. And Lim Kit Siang's indefatigable defence of democracy and his dedicated oversight on issues of honest governance have made him the conscience of the nation.

And under the corruption-free leadership of PR, the various PR state governments have achieved admirable records of good governance. Pro-rakyat policies are quickly and equitably implemented irrespective of race and religion, and transparency and accountability are introduced to their administrations to eliminate corruption and improve the delivery system. As a result, the people are happy with what they see, despite adverse conditions heaped upon them by a hostile federal government and limitations of what a state government can do in a federal-centric political structure.

Having experienced half a century of BN rule and what it has brought to the people, it should be clear by now that PR is a better bet to fulfill the people's aspirations.

And one would have imagined that with so much unhappiness at the ground, it should be easy to wean the electoral support away from BN in these two territories. But in reality, this is not so.

The reasons why this is the case are complex, and as these differ between Sabah and Sarawak, they will be discussed separately.

Sarawak the poor rich kid

With a land mass as big as Peninsular Malaysia but with a population of only about one tenth as many, Sarawak is very thinly populated. Much of its rural people, who consist of indigenous ethnic groups, live in long houses or small villages, scattered in the vast interior, many accessible only by river boats or logging tracks.

These villagers are controlled by headmen of long houses or villages, who in turn are appointed, controlled and paid by the state bureaucracy.

The villagers, being cut off from modern communications – no TV, newspaper, telephone, Internet, only the radio – and poorly educated, have low political consciousness. They have little idea how democracy works and often cannot recognise bribery when cash is distributed during election time. In fact, many have already accepted as a way of life that election time is the moment when they can expect the showering of goodies in exchange for votes.

In the last state wide election in 2006, opposition Dayak leaders were expecting victory from the encouraging feedback and promises from the villagers, but were shocked when results rolled in to show that they were almost completely wiped off the slate. The reason was that the BN leaders had adopted a new tactic whereby on the eve of polling, they threatened the headmen with sacking who in turn warned the villagers of deprivation of cash and projects should they vote for the opposition. On the other hand, if they voted for BN, cash would be distributed and projects delivered. As the villagers were in abject poverty and in fear of backlash, they decided to comply with BN's wishes and broke their promise of support given earlier to the political leaders of their own kind.

Therein lies the major challenge to PR to break this vice-like grip on rural votes by BN, made immensely more difficult by their poor accessibility.

The story of Sarawak is a sad tale that should not belong to this age at this part of the world. Who would believe that an autocrat can control a state of abundant natural resources and openly plunder its assets at will to accumulate fabulous wealth for himself and cronies for 29 years, impoverishing its people in the process, and yet seemingly living happily ever after – in a supposed democracy known as a leading member of Asean?

And this man is Taib Mahmud, Chief Minister extraordinaire of Sarawak since 1981. Through his party PBB, which is a component of BN, he has ruled Sarawak with an iron fist, personally controlling the state's natural resources, in particular, the vast rainforest.

The bulk of his wealth comes from the rich timber concessions, which he readily awards to himself, his family, political associates and business cronies. To appreciate the vastness of the timber concessions so appropriated, let us take a look at the research paper by David Brown. In his doctoral dissertation titled "Why Governments Fail to Capture Economic rent: The Unofficial Appropriation of Rain Forest Rent by Rulers in Insular Southeast

Asia between 1970 and 1999” published in 2001, for which he had carried out extensive research and interviews, he tabulated the concessions given out to companies directly and indirectly controlled by the Taib family or his business cronies.

Tallying the concessions held under three major timber groups alone – Samling group, Rimbunan Hijau group and Taib family group – the total acreage already exceeds two million hectares (up to 1999). Converting to ringgit and sen, this acreage means a logged value of over RM50 billion. If this money is distributed to the people of Sarawak, each family will receive RM100,000. But alas, this money has gone to Taib & family, BN political leaders and business cronies.

In addition for the corrupt disposition of the state’s richest asset, Taib should also be held responsible for depleting, mainly through his hand, one of the richest rainforest in the world at a totally unsustainable rate. Driven by greed, the frenzied harvesting of logs escalated to 19 million cubic metres annually by 1991, which is five times its sustainable rate, according to a report by the UN sponsored body “International Tropical Timber Organisation” (ITTO). Such irresponsible destruction of humanity’s common heritage had alarmed the world, resulting in the European Parliament unanimously resolved in 1987 that the European Community banned the import of hardwood from Sarawak.

In the rampant exploitation of the forest, many indigenous inhabitants were driven to desperation due to ecological damage to the habitat and forced occupancy of their ancestral land by the big corporations carrying out logging and plantation enterprise. These impoverished villagers have now lodged hundreds of suits under Customary Land Rights against the government and the intruders. Most of these cases are still pending in courts.

As a result of such massive timber corruption, which in turn enables Taib to personally maintain his grip on power while indirectly guaranteeing BN’s hegemony, poor Sarawakians are left with only 10% of the primary forest, which was once their richest inheritance from nature.

However, the magnitude of this wealth gone astray is not known to the ordinary people in Sarawak. What is more well known is the Taib family owned flagship Cahaya Mata Sarawak Bhd, commonly known as CMS. This holding company has more than 40 subsidiaries, which stretch their tentacles into every nook and corner of the economy of Sarawak and beyond, covering the full spectrum of economic activities that span from manufacturing to agriculture, and from infrastructure development to the

service industries. The secret of CMS's rapid rise in wealth comes from its privileged treatment from the government, being given first preference to grab lucrative large infrastructure projects and other contracts without proper tenders.

Taib Mahmud's political power is derived from the strong backing from Umno in Kuala Lumpur and from timber wealth-induced loyalty from leaders of BN component parties in Sarawak, namely, the Chinese-based SUPP and the Dayak-based SPR and SPDP, and his own PBB which represents Malays and Melanau as well as some Dayak leaders. Kuala Lumpur will not touch the corrupt autocrat as long as he delivers the Sarawak parliamentary seats en bloc as he has always done in the past; and his Sarawak fellow leaders will also remain subservient as long as they can continue to enjoy the wealth and status that accrue to these ruling elite.

In Malaysian politics where race is everything, Taib's political dominance is an anomaly. He comes from a small minority race – Melanau – which constitutes only 7% of the Sarawak population of 2.4 million people. By Malaysian political logic, a leader from Dayaks, who form almost half of the population, should be in the helm. That indeed was the case when a Dayak – Stephen Kalong Ningkan – became the first Sarawak chief minister when Malaysia was formed in 1963. But he was soon toppled by a virtual coup d'état engineered by the federal power in Kuala Lumpur. Since 1970, Sarawak has been ruled by two chief ministers, both Melanau Muslims – Taib and his predecessor Rahman Yakub who is Taib's uncle.

The Dayaks, which is a collective term for several ethnic communities of similar backgrounds, have been unable to regain power basically because they have splintered and fractured, and partly because the Umno-dominated central government favour the two Melanau Muslims. Weighed down by the infighting tendency among themselves, the Dayaks are now dispersed into several political parties on both sides of the political divide. On the ruling side, the Dayaks are in PBB (which is led by Taib), SPR and SPDP. On the opposition side, they are in SNAP (which has recently joined forces with Pakatan Rakyat), and the deregistered PBDS (many of them have joined PKR).

PKR has recently appointed a new chief, Baru Bian, to lead its movement in Sarawak. Baru Bian, who comes from a small ethnic community Lun Bawang but accepted as a Dayak leader, is a well respected human rights lawyer who has fought many Customary Land Right cases for villagers who have been unjustly deprived of their land. Declaring himself a Malaysian

leader, fighting on a non-racial platform to champion the cause of Sarawak, he is expected to play a leading role in consolidating the Dayaks and rallying support in rural areas and in towns. He is expected to work well with DAP which made unprecedented headway in the last state elections in 2006 by winning 6 state seats in the Chinese dominated urban areas. Together, they are expected to make a major break through in the coming state elections, expected to be held in 2010 or 2011 by the latest. Such breakthrough would be a good precursor to the next Parliamentary elections which must be held the latest by 2013.

An air of expectant optimism is in the air in Sarawak, as the political tsunami of the March 2008 general elections has awakened people to the stark reality that the hitherto invincible Barisan Nasional is vulnerable after all. This surprise discovery has removed a major stumbling block that has prevented people from supporting the opposition in the past – the fear factor. Many voted for BN due to the fear of reprisal and also to the sense of resigned futility – “since you cannot beat them in any case, why vote against them to incur their wrath?” To the villagers living in far-flung interior of Sarawak, who depend on the goodwill of the mighty government for their wellbeing, the fear of offending the unloved BN is daunting, unless of course, there is a reasonable chance that by voting for the opposition, the incumbent ruler can be toppled.

PR campaigners must therefore capitalize on the political tsunami effect - that change is around the corner, that if people vote in unity, change will surely come, as sure as the sun rises.

Sabah the paradise lost

Sabah is another sad story, a story of paradise lost.

Older citizens who had lived in Sabah in the fifties and sixties and even the early seventies never cease to be nostalgic about those good old days. For those were the carefree days of milk and honey as well as days of innocence. Milk and honey, because money was in abundance, thanks to the plentiful extraction of timber, of course. Innocence, because people then had little race-and-religion consciousness, and mixed marriages were the order of the day, and the land was virtually crime-free. The people were living harmoniously in the true sense of the word, despite the fact that Sabah had the most number of ethnic groups, with 28 of them recognized officially as indigenous of the land.

The loss of innocence began with the rule of the third chief minister Mustapha Harun of USNO. A Suluk Muslim from southern Philippines, he came to power in 1967 with the assistance and backing from the Umno-led central government. Mustapha brought in the Umno brand of divisiveness by practicing heavy racial and religious discrimination. His coercive tactic of converting people to Islam with government positions and wealth as leverage was particularly loathsome.

Mustapha soon became a virtual dictator by crushing the opposition with free use of the ISA, a power which was delegated to him by the central government. With absolute power, he amassed immense wealth for himself from the timber concessions, and in the process, corrupted the entire government. Apart from corruption and authoritarianism, Mustapha's rule was marked by self-serving leaders running an inept administration, and the people felt badly neglected and trampled upon.

With the already powerful presence of the federal government via its officers from Kuala Lumpur manning key government organs, Mustapha's misrule that was coloured by religious and racial oppression imported from Peninsula had only accentuated the Sabahans' feeling of being colonized; and many silently regretted for having merged into Malaysia. Keep in mind that Christian Kadazans and the Chinese formed the majority of the population then.

Though Mustapha and USNO were toppled in 1975, rampant corruption and gross negligence by both federal and state governments continue to devastate the state, turning Sabah from one of the richest states into the poorest in the country.

As if corrupt leadership and inept administration were not bad enough, Sabahans were to suffer another misfortune, perhaps the greatest, and that is the massive, prolonged and unending influx of illegal immigrants that were to shatter the peace and tranquility of this idyllic land forever.

The floodgate for illegal immigrants was first opened by Mustapha to let in his Suluk kinsmen from Southern Philippines, but what started off as a trickle in the late sixties gradually gathered momentum until it became a sustained torrential transmigration that resulted in the immigrants outnumbering the locals. The frightening rate of this influx, which consists mainly of Muslims from southern Philippines and Indonesia, can be seen from the following Sabah population statistics recorded over the period from 1970 to 2007, as shown below:

Year	Population	Increase
1970	0.65 million	48%
1980	0.96 million	77%
1990	1.70 million	47%
2000	2.50 million	36% (7 years)
2007	3.40 million	

The population of Sabah has therefore been exploding, with a total increase of 423% from 1970 to 2007; and this trend appears to be continuing. But the comparative increase in neighbouring Sarawak was only 140%, increasing from 1.0 million in 1970 to 2.4 million in 2007. Had Sabah population been increasing at the same rate as Sarawak, its population should only stand at 1.56 million, not 3.40 million, in 2007. Taking into consideration that 800,000 Malaysians residing in Sabah had left the state from 1995 to 2004 according to immigration records (*Malaysiakini*, 6th Feb 2006), it is apparent that immigrant population has exceeded two million, thus verifying claims by local NGOs which has been tracking this issue closely.

The overpowering presence of this sea of immigrants has posed serious social problems. Apart from presenting nightmarish security problems, immigrants have crowded out the locals in social services such as hospitals, thus straining the limited public amenities available to the people.

But what is even more abhorrent is the invasion into the sovereign rights of Sabahans through the mass conversion of many of these immigrants into citizens and voters in a clandestine and illegal operation known as 'Project M' (M stands for Mahathir). The result of this treacherous operation is reflected in the electoral roll in 1999, where the state's Muslim majority constituencies had suddenly shot up to 50%, from 30% in 1994, all within the short interval of five years. Details of this shameful operation were well documented in Justice Muhammad Kamil Awang's judgment in June 2001 annulling the election in the Likas constituency.

This is no doubt a political conspiracy hatched in the corridor of power in Kuala Lumpur to drastically alter the balance of power between the Muslim population and the non-Muslim Kadazan-Dusun and Chinese. This strategy has obviously succeeded in robbing the original Sabahans of their sovereignty, as reflected in Umno eventually entrenching itself as the unquestioned ruling power, leveraged on the massive infusion of illegal immigrant votes, known as the "phantom voters". The result is the deepening of federal rule in tandem with the weakening of Sabahan voices.

That Sabah is in the depth of despair is understandable. Deprived of their democratic rights to determine their own fate, feeling terribly unsafe and insecure in their own homeland after being overwhelmed by immigrants, grossly neglected by a corrupt state government and an unsympathetic federal power, where can Sabahans seek remedy and justice?

The people of Sabah have rightly demanded that the illegal immigrant menace, which is the mother of all evils, be effectively tackled with the formation of a royal commission of inquiry to get to the bottom of this plague and come up with a just solution. However, despite repeated requests over many years, nothing meaningful has been done except token repatriations and announcement of formation of “task force” and “committee” from time to time.

However, Sabahans must be realistic. There is no point in continuing to knock on the door of the Umno-led BN to seek a permanent solution. For how can we expect Umno to muster the political will to clean up the illegal immigrant and phantom voter mess when its very political power in the state is hinged on the murky existence of such dark forces?

It should not be difficult for Sabahans who are serious about extricating the state from the present quagmire to come to the realisation that ridding Umno is the only way forward.

The next principle that we must recognize is that winning the state power without changing the federal ruling coalition wouldn't do. This is because under BN, the federal government controls the finance as well as retain the authority to make policies and implement projects, leaving state government minor financial resources to carry out secondary development.

Besides, even if a local political power succeeds in displacing BN in the state, the new state government would not be able to withstand the hostility and sabotage from the BN federal government. And this would inevitably result in the new state government crumbling or being sucked into the BN whirlpool, returning the state to the pre-election status quo as far as reform for Sabah is concerned. This was proven in the case of PBS, which won the 1994 state elections, but was soon toppled due to subversion from BN. By 2002, PBS had joined BN as one of its many subservient component parties.

Sabah politicians who aspire to end the present miseries must therefore take the macro view of not only winning the state but also changing the incumbent federal power. In this respect, putting federal power in the hands of a just and incorruptible coalition may be more important than winning only state power. This is because a good federal government can do more for the state than what a good state government can do under a bad federal government.

Pakatan Rakyat has already pledged in its common policies to carry out a series of reforms as elaborated earlier. These measures, if implemented under a progressive federal government, will surely uplift the quality of life of Sabahans by improving the economy and security under a truly democratic system of government.

It is for the common good of Sabah as well as for the entire nation that current independent political forces in the state should either ally themselves with PR or join one of the component parties of PR. This will strengthen the hands of the forces opposed to BN as well as avoid three or multi-cornered fights. The latter must be avoided at all costs and in fact it must be totally eliminated, as the next election will be a close contest, where the presence of even a few three-cornered fights may cause the failure of PR to unseat BN.

Reflecting and looking forward

Malaysians have not known any ruling power other than the Barisan Nasional (and its preceding entity in the name of Alliance) since independence half a century ago. Changing that power must be a momentous decision for many.

For those who are hesitant, perhaps they should ponder over these questions:

- Which public institution, other than the Auditor General, is not riddled with scandals and has not lost credibility and respect of the public? I can think of none, and these include the judiciary, attorney general's chambers, police, MACC and the election commission.
- How many ministers, *mentri besar* and chief minister (other than those in PR) can claim that he has not acquired illegitimate wealth and is able to withstand independent scrutiny of their assets? And how many senior BN leaders have been embroiled in scandals of corruption, abuse of power and other crimes, and yet have escaped proper investigation and punitive action from our pliant law-enforcement bodies? I can think of many, and these include the Prime Minister and the Deputy Prime Minister.

When a political leadership has sunk as low as ours and public institutions as equally decadent, it is naive to think that we can survive unscratched the rigorous challenges of this new age when our competitors continue to race ahead faster than we do.

In fact, we are living on borrowed time, as we would have bankrupted ourselves long time ago if not being propped up by the god-given gift of petroleum. Due to unrestrained splurging and lackadaisical productive efforts, our addiction to petroleum as crutch has so grown that more than 40% of the government's operational expenses are now paid for by income from petroleum in the form of royalty, export duty, petroleum income tax and dividends from Petronas (excluding corporate income tax from companies in the petroleum industry). Surely, the prolongation of the status quo is tantamount to leaning heavier and heavier on a crutch that is getting shorter and shorter. How long can this untenable situation last?

Even when the ruling party is changed, it will take some time to undo the damage done by the previous regime, and that means the nation's productive process can only be geared up to the next notch after a certain intervening period. But the longer we delay the changing of the guard, the more difficult the transition will be, as we will then not have the advantage of a comfortable petroleum income to cushion us during the transformation, as our limited oil reserve further dwindles.

The core of resistance to change mainly lies with the ultra elements in Umno and their supporters, not its component partners in BN, who would be only too happy to see their coalition turning genuinely multiracial and non-discriminatory. But Umno wouldn't change unless the majority of Malays decide that enough is enough, let's give others a chance to build a better country. Yes, Umno will change only when it is in the opposition.

The relegation of Umno to the opposition will certainly not endanger the Malay race, as Umno would want the Malays to believe. On the contrary, it will free many Malays from the mental bondage of racial and religious bigotry, a condition precipitated by decades of dishonest news reporting and misleading commentaries propagated by Umno-controlled press and television channels. This liberation from Umno's enslavement of the mindset is of great importance, as henceforth Malays will be able to make political decisions that will ensure that the country will continue to move forward under leadership that best serves the national – not parochial – interests.

Under Pakatan Rakyat's just and equitable affirmative action policies that help those who really need help, which will eliminate the unnecessary crutches created as camouflage to facilitate self-enrichment by the Umnoputras, Malays will really take their place in the modern world, competing on par not only with others in the country but also with the rest of the world.

With Pakatan in the helm, we should see a halt to the widening of our religious and racial fault lines, and the gradual closing of these gaps through implementation of policies in conformity with universal values and teachings of all major religions.

We will also see the rehabilitation of our institutions and civil service to their original function as designated by the Constitution – serving the interests of the people with honesty and dedication and free from political interference.

The repeal or amendment of oppressive legislation will see a revival of democracy, transparency and free media.

Removal of Umno's policies which are racially and politically discriminatory and oppressive will allow for a revival of the economy, educational excellence and reversal of brain drain.

Economically, we will see the freeing of the entrepreneurial spirit, and the expected return of investors' confidence. Coupled with a reversal of brain drain, and a renaissance of academia, we should see definite and steady rejuvenation of our economy.

When a multiracial and multi-religious country is on the path of healthy economic growth under a democratic leadership practicing universal values acceptable to all races, that will be a sure sign that the country is firmly rooted to bring continuous prosperity and happiness to its people.

That is what Malaysia should be, and that is what we must all fight for.

And we can certainly turn that dream into reality if we make the right political decision.

The Perak Constitutional Crisis

The articles in this section are not arranged in chronology order, but are grouped according to the subject matters and arranged in a sequence that facilitate an easier understanding of the rather complex picture.

An Overview of The Perak Crisis

The infamous power grab in Perak must have ranked among the most shameful episodes in our nation's history. Constitution and laws were swept aside, entire range of government institutions were abused and brute force illegally employed – to illicitly sabotage and physically evict the democratically elected Pakatan Rakyat (PR) state government from the state secretariat building. After the seizure of power, the illegitimate Barisan Nasional (BN) state government was preserved through the police physically blocking PR assemblymen from access to the assembly building to convene meetings and the courts handing out blatantly biased judgments.

This virtual coup d'état is in fact part of a larger, continuing and systemic scheme to subvert, destabilise and overthrow Pakatan controlled state governments throughout the country through illegitimate and unlawful acts by government institutions and political agents since the last general election of 8 Mar 2008.

Perak was the prime target and the first victim due partly to PR's smaller majority in the state legislature and partly to the state government's enviable achievement. Under the stellar political leadership of Menteri Besar Nizar Jamaluddin, the Pakatan Perak government was the model of seamless co-operation among component parties, and an exemplary regime that has swiftly implemented pro-rakyat policies that won the hearts and minds of all races. Perak was therefore the best advertisement for PR as the kind of governance the people could expect if it is elected to helm the federal government in the next election. Its continued existence would therefore constitute an unacceptable threat to Barisan Nasional's (BN) electoral chances of returning to power come next general elections.

The climax of the Perak coup, engineered by then Deputy Premier Najib Razak, began when two PKR assemblymen mysteriously disappeared

and remained incommunicado to the PKR leadership for a week at end of January 2009. The duo was then facing imminent corruption charges in court from the Malaysian Anti-Corruption Commission (MACC) amid swirling rumours of monetary inducements to cause their defection. This was recognized as a classic case of defection via the carrot-and-stick treatment, the stick being the MACC and the carrot being the material inducement.

Then, a series of rapid-fire dramas unfolded over a six-day period – Feb 1 to Feb 6 – that resulted in the PR state cabinet being physically evicted by the police force from the state government building and the Perak Sultan appointing a menteri besar from UMNO (while the incumbent MB had not resigned). These crucial events are briefly outlined as follows (articles 1, 2 & 3):

- Feb 1 Speaker S Sivakumar announced that he had received the letters of resignations of PKR assemblymen Jamaluddin Radzi and Osman Jailu (who had disappeared earlier), and that he had accepted their resignations.
- Feb 2 Sivakumar personally handed his letter of notification of these two vacancies to the Perak state director of the Election Commission (EC) Adli Abdullah to seek by-elections in these two constituencies.
- Feb 3 EC refused to recognize these resignations and declared that there would be no by-election..
- Feb 4 Four PR assembly persons who had ‘disappeared’ earlier, suddenly appeared in a press conference held by Najib in Putrajaya at 1640 hrs, where he announced that BN had the majority to take over the state government with the support of three ‘friendly independents’ (deflected from PR) plus the return of one assemblyman to UMNO. These four assembly persons were:
 - PKR’s Jamaluddin and Osman
 - DAP’s Hee Yit Foong, who had been playing ‘hide and seek’ for past one week
 - PKR’s Nasarudin Hashim who double-hopped back to UMNO after a short sojourn in PKR.
- Feb 4 Menteri Besar Nijar had an audience with Sultan Azlan Shah at 1600 hrs, advising His Royal Highness to dissolve the legislative assembly.

Feb 5 Najib and BN assembly persons and the three ‘independents’ had an audience with the Sultan in the morning.

Through a statement released at 1425 hrs, the Sultan said that he was convinced that Nizar had lost majority support and ordered Nizar and his cabinet to resign immediately while declining to dissolve the assembly.

At 1620 hrs, the police had taken over the state government building, and the state secretary instructed the state cabinet to evacuate from their offices.

Nizar and his cabinet refused to resign, but instead, submitted a written appeal to the Sultan to reiterate his earlier advice to dissolve the assemblymen, while explaining why Pakatan had not lost the majority support.

Speaker Sivakumar applied to the court in the morning to declare the three seats under the ‘independents’ as vacant to pave the way for by-elections.

Feb 6 Siva made an urgent request to the Sultan to convene a special seating of the assembly.

The Sultan did not respond to Nizar or Siva, and instead, swore-in Zambry Kadir as Menteri Besar.

Despite the Sultan’s new appointment, Nizar and his cabinet continued to function as the legitimate government outside the government building. They vowed to fight through the courts while persisting in calls for fresh elections to resolve the stalemate.

The tussle for power between the two camps proceeded in two fronts: the courts and the assembly.

A series of suits were initiated by MB Nizar and speaker Siva, attracting counter suits from their opponents, and these are still on-going at various levels of the courts – high court, court of appeal and federal court. The proceedings and judgment relating to these suits have exposed the judiciary as utterly lacking in judicial integrity – unabashedly biased in favour of the ruling BN in flagrant violation of the provisions of the constitution pertaining to the separation of powers.

An exception was the judgment by high court judge Aziz Rahim declaring Nizar as the lawful Menteri Besar on May 11. This meticulous judgment which took Aziz more than one hour to read out, drew much admiration across the legal fraternity for its sound interpretation of law

and unassailable logic. But this judgment was promptly put on hold the next day by court of appeal judge Ramli Ali sitting in a one-man bench (article 2). Ten days later, the court of appeal over-turned Aziz's ruling with an 5-minute oral judgment that miserably failed to counter any of Aziz's legal arguments (article 3). Nizar has appealed against this judgment to the federal court.

MB Nizar and speaker Siva have been repeatedly seeking redress through debates in the legislature, but on every occasion, Pakatan assembly persons were physically blocked and roughed up by the police to prevent them from entering the assembly hall. This resulted in assembly sittings being held outside the government building.

The worst police violation of the sanctity of the legislature took place in a BN-initiated assembly sitting on May 7 when police entered the assembly hall to manhandle and drag speaker Siva into another room so that the BN chosen speaker R Ganesan could occupy the speaker's chair (article 8).

Later, Sivakumar sued Ganesan to seek damages for assault and wrongful detention, but the high court dismissed the suit on Sept 8 in a judgment that blatantly displayed double standards (article 9).

There is no resolution in sight of the political impasse in Perak, while BN continues to stay shy of fresh elections.

1

Why Nizar's Removal Is Unconstitutional

15.02.2009

At the core of the Perak crisis is the issue of whether the forced removal of Mentri Besar Nizar Jamaluddin from his post was constitutional. If it was not, then Nizar is still the Mentri Besar.

The answer to this question would depend on:

- a. whether Nizar had lost the support of the majority in the state assembly, and if he had,
- b. whether the Sultan had the power to dismiss him.

Let us firstly look at the issue of whether Nizar had lost his majority.

In a press conference on Feb 4 at 1640 hrs in Putrajaya, Deputy Prime Minister Najib Razak announced that Barisan Nasional (BN) had the majority to take over the Perak government as the assembly was tied at 28 vs 28 with 3 'friendly independents'.

Next morning, Najib, together with BN assemblymen and the '3 independents' had an audience with the Perak Sultan at his palace. Then at 1425 hrs, the Sultan issued a statement 'ordering' the Mentri Besar and the state executive council to resign immediately, failing which, these posts were 'regarded as vacant'.

And two hours later, the police took over the state government building and evicted the state cabinet.

'Independents' already resigned

Nizar refused to resign on the ground that he had not lost the majority support, as the '3 independents' had already resigned as assemblymen. He promptly re-appealed to the Sultan to give his consent to dissolve the assembly for fresh elections.

The Sultan did not respond to Nizar's appeal, instead, he installed a new Mentri Besar the next day (Feb 6).

The resignations of the '3 independents' came into effect earlier when the assembly speaker accepted their genuine letters of resignation and declared their respective seats vacant. However, the Election Commission (EC) declined to regard the seats vacant on ground of doubtful resignations. Despite the speaker's assertion that he was the rightful authority – not the EC – to accept these resignations, he nevertheless applied to the court to declare these seats vacant so as to dispel possible ambiguity.

Najib's press conference on Feb 4, where he introduced four 'defectors' – the '3 friendly independents' plus one double hopper – crowned almost two weeks of intense speculations under a cloak-and-dagger ambience of intrigues that included mysterious disappearance, hide-and-seek, hopping, double hopping, bribery and 'kidnapping'.

Questionable defections

The intrigues started when two PKR executive council members – Jamaluddin Radzi and Osman Jailu – who were both facing corruption charges (scheduled court hearing on Feb 10), disappeared on Jan 25 and remained incommunicado to party leaders, only to reappear in Najib's Feb 4 press conference. Rumours were rife that they were victims of a 'carrot-and-stick treatment' while under protective custody, as throughout the period of their disappearance, they failed repeatedly to answer frantic calls by party leaders to surface to clarify their positions. The duo, meanwhile, intermittently leaked out vague messages via BN-controlled media.

The third 'independent' – DAP assemblywoman and deputy speaker of the assembly Hee Yit Foong – had been playing hide-and-seek for one week, failing to appear for several important functions. While she did express unhappiness over alleged poor treatment by party leaders towards her, she nevertheless repeatedly pledged – right up to the day before her appearance with Najib on Feb 4 – that she would never betray the party that she had served faithfully for more than two decades. Granted that it should not have been a complete surprise when she quit DAP to become an independent, as she was already frustrated with her party; but why suddenly take the completely illogical step of sleeping with the enemy – an enemy that she had fought tooth and nail all her life? In the absence of any apparent reversal of her political conviction, who would believe that her helping hand to BN to topple the Pakatan Rakyat government was not

encouraged by an irresistible inducement, tinged perhaps with an element of coercion?

That Hee was still undergoing emotional upheaval was obvious from her body language during Najib's press conference where she remained sullen and silent throughout. At the end of the press conference, she was immediately whisked into the room of Najib's political secretary where she was given more than one and a half hour of 'counseling' by UMNO assemblywoman Hamidah Osman. Hee's countenance in the room was serious and non-smiling. (*Oriental Daily*, Feb 5)

Mysterious double-hop

The prize catch of that fateful day of Feb 4 was undoubtedly the 4th 'defector' Nasarudin Hashim who double-hopped back to UMNO, thus narrowing the gap between Pakatan Rakyat (PR) and BN in the assembly by two, making the tie of 28 vs 28. Nasarudin's double somersault (from UMNO to PKR and back to UMNO) was perhaps the most dramatic of the four 'defections'.

In the afternoon of Feb 4, Nasarudin's wife Umi made a phone call to Nizar at 1510 hrs in the midst of his press conference. Nizar then told the press that Umi had called to say her husband had been kidnapped and brought to see Najib. Nasarudin was said to be on his way from Kuala Lumpur to the State Secretariat in Ipoh to meet PR leaders when he was intercepted by two UMNO assemblymen Ahamad Pakeh Adam and Hamdi Abu Bakar who claimed that the Regent wanted to see him in Kuala Lumpur. Eventually, Nasarudin ended up with Najib in Putrajaya. By 1640 hrs, he appeared in Najib's press conference, where Najib announced that Nasarudin had returned to UMNO.

It appears that Nasarudin's abrupt move to re-join UMNO was a surprise, as since his deflection from UMNO to PKR on Jan 25, he had shone as a credible leader with political conviction, repeatedly turning down strong overtures to return to UMNO including the rumoured offer of the post of Mentri Besar. So by logical deduction, something most extraordinary – more than just material inducement – must have happened to him in that fateful afternoon to make such a quick turnover of him. Perhaps only a powerful persuader could have persuaded him to take the step that would surely bring him shame and public scorn in the record-breaking double-hopping act.

That he was a reluctant 'defector' was reflected in his demeanour in Najib's

press conference, when the appearance of stoic sufferance was written all over his face. Appropriately, at the end of the press conference, he threw a pack of his press statements on a table and swiftly left the scene.

Illegal sabotage

There was a common denominator among these four ‘defectors’. None of them has given credible reasons for their switch of loyalty, indicating these ‘defections’ were not motivated by honest political convictions, but rather, the ‘defectors’ were victims of clandestine political machinations that in all likelihood are criminal in nature.

These sordid political maneuvers were but part of a continuing and ever expanding agenda of sabotage to destabilise and topple PR state governments, focusing mostly on Perak and Kedah at this moment. In fact, the agents of such sabotage appear to be on a rampage of political bribery and intimidation of late, judging from increasing reports from numerous PR assemblymen who complained of harassment with offers of millions of ringgit plus lucrative positions. And some have even expressed worries over the security of themselves and their families. Many reports have been made to the police and the Malaysian Anti-Corruption Commission, but no action is known to have been taken.

Against the backdrop of these dubious political maneuvers, and with the legal status of the ‘3 independents’ in limbo, it is a complete amazement as to how the Sultan could have concluded that the Mentri Besar “had ceased to command the confidence of the majority of the State Assembly members” as prescribed under Article 16 of the Perak constitution.

The Sultan under these circumstances was clearly not the correct institution to undertake the task of ascertaining the true state of confidence the Mentri Besar enjoyed. The only competent body for this task was the state assembly.

No loss of majority

Without a legitimate establishment of this loss of majority, there was no constitutional basis to ask for the Mentri Besar’s resignation. His legal status as Mentri Besar is therefore intact, as he has neither resigned nor officially been dismissed. And the military style take-over of the state government building at lightning speed on Feb 5, which bore every semblance of a coup d’etat, was therefore most deplorable and an uncalled-for provocation against supporters of the democratically elected government.

At this point, the issue of the Sultan's power to dismiss a menteri besar becomes hypothetical, since the former had no legal basis to make such an attempt.

Still, as an academic interest, can the Sultan dismiss a menteri besar in the extreme case of the latter having lost majority support and yet refusing to dissolve the assembly?

It is not at all certain that the Sultan has such power, as Article 16(7) states that "a member of the Executive Council other than MB shall hold office at His Royal Highness's pleasure", implying that the menteri besar may not be dismissed by the Sultan.

But why go into such uncharted terrains when there is an ideal solution at hand to resolve the present predicament – the dissolution of the assembly? Such a solution will kill many birds – the multiplicities of legal complications – with one stone, while returning the mandate to the people, in whom sovereignty lies.

A word on the Sultan's prerogative to withhold consent to dissolution of assembly. While the Sultan may have the legal right to reject dissolution, such a legal right is not meant to be exercised without accountability.

In a democracy, the decision to dissolve a legislature is rested with the executive head (prime minister or chief minister), not the titular head (constitution monarch or president). When a constitution provides power to the titular head to over-rule such a decision from the executive, it is meant as a protective mechanism to prevent abuses, such as over-frequent elections or fresh elections with no hope of resolving existing political impasse. Menteri Besar Nizar's decision to hold fresh election does not fall under this category, and hence the Sultan is constitutionally wrong to withhold his consent.

2

Nizar Won, But Judge Ramli Ordered Hold the Next Day

Nizar won the MB vs MB suit against Zambry in the High Court on May 11, and he quickly moved into the Perak State Government building to take over the rein of government from Zambry the next day. But Court of Appeal judge Ramli Ali, sitting alone without the usual panel of three, swiftly ordered a stay of the High Court decision the next day May 14, resulting in Nizar having to move out from his MB office within hours of moving into it.

13.05.2009

An intriguing question arises as Court of Appeal judge Ramli Ali ordered (on May 12) a stay of execution on High Court's declaratory judgment that Nizar Jamaluddin – not Zambry Kadir - is the lawful Menteri Besar of Perak.

In his judgment the day before (May 11), high court judge Aziz Rahim declares that Nizar had never ceased to be the Menteri Besar while Zambry Kadir had never been one.

So what does judge Ramli mean when he orders a stay of execution? Does he not mean to ask Nizar to cease to be Menteri Besar from now onwards until the case is finally settled at the higher courts? But that would mean stripping a legal status that Nizar has always enjoyed. Would that be fair to Nizar, when the high court judgment has not been overturned by a higher court?

The litigation ahead is a long and tortuous road and may take years to reach its final conclusion at the highest court. Is it not a gross injustice to Nizar that he – a declared lawful Menteri Besar – has to stand aside so that Zambry – a declared pretender – can occupy the Menteri Besar's seat?

It is recognized that while the legal tussle is still on-going, we need some

one to act as Menteri Besar. Who is more qualified to act in that position – Nizar or Zambry? That depends on who enjoys a higher legal and moral standing for that purpose? After the Aziz judgment, it has to be Nizar.

This is the reason why judge Aziz had rejected Zambry's request for a stay of execution immediately after he delivered the judgment the previous day – to avoid aborting justice at this stage.

And what is the ground put up by Zambry for wanting the stay order? According to his lawyer Cecil Abraham, it is to stop Nizar from approaching the Sultan for dissolution of the state assembly for a state-wide election. His rationale is that, once an election is held, Zambry's appeal is rendered academic.

Now, let us examine this rationale. Assuming there is no order to stay execution, and as a result, Nizar succeeds in dissolving the assembly and an election is held, how would that do injustice to Zambry? Is Zambry saying that in an election, his party would be unfairly treated by our electoral system? But that would be a ridiculous suggestion, as our Election Commission has always been overtly pro-Barisan Nasional and all the government institutions and public media have also always been heavily abused to favour BN in every election. Or is Zambry saying that he has a much stronger case in court? But that would be a far fetched exertion, as it is the considered legal opinion that the balance tips in Nizar's favour in fact and in law. This opinion is supported by Aziz's detailed and meticulous judgment that took him more than one hour to read out.

In fact, a fresh election for Perak is not only a fair solution where none would suffer injustice, but the only practical way out of the present state of near anarchy in the state, with both parties fighting tooth and nail (physically at times) to claim authority to rule, while a host of suits and counter suits are pending in the high courts, all of which arose from the illegal power grab engineered by then Deputy Prime Minister Najib Razak in early February.

That BN has been doggedly determined to avoid an election despite such compelling circumstances only reveals that it is a party working for only its self-interests. Its policy is anti-rakyat in that it is not only depriving the people the right to choose their own government, but is dooming them to suffer prolong political and economic turmoil as there is no end in sight of the present constitutional crisis.

And the rash action by judge Ramli to grant Zambry the stay order in circumstances that draw consternation only worsens the image of the judiciary while further eroding confidence in the government.

Apart from wanting in rationale in his judgment, the lightning speed with which Ramly had granted the order must have caught many people by surprise – receiving the application at 0930 hrs, convening the hearing at 1130 hrs and passing the judgment at 1300 hrs, thus reversing judge Aziz's rejection of stay order in only 21 hours. What a superb performance by our courts known for their snail's pace of handling cases. (I recall that following Anwar Ibrahim's sodomy conviction in 2000, it took the court of appeal three years before it began hearing Anwar's appeal). But, is it not a bit too hasty to reach decision on an issue so important that it could have changed the course of history?

And on such an important issue, why did judge Ramli sit alone, bereft of the usual panel of judges of at least three in a court of appeal hearing? Such breaking of its own rule can only be justified in an emergency situation where the slightest delay in granting an order may result in irreparable injury to a party. Has such a situation developed for Zambry? What injury would Zambry suffer, if it takes several days instead of several hours for the court to reach a decision? Or did judge Ramly feel the same sense of urgency as expressed by lawyer Abraham that any delay in granting the order may precipitate the catastrophe to BN in the form of a state-wide election for Perak? But should the judiciary's conduct be dictated by such political manouvring?

It is understood that Nazir's lawyer will be presenting his application to the Court of Appeal today to set aside Ramly's order. Let's see whether the same court would accord Nazir's application with the same dispatch.

Postscript

The Court of Appeal never granted a hearing to Nizar's application submitted on May 13 to set aside Ramly's stay order, but instead, convened a hearing on May 21 to hear Nizar's appeal.

3

Court of Appeal Overturns Aziz's Judgment without Basis

After Court of Appeal judge Ramli Ali single-handedly and with lightning speed (less than 24 hours) ordered stay of execution of High Court judge Aziz Rahim's declaration of Nizar Jamaluddin as the lawful Menteri Besar of Perak, a Court of Appeal panel of three followed nine days later with a judgment overturning Judge Aziz's judgment.

24.05.2009

The pain was acute and deep when the verdict came, despite it being widely anticipated. The complete silence that greeted the Court of Appeal decision in favour of Zambry Kadir – in contrast to the uncontrollable jubilation that hailed the high court declaration of Nizar Jamaluddin as the lawful Menteri Besar only 10 days ago - spoke for itself. I believe the disappointment and suppressed fury prevailing in the court room this time was reflective of the feelings invoked across the nation when Justice Raus Shariff delivered the 5-minute oral judgment that marked a new low in our judiciary on May 22.

How can the nation not be disappointed when Raus' judgment is nothing but regurgitation of a list of the Appellant's (Zambry) arguments, void of any reasoned input by the panel which also included Justices Zainun Ali and Ahmad Maarop? How can we call this a judgment when the comprehensive and meticulous grounds of judgment of High Court Judge Aziz Rahim and the compelling submissions by the Respondent's (Nizar) lawyers are completely ignored and side-stepped?

Topmost of the Respondent's argument is that the Sultan has no power to sack a menteri besar. The court panel kept mum on this issue, and since the Appellant didn't dispute this contention either, it must follow that the

issue is settled – the Sultan has no such power. And since Nizar had not resigned when the Sultan appointed Zambry, then how could the court conclude that the Sultan was right in appointing Zambry? Unless of course, the court is saying that the Sultan is entitled to appoint a second menteri besar when the first one is still serving? But would anyone in his right mind suggest that?

Following the footstep of the Appellant, the court seems to be equally obsessed with the notion that Nizar had lost the majority, and corollary to that, anything done to get rid of Nizar is okay, as it complies with the democratic principle that the majority must rule.

This line of thinking is defective legally and constitutionally, as the transition of government must follow the rules laid down in the law and the constitution, failing which it is deemed illegal.

Sultan cannot sack Menteri Besar

In this country, even when the Monarch is satisfied that the head of government has lost majority support, the former has no power to dismiss the latter. This is made abundantly clear in our constitution (whether Federal or State) which expressly states that only the ministers – not the prime minister or chief minister (menteri besar) - serve at the pleasure of the Monarch.

In the case of Perak, even when Nizar has truly lost the majority (which is not at all the case), the Sultan has no choice but to wait for Nizar to resign before he can appoint another menteri besar, that is if the Sultan withdraws his consent to a dissolution of the state assembly.

Could we then consider this as a major defect in our constitution – a major oversight by the crafters of our constitution? Not at all the case, as our forefathers did not consider it likely that such an eventuality could occur – a head of government so shameless that he refuses to step down when he has truly lost the majority support. And they were proven right, as it has not happened in the past, neither is it happening now.

The crisis in Perak did not spring from Nizar's refusal to resign for having lost the majority, but was caused by his disagreement that that he had lost the majority. That was made abundantly clear to the Sultan during the audience on Feb 4 when Nizar stressed that there was a stalemate at the assembly following the resignations of three Pakatan assembly persons from the assembly and proposed that the assembly be dissolved. And when the Sultan's secretary released a press statement the next day, stating that His

Royal Highness did not consent to the dissolution of assembly but instead wanted Nizar to resign due to HRH being convinced that Nizar “had ceased to command the confidence of the majority of the State Assembly members”, Nizar quickly delivered a written appeal to HRH the same evening. In this appeal, Nizar refuted Barisan Nasional’s claim of majority, and reiterated that the assembly was tied at 28, as the Speaker had already accepted the resignation of three Pakatan assembly persons. Nizar further informed HRH that the Speaker and the Perak government had already applied to the High Court to declare that these three persons were no longer assembly persons.

This application is still pending in the high court.

Until this court case is finally settled, no one can claim majority in the assembly without a vote of confidence in the assembly that is legally and properly convened. But that wouldn’t be anytime soon as the myriad of interconnected suits and counter suits pending in the high courts would impede the holding of such a seating.

Assembly the final arbiter

Significantly as submitted by the Respondent, the Speaker also made an urgent appeal in writing to HRH on Feb 6 to convene a special seating of the assembly, but unfortunately this was not acceded to. So, instead of allowing the assembly to determine the vital question of confidence, the Sultan had relied on his personal interview with individual assembly persons in the Palace to form his judgment that Nizar had lost his majority, thus sparking off a chain of events that have badly shaken public confidence in the integrity and political neutrality of almost all the institutions of state under the Barisan Nasional leadership.

Can the Sultan supplant the assembly as the legal authority to ascertain the level of confidence the Menteri Besar enjoys in the assembly? High Court Judge Aziz has ably answered the question in his judgment on Feb 11. He said that reading Clauses 2, 5 & 6 of Article 16 of the Perak constitution together will lead one to logically conclude that it is the assembly that determines whether it has confidence in the Menteri Besar as head of the the Executive Council, as “the Executive Council shall be collectively responsible to the Legislative Assembly” (Clause 5). Since the Menteri Besar and his Exco are answerable only to the assembly and to no one else, why should the Sultan or for that matter, any third party be allowed to be the final arbiter as to whether the Menteri Besar has lost the confidence of the assembly and

therefore must quit? In other words, while it is the Sultan who appoints a menteri besar, it is only the assembly which can decide his fate.

Regretably, the panel led by Justice Raus had no answer for this remarkable ground of Aziz's judgment. And without giving a single instant of how Aziz has floundered, how could the panel conclude that "the learned high court judge erred in law when interpreting the Perak Constitution" and overturned his judgment?

Judgment collapses

It is clear that the panel's judgment has already collapsed on these two scores alone – that the Sultan has no power to sack the Menteri Besar, and that the Sultan cannot supplant the assembly to ascertain the confidence enjoyed by the Menteri Besar.

The saddest part is that this judgment is but one of a series of judgments handed down over the Perak crisis from the nation's highest courts – federal court and court of appeal – which have been widely criticized as politically partisan resulting in various dubiousities – blatant disregard of constitutional provisions, judgment without proper or written grounds or judgment in indecent haste. This only serves to confirm a widely held opinion that in the rarefied stratosphere of these courts, honesty and integrity are rare commodities, which must be the inevitable phenomenon of a system that rewards the compliant but dishonest and punishes the non-compliant but honest.

One can foresee that as Barisan Nasional continues to maintain its questionable hold of power in Perak, more and more of these abominable transgressions of justice will flood our radar screens as the host of legal cases unwind themselves through the higher courts. While these will inflict grievous damage to our national image, they will ironically hasten the day of real reforms as more and more people will become convinced that the only way to restore the rule of law is to have a regime change.

4

EC Over-rules Speaker – No By-elections!

After PKR assemblymen Jamaluddin Radzi and Osman Jailu had played 'missing' for one week amid swirling rumours of defection, speaker Sivakumar announced he had received the duo's resignation letters and notified EC accordingly. But EC rejected Siva's notification the next day (Feb 3). This rejection enabled Najib to stake his claim of majority to rule in Perak the following day.

04.02.2009

Just as Malaysians were held spellbound by another round of the country's unique brand of "missing persons" politics, we are hit by another bombshell – the unprecedented move by the Election Commission (EC) to overrule a decision by the Speaker of a legislature to accept the resignations of members of the legislature.

When newly installed election commission chairman Abdul Aziz Yusof announced on Feb 3 that two assemblymen of the Perak state assembly should continue to hold their positions as assemblymen, despite having received a notification from the speaker that these two had resigned, the EC was in fact telling the speaker: "Your acceptance of those two resignations is no damn good, we don't recognize it, so the two will remain assemblymen, and there wouldn't be any by-election."

Sure, the EC did not use these exact words to reject the speaker's decision, in fact, it said "EC decided that it cannot establish that vacancies have occurred", and went on to say "we have decided that both the seats will remain with the incumbents" and that there would be no necessity to call for by elections. But doesn't this amount to a flat rejection of the speaker's acceptance of those resignations, as without repudiating the speaker's decision, EC had no reason to declare that there was no vacancy?

But since when have we amended the law to allow the EC to take over the function of the speaker to accept or not to accept the resignation of members of the legislature? What legal standing does EC have to claim a say over the membership of a legislature? What legal power does EC have to interfere in the exercise of the speaker's authority to run the affairs of the legislature? And isn't the decision over the suspension or resignation of a legislator the exclusive domain of the speaker and the assembly?

Resignation a fait accompli

When speaker V. Sivakumar received the letters of resignation from PKR assemblymen Jamaluddin Radzi and Osman Jailu, he had every right to accept these resignations and thereafter to inform EC of these two vacancies. The act of resignation was considered complete when Sivakumar announced on Feb 1 that following his acceptance of those two letters, "they have stepped down as state assemblypersons with immediate effect". Next day Feb 2 at 8:00 am, Sivakumar personally handed his letter of notification of such vacancies to the Perak state election director Adli Abdullah.

So on what ground did the EC reject Sivakumar's decision over the resignation of Jamaluddin and Osman? EC chairman Abdul Aziz said in a press conference on Feb 3 that soon after EC received Sivakumar's notification on Feb 2 at 8:00 am, it also received one letter each from Jamaluddin and Osman claiming that their letters of resignation were invalid. The EC then claimed that these two letters had given rise to doubts over the validity of the resignation, hence its decision to maintain the status quo, meaning no vacancies and no by-elections.

Asked whether the two denied in their latest letters that they had signed their earlier resignation letters, Abdul Aziz said: "they do not deny (signing), but they do not agree with the date of enforcement of the letter". When a reporter asked: "so they claim the letters were invalid?" Abdul Aziz answered: "not valid, they deny the date of the letter as Feb 2, 2009". (*Malaysiakini*, Feb 3).

Dispute only on date

So, the crux of the issue is now boiled down to the date of the letter. Jamaluddin and Osman had said earlier that they had signed undated letters of resignation soon after the Mar 8, 2008 elections, presumably as a pledge of loyalty to their party PKR, in default of which their resignations would be tendered.

And since both had disappeared for almost a week and steadfastly failed to respond to frantic calls by PKR leaders amid swirling talks of their defections to UMNO, it should come as no surprise that the two resignation letters were delivered to the speaker for these to take effect as agreed solution for such eventuality as pledged earlier by the PKR legislators.

The point to note is that these two did not challenge the legality of such an arrangement of resignation that apparently serve to seal the relationship between the party and its elected representatives, they only dispute the timing of using such resignation letters, possibly on the premise that they had not yet declared their defection from PKR. In fact, through separate press conferences on Feb 2 when both again failed to appear themselves as promised, their supposed representatives read out press statements that claimed that they remained PKR members and denied they had resigned. They justified their continued non-appearance by claiming they were sick.

Now that Jamaluddin and Osman have objected to the timing of these resignation letters, what should the EC do – to act upon the speaker's notification and call for by-elections or accept the two letters as valid complaints and brush the speaker's notification aside? The EC has obviously chosen the latter.

This is of course a horrible blunder on the part of the EC, as it has no business to butt its nose into the correctness of the speaker's decision, whatever complaints it may receive from the resigned parties. The correct procedure in case of a dispute of such nature is for the assemblymen concerned to complain to the speaker, failing which they should seek redress through the courts, and EC should be the last body considered for settling such dispute. It is therefore unthinkable that EC should have taken upon itself in this case the role of a judge and ruled in favour of the complainants, virtually passing a verdict against the action of the speaker.

EC blunder inexcusable

The big puzzle is: how could an election body that has functioned for half a century have committed such fundamental error? What conclusion can we draw other than that the EC under the new leadership of Abdul Aziz, instead breathing a new life to the much discredited body with a higher level of independence and integrity, has in fact fallen into greater depth of subservience to the ruling power, taking into consideration that even the much criticized former EC chairman Rashid Rahman had the decency to publicly declare that the EC had only one option – to act on the speaker's notification to call for by-elections?

Najib's Fallacious 'Majority' In Perak

05.02.2009

Deputy Prime Minister Najib Razak announced in a press conference on Feb 4 that though the Perak State Assembly is tied between Pakatan Rakyat and Barisan Nasional at 28 vs 28, he had the support of three 'friendly independents' for the Barisan Nasional to form a majority state government.

Najib's claim of the majority of three is fallacious, because his so called 'friendly independent', former PKR assemblymen Jamaluddin Radzi and Osman Jailu, had already resigned on Feb 1. When Speaker V. Sivakumar received their letters of resignation on Feb 1, he announced on the same day that he had accepted the resignations and declared: "They have stepped down as state assemblypersons with immediate effect". Hence, these two men legally ceased to be assemblymen upon the speaker's announcement.

Subsequent announcement by the Election Commission (EC) on Feb 3 that these two men remained assemblymen had no legal effect on their status, as the legal authority to accept resignation and hence determine assemblymen's legal status within the assembly is vested with the speaker and not with the EC.

Under our laws, only a conclusive judgment in the court of law can restore the assemblymen status of these two ex-PKR members.

As for the third so-called 'independent' ex-DAP assembly woman Hee Yit Foong, she was reported to have resigned from the state assembly on Feb 4. *Sin Chew Daily* dated Feb 5 reported that Speaker Sivakumar faxed a statement to the press at 5 pm on Feb4 stating that he received Hee's resignation letter on the same day at 8:10 am and that he had already accepted her resignation, and he would soon contact the EC to arrange for a by-election within 60 days.

With this latest resignation from Hee, Perak assembly is now tied with a 28 vs 28 stalemate.

This is a classic case of a political impasse that is invariably resolved by dissolving the assembly for a fresh election.

As a constitutional monarchy practicing parliamentary democracy, it is the Sultan of Perak who dissolves the assembly under the advice of the Mentri Besar.

Mentri Besar Nizar Jamaluddin has already an audience with his Highness and is waiting for his consent for the dissolution.

In a country practicing democracy, consent for dissolution on legitimate ground is rarely withheld from the constitutional head, in keeping with the spirit of democracy which dictates that the people must be the final arbiters as to who should form the government.

In the current Perak case, withholding consent to the incumbent, or worse, appointing a new mentri besar from the opposition at this time could plunge the state into dangerous and prolong political turmoil when current political ambience is characterized by daily dramas of assemblymen "disappearing" or "hopping" or "double-hopping" or even "kidnapping".

A wise decision from the Sultan at this critical juncture of history will go a long way to enhance the people's faith in our system of constitutional monarchy, besides restoring stability to Perak, and improve the political ambience of the nation.

6

Federal Court Favours EC, Undermines Separation of Power

The oral judgment is flawed and must be reversed.

16.04.2009

The Federal Court erred when it ruled on April 9 through an oral judgment that the Election Commission (EC) could over-rule the Speaker's acceptance of resignations in the Perak State Assembly.

The Court's decision was in response to an urgent application by three assemblypersons who wanted a declaration whether it was the EC or the Speaker who had the final say over their disputed resignations. The Speaker had earlier accepted their resignations based on their pre-signed letters to this effect, but they – Jamaluddin Radzi, Osman Jailu and Hee Yit Foong – claimed that their resignations were invalid.

In the present oral judgment, the court's error appears to have sprung from a misinterpretation of the Perak State Constitution, Article XXXVI, Clause (5), which states:

“A casual vacancy shall be filled within sixty days from the date on which it is established by the Election Commission that there is a vacancy.”

The main purpose of this clause is actually to stipulate that a) a vacancy must be filled when it arises and b) it must be filled within 60 days. The words “from the date on which it is established by the Election Commission that there is a vacancy” is actually intended more for the purpose of defining the period of 60 days rather than for empowering the EC to be the final arbiter as to whether a resignation in the legislature is valid or invalid. If it is the latter, it would have been so stated in unambiguous language.

When the court says “The Election Commission is the rightful entity to establish if there was a casual vacancy in the Perak state legislature”, it does not really address the issue. The crux is not whether the EC establishes a vacancy – for that is obvious as without a vacancy you can’t have a by-election – but how it establishes a vacancy.

A vacancy is established when there is a resignation. But who receives the resignation? Surely, it is the Speaker. If there is an argument over a resignation, which authority should deal with it? Surely, it is also the Speaker, failing which, it is the Assembly. Can the EC poke its nose into the mechanism through which such matters are resolved in the legislature? Surely not, for that would amount to an intrusion into the autonomy of the legislature and a violation of the fundamental constitutional principle of separation of power. Such privileges of the legislature are clearly guaranteed under the Federal Constitution, Article 71, clause 1, which states:

“The validity of any proceeding in the Legislative Assembly of any State shall not be questioned in any court.”

If even the judiciary cannot meddle into the affairs of the legislature, can the Election Commission do that?

So, when the Speaker, who acts on behalf of the Assembly, notifies the EC that an assemblyman has resigned, the job of the EC is pure and simple – declare that a vacancy exists and arrange for a by-election within 60 days. It is the height of absurdity for the EC to brush the Speaker’s such notification aside, just because the assemblyman concerned sends in a letter disputing the validity of his resignation, as happened in the case of Jamuluddin Radzi and Osman Jailu when EC declared their respective seats as not vacant on 3 Feb 2009.

The present Federal Court ruling allowing the EC to over-ride the state legislature has not only undermined the autonomy and independence of all state assemblies, but will also open a dangerous gateway for the EC to encroach into the sacrosanct preserve of the nation’s supreme body – Parliament. Since this judgment comes from the nation’s highest court, it will stand as precedent to guide future judgments in all courts on this issue and it therefore amounts to a distortion to our constitutions.

The immediate impact of this judgment on the current political impasse in Perak is serious, as it will unjustly and unconstitutionally alter the balance of power in favour of Barisan Nasional once the Assembly is convened, which is expected to be imminent.

It is therefore imperative that an urgent application be made for a judicial review now to rectify this constitutional distortion to avert imminent injustice in the Perak Assembly as well as to protect all legislatures including parliament from undue interference from the EC in the future.

Federal Court Errs to Favour EC

This is the written judgment of the Federal Court of its ruling delivered orally on April 9.

17.06.2009

In a written judgment by Justice Nik Hashim Nik Rahman, the Federal Court empowers the Election Commission (EC) to over-rule the Speaker over the resignations of the three ‘independents’ in Perak and declares they retain their status as assembly persons.

This judgment, released on June 15 - sixty seven days after the oral judgment was given by the panel of five judges on April 9 - is flawed on two scores.

First, the court has misinterpreted the Constitution to wrongly declare the EC – instead of the Speaker – as the authority to decide whether a resignation in the legislature should be accepted.

Second, even if the court is correct in giving EC the role of the final arbiter in respect of resignations in a legislature (which is decidedly wrong in law), the court has no business to declare that the three ‘independents’ remain as assembly persons.

The kingpin of the court’s argument is Article 36(5) of the Perak Constitution, which reads:

“A casual vacancy shall be filled within sixty days from the date on which it is **established** by the Election Commission that there is a vacancy.”

Pouncing on the word “established” as conferring an executive power to deliberate on the legality of the resignation of a legislator, Nik Hashim asserts that “the Election Commission has the right to enquire into any matter relating to the purported resignation.” He further states that “Under Article

35 of the Perak Constitution, the Speaker's role is limited to receiving the written resignation letter of the assemblyman and forwarding the same to the Election Commission which will then by its own procedure determine whether a casual vacancy has arisen or not". (Article 35 reads: "A member of the Legislative Assembly may resign his membership by writing under his hand addressed to the Speaker.").

If Nik Hashim's interpretation of the Constitution is correct, hasn't our poor Speaker been reduced to a mere messenger boy for the EC whenever a resignation in the Assembly or dispute arising wherefrom crops up?

Surely our founding fathers and the crafters of our Constitution, which is built on the principle of separation of power, could not be so dim-witted as to allow such a piece of nonsensical legislation to slip through their fingers?

Misconceiving the word 'established'

Actually there is nothing wrong with the legislation. The problem is with the interpreter of the constitution. Nik Hashim has obviously misconceived the real function of the word "established". Interpreting it out of context, he conjures up powers to the EC that are not intended and non-existent in the Constitution.

Any experienced reader of the constitution should be able to discern that Clause 5 of Article 36 of the Perak Constitution was intended to stipulate that a casual vacancy must be filled when it arises, and that it must be filled within a certain period. The word "established" is used in the context of defining the sixty day period within each the vacancy must be filled, and not to be used as implying the granting of executive power to the EC to micromanage the mechanism of an act of resignation in a legislature.

If it is intended that the EC be given such an important function as manager and final arbiter of resignations in a legislature, is it conceivable that the crafters of the our constitution had camouflaged it in such cavalier fashion, and not expressly spelling out the details under a separate clause? In fact, it is equally inconceivable that our founding fathers could have agreed to such provision due to its fundamental contradiction with the doctrine of separation of power.

In Malaysia, and in fact in legislatures all over the democratic world, it is always the Speaker who scrutinizes and acts upon the resignation of a legislator, and should there be any dispute which the Speaker could not resolve, the Assembly will act as the final authority to settle the outstanding

issues. In the worst scenario where criminality is alleged, such as forged signature or undue coercion, the aggrieved party can always seek redress through the courts. But under no circumstances should the EC involve itself in any such matter which is deemed the exclusive domain of the assembly, outside the jurisdiction of not only the EC but also the courts. The latter could only come in, if there is incidence of criminal elements.

EC's hollow authority

Nik Hashim may be technically correct when he rules that “the Election Commission is the rightful entity which establishes if there is casual vacancy of the State Legislative Assembly seat”, but such function to “establish” vacancy is a hollow authority – a mere formality to announce a vacancy upon notification from the Speaker of a resignation, as the bulk of action in a resignation takes place at the Speaker’s end, not at the EC’s.

When the Speaker receives a letter of resignation, he scrutinizes its authenticity, and satisfies himself that the resignation is genuine before accepting it. And upon his notification to the EC to this effect, the legal act of resignation is deemed complete. And since the EC has no legal power under the Constitution or any law to undo this resignation, it should treat the Speaker’s notification as legal command to fulfill his constitutional obligation to declare a vacancy and a by-election date.

In the Perak case, the EC had clearly acted *ultra vires* the Constitution when it rejected the Speaker’s decision and refused to conduct by-elections.

The current Federal Court judgment endorsing such unconstitutional act has caused a grave distortion to our Constitution and opened the floodgate for potential interference by EC into issues of resignations in our legislatures including parliament.

This judgment must therefore be promptly reversed through a judicial review to avert permanent damage to our system of government under the principle of separation of power.

I have said at the beginning of this article that the Federal Court has no business to declare that the status of the three ‘independents’ be maintained as assembly persons. This is because this court hearing is just to interpret the meaning of the Constitution pertaining to the EC’s power in respect of the resignation of a legislator, and not to look into the legality of the specific act that the EC had taken in respect of the resignations of the three ‘independents’ in the Perak Assembly. As such, the Federal Court has no

legal basis to make declarations that the assemblymen status of the three 'independents' be maintained. That decision is up to the High Court in Ipoh, where such litigation is still on going.

8

Police 'Replaced' Perak Speaker by Brute Force

08.05.2009

The Barisan Nasional (BN) government has probably scored another first in the world. It has sent its police force to enter a state legislative assembly hall to physically haul the sitting speaker out of the assembly hall and escort another speaker of its choice to take over the empty seat during a melee. Through this act, BN claimed that it has successfully ousted the Pakatan Rakyat speaker S. Sivakumar.

We have seen scuffles between opposing legislators in legislative assemblies in other parts of the world, notably in Taiwan and South Korea. And we have also seen Sergeants-at-arms getting physical in such situations. But I don't believe there is a precedent anywhere that the police force enters a legislature to take control of events – least of all, physically evicting an incumbent speaker and physically installing a new speaker from the opposing camp, like what happened in the Perak state assembly on May 7.

Under the doctrine of Separation of Power, upon which the Malaysian Constitution is founded, neither the Executive, nor the Judiciary can meddle into the affairs of the legislature. As the supreme body of a government and as an independent institution, the legislative assembly enjoys autonomy and has always been meticulously out of bounds to the police force.

Sending a horde of police personnel into the assembly hall to forcibly enforce a decision of one party against another is therefore a heinous and unforgivable act of violation of the fundamental principles of our Constitution. First, the police should never intrude into the sacrosanct ground of the assembly safe as requested by the speaker; and second, the

police should never take side in a political dispute, as it should at all time act as a politically neutral body to enforce law and order.

The pandemonium that broke out in the Perak Assembly is rooted in a tussle for legitimacy to govern the Perak State. The constitutional crisis exploded in early February when the Ruler appointed a new Menteri Besar from BN when the incumbent Pakatan Menteri Besar had not resigned, resulting in two parallel governments. The issues that complicate the impasse now are:

- a) whether the three defectors from Pakatan did or did not resign as assemblymen
- b) whether the suspension of BN Menteri Besar Zambry Kadir and his six executive councilors for 18 months and 12 months respectively from the assembly are valid
- c) which of the two – PR's Nizar Jamaluddin and BN's Zambry Kadir – is the rightful Menteri Besar

All these three issues are now being legally contested in a web of suits and counter suits in the high courts, the eventual outcomes of which may take years to decide as they wriggle their ways to the higher courts. The obvious, and in fact the only practical solution to the stalemate is a dissolution of the assembly and return the mandate to the people of Perak. Failing which, the Perak crisis will continue to fester as unbearable political and economic sore to not only Perakians but to all Malaysians.

Meanwhile, BN must not be too quick to celebrate their 'success' in physically evicting the incumbent Pakatan speaker Sivakumar, as physical eviction is not necessary the same as legal eviction. As rightly pointed out by Pakatan Menteri Besar Nizar Jamaluddin and speaker Sivakumar, the motion of no confidence against speaker Sivakumar was null and void as he had not even convened the meeting yet when the motion was proposed by Zambry. Besides, Siva had already issued a letter of rejection of the motion a day earlier, in exercise of his power as speaker under the standing orders.

As for the police violation of the Constitution, the prime culprits ultimately responsible for this debacle are the Inspector General of Police Musa Hassan and Home Affairs Minister Hishammuddin Hussein. In any established democracy, they will have to defend their honour by offering to resign. However, short of resignation, the least they should do now is to offer an apology to the nation.

9

Speaker vs Speaker: Judge Azahar Slapping His Own Face?

09.09.2009

A tragic yet hilarious court proceeding took place in the Ipoh high court on Sept 8 when the judge blatantly contradicts himself in dismissing a suit brought by Perak's Pakatan Rakyat speaker against the state's Barisan Nasional speaker (yes, two speakers in the Perak assembly).

Judge Azahar Mohamed rejected V Sivakumar's suit to seek damages from R Ganesan for assault and false imprisonment during the chaotic and violent state assembly sitting on May 7. He said the court had no jurisdiction to hear the case due to Federal Constitution Article 72 stipulating that "the validity of any proceeding in any state assembly cannot be questioned in any court".

And yet in the same breath he declared that "the decision of the legislative assembly to remove the plaintiff as speaker and to appoint the defendant was conclusive and had been fairly determined by the state assembly on May 7, 2009."

Now, the crux of the entire contention between the two speakers is: who is on the right side of law in the violent tussle for the speaker's chair on May 7? By declaring Ganesan as the rightful speaker, Judge Azahar is in fact making a legal judgment. Is that not a breach of Article 72? How come he has no jurisdiction to hear Sivakumar's grievances but has jurisdiction to judge Ganesan as legal speaker? Is that not a contradiction of the highest order?

Apart from this atrocious double standard applied by the judge, the main flaw of the judgment is the inability to differentiate between assembly proceeding and criminal behaviour. What Sivakumar is seeking is redress for the unlawful physical violence inflicted on him. And Article 72 covers only

businesses conducted in the assembly – not unlawful and criminal act.

Judge Azahar has therefore wrongly used Article 72 to come to his judgment. To make it very clear that this is the case, I will quote in full the relevant clauses in Article 72 (Clauses 1 & 2) and explain the reasons why.

Clause 1: “The validity of any proceedings in the Legislative Assembly of any State shall not be questioned in any court.”

Clause 2: “No body shall be liable to any proceedings in any court in respect of anything said or vote given by him when taking part in proceedings of the Legislative Assembly of any State or of any committee thereof.”

Note the operative words “proceedings” in Clause 1 and “anything said or any vote given” in Clause 2. It is abundantly clear what Article 72 refers to are the speeches and resolutions made in the assembly, not any criminal or unlawful act.

But what happened on May 7 was complete pandemonium and chaos in the assembly hall. There was no chance to conduct any business at all, least of all any resolution passed. In fact the only business done on that day was the address by the Perak Regent Raja Nazrin Shah.

And how was Sivakumar “replaced” by Ganesan during that pandemonium?

While Sivakumar was sitting in the speaker’s chair, hordes of police personnel entered the assembly hall, allegedly on Ganesan’s order, and physically lifted, carried, dragged and moved speaker Sivakumar into a room where he was forcibly detained until the assembly sitting was over. And as soon as Sivakumar was removed from the hall, police personnel escorted Ganesan into the hall and ushered him to the speaker’s chair, with police personnel making a line to stand guard in front of Ganesan to prevent any assemblymen from reaching the speaker’s chair.

The entire tragedy-comedy was stage-managed by the police, and it is therefore more appropriate to say that while Sivakumar was elected by the assembly through a resolution, Ganesan was physically planted into the speaker’s chair by the police. And that about sums up what happened on that tragic-hilarious day.

And since Judge Azahar appears to be so respectful of the constitutional principle of separation of power as demonstrated by his professed adherence to Article 72 – which is the constitutional provision protecting the autonomy of the legislature – is it not puzzling that he should have chosen to ignore

completely the heinous violation of the doctrine of separation of power when hordes of police personnel invaded the assembly to physically replace one speaker with another? Is it not another shining example of double standard in the Malaysia Boleh tradition?

After the series of judicial decisions that appear to wantonly trample on the constitution and the law - particularly those related to the separation of power - following the shameful power grab in Perak, the latest low represented by Azahar's decision makes us wonder how much lower our judiciary can sink into, as many more judicial decisions in the same series are still pending.

BN Rule in Perak Turned Barbaric

30.10.2009

After the nonsensical assembly sitting in Perak on Oct 28, Barisan Nasional should deeply reflect whether it is worthwhile to prolong its farcical rule in the Silver State.

To say the least, the session was a complete wash out.

First, police control and intervention inside and outside the assembly was so heavy and so overpowering that it has completely destroyed the image of our legislature as being independent and the highest institution in our system of government.

Second, the slipshod manner with which BN's budget motion was rushed through makes us wonder whether the budget was legally approved.

Let us start with the budget approval.

BN's Mentri Besar Zambry Kadir started his budget speech at 1120 hrs, and thirty minutes later, he had not only completed his speech, but had moved his budget motion through three readings. Each one reading was approved by the BN assemblymen present, under vocal protests from Pakatan assemblymen. There was no debate and no one seemed to have heard any detailed figures – if figures were read out then, these were not carried in many newspapers the next day anyway. Pakatan assemblymen walked out of the assembly immediately after the approval of the third reading.

A budget proposal is a statement of revenues and expenditures as well as major policies that encompass the entire government which is made up of many departments. So, it is normally a lengthy speech, followed by debates that take place during each of the first, second and third readings. It is hence a real marvel how the assembly could have compressed such elaborate process of proposal, deliberation and decision in all the three

stages in the short interval of half an hour.

Through such gun-shot approval, the voices of the people who speak through their representatives are muted. Isn't this a mockery of our democratic process and betrayal of the trust of the people?

Can we then call the budget legally approved?

2 Speakers 1 Perak

On top of that is the questionable legality of Ganesan's position as speaker. His election as speaker on May 7 was deemed fraudulent, as the assembly session on that day was so chaotic and violent that it was not possible to conduct any business except the delivery of the opening speech by the Regent. Compounding this now is Ganesan's breach of the Perak Constitution Article 36 A (5) which stipulates that a speaker must relinquish his private practice immediately or in any case not later than three months after his appointment, failing which he shall be disqualified. So, even if Ganesan's appointment on May 7 was legal (which is not at all the case), he was already disqualified on Aug 7.

With an illegal speaker presiding in the assembly, can any business be conducted legally, least of all the all important agenda of the state budget approval?

Without an approved budget, wouldn't the BN-controlled government machinery be spending money illegally?

No doubt, BN may be least worried about matters of illegality, confident of its iron-grip on the entire government machinery to serve its parochial interests. After all, isn't BN Mentri Besar Zambry's appointment, made while incumbent Mentri Besar Nizar Jamaluddin was still serving, also illegal if only the courts have been upholding the constitution? Isn't the entire state cabinet, which was selected by Zambry, also illegal?

But can BN afford the massive loss of popular support every time the police manhandle and bully elected representatives from the opposing camp or judges dishing out blatantly unconstitutional rulings?

Barbaric police intervention

Take the ridiculous scenario of the Perak assembly of Oct 28. The entire assembly compound was turned into a virtual war zone, with the entrance being protected by the kind of barbed wire seen only in war time. Hundreds of policemen and a riot squad who had been milling inside and outside

the building manned the five check points stretching from the gate to the door of the assembly hall. Pakatan assemblymen complained of harassment every inch of their way to the last check point, where they were subjected to the humiliation of a body search and metal scan. They also had their personal effects of hand phones, lap-tops, cameras etc forcibly removed before they entered the hall.

On his way to the assembly hall, Speaker Sivakumar was lured to an area not visible to reporters and the public where he was pounced upon by scores of police personnel who forcibly disrobed him. In the melee, he was punched and strangled with an arm lock, and his colleagues roughed up for trying to protect him.

Pray, where in the world can you see such barbaric act? Not even in the pariah state of Zimbabwe!

The picture inside the assembly hall is not any prettier. Scores of police personnel were there to man the entire assembly, with twenty of them forming a protective wall in front of the BN speaker Ganesan. And video cameras were transmitting live the activities of Pakatan assemblymen to the state police headquarters and the national headquarters at Bukit Aman, according to a *Malaysiakini* report.

Now, isn't this the ultimate humiliation and insult to the highest institution of a democracy, with the police contemptuously treating our Pakatan law makers as a bunch of criminals?

BN must make up its mind once and for all. Does it still want to put up the pretence that Malaysia is a democracy? If it does, should it continue to bombard our senses with such disgusting scenes and bare to the world the ugly truth of what Malaysia truly is?

MB vs MB: Federal Court of Judicial Pillars or Political Stooges?

16.11.2009

There was deep disappointment and angry resignation when the Federal Court panel of five sat on Nov 5 to hear the Nizar vs Zambry appeal, immediately after rejecting Nizar's request for a full panel to hear the case.

The appearance of the five judges alone was sufficient to impart the sense of foregone conclusion, for these are familiar faces that appeared in the series of hearings of the Federal Court held in respect of the current Perak constitutional crisis, and they all seemed to lean towards the Barisan Nasional.

The first three - Alauddin Sheriff, Arifin Zakaria and Zulkefli Makinudin – are virtually permanent fixture in the 'Perak cases', while the remaining two – Ghazali Yusoff and Hamid Embong – have also been involved. One cannot help but wonder: what happened to the rest? Why can't we have fresh faces to also impart their wisdom over such a grave constitutional crisis?

What about the eminent Chief Judge of Sabah and Sarawak, Richard Malanjum, whose seniority was only next to Alauddin Sheriff (President of the Court of Appeal), and whose judgments often won admiration of the legal fraternity and the general public alike. He has not sat in a single case. Why should the country be deprived of the opportunity of tapping into his rich experience and much valued judgment?

Then, what about our very senior Justice Gopal Sri Ram – an appellate court judge since 1994 – who is distinguished by his deep legal knowledge and sound judgment delivered without fear or favour.

Surely, the participation of Malanjum and Sri Ram will restore some credibility to a judicial system already teetering on total mistrust, thanks to

the long string of judicial decisions which have been perceived as blatantly biased and politically partisan since the crisis started in February this year.

Show of Arrogance to Reject Full Panel

This is the third time that the Federal Court rejected NiZar Jamaluddin's request for a full panel. And what irked the public is the court's arrogance in rejecting the lawyers' earnest, compelling and unassailable plea without bothering to offer the reasons of rejection.

That the coming court decision will be of paramount importance is underlined by the fact that it is expected to define the power limits and the inter-relationships of the triangle of King-Prime Minister-Parliament, though the case is over the Perak constitutional crisis. This is because state constitution and federal constitution are similar in these aspects of the law.

An affirmative decision in favour of Zambray will mean that in future the King is vested with the power to sack a Prime Minister. More than that, he can do so without the involvement of Parliament. This of course will mean the negation of the fundamental principles of democracy upon which this nation was founded.

Facing such a momentous decision, is it too much to ask for a full panel, or at least as wide a spectrum of judges as possible, to deliberate on an issue which may make or break our democratic system of government?

Since the Federal Court has convened panels of seven judges to hear drug related cases in the past, why can't it convene a bigger panel for the current case, since the issues involved are many times more important?

And why make the 'Perak cases' the exclusive domain of the few judges who are already looked upon with increasing dismay by the public for their perceived political partisanship? Why meticulously keep these cases out of bound to the well regarded judges?

Doesn't Chief Justice Zaki Azmi, who only a short while ago was an UMNO stalwart, owe the nation answers to these perplexing questions?

Court of Appeal erred

The court completed hearing in one single day of Nov 5, the submissions from the lawyers of both the Appellant (Nizar) and the Respondent (Zambray) as well as from Attorney General Gani Patail. The latter appeared as intervener to help interpret the Perak and federal constitution, though in actual fact, he acted more like an attorney for the Respondent.

The arguments from both sides are largely repetitions of those presented in May in the lower courts, with the exception of the Appellant putting in some fresh arguments. A new input was that the Sultan should not have taken upon himself to interpret the constitution like what he did in his press statement of Feb 5 that considered the posts of *mentri besar* and his *exco* vacant if they refused to resign. Interpretation of the constitution should be left to the court. Another point was that as a constitutional monarch, the Ruler was duty bound to take advice only from his *mentri besar* – not any other including then Deputy Prime Minister Najib Razak.

The bulwark of the Appellant's case, as submitted in the lower courts, remains that the Sultan is not empowered under the constitution to dismiss a *mentri besar*, and that only the assembly, through a vote of confidence, can dismiss him. The Appellant also hammered home the point that the Court of Appeal's rejection of Nizar as the rightful MB was flawed in that it had failed to take cognizance of the fundamental findings of High Court judge Aziz Rahim.

And the Respondent continues to maintain its contention that BN had the support of the majority of assemblymen and that the Sultan is entitled to determine which party had the majority support, stressing that nothing in the Perak constitution stipulates that such determination of support must be made in the assembly floor.

AG Gani Patail said the Ruler had taken upon himself to determine who had the majority support. He said: "A press statement issued by the Perak ruler revealed this, where he was satisfied that BN had the majority, and therefore, Nizar's post – despite his refusal to resign – was deemed vacant".

Note how Gani avoided using the word "dismiss" on Nizar.

In fact, none of Zambry's lawyers or Appellate Court judges had claimed that the Ruler had the power to dismiss Nizar. They only claimed that Nizar's post had become vacant.

But without Nizar resigning, how could the post become vacant, and how could the Ruler appoint another *mentri besar*? This is the mother of all questions that the judges must answer before any one can rule that Nizar has lost his post.

Extreme treatment against Nizar unjustified

On reflection of the Respondent's case, perhaps we should explore a new perspective. Let us ask: what has Nizar done to deserve such extra-ordinary treatment – his support being ascertained by the Ruler personally, ordered to resign immediately, failing which his post was "deemed vacant"?

Had Nizar caused our democratic system of government to come to a dead end, which would have been the case if he had lost the majority support and yet clinging on to power by

- a) failing to advise the Ruler to dissolve the assembly, and
- b) refusing to subject himself to a vote of no confidence?

Did Nizar do any of these?

No! In fact, he did the opposite. He repeatedly advised the Ruler to dissolve the assembly due to a stalemate, but was turned down. He wanted an emergency session of the legislature to resolve the stalemate; that was also turned down.

Since Nizar had committed none of the sins against the principles of democracy as enshrined in our constitution so to speak, what justification was there to subject him and his cabinet to such extreme treatment as described?

That begs these further questions:

- Why was the Ruler in such a hurry that he couldn't wait for a short while longer to let the assembly meet to resolve the impasse?
- And why did he reject his *mentri besar*'s advice to dissolve the assembly when it was apparent that there was a political impasse – a classic case of instability which is always resolved by returning the mandate to the electorate?

Granted that the Ruler has the discretionary power to withhold consent to a dissolution of legislature, but should a constitutional monarch exercise that power without accountability?

The time has come for our highest court to put things right. This is a rare opportunity for our judiciary to redeem its tattered image and for the judges to shine with their judicial integrity.

The stakes involved are so high and grave that whatever decisions they make, each and every one of the panel should have the courage and dignity to stand up for their views for which they must write their individual judgments, unlike the recent practice of hiding under a single judgment, claiming it to be unanimous decision.

The Altantuya Murder

Mongolian Murder a Potential Time Bomb?

14.01.2007

Anwar Ibrahim's recent call to widen police investigations into the Mongolian model's murder is a stark reminder that all is not well with the Malaysian government's handling of this murder case. In fact the standard of transparency and accountability falls so short of that practiced by a democratic country that once again we are painfully reminded of the perversion of justice that took place in the infamous persecution of Anwar Ibrahim eight years ago. The injustice then was to condemn and persecute an innocent man. This time, it is perhaps to protect one guilty of murder.

As in the earlier Anwar case, democratic institutions – police, attorney general's chamber, judiciary and the media - seem to have been mobilized again to act in concert, in a critical damage control exercise, upon which may hinge the fate of the power structure of the country. However, before delving into these details, let us take a perspective view of the case.

At the heart of the scandal is a beautiful Mongolian girl, Altantuya Shaariibuu, who was rather erroneously known as a model, but in fact a multi-lingual interpreter and translator, said to be conversant in Chinese, Russian, English and French. She was alleged to be a lover of Abdul Razak Baginda, a political analyst and a confidante of the Deputy Prime Minister cum Minister of Defence Najib Tun Razak. The pair were said to have frequently traveled together on business trip.

The gravity of Altantuya's bizarre murder – shot and blown to pieces – looms from its indirect link to Najib, as two of his body guards were charged for killing and Razak Baginda for abetting; and the explosives used were no ordinary explosives, but high power C-4 which was in the exclusive custody of the ministry of defence. Compounding this gravity was another scandal also indirectly linked to Najib via Razak Baginda, whose company was the

dubious recipient of an exorbitant commission paid out in connection with the multi-billion purchase of submarines by the ministry of defence.

So Najib, who in many ways acts like the *de facto* leader of the country, has become the ultimate focal point of two explosive scandals, albeit linked to him indirectly.

That this scandal touches the nerve centre of the top political hierarchy is apparent from the extra-ordinary treatment accorded to it by the police, attorney general's chamber, judiciary and the local media. The local media's collaboration was most recently demonstrated in the blackout of news on the Anwar Ibrahim press conference on Jan 10, where apart from calling for wider probe, he also bombarded the authorities with a series of incisive questions which would have hit headlines if Malaysia has free press.

The police

Starting with the police, why was Najib not queried? (Reuters on Jan 10 quoted a government source saying that no one else had been questioned other than the three accused). The police had no possible justification not to question Najib, as the alleged murderers and the explosives were in his domain.

Keep in mind that these body guards are from the Special Action Force where they were trained for extreme duties and absolute obedience, and that they had no apparent motive on their own to annihilate the girl. Take note that Razak Baginda was not charged for ordering but abetting the murder (he couldn't have ordered any way since he had no authority over them). So who had ordered the body guards to abduct the girl while she was attempting to enter Razak's house and later killed her? Shouldn't the police have been curious to find out some answers from the body guards' immediate boss (Najib) as to why and how they had embarked on such a violent venture? What inference can we draw when the police failed to act as it should have in regards to Najib? Or do the police know what the public don't?

And why have the police been extremely tight-lipped over details of the case, with the head of the criminal investigations department (Christopher Wan) remaining steadfastly mum?

Why has the Inspector General of Police (Musa Hassan) taken the most unusual, and in fact, unprecedented measure of taking personal charge of this investigation?

Is it proper for the police to hide crucial facts of the case when the news have been hogging international headlines, casting aspersion on the

integrity of the government?

Being also minister of security which controls the police force, Prime Minister Abdullah Badawi is directly responsible for proper police conduct over this investigation. Though he was quick to pledge a no-holds-barred probe and due punishment to the culprits irrespective of status, his words have not been matched by deeds.

Prosecutor and judiciary

Murder is a non-bailable offence. When Razak was granted bond (without security) on Nov 23 and again extended on bail on Dec 14 on the questionable ground of having had bronchitis, both the prosecutor and the high court judge were seen as acting with partiality in favour of the accused, as such bail was rarely granted, save on grounds of extreme health hazard.

On Jan 5, Razak's application for extension of bail was rejected, to almost every one's shock. However, the rejection was not against the application per se, but against it being submitted in the oral form. The judge then fixed Jan 19 to hear the application which will be submitted in the written form.

However, impatient to wait till Jan 19, Razak appealed and was granted a hearing by the Court of Appeal on Jan 11, when it rejected the appeal on the ground that there was no judgment for the court to deliberate, as the high court had yet to hear the application on Jan 19.

Apart from dereliction of duty in failing to oppose bail, the deputy public prosecutor (Salehuddin Saidin) from the A.G.'s chamber had also acted improperly when he ruled out the possible involvement of parties other than the three accused when the investigation is manifestly incomplete and the alleged killers lacked motivation to kill on their own. His overzealous push for such a premature conclusion has thus fanned further speculation on the existence of a real master mind behind the three accused.

Perhaps what disappoints the public most is the distant date fixed for the hearing – March 10, 2008. Judge K.N. Segara's explanation of 'first come first serve' cuts no ice. For an important case like this, where the integrity of the highest strata of the government is brought into question at home and abroad, the court has every justification to allocate priority, since it is in the public interests to have justice served to regain public confidence at the earliest. Here again, we are reminded of the contrast in treatment accorded by the court between the Anwar Ibrahim trial for corruption (no money involved) and the Altantuya murder trial. If the Anwar trial could commence in just over a month from his arrest, why can't the present murder

case, which involves an offence many times more serious, be also given an expeditious trial? Does this not confirm the oft-repeated accusation that our judiciary acts under the dictates of the Executive – insignificant charges have been tried on express lane, while trials for grave charges can be pushed off, if such arrangements suit the political interests of the power that be?

The Submarine lead

The key to any murder case is the motive. This is where we have to bring in the submarines deal scandal, for Altantuya's apparent part in it may provide an important lead to the motivation of this murder.

Reports from Mongolia have thrown light on Altantuya's working relationship with Razak Baginda. Based on an interview with Altantuya's father Professor Shaariibuu, a certain report indicated that the Professor had established from Altantuya's documents that the latter had been rendering translation and secretarial services to Razak, interpreting for him in high level meetings and negotiation. In particular, she had assisted Razak in the submarines deal. The Professor further stated that the main purpose of Altantuya's final trip to Malaysia was to demand settlement of the fees due to her.

Such demand for fees would have been treated as an ordinary affair, if not for the fact that there is a dark side to this submarine deal.

The Malaysian ministry of defence pays one billion euros (RM 4.5 billion) to the vendor Amaris (French/Spanish JV) for three submarines (including a used one), for which transaction, Razak's company Perimekar receives a commission of 114 million euros (RM 510 million) from Amaris. The commission is a whopping 11% of the sales value, a ridiculously high figure that suggests improprieties. Excessive as the figure might sound, the true hidden leakage could be very much more if consideration is given to the fact that the sales was not conducted through competitive tenders.

Being the interpreter, who happened to be a charming person, Altantuya could have played an important role in sealing the deal. And considering that this is a deal where money flows freely, it would not be far fetched to imagine that Altantuya could have been promised a more than generous fee, in addition to privy to information that could not be leaked out without causing grievous damage to others.

Under such circumstances, Altantuya could be looked upon as an unwelcome and dangerous visitor if there were irreconcilable differences between her and her Malaysian clients, whether these arose from pecuniary

conflicts or sexual entanglement as widely rumoured.

It is obvious that investigations into the murder case cannot be meaningfully pursued without at the same time probing into the submarine deal scandal. In this connection, the participation of our docile Anti-Corruption Agency is long overdue.

This is the time when Prime Minister must show his leadership by personally ensuring that these two law-enforcing bodies under his portfolios – police and ACA – work hand in hand to expeditiously secure a full and fair investigation into the murder case as well as to bring the corrupt to book in the submarine corruption scandal. He should further ensure that the judiciary and the attorney general's chamber be allowed to deliver justice without interference from the Executive.

The Altantuya Murder: Justice On Trial

Explosive testimony on the photo allegedly showing Najib & Altantuya together was suppressed. Court irregularities abound.

02.07.2007

An unbelievable spectacle took place in the bizarre murder trial of Mongolian beauty Altantuya in Day 10 (June 29). When the family lawyer (Karpal Singh) of the murdered victim attempted to ask the deceased's cousin a question regarding "a government official" photographed together with the deceased, prosecutor and defence lawyer acted in unison to thwart the question. This resulted in a shouting match, with Karpal Singh on one side, confronted by the combined forces of prosecutor and defence lawyers on the other.

On an earlier day (Day 7, June 26), a similar division of forces in the court occurred when a Mongolian witness told the court that the immigration entry computer records of the deceased and her two Mongolian companions (including the witness) had been mysteriously erased. While Karpal Singh asked the court to take proper note of this highly irregular event, both prosecutor and defence lawyer objected to this evidence as irrelevant, and insisted that it be expunged.

Now, isn't that a strange phenomenon? A prosecutor is supposed to seek justice for the deceased victim's family against the murderers, so how come the prosecutor is now ganging up time and again with defence lawyers to oppose the victim's family lawyer? Is this a case of prosecutor vs defence or a case of (prosecutor + defence) vs victim's family? Obviously, prosecutor and defence seem to have plenty of common interests which contradict those of the victim's family. What is that common interest?

The answer may lie in the identity of that "government official" that

appeared in the photograph with Altantuya that both prosecutor and defence tried so hard not to allow its exposure.

The taboo photo

On Day 10, Altantuya's cousin Ms Burmaa Oyunchimeg testified that after Altantuya returned from France, Altantuya went to Hong Kong to meet the witness, and showed the latter a photograph that shows Altantuya, her alleged lover Razak Baginda (the third accused) and "a government official" taking meal together. Answering Karpal Singh later, after the shouting match in the court had subsided, she said this "government official" was Najib Razak. She could distinctly remember this name because it bears similarity to her cousin's alleged lover's name, and she even asked Altantuya whether they were brothers. Burmaa further added that the photo had also been shown to Altantuya's father.

Now, the revelation of Najib Razak in the photo would not have caused such a sensation if not for the Deputy Prime Minister's oft repeated denial of any knowledge of Altantuya, including a public denial during the recent Ijok by-election, when even the name of Allah was invoked.

What does DPM Najib Razak have to say now that his denial is directly contradicted by witness Burmaa? His press secretary Tengku Sarifuddin Tengku Ahmad issued a brief statement on June 30 saying that the DPM declined to comment for two reasons. One, any comment from Najib might be subjudice, since the case is on-going. Two, Najib had already repeatedly denied acquaintance with the girl in the past, "as such, the issue over the picture does not arise".

Subjudice to the case? That sounds ridiculous. How would a simple statement like "I have never had my photo taken with Altantuya" be subjudice? In fact, being the No.2 leader in the government, Najib is absolutely duty bound to the nation to say outright whether he was ever photographed with Altantuya, in view of the serious implication of Burmaa's allegation.

The issue over the picture does not arise? Equally ridiculous. In fact, the opposite is true. Precisely because of Najib's past denials, it is all the more imperative that Najib must stand up now to clarify to the nation.

Guilty conscience

There is only one explanation for Najib's past denials and his present silence

– guilty conscience. If Najib’s conduct with respect to the case has been above board, there is no reason whatsoever for him to deny acquaintance with a good friend’s (Razak Baginda) friend (Altantuya). Similarly, if the allegation of the picture is false, it is inconceivable and totally incomprehensible and irresponsible that Najib should have chosen not to refute Burmaa’s allegation.

In fact, Najib was so worried about the publicity of the picture that his secretary called editors of the local press, and requested them not to blow up the issue. This has resulted in this explosive story staying clear of the headlines on the next day (June 30), and the name of “Najib Razak” not being identified as the DPM in Malay and English papers. (In one Chinese paper – *Guang Ming* – this Najib story hit the headline in the front page in the evening edition, but disappeared completely from it in the day edition next morning, June 30). And of course, Anwar Ibrahim’s criticism of the trial and his specific call on Najib to clarify on the picture during a press conference was generally blacked out.

However, despite such suppression of news, irreversible damage is done. There is little doubt that Najib is deeply troubled and his political position seriously weakened.

Political manipulations

That this murder case has been subjected to serious political manipulations is obvious from the very start when police commenced its highly questionable investigation, right through to the present trial stage when the conduct of prosecutor and defence lawyers appears increasingly dubious. Instead of prosecutor seeking the truth and defence lawyer fighting to defend the accused as their prime objectives, both seemed to be pre-occupied with an over-riding mission – to prevent the whole truth from emerging. Their combined efforts to cover up issues of immigration record erasure and identity of Najib Razak in the picture are just two examples of such conduct.

The highly irregular nature of this case was also marked by frequent and mysterious changes of legal personnel, resulting in the complete change-over of defence lawyers, prosecutors and judge even before hearing began. These weird phenomena were crowned by the shock appearance of a new team of prosecutors who were appointed only hours before the hearing was supposed to begin, thus necessitating an impromptu postponement of hearing for two weeks. None of these changes of legal personnel has been

properly explained, except for the first accused's lawyer (Zulkifli Noordin) who quit because of "serious interference by third parties".

Under these circumstances, the public must brace themselves for more aberrant scenarios from this court, while Najib and his supporters may have to keep their fingers crossed in the long days ahead when many more witnesses have yet to walk through what must appear to Najib as a minefield.

Criminal justice in shambles

On a more serious note, this unseemly trial does not exactly add credit to our judicial system, the wretched image of which has just been further mauled by the shameful finale of another sham trial – that of Eric Chia of Perwaja Steel fame. After seven long years of investigations and three years of court hearing, the case was thrown out due to lack of prima facie evidence. With that, the long drawn Perwaja Steel scandal saga is ended without finding any culprit for the mountain of losses (more than RM 10 billion) through frauds and corruption suffered by the taxpayers.

There has been a spate of criminal cases being dismissed of late due to inadequate investigations and poor prosecution, indicating that the downward slide of our criminal justice system which gathered momentum in the Mahathir era has hastened its downtrend under Abdullah Badawi's leadership. With criminal justice system in shambles, rule of law is jeopardized. And that is an important criteria to judge the efficacy of Abdullah's administration vis-à-vis his reform agenda.

Bala's Affidavit Fills Voids in Altantuya Trial

Razak's private investigator Bala revealed stunning details that implicated Najib.

15.07.2008

Any one who has read through private investigator P. Balasubramaniam's (Bala) sensational affidavit implicating Deputy Prime Minister Najib Razak to the Altantuya murder case must have been deeply impressed by the believability of the contents therein. For that affidavit has filled a huge void left gaping by the one-year old Altantuya trial – the absence of compelling motive by the three accused.

And if the same reader were to read through Bala's second affidavit presented (on July 4) to the press within 24 hours after the first affidavit (dated July 1) was presented (on July 3), then he should be even more convinced of the existence of the Najib connection. In the second affidavit, Bala meticulously identified every single paragraph in the first affidavit that contained links of Najib to the case, and declared the facts contained in these selected paragraphs as "inaccurate and untrue". In other words, the second affidavit is nothing more than an exercise specifically targeted at erasing every trace of Najib from the first affidavit. Bala's lawyer Americk Singh Sidhu considered the second affidavit as one made under coercion and hence unreliable, as it was not possible for Bala to have willingly reversed within hours the position that he had taken two pain-taking months to crystallize - in the form of the first affidavit, which was conscientiously written with Sidhu's assistance.

If Bala's first affidavit is a pack of lies as claimed by Najib – who reiterated he had neither met nor known Altantuya – wouldn't it be more reasonable to let the authorities do the probing rather than staging a clandestine lightning

swoop that resulted in the grotesque creation of the second affidavit? Didn't the latter action appear more like a panic-stricken reflex by the injured party to douse a fire that had suddenly burst into the open?

That the on-going Altantuya trial appears somewhat surreal is obvious from the facts that the first two accused who were charged for the killing appeared to have no apparent motive while the third accused who was charged for abetting did not have any authority over the first two, as apparent from the following facts:

- The first two accused, who were bodyguards to Najib, had no knowledge of the girl. They were from the Special Action Force, where they were trained to execute extreme duties and to obey absolutely the orders from (and only from) their superior.
- The third accused, Razak Baginda, who is a confidante of Najib, is not a government official. Razak had only met the first bodyguard and they met for the first and only time one day before the murder. They were sent to Razak by Najib's aide camp ASP Musa Safri to solve Razak's problem.

Since Razak couldn't have given the order to kill, and the two bodyguards had no reason of their own to do so, surely there must be some one else involved who had authority over the two bodyguards. Why didn't the police and the prosecutor pursue the cause of actions by the three accused? By leaving the core issue of motivation out of the case, is it not futile for the court to drift on and on rather aimlessly to look for the elusive truth?

Bala's affidavit

Bala's affidavit has landed with a big bang because it has boldly stated a position that has hitherto been taboo but actually makes sense of the seemingly perplexing case. Its revelation of the alleged Najib-Altantuya-Razak triangle and the alleged attempt by police and prosecutors to eliminate Najib from this triangle actually explain some of the puzzling phenomena we have observed over this case.

Bala, who had been engaged to protect Razak and his family from harassment by Altantuya, attempted through his affidavit to give a full account of what he has gone through and observed and what he has learned from the various parties involved in the case. The salient points in the affidavit are as follows:

- 1) From his separate conversations with Razak and Altantuya, Bala has been informed that:
 - a. Razak was introduced to Altantuya by Najib at a diamond exhibition in Singapore.
 - b. Najib had sexual relations with Altantuya.
 - c. Najib wanted Razak to look after Altantuya (including financially) as he did not want her to harass him since he was now the deputy prime minister.
 - d. Razak bought Altantuya a house in Mongolia.
 - e. Razak had married Altantuya in Korea as her mother was Korean and her father a Mongolian/Chinese mix.
 - f. Altantuya demanded USD 500,000 as agreed commission for her services rendered in the submarine deal in Paris. She needed money badly to treat her ailing mother as well as to redeem the house which her brother had re-financed.
 - g. Altantuya asked to meet Najib, if she could not meet Razak.
- 2) Bala was detained and interrogated by police for seven consecutive days, and the police recorded his statement everyday from 8:30 am to 6:00 pm. During this time, he told the police everything Razak and Altantuya had told him about their relationship with Najib. However, when Bala signed the police statement, he found that details relating to Najib had been left out.
- 3) Bala said that during his court testimony, prosecutors did not ask him any question in respect of Altantuya's relationship with Najib or of the phone call he received from Najib's aide camp Musa Safri.
- 4) On the day Razak was arrested, Bala was with Razak at his lawyer's office at 6:30 am. Razak said he sent Najib an SMS the evening before since he could not believe that he was to be arrested, but he had not received a reply. Then at 7:30 am, Razak received an SMS from Najib, and showed the message to both Bala and the lawyer. The message read:

"I am seeing IGP at 11 am today matter will be solved be cool."
- 5) The purpose of the affidavit is to persuade the authorities to re-open their investigations into the case immediate, as Bala strongly felt that there are parties other than the present three accused involved in this murder. (Prosecution case already closed, court will resume on July

23 to hear summaries from both prosecution and defence in order to decide whether there is prima facie case.)

Thwarting justice

It will be seen that Bala's affidavit is an important document that not only offers significant new leads to the case, but also exposed alleged collusion between the Deputy Prime Minister and the Inspector General of Police over the case. These allegations of collusion among the higher authorities, though unproven as yet, are rendered credibility by the logic-defying act of leaving Najib and Musa Safri completely out of the radar screen of the police, prosecutors, defence lawyers and the judge. The hypersensitivities displayed by all parties concerned in the courtroom whenever the name Najib was raised only served to reinforced this perception.

In any democratic country with sound rule of law, Bala's affidavit would have caused the immediate formation of an independent panel to probe into the veracity of the facts and allegations contained therein, with the aim to prevent a miscarriage of justice and to punish those found guilty of obstructing and transgressing justice. However, in this Boleh land, this affidavit hardly caused a stir among those responsible to uphold the law – from the Prime Minister to de-facto law minister to attorney general, police and the judiciary. There has been no visible sign that any of these law-enforcers is concerned about the fact that our laws and justice system might have been seriously breached, except the standard response to this kind of high-level scandal – the police are looking into the two affidavits, full stop.

At the rate things are going, it looks almost a certainty that the so-called police investigation will not come up with anything that may impede the court session which will resume on July 23 to hear the summaries by both parties. A decision on whether there is a prima facie case will hence be made without taking into consideration the Bala affidavit, despite the strong possibilities of serious transgression of justice as presented by the affidavit.

This shameful episode is making a mockery of the Prime Minister's most recent renewal of his vow to institute judicial reforms and to improve the rule of law. It also fortifies public perception that institutions of state – police, attorney general's chambers, judiciary and other law-enforcing agencies – have existed to preserve the hegemony of the ruling political power as their top priority and not to serve the interests of the rakyat.

The double-standard and the abuse of power that have been glaringly and disgustingly displayed in recent days by these law-enforcers only deepen the alienation of the masses against the regime.

The recent March election has spoken in unmistakable term that the people have waken to re-possess their rights under the Constitution, and the ruling power is well warned not to take lightly to this political renaissance of the people. The corrupt power may win in a corrupt court, but there is no way it can escape harsh judgment in the hearts and minds of the masses.

Court Rejects Bala's Affidavit

26.07.2008

Explosive new evidence implicating deputy premier Najib Razak in Altantuya's murder case was thrown out by the court when it resumed session on July 23 to hear the summary of both prosecution and defence after prosecution wrapped up its case one month ago. Both prosecutor and defence lawyers – traditional protagonists in a criminal trial – had strangely stood on the same front to block the emergence of this new evidence, which could potentially alter the entire configuration of this murder case.

In rejecting the application by lawyer representing Altantuya's family and the Mongolian government – Karpal Singh – to re-open the prosecution case to hear this new evidence, the presiding judge Zaki Yasin in the Shah Alam high court said that “the court will only exercise its discretional right to call for any witness when the need arises”.

But alas, the court is already on the brink of deciding whether there is prima facie case, so if this is not the right time to hear this vital piece of new evidence, then what is? After the accused are discharged for lack of prima facie evidence?

The latter scenario is not entirely far-fetched, considering that the only hard evidence – confession of the second accused – had already been thrown out by the court at the early stage of the trial and the court has been drifting rather directionlessly for one year without a compelling motive and without revealing the authority that prompted the first two accused (who were Najib's bodyguards) to commit their act.

This is where the new evidence – a statutory declaration by private investigator P. Balasubramaniam revealing astounding intimate details – is considered to have come in at the nick of time to prevent a major miscarriage of justice by casting an important new light on the case.

In fact, it was this desire to see justice done that prompted Bala to present his affidavit at this juncture. Bala was alarmed that the court was about to hear the summary, and yet vital information he had furnished earlier to the police implicating Najib had not surfaced in court.

Through his affidavit, Bala has brought in a new player – Najib. Allegedly, Najib was the original lover of Altantuya, who was passed on to best friend Razak Baginda (the third accused) when Najib wanted to keep a distance from Altantuya upon becoming the deputy premier. Then in October 2006, Altantuya arrived in Malaysia to press Razak for the payment of USD 500,000 as alleged commission for services rendered in the submarine deal in Paris. Bala was engaged to fend off Altantuya.

When Altantuya's harassment got out of hand, Najib's aide-de-camp DSP Musa Safri sent the first accused to meet Razak for the first and only time one day before the murder to overcome Altantuya's harassment. The rest is history.

Bala's affidavit not hear-say

It is important to note that Bala was engaged to protect Razak and his family from Altantuya's harassment on an around-the-clock basis for periods preceding and after the disappearance of Altantuya, during which periods Bala was privy to many intimate details as well as witness to many occurrences surrounding the main players. His affidavit was a conscientious account of what he saw and heard over events that actually transpired. It is hence totally unjustified for the court to reject Bala's affidavit on the ground that it was "hearsay". In fact, Bala's affidavit contained many important direct evidences, such as:

- Altantuya's demand for her alleged commission of USD 500,000 at the Brickfield police station on 14 Oct 2006.
- On the night of murder on 19 Oct 2006, Bala witnessed the first two accused and lance corporal Rohaniza taking Altantuya away in a red Proton Aeroback in front of Razak's house.
- On the day of Razak's arrest, Bala was with Razak in the office of Razak's lawyer at 6:30 am. Razak said he sent Najib an SMS the night before as he refused to believe he was to be arrested, but he did not receive a reply. Then at 7:30 am, Razak received an SMS from Najib and showed the message to Bala and the lawyer. The message read:

"I am seeing IGP at 11 am todaymatter will be resolved.....be cool".

- During his seven-day detention (after the arrest of Razak), Bala told the police all he knew including everything Razak and Altantuya told him about their relationship with Najib, but when he came to sign the statement, all parts relating to Najib had been obliterated.

It will be seen that Bala's affidavit contains evidences of perversion of justice as well as valuable missing links which should let the truth emerge in an otherwise muddled case.

The government's response to this affidavit has been most disappointing. It not only failed to set up an independent panel to probe the contents therein as required in any country with rule of law, but not even the police or the prosecutors have shown any seriousness to investigate these alarming revelations. And now the latest, a flat rejection by the court to entertain Karpal's motion through concerted objection by all participating legal officers who have sworn to uphold the law – prosecutors, defence lawyers and the judge.

That makes us wonder, is the primary objective of the court to seek truth and serve justice or is it to protect criminals who happen to be persons of power and influence? If it is the former, shouldn't the court have at least postponed the hearing of the summary pending investigations of the affidavit, however slow the investigations may be?

By bulldozing the case forward with complete disregard to alarming signals that justice might have been transgressed in such an internationally inflammatory case is to expose Malaysia to new depth of international disrepute of our already wretched justice system.

And for the family of the victim who was slain in the cruelest fashion, what can they do other than to continue to weep in silence?

Razak's Helping Hand to Najib Not Helpful

Razak was acquitted without having to enter a defence on Oct 31. Three weeks later, after the period allowed for prosecution to appeal against the acquittal had lapsed, he called a press conference to exonerate Najib and his wife, which was widely perceived as a quid pro quo move.

22.11.2008

There appears to be only one motive in Razak Baginda's press conference on Nov 20 in the wake of his acquittal in the Altantuya murder trial. It was to alleviate the mounting pressure on Deputy Prime Minister Najib Razak and his wife Rosmah Mansor, who have found themselves irretrievably entangled in the Altantuya murder case. These entanglements spring from two sources: a judicial process bruised by numerous irregularities and dubiousness widely believed to be caused by the desire to protect the real culprits; and the suffocation and questionable response to incriminating new evidences.

In the 40-minute press conference, Razak Baginda only delivered two solid points: one, Razak himself is innocent; and two, Najib & Rosmah are also innocent, as Razak claimed that the latter never met Altantuya, and that all allegations against them were lies. Beyond these two assertions, Razak did not yield even one inch of facts that might have thrown some light on the numerous puzzles that have found no answers in the one year old trial.

And since the court has already acquitted Razak of the charge, why should he bother to hold a press conference to perform the redundant act of once again declaring himself innocent, if it is not meant to help out his close friend and benefactor? (Some view this as quid pro quo, saying Razak

deliberately cancelled the previous press conference on Nov 6 so that it could be held after the end of the allowable appeal period, which fell on Nov 14, just to make sure that the prosecutor would not appeal against his acquittal.)

But if Razak and the intended recipients of this supposed reciprocal gesture think that Razak's declaration of Najib's innocence is of any help, they are mistaken.

How did Razak know?

It was interesting to observe that when Razak was asked how he knew that Najib never met Altantuya, Razak was stunned and speechless for a moment, before he found his composure to emphatically utter: "I know I know", without explaining how he knew.

Stacked against this simple answer of "I know, I know" is of course a mountain of facts and events that point to the contrary of Razak's claim of innocence.

The first event that strikes the mind is the mysterious disappearance of private investigator P. Balasubramaniam (Bala) after implicating Najib in the case. On 3rd July 2008, Bala disclosed his explosive affidavit revealing the existence of the alleged Najib-Altantuya-Razak triangle of relationship – in direct contradiction to Najib's repeated vows that he never met Altantuya - in addition to furnishing other details that helped to make sense of this otherwise puzzling case. The next day, under apparent coercion, Bala signed another affidavit retracting every paragraph in the first affidavit with links to Najib; and immediately after that he and his entire family disappeared and never to re-appear until this day.

In the first affidavit, Bala said he wanted to prevent a miscarriage of justice, as many details with links to Najib given by him to the police had been left out in the police statement and also never raised in court. He therefore sought to appear in court to provide these missing links. Regrettably, he never had that chance.

Upon disclosures of these two affidavits, the police promised to investigate them. They later claimed to have located Bala and his family in a foreign country (the identity of which the police refused to divulge), and they also claimed to have taken a statement from Bala. However, to this day, the police have remained silent on these investigations as well as the whereabouts of Bala and family.

Critical evidence blocked

Meanwhile, the lawyer for the family of Altantuya and the Mongolian government (Karpal Singh) applied to have Bala's affidavit included in the trial, but was blocked by the concerted objections from all the participating players in the trial – the judge, prosecutors and defence lawyers.

This instance of blockade of evidence to the trial is only one in a series of similar blockades that appear to fit into a pattern whereby critical evidences that were deemed important leads to this murder mystery were blocked, apparently to prevent the truth from surfacing.

Important examples of these court incidences were the mysterious erasure of immigration records of Altantuya and her female companions at the material times of the crime, and the mention in court of a photo allegedly showing Najib having a meal at a table with Altantuya and Razak.

In the latter case, Altantuya's cousin Ms Burmaa Oyunchimeg (called Amy) testified on 29 June 2007 that Altantuya had shown her the photo in Hong Kong when the former returned from a trip from France. However, before Karpal Singh could lead the witness further, he was stopped by the judge, upon strong protest from prosecutor, enjoined by defence lawyers.

According to Amy's testimony, the photo was taken after August 2005, and she considered it an indication that her cousin's love affair with Razak had not ended by then (The Straits Times dated 3 July 2007). This testimony clearly contradicted Razak's claim that his affair with Altantuya ended in August 2005. That brings us to the question of the reliability of his statements.

Emotional outbursts

In fact, Razak was found wanting in honesty in his replies to questions on the two emotional outbursts – once by himself in mid trial in Feb 2008, and once by his wife when he was first charged in 2006.

On Razak's outburst in court on 20 Feb 2008, this is what the *New Straits Time* reported.

Before proceedings began, Razak's father Abdullah Malim Baginda whispered something to his son who was in the dock. Razak's demeanour changed and he walked back to the holding cell, turned to face his father and angrily shouted: "Shall I shout it out?" His father pointed his finger at him and indicated no.

Then Razak loudly said “I am innocent! I am innocent!” before going into the cell.

When the trial judge adjourned proceedings for lunch, Abdullah walked up to his son and again whispered something into his ears. Razak jumped up from his seat and in an animated way shouted : “Oh no, oh no.” He then kicked the dock gate angrily as he walked out and banged on the lock-up door and looked terribly upset. He was in tears.

And what was Razak's explanation during the press conference for this outburst? He said he was only venting his anger as he was upset with the postponement of the case. That answer did not sound very convincing, did it? So, what is the secret that Razak is hiding from us?

On the second outburst when he was charged in Nov 2006, his wife shouted hysterically “Why charged my husband, he does not want to be the prime minister?” Razak explained that his wife was then under stress as she had not seen him for some time.

That certainly didn't sound like an honest answer. A more reasonable guess is that she was angry that her husband was made the scapegoat for someone who was aspiring to be the next prime minister. The identity of this person is so obvious that it needs no further elaboration.

Finally, with regards to Razak's claim that allegation of Altantuya's involvement with the submarine deal was a lie because the contract was signed in June 2002 while he first met the deceased at end 2004, my answer is this: whose words are to be believed – Bala's or Razak's? If Bala told the truth, then there is no credibility gap in the two dates, as according to Bala, Altantuya was passed on from Najib to Razak, as Najib did not want her to harass him since he was then the deputy prime minister (Najib became DPM in 2004).

If Bala did not tell the truth, why wasn't he sternly dealt with? Why should the authorities be so fearful of him that he was forced to retract his statement, made to disappear and his affidavit barred from court?

Who is Frivolous: PI Bala or PM Najib?

07.12.2009

When questioned by reporters regarding private investigator P Subramaniam's latest revelations implicating the family of Prime Minister Najib Razak in the Altantuya murder scandal, Najib snapped "I will not entertain any frivolous statement" and asked reporters to move on to the next question.

This curt reply to crassly cut reporters off from asking further questions sounds more like a reflex in panic, rather than a responsible answer from the prime minister of a supposedly democratic country. For it was a totally inappropriate reply to Bala's serious accusation, which was made in circumstances that commanded respect and credibility.

What can be more serious than accusing Najib's wife Rosmah Mansor and his brother Nazim of having used the "carrot and stick" maneuver to force Bala to retract his first affidavit which implicated Najib in the murder scandal?

And what can be more respectable than having his revelations made in an interview conducted and witnessed by three senior lawyers of the country?

Bala alleged that Rosmah's close associate Deepak Jaikishan offered him RM5 million and Nazim threatened to harm his family unless he followed Deepak's instructions.

This happened on the day he disclosed his first affidavit on 4th July 2008. Fearing the safety of his family, Bala retracted under coercion the allegations linking Najib to Altantuya in a second affidavit the next day, and disappeared immediately with his family until his recent interview which was captured in video and recorded in transcripts.

These were first published in Malaysia-today.net and later relayed by other websites including *Malaysiakini* and *Youtube*.

In the interview, Bala described how he was forced into retraction and how he and his family embarked on their fugitive journey to India under the overall direction of Deepak. That journey was a rather convoluted and lengthy voyage that saw them passing through or staying for various durations at Singapore, Bangkok, Katmandu, Delhi, Madras and eventually Chennai.

Bala exuded confidence with his detailed description of occurrences supported by factual details that pin point the relevant players, locations, times, dates, durations, hotels, monetary figures, cheques, bank accounts, etc

Against these formidable allegations, all we have from the alleged culprits is deafening silence, despite the news having been circulated in the Internet for more than two weeks. Until, of course, when Najib dismissed these as “frivolous” and not worthy of his response, during a press conference after an UMNO supreme council meeting on Dec 4. This effectively means that Bala has cooked up a pack of damned lies, according to Najib.

So, one of them must have lied. Was it Bala, or was it Najib?

Facts favour Bala

A cursory glance at the facts and circumstances surrounding the latest controversy would enable one to readily conclude that Bala has the upper hand, for the simple reasons that Bala’s accusation is buttressed by precise facts and details that could be easily debunked if false, while Najib and his group have chosen to remain silent in spite of the serious nature of the accusation.

If Bala’s statement is false, and with the immense power and resources at the disposal of the Prime Minister, there is no possible reason for Najib not to have instantly ordered an investigation, and bring Bala to face the consequences for having so openly and repeatedly defamed the Prime Minister and his family.

If Najib could have Raja Petra Kamarudin - webmaster of Malaysia today - charged for criminal defamation for the publication of an article in his website that said Rosmah was present at the crime scene, why can’t he do the same on Bala?

In fact, Bala’s case is even more serious, as he has signed on two contradictory affidavits – a clear offence of false declaration – besides accusing the Prime Minister and his family of involvement in murder.

And why should the Prime Minister, his family, and the various

law-enforcing agencies be so kind and forgiving to Bala as to leave him untouched, while the nation suffers the humiliation of its Prime Minister being openly defamed and ridiculed?

From another perspective

Viewing the case from another angle – Bala’s perspective, it appears even more compelling that Bala was not likely to have lied.

Why should a family man like Bala falsely accuse the Prime Minister of involvement in the most heinous of crimes, knowing its serious consequences as an ex-police officer? What possible gain could he get, keeping in mind that he couldn’t have extorted any money, since the allegation is untrue?

Even if it is true that Bala had falsely accused Najib, that he had repented and retracted his allegations in a second affidavit, and ran away to another country to escape retribution, there is no conceivable reason for him to make a come-back to invent another pack of lies, thereby exposing himself for the second time to the risk of serious punishment. Unless, of course, he is a lunatic, which is clearly not the case.

Grounds of suspicion abound

Evidence of justice being aborted to protect Najib is found in the numerous irregularities that had occurred before and during the trial of the Altantuya murder.

Why was Najib not investigated since the first two accused, who were his body guards and took orders from him, had no apparent motive on their own to commit the murder, and the third accused was his confidante?

Why were the judge, prosecutors and even a defence lawyer abruptly replaced without credible reasons shortly before the trial?

Why was the motive for murder never raised during the trial?

Why did prosecutors and defence lawyer join forces to prevent critical evidence being pursued in court such as an alleged photograph showing Altantuya and Najib taking meals together and the mysterious erasure of immigration entry records of Altantuya and her Mongolian companions?

Why was Bala’s affidavit barred from the court without credible reasons?

Since the third accused, who was charged for instigating the murder, was released without his defence being called, then who had ordered the killing?

It is clear that unless these troubling questions are dealt with satisfactorily, there is no way Najib can clear himself of suspicions that have surrounded him, least of all, by waving away inquisitive questions by a curt reply like what he did in the said press conference.

In fact, such conduct only betrays his weaknesses. For it is plain commonsense that if Najib is on the side of truth, he would have welcome reporters to ask questions – instead of crudely shutting them up – so that he has a chance to exonerate himself. And he would also have taken action against Bala ages ago, instead of inaction for so long – perhaps with the hope of the scandal fizzling out in due course?

The latest Bala revelations have constituted a solemn challenge to the integrity and legitimacy of Najib's premiership, for which he must now solemnly account to the nation.

And the only way to do that without dishonoring his oath of office is to commission a truly independent panel to uncover the truth and account to the nation.

Najib's Ascension to Premiership

Why Najib Must Be Stopped From Becoming PM

13.03.2009

Minister Nazri Aziz's barefaced denial of any wrongdoing by the Attorney General (AG) and Inspector General of Police (IGP) in Anwar Ibrahim's black eye case in the face of incontrovertible evidence is an affront to common decency and an insult to people's intelligence.

Answering a question in Parliament on Mar 11, Nazri said the then Anti-Corruption Agency (now the Malaysian Anti-Corruption Commission) (MACC) had completed the investigations and concluded as early as September last year that both AG Gani Patail and IGP Musa Hassan were innocent of Anwar's written complaints of fabrication of evidence. If that is the case, why didn't the AG's chamber use this conclusion to counter Sessions Court Judge Komatty's decision to reject AG's request to transfer Anwar's sodomy trial to the High Court on ground of AG's entanglement in the black eye case? Shouldn't the prosecutors have used the AG's "confirmed" innocence as the perfect argument in the first instant, instead of fighting doggedly from one court hearing to another just to ensure that Anwar's trial could be taken away from Komatty and transferred to another judge in the high court?

Coming on the heel of a spate of daring and shameless breaches of the constitution and the laws beginning from the illegal power grab in Perak, this Nazri move to cover up for AG & IGP is perceived as the latest manifestation of a new pattern of lawlessness demonstrated with increasing boldness and arrogance by practically all the institutions of state.

It is no coincidence that this new phenomenon of crass contempt for the rule of law only cropped up after Prime Minister Abdullah Badawi passed

on the effective running of the country to prime minister-in-waiting Deputy Prime Minister Najib Razak at the beginning of this year. Let us take a brief look at some of these events.

Following the virtual coup d'état in Perak engineered by Najib in early February, the state has been in constitutional limbo with two parallel governments carrying on their running feuds in the legislature and in the courts.

The tree of democracy

Confrontations between the two camps came to a head when the Speaker V Sivakumar called for an emergency sitting of the assembly to be held on Mar 3. Zambry called this meeting 'unlawful'. On the eve of the meeting, a circular appeared in the Secretariat Building to say that entry to the building (where the State Assembly is housed) would be closed the next day. And Perak Chief Police Officer Deputy Commissioner Zulkifli Abdullah warned that no one, including assemblymen, should gather at the building, upon advice by the pro-BN Assembly Secretary Anton Sabri that the emergency session was 'invalid'.

The Speaker however warned that neither CPO Zulkifli nor assembly clerk Anton should try to thwart a legitimate sitting of the assembly duly convened by the speaker, as any such attempt would be deemed a breach of Section 124 of the Penal Code, an offence punishable with seven years of imprisonment.

On the morning of Mar 3, PR assemblymen were denied entry to the State Assembly by a barricade of riot police under the command of Ipoh OCPD Asst Comm Azisman Alias who warned the assemblymen to disperse at pain of arrests. Also physically repelled by a group of rowdy BN supporters who threatened violence, the PR assemblymen retreated to a rain tree nearby, where the emergency sitting was formally convened by Speaker Sivakumar. This rain tree has since been celebrated and commemorated as the "Tree of Democracy".

In this melee, a series of breaches of law were committed by public servants – State Secretary, police, Assembly Secretary – who failed to maintain neutrality and non-partisanship in politics in the current power struggle between PR and BN:

- Pro-BN State Secretary Rahman Hashim for illegally giving order to seal off the State Secretariat Building.

- Pro-BN Assembly Secretary Anton Sabri for usurping the authority of the Speaker to interpret the laws governing the state assembly.
- Pro-BN CPO Zulkifli Abdullah for illegally deploying his force to thwart a legitimate assembly sitting based on his ridiculous decision to accept the word of the assembly clerk instead of the rightful authority which is the speaker.
- All three have breached Section 124 of the Penal Code.
- All three are guilty of political partisanship, in violation of the civil service code to maintain political neutrality and breaching their vows to uphold the constitution.

Shameful court scenes

On the same day of the assembly under the rain tree, the tussle for power between PR & BN took place in another arena – the Ipoh High Court, where Judicial Commissioner Ridwan Ibrahim granted an order whereby Speaker Sivakumar “is restrained from convening any unlawful meeting purporting to be a meeting of the Perak state legislative assembly.”

I regret to say that J C Ridwan has brought disrepute to the judiciary due to multiple irregularities as well as hollowness of substance of the order.

In the first place, when he gave the judgment on Mar 3, his tenure as judicial commissioner (a probation judge) had already expired (on Feb 28) and hence the court hearing was unlawful. Subsequent belated renewal of Ridwan’s contract could not validate his judgment, as at the material time when the judgment was made, Ridwan’s status as judge had lapsed.

Second, he illegally barred Sivakumar’s lawyers from representing him and instead assigned the assistant state legal adviser Zulkarnain Hassan to represent him without his consent. This is a ridiculously unjust imposition on Siva, as the state legal adviser Kamal Shahid is in the enemy camp, not only representing Zambry in a Nijar vs Zambry suit, but has also been publicly named by Nizar as one of the five architects who plotted the fall of PR in Perak. Besides, Siva had never authorized or talked to Zulkarnain.

Third, J C Ridwan’s refusal to hold the hearing in open court on such an important case of public interest was unreasonable and smacks of suspicious intent.

Fourth, Ridwan gave his order in unacceptable haste, having deliberated for only 10 minutes on a 90 minute submission by Zambry’s lawyers without Siva’s participation. Since this is a case which might be argued for having

infringed on the constitutional principle of separation of power, it is not possible for Ridwan to do justice without hearing the full arguments on these constitutional aspects from both parties and without him deliberating fully over the issues raised.

As for the substance of Ridwan's order, he only prohibits unlawful meeting. Ridwan's logic is puzzling. If a meeting is unlawful, it is null and void. Is there any necessity to prohibit it then?

Sad to conclude, what we witnessed in the Ipoh High Court, is a fumbling probation judge who, in his over-eagerness to comply with the wishes of BN, has transgressed fundamental justice. One may ask, why should the court have assigned such an important case to such an inexperienced probation judge (whose tenure had lapsed to boot), if there was no evil design? This is but one of many examples that our judiciary continues to mire in a state of utter impairment.

Continuing sabotage

While these debacles in Perak are going on, relentless sabotage has been carried out against the PR governments in Kedah and Selangor. These are in the form of harassment on PR assemblymen to defect or to quit, with bribery and threats and even sexual scandal.

In Kedah, various PR assemblymen reported offers of millions of ringgit to hop party. Notably, assemblyman Arumugum was so severely harassed with bribery and threats that he resigned his seat and escaped with his entire family to India to avert possible damage to his party. These incidents have been repeatedly reported to the police and MACC, but no effective action has been taken.

In Selangor, MACC chief commissioner Ahmad Said Hamdam openly and dubiously accused Menteri Besar Khalid Ibrahim of abuse of power – after a swift investigation – over the petty issues of maintenance of his personal car assigned for official use, and the distribution of 46 cows to the poor during an Islamic festival; while shamelessly kept mum over numerous reports of multi-million ringgit corruption against BN leaders which have been sleeping for years without any action. PR Assemblywoman Elizabeth Wong was harassed to resign her seat after her nude picture secretly snapped during her sleep was exposed in BN-controlled media. Though the suspected culprit was known, the police made no effort to bring him to book.

These blatant double standards practiced with increasing frequency and vulgarity by law enforcing agencies, judiciary and prosecutors, and their overt political partisanship have disgusted the public and caused the popularity of BN in general and Najib in particular to plunge. But instead of making reforms to salvage public support, UMNO has pursued the opposite course of lawlessness and repression under the de-facto leadership of Najib.

Little wonders that the people are increasingly apprehensive whether Najib will drag the country down to a state worse than the darkest days of Mahathirism, now that they have seen the reckless destruction of political tranquility in Perak under PR's exemplary rule of racial unity and clean and pro-rakyat government.

The Altantuya curse

On top of these worries is the curse of Altantuya's murder which hangs over Najib's head like Damocle's sword. Najib should realize by now that no matter how many times he swears he is innocent, he could not possibly have cleansed himself of this taint, unless and until he and his aide-de-camp Musa Safri are subject to a proper investigation and exonerated by a court of law perceived as just and fair (certainly not the present court).

Now that Najib is about to take over the baton of premiership from Pak Lah, we may ask ourselves the final question: Do we want to see a Malaysian prime minister dashing around the international arena with the Altantuya tag hanging around his neck, as world leaders could not possibly be unaware of this Altantuya taint?

Najib Must Be Screened by a Royal Commission of Inquiry

Only days from Najib's anticipated ascension to the premiership, Najib had no proper reply against the bombardment by foreign journalists over the swirling questions of his alleged links with the Altantuya murder case. To safeguard vital national interest, Najib ought to be subjected an independent probe, for which his imminent appointment must be delayed.

30.03.2009

In a heated press conference at the end of the UMNO Annual Assembly on Mar 28, the newly crowned President of UMNO Najib Razak failed to dispel swirling rumours of his alleged links to the murder of Mongolian beauty Altantuya Shaariibuu.

This press conference had attracted unusual foreign press attention, due to heightened international media coverage over the scandal as Najib's anticipated ascension to premiership nears. And as the name of Altantuya splashes in news features that pop up all over the world from France to Australia and from US to India, Najib seems to be irretrievably linked to this sex-corruption-murder scandal which is linked to a multi-billion government arms purchase.

Answering a barrage of questions from foreign journalists whether these persistent aspersions would undermine his premiership, Najib only repeatedly said: "These are malicious and baseless lies. I have already given my answers, but they persist. This is an opposition ploy."

Najib sounded as if he had already given all the necessary explanations to exonerate himself from his apparently strong connection to the case, but actually all he had done was the repeated uttering of these few words: "I had

never met the Mongolian woman, I had never known her”, full stop. In fact, he swore in public several times, using the same words.

Serious questions

If Najib thought those few words were sufficient to quell the mountain of suspicion arising from the myriad of burning questions as yet unanswered - in the face of dubious action or inaction by the law enforcers - he must have been terribly naïve and completely underestimated the intelligence of the public. Just to pick a few of these in random to demonstrate how serious these questions are:

- Private investigator P. Balasubramaniam and his entire family mysteriously disappeared a day after he revealed a sworn statement giving intimate details incriminating Najib to the murder case in July 2008. Despite promises to investigate, the police have remained silent over the contents of this affidavit. And the court had also barred the admission of this document. Why did the police and the court keep a safe distance from this document that could have led to a break-through of this trial? What has happened to Bala and family – as nobody seem to know their whereabouts?
- Why did the court – prosecutors, defence lawyers & judge – acting in unison, block further evidence from Altantuya’s cousin Burmaa Oyunchinmeg when she testified that Najib appeared in a photograph with Altantuya?
- Why did the court block further evidence upon revelation in court that Malaysian immigration records of Altantuya and her two Mongolian companions had been mysteriously erased? Shouldn’t such erasure have been considered an important lead and an indication that some VVIP was involved?
- Why were Najib and his aide-de-camp Musa Safri not investigated and called to the witness stand, since it was Musa Safri who gave instruction to the first accused (first and second accused were Najib’s bodyguards) to take care of the third accused Razak Baginda’s ‘woman problem’. Now that Razak Baginda (a close associate of Najib) has been declared innocent, the court is now left with the bizarre scenario of a murder without a motive, since the first two accused had no motive on their own to kill the victim.

It does not take a Sherlock Holmes or a legal expert to smell a rat in the handling of this murder case – a possible conspiracy to cover up for the real culprit.

During the press conference, not satisfied with Najib's simplistic answer, journalists repeatedly asked the same questions. Finally, Najib snapped: "We will deal with it, we know how to handle it". When asked whether this means possible crack-downs against his political opponents, Najib protested: "It is not fair to prejudge me. Give me a chance to take office first. Judge me by my action."

So, Najib is pleading to be allowed to become the prime minister first, then judge him for what he does.

But is it fair to ask the nation to accept the risk of appointing a prime minister when such formidable dark clouds clearly hang over his head? If there is indeed incriminating evidence, would it not act as a potential time bomb that could cause the PM to be prosecuted or subject to blackmail by those in possession of such evidence? Even if such evidence is non-existent, Najib has no way of running away from this taint, which would surely undermine his standing and effectiveness as PM at home and abroad, so long as he refuses to submit himself to a proper investigation and subsequent vindication in a court of law.

Independent inquiry a must

It is therefore imperative that a royal commission be set up to clear Najib of such suspicion before his appointment as PM (if he is innocent) to safeguard vital national interests. That would mean a delay of a few months to his impending appointment.

I can see no possible reason to object to such delay, as incumbent Prime Minister Abdullah Badawi, whose term does not end until 2013, is fully capable of helming the state, fresh from accolades heaped upon him by his party for rendering invaluable service to the nation.

Najib in particular should welcome such an authoritative process to free him from the current tag and enhance his credibility as future premier and he should therefore have no objection to such delay. Unless of course, for reasons only known to him, he cannot afford to be so probed; neither could he afford not to be at the pinnacle of power at this very moment.

As for the nation at large, such an independent inquiry should bring a sigh of relief that the future premier is cleared of at least the taint of the Altantuya murder.

Hidden Dramas Hours Before Najib's Swearing-in

13.04.2009

Unusual occurrences on the day before Najib Razak's swearing-in on April 3 as prime minister have raised questions on the royal consent to his appointment as the sixth Prime Minister of Malaysia.

From the time Najib left the palace ground at 1215 hrs on April 2, after an audience with the King, the nation was kept in the dark for seven hours as to whether the King had given his consent to Najib's premiership. It was not until 1940 hrs that the first newsbreak came from Bernama stating that Chief Secretary to the Government Mohd Sidek Hassan announced that the King had given his consent to Najib's appointment and that Najib would swear-in at 1000 hrs the next day – which was the time previously circulated by the government. Was it not most extra-ordinary that the nation was kept in suspense for so many hours when the ceremony was only hours away? What was the reason for this big delay in announcement? Was there any problem with the royal consent?

That something was amiss was apparent in the morning of April 2 when then Prime Minister Abdullah Badawi went alone to meet the King, contradicting Najib's disclosure on the preceding day (April 1) that he was invited by Abdullah to accompany the latter to meet the King for the royal consent to Abdullah's resignation and Najib's appointment.

Abdullah arrived at the palace at 1000 hrs for an audience with the King to express his intention to relinquish his premiership. After an hour-long meeting with the King, he uttered only these words to the official media allowed into the palace: "It's a matter for Tuanku to decide". He drove through the main gate at 1100 hrs without talking to some 70 reporters gathered there.

Minutes later, Najib's official car and police escort drove past the palace and arrived at Abdullah's residence at Jalan Bellamy (located near the palace), where the two leaders met for 10 minutes.

Najib, who was called to the palace, arrived at 1130 hrs to have an audience with the King. He left through the main gate at 1215 hrs and waved to the anxiously waiting reporters through his open window and said "Thank you", without stopping to talk to them.

Strange silence

Thereafter, complete silence – without a word from either the palace or the government on the outcome of the morning's royal audience given to these two leaders, until *Bernama's* statement in the evening.

Observing the above events, we can deduce that

- It must have been at the King's request that Abdullah went to see the King alone – without Najib. Obviously, the King wanted to talk to Abdullah privately, and the hour long audience indicated that much was discussed about the proposed transfer of power.
- When Abdullah left the palace at 1100 hrs, he gave the impression that the King had yet to decide on his proposed resignation and perhaps also his recommendation of Najib to take over the premiership.
- The lack of positive indications from both leaders after their royal audience and the long silence thereafter indicated that royal consent was unlikely to have been given during the audience. Otherwise, the government would have wasted no time to announce such consent, judging from its impatience to fix the swearing-in time and date, as reflected in several such premature announcements previously.
- Then, when was royal consent given, if at all it was given? What transpired between 1215 hrs (when Najib left the palace) and 1940 hrs (when *Bernama* reported the royal consent) on April 2?

For a better understanding of what actually transpired on April 2, we have to take note of two important events that took place on April 1.

One, Chief Secretary Sidek Hassan announced through *Bernama* that before the Cabinet meeting in the morning, Abdullah had an audience with the King, whereby the King consented to Najib swearing-in as prime minister at 1000 hrs on April 3 and the King also agreed to grant an audience

to both leaders at 1000 hrs the next day, April 2, for this proposed power transfer. However, at 1954 hrs, *Bernama* issued another statement saying the Chief Secretary had said his earlier announcement on the swearing-in was premature, and asked for the story to be ignored.

Two, Pakatan Rakyat handed to the King a letter by all its 81 members of parliament, appealing to the King to delay the appointment of Najib as prime minister until many allegations against him were cleared. These included in particular the shocking scandals of the murder of the Mongolian woman and commissions in the purchase of Scorpene submarines, which of late had been well publicized in news media all over the world. The letter stated that premiership being the nation's top job, it ought to be held by some one who was clean and of unquestionable integrity. It was therefore appropriate that His Majesty delay the appointment till all allegations were investigated by an independent commission and Najib's name cleared.

Royal second thoughts?

Looking at these two events, it is entirely possible that the King could have nodded his head to Abdullah's proposed transfer of power to Najib early in the morning of April 1, but after deliberation over the appeal by the 81 MPs, the King could have second thoughts about hurrying through the swearing-in the next morning. Hence the Chief Secretary's late statement to retract his earlier announcement on April 1, and the separate audience – instead of joint audience – to Abdullah and Najib the next morning.

As a conscientious constitutional monarch who takes his role as guardian of the constitution and the country at heart, it is also possible that Tuanku Mizan could be seriously considering a delay to the power transfer to clear matters up to protect vital national interests. But his hands appeared to have been forced by the drummed-up publicity for the imminent swearing-in only hours away via premature issue of invitation cards and a questionable last-minute news release by *Bernama*, both of these are deemed inappropriate.

Since it is the King who accepts the Prime Minister's resignation, and since it is also his prerogative to appoint the new Prime Minister, shouldn't it be the palace that makes the announcement of the King's decision? Shouldn't it also be the palace that issues the invitations – instead of the prime minister's department – for the ceremony at the palace for the handing over of the appointment letter to the new Prime Minister?

Is it not an act of the highest disrespect to the King for the government to issue invitations for the swearing-in of Najib when the King had not even

granted an audience to the incumbent Prime Minister to discuss about his proposed resignation? Or is the government taking the institution of monarchy as a mere rubber stamp?

Questionable legitimacy

We can well understand Najib's desperation to ascend the premiership in great urgency, since he has already been hyped as the savior of a sinking ship, and any hindrance to such ascendancy could spell disaster; nevertheless, such usurping of the authority and status of the monarch is an affront on our Constitution and serves to further undermine constitutional rule in this country under the Barisan Nasional. It also gives rise to questions about the legitimacy of the new premiership.

It is an ominous start for Najib as Prime Minister, having just added another baggage to the many uncleared baggages Najib is carrying over to his premiership.

Najib's Premiership: Sound And Fury, Little Substance

13.07.2009

Amid the blissful euphoria orchestrated by the main stream media to mark Najib Razak's 100th day of premiership, two towering Malay politicians delivered landmark speeches that unveil the truth of what really has been bedeviling this nation.

Zaid Ibrahim and Tunku Razaleigh Hamzah, in their own individual styles and eloquence, standing on different stages, told PM Najib off with virtually the same message:

“Stop sloganeering with your 1Malaysia hype, start facing the truth please!”.

And what is that truth?

The truth as concurred by the two is: This country has fallen into the present quagmire of national disunity and economic malaise because UMNO is determined to cling to racism to perpetuate its authoritarian and corrupt rule. Sloganeering and piecemeal politicized liberalization and goodies as presently trumpeted will not help. Only sweeping fundamental changes in philosophy and policies will do.

Tunku Razaleigh is a veteran UMNO leader and a one time Finance Minister. He is nowadays widely perceived as an elder statesman and the only sane voice within UMNO with his regular statements of reasons and rationality that repudiate UMNO's excesses and abuses, particularly under Najib's leadership, which effectively began well before he officially ascended the premiership in April this year.

Zaid Ibrahim, who resigned last year as de facto law minister due to UMNO's rejection of his judicial reform agenda, has recently joined PKR.

He is expected to play a key role in forging an enduring alliance among component parties in Pakatan Rakyat.

Umno's racist philosophy

While both of them concurred on diagnosis and remedies, Zaid Ibrahim carried a step further in his speech. He believes UMNO is beyond salvation, and advocates a change of regime as the only way to save the nation. He has convincingly presented a case of a viable alternative in the form of Pakatan Rakyat, which may appear faltering at times with internal squabbling under the magnifying glass of the mala fide local media. But in truth, despite such squabbling under its more democratic political culture, the top leadership of Pakatan is strongly cemented by the common resolve to replace Barisan Nasional and restore democracy and good governance to the people. And Pakatan will march unrelentingly to achieve this objective. If it fails, the fire of change ignited by the Mar 8, 2008 election will be quickly extinguished, dooming the destiny of Malaysians for generations to come.

Zaid began his discourse by analyzing why UMNO has become dictatorial and corrupt. UMNO believes that it has an almost 'divine' right to rule, claiming that unless the Malay hegemony maintained by UMNO now is perpetuated, Malays will be marginalized. With this underlying philosophy, it has amassed dictatorial powers and trampled on the fundamental safeguards of the Constitution. Believing the end justifies the means, UMNO has unhesitatingly subverted the integrity and political neutrality of government institutions to enhance and preserve its political hegemony. This philosophy of Malay cause has seeped through the rank and file of practically all government institutions which have become largely mono-raced through decades of UMNO's racist rule. This explains why there is no sense of shame when vulgar political partisanship and discriminations in clear violation of the Constitution are displayed in the exercise of their duties, whether these are performed by judges, prosecutors, police, anti-corruption commission, election commission, or other civil servants. All are okay under UMNO's agenda of Malay cause so they say.

As pointed out by both politicians, the main beneficiary of this race-based hegemony is the ruling elite, who have long hijacked the affirmative New Economic Policy (NEP) for self-enrichment and preservation of their political power in the name of the Malay cause. This has resulted in rampant and pervasive corruption that spreads across the entire spectrum of the political and administrative hierarchy under UMNO's rule.

The price that the nation has paid for this corrupt authoritarian rule is the unrelenting escalation of crime rates, loss of civil liberties including media freedom and the serious erosion of the rule of law. Needless to say, unbridled and unprincipled racial and political discriminations have polarized the nation along racial and political lines.

No institutional reforms

And UMNO under Nazib has done practically nothing to restore the rule of law as exemplified by its complete disregard for the two Royal Commissions' recommendations to restore integrity to the judiciary and police via the Lingam probe and the implementation of IPCMC (Independent Police Complaints and Misconduct Commission) respectively. In particular, Najib's disdain for the rule of law is reflected in the continued harassment of Anwar Ibrahim through a dubious sodomy charge; and his unconstitutional grab of power in Perak, which is now being maintained through manipulation of judiciary and prosecutors.

At this time of our lowest economic ebb in recent memory amid global recession, what we need is national cohesiveness and unity of purpose and robust economic resilience to stage a bounce back. But what we have now is the opposite. Apart from endless political dissension and racial squabbling, decades of racist discrimination and protectionism has maimed our competitiveness through crippling mediocrity in education and administration and massive brain drain. With the recent sharp fall in investment and sustained capital flight, which is reflective of the low regards investors have of the present system, the prospect of a healthy recovery is bleak.

In this respect, both the Tunku and Zaid are of the opinion that the only way forward is to rid the present racist policy. Speaking in words that will surely withstand the test of time, both have offered advice that deserves the serious consideration of every Malaysian.

Zaid said:

"The single greatest impediment to Malaysians being unified and working together for the common good, is racist politics in Malaysia".

And the Tunku said:

"A fair and equitable economic order, founded on equal citizenship as guaranteed in our Constitution, is the only possible basis for a united

Malaysia and a prerequisite of the competitive, talent driven economy we must create if we are to make our economic leap.

If we could do this, we would restore national confidence, we would bring Malaysians together in common cause to build a country that all feel a deep sense of belonging to. We would unleash the kind of investment we need, not just of foreign capital but of the loyalty, effort and commitment of all Malaysians.”

Najib's 1Malaysia a Two-Faced Scam

10.08.2009

Former Prime Minister Mahathir Mohamad has claimed that he does not understand what '1Malaysia' stands for and suggested his 'Malaysia Boleh' is a better slogan. I can't help but agree with him that 'Malaysia Boleh' perhaps better describes some of the grotesque idiosyncrasies of Malaysian life, at least over the following two scenarios which were spectacularly contradictory to each other:

Scenario 1: Prime Minister Najib Razak's wife Rosmah Mansor put up a stellar performance in a charity dinner that helped to raise RM 2.3 million for a Chinese primary school in Segambut, Kuala Lumpur on Aug 6. Not only did Rosmah serenade the audience with a popular Mandarin song (which alone netted RM 200,000), her group of ministers' wives gave rendition to four songs each in a different language - Mandarin, English, Malay and Tamil - to give full expressions to her husband's '1Malaysia' motto. She heaped praise on the Chinese community for their unfailing generosity to support Chinese education and urged other communities to follow suit in the spirit of '1Malaysia'.

Scenario 2: Almost at the same time, mass circulation Malay paper Utusan Malaysia, which is UMNO's mouthpiece, spat racial fire through an incendiary article. Writing under the title 'Melayu jangan jadi bacul' (Malays, don't be cowards) on Aug 4, journalist Noor Azam called on the Malays to rise up to meet the challenges posed by the Chinese and Indians, who wanted to "destroy Malay political power held by UMNO since independence" with the help of Anwar Ibrahim and PAS. This supposed power grab was pursued with Chinese-dominated DAP manipulating the Malay leaders in Pakatan Rakyat, claimed Noor Azam. The writer further alleged that "The attacks and the hatred shown by the opposition and

Chinese and Indian political activists towards the Malays have worsened". To goad the Malays into action, he even went to the extent of calling them 'cowards', saying "The Malay race has become stupid cowards, and people who are cowards will die before even their deaths."

Such bare-faced incitement of racial hatred and racial clash should have landed the writer in lock-up and the newspaper's licence revoked under Malaysia's repressive laws, particularly if they are on the other side of the political divide. However, Noor Azam and Utusan Malaysia not only escaped untouched, but had the honour of being defended by none other than the UMNO's Deputy President cum Deputy Prime Minister Muhyiddin Yassin who ridiculously and inexplicably blamed the opposition for causing such heightening of racial temperature. That Noor's racist blast bears the stamp of UMNO's policy is unmistakable.

Double-faced politics

Observers of political development following Najib's ascension to power could not fail to recognize that these two conflicting scenarios are by no means isolated. In fact they are each a clog in a continuous chain of events moving in diagonally opposite directions. While the top husband-and-wife team are merrily singing their idyllic songs of racial harmony and dishing out goodies day in and day out, their party's propaganda machines are regularly spewing racist poison to rile up the majority race against the minorities. UMNO has partially got away with this double-faced game, because it has complete control over the local media (other than the Internet), and the two conflicting tunes are played separately to two different audiences in their respective media, with each largely oblivious of what the other has learned. For example, news in the nature of Scenario 1 is never carried in the Malay press so that UMNO can throw some bait to Chinese voters without risking the displeasure of Malays. Similarly, it incites Malay sentiments against other races only through the Malay press which is not commonly read by the Chinese.

The objectives of this two-pronged strategy are obvious. Strategy 1 (Scenario 1) is meant to coax the return of Chinese and Indian voters who had left the BN in a mass exodus in the last general elections on 8 March 2008. And Strategy 2 (Scenario 2) is geared towards splitting the opposition and re-uniting the Malay electorate under the UMNO canopy by appealing to the primordial instincts of race and religion through pressing the panic

buttons of lies and deceit, of which the nonsense of Scenario 2 is typical. The over-arching aim is of course an electoral victory in the next elections – at all costs including inflaming racial and religious clashes.

This explains why Najib's new measures upon assuming office are mostly ad hoc, piecemeal, populist and election-centred – every move calculated for electoral gains.

There is a conspicuous absence of serious policy initiatives to regain national cohesiveness from the present chaotic political and racial fragmentations. This had to be done through legislative and institutional reforms to restore full justice and equality to all citizens regardless of race, religion and political affiliation as guaranteed under the Constitution. Neither is there any long term planning to re-invigorate the economy through fundamental policy changes in economy, education and public service. But how could UMNO achieve any of these when it refuses to give up racism, corruption and elitism as mainstay of UMNO's political sustenance?

Revival of repression

In fact, Najib's pursuit of this Jekyll and Hyde political game under the charade of his '1Malaysia' slogan is a clear signal that UMNO has given up its earlier token attempt under former premier Abdullah Badawi to institute reforms in the aftermath of its punishing set back in the 8 Mar 08 elections. In its place are tokenism and public relation exercises and image-polishing to spruce up the façade of reforms and harmony, for which the government would spare no costs. Whereas in substance, the Najib leadership has chosen the opposite course of renewed repression ala the Mahathir era. This has been amply illustrated in the series of lawless atrocities against its political opponents beginning from the infamous power grab in Perak, right through the death of Teoh Beng Hock under custody of Malaysian Anti-Corruption Commission and the brutal and reckless crackdown of the anti-ISA mass rally by the police on Aug 1.

Under these circumstances, the road ahead for Pakatan Rakyat to realize its dreams of reforms is tortuous and challenging indeed. Apart from having to constantly fend off politically motivated harassment from various law enforcement agencies which are invariably UMNO manipulated, it has to fight the awesome battle of winning the hearts and minds of the masses in the uneven battlefield where all mass media (safe the Internet) are deployed as instruments of propaganda for UMNO.

For this reason, Pakatan Rakyat cannot have the luxury of unrestrained freedom to engage in intra-party and inter-party dissensions through the public media without dooming its chances of unseating the incumbent power. All parochial party interests or personal ego must be subsumed to the coalition's over-arching objective which is to bring genuine reforms to salvage the country from its present decline.

As for the public at large, just as every citizen has his inalienable rights to life and liberty and equality under the Constitution, there is also the corollary obligation upon each and every one to stand up and defend those rights. It is in this respect that those who are enlightened of the truth must do his part to disseminate that truth so that justice and truth will eventually prevail in this country.

Does Najib Really Understand Economics?

10.11.2009

I bet not a few among the participants at the 21st Multimedia Super Corridor (MSC) Malaysia Implementation Council meeting were aghast when Prime Minister cum Finance Minister Najib Razak's announced that Malaysia was aiming for a 9% annual GDP growth until 2020.

In an opening speech at the meeting held in the morning of Nov 9, Najib said:

“We aim to be a developed nation by the year 2020 and we are looking to more than double our per capita gross national income from US\$7,000 (RM24,500) to at least US\$17,000 by then in order to qualify as a high-income nation according to World Bank classifications.

“This would also mean that Malaysia has to grow its GDP by over nine 9% annually until the year 2020.” (Malaysian Insider, Nov 9.)

Playing with the totally unrealistic growth figure of 9% at a time when Malaysia and the world are still going through one of the worst recessions with no definite light at the end of tunnel yet did sound surreal indeed. More so, when Malaysia's growth record in recent years have been anything but robust.

Obviously advised by his aides that his gung-ho expectation was way overboard, Najib scrambled to do damage control via a press conference several hours later when he denied having said 9%. He said: “I did not say nine per cent, I said around six per cent as nine is not realistic.”

But of course, Najib's denial came too late, as several news media including *Bernama* and *Star* had already quoted him at nine per cent. Though these media dutifully replaced the figure of nine per cent by six per cent in their updated versions in the afternoon, some betrayed their clumsy

amendment by retaining the incongruous per capita GDP growth from the current US\$7,000 to US\$17,000 in 2020.

If indeed Najib had quoted six per cent, then compounding US\$7,000 at the increase of 6% per annum can only bring us to US\$13,000 by 2020. Only when we compound it by 9% can we reach the figure of 17,000. Figures tell no lies. It was clearly a deliberate statement, not a typing error or a slip made when reading the speech.

So the big puzzle: How could a finance minister, who is supposed to be the economic czar of a country, make such an unforgivable blunder?

Granted that a man of Najib's position is expected to rely on speech writers to lighten his works, but he should remain the master as policy formulator and decision maker, not a robot reading out speeches he could not fully comprehend.

Chairing over such an important meeting which deliberates the agenda of MSC Malaysia, which in Najib's words, serves as "a foundation to build a world-class technology sector to kick start a vibrant Malaysian ICT industry", I would expect Najib to be in full possession of a macro view of the nation's economy, the direction it is going, and the specific role the budding ICT industry is playing in relation thereto. And central to all these is of course a realistic assessment of current and potential strength of our economy.

As finance minister, Najib is sitting at the apex, commanding a vast bureaucracy of economic and financial experts and planners, and he should therefore be the best judge of our economic realities. In fact, he should be the first one to spot any gross irregularity in major economic figures. If he is a competent finance minister, he should be the final arbiter as to what growth figure to adapt for policy making purpose.

Even allowing the fact that he is new to the job, he should at least be able to discern when a wildly unrealistic target is presented to him. Not to be able to sense that 9% growth is way out of the realm of the reasonable is a horrible admission of ineptitude.

Under the circumstances, it is not unreasonable to surmise that this could be a case of an economic novice writing out a speech which was read out by a boss equally ignorant about economics.

That may not be a far-fetched assumption, given that Najib's premiership so far seem to have been one gigantic public relation exercise void of substance to create the impression of change when in fact nothing has been changed. Not in our hopelessly decadent institutions nor in our utter lack of rule of law.

**Election Mar 2008 – Pakatan Rises,
BN Declines.**

King Must Act in Election Commission Appointment

On the eve of EC chairman Rashid Rahman's due retirement on 31 Dec 2007, UMNO is rushing through a constitutional amendment to extend the retirement age of EC members, so as to allow Rashid to preside over the coming elections.

22.11.2007

Almost by stealth, the government has just quietly introduced a constitutional amendment that will have an important impact on Malaysia's course of history.

On Nov 20, minister Nazri Abdul Aziz tabled for first reading the Constitution (Amendment) Bill 2007 that seeks to extend the retirement age of members of election commission (EC) from 65 to 66. This bill will be tabled for second and third reading on Dec 11.

This lightning move to amend the constitution is obviously to enable current EC chairman Rashid Rahman - due for mandatory retirement on coming Dec 31 when he reaches 65 - to preside over a critical general election that may take place soon.

Rashid is a virtual UMNO functionary, having faithfully served to advance the political fortunes of UMNO led coalition Barisan Nasional through unabashed gerrymandering at every constituency re-delineation exercise in the past few decades. Our memories are still vivid of his shameful conduct as EC chairman in the Ijok by-election in April 2007 - an election so scandalized that it rendered even election-Malaysian style meaningless. Apart from committing every election sin imaginable in that by-election, BN's open and massive bribery - spending tens of millions of public funds on a constituency of only 12,000 voters in a matter of days prior to polling -

was virtually crying out for punishment. And yet, in the face of such blatant challenge to his authority, EC chairman Rashid not only failed to blow the penalty whistle as an umpire should, but instead had abetted the crime by endorsing such bribery as legitimate government expenses.

The mammoth street rally in Kuala Lumpur on Nov 10 to hand over a petition for electoral reforms to the King was the culmination of accumulated frustration and despair at the hopelessly biased electoral system that has gone from bad to worse, for which Rashid must bear major responsibility.

EC neutrality imperative

Democracy cannot exist without elections. Similarly, a country with a critically defective election system that heavily favours one contestant to the deprivation of its opponent is not a democracy, for the simple reason that the winner is a fake. Fake victors do not represent the will of the majority – the very definition of democracy.

For the electoral system to work, it is imperative that EC remains neutral. For this reason, EC has been accorded the same degree of independence as the judiciary, with Parliament determining the members' term of service. Once appointed by the King, an EC member cannot be removed without going through the same elaborate process as that for the removal of a judge – by a tribunal appointed by the King.

In fact, our Constitution has shown even greater respect to the independent status of EC by having its members appointed by the King without the mandatory "advice" by the prime minister as in the case of appointment of judges. This ensures that the appointee is not obligated to the Executive. In the appointment of chairman and members of EC, all the King needs to do is to consult the Conference of Rulers and to ensure that individuals so selected "enjoy public confidence" (Article 114 of the Constitution).

Hence, there is enough constitutional protection to allow the EC to operate in comfort and security as an independent institution free from interference from the incumbent political power. There is certainly no justification for Rashid to adopt the mentality of subservience to the Executive as revealed in his interview with *Malaysiakini* on 10th Oct 2003. When asked whether EC was meant to be an independent body, Rashid answered: "No, never ever. You look at the constitution, what does it say? That there shall be a commission that enjoys the public confidence. It does not say 'an independent commission'".

With such mentality, is there any wonder why EC has always been regarded as an indispensable instrument to perpetuate the political hegemony of UMNO?

And without an impartial EC, how can we ensure that the power to rule is vested with the people and not hijacked by the entrenched incumbent?

Rashid's impending retirement has offered the nation a golden opportunity to kick-start serious reforms in our electoral system. We therefore appeal to the King to exercise his power to appoint a new chairman that truly commands public confidence who can detach the EC from the clutches of the ruling party. For that, we respectfully suggest that the His Majesty should not confine his consideration to only the prime minister's candidate, but would also cast his sight over the wide spectrum of civil society to select the most suitable person, on whose leadership much of our hope on restoration of democracy depends.

Trivialising the constitution

Turning now to the impending constitutional amendment, UMNO is trivialising the Constitution through shotgun amendment for political expediency. This must be deplored in the strongest term. Today, we are asked to approve a constitutional amendment overnight to accommodate Rashid. What if a future EC head falls out of favour – will there be another lightning constitutional amendment to cut short his service?

UMNO must be reminded that the Constitution is the solemn agreement cementing the consensus reached among the country's founding fathers who represent various racial and religious groups. It should not be lightly altered. Where alteration is desirable and inevitable, it should only be done with consensus after the widest consultation possible, so as to preserve societal harmony.

For this reason, the constitution of a democracy is rarely amended. Take the case of USA which, in its 231 year history, has only amended the constitution 27 times (mostly single amendment), the last being in 1992. And in Singapore, which has similar historical background as Malaysia, the constitution has been amended only 4 times, the last being in 1991. In contrast, Malaysia has already amended its constitution well over 40 times (mostly multiple amendments) consisting of not less than 650 individual amendments. These figures speak for themselves as to the low priority our successive BN leadership has placed on the sanctity of law and the preservation of rule of law.

Coming elections critical

Why did I say earlier that the coming election is critical? This is because the state of the nation has never descended so low as under the present leadership of Abdullah Badawi, while the opposition is well poised to mount the challenge for power under the leadership of Anwar Ibrahim who is generally accepted as a viable and more desirable alternative to the incumbent. An impartial EC at this moment will certainly help to reduce the extreme lop-sidedness of the present playing field, thus offering the country the first real chance in breaking off from the antiquated corrupt rule of UMNO, which is gradually but surely bringing the nation to the precipice of calamity.

Just look at the incessant titanic scandals that have been bombarding our senses in recent days. To name a few, on the corruption front, we have the nation's top crime busters – deputy home security minister, IGP & ACA chief – simultaneously investigated for corruption and exonerated dubiously; the RM 4.6 billion “Ghost Town” in Port Klang (PKFZ); the dubious RM 6.7 billion naval vessel contract that was defaulted; Sarawak chief minister's alleged embroilment in the timber kickback scandal, etc. The picture is equally bleak in our judicial system – the shocking release of Eric Chia of the Perwaja Steel fame (RM 13 billion losses) after one decade of investigations and trial; the sham trial of the grisly Mongolian murder with links to top political hierarchy; the Lingam video clip that reveals manipulation of justice and judges at the highest level.

While the nation is battered by an endless stream of scandals, the prime minister's spin doctors are merrily spinning “economic corridors” everywhere – to the south, north and east coast, and very soon across the ocean to Sabah and Sarawak. With corruption and the rule of law deteriorating by the day, these “corridors” will eventually meet the same faith as their predecessors in the Mahathir era – evaporation into thin air. The only difference is: Abdullah calls these “corridors” while Mahathir called them “economic triangles” such as Johor-Singapore-Batam triangle to the south, Malaysia-Thailand-Sumatra triangle to the north, and Malaysia-Phillipine-Kalimantan triangle to the east. These “triangles” are of course never heard of nowadays.

Meanwhile, the quality of our education system continues its unrelenting slip, as for the first time, none of our twenty odd public universities could squeeze into the top 200 of the prestigious THES World Universities Rankings (Times Higher Education Supplement).

Economy threatened

The ruling coalition may be unfazed by these bad news, nestling in the thought that they are well insulated from the wrath of public opinion through the protective shield of local press and TV, which often act as the regime's propagandists. But market forces are merciless. They will mete their punishment to a governance run foul through crippling economic competition and hollowing out of investment.

For the first time, Malaysia's FDI outflow equals FDI inflow for 2006 (outflow USD 6.0 billion against inflow USD 6.1 billion), as reported in World Investment Report 2007 published by UNCTAD (United Nation Conference of Trade and Development) on 16th October 2007. This is most unusual for a developing economy, and it signifies the troubling scenario of capital flight arising from dwindling investment opportunity due to loss of competitiveness. In contrast, the FDI outflow/FDI inflow ratios for our neighbours are: 36% for Singapore, 8% for Thailand and 61% for Indonesia. It is pertinent to note that even in an advance economy like Singapore, its FDI outflow is only one third of FDI inflow, which stands at USD 24.2 billion – 4 times ours.

Malaysians who regularly get their ration of news from the Internet – as distinct from those who only read the local press and watch the local TV – should have no problem understanding why Malaysia continues to slip against its neighbours in competitiveness. The inevitable conclusion is: the UMNO led anachronistic conglomerate of race-based parties has long outlived its legitimate political life-span. It is time that we turn to a new leadership to check the present regression and steer the nation towards the path of genuine integration and growth.

And the restoration of neutrality to the election commission at this stage will be one big step towards realizing this objective, for which we must put our full weight to ensure a competent EC chairman is appointed.

Main Election Issue: For or Against Umnoputraism?

Drawing the battle line and presenting the main issue on the eve of the 08 Mar 2008 elections.

03.03.2008

For the first time, there appears to be a clear-cut battle line between the opposition parties - PAS, DAP & PKR – and the ruling Barisan Nasional in the coming election.

Reading through the manifestos of the opposition parties, they seem to have said in one voice: no more racial politics please, let us get on with real nation-building by restoring the democratic rights as enshrined in our Constitution to all citizens, irrespective of race or creed.

Whereas BN says: we have done well in the past 50 years, let us maintain the status quo. This means UMNO will continue its hegemony which is characterized by abrogation of democracy, impaired rule of law, pervasive racism, rampant corruption, abuse of power, religious intolerance, uncontrollable crime rate and runaway inflation.

Of these evils that are plaguing this country, what have captured the attention of the electorate most are the ones that have inflicted personal pain to the common people: the unbearable price hikes and the equally unbearable crime rates. So, let us zero in on these two issues.

Crime rates have been spiraling uncontrollably in recent years due to two main factors: a thoroughly corrupted and incompetent police force, and absentee ministerial oversight under the Minister of Internal Security cum Prime Minister Abdullah Badawi. A corrupt police force is the natural product of a corrupt political leadership. It doesn't make sense any way for a

corrupt political leadership to maintain a clean and competent police force, for the latter, if truly uncorrupted, would surely put the former in trouble. That is why the proposed Independent Police Complaints and Misconduct Commission (IPCMC) will never be implemented as long as UMNO is in power. And that is also why crime rate will not come down for the next five years if UMNO is returned to power.

What about inflation? BN has a point when it says that local prices are affected by escalation of world prices of commodities. But why are Singaporeans, who are even more affected by world commodity price escalation than us, do not cry out in such pain as Malaysians? Shouldn't Singapore, which produces no primary commodity at all, suffer more than Malaysia, which is a major exporter of primary commodities?

First, Singapore has been enjoying robust economic growth while Malaysia has not, despite BN's claim to the contrary. The vast majority of Malaysians, who have been struggling to make ends meet, could hardly stay above the water under the recent price spirals. Second, Malaysia's notorious income disparity, which is already worst in the region, has further worsened under Umnoputraism – the policy of favouritism enjoyed by UMNO elites and cronies, resulting in vast majority being deprived of equitable share of the nation's wealth. Third, unreasonable hikes in costs of services – road tolls, electricity, water, telecommunications etc – due to one-sided agreements and monopolies favouring crony enterprises to the detriment of consumers. Fourth, we have a corrupted and inept administration that has lost its moral authority to impose discipline on traders, many of whom have obviously indulged in profiteering.

It will be seen that, as all roads lead to Rome, all these evils could be traced to one root cause – racism.

It is through racism that UMNO is able to maintain its hegemony through racial divide and rule. While in power, it amends the Constitution and enacts laws that abrogate democracy in a continuous process that eventually allowed it to have amassed immense autocratic power to the Executive. It manipulates the democratic institutions – judiciary, attorney general's chambers, police, ACA, election commission, civil service, etc - to serve the parochial interests of the party. Through these manipulations, the ruling elite have pursued its illegitimate interests with impunity, such as amassing illegal wealth and crushing down on political dissents.

As a result, racism and corruption have run unabated in a dictatorial ambience, devastating the nation to an untenable level of political regression.

Apart from causing the worst racial polarization and brain drain through intensifying racial discrimination, Umnoputraism has seriously undermined the integrity and efficiency of the entire government machinery through uninhibited corruption. In particular, our judiciary is held in scorn, and the quality of education continues its unrelenting slide.

Our international competitiveness have slipped from the top strata to the bottom rank in the region, disfavoured by foreign and local investors alike. A most worrisome indicator is the slip of Malaysia's export growth to the bottom in the region for 2007 (refer to *Star*, Nov 29, 2007). In a year (2007) when global economy expanded strongly and primary commodity prices surged, Malaysia should have enjoyed admirable export growth and economic boom since it is a major exporter of primary commodities and a net petroleum exporter. Then why are the people groaning of economic hardship amidst rising costs of living and declining quality of life?

Hong Kong and Singapore have no natural resources whatsoever, and yet they are reaping bountiful budget surpluses and distributing generous cash to their citizens. In contrast, Malaysia is richly endowed with natural resources and yet it has to struggle to prop up its economy through more than ten consecutive years of heavy budget-deficit spending.

No rational person should deny that Malaysia has been badly mismanaged. And the culprit is UMNO's racist and corrupt politics.

On the eve of election, UMNO may be satisfied that it will continue to be cuddled by its core supporters. This feeling has no doubt been buttressed by the anticipated goodwill it has gained through the recent hefty wage increment to the 1.2 million government employees and the unprecedented commodity price boom enjoyed by Felda settlers who are spread all over the country. But these people must be reminded that their unusual benefits may be transient, as such hefty wage increment is a one-off affair, and commodity prices are subject to cyclical changes. Only a clean and competent political leadership can extricate the nation from the present quagmire and bring long term prosperity to its entire people.

Malaysians of all races must now decide whether they want the present racial fragmentation to continue for another five years under UMNO, with all the collateral vices intact or give a fresh start to the nation by boldly embracing genuine multi-racialism to restore democracy and good government to the people.

In short, the vote to be cast on the 8th of March should be treated as a verdict on Umnoputraism: for or against?

An Opportunity to Treasure for the Opposition

The election results shock almost everyone with the opposition parties sweeping in with unprecedented success.

10.03.2008

Malaysian Election 2008 has heralded the arrival of a new era.

The spectacular election results demonstrated in no uncertain terms that the racial bondage that has imprisoned this country for 50 years has finally begun to disintegrate under the combined onslaught of PKR, DAP and PAS.

Not only the target of breaking Barisan Nasional's long standing two third parliamentary majority was achieved, but more importantly, the opposition has unexpectedly captured the heartland states of Selangor, Perak, Penang and Kedah, in addition to retaining Kelantan in a landslide. These achievements would not have been possible, if not for the new ground boldly broken into by the electorates themselves – hordes of Chinese and Indians who never supported PAS before had rushed to vote for the latter, while Malays in unprecedented numbers had voted for DAP. And needless to say, all the three major races have supported PKR enthusiastically.

It is this willingness to break the racial and religious taboos (which have been instilled into the people by BN) that has opened up a new vista of great opportunity for the nation, made possible through the electorate's newfound wisdom of choosing a government not based on race or religion but on merits. Henceforth, political parties must fight their battles with sound policies and ideals and records that are most attuned to the welfare of the masses, not by appealing to the primordial instincts of race and religion; as the electorate are clearly discarding the latter for the former.

This will surely result in vast improvement in governance for the country through better selected political leadership.

However, this rosy scenario may come to naught if the opposition parties fail to transcend their differences and work together effectively as a team to transform promises into realities.

Collective leadership

None of the opposition parties has a simple majority in any of the state assemblies of Selangor, Perak, Penang and Kedah, so they have no choice but to form coalitions if they want to rule these states. Since coalition is thrust upon them, they must form a political partnership, and this partnership should logically also extend to states where a partner may have only one seat, namely Penang (PAS: 1) and Kedah (DAP: 1). The inclusion of PAS and DAP in Penang and Kedah respectively will ensure that policies made in these states will have taken cognizance of the interests and views of the constituents represented by these parties in these states. Besides, these minor inclusions will help to foster solidarity among partners and minimize dissatisfaction of minority constituents in these states.

A major failure of the BN model of leadership is the over-concentration of power on the leader and the lack of mutual respect and genuine consultation among partners, as the former encourages corruption and abuse of power while the latter will doom the partnership to eventual disintegration through desertion by the marginalised partners.

Hence, the opposition parties must genuinely practice collective leadership in the state governments, not only to avoid pitfalls of BN but to ensure long term flourish of the partnership. All policies and major decisions must be the product of consultations, not whims of the autocrat.

With the understanding that the leader is but the executor of policies, which in turn are collectively decided, the choice of the leader (chief minister or menteri besar) should not be an oversensitive issue, as long as the decision is collectively made and the candidate is deemed suitable.

Top priority

The main scourge of this country is corruption, which is the root cause of high crime rate and inefficient government which in turn is a contributing cause to economic hardships manifested by stagnant economy and runaway inflation. We have promised the electorate to wipe out this vice, so anti-

corruption measures must be on the top of the opposition agenda. As a start, I propose these two immediate measures:

One, push for public declaration of assets of all elected representatives, with those in PKR, DAP & PAS taking the lead. All opposition-controlled state governments should include in their official websites a section showing the assets of all assemblymen. Pass a resolution to call for these public declarations if BN assemblymen are reluctant to do so. These asset details should be updated regularly.

Two, make it compulsory for all contracts under state government control to go through open and transparent tendering system: all tenders to be advertised and tender prices announced promptly (including posting in official website) upon closing of tenders. All tenders must be evaluated professionally with known criteria and awarded through the tender board.

Public support crucial

Now that the electorate has given the mandate to the opposition parties to govern these states, the people can help to make these new governments a success by giving them whole-hearted support and constructive criticisms where they are due. We must not forget that Malaysia has been badly managed for a long time, and it is only through maximum co-operation from the public, that the arduous task of reforming an old and impaired system can be speedily accomplished.

As for the opposition parties, this is a once in a lifetime opportunity to demonstrate their competence to take over the helm of the entire country by doing a good job of running these states. This, I am sure, can be achieved if the leadership of these three parties are willing to put the nation above personal or parochial party interests at all times. And let all adopt the motto: "The nation must always come first, no matter what happens".

Disaster Looms for Malaysia's 'Titanic'

One month after the stunning electoral set back, Pak Lah's feeble attempt to 're-energise' the unfulfilled institutional reforms was overwhelmed by UMNO's propensity to crawl back to its old racial cocoon.

04.04.2008

When former premier Mahathir relentlessly lashes out at Prime Minister Abdullah Badawi for the disastrous electoral setback suffered by Barisan Nasional, does Mahathir realize that that he is in effect slapping his own face?

BN was heavily punished by the electorate only because Pak Lah had failed to clean up the filth left behind by Mahathir. So, the latter is still the main culprit for having "destroyed UMNO and BN" - the very accusation he made of Pak Lah in an emotional outburst upon learning the election results.

For, was it not Mahathir who had perfected the art of dictatorial rule and transformed UMNO into a hegemonic power that has brought havoc to the country through massive corruption and abuse of power? Now the people have grown wiser, so they have emphatically rejected this corrupt hegemony, as demonstrated in the election results of Mar 8.

Almost one month after the election, the leadership of UMNO appears to be still groping, unsure what exactly has hit them so hard. While Mahathir and his supporters are still merrily baying after the blood of Pak Lah, one time vice president Tengku Razaleigh Hamzah (Ku Li) is frantically sounding the alarm bell that Malays are loosing political power. Other UMNO leaders are vaguely talking about "reforms", "reinventing" or "strengthening" the party without being specific what these mean.

Perhaps the nearest to any policy response to this election came from Pak Lah himself when he delivered his first major post-election speech during

the Investment Malaysia 2008 Conference on Mar 25. He conceded that the failure to fulfill reform pledges was a major factor of the electoral shock and vowed to re-energise reforms against corruption, crime rate, judicial rot, among other issues. However, his resolve was thrown into doubt when in the same breath he said his "biggest mistake" was to have failed to wage a successful cyber-war as the opposition did. This reminds us of the doubtful admission of guilt by former MCA vice-president and health minister Chua Soi Lek who recently resigned in disgrace after a secret video recording of his sex exploit was circulated. Chua said his biggest mistake had been to stupidly use the same room every time he had a romp with his 'personal friend'.

It's management, not Internet!

Make no mistake, BN/UMNO was sunk due to its atrocious mismanagement of the country, not due to the Internet, as the latter is only the messenger, not the message itself.

If UMNO's so-called reforms or rejuvenation or whatever you call it, is only a revamp of the long antiquated racist formula to run the country in this globalised age without genuine rehabilitation of the impaired democratic institutions - as appears to be the case, judging from the tenor of the rebellion that is brewing - then the 'Titanic' (read UMNO) is on course to meet that fateful iceberg.

In fact, UMNO should realize that, had it not been its monopolistic use of the media for election propaganda in the run up to the last elections, BN would have suffered a crushing defeat, considering the mountain of corruption and misdeeds that have been endlessly emanating from its leadership.

Indeed, the first indication of the shakiness of Pak Lah's reform pledges came when his so-called "reform cabinet" rejected de facto law minister Zaid Ibrahim's maiden attempt to initiate judicial reform. Entrusted by Pak Lah to spearhead judicial reform, Zaid had proposed to apologise to former Lord President Salleh Abas and other Supreme Court judges who were unjustly sacked in 1988, leading to the collapse of integrity in the judicial system to this day. No less than the second and third highest UMNO - deputy president Najib Razak and vice-president Muhyiddin Yassin had publicly slapped down on this Zaid initiative. So much, for Pak Lah's renewed effort at reforms under the 'rejuvenated' 'reform cabinet'.

And so, Pak Lah's call for reforms looks destined to remain a "voice in the wilderness", in line with its similar destiny in his previous term of premiership.

While there is no visible movement on the ‘reforms’ front, actions seem aplenty in the camps that champion racial causes – presumably the ‘revival’ of Malay power through UMNO, with an apparent convergence of purpose between former party stalwarts Mahathir and Ku Li. The latter is agitating for a party EGM and has declared his challenge for the presidency in party polls in December.

Ku Li’s racial logic

It is pertinent to look into Ku Li’s line of thinking when he invokes the fear of “loosing political control to non-Malays”. He theorizes that Penang, Perak and Selangor are already under non-Malay control. He arrives at this conclusion by numerically adding the non-Malays in PKR to those in DAP in the respective state governments.

This narrow interpretation of racial power is both illogical and unhelpful in forging racial integration. First, a party member’s first allegiance is to the party (where members share the same ideology), not to his race. It is the policy of the party that determines the treatment accorded to the various races, not the racial identities of the officers executing the party policy, for a member that strays from party policy cannot survive within that party. Second, these state governments are ruled by coalitions of PKR, DAP & PAS, where none of the parties have won enough seats to govern alone. So, policy decisions are, by necessity, consensus under collective leadership.

In fact, Malays should be least worried of being marginalized under these coalition governments, for is it conceivable that PKR and PAS would allow Malays to be so treated?

UMNO leaders have equated Malay power with UMNO, so in their logic, Malays loose political power when UMNO looses control of government. Why should it be so? Aren’t both PKR and PAS led and controlled by Malays? Is Anwar Ibrahim not a Malay? Is Hadi Awang not a Malay?

Malays should logically be more worried about whether the elected government is good or bad, rather than whether the government is or is not UMNO-controlled.

NEP and Malay rights

Perhaps the issue that invokes the greatest concern among Malays is the fate of the New Economic Policy (NEP), which has come to be identified with Malay privileges.

Admittedly, NEP had made considerable contributions towards uplifting the status of Malays in economic and educational field, particularly in the earlier stage, resulting in the creation of a respectable and sizable Malay middle class. However, as UMNO assumed increasing hegemonic power under Mahathir, NEP has degenerated into a gigantic camouflage for massive corruption and cronyism that sustain the political patronage system. In turn, this sustains the UMNO hierarchy with the party president cum premier at the apex – a phenomenon we call Umnoputraism, which has become the plague of economic competitiveness and rule of law.

When Pakatan Rakyat – an alliance of PKR, DAP & PAS – proposes to do away with NEP, it actually means to discard Umnoputraism. In place of NEP, a genuine affirmative policy known as the Malaysian Economic Agenda (MEA) will be implemented to uplift the economic and social status of those who are in such need, irrespective of race or creed, in an ambience of transparent and frugal rule that will surely revive investors' confidence in this country.

Malay confidence in Pakatan Rakyat should further be re-assured by the avowed intent of the three component parties through their respective manifestos to uphold the Constitution, in which the special position for the Malays and the natives of Sabah and Sarawak is safeguarded under Article 153. There is no reason to believe that this status quo will change anytime in the future.

Pakatan Rakyat

The greatest urgency for Pakatan Rakyat now is to quickly bring into shape the style and substance of its liberal and pro-rakyat governance, as contrast to the BN's self-enriching elitist rule. The perception of the goodness of PR's rule must be quickly and firmly established so that PR can face off with confidence any sudden political challenge that may erupt in this time of transition and fluidity of political power.

In this connection, PR must follow through with determination its top-priority agenda of public declaration of assets of elected leaders, reinstatement of open and transparent tenders and legislative initiatives in judicial and electoral reforms and restoration of civil rights.

The people have spoken loudly in the election of Mar 8. Has BN understood the message and does it possess the political will to make the necessary changes?

And is PR up to the challenge of fulfilling the people's wishes? The people are keenly watching for answers in the months ahead.

Anwar's Triumphant Return To Parliament

Anwar's epic victory in the Permatang Pauh by-election on Aug 26 was another milestone marking Pakatan Rakyat's unrelenting march towards Putrajaya.

06.09.2008

The Permatang Pauh by-election has rightly earned its reputation as Political Tsunami II. It has not only confirmed that Political Tsunami I - general elections on Mar 08 – was not accidental, but has also established beyond doubt that Pakatan Rakyat (PR) is a far superior political force than incumbent Barisan Nasional (BN) to move Malaysia out of the present quagmire of economic malaise and political shambles.

Contrary to BN leaders' cavalier reference to Permatang Pauh as “just another by-election”, it is in truth a battle royale between the two protagonists. It resulted in a drubbing for BN that some rightly nicknamed the Waterloo of BN – a decisive defeat reminiscent of the famous battle that marked the eclipse of France in the Anglo-French war for supremacy two centuries ago.

How can it be otherwise when both had pooled in all their resources for this epic showdown, in the course of which BN was completely outclassed and resoundingly clobbered?

Against Anwar Ibrahim's clarion call for sweeping political reforms and advocacy of a reviving economic agenda, BN/UMNO could only answer with vile personal attacks and ugly incitement of racial hatred and fear.

Pakatan Rakyat outshines BN

And the mismatch in campaign strengths was painfully glaring. Starting from the nomination day when the size of BN supporters was completely dwarfed by that of PR, the latter put up a dazzling campaign marked by

buoyant morale, strong discipline, seamless co-operation among the PR partners (PKR, PAS, DAP) and convincing conveyance of its pro-rakyat agenda. In contrast, BN's campaign was mired by paucity of cogent ideology, disarrayed teamwork, low morale, and resorts to defamation, election frauds and trickery.

The great contrast in support from the masses can easily be seen from the stunning and increased majority won by Anwar Ibrahim who garnered two third of votes cast, despite BN having waged its dirtiest campaign to date. This included the many abuses of public resources to gain votes, such as impromptu dispensation of millions of public funds and incessant dissemination of vicious propaganda through government-controlled media, besides manipulating the partisan election commission.

An analysis of the polling results shows that PKR had made substantial inroads (since election Mar 8) in the polls among all the three races – Malays, Chinese and Indians – in addition to grabbing a lion's share of votes from young voters of all races. That young voters have deserted BN in flocks is a clear indication of their detestation of BN's antiquated politics. It augers a sunset scenario for this overstayed political power, keeping in mind that almost one third of qualified voters – most of them young - have yet to register as voters. Imagine the impact they will have on future elections when they are registered in due course.

From this by-election, we see that the migration of electoral support of all races away from BN has continued unabated since the landmark election on Mar 8. This phenomenon is attributed in part to yet another floundering by Prime Minister Abdullah Badawi to honour his reform pledges post-election, and in part to UMNO's unaltered course of racial hegemony which embarrass other race-based component parties and further alienate the non-Malays. Under UMNO's business as usual stance of governance, deterioration in all fronts continue – political, economic, social etc – as exhibited by the quickening pace of public scandals of endless corruption and abuse of power that further undermine public confidence and trust.

Economy mismanaged

Global economic slow-down and escalating inflation have hit many countries. Malaysia suffers more than its fare share of hardship due to gross mismanagement by an incompetent leadership. As a major petroleum producer and exporter in this region – Malaysia produces 1.7 million barrels of oil equivalent per day - we should be riding it out with relative

ease compared to countries without oil fortunes. But instead, we are landed in a double whammy of hyper-inflation and stagnant growth, which have inflicted widespread economic hardships to man-in-the-street and industries alike.

A case in point is the national budget 2009 recently tabled by Abdullah. Although there are some minor allocations to assist the needy here and there, these are far from adequate to overcome the sufferings of the general public caused by severe shrinking of our ringgit. The budget tends to deal with surface symptoms but fails to address the root causes of our economic malaise. Shrewd political observers have rightly call it a populist budget aimed at giving life-support to a wobbly prime minister and his government which is struggling to prevent its approval rating from plunging further.

While the budget lacks policy direction based on a macro view of the economy, evidences of reckless spending galore. A glaring example is the alarming ballooning of operating expenditure which seems to be the trend in recent years. This has doubled to RM 154.2 billion during the four years of Abdullah's premiership, and tripled since 2000. It really boggles the mind as to how such expenses – wages, rental, maintenance, office supplies and the like – could have expanded so swiftly. Part of the answer could perhaps be found in the Auditor General's annual reports which are unfailingly strewn with recurring cases of massive leakages that are caused by negligence, abuse of power and outright corruption.

Rapidly increasing operating expenditure (which are largely unproductive) in tandem with a corresponding dwindling development expenditure – which has shrunk to one quarter of total budge by 2009 – is undoubtedly a negative development that has contributed to our sluggish growth.

It is really painful to note that, despite our fabulous oil wealth and booming prices in recent years – the contributions from which now account for a whopping 40% of our total revenue – Malaysia should have struggled through twelve consecutive years of heavy budget-deficit spending with lack-luster economic growth to boot. What reasons could we give for such phenomenon if not for the steering by a corrupt and inept political leadership that squandered our wealth and threw away golden opportunity to build a solid base for our economy?

Prudent spending can of course improve our fiscal health; however, fundamental solution to overcome our economic hardship can only be found through a hefty uplift of the income level of our people through energetic revitalization of the economy. But such revitalization cannot be

achieved without restoring investors' confidence, liberalizing the economy by removing race-based and crony-driven protectionist policies, and upgrading education and public service by restoring meritocracy. All these measures should take place hand in hand with sweeping political reforms to restore confidence and competence to all the institutions of state.

Only through such full-scale and simultaneous attacks on the ills that plague our entire political and economic fronts could we hope to nurse our nation to the healthy path of solid nation-building and strong economic growth.

PR must take power

There is not the slightest chance that the incumbent government of Barisan Nasional is capable of embarking on such a reform venture. This is the reason why Pakatan Rakyat under the leadership of Anwar Ibrahim must endeavour to take over the reign of government without delay.

We can't wait for another four to five years when the next general election is due. This is because the unwieldy BN coalition with its antiquated political philosophy and policy has long past its validity period, and it is now in the final stage of disintegration with intensifying intra-party and inter-party in-fighting. At the rate these squabbles are proliferating now, in no time the satellite racial parties, which have already been hollowed out at the grassroots, will depart from BN, leaving UMNO to stand alone. And UMNO, already corrupted to the core, is afflicted by an intractable leadership problem. The top leader is unacceptable to the grassroots, and the anointed successor, deputy leader is too scandalized to fit into the shoes, and other potential contenders are barred due to the feudal autocracy in the party, thanks to the devious ingenuity of former autocrat Mahathir Mohamad. Needless to say, the nation is now cruising on a rudderless journey, with all its dire consequences on the economy.

Allowing nature to take its own course under these circumstances would be to invite irreparable damage to the nation's political, economic and social fabric.

Another even more compelling reason why Anwar Ibrahim must succeed in attracting crossovers to form a new federal government now is that UMNO will not sit idly by for long, watching its empire crumble. The longer the delay in the take-over of power, the higher the risk of the political partnership of Pakatan Rakyat being sabotaged by a desperado dying power. Having seen how readily and ruthlessly UMNO has cast the

repressive net over its political rivals in the past in order to preserve its hegemony, it is almost a certainty that UMNO will do its utmost to ensure that PR will not sail through smoothly to the next general election. And the hope of millions for a better tomorrow may then be dashed.

As for those who take the moral high ground to condemn the impending cross-over of MPs as betrayal of democratic principles, my simple answer is that Malaysia is not a democracy in the first place. If we were one, PR would have won the Mar 8 election, and there would not have been the necessity to engineer the present cross-over.

To skeptics who maintain that Malaysia is a democracy, I ask: Which democratic government in the world could steam-roll an ostentatiously pseudo sodomy case over a personage like Anwar Ibrahim and yet survive the wrath of public opinion? Do keep in mind that the corrupt system that put Anwar in jail for six years on similar pseudo charges a decade ago is still intact today.

BN Doomed by In-built Contradictions

The prolongation of the long antiquated race-based coalition model is playing havoc with the country.

07.10.2008

As UMNO's political power continues to decline since the March general election, Barisan Nasional (BN) component parties like MCA, MIC & Gerakan are caught in a secret dilemma – whether they should feel happy about this development. Happy, because a weakened UMNO gives these long subservient race parties the first opportunity in decades to press as equal partners in the coalition and recoup lost support in their communities. Not happy, because a lame duck UMNO may result in BN losing political power altogether to Pakatan Rakyat (PR), resulting in these component parties losing their governing status.

In crude terms, a strong UMNO is bad, because its arrogance will alienate the minorities. However, a weak UMNO is also bad, because it loses traction as the pillar for its satellite race parties.

Therein lies a fundamental contradiction in the relationship between UMNO and its parasitic partners. This contradiction, among others, would doom BN to an eventual disintegration, due to the structural changes that have taken place in the political landscape as manifested in the March 8th election results. These changes are:

1. Minority races no longer accept harsh racial discriminations, and they are convinced that their respective race parties have failed to protect their constitutional rights, having been hopelessly subjugated to UMNO's hegemony.

2. People of all races have come to realize that the BN government has grossly mismanaged the country through corruption and inefficiency, and that UMNO has widely abused the affirmative New Economic Policy for corrupt self-enrichment of party leaders and their cronies.
3. The majority of people of all races detests BN/UMNO's racial politics and yearns for restoration of democracy and the rule of law, which have been steadily whittled away in the past few decades.
4. The people have accepted Pakatan Rakyat as a viable alternative to incumbent BN, as evidenced by Pakatan winning 50% of the popular votes in the March election.

Paradigm shift

After being subjected to BN's absolute dominance for five decades, the paradigm shift represented by the above changes is spectacular indeed, considering the fact that the country is still under repressive rule. This political awakening of the people would of course not have been possible if not for the rapid advent of the ICT revolution and tireless campaigning by Pakatan Rakyat. And the beauty of this political process is that once the populace has become so enlightened, it is irreversible. As time goes on, this enlightenment can only increase, as shown in the recent Permatang Pauh by-election, when PKR increased its majority against overwhelming odds.

The results of the by-election, as well as subsequent opinion poll, have shown that while PR's support from all the three main races have increased, the increase with the Chinese and Indians is spectacularly. This is an important signal to the minority race parties in BN that their days are numbered, unless UMNO can make drastic changes to its policy of racial hegemony and corrupt governance through repressive rule. But there is not the slightest evidence that UMNO is moving in this direction, despite harsh admonition and even warning of defection by its racial partners. In this respect, the present crop of MCA and Gerakan leaders, who have been belting out chivalrous rhetoric with the promise to tame the unbridled UMNO in the run-up to their respective party elections, can only be described as indulging in mass deception – deceiving others while in a state of self-deception.

Indeed the contradiction in BN is not confined to that arising from UMNO's big bully role, as a coalition of race parties such as BN is inherently

a flawed political structure. It was only acceptable in the lead-up and transition stage of the newly independent multi-racial state – as national consciousness had not taken root. That is why the former Alliance Party - consisting of UMNO, MCA & MIC – which gained independence half a century ago for the then Malaya, was considered an appropriate political entity to lead the country into nationhood. However, as the country matured, such coalition of race parties should have long ago evolved into multi-racial parties to pave the way for true national integration.

Race-based coalition unacceptable

The reason why a coalition of race parties cannot be accepted as a permanent solution is simple – it is confrontational in nature among its partners. As each race party champions the interests of its racial group, conflicts are bound to arise all the time which necessitate constant negotiation and compromise. And it is inevitable that every race party within the coalition would look at another race party as an adversary in addition as a partner. Potential for friction increases in direct proportion to the degree of disparities among the races, whether in the social or economic field.

So long as such a governing political structure continues to exist, friction and conflicts among the races will remain an omnipresent feature of government, thus posing an unacceptable stumbling block to racial integration and nation-building.

And such stumbling block becomes even more insurmountable, if one race party assumes hegemony and imposes systemic discrimination against other racial groups. Indeed, in the case of Malaysia, this stumbling block has become monstrous, as the dominant partner is not only dictatorial but has also become thoroughly corrupted, perpetuating its rule through abusing the country's depraved institutions under the shield of repressive legislations. The devastation of such rule on nation-building is horrendous – worsening racial polarization, deteriorating rule of law and intractable economic morass. This has caused widespread hardships to the people, despite the country in recent years enjoying unprecedented booming prices for primary commodities which are largely exported.

It is precisely due to public despair and disillusionment of such flawed political leadership of BN that Pakatan Rakyat's clean politics of good governance and multi-racialism is welcome with relief as a breath of fresh air to bring new hope to the nation.

Heretical ideologies

In fact, following the recent political tsunamis swept in by PR, the nation has become increasingly aware that UMNO, through its prolong hegemony, has misled the nation into embracing dubious myths as golden formulae for nation-building. Chief among these are the adoption of a coalition of race parties as permanent polity to rule the nation, and the conversion of extra-constitutional racial privileges - evolved from the political agenda of the New Economic Policy - as birth rights.

These heretical ideologies have been the major root causes of the serious political and economic ailments that have plagued the nation.

There are good reasons why UMNO leaders have perpetuated these myths. They are to ensure that, through these racial divide and rule strategies, party leaders' political power and personal wealth can be permanently safeguarded.

And the leaders of these satellite race parties cannot abrogate responsibilities in the sordid affair, as their abetment to provide the façade of multi-racialism has perpetuated UMNO's hegemony.

At this time when the nation is facing unprecedented political and economic turmoil that may make or break the nation, it is the responsibility of every member of Parliament, in whose hands the fate of the nation has been entrusted, to ponder deeply what he must do that will most benefit the people. Should he allow the nation to drift as it is for another five years until the next election is due, or should he promptly act to contribute towards making a decisive break from the past so as to open a new chapter of hope for the nation now, without going through the hazards of a prolong corrupt rule?

Penyakit Tua? No, It's Alzheimer's Disease!

In the wake of rampant money politics in the run up to UMNO's party polls, Musa Hitam expressed frustration over the aging party's continued decline through corruption and outdated mindsets. Incapable of instituting any meaningful reform and failing to evolve with the march of time, UMNO is gazing helplessly at its own political sunset.

25.10.2008

Former deputy prime minister Musa Hitam shrewdly diagnosed the multiple deadly diseases afflicting the ailing UMNO when he talked to the press after launching a forum on Oct 22. He said the party is “too introverted”, its leaders pre-occupied with self-interests and oblivious to the interests of the masses. He also said the party is incapable of rectifying fundamental flaws such as corruption, poor accountability and abuse of power. As a result, the party has lost popular support.

Musa politely described this phenomenon as “penyakit tua” (old age sickness), but I think it will be more appropriate to call it Alzheimer's disease, as the state of corruption of the party has already reached a stage of no return.

Just flip the daily papers, and you will readily read stories of money politics in the run up to the party election. One senior UMNO minister was so exasperated by this rampant practice that he sarcastically suggested that party might as well auction its leadership positions by tenders. And the chairman of the party's disciplinary committee Tengku Ahmad Rithaudeen, who often admonishes party leaders against money politics, has just expressed shamefulness over the hopeless state of corruption in the party election, as even informers on such corruption could reap bumper rewards from the corruptors, thus depriving the committee's access to incriminating

evidence. In fact, election corruption in UMNO has been so ingrained – it has been practiced for more than two decades according to Rithaudeen – that a search in Google would show that “money politics” has become synonymous with UMNO.

When money and politics become so negatively and pervasively intertwined, party leadership inevitably falls into the clutches of wealth-seekers and wealth-dispensers. This explains why UMNO lacks political idealism and its leaders mired in mediocrity.

Abhorrent as such money politics may appear, it is however only the tip of the iceberg and symptomatic of a larger scourge that is destined to send UMNO to eventual oblivion.

Party degeneration

Started as a nationalist party in the forties to unite the Malays in their political struggles for independence, UMNO has seen prouder days as true nationalists when it worked shoulder to shoulder with other race-based parties to build the young nation at its budding stage. However, the watershed event of the May 13 racial riot in 1969 changed the course of history. Thenceforth, UMNO assumed absolute political dominance. As the famous saying goes “absolute power corrupts absolutely”, corruption began to spread rapidly in the UMNO dominated government in the seventies. However, it was during Mahathir’s two-decade rule that the art of corruption was perfected and institutionalized and lifted to the high level that we are all familiar with today.

Mahathir was able to do all this, unscathed by law, because he had amassed vast dictatorial powers through numerous amendment of the Constitution and legislation of repressive laws. With such power, and with electoral victory guaranteed by playing racial politics, he had subdued political dissent and subjugated institutions of state to serve party and personal interests.

Through sweeping privatization of state assets and through the policy of public procurement by private negotiation, party leaders and cronies were enriched beyond their dreams through political favouritism under the all-embracing façade of the affirmative New Economic Policy. This gave rise to overnight millionaires and even billionaires in the process, aggravating income disparity within Malay society.

It is not an exaggeration to say that the entire hierarchy of UMNO was financially sustained through this largesse system. Remove the system,

UMNO would crumble overnight.

In short, Mahathir's iron-grip and race-backed rule was sustained through repression and corruption.

Then what about Abdullah Badawi's reign? He won an unprecedented electoral victory by promising to undo the evils of the Mahathir era, but he also suffered the greatest electoral set back four years later for failing to fulfill that promise. Now, he is on the verge of handing over power to his deputy Najib Razak, while promising to carry out a few reforms before he leaves the scene as his legacy to the nation. These reforms are aimed at improving the independence of the judiciary and the effectiveness of the anti-corruption and other law enforcing bodies.

Against UMNO logic to reform

But will UMNO allow him to do that? Highly unlikely. Pak Lah himself knew as much, as revealed in his uncharacteristic outburst against clamours for him to make another shift forward of his retirement date, this time from March 2009 to December this year (the earlier shifts were from June 2010 to June 2009, and again from June to March 2009). Speaking to reporters in Kota Kinabalu on Oct 19, he angrily rebuked Minister of International Trade and Industry Muhyiddin Yassin, who had been at the forefront agitating for Pak Lah's premature retirement and had just suggested the party poll be brought forward from Mar 09 to Dec 08, and asked:

"Is he (Muhyiddin) afraid of reforms? He doesn't want to see reforms? Why must he frustrate reforms which have been yearned for by the people? The people have been angry with me for not honouring my reform pledges in 2004 when they gave me strong electoral support.Why must he make the suggestion now (to shift the party poll forward)? This means my reform efforts will be thwarted. But I will not step down until the reforms are carried out."

It looks like Pak Lah is fighting a lonely battle, as there is no political will among UMNO leaders to change the status quo.

One must realize that from UMNO's perspective, it is perfect logic for the leaders to resist any reform that would make the judiciary more independent and law enforcing bodies more effective. For who would protect the corrupt, when judges and policemen become no-nonsense enforcers of the constitution and the law? And without the complicity of these institutions, how could UMNO maintain its repressive and corrupt

rule? The plain truth is that UMNO cannot possibly survive politically on a level playing field against its opponent in a democratic environment where rule of law is upheld.

Oblivion inevitable

Musa Hitam is of course right when he said that UMNO is trapped in the mindset of 20 or 40 years ago, when religious and racial issues reigned supreme in an UMNO politician's agenda. But time has changed, so have the people, including the Malays who had been the bedrock of UMNO's electoral support. The younger generation of Malays does not view UMNO with the same perspective as their parents. UMNO must prove it is capable of leading the country decidedly forward in this global environment before they would give their electoral support. Exploitation of racial and religious issues is no longer a safe political trump card. With this trump card in question, and with no capacity to reform and evolve with the march of time, where can UMNO head to except political oblivion?

At this time of global financial meltdown not seen since the Great Depression of 1929, the nation is of course anxious how Malaysia can get through this storm without getting too badly battered. Is our political leadership up to the task of leading the nation safely through this rough sea? Are our institutions sufficiently competent to meet the anticipated challenge? Do our people have the skills and resilience to rise to the occasion?

Looking at how the Barisan Nasional coalition has been completely embroiled in intra-party and inter-party struggles for power and political survival of its own with scant attention to the external world, and its reluctance to cast off the race-inspired protectionism which is the main impediment to economic re-invigoration, the prospect ahead is bleak.

PKR Congress Signals Readiness For Rein of Government

06.12.2008

I attended for the first time PKR's party congress held on 29th and 30th November 2008. I believe what I have witnessed is a political party that has grown into full maturity, ready to fulfill its mission to re-shape the destiny of the nation in partnership with others in Pakatan Rakyat.

Leaders from the upper echelon of the party hierarchy have not only exhibited outstanding oratorical skills and exceptional self-confidence, but have also inspired the audience with their undoubted patriotism and dedication.

And among the grass root leaders, speaker after speaker of all races demonstrated that they have steadfastly persisted in their belief and commitment to multi-racialism and camaraderie across racial lines, despite the recent spate of provocative maneuvers by UMNO to incite religious and racial sentiments to win political support.

Against such a scenario of a multi-ethnic comradeship engrossed in discourse to bring sweeping reforms to the country, I could not help but recalled the live telecast of the UMNO congress two years ago, where shrills of racial rhetoric filled the hall. In that conference, delegates competed to outshine each other in championing Malay rights and privileges apparently trapped in a zero sum mindset, camouflaging such racist pursuit under the ritualistic recital of "ugama, bangsa dan negara" (religion, race and nation). Other than fighting for a bigger slice of cake, there was no discourse on how to advance the national fortune. The absence of national perspective in the deliberations among delegates was painfully conspicuous.

During the PKR congress, I was also encouraged by the positive response

accorded to party elder statesman Syed Husin Ali (Deputy President) when he gave an inspiring pep talk on clean politics. His advice to reformists not to look for returns for self but for the masses struck resonance with the audience - a clear manifestation that the grass root leaders of PKR are imbued with patriotism. This again stands in contrast with the UMNO counter parts, who reveal themselves as self-seekers through the now world renowned and ever escalating and ruinous practice of money politics (read corruption) in the run up to their imminent party polls.

Therein lies the great divide between PKR and UMNO.

As for the unrealized attempt to seize power on Sept 16, for which Anwar Ibrahim has received considerable brickbats, Tian Chua (publicity chief) explained that the concept of the move has been misunderstood. He eloquently emphasized that the whole idea is not to make Anwar the prime minister, neither is it to replace the BN government per se. It is in truth a political struggle to bring changes to a defunct political system of corrupt institutions built on antiquated ideology. He further stressed that the party does not struggle for Anwar, but Anwar was selected by the party to spearhead the movement.

And Anwar is quietly re-assuring that Pakatan Rakyat is still on-course in its quest to capture Putrajaya, though this time to coincide with its mounting challenge to the incumbent power in the State of Sarawak - a pivotal state with the most electoral seats (parliamentary 31 and state: 70), where the people are among the poorest despite having the biggest land mass and the most abundant natural resources of the country.

That Sarawak is ripe for political picking is made abundantly clear by the congregation of Dayak leaders in the Congress, who made passionate pleas for assistance to restore justice to their oppressed people.

Led by Nicholas Angat Bawin, a two-term state assemblyman who recently joined PKR with 12,000 other supporters, these leaders explained that the natives and other have-nots have been robbed of their ancestral land (their only possession) by a callous government that favours only the rich. Despite such injustice, they had given electoral support to the BN government in the past out of fear and hopelessness. However, jolted by the 8 March political tsunami, they now realize that change is possible and have started the groundwork to bid for power in the next state elections which must be held no later than mid 2011, but speculated to be brought forward to 2009 or 2010.

In response, Anwar vowed to unleash the full might of PKR in conjunction with other Pakatan partners towards restoration of justice to the Sarawak people through a change of government.

Given that Dayak is the biggest racial group in Sarawak, and given the increasing unpopularity of the corrupt government, which is led by an aging and ailing chief minister whose long reign (28 years) have been scandalized by abuse of power and amassing of fabulous wealth for his family and political cronies, there is no reason to doubt that the end of that infamous era is near its end, now that the political tsunami has reached its shore.

As the conference was drawing to a close with top party leaders successively giving stirring winding-up speeches to the rapt attention of a floor that was three quarter filled (again in stark contrast to the recently concluded MCA congress which was almost completely deserted by delegates on the concluding day), my spirit was elated and I felt comfortable that PKR together with Pakatan partners would surely reach Putrajaya.

As I was stepping away from the hall, I thought if I could peep into Anwar's mind then, I should see a political warrior filled with a sense of satisfaction – that all the years of sacrifices and struggles have not been in vain, that he has successfully assembled and nurtured a political force equipped to soldier on with grit and determination, with or without his presence, towards the destination set forth in the hey days of Reformasi ten years ago.

How to Solve Indian Marginalisation?

Indian marginalization is part of a larger national plague of impoverishment under an elitist and corrupt federal government, and the fundamental solution can only be found through a change of national leadership.

02.01.2009

In the light of recent grouses among certain Indian leaders against the Pakatan Rakyat -led Selangor government for neglecting Indian interests, I am writing this open letter to share my thoughts.

Let us start with the HINDRAF movement. The reason why this movement has won so much sympathy among all races is because it has expounded a truth – that Indians have been marginalized.

So we shall establish the first principle in this discourse – Indians have been marginalized.

That, however, is the easy part. The real challenge is: how do we save the Indians from marginalization?

Do we strengthen MIC so that it has a bigger say in Barisan Nasional? I don't think many like this idea, simply because it has not worked for fifty years.

Do we start a new Indian party just like Nallakarappan did when he broke off from PKR just before the Ijok by-election in April 2007? I think we can all agree that Nalla and his party have got no where, so better forget about this idea. It is common sense anyway that proliferation of Indian parties can only weaken the Indian position.

Or do we continue the HINDRAF struggle? That, of course, is a serious question, for which careful thoughts must be given.

Let us start our deliberation by first asking this question: Has there been a government policy to deliberately marginalize the Indian community?

In all honesty, I do not think so, despite my years of fierce criticism of the

UMNO-led Barisan Nasional government. For that matter, I do not think the government has targeted any racial group for marginalization – be they Chinese, Indians or the natives of Sabah and Sarawak.

Marginalisation due to corrupt government

Marginalisation of large sections of Malaysians is a result of bad policies implemented by a corrupt leadership. The New Economic Policy (NEP), which symbolizes UMNO's racial agenda, actually started off on sound affirmative action principles to eradicate poverty and redress social and economic imbalance, but soon degenerated into a racist tool by UMNO to amass wealth for its leaders and cronies through political hegemony. Though the policy has largely uplifted the educational and economic status of Malays, UMNO's corrupt and dictatorial rule on the back of its racist ideology has wrought devastating consequences – an authoritarian state torn by racial dissension where vast populations are impoverished through corruption, squandering and sheer incompetence.

As a result, all races have fallen victims to such misrule. Admittedly, Indians are among the most neglected, though ironically Malays constitute the biggest racial group in the impoverished category, while the natives of Sabah and Sarawak are stuck in a warped time zone of yesteryears with scant infrastructures and educational facilities to develop their economic potentials.

With this, we shall agree on the second principle of this discourse: Indians have not been singled out for marginalization, but rather, they are part of the wider Malaysian society (save the Umnoputras) which has fallen victim to a corrupt elitist rule.

What is the solution to the Indian predicament then? Would it help by giving a few more government posts or contracts to Indians by a state government? While that will make a few Indians happy, it would not alleviate the prevailing poverty of Indians, who number almost two millions. Besides, the role that a state government can play in altering the political course of the nation is limited, as its authority covers only land matters and local councils, and its financial resources negligible compared to that of the federal government (the revenue of the richest state government of Selangor amounts to hardly 1% of the federal government revenue).

Problem cannot be solved in isolation

Malaysia's problem is acute economic and political mismanagement, one

consequence of which (among many) is manifested in the marginalization of Indians. So the Indian problem cannot be solved in isolation, without changing national policies, which in turn can only take place by changing the national leadership.

The present federal leadership is too entrenched with its addiction to easy personal wealth through racist protectionism and corrupt institutions to be willing or able to effect any meaningful change to the status quo. And without the necessary reforms to restore confidence and improve competitiveness and productivity, there is no way we can extricate ourselves from the current economic malaise. This means all Malaysians – including Indians of course – will continue to suffer the economic hardships, more so in this turbulent time of unprecedented world financial and economic crisis.

With the nation plunging into deeper debts under current adverse economic conditions, and the incumbent power even more determined to pursue its racist policy in order to strengthen its traditional electoral support base, what hope is there for Indians to improve their livelihood while UMNO/BN continues to remain in power?

Pakatan brings hope

In contrast, Pakatan Rakyat's agenda to reinstate democracy and good governance and restore egalitarianism under the Constitution whereby all citizens are guaranteed equal rights offers the best recipe to re-unite the races and turn the nation on the path of robust growth. That such an agenda has met with emphatic approval by the masses was demonstrated by the decisive swing of support accorded Pakatan in the 8th March 2008 elections.

Though Pakatan's subsequent rule in the states has not brought dramatic and huge changes on a national scale during the past nine months, its imprint of corruption-free and pro-rakyat political leadership is unmistakably stamped on every Pakatan-controlled state. The economic impact of Pakatan's rules on the national scene is necessarily limited and gradual, due respectively to the limited jurisdiction and resources of state governments as explained earlier and to a bureaucracy (civil service) fossilized by decades of corrupt rule. However, as sure as the sun rises, the wind of change brought by Pakatan will stay and intensify and it will soon sweep through Sabah and Sarawak to bring the federal government under Pakatan rule.

Under the circumstances, the best bet for marginalized Indians, and in fact for all Malaysians, is to work for the speedy realization of a Pakatan federal government, which will bring healing and genuine nation-building to the country.

Should Hindraf continue its struggles?

To answer the earlier question whether the HINDRAF movement should continue its struggles, the answer is of course yes. HINDRAF has made valuable contribution towards Pakatan's success in the 8th March elections by wakening and bringing unity of purpose to the Indian community, and there is no reason why they should not persevere until this country is free from the yoke of BN's oppressive and corrupt rule.

In fact, many Malaysians had been moved by the courage and sacrifice displayed by HINDRAF, when thousands of supporters braved tear gas and water cannons to march from Batu Caves to Kuala Lumpur city center on that memorable day of 25th Nov 2007 to express solidarity for a common cause.

We hope the same indomitable spirit will continue to shine on the Malaysian political scene to contribute towards the evolvement of a non-communal and meritocratic society, where every citizen will be given equal opportunity to develop his potentials to the fullest.

Anwar Sodomy II

Mahathir Admitting 1998 Sodomy a Frame-Up?

20.07.2008

A passage in former premier Mahathir Mohamad's latest article on the Anwar sodomy controversy seems to have offered an interesting insight into Mahathir's subconscious thoughts on the subject.

In an article titled "The Anwar Debate" posted in his own blog on July 17, Mahathir suggested the current sodomy allegation against Anwar Ibrahim must be true, as the present government can't possibly be so stupid as to use the same tactic twice to undermine Anwar. The interesting parts of his arguments are found in paragraphs 6 & 7, which I quote:

"Para 6. Yet can it be that the present government is so stupid and unimaginative as to use the same 'ploy' especially after it was so happy over the release of Anwar? Surely it could come up with another story which would be more credible if it is deliberately plotting or conspiring against Anwar. The probability is that the story is the same because it is genuine.

"Para 7. Is the present complainant a copycat? Hardly likely. Few would care to make public such a very shameful thing as being sodomised.". (Underlines are inserted by me for highlighting purpose).

The word 'copycat' implies that some one is reproducing something by simply copying a precedent. So what is that 'something' that the supposed plotters are copying? Is it the sodomy accusation per se or the plot to fix Anwar? Surely it must be the latter, for it doesn't make sense for some one to accuse Anwar of sodomy just for the sake of copying a similar accusation ten years ago. So by using 'copycat' to illustrate his question, isn't Mahathir

inadvertently revealing his inner thoughts that the previous incident was indeed a plot?

Similar trend of thoughts can also be detected in the use of the words “the same ‘ploy’” to describe the present incident, though the word ‘ploy’ is understood to be a sarcastic expression. For if the previous incident was not a plot, then why use it to illustrate that the present incident isn’t a plot? By doing so, Mahathir is virtually saying that no one is so stupid as to use the same trick twice on the same people. Isn’t this another tacit admission that the sodomy accusation in 1998 was a conspiracy against Anwar?

Mahathir also implicitly admitted that the 1998 sodomy charge was not quite a smart move when he said that “surely it could come up with another story which would be more credible

Though the 1998/1999 trials of Anwar have been universally recognized as a conspiracy to destroy Anwar politically, it is nevertheless the first time that Mahathir acknowledged this fact in his own words, however unintended such acknowledgement might have been.

With regards to Mahathir’s main rationale that this government cannot possibly be so stupid, my simple answer is that this is not a government plot but an evil scheme hatched by a few very influential and powerful individuals who feel threatened by Anwar’s imminent rise to political power.

Is this act stupid as claimed by Mahathir? Certainly not! On the contrary, sodomy charge remains the most powerful and convenient weapon to bring down a public figure in a country like Malaysia where rule of law is weak and where such sexual conduct is legally condemned as a heinous crime. Significantly, the corrupt institutions of state that were instrumental in bringing down Anwar ten years ago remain as corrupted today (if not more). In fact, the key police officers and prosecutors who brought down Anwar ten years ago are actively participating in the present ‘investigations’ and prosecution.

Is Anwar guilty of sodomy as claimed by Mahathir?

The answer is: Would the police have released Anwar only hours after arresting him with such obscene high-handedness, if Anwar did not provide a complete alibi for the day he was accused of assaulting the alleged victim?

Medical Report Exonerates Anwar, But Police Doggedly Pursue Him

A leaked medical report confirms that there was no sodomy, but the hospital staff was pressured into casting doubt on this medical report.

01.08.2008

Hospital Pusrawi made an attempt through a press statement to negate its own medical report that shows no sodomy on Anwar Ibrahim's aide Mohd Saiful Bukhari Azlan. However, the hospital's repeatedly contradictory and evasive answers to probing questions from reporters during the press conference clearly revealed that the hospital was merely putting up a show to hide the truth.

In the press conference on July 30, the hospital's general manager Wan Mahmood Wan Yaacob - accompanied by the hospital's medical director Kamaruddin Ahmad - denied that the Saiful medical report was related to sodomy, considered the examining doctor as unqualified to examine for sodomy, and even cast doubt on the authenticity of the Saiful medical report that is in wide circulation. He made all these assertions despite overwhelming evidences to the contrary.

However, under unrelenting questioning, Wan Mahmood admitted that the report in circulation "looks the same, contents are the same" as the original report. Then why did the hospital go into the redundant measure of setting up a three-men committee to probe into the authenticity of the circulating report - which bears all the hallmarks of typical Barisan Nasional tactic to delay and prevent the truth from emerging?

Doctor confirms no sodomy

Dr. Mohamed Osman Abdul Hamid who examined Saiful Bukhari Azlan at 2 pm on June 28 clearly stated in his report on Saiful that the patient had no bleeding, tear or scar in the rectal/anal area and that he appeared “alert, comfortable, not pale”. Under the heading “diagnosis”, Dr. Osman wrote: TRO Assault (Sodomise) (TRO stands for ‘to rule out’). It means Dr. Osman ruled out sodomy. Under the heading “rawatan” (treatment), Dr. Osman wrote: Advise to go to the government hospital (plan to do police report). It means that the doctor asked Saiful to go to a government hospital for a check up as required by law, since he was going to make a police report.

This medical report, though brief, is a true record that Dr. Osman had examined Saiful and found no physical evidence of sodomy. Such report could preclude subsequent medical finding to the contrary, considering that four hours after Dr. Osman’s examination, Saiful visited Hospital Kuala Lumpur where he made a police report and subjected himself to another medical examination, the contents of which are now being zealously guarded by the police.

With regards to Dr. Osman’s competence, both Wan Mahmood and Kamaruddin said they “had no doubt on Mohamed’s credibility as a doctor” and further commented that “he was a good doctor”. With such appraisal, it is puzzling how Dr. Osman, who is 56 years old and has twenty years of medical experience, could be considered as unfit to carry out a simple examination on a sodomy assault. In fact, Dr. Osman’s report is not only relevant in the court of law, it is also invaluable to the police engaged in their preliminary investigation on the veracity of this sodomy allegation.

But instead of treasuring this evidence, the Deputy Inspector General of Police Ismail Omar called the disclosure of this evidence as an attempt to “sabotage” police investigations and to “confuse” the public, while he inexplicably refused to comment on the content of this medical report. Unless he considered the report a fake, how on earth could he condemn its disclosure as an act of sabotage? The refusal by Ismail Omar and other government leaders and officials to comment on the substance of this report while steadfastly calling for punishment against the informer who leaked this report is exemplary of the long established government policy of nailing the whistle-blower to protect the culprit.

Conspiracy to fix Anwar obvious

Isn't the government's deafening silence on this report an emphatic admission that it is genuine and relevant? Isn't Hospital Pusrawi's feeble attempt at deception a manifestation that the government authority concerned lacked the courage to discredit this report by itself?

It is pertinent to ask: Is the present police exercise an attempt to find out the truth about the sodomy allegation or is it an all-out effort to fix Anwar Ibrahim? The latter seems to be the case, judging from Deputy IGP Ismail's response to Home Minister Syed Hamid Albar's admonition to police to wrap up its work "as soon as possible" following the explosive revelation of the Saiful medical report. Ismail said the police had been "relentlessly seeking relevant and the latest information constantly looking for new leads." That sounds like some one who has been hunting down a serial murderer, rather than investigating an alleged sodomy rapist who does not appear to have committed the offence – as per Dr. Osman's report and Anwar's alibi.

This Hospital Pusrawi debacle is only the latest in series of tactics that betray ill intent to persecute Anwar, such as:

- Denying Anwar a copy of Saiful's police report without reason.
- Ambushing and arresting Anwar in a high-handed manner that resembles the capture of a top international terrorist; forcing him to sleep overnight in a cold cement floor, resulting in a flare-up of his spinal injury, which was inflicted during a similar sodomy charge 10 years ago.
- Police and top leaders harassing Anwar to submit for DNA sampling when it is neither needed nor called for. Anwar refused the requests on the ground that it may be used for fabricating false evidence just like it was done in a similar trial 10 years ago.
- Government controlled press and TV channels constantly casting aspersions on Anwar as a sodomite.

It is the unanimous opinion at home and abroad that the current sodomy allegation is a political conspiracy to prevent Anwar from leading Pakatan Rakyat in an imminent take-over of power from a crumbling Barisan Nasional. Many consider this a replay of the event ten years ago when Anwar was similarly accused and persecuted. However, unlike the 1988 event when the prime mover was the Prime Minister (Mahathir Mohamad), Abdullah Badawi does not seem to be playing a similar role.

Police the driving force

In fact both the PM and Home Minister Syed Hamid Albar whose portfolio includes the police force do not appear to be on top of the police force which seems to be the mover and shaker of events in recent days that are fast changing our political landscape. Like the plot to fix Anwar, his Hollywood style arrest, the recent gridlock of traffic in Kuala Lumpur and sealing off of Parliament House etc - these high-handed measures had incurred the wrath of the people, and all Abdullah and Hamid could do was to act as apologists for the police.

Another example was the issue of Anwar's DNA. Both leaders seemed to have been duped into making a fool of themselves by publicly demanding Anwar to submit to DNA sampling when the government is already in possession of Anwar's DNA. Did Abdullah and Hamid know about the ulterior motive of collecting Anwar's fresh blood sample now? I bet not.

The police force is ruled with an iron fist by Inspector General Musa Hassan. He and Attorney General Gani Patail had played leading roles in the infamous trials of Anwar Ibrahim ten years ago and are now under investigation by the Anti-Corruption Agency for alleged fabrication of evidence against Anwar then. Though Abdullah said a few days ago that both Musa and Gani would not be involved with the current Anwar sodomy investigation, but how convincing are such assurances when both remain bosses in their respective bodies?

PM must exercise his power

We have no doubt of Abdullah's sincerity when he asked for another two years for him to carry out reforms that he had failed to do previously, and we think the current crisis created by the sodomy allegation is a golden opportunity for him to stamp his mark as a reformer by righteously exercising the immense power vested in his hand as prime minister and order that rule of law be strictly observed in the resolution of this crisis.

Considering our vastly changed political landscape and the precarious economic and political situation we are in now, any repetition of the unjust treatment meted out to Anwar in 1998 will surely bring unimaginable consequences to the nation.

Sodomy Never Took Place

The case against Anwar is so weak that it appeared to near collapse when Anwar was charged in the Kuala Lumpur Sessions Court on 7th August 2008.

09.08.2008

Sodomy allegation against Anwar Ibrahim has all but collapsed on the day he was charged in court (Aug 7), following several events that occurred simultaneously on that day.

First, there was the surprise climb-down of the charge from the anticipated “sexual assault” to one of consensual sodomy. After a month-long propaganda in UMNO-controlled media depicting Anwar as a sex-offender, when even the prime minister alluded to “rape” on the eve of court hearing when questioned whether the complainant would also be charged, the prosecutor’s charge of Anwar under Section 377B of the Penal code (for consensual sodomy) was an anti-climax.

It gives the impression that despite all the high drama of high-handed police actions and tough talks by top political leaders, the fact remains that police have failed to come up with basic evidence to prosecute; and prosecutors have to scramble at the last moment to put up a makeshift charge. This impression is further strengthened by prosecution’s failure to produce a list of witnesses – a departure from the norm where the list is ready when the prosecutor presses the charge in court. This is in addition to the highly abnormal and unethical police conduct of persistently failing to give the accused a copy of the police report lodged by complainant Mohd Saiful Bukhari Azlan more than a month ago without reason.

Second, even hours before the court session, Dr. Mohamed Osman Abdul Hamid whose medical report had earlier stunned everyone with his finding that Saiful was not sodomised, dropped another bombshell – this

time having his statutory declaration (dated Aug 1) and a medical statement (dated June 30) published in Malaysia Today website, re-affirming his earlier finding with indisputable clinical details while alleging police harassment and distortion of his testimony. He intimated at the end of his affidavit that in order to escape such constant harassment he has since left Malaysia with his family for their own safety.

Dr. Osman's affidavit, which details what transpired during his examination of Saiful hours before the latter's police report and the subsequent encounters with the police, exudes unquestionable professional integrity and should serve as a powerful deterrent to any one who may contemplate to concoct physical evidence of sodomy on Saiful.

Third, Anwar's lawyer Sankaran N. Nair disclosed after leaving the court that his client had a watertight alibi which was already disclosed to the police during their interrogation on Anwar earlier. At the material time of the alleged offence (3.01 pm to 4.30 pm on 26 June 2008), Anwar was having a meeting with several of his friends in the condominium apartment mentioned in the charge.

Anwar later explained that he often used the apartment which belongs to "a very close family friend" to conduct secret meetings with government leaders, businessmen and politicians. On the day of the alleged sexual assault, he was having talks there with an economist and a former banker, among others, to discuss economic strategies for the Pakatan Rakyat-controlled states. The police have already questioned those involved in the meeting, in addition to questioning owners of the apartment for 25 hours.

Saiful's secret meeting with police

If there is any lingering doubt of Anwar's plea that "This is a malicious and treacherous slander, I am not guilty" which he repeated twice before Kuala Lumpur Sessions Court judge S M Suppiah, then the revelation by Malaysia Today website of a secret meeting between Saiful and a senior police officer three days before the police report should be sufficient to put the issue to rest.

In an article dated 30 July 2008, titled "Rodwan met Saiful three days earlier" under the column "The Corridors of Power" in Malaysia Today website, the writer disclosed that Senior Assistant Commissioner (SAC) II Mohd Rodwan Mohd Yusof met Saiful at 2.30 pm on July 25 in room 619 of the Concorde Hotel in Kuala Lumpur. Prior to the meeting, Rodwan and Saiful spoke on the phone at least eight times. Three days later, on July

28, Saiful visited Hospital Puswari at 2 pm where he was examined by Dr. Osman. Four hours later, he was at Kuala Lumpur Hospital (KHL) where he reported to the police that he was sodomised by Anwar on July 26.

On the same day the article was published (July 30), SAC Rodwan was asked whether he really had a secret meeting with Saiful three days before the police report, and Rodwan answered that he was not prepared to respond to this issue, according to the *Oriental Daily* dated July 31.

And Rodwan is noted for his dubious role in the infamous trials of Anwar ten years ago, as explained in a statement by Anwar's lawyer R. Sivarasa:

"In 1998-1999 trials, Anwar experienced the phenomenon of fabrication of DNA evidence. We had SAC Rodwan illegally removing DNA samples from forensic custody. In cross-examination of the prosecution's witnesses it was exposed that DNA taken from blood samples was planted on the infamous mattress."

What conclusion can we draw from Rodwan's refusal to respond to such serious allegation in *Malaysia Today*? Wouldn't he have promptly refuted the allegation if it was untrue? What discussion he could have had with Saiful in such secret meeting if it was not about Saiful's impending accusation against Anwar?

Compelling logic that points to no sodomy

Now, the crucial question that will reveal the truth: If there was a pre-plan to fix Anwar as indicated by the Rodwan-Saiful meeting, why didn't Saiful rush immediately (after the sodomy) to the KHL where Anwar's semen could be extracted from Saiful's anus and its DNA matched with a previous sample collected from Anwar ten years ago, if it was true that Saiful was sodomised by Anwar on July 26? Why should Saiful have waited for two days before visiting Hospital Puswari?

It is important to note that when Saiful met Dr. Osman on July 28, he complained of anus pain for two days, and said he could not sit down because of such pain. It was only after Dr. Osman completed the examination and told Saiful he found no abnormality in his anus that Saiful intimated that he was sodomised by a VIP (no name mentioned) and wanted to make a police report. Thereupon Dr. Osman advised Saiful to visit a government hospital as it was a criminal case.

The inference we can draw from this sequence of events is that Saiful would not have dared to visit any doctor for an anus examination on July

26, the day he was allegedly sodomised, because there was no sodomy.

His visit to Hospital Puswari on July 28 to complain of anus pain for two days was probably done with the purpose of procuring a prescription for his so-called anus pain with only a perfunctory examination. Little did he know that he would be subjected to a thorough rectal examination through a proctoscope as that performed by Dr. Osman.

However it is looked at, it is not credible that a man of normal intelligence like Saiful could have failed to go for a medical examination immediately after a genuine sodomy when there is a plot to fix the sodomist. The only explanation for such failure is that sodomy never took place.

The Impaired Judiciary

What Judicial Commission is a Must

The power to decide on the appointment and promotion of judges must be shifted from the prime minister to an independent judicial commission (yet to be set up), in view of past abuses of such prime ministerial power. This proposed commission should be viewed as an important step towards rehabilitation of our tattered judiciary.

24.08.2006

Chief Justice Fairuz Sheikh Halim has used dubious logic to refute allegations that the government has appointed bad judges. He said judges were appointed and promoted according to the provisions of the Constitution. And since it is the same system of appointment that has yielded such illustrious judges in the past as previous Lord Presidents Sufian Hashim and Sultan Azlan Shah, the present judges by extension must also be good.

Fairuz asked during a judges' conference on Aug 22: "If they (the former Lord Presidents) can be people of integrity, why can't judges, who are appointed by the very same authority through the same procedure, have integrity too?"

The answer to that question is simple. Under our Constitution, it is the prime minister who decides on the appointment of judges, so it is only reasonable to expect that a good prime minister appoints good judges and a bad prime minister appoints bad judges. The illustrious judges so named by Fairuz were all appointed by former prime ministers who were eminently noted for their high integrity in an era gone by, whereas the chief justices who were embroiled in scandals were all appointed in more recent times during Mahathir's reign.

To understand how judges are appointed, let us take a closer look at the Constitution. The appointment of judges is governed by Article 122B

of the Constitution, where it is stipulated that all judges are appointed by the Yang di-Pertuan Agong, acting on the advice of the Prime Minister, after consulting the Conference of Rulers. In addition, the Prime Minister in tendering his advice on these appointments, has to consult, wherever applicable (depending on which judicial position is involved), the Chief Justice, the President of the Court of Appeal, Chief Judges of High Courts, the Chief Minister of each of the States of Sabah and Sarawak.

Under the parliamentary democracy inherited from the British, the Yang di-Pertuan Agong, being a constitutional monarch, is obligated to act on the advice of the Prime Minister and his ministers. So, as far as the appointment of judges is concerned, the Prime Minister is the decision maker, with other bodies acting only in their advisory capacities without veto power. Further, there are no set criteria or open procedure through which the Prime Minister makes his decision. The wielding of such absolute power by one person without transparency and without checks and balances is of course open to abuse. It is all the more unsatisfactory when considering the fact that the judiciary is an independent institution, whose function under the Constitution is to check the excesses of the Executive, among others.

This system of judicial appointment is therefore inherently flawed as there is too much temptation for the prime minister to abuse such power for political expediency at great detriment to the country and the people. And indeed it has happened to devastating effect, as proven in the infamous judiciary debacle in 1988, during which the Lord President and other top judges who stood up for justice were savagely victimized for political reasons. The Malaysian judiciary has not recovered since, as evidenced from the fact that the judges notoriously tainted in the disgraceful trials of Anwar Ibrahim continue to be given promotions with indecent speed, leapfrogging over other more senior and deserving judges to now occupy the Federal Court, the highest court of the land. These appointments were of course met with much criticism and further undermined the integrity of our judiciary.

Under these circumstances, the Bar Council's recent call to establish a judicial commission to deal with the selection, appointment and promotion of judges is most timely indeed. Such a commission will represent a most significant step towards rehabilitation of our much tarred judiciary. It will also bring some hope to the people that the now almost forgotten reform agenda promised by Prime Minister Abdullah Badawi during the last election is not totally dead.

Rising in Unison to Force Judicial Reforms

The explosive Lingam video clip has inflamed the nation over the utter rot our judiciary has sunk into, thanks to Mahathir; and the Malaysian Bar is calling for a historical march in Putrajaya to press for a royal commission of inquiry to start cleansing our judicial system.

25.09.2007

Congratulations to the Malaysian Bar Council for rising to the occasion in the face of naked assault on our judicial system as highlighted by the explosive video clip that exposes evil political manipulation of the judiciary.

The Council has called on the government to immediately set up a royal commission of inquiry to get to the bottom of the depraved state of our judicial system. And to demonstrate the Bar's resolve, it has unprecedentedly called on members to march from the Palace of Justice to the Prime Minister's Department in Putrajaya to deliver the memorandum of request to the cabinet on Sept 26.

It is indeed heartening to see the Malaysian Bar living up to its role as vanguard in the defence of judicial integrity. Let this be the start of a determined nation-wide movement to cleanse our judiciary of entrenched political manipulation.

The Video Clip

The eight minute video clip exposed by Anwar Ibrahim on Sept 19, capturing lawyer VK Lingam in a telephone conversation with Chief Justice Ahmad Fairuz held in 2002, is amazingly illustrative of the devilish practice that has corrupted the Malaysian judiciary for the past two decades. (Fairuz was then Chief Judge of Malaya, No.3 in judiciary).

The Lingam video revealed how the the Prime Minister decided on senior judicial positions – not by consultation with the judicial fraternity but by listening to “whispers” by close business and political cronies, who functioned as agents for the Prime Minister’s personal financial and political interests (words in inverted comas in this article are the exact words used by Lingam in the video clip conversation). It also confirms that the criteria of selection were not based on judicial merits but on political and personal allegiance to the Prime Minister. Persons on the preference list were termed by Lingam as “key players” and “soldiers”. Judges favoured by the then independent-minded Chief Justice Dzaiddin Abdullah who often defied the PM’s wishes were classified as in “the other camp”. Judges loyal to the Prime Minister including “Eusoff Chin, Ahmad Fairuz” were said to have “fought for” the cause. Fairuz was even praised for giving “110% loyalty”.

In the telephone conversation, Lingam and Fairuz were discussing the strategy to outsmart Dzaiddin so that more judges loyal to the prime minister could be placed in key positions. Fairuz must have impressed on Lingam (Fairuz’s voice could not be heard) that central to this strategy was the prompt promotion of Fairuz himself to higher position and pressed Lingam to help out.

Lingam repeatedly assured Fairuz that he had been working hard on this, and Lingam even described how he managed to get Fairuz the Chief Judge of Malaya job through “brainwashing” Vincent Tan (then Prime Minister Mahathir’s business crony) into convincing Mahathir to give the job to Fairuz. (Fairuz was appointed CJM in late 2001).

Lingam also promised Fairuz that he would ask Vincent to remind the PM to bestow a Tan Sri ship to Fairuz so as to “elevate” the latter’s position.

Lingam ended the conversation with assurance to Fairuz that he would pursue hard on Fairuz’s promotion and would arrange for Fairuz to meet Vincent and Tenku Adnan (a minister and a political crony to Mahathir) confidentially, prior to a meeting with the PM.

As it turned out, Fairuz was made a Tan Sri in June 2002, promoted as President of the Court of Appeal (No. 2 in judiciary) in December 2002, and almost immediately after as Chief Justice in March 2003.

Public fury

Despite the common knowledge that Malaysian judiciary has been under political manipulation for many years, nevertheless, the revelation of the video clip caused a firestorm of fury and protests. This is akin to a wife

being shown a snapshot of the long suspected unfaithful husband caught with his pants down. Though the revelation is not new, its electrifying effect is still the same – enough to cause the wife to blow up in a state of frenzy.

It is encouraging to note that Malaysian society across the board, save the ruling coalition, reacted instantly with indignation and a determined spirit that this hideous mutilation of our judiciary must be halted. All opposition parties, the Bar Council, numerous NGOs and individuals have voiced their anger and demanded the immediate setting up of an independent commission of enquiry to probe into the revelation of the video clip, with a view to seek long term solution to our much battered judiciary, in addition to meting out punishment to the culprits.

While the nation is at boiling point, where are the culprits – Lingam and Fairuz? A week has lapsed since the revelation, they are still no where to be seen. There has been no open denial of their role in this shameful episode. Meanwhile, top guns of the establishment – PM, DPM, Minister in charge of law, and even the attorney general (AG) – seem to be pursuing the same well trodden path of smothering the fire set off by a high-level scandal. Their objective may be the same, but their tactics vary. Worthy of mention are those of the AG and the PM.

The strangest is from the AG who, as top law officer of the government, incredibly thinks that there is nothing wrong with the substance revealed by the tape.

The saddest is from the PM, who seems to aim his gun at the whistleblower, instead of the culprits. The most repulsive part of his statement is his claim that “the video was released with the aim of getting the people angry with the country’s judiciary system” and his warning that “those who released the video, as well as those who lodged ACA reports” would be punished, if the video was found to be not true (The Sun, Sept 21).

To these leaders indulging in the denial syndrome to deceive the nation, let me ask this common sense question. If you are the alleged culprit, and the video is a fake, wouldn’t you have jumped up to declare your innocence in the first instance and reported the fraud to the police so as to nail the forgers? Being most knowledgeable of the law, the Chief Justice should not only do this for his own personal interest, but he is in fact absolutely duty-bound to do so, so as to defend the good name of the judiciary. Hence, instead of threatening the whistleblower, wouldn’t it be more appropriate for the PM to get the principals of the scandal to publicly declare their straightforward answers and to follow this up with an independent enquiry?

Strategy of Action

Prime Minister Abdullah Badawi flatly rejected the notion of an independent enquiry during a press conference on Sept 21; instead, he asked the police to investigate the case, starting with determining the authenticity of the tape. We know only too well what this will lead to, as we are very familiar with the government's *modus operandi* in dealing with scandals involving top officials in the ruling clique (the Chief Justice is undeniably one, according to the tape) – investigation started by either police or the Anti-Corruption Agency, followed by long delay, and when public interests have waned, AG quietly declare case closed due to inconclusive evidence.

Knowing Adullah's style of leadership, the Bar Council must brace itself to a disappointing response (or rather non-response) from Abdullah on the memorandum to be presented on Sept 26, and plan for alternative strategies to push the agenda ahead.

A silver lining in the cloud is our King, who is empowered under the Commissions of Enquiry Act 1950 (Revised 1973) to appoint a commission to inquire into any public matter as he deems fit to uphold public interests. In this connection, the people are encouraged by the righteous utterances of royalties in recent days and are confident that the King, with the backing of his fellow rulers, will not hesitate to exercise his constitutional power to protect the rights and interests of the people when the occasion arises.

The Malaysian Bar as primary defenders of law, political parties, NGOs and the civil society at large should therefore seize this opportunity to forge concerted efforts in appealing to the King, as well as in organising other mass movements that would place the nation on-course to restoration of integrity in the judicial system.

Meanwhile, we should realise the serious constraints to spreading public awareness of the perils to our nation caused by a maimed judiciary, as the ruling BN still exercises complete stranglehold on the local press and TV channels. As of now, none of these has identified the culprits in the video clip or publicised Bar Council's proposed march from the Palace of Justice to the PM's Department on Mar 26.

It therefore falls upon the shoulders of those already enlightened through organized bodies and the Internet to work doubly hard towards achieving our aims. For a start, let us together make the proposed march on 26th a momentous event – one that is fitting to usher in a new era of judicial reforms.

Najib's Ploy to Delay Malaysian Bar

On the eve of the lawyers' march in Putrajaya, Najib suddenly announced the appointment of a three-man panel to look into the authenticity of the Lingam video clip – a crude attempt to derail the march and thwart efforts for a full probe.

26.09.2007

The hurriedly arranged three-man panel announced by DPM Najib on Mar 25 to investigate the explosive Lingam video clip is obviously a ploy to achieve 3 objectives, namely:

- 1) To take the steam off the proposed Malaysian Bar's march in Putrajaya on the next day Mar 26.
- 2) To prevent a full scale investigation by a Royal Commission of Enquiry.
- 3) To close the case in the shortest possible time so as not to hinder the imminent general election.

Najib's denial that the panel's formation was a reaction to the Bar Council's move is easily demolished by what the panel's chairman Haidar Mohd Noor told the press. Asked whether he had received his letter of appointment and terms of reference, Haider said: "I have not received anything as yet. I guess, because of the urgency, they called us up first." Haider further said: "I was just informed today (Tuesday) of our appointment. We need to know what our role is."

Now, if Najib's announcement is not to pre-empt the Bar Council's move, why should he have been in such a hurry - announcing the panel's formation on the same day that the appointees were told of their appointment, even before the latter knew the terms of reference or receive the appointment

letters? What is the reason for such indecent hurry, that the announcement must be made one day before the Bar Council's march? If it is not to derail the march, then what is such hurry for?

According to the *Star*, the terms of reference are to "investigate the authenticity of the video clip". The panel's finding should be "based on police and other government agencies' findings. It can probe further into the findings but cannot directly be involved in interviewing and obtaining details from those implicated. Findings will be submitted to the Cabinet, subsequently made public".

It is obvious that Najib's proposed investigation is totally unacceptable.

That the investigation is for ascertaining authenticity of the video is a clear demonstration of the government's total lack of sincerity. Such investigation is a sheer waste of time, as no body is ever in doubt of the video's authenticity, especially when both the Chief Justice and V.K.Lingam have chosen to remain in hiding one full week after such serious accusations were leveled against them.

What we need is total exposure of the treacherous politician-judiciary nexus that has existed since 1988 until this very day. It is this betrayal of our Constitution by top political leaders and top judges that is the root cause of countless cases of travesty of justice - including some heinous ones - that have ravaged our judicial system and defamed our country. Unless this terminal malignancy is properly diagnosed and effective remedial measures taken, how can we check the continued decline of the state of this country?

Only with the work of a properly constituted royal commission of enquiry appointed by the Yang di-Pertuan Agong, with full power to get to the bottom of this prolonged decadence, can we hope to extricate this nation from the scourge of a depraved judiciary.

Reject Najib's 3-Man Panel Now!

01.10.2007

No sooner had the spirit of the nation been lifted by the historic “Walk for Justice” held in Putrajaya on Sept 26 than it was doused by the Malaysian Bar President’s hasty acceptance (on the same day) of the three-men “independent” panel hurriedly announced by Deputy Prime Minister Najib Tun Razak on the previous day Sept 25.

Najib’s so called independent panel is a ploy designed to deflect the real target of cleansing our corrupt judiciary, which has been crippled by dictates of the Executive.

By accepting the panel, the Bar has placed its own request for a royal commission of enquiry in abeyance, weakened the positions of others with similar demand, and dampened the fervour for change that has rapidly gathered momentum across the full spectrum of society since the exposure of the Lingam video clip by Anwar Ibrahim on Sept 19.

Najib’s proposed panel is complete nonsense, for it not only misses the forest for the tree in its scope, but is also totally inadequate in respect of moral authority, legal power and impartiality of panelists. Let me elaborate.

Scope of inquiry inadequate

The panel’s term of reference is limited to ascertaining the authenticity of the video clip. But the nation is more interested in the hanky-panky that is going on between the prime minister and top judges as indicated in the Lingam – Fairuz telephone conversation. Lawyer V K Lingam has given us a lead as to how judicial appointments and promotions (especially in top positions) are made based on personal loyalty to the political and financial interests of the prime minister and brokered by his business and political

cronies. We want to know the extent of political control exerted on the judges and how it has caused miscarriages of justice in the past. Only by finding out the truth can we rectify the wrongs.

Authenticity is of course a pre-requisite to any enquiry, but in this case, it is almost a foregone conclusion as both Chief Justice Ahmad Fairuz and Lingam have not openly denied such serious allegations even two weeks after the exposure.

Is it conceivable that in this day of instant communication and revolutionary technology that the government, having access to the video for two weeks, is so ignorant of the authenticity of the tape that it has to appoint an “independent” panel to ascertain this, while refusing to consider anything else? What conclusion can we draw other than it is a government tactic to diffuse public pressure and to buy time to wiggle its way out of this damning scandal?

Moral authority lacking

This panel is appointed by the Deputy Prime Minister and will presumably report to him. But don’t forget that this video is about the prime minister manipulating the judiciary for personal and political gains – a serious breach of the Constitution by the head of the Executive, and by extension, the ruling party who stands to gain politically in this illicit relationship. So wouldn’t there be a conflict of interests if the deputy head of the Executive were to appoint a panel responsible to him to uncover the sins committed by the Executive? How would an administrative panel under his jurisdiction be able to command the kind of moral authority required of it?

This Najib panel is only an administrative body without the legal power to summon witnesses and compel evidences. It cannot even directly interview those implicated to obtain details from them. So its findings have to be based on those from the police, Anti-Corruption Agency and other government bodies.

So we do not expect the panel’s conclusion to differ from those of the police or ACA, and we don’t see how we can call such investigations “independent”.

Panel members not impartial

The leader of the panel is Haider Mohd Noor, a former chief judge of Malaya, now chairman of Bumiputra-Commerce Bank Bhd, which is

controlled by DPM Najib's brother Nasir. Haider is also a trustee of Perdana Leadership Foundation, which is used by former premier Mahathir as his base to continue his political activities after he stepped down from office. And as prime minister in 2002, Mahathir is shown up in the video clip as the ultimate manipulator of the judiciary, and as such, he should eventually be the prime target of investigation in the scandal.

With these connections to the interested parties, Haider is already ill-suited to participate in this panel. However, Haider's worst problem comes from his dubious role in the infamous judicial crisis in 1998, when then Lord President Salleh Abas and two other Supreme Court judges were unjustly sacked, resulting in the subjugation of the institution of judiciary to executive control until this very day. Haider, as Chief Registrar of the Supreme Court then, ordered the court seal and doors to the Supreme Court be locked, in defiance of Supreme Court Judge Wan Suleiman's request, so as to prevent an emergency court hearing, which would otherwise have issued an injunction to stop the Tribunal that led to Salleh's dismissal.

Another panel member Lee Lam Thye chairs the National Service Council and reports directly to Najib who is also Minister of Defence. Lee is also a director of Media Prima Bhd which controls a vast media empire of newspapers, TV, radios, etc. It is mainly through Media Prima that UMNO exercises its stranglehold on information dissemination that has kept vast sections of the populace in the darkness with regards to the real crises confronting the nation precipitated by UMNO's serious misrule. And UMNO, as the real political power controlling the country, is of course the beneficiary of the unholy politician-judiciary nexus, and therefore a hugely interested party in the investigation of the Lingam tape.

In addition to these questionable links to the interested parties, Lee is suffering from an image problem arising from his sudden and mysterious resignation as No.2 leader in DAP that caused a party crisis on the eve of 1990 election. Many continue to hold Lee in suspicion, citing his move against his party in 1990 as part of a plot that enabled then Prime Minister Mahathir to call a snap election at the enemy's weakest moment. And of course, Lee's subsequent elevation in social status (a Tan Sri now) and wealth (directorship of many companies) - much of which arrived through goodwill of the ruling coalition - does not help to shed his image as some one deeply beholden to Barisan Nasional.

An important purpose of the enquiry is to restore confidence to the judiciary in particular and the government in general, whose image

has been much battered by a series of grave scandals in recent days. The appointment of members of a panel with such questionable backgrounds can only deepen the people's mistrust of the entire establishment.

Royal commission the way

It will be seen that all these weaknesses can be overcome, if the Yang di-Pertuan Agong exercises his power under the Commissions of Enquiry Act 1950 to appoint a royal commission comprised of reputable individuals to probe the video clip. This commission, which will be vested with legal power to summon witnesses, compel evidences and provide protection to witnesses, will ascertain the extent of decadence of our judiciary and recommend appropriate remedies. The report will be submitted to the Agong for deliberation by Parliament.

There is of course no guarantee that a good royal commission report will lead to the salvation of the judiciary, as shown in the case of Royal Commission Report on the Police completed several years ago. Although it is excellent, the police force continues to deteriorate as reflected by continuing scandals and mounting crime rates, despite huge fortunes being spent in upgrading facilities and increasing manpower. This is due to the lack of political will to eradicate the root causes of rampant corruption and wanton human right abuses.

Nevertheless, a royal commission is an important first step, as effective exposure by a dedicated commission will open the eyes of the people to the gravity of our weaknesses, thereby giving impetus to the mass movement that will compel the hands of the government to initiate the necessary changes.

Allowing the status quo to continue is not an option, as a deteriorating judicial system will hasten the slide in investors' confidence that was set in since the Asian financial crisis a decade ago. The consequential damage to our economy and national well being will only worsen under the intensifying pressure of globalization. These mounting economic challenges, added to worsening racial and religious tensions - as has been taking place under UMNO's leadership - will surely drive this nation towards disintegration.

It is therefore vital that all Malaysians treat the present judicial crisis as reflected by the Lingam video clip as a life-or-death issue that must be tackled with full force until it is resolved. In this respect, it is heartening to see that Parti Keadilan Rakyat already submitted its petition to the Agong for a royal commission on Sept 28, and there are indications that other

bodies will follow suit. This is the time when the people must unequivocally exert their collective will to make this commission a reality.

Finally, it is hoped that the Malaysian Bar would urgently review its position with regards to Najib's panel, and once again take the lead role, as natural guardians of law should, in a renewed charge towards thorough cleansing of our judiciary. And that means Najib's panel must be rejected forthwith.

Frantic Search for Whistle-Blowers Confirms Clip is Genuine

While the government is frantically looking for the whistle-blowers, the dummy 3-men panel to probe the Lingam tape is attempting to start its superfluous task of ascertaining its authenticity.

10.10.2007

The government's obsession at pursuing the whistle-blowers while meticulously avoiding mention of the two principal alleged culprits – lawyer V K Lingam and present Chief Justice Ahmad Fairuz – is the surest tell-tale sign that the Lingam video clip is not only authentic, but is also known to the government to be authentic.

Significantly, three full weeks after the exposure of this explosive video clip (on Sept 19) which revealed political manipulation and illicit fixing of senior judicial posts, both alleged culprits have not openly denied the serious charges, and have also steadfastly remained incommunicado and invisible to the public.

Instead of going after the alleged culprits, de-facto law minister Nazri Abdul Aziz made a desperate attempt to dig at the whistle-blowers. Quoting a non-existent “Witness Protection Act”, he went to the extreme of offering a face change through plastic surgery as the ultimate protection to lure the anonymous source behind the video to come forward to the government.

Nazri warned that “a probe into the clip will come to nothing if the whistleblower does not come forward to verify its authenticity.” He added that if the witness failed to appear, “we can conclude that they are lying”.

Nazri's stipulation of the whistleblower's appearance as pre-condition to this investigation defies all logic.

The evidence is the video clip. Authenticity should be built primarily upon a technical analysis of the clip - whether the person that appears in the video is Lingam or an impersonator, or whether the voice is Lingam's or a voice-over. These can be ascertained by analyzing Lingam's mannerism, voice, tone, accent, linguistic expressions and vocabulary, and compared with the clip. But unless Lingam claims that the clip is a fake, there is even no necessity to go into these exhaustive technical details.

Identity of whistle-blower irrelevant

In the absence of a challenge from Lingam, Nazri's insistence in hinging the whole investigations on the appearance of the video maker is all the more unreasonable, for there is still the question of credibility of any self-claimed video-maker that may emerge. If a person emerges to claim he filmed the video, can we take his word as proof that the clip is authentic? Of course not, we still have to go through the technical analysis, if Lingam insists it is a fake. Finality is rested with the technical analysis, in case of dispute. Then why make the video-maker's appearance as an absolute pre-requisite for the entire investigation?

That the original whistle-blower's identity is not even relevant to the uncovering of a major scandal was amply illustrated in the Watergate scandal in US in the early seventies when the scandal was finally resolved with the resignation of former President Richard Nixon. Throughout the lengthy investigations, the identity of the mysterious whistle-blower codenamed "Deep Throat" was never revealed, and yet this did not prevent a fruitful conclusion of the entire investigations. Incidentally, the two Washington Post reporters, Bob Woodward and Carl Bernstein, who first exposed the scandal, were honoured by the award of the nation's top literary prize - the Pulitzer - to the newspaper, in recognition of their journalistic achievement.

This is of course in contrast to the treatment received by our poor whistle-blowers - PKR vice-president R Sivarasa and Anwar Ibrahim's political aide Sim Tze Tzin - who have been hounded by our Anti-Corruption Agency. They were served with notice under Section 29 (c) of the Anti-Corruption Act 1997 to reveal the source of the video clip to ACA within seven days from Oct 4, failing which they are liable to be jailed for two years and fined RM 10,000/-.

What a contrast in the way a genuine democracy handles a major government scandal with that adopted by a corrupted pseudo democracy like Malaysia! The former honours its whistle-blowers and punishes the

culprits (even the chief executive of the nation), while the latter punishes its whistle-blowers, and protects the culprits.

Why footage is genuine

Why did I say earlier that the video clip is genuine and that the government knows that it is so? The answer is apparent from the conduct of the alleged culprits and from the government, elaborated as follows.

1. The alleged culprits have chosen to remain in hiding and have refused to publicly declare their denial or admission on the serious allegation. If this prolonged silence is not prompted by guilt, then what causes the silence?
2. All the top political leaders including PM, DPM, Nazri and other ministers, ACA, police, and even the newly appointed three-man panel have meticulously avoided the mention of Lingam and Fairuz. Why? Shouldn't these two alleged players be the first target of enquiry – unless everyone already knows the answer?
3. Nazri's earnestness in seeking the video maker to the extent of offering plastic surgery reveals his subconscious acknowledgement that the source is a genuine video-maker capturing the Lingam conversation, otherwise, how could Nazri in his wildest imagination have expected a criminal making a fake video to be so foolish as to appear himself just because there is assurance of full protection including face change?
4. Prime Minister Abdullah Badawi has joined the chorus, being quoted in Penang on Oct 7 as saying that the video-maker should know a lot more about this footage and could enable the authorities to secure more comprehensive information and evidences for a fair investigation. Pak Lah appealed to the whistle-blowers and photographer to co-operate with the authorities. (*Sin Chew Press*, Oct 8). Now, if that is not an acknowledgement that the clip is genuine, then what is? Or is it conceivable that Pak Lah was persuading a con video producer to tell the truth to the government? Hadn't Pak Lah already pre-supposed the authenticity of the video clip?

Since in reality no one is in doubt of the video, then why appoint an "independent" three-man panel to investigate the authenticity of the clip, if it is not actually an exercise to cover up the ugly truth?

Lame-duck panel superfluous

The morally deficient lame-duck panel hardly concealed its role as a stooge of the ruling power UMNO on its first meeting with the press on Oct 3. Apart from confirming the panel's total lack of legal power to carry out its task properly such as compelling evidences, panel leader Haider Mohd Noor emphatically rejected the suggestion to call Lingam to testify. When pressed further, he said: "If he wants to comeI don't know". Isn't that amazing - the investigator fighting shy to call Lingam when the latter should have been the most urgently sought witness to answer the prime question of whether he (Lingam) did or did not make that incriminating phone call! Haider's telling response leaves one with no room for doubt as to whether he already knows the answer.

In the same press conference, Haidar invited the public who have knowledge of the video clip to come forward to give evidence. But that invitation was swiftly slammed down by Deputy Prime Minister Najib Tun Razak, who appointed the panel a few days earlier, with the directive that the panel was not to interview anyone but to receive reports from the ACA, police or other government agencies. With no power to investigate and no access to witnesses, the panel's superfluous function is self-evident.

With Najib deliberately setting up a dummy panel on one end and Nazri frantically and irrationally pursuing an elusive whistle-blower at the other, we are left with no alternative but to conclude that the entire government strategy in dealing with the present crisis is imbued with dishonourable intentions – to cover up the scandal at all costs to preserve the status quo.

If that is not the case, an honourable government would otherwise have set up a fully empowered royal commission of inquiry in the first instance so as to get to the bottom of our judicial scourge, as a prelude to full judicial reforms.

And that is what all patriotic Malaysians must fight for, if we are serious about restoring independence and integrity to our fallen judiciary.

Post script:

1. *On 12 Dec 2007, the Prime Minister announced the appointment a five-member Royal Commission of Inquiry to probe into the Lingam tape.*
2. *The Royal Commission conducted hearing from 14 Jan 2008 to 15 Feb 2008.*

3. *On 9 May 2008, the Royal Commission submitted its report to the King. The report found the clip authentic and the conversation true, and recommended investigations be carried out against six individuals under various laws for their questionable conduct in the appointment of judges. These individuals, apart from Lingam and Fairuz, are Mahathir Mohamad, Eusoff Chin, Adnan Mansor and Vincent Tan. The relevant laws are Sedition Act, Official Secrets Act, Penal Code, Prevention of Corruption Act and the Legal Profession Act. The Cabinet decided that appropriate action would be taken against the six, for which the Attorney General would institute immediate investigations.*
4. *On 17 Jun 2009, Minister Nazri Aziz, replying to a question in Parliament, said no action had been taken against the six individuals as the Attorney General found that there was insufficient evidence to charge them.*

A Malaysian Judge Made History

High Court Judge Hishamudin Yunus severely reprimanded the government for abuse of ISA to mete out inhuman treatment to political detainee Abdul Malek Hussin and awarded him RM 2.5 million in compensations.

21.10.2007

For the first time in history, a Malaysian judge heavily punished the government for gross abuse of its draconian law – the first big slap on the face of the Executive, long accustomed to unrestrained and unconstitutional persecution of political dissidents with virtual impunity from compliant attorney general and judiciary.

In a judgment that is bound to illuminate the Malaysian judiciary for a long time to come, High Court Judge Hishamudin Mohd Yunus ruled on Oct 18 that the state has violated the Constitution and awarded political detainee Abdul Malek Hussin RM 2.5 million in total compensation.

Malek was arrested by the police under the dreaded Internal Security Act (ISA) in Sept 1998 in the tumultuous days of Reformasi (reform movement) following the sacking and imprisonment of former deputy prime minister Anwar Ibrahim. During the 57 days of detention, Malek was subjected to - in the words of Judge Hishamudin - “vile assault, unspeakable humiliation, prolonged physical and mental ill-treatment”, and completely deprived of legal counsel.

In March 1999, Malek filed a civil suit, citing a police special branch officer Borhan Daud, the then Inspector General of Police Rahim Noor, and the government as correspondents.

In his judgment, Hishamudin found no evidence of Malek posing any threat to national security but every indication that the detention and torture was politically motivated arising from Malek’s support to Anwar Ibrahim

and his reform movement. As such, Malek's detention was unlawful, and a violation of his constitution right under Article 5(3).

In hard hitting language, the judge described the defendants' behaviour as "inhuman, cruel and despicable". He awarded an exemplary damage of RM 1.0 million "to show the abhorrence of the court of the gross abuse of an awesome power under the Internal Security Act, and to ensure that the extent of abuse is kept to the most minimal, if not eliminated completely."

In his 41-page judgment, Hishamudin pin-pointed several police officers for breaching the law and concocting evidence. He also expressed displeasure at the Deputy Public Prosecutor for having implicitly colluded with police officers in thwarting Malek's complaints.

Courageous judge

Justice Hishamudin is no stranger to human rights watchers, who have been impressed by his consistent record in delivering independent and impartial judgment - a remarkable feat in a judiciary perceived to often bend to the wishes of the high and mighty, in scant regards to the Constitution. His most notable judgment is perhaps his decision in May 2001 to free two Reformasi activists - N. Gobalakrishnan and Abdul Ghani Haroon - arrested under ISA at the height of repression against the Reformasi movement under former autocrat Mahathir Mohamad.

In the present judgment, Hishamudin's courageous and righteous act has undoubtedly brought cheers to a nation long dismayed by unrelenting decline in judicial integrity and most recently shocked by the stunning revelation of the Lingam video clip. In this latest scandal, lawyer VK Lingam was allegedly conspiring with present Chief Justice Ahmad Fairuz in a telephone conversation to "fix" the appointments of judges loyal to then premier Mahathir Mohamad in 2002. Subsequent events turned out to tally with the scenario outlined in the Lingam-Fairuz conversation, thus strengthening the credibility of this tape.

Such subjugation of judiciary to political manipulation has in fact been common knowledge, as evident from many cases of glaring perversion of justice whenever the interests of the ruling power so dictate. The deterioration of our judiciary has however hastened in recent years as seen in the rapid promotion of judges of dubious records in a process shrouded in secrecy. Some of these promotions are seen as rewards for having "delivered" in the shameful Anwar trials and appeals.

Skewed judicial system

A prominent example of this skewed system of promotion is seen in the contrast of fortunes between Justice Hishamudin and Justice Augustine Paul (of the infamous Anwar trial fame). While Paul, newly promoted to high court judge to handle the Anwar case in 1998, had leapfrogged to the nation's highest court (Federal Court) by 2005, Hishamudin has remained stagnant as a high court judge since 1995, despite his illustrious judicial record. Another example is Court of Appeal judge Gopal Sri Ram, the most senior judge known for some of his impartial and courageous judgments, has been passed for promotion to the Federal Court 14 times by his juniors since his direct appointment to the Court of Appeal in 1994. Some of these promoted on the express train to the Federal Court had stayed in the Court of Appeal for only one year, notably those who were seen to have "delivered".

The moral of the story in our judiciary is obvious: fortune only smiles on those who are obedient and submissive, but woe to those who are steadfastly principled. With such a system, is there any wonder why our judiciary has been traveling on a downward slippery way?

While our spirit is buoyed by the Hishamudin judgment, we must temper our joy with the realization that the likes of Hishamudin and Sri Ram are rare gems that numerically could not influence the course of our judiciary. As they say, one swallow does not a summer make. Judicial reform is a long journey, and we haven't even started yet.

But start we must, as the Hishamudin judgment has already opened our eyes to the immense benefits that a just judiciary can bring to the nation.

Judicial reform a must

Imagine our courts are filled mostly with judges of Hishamudin's integrity – from high courts to court of appeal to federal court – and led by a chief justice of impeccable honesty and competence, wouldn't that be the best deterrent against the rampant breeding of corruption and abuse of power that is raging in every strata and section of our government – the cabinet, judiciary, attorney general's chambers, police, government departments, anti-corruption agency, election commission, statutory bodies and GLCs (government linked corporations)? In fact, a competent judiciary can act as a powerful agent to cleanse our political and administrative systems of corruption.

Corollary to that, wouldn't a revamped judiciary bring about a more level playing field for political contests among political parties - through restoration of citizens' constitution rights while suppressing similar infringement by the incumbent power? Through such restoration of democracy, we will surely see the natural replacement of the corrupt and the incompetent by the bright and the dedicated to lead the nation.

In such a scenario - a cleaner administration in a more vibrant democracy - investors' confidence, which has seen steady decline in the last decade, will certainly return to the country.

Judicial reform is therefore a crucial move that will bring about a turning point in our current course - arresting the decline in government quality, revitalising the leadership, and boosting the economy.

It is for this reason that we cannot afford to compromise on our quest for a royal commission of enquiry to look into the judicial rot revealed by the Lingam video clip, as a first step towards full reform.

Judicial Rot: From One Nightmare to Another?

Following the retirement of Ahmad Fairuz as Chief Justice, the lightning promotion of UMNO stalwart Zaki Azmi to the second highest post in the judiciary raised eyebrows all round.

07.12.2007

Just as the nation is heaving a sigh of relief at the exit of the scandal-ridden Ahmad Fairuz as Chief Justice, in comes another dubious candidate poised to take his place.

Prime Minister Abdullah Badawi's sudden announcement of the appointment of Zaki Azmi to the second highest post in the judiciary – President of the Court of Appeal – must have jolted and dismayed many who have cherished hopes of judicial reforms following the reluctant retirement of Fairuz. After all, Zaki Azmi, who had not spent a single day as a judge in the court of appeal or the high court, was parachuted to the nation's highest court – the Federal Court – only three months ago. He has not even warmed his seat as a judge, and yet he now looks poised to succeed Chief Justice Abdul Hamid Mohamad five months from now when Hamid retires in April 2008 upon reaching 66 years of age. (Both Zaki's and Hamid's appointments were simultaneously announced by the Prime Minister on Dec 5).

In fact, when Zaki was appointed a Federal Court judge in September, he was instantly recognized at home and abroad as the person planted to the highest court to succeed Fairuz, whose request for a six month extension of service beyond his mandatory retirement on Oct 31 was not accepted by the Yang di-Pertuan Agong. Such instant recognition of Zaki's mission came from his deep involvement with UMNO as a key party player. He

was chairman of the party's election committee, deputy chairman of its disciplinary board of appeal, party legal adviser etc.

Political & business background problematic

As UMNO's legal man, he was involved with the party's myriad of scandalous financial misadventures that were bailed out by the government in the heydays of Mahathir's crony-capitalism during the last Asian financial crisis. One prominent example is the RM 3 billion loan scam in the disastrous acquisition of Philippines' National Steel Corp. (NS) by UMNO's financial proxy Halim Saad. When the shares of NS became scrap, four top Malaysian banks were made to stomach the entire RM 3 billion losses. And Zaki was then a director of the investment vehicle - Hottick Investment Ltd of Hong Kong – which borrowed the RM 3 billion and embarked on the acquisition of NS.

Apart from acting as UMNO's nominee, Zaki also has held directorship in scores of major companies including some of the most well known names such as Berjaya, Metacorp, Pan Global, SP Setia, Malaysia Airports, Hume, Matsushita Electric, Pharmaniaga etc. Zaki was reported by *Bernama* on 21 April 2007 to have said that his 58% owned Emrail Sdn Bhd, a railway specialist company, had only the government as employer, and that he was earnestly soliciting contracts in the northern and southern portions of the double-tracking project to turn the cash-strapped Emrail around.

While such political and business background would already have made him a poor candidate for any judicial appointment, Zaki is battered by yet another serious handicap – the question of his moral integrity arising from his controversial marriage and divorce from his second wife Nor Hayati Yahaya, who was half his age.

Questionable moral integrity

Zaki married Nor Hayati in a ceremony conducted by a kadi from Thailand in a textile shop in Perlis in March 2005. They separated three months later. In the messy divorce that ensued, it was revealed that Zaki burned the original marriage certificate to hide the marriage from his first wife. Further, the marriage was ruled by the Syariah court as illegal.

Following the revelation of Zaki's marital trouble, he resigned as deputy chairman of UMNO's disciplinary board, for which he commented: "Considering that members of the disciplinary board are of the highest

integrity, I have made this decision following reports in the media” (*New Straits Times*, 9 Aug 2005)

The question we must ask now is: If Zaki is morally unfit to serve in UMNO’s disciplinary board, how could he be considered morally fit to be a federal court judge, not to mention his lightning elevation to the No.2 position, and anticipated imminent rise to the top job in the judiciary?

Is this country so poor in legal talent and integrity that we have no choice but to appoint some one so glaringly unsuited for such important judicial position arising from his multiple conflicts of interests and questionable integrity? If not, then why did the Prime Minister make such a move? If it is not to advance the Prime Minister’s and UMNO’s interests, then what motivated such an appointment?

We have already seen in the infamous Lingam video clip how the former Chief Justice betrayed his oath of allegiance to the country and the Constitution by crawling to serve the parochial interests of his political and business masters, thus confirming the common knowledge of the depth of degradation our judiciary has sunk. While the Prime Minister and his cabinet is still dilly-dallying over the appointment of a proper royal commission of inquiry to probe into the Lingam tape scandal almost three months after its public display, are we now made to swallow another UMNO atrocity – the instant elevation of an UMNO stalwart in the nation’s highest court?

PM’s announcement skeptical

However, in the midst of despair over UMNO’s latest move, we detect something amiss in the Prime Minister’s announcement of this dual appointments (Hamid and Zaki). While the PM claimed that upon his advice, these appointments were assented to by the Agong after consultation with the Council of Rulers, no effective date had been decided for Zaki’s appointment, while Hamid’s was fixed on Nov 1 - the day he started duty as Acting Chief Justice. Neither had any date been decided for the handing over of the appointment letters. If these dates had not been decided, why was PM in such a hurry to make an incomplete announcement?

Knowing that the King and the Council of Rulers had previously declined to accept nominees deemed inappropriate to fill the vacancies of the President of Court of Appeal and Chief Judge of Malaya respectively, as well as having turned down Fairuz’ request to continue as Chief Justice, the suddenness of PM’s claim of royal assent – particularly in reference to Zaki’s controversial promotion – came as a surprise to many people. Did

the Agong also assent to Zaki's appointment? If so, why couldn't Zaki's date of appointment be also decided alongside with Hamid's? Or was there a problem of royal assent?

Whatever the case may be in regards to Zaki's appointment, it is pertinent to take serious note of the view expressed by the Sultan of Perak, Raja Azlan Shah, on public perception of judicial impartiality in his opening address to the 14th Malaysian Law Conference on 29th Oct 2007.

Raja Azlan Shah, one of the most illustrious Lord Presidents of Malaysia, said that judiciary loses its value and service to the community if there is no public confidence in its decision-making. And the principal quality in judiciary is "impartiality", which exists in two senses – the reality of impartiality and the appearance of impartiality. Of these two, the appearance of impartiality is the more important, stressed the Sultan.

Zaki's appointment disastrous

Taking cue from this observation, Zaki's appointment is an unmitigated disaster, as even if he has the superhuman capability to totally sever his umbilical cord to the ruling party and his commercial interests to eliminate conflict of interests, there is still the insurmountable problem of public perception. With Zaki's questionable background, there is no way he can command complete public confidence, particularly when the interests of UMNO or his businesses are involved.

Coming at a time when Malaysia's competitiveness is fast losing ground, which has been contributed in no small way by its worsening judiciary image, such a daring raid on the sanctimonious ground of neutrality as the judiciary through planting a party stalwart to take over its control is destined to bring ruinous consequences to this country. Not even in the height of Mahathir's autocracy would such a reckless adventure be contemplated.

Knowing UMNO's arrogance and supreme confidence over its political hegemony, we do not think that it is open to advice from the public. We therefore earnestly appeal to the Agong and the Rulers to exert their benevolent influence empowered by the Constitution to protect our judiciary from further injury, as they have so valiantly done in the recent past.

Postscript:

Zaki became the President of the Court of Appeal.

Less than a year later, he was sworn in as Chief Justice on 29 Oct 2008.

Najib Not in Sync with Pak Lah on Reforms

In a heart-warming speech during a gala Bar Council dinner, Pak Lah made tacit atonement for the wrongs done to top judges during the 1988 judicial debacle and vowed to commence meaningful reforms; but Najib poured cold water over this reform gesture the next day,, signifying UMNO's refusal to change the status quo.

22.04.2008

“Najib does not look like Mahathir, but he sounds like Mahathir”. That seems to be a common impression of Deputy Prime Minister Najib Razak’s callous statement that followed Prime Minister Abdullah Badawi’s heart-warming speech over the 1988 judicial crisis during Bar Council’s dinner on April 17.

In a speech that ended with the audience’s prolonged applause and standing ovation, Pak Lah (the PM) tacitly expressed remorse for the wrong done to the six Supreme Court judges and to the judicial system and he undertook to commence judicial reforms starting with the setting up of the long sought after Judicial Appointments Commission. Though there was no official apology, Pak Lah’s heartening words of recognition and comfort to the former judges and his promise of “goodwill ex-gratia” payment to them are unmistakably acts of admission of errors and atonement. Though these acts were deemed short of expectations (full measures should have included an apology and a full investigation), the former judges and their families felt relieved and consoled to various degrees for having being finally vindicated, and the audience in general felt elated by the Prime Minister’s historical announcement. None in the audience that night could mistake the PM’s statement as anything other than genuine contrition and desire to make good not only to the judges but to the entire judicial system.

While the warmth generated by Pak Lah's statement were still lingering, Najib's incongruous statement the following day must have jolted many to current political realities in Malaysia. Obviously referring to Pak Lah's speech, Najib said:

"The ex-gratia payment is not tantamount to revisiting whatever that has been decided. It is not to be construed as any form of apology but this is our way of addressing some of their personal considerations and some of the personal experiences, hardship that they have gone through.

"That is all ... so it is to be seen in that light. It should not be construed as anything beyond that."

Najib's flat denial

This Najib statement is a flat denial of any wrong done against the judges, and the payment, according to Najib, is not to compensate for the wrong done but something to meet the "personal considerations" and "personal experiences, hardship" encountered by the judges. What a mouthful of nonsense is that? If no wrong has been done, why bother to pay anything at all? If the judges were rightfully sacked and suspended as implied by Najib, then these judges should have been reprimanded instead of being lauded and rewarded with presumably hefty sums of money. By maintaining Najib's position, he has practically exposed Pak Lah to potential ridicule for squandering large sums of taxpayers' money on some high officials who have already being designated as having betrayed the trust of the state.

Just contrast Najib's cold words of denial against Pak Lah's generous words of praise and conciliation. Pak Lah described the six judges as "towering judicial personalities" representing a "venerable institution which could be trusted to deliver justice..... a model for other countries – independent and credible". Referring to the judicial upheaval of 1988, Pak Lah said: "Rightly or wrongly, many disputed both the legality and morality of the related proceedings. For me personally, I feel it was a time of crisis from which the nation never fully recovered." As for the "goodwill ex gratia" payment, it was meant "to recognize the contributions of these six judges to the nation, their commitment towards upholding justice and to acknowledge the pain and loss they have endureda heartfelt and sincere gesture to mend what has been."

What interpretation can we draw from these plain words of Pak Lah other than an honest admission of the Executive having done these great

judges grievous injury, causing the nation to suffer till this day? Against this praise worthy gesture, which won stumping approval from an audience which represents the cream of the nation, isn't Najib's negative and arrogant statement an insult to the Prime Minister personally and the height of insolence against the nation, which had been yearning for so long for this historic day of a new beginning for the judiciary?

The second point of confrontation posed by Najib's statement is his denial of the fallen state of our judiciary.

Pak Lah has frankly admitted that the "level of trust and respect for the judiciary" had declined. He spoke of prevalence of "perceived corruption and perceived decline in quality". He said the business community were concerned "about the fairness and capacity of Malaysia's judiciary in settling disputes". He further said "some Malay rulers have openly voiced their disquiet on what they see as a decline, requiring nothing short of a judicial renaissance. Some retired judges have related troubling tales of impropriety."

It was in recognition of such glaring inadequacy of our judiciary, and of the overwhelming demand by the nation, including "politicians from both side of the aisle", that Pak Lah proposed the Judicial Appointments Commission, so as to ensure that the best be appointed to the bench, in a transparent and accountable system.

Asked to comment on Pak Lah's proposal, Najib said that this reform measure "means that the government is aware that we do need to ensure that our judiciary has the highest reputation" Notice the meticulous effort by Najib to avoid admission of the sordid state of our judiciary and of the need to reform, through his evasive reference to the need to have the "highest reputation". This again is in contrast with Pak Lah's recognition for extensive reform when he said: "There is still much to do to renew the public's trust in the nation's judiciary and to ensure that justice is consistently delivered. What I have announced tonight is the beginning of a longer process towards reforms."

Najib at variance with Pak Lah

That Najib is not in consonance with Pak Lah on the latter's reform measures is obvious, as further illustrated in a *Bernama* report on April 20 when Najib was asked to comment on the Anti-Corruption Agency reforms (proposed by ACA itself) that surfaced on the heel of Pak Lah's judicial reforms. Queried whether these reforms were an effort by the government

to rehabilitate Barisan Nasional, Najib said “quite a number of people felt” that the government had not done enough to fulfill the 2004 reform pledges, and therefore these reforms are continuing efforts, but he quickly qualified by saying only “those deemed necessary and appropriate”.

On whether there were other reform plans, Najib said: “We are open to suggestion”.

Najib added: “Of course on overall working of the ACA, for example, there are various views expressed. The government has not made a formal decision (on the ACA), as such, we are still open to it. The Prime Minister is personally looking into it.”

But three days later on April 21, the Prime Minister stunned the nation with a surprisingly comprehensive package to turn the ACA into an independent institution that was supposedly modeled after the much praised Hong Kong counterpart, the Independent Commission Against Corruption (ICAC). Pak Lah also said there would be a “whistle-blower” protection act to protect informers.

This latest development revealed that Najib not only does not share Pak Lah’s reform zeal but is actually not privy to Pak Lah’s reform plans.

Mahathir shadow in Najib

On the other hand, Najib’s nonchalant reform posture seems to find remarkable resemblance with that of former premier Mahathir Mohamad, who in his latest appearance in the BBC “Hard Talk” program, dismissed Pak Lah’s reform efforts as mere opportunistic move to regain lost popularity. Mahathir insisted that the sacking of judges in 1988 was perfectly legal and proper.

Mahathir may have repeatedly chafed Najib for lacking the courage to have an open showdown with Pak Lah, but make no mistake, Najib remains Mahathir’s favourite. This was made abundantly clear when Pak Lah for the first time named Najib as his successor in a recent gathering of UMNO leaders in Johor Bahru. Mahathir’s instant reaction was that Najib was the ideal candidate to take over from Pak Lah, in spite of Mahathir’s earlier intimidation to back other horses.

There should not be any doubt that if and when Najib takes over, politics a la Mahathir will return. Answering a question in the BBC interview, Mahathir expressed confidence that UMNO would regain its glory if Pak Lah was replaced immediately. Knowing Mahathir’s recalcitrance as an autocrat and his disdain for the rule of law, need we to speculate that

his path to glory is none other than his well-trodden path of repression – perhaps another *Operasi Lalang*? And who better to realize that dream than favourite Najib?

Those who are agitating for Pak Lah's immediate step down are precisely the same people who have alienated the masses with unbridled racial arrogance and corruption. Had they heeded Pak Lah's reform call – such as prompt implementation of the IPCM and restrain in raiding public coffers – would BN have suffered such humiliation in the recent general election? It is the political system that the people have rejected, not the leader.

The dawn that was ushered in by Pakatan Rakyat is an irreversible historical trend – dismantling of racial bondage and freeing of the democratic spirit - as once the fruits of that trend is tasted, the people will not let go of it. So, one either swims with the current or dies going against it.

Pak Lah's Reform Bills Mere Humbug

The two reform bills over judiciary and the anti-corruption body are supposed to be Pak Lah's parting gifts to the nation, but when these were introduced and rushed through Parliament, they are found to be complete wash-out. This clearly demonstrates that UMNO does not have the slightest intention to reform the scandal ridden judiciary and the ACA.

19.12.2008

If there is one lesson that we can learn from the just concluded parliamentary debates on the prime minister's much hyped "reform" bills, it is that the only way to reform a corrupt autocracy is to get rid of it, not to reform it.

In three days of intensive debates from December 15 to 17, the Barisan Nasional (BN) rammed rough-shod over vehement objections from Pakatan Rakyat to get the Malaysian Anti-Corruption Commission Bill (MCAA) and the Judicial Appointments Commission Bill (JAC) approved in Parliament. With that, Prime Minister Abdullah Badawi (Pak Lah) declared victory for having finally fulfilled his promise to clean up the judicial system and wipe out corruption by pushing through these two bills.

But the truth is: the opposite to what Pak Lah said has taken place.

Instead of freeing the judiciary and the anti-corruption agency (ACA) from the clutches of the Executive, whose abusive manipulations of these institutions have been the root cause of the crisis of public confidence, the passing of these two bills have in fact legally formalized the Executive's (in the form of the prime minister) hold on these institutions.

The JAC Bill

Take the JAC. The rationale for this bill is to restore independence to a

judicial system that has been critically maimed since the 1988 Judicial Crisis when top judges were unjustly sacked for political reasons and the Constitution also amended (Article 121) to subject the judiciary to parliamentary authority. So the obvious solution to overcome this excessive executive interference in the judiciary is to transfer the power to appoint judges from the prime minister to an independent panel, as well as to reverse the amendment to Article 121 so as to free the judiciary from the jurisdiction of Parliament.

But how can the JAC Bill achieve these objectives when it not only fails to amend Article 121, but instead empowers the prime minister to appoint and sack at will the majority of members of the Commission (Clauses 5 & 9), and to also change at will the provisions of the Bill by Gazette notification within the first two years of its operation (Clause 37)? Thus instead of relinquishing power, the prime minister has strengthened his hold on the system of judicial appointment.

Further, the introduction of JAC without amending Article 122B of the Constitution has rendered the bill *ultra vires* the Constitution. Article 122B, which governs the appointment of superior court judges, provides an elaborate system of consultations with various office-bearing judges (heads of various courts) by the prime minister before he advises the Agong who shall then appoint judges, after consulting the Conference of Rulers. In the case of appointing the chief judge of Sabah and Sarawak, the chief ministers of these two states must also be consulted.

Hence, without amending Article 122B to accommodate the JAC Bill, we have now two parallel systems that conflict and overlap each other – the existing system of consultation through various judicial heads and the new system through the judicial commission. De facto law minister Nazri Aziz refuted such claims of constitutional conflicts by contending that the task of JAC is merely to compile a list of candidates for the prime minister to choose from and the prime minister is still free to act as provided for under Article 122B, and hence JAC does not impinge on the former. This argument is flawed and self-defeatist. First, when two parallel and different systems of consultation are on-going, potential collisions and conflicts are inevitable, in which case JAC must give way to Article 122B, as the Constitution must take precedence. Second, Nazri's explanation is tantamount to a confession that JAC is merely a dispensable accessory to the prime minister's decision-making process (to appoint judges), as nothing in the Bill binds the prime minister to choose the appointee from the list produced by JAC.

It is clear that the JAC Bill is unconstitutional and it not only defeats the purpose for which it is enacted but also worsens the judiciary's present precarious position as an independent institution.

If BN is sincere to restore independence to the judiciary, it should simply supplant Article 122B with a Commission appointed by the Agong in consultation with the Conference of Rulers (without advice from the prime minister) just as the Election Commission is appointed by the Agong under Article 114. The JAC should of course include all the relevant stake-holders – individuals who enjoy public confidence. In addition, Article 121 must also be amended to re-instate the principle of separation of power among the three independent pillars of government - parliament, judiciary and the executive.

The MACC Bill

As for the MACC, it is admittedly an improved version over the present ACA, having now a wider scope of operation under a more elaborate bureaucracy of new advisory and overseeing panels. However, it lacks crunching power where it counts and does not address the fundamental flaws that have been crippling this corruption buster. These flaws are:

- a) ACA lacks independence as it operates under the dictate of the prime minister's department. As a result, it has often been abused as henchmen to unjustly persecute opponents of the ruling party while showing no zeal to pursue corruption cases against the ruling elite.
- b) ACA does not have prosecuting power, which is vested with the attorney general. The latter has been blatantly practicing selective prosecution since the reign of Mahathir, with successive AGs showing loyalty to the incumbent power, over-riding allegiance to the Constitution and the country. And the present scandal-ridden AG (Gani Patail), who is himself under investigation for falsifying evidence in the persecution of Anwar Ibrahim ten years ago, has proven to be no exception, having been seen as a major stopper to many a corruption investigation and prosecution against the ruling elite.

Regrettably, the MACC Bill does not provide remedies to any of these shortcomings. The newly created Special Committee on Corruption, which is made up of parliamentarians, is not determined by Parliament and reporting to Parliament, but instead selected at the discretion of the prime

minister, and reporting to the prime minister. So do the other four newly created bodies – Anti-Corruption Advisory Board, Special Operations Review Panel, Corruption Prevention and Consultative Council, and Complaints Committee - all beholden to the prime minister. So where is the independence so earnestly clamoured for by the public for this corruption fighting body? And without independence, can we really expect MACC to declare war on the corruption that is evidently raging out of control now among the hierarchy of the ruling party?

Similarly, under the MACC Bill, prosecuting power continues to stay with the attorney general. So how do we expect MACC to overcome this final stumbling block to net in the big fishes, without transferring the prosecuting power from the attorney general to MACC? It is pertinent to note in this respect that out of the numerous cases of big time corruption among the top hierarchy of the ruling coalition and its cronies, none has been successfully convicted in recent memory.

Optimism unwarranted

Immediately after passing these two “reform” bills, Pak Lah expressed confidence that these bills will restore public confidence, thereby “increase the country’s competitiveness and attract investors to come”. Noting that “negative perceptions with the judiciary and the anti-corruption agency were very strong before this”, Pak Lah added: “With the setting up of these commissions, we won’t have any corruption and even if there is, it will be very little” (*Malaysiakini*, Dec 17).

While giving credit to Pak Lah for at least admitting that our judiciary and anti-corruption efforts are in bad shape, his optimism over the effectiveness of these reform measures is at best naïve, and at worst dishonest and deceiving.

In fact, even if these two bills have been properly drafted to address the present flaws of these institutions, there is still the question of integrity of the key office-holders who helm these institutions – chief justice, attorney general, inspector general of police and director general of ACA. It is often said that one may have the best laws in the world, but if we have crooks to implement them, the good laws may come to nothing.

In the case of Malaysia, none of these key office-holders is spared of the taint of scandals and improper conduct. Neither do we expect them to be otherwise, knowing the low integrity and caliber of our political leadership.

Corrupt political leadership does not attract men of outstanding integrity; neither can it be expected to enact effective laws to maintain high integrity in government. That truism has practically reduced our options to only one - a change of political leadership. That is, if we are still serious about restoring the rule of law and the pursuit of excellence for the country.

The Perennially Troubling Police Force

Police Atrocities Bring Forth a Malaysian Dilemma

Deputy IGP Musa Hassan's bold defiance of cabinet authority and the worsening police abuses of human rights are symptomatic of a decadent political leadership.

28.11.2005

Malaysians, who are generally immune to shocking scandals, must have been flabbergasted by the latest dare-devil defiance of the police against the legitimate orders of the nation's highest authority.

On Nov 24, a video clip of a female police officer ordering a naked woman to do 10 ear squats was shown to MPs in Parliament House. They and many ministers expressed disgust over the humiliation of the detainee.

The next day, Prime Minister Abdullah Ahmad Badawi, obviously infuriated at such abusive conduct, called such incidents "shameful" and damaging to the country's image. He personally ordered Deputy Inspector-General of Police Musa Hassan to carry out an immediate and thorough investigation and to take stern action against the culprits.

But on Nov 26, Musa made an earth-shattering announcement: "It is the perpetrator behind the video footage whom we are after and not the policewoman who was carrying out a routine check." In other words, while the cabinet wants to nab the police culprits, Musa is chasing the whistle blower, having rejected the notion of police wrong-doing. And so, in one humiliating blow, Musa swept aside with contempt, not only the PM's order, but also the indignation of Deputy PM Najib Abdul Razak, ministers, parliamentarians, NGOs and the public.

Specifically, Musa said that "all detainees were required to strip and be searched before being sent to the lock-up", contradicting Najib's statement

that “forcing a person to strip was not part of the procedures in police investigations, and there was no reason for a person to be embarrassed in that manner”. With Musa’s latest defence that the policewoman was carrying out a “routine check”, he is in effect saying that stripping a woman naked and getting her to perform squats while holding her ears is standard police procedure. Is Musa not bestowing on Malaysia the dubious honour of being the only country in the world adopting that practice?

Adding to the seriousness of this dramatic defiance is that this is Musa’s second public disobedience of cabinet authority within two days. On Nov 25, Musa publicly rejected unanimous cabinet advice on Nov 23 to a policeman to withdraw his defamation suit against a teenager who had reported him to the Anti-Corruption Agency (ACA). (That report had resulted in the policeman being charged in court for corruption, but being cleared on a technicality). The cabinet was of the opinion that the legal suit was against public interest as it would deter the public from making reports to the ACA in the future, thus frustrating the prime minister’s on-going anti-corruption campaign. However, Musa retorted that the policeman was entitled to his human right to sue and the police department would not interfere with that right.

Flagrant human right abuses

This daring insubordination against civilian authority came on the heels of a series of police scandals that have lately enraged the nation, involving alleged extortion, corruption and abusive treatment of women from China. Only a few days ago, four women of Chinese nationalities went to Parliament to complain of wrongful detention by police for several days during which time they claimed to be subjected to sexual harassment and theft of their money - all because they allegedly refused to pay corruption money at a police road block. They have since identified two policemen and two policewomen in an identification parade as the culprits. In spite of this, the alleged culprits are continuing their work as usual, while the police authorities are supposedly continuing with their investigations.

These incidents have made sensational headlines around the world. The Malaysian police are now perceived as habitual violators of human rights and a brute force beyond the control of the civilian authority.

While foreign countries may be surprised that a country hyped by the Western powers as a model Islamic democracy should have fallen to such a dire state of the rule of law, should Malaysians be similarly surprised? They should not, for this is but the tip of an iceberg, and the abuses exposed

recently are relatively mild when compared to past atrocious violation of human rights, whether in the criminal or political fields. After all, gory details of physical and mental torture of innocent people detained for political purposes have appeared in books and in the infamous trials of former deputy premier Anwar Ibrahim. Police detainees have also died under unexplained circumstances.

Solution lies with political leadership

Then, what is the solution? Will it help to punish all the police personnel said to be involved in the recent cases, or even to punish Musa? It could help to check the decline of discipline to some extent, but it would be only a treatment of symptoms, not the root causes.

The real solution lies in the political leadership. Two decades of former premier Dr Mahathir Mohamad's corrupt and decadent autocracy - during which he relied increasingly on the police as henchmen to sustain his political power - has turned a disciplined and conscientious force that protects the people into a brute force that serves not the people but its political master as well as itself. Through successive legislations of repressive laws, the police have become armed with awesome arbitrary legal powers that can practically clamp down on any political opposition at will, in addition to allowing its personnel to lord it over the people.

However, making such a monster out of the police force amounts to having created a double-edged sword. It can cut in both directions. While it is an effective instrument to hit the opposition, it can deliver fatal blows to the political master as well. We now have the classic autocrat-police relationship that prevails in many tyrannical states in Africa, where each holds the other in mutual respect and mutual fear. The autocrat depends on the police to protect his corrupt rule, while the police rely on the autocrat to provide shelter for their corrupt life. It would not be wise for either to rupture that happy balance, as it may lead to unpredictable consequences.

In Malaysia, the autocrat may have stepped down, but the corrupt leadership remains intact. As long as the political leadership remains corrupt, it is futile to talk about cleansing the police force. It is precisely due to this reason that the cabinet has continued to drag its feet on implementing the recommendations of the Royal Commission on the Police, which sought reforms to remove the repressive powers of the police and to check abuses through an independent watchdog.

What can Malaysians do to change that status quo? That, in a nutshell, is the dilemma that faces them today.

IPCMC: No Compromise Please!

30.03.2006

I disagree with a *Malaysiakini* reader's suggestion that the powers of the proposed Independent Police Complaints and Misconduct Commission (IPCMC) be watered down in the face of police opposition.

The basis of this suggestion sprang from his earlier proposal to model the IPCMC after the United Kingdom's Independent Police Complaints Commission (IPCC). I contend that we cannot follow the UK laws in regards to IPCMC's power to discipline the police simply because the circumstances in Malaysia are completely different from those in UK.

UK has one of the most exemplary police force in the world under the control of a political leadership of unquestioned integrity. In contrast, our police force is in a dire state, which was brought about through two decades of corrupt misrule. It was precisely in recognition of this fact that our reform-minded Prime Minister Abdullah Badawi commissioned the Royal Police Commission to pull the police force from its present quagmire. We are proud to say that the Royal Commission has fulfilled its mission with honour and distinction. Its findings are undoubtedly the most authoritative ever, and its recommendations, of which the IPCMC forms the core, are unanimously hailed as timely and effective in redressing the police ills.

However, the police are fighting tooth and nail against the IPCMC, even to the extent of its chief risking his neck by openly defying the Prime Minister and his cabinet. What does this tell us? It tells us that the police are very fearful of the IPMC. It also tells us that the Royal Police Commission must have prescribed the right medicine.

The vehemence with which the police are fighting back against the IPCMC can only mean two things. First, its corruption and abuse of power is really as bad as diagnosed by the Royal Commission, otherwise, it would

have welcome the IPCCM to return the good name to the force, if its vast majority especially the upper echelons are clean. Second, the IPCCM is effective in nailing the corrupted, wherever and whenever they may be.

For the first time in our history, a watchdog body is proposed to be armed with teeth and made to report to Parliament. And that strikes fear into the guilty.

Opposition to the IPCCM is centered around the arguments that there are already enough bodies to check police excesses – without the IPCCM - such as the Police Force Commission, Anti-Corruption Agency, public complaints bureaus etc., without the IPCCM. But the truth is that all these bodies have proven to be total flops, otherwise our police force wouldn't have plunged to its present depth of decadence, and there wouldn't have been the need of a royal police commission in the first place.

Why have we failed to control the police? Sad to say, this is attributable to the failure of both the present and the previous prime ministers who also control the police directly as security/home ministers. The previous PM failed because he used the police primarily as henchmen to preserve his corrupt autocracy, while the present PM also fails because he is too weak, as demonstrated by frequent public defiance of his authority.

As for the growing noise of UMNO members of parliament attacking the IPCCM, it should be viewed in the larger context of an antiquated UMNO resisting changes. The rationale of these UMNO opponents to the IPCCM is clear. If the police become a clean and efficient law enforcer, who is there to protect the corrupt ruling elite from prosecution? And how could the opposition be illegitimately prevented from challenging the incumbent power then?

It is at time like this, when the issue at hand becomes a litmus test of a leader's integrity, that the wheat is separated from the chaff. I dare say that none of the UMNO members of parliament who vociferously opposed the IPCCM would dare to seek a mandate from the electorate in his constituency to scrap the IPCCM, for he knows that the answer would be an emphatic no.

There is a crying need to reform the police force along the lines prescribed by the Royal Commission. The police know it. And the people overwhelmingly want it. In fact, the people have been yearning for this day – a decisive turning point of our police force through effective reform to turn the heightening crime rate around and return law and order to this country. Our peace-loving and tolerant people deserve this from their leaders.

All we need now is a courageous political leadership to implement it. Will Pak Lah rise to the occasion? And will the more decent leaders in UMNO pick up enough courage to do what is right for the people?

Should UMNO fail the people on a crystal-clear issue like this, there is no way it can escape the people's judgment.

Whom Do the Police Serve: Ruling Party or the People?

Continuing its streak of daring defiance against civilian authority, the police force stepped up its opposition against the implementation of the IPCMC by warning dire consequences to the ruling party (read UMNO) – loosing political power as well as loosing electoral support from the police.

29.05.2006

The Malaysian police force seems to be more concerned with the loss of political power by the ruling party (read UMNO) than the people not getting efficient police service, in its deliberation on the proposed Independent Police Complaint and Misconduct Commission (IPCMC).

In a special bulletin posted on its official website, the police launched an all out attack against the IPCMC. Among the myriad of reasons given for its objection - most of which are wild assertions unfounded on facts and logic – the one that strikes closest to the heart of UMNO is perhaps the claim that UMNO will lose political power if IPMC is implemented.

Under the subheading ‘Rationale for rejecting IPCMC’, the police give nine reasons for its objection, and the third one is stated as “erosion of political power by the ruling party”.

And under another subheading: ‘IPCMC: why we don’t need it’, the police give ten reasons, and the first one warned of the minister losing power of control of the police to the IPCMC and said: “Let politicians beware that they will eventually lose powers, control and influence over a neutral, professional and people-centered police (as suggested by the Royal Commission).”

The special bulletin also quoted the Association of Gazetted Senior

Police head ACP Jamaludin Khalid as warning that the police will vote for the opposition in the next election if IPCMC is formed.

Political partisanship

Reading between the lines, what the police have said could be interpreted to mean that if the police are truly reformed with the help of IPCMC into a neutral, professional and people-oriented force as suggested by the Royal Commission, then the ruling party will lose political power.

In fact the police admit as much to its lack of neutrality in reason no. 9 under subheading 'IPCCM: why we don't need it' when it claims that the time is not ripe for implementing the IPCCM, saying: "If facilities are in place and the government is ready (when the police is required to be neutral and people-centric) only then IPCCM could be considered with suitable amendments to the Bill in fairness to the police".

The crucial question we must ask is: why should the ruling party lose political power if it is clean and honourable? Shouldn't a better police force be welcome by the electorate and thus enhance instead of eroding the ruling party's popularity?

On the other hand if the ruling party is corrupt and depends on illegitimate repression enforced through the police to stay in power, then a neutral and corrupt-free police force would indeed be unhelpful in protecting the ruling party from the wrath of the people.

Our police is obviously hinting that the latter case applies under current realities.

Thus, through its desperation to ward off the IPCCM, the police have inadvertently and implicitly confirmed its well known unconstitutional role as henchmen to protect UMNO's illegitimate hold to political hegemony and have also given credence to the wide-spread skepticism over the legitimacy of postal votes cast by the police and military personnel.

And so we have a police force telling the ruling party in its face: don't crack down on us on corruption, or we will not insulate you from losing your corrupt rule; or putting it bluntly: you scratch my back, I will scratch yours.

Electoral threat

As for the police threat to vote for the opposition in the next election, it clearly implies that hitherto the police have been voting for only the ruling

party. But, isn't voting secret? How do the senior police officers know who the rank and file and their family have voted for? There have been persistent complaints that our armed personnel and their family cast their votes under the gaze of their superior officers, and these postal votes have in the past reversed the electoral outcome in the last moment in favour of the ruling party in many a tightly fought electoral contests. In spite of repeated protests, postal voting continues to lack transparency, and kept out of sight of the election agents of the opposition. The latest electoral threat by the police only reinforces the illegitimacy of such voting process.

On an even more serious note, such police electoral threat is tantamount to blackmail. It is already a breach of law to coerce voting en bloc for any political party, and it is doubly serious when the police use this block voting to blackmail the political leadership into reversing a major policy decision. Such blatant defiance of civilian authority is unheard of in any democracy and would have undoubtedly resulted in severe disciplinary action being taken against the top police officer(s) involved including dismissal.

Reading over the various reasons given for opposing the IPCMC, one gets the impression that the police are merely scraping up bits and pieces of possible justification in the hope of hitting the jackpot – a heavy weight objection that could knock the IPCMC off its intended course. Alas, apart from the possible legitimacy of the police concern over the alleged lack of opportunity for self-defence by the officer under investigation – a defect that could be readily rectified if found to be true – none of the reasons stated could stand up to reason.

Principal objection invalid

The police objection is evolved around the contention that the IPCMC has supplanted the authority of the minister and the police chief and usurped the constitutional function of the Police Force Commission (PFC). This is flagrantly untrue. IPCMC comes into play only when there is a breach of discipline or a complaint of such breach. It does not take over any of the existing authority to appoint, promote, transfer, and discipline members of the police force as provided for under article 140 of the Constitution.

IPCMC's function to investigate and discipline errant police officers is deemed an additional measure to supplement the existing bodies carrying out such functions, which have been found badly wanting. Contrary to the police claim that IPCMC's such disciplinary power is unconstitutional, the second part of Article 140 (1) of the Constitution specifically provide for

such disciplinary power to be exercised by an authority other than the PFC. There is no doubt that this part of the Constitution was deliberately crafted in anticipation of the coming into being of a body like the IPCMC.

As for the police claim that there is no pressing need to introduce the IPCMC, this is contradicted by the report of the Royal Commission. The latter, which is the result of more than one year of painstaking investigations and hearings conducted all over the country by commissioners that include a former chief justice and a former police chief, is recognized as the most authoritative finding ever on the state of the police force. The report speaks of rampant and pervasive corruption with many examples of vast wealth amassed by police officers unhindered by any of the law enforcement agencies. And the Commission's comprehensive recommendations to thoroughly reform the police into a dedicated and service orientated force, of which the IPCMC forms the core, have been hailed unanimously by the people of this country as effective and timely in pulling the police force from its present cesspool.

It is noteworthy that while the police have been scouring for excuses to fend off the IPCMC, it has not denied the factual findings of the Commission on corruption and low efficiency. This is an indirect admission that the present checks and balances, both internal and external, are grossly inadequate. Surely that calls for serious reforms and the creation of a truly effective discipline master to restore some shine to our police force.

Without denying such poor state of health, the police claim of IPCMC's demoralizing impact will only invite interpretation that they feel nervous of an impending shake up of their corrupt life style. It is an implicit admission that they are corrupt and are not prepared to change, as a morally upright police officer has no reason to fear but every reason to welcome the IPCMC as a positive influence to improve the police image.

The larger context

While focusing on police corruption, we must not lose sight of the larger context within which this has taken place, for which the Royal Commission has rightly said: "Corruption in the police force is part of a larger problem of corruption in Malaysia that is recognized by both people and government alike. Corruption is a social disease that cannot be effectively eradicated without addressing the root causes. Corruption in the police also cannot be eliminated in isolation from the social and political environment".

Looking back over 49 years of our existence as an independent state, one could not recall a lower moment than this, when the police could openly admit to mutual complicity with the ruling party to unconstitutionally perpetuate the latter's rule, while hurling threats at the political leadership to defy its major policy decision.

The older generation who has lived through the fifties and sixties under the first three prime ministers must have looked on aghast at such flagrant display of indiscipline and low integrity of our government. How did we come to this?

While it is outside the scope of this article to go into details, suffice to say that this is only one of the many manifestations of two decades of Mahathirism, during which racism, cronyism, corruption and abuse of the Constitution ran rampant.

It is also a stark reminder to current prime minister Abdullah Badawi that his so-called reforms have not made any impact. Worse, there is every indication that corruption and indiscipline in the government have deteriorated.

Finally, a word of advice to the police. It is not the business of police to dabble into politics. The police have sworn allegiance to the country and the Constitution, not to the ruling party. It is an act of betrayal to the country to clamp down on legitimate political opposition using means that violate the letters and spirit of the Constitution. It is also a breach of its oath of allegiance if the police should deliberately fail to act on criminal offences, in particular, corruption involving leaders in the ruling party.

As for the implementation of IPCMC, while we share the police view that the practice of corruption is not peculiar to the police force but generally prevalent in government services, we do not agree that the police should reject such a watchdog body. The police must realize that it is the unanimous view of the people that corruption and dereliction in the police department is most serious, as a result of which public security has plunged to a level that is testing the tolerance limit of the people. The police should abandon the notion of it being victimised. Instead it should look upon such an opportunity as a challenge and an honour to spearhead the country's much needed reforms that will not only bring pride to the police force, but will spread to other parts of the government.

Dark Clouds Over the IGP

Despite IGP Musa's scandalous records as a law enforcer – explosive escalation of crimes and atrocious violation of human rights – and the latest allegation of his underworld links in the Internet, Najib decides to extend his service. Why?

06.09.2009

How should one read Prime Minister Najib Razak's decision to renew Inspector General of Police Musa Hassan's service contract despite his horrible records – exploding crime rates, brutal suppression of civil liberties and swirling talks of his alleged links with the underworld?

Some would say that the IGP is retained because, as a ruthless suppressor of human rights, he is exactly the kind of police head needed to prop up the wobbling UMNO led regime that is fast loosing popular support. Musa's credentials for this role were well demonstrated in the infamous power grab in Perak. Brushing the Constitution and law aside, police brute force was repeatedly employed to physically bar and rough up Pakatan assemblymen from exercising their constitutional rights to regain their legitimacy to rule from the illegitimately established BN state government.

Others would say that Najib is in no position to get rid of Musa as the latter has the upper hand, being holder of the darkest secrets pertaining to major scandals that have been heavily weighing down on Najib, such as the Altantuya murder and the Scorpene submarine purchase.

Some would even suggest that Musa's hitherto pivotal role in the on-going dubious Anwar sodomy trial II makes him indispensable to the continuing potency of this case as a potential lethal weapon against the seemingly unstoppable advances of Pakatan Rakyat.

For those who have been paying attention to the local political scene, it is not difficult to see that all the above three views are valid. In other words, it is the combination of expediency for political survival and the personal vulnerability of the Prime Minister that has contributed to another extension to the already extended term of two year for the hugely unpopular police head.

Musa's extension of service also signifies that there will be no light at the end of tunnel of promised reforms as hyped in Najib's 1Malaysia euphoria. Between an inclusive democratic Malaysia and a race-supremacist authoritarian Malaysia, the Najib led UMNO has obviously chosen the latter.

Frightening plunge in security

Politics aside, what concerns the man-in-the-street is the frightening deterioration of security and law and order in the country. A recent opinion poll conducted in the Home Ministry website reveals that 97% of respondents expressed worry over the state of public safety, 94% were of the opinion that the authorities had not done their best and a shocking two third said they or their immediate family members had been victims of crimes. These alarming polling results are in tandem with the fact that crimes have escalated exponentially during Musa's tenure as the IGP.

Why has crime rate continued to spiral uncontrollably despite the billions of ringgit being poured into the police to upgrade facilities and expand manpower following the recommendations of the Royal Commission of Inquiry to upgrade the police force in 2005? Why have rampant corruption and persistent abuse of power and violation of human rights continued to bug our police force with increasing tenacity? Why have the police continued to resist the implementation of the crown jewel of the Royal Commission's 125 recommendations – the establishment of the Independent Police Complaints and Misconduct Commission, which by consensus, would have been the most potent medicine to whip our decadent police force into shape?

In all these failures, we see the shadow of IGP Musa Hassan. It is therefore with the utmost indignation that we must deplore the Najib leadership for refusing to react to the alarm bells sounded in Malaysia Today website in the past week, where explicit details of Musa Hassan's alleged links to the underworld were exposed.

Explosive revelations

In a series of postings, Malaysia Today's Raja Petra Kamarudin (RPK) displayed photocopies of statutory declaration and correspondence among key players to substantiate the allegations of Musa's involvement. These allegations included: the IGP allowing an underworld kingpin to manipulate postings of officers while siding another kingpin to secure his release.

In a posting on Aug 28, RPK revealed a statutory declaration made by a former aide de camp (ADC) of Inspector General Musa Hassan, where the ADC accused the IGP of misconduct that "undermined the integrity and credibility of PDRM, constituting a betrayal of his oath of office". Certain names and details were blacked out in the documents for "obvious reasons", but RPK promised that the 'un-black' out version would be revealed if its authenticity was challenged by the government or when Musa's service was extended so as to embarrass the government.

Specifically, the ADC alleged that

- As ADC, he compiled and coordinated posting orders as based on a draft and proposal made by one BK Tan. A list of the postings as implemented was attached to the Affidavit.
- Some transfers were made as "entrapment", others with short notices were made as punishment to convey the impression of eradicating corruption and abuses, though "it was furthest from the truth".
- He verified that the statutory declarations of certain police officers (names given) alleging manipulation of "promotions, ranks and postings in the hierarchy of PDRM" by BK Tan were true. (These statutory declarations appeared earlier in Malaysia Today).
- Six police officers who exposed Musa's alleged underworld links were charged for various offenses.
- A former CID Director (name given) informed him that it was Musa who gave the order to set up a covert blog to make allegation of corruption against former Deputy Minister of Home Security Johari Baharom. (In 2007, Johari, a known adversary to Musa, was accused in an anonymous blog of accepting RM 5.5 million bribe to free three underworld bigwigs, but Johari was subsequently cleared of this allegation)

In another posting on the same day, Aug 28, RPK revealed a letter dated 29 Aug 2007 from Johari Baharom to his former boss, Abdullah Badawi who was then Prime Minister cum Home Security, where Musa's link with

one Goh Cheng Poh was unveiled. Goh was nabbed in an anti-Ah Long operation and banished to restricted residence (RR) in Jeli, Kelantan, under the direction of a task force headed by Johari. Goh then made a habeas corpus application to the court on 14 Aug 2007 to set aside the RR order on ground of male fide detention. In Johari's letter to Abdullah, he described details of how Musa, in conjunction with the attorney general Gani Patail (AG), took unprecedented legal steps to help Goh to win his case. (Following this suit, AG ordered Goh's release.)

Will Agong step in?

In any democracy, these explosive exposures would have rocked the government. Even in the pseudo democracy of Malaysia, surely these allegations are serious enough to merit a proper investigation, particularly when these occurred on the eve of the re-appointment of such a controversial figure who commands no public confidence.

But our government has remained silent. And what has Musa got to say to these allegations when contacted? He refused to comment, according to *Malaysiakini* which reported these revelations on Aug 29.

However, all is not lost as the Yang di-Pertuan Agong is empowered under Article 140 (5) of the Constitution to refer the Police Force Commission's recommendation back to the Commission for another round of consideration. Until the Agong signs on the letter of appointment which should take effect on Sept 13, the Agong can still ask the Commission to deliberate further, pending a proper investigation to clear up the dark clouds hanging over the IGP.

The issue of the caliber and integrity of the next IGP is of vital importance at this critical junction of our history in view of the chaotic state of the rule of law the nation has descended into. And we trust that the Agong will give this matter his due consideration.

Teoh Beng Hock's Tragic Death

Teoh's Death: Mysteries Abound, Royal Commision without Delay

A Pakatan political aide's tragic death, apparently under custody of MACC, has sparked off a storm of protests amid what appears to the public to be a MACC campaign to harass Pakatan assemblymen in Selangor over hear-say allegations of misuse of public funds.

20.07.2009

Teoh Beng Hock's tragic death on July 16 seems to have jolted this country from the euphoric daze induced by the media blitz that has glorified Najib Razak's premiership. Staring starkly at the people now is the image of a rotten state of depraved institutions, of which the obnoxious Malaysian Anti-Corruption Commission (MACC) represents but the tip of an iceberg. This rotten state was mercilessly exposed during the entire infamy known as the Perak power grab where none of the government institutions was spared from political manipulations to engage in unconstitutional and unlawful activities to satiate UMNO's obsession to seize and preserve power at all costs.

In this context, none should be so naïve as not to recognise that Teoh Beng Hock – political secretary to Selangor state assemblyman Ean Yong Hian Wah – is the victim of political persecution, the latest in a series of hardly concealed acts of subversion and sabotage against Pakatan Rakyat (PR) since the Mar 8, 2008 election exposed UMNO's precarious political future.

In the present incident, MACC is in the midst of an operation to destabilise the Pakatan-controlled Selangor state government through endeavours to prosecute PR assemblymen, for which it has been busy

fabricating the necessary evidence through threats and coercion of potential witnesses. And Teoh Beng Hock is clearly a victim of physical intimidation and mental torture under such a process.

That this was the case was indicated by Kajang municipal councilor and businessman Tan Boon Wah, who was interrogated at the same time as Teoh Beng Hock; both were called in separately as witnesses, not suspects. Tan described in graphic details how he was physically abused and mentally tortured to falsely admit (which he refused) that he did not supply the 1,500 flags at the price of RM 2,400 to the constituency of Seri Kembangan, implying that its assemblyman Ean Yong Hian Wah had corruptly pocketed the money. Teoh was understood to have been worked on to yield the desired result against Ean Yong.

Tan Boon Wah also disclosed racial insults thrown at him during the interrogation, thus reinforcing an earlier allegation of racially biased persecution as all the seven assemblymen presently under investigation by MACC for suspicion of misappropriation of state allocations are ethnic Chinese. This view was further collaborated by Dariff Din (a Malay assistant to assemblyman Lau Weng San), who was also interrogated at the same time as Teoh and Tan. Dariff said the interrogators were obsessed with his racial identity as he looked like a Chinese; and spent the bulk of the interrogation time just to make sure that he was as claimed – a Malay. Dariff said: “everything went smoothly after they learned that I was a Malay Muslim”. He added that from what he observed, MACC was merely “fishing for evidence against Pakatan assemblymen” without any specific clue of corruption.

Against such a backdrop, the calls by various authorities to the public not to hurl accusation but to trust the police to conduct a “professional and thorough” investigation is taken by many as an insult to their intelligence, as if the public is unaware that these two enforcers – Macc and police - have long been perceived as routinely playing a game of “you scratch my back, I scratch yours”. The latest such evidence is the MACC’s recent exoneration of the Inspector General of Police Musa Hassan of alleged fabrication of evidence in the Anwar Ibrahim “black eye” probe, despite the presentation of incontrovertible evidence to the contrary by Anwar. So, can any one be blamed for being skeptical, thinking that it is now pay-back time for the police to return MACC the favour?

Serious doubts

Now that the police have said that initial pathologists' report indicated Teoh died of injury due to fall from a high place, the mystery is zeroed in on the circumstances surrounding Teoh's fall from the building. It is here that serious doubts have surfaced over MACC's version of what happened to Teoh.

Issue 1: Was Teoh ever released by MACC?

MACC chief commissioner Said Hamdan has disclaimed responsibility for Teoh's death on the ground that Teoh was released before he met his death.

His director of investigations Shukri Abdul had earlier claimed that Teoh was released at 3:45 am on July 16, and was last seen at 6am sleeping on a couch in the MACC office after been given permission to rest there. The next MACC heard of Teoh was when a cleaner in the building shouted that he discovered a body lying on the 5th storey balcony of the building (Plaza Masalam in Shah Alam) where Teoh was interrogated on the 14th floor.

This story implies that Teoh walked out of the office on his own without being seen, sometime after 6 am. But Teoh couldn't have done that as he did not have the electronic card to open the door to either leave or enter the office.

If Teoh was released, surely his hand phone must have been returned to him. How come his hand phone was not with him when his body was found?

Besides, there was no credibility that Teoh had chosen to linger in the same office where he must have been subjected to many hours of traumatic roughing-up in the hands of the interrogators. Any reasonable person would have rushed home in the first instance to escape the dreadful place, considering that his car was conveniently parked in the same building and that he was scheduled to register his marriage with his loved one on the same day.

If indeed Teoh was in custody all the time as it appears to be the case, why should MACC have concealed this fact if it did no wrong to cause Teoh's death?

Issue 2: What happened between 1:30pm and 5:00pm?

Though Teoh's body was discovered at 1:30pm, it was not until after 5pm that MACC disclosed the news to assemblymen Ean Yong and Ronnie Liu who had been waiting for over an hour in the MACC office insisting to meet Teoh Beng Hock. Why should MACC have hidden the news for so long unless there were compelling reasons which in all probability might not be guilt-free?

Issue 3: Why was the outer timber door of the MACC office unprecedentedly closed for some half an hour at the time when some one discovered Teoh's body?

The Chinese section of *Malaysiakini*.com reported on July 17 that its reporter Rahmah Ghazali observed an inexplicable happening at the MACC office at 14th floor, where the outer timber door was mysteriously shut between 1:15pm and 1:35pm, and re-opened shortly before 1:50pm on July 16.

Rahmah explained that she first arrived at the MACC's 14th floor office at 1:15pm to attend a press conference to be given by Kampung Tunku assemblyman Lau Weng San. Seeing that no one was around, she went down to the 4th floor to wait at the reception hall. When other reporters arrived at 1:30pm, she followed them to the 14th floor again, but was surprised to find the outer timber door of the MACC office closed; it was then about 1:35pm. Thinking that the staff could have closed the door to go for lunch, she and other reporters went down for food.

She then called Lau Weng Sun who expressed disbelief that the timber door was closed, as MACC was supposed to operate around the clock. Knowing that Lau was already on the way, she decided to skip lunch and went back to 14th floor, and found the timber door re-opened this time; the time was about 1:50pm.

Lau arrived at 2pm. After talking to reporters for about 20 minutes outside the MACC office, he went in to make a report. Of course, none of them knew that Teoh Beng Hock was already dead then.

1:30pm was the time when some one discovered Teoh's body. Why did MACC took the unprecedented step to shut down the office briefly, closing the door between 1:15pm and 1:35pm, and re-opening the door at shortly before 1:50pm? What did the staff do behind that timber door at that crucial moment that they would not want outsiders to see? The mystery seems to deepen.

Royal commission the only option

In summary, it is apparent that MACC is holding far too many secrets that it has not shared with the public over this tragedy, which is aptly defined by Lim Kit Siang as “how a healthy, vibrant and idealistic young political worker could enter the MACC headquarters as a witness in its investigation only to end up as a corpse in a plunge from the 14th floor of the building”.

Entrusting the full responsibility on any of the existing law-enforcing agencies to unlock these secrets would not do, as none enjoys public confidence.

There is no option but to appoint a royal commission of inquiry comprised of competent individuals whom the public trust to unravel the present mess, if Najib does not want the mistrust of his leadership to deepen. And not a minute is to be wasted for this commission to spring into action, if vital clues needed to establish the truth is not to be lost for ever.

Royal Commission of Deception

By proposing a royal commission to do a side show, the BN government seems determined to shield the MACC from rigorous investigations; the latter's role as a political tool to sabotage Pakatan Rakyat being all too obvious from its outrageous double standards in dealing with corruption allegations.

23.07.2009

Prime Minister Najib Razak has finally announced the agreement to set up a royal commission of inquiry (RCI) to assuage the nation's anger over the tragic death of Teoh Beng Hock in the hands of the Malaysian Anti-Corruption Commission (MACC). But what a let down, and what a deception!

Instead of probing the death of Teoh, the commission is asked to look into the interrogation methods of the MACC. The absurdity of this move is akin to a school boy caned to death in a school, and the public inquiry is over the disciplinary procedure of the school, not over how and why the boy met his death.

The injustice that befell Teoh Beng Hock – a clear victim of political persecution – has infuriated the nation to boiling point, and yet Najib thinks that an RCI looking into MACC's methodology would be sufficient to douse the anger and restore confidence in his leadership. What does he take Malaysians for? A bunch of dimwits?

Oh ya, I know what they will say, together with this RCI is an inquest where a magistrate would look into the cause of death. But any one familiar with legal practice can tell you that comparing an inquest to a RCI is like a child vs an adult. An RCI is commissioned by the King, and it is usually made up of senior members of society with distinguished records of competence and integrity, and having wide power to summon for witnesses

and unearth evidence, and reporting to the King; whereas an inquest is manned by a junior legal officer whose source of evidence is limited to feeds from the authorities (mainly police) with no power to call for witnesses and other evidences, and forwarding the findings to the attorney general.

Since an RCI is going to be set up in response to public demand to uncover the truth pertaining to Teoh's death, why create another junior body to take away the principal task - finding out how and why Teoh died – leaving RCI to do a side show? Besides, without allowing RCI to probe into the death, how could it fathom what has gone wrong with the operations of MACC's? In fact these two tasks are integral and inseparable. Only when the full circumstances surrounding the death are ascertained, can the defects of the system be defined and recommendations made. This is plain common sense, and I can't imagine that a man of Najib's intelligence cannot comprehend it. That leaves us with no alternative but to conclude that the UMNO leadership is playing a game of hide and seek with the public with respect to this tragedy.

Shocking police conduct

Najib said “the government will do whatever that is necessary to find the truth” and Inspector General Musa Hassan has repeatedly warned the public not to speculate and hurl accusations but to trust the police to carry out a “transparent and professional” investigation, but what has transpired is contrary to these assertions.

The police investigations in particular have been shockingly questionable and unprofessional.

It should be plain from day 1 of the discovery of the body (July 16) that Teoh died while under custody and he fell from the window of the MACC's 14 floor office. That he was never released was verified by his personal articles including his hand phone which were still being kept by MACC when the body was found and the fact that he could not have walked off the office on his own as implied by MACC as he did not have the electronic card to open the door. That he fell through the office window was implied from the 14th floor window latch which was found next to Teoh's body.

Then why didn't the police seal the office, seize all relevant documents including notes of interrogation, dust for finger prints particularly those at the window on the very first day (July 16), as death by foul means clearly could not be excluded.

Despite evidence of Teoh's fall from the building while under custody,

why did Selangor police chief Khalid Abu Bakar say that he did not suspect foul play and classified the case as “sudden death” – even before autopsy was performed? Didn’t this presumption betray patronization of a fellow law-enforcing agency?

Why did the police team of forensics personnel visited the crime scene only on Day 4 (July 19) to take evidence, removing articles such as documents, CCTV records, window latch etc, knowing that vital clues could have been erased, tampered with or removed in the intervening 3 days? Didn’t this reflect a lack of seriousness?

Why did the police deny repeatedly to assemblyman Ronnie Liu until day 4 that it had Teoh’s hand phone, when in fact the it has been in its hands since day 1? For what reasons were the police secretly keeping the phone for so many days? And what prompted it to change its mind now?

The body was discovered at 1:30pm and Teoh’s boss assemblyman Ean Yong Hian Wah arrived at the MACC office at 5 pm asking to see Teoh, but the personnel therein including Selangor police chief Khalid Abu Bakar did not entertain Ean Yong for more than an hour. Why kept the news from Ean Yong for so long? Why wasn’t Teoh’s family informed in the first instant? Was this long duration of silence a needed interval to complete certain preparatory work before the bad news was announced to the world? Shouldn’t such improper conduct give rise to suspicious imputations?

The autopsy was completed on day 2 (July 17), why is the police still keeping the findings under lid?

MACC in political conspiracy

As for MACC, questions galore that suggest criminal liability over Teoh’s death against the backdrop of a political conspiracy to sabotage the Selangor Pakatan state government with corruption prosecutions. Examples of these are:

1. Why did director of investigations Shukri Abdul lie that Teoh was released at 3:45 am and that he had no idea how Teoh’s body landed on the fifth floor balcony, when in fact Teoh was never released and he fell off a window in the office? Was there a necessity to lie if there was no criminal liability on the part of MACC?
2. Why was Teoh tortured in a marathon interrogation that stretch into the early hours of morning when he was not a criminal suspect but only a witness assisting in an investigation over a hearsay allegation

of misappropriation of a paltry RM 2,400 by his boss Ean Yong? Ean Yong was among a group of seven Pakatan assemblymen selected for investigation for unspecified and unsubstantiated suspicion of misusing their annual allocations of half a million ringgit each. In contrast, Pakatan complaints against BN assemblymen for having dubiously spent their entire annual allocations within the short period of two months shortly before the last election in 8 Mar 08 have been met with silence for more than a year.

3. Why have Pakatan leaders been systematically hounded over dubious petty allegations while MACC routinely playing deaf and dumb over multi-million and even multi-billion scandals of corruption and abuse of power by Barisan Nasional leaders? Why the silence over the RM 12.5 billion PKFZ scandal despite having received numerous reports of complaints from Pakatan since 2004? Why no notice was taken over the recently exposed mansion of former Selangor Menteri Besar Khir Toyo, reputedly worth RM 24 million which was a cost well beyond his accumulated official income? Why no action was taken against Khir for the numerous reports of corruption and abuse of power uncovered by the Pakatan state government since the last election?

It is as clear as day light that MACC exists not to wipe out corruption, but to wipe out Pakatan Rakyat – not only in Selangor but all over the country. It is the realization of this despicable role played by MACC in relation to the tragic death of an upright and dedicated young man - whose life was so cruelly snuffed out on the eve of his marriage - , that has caused the tolerance of the nation to touch its breaking point.

Let us resolve that the fascist power be not tolerated henceforth. Let us all stand up for justice for Teoh Beng Hock.

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PM & AG's Justifications For Inquest Laughable

25.07.2009

Both Prime Minister Najib Razak and Attorney General (AG) Gani Patail have flopped miserably to justify the unjustifiable – the irrational and untenable decision to have both a royal commission of inquiry (RCI) and an inquest to deal with the boiling controversy of Teoh Beng Huat's tragic death while under custody of the Malaysian Anti-Corruption Commission.

In an immediate response to nation-wide protests against the government's decision to allow the RCI to deal with only procedural matters while leaving the all important issue of cause of death to an inquest in a magistrate court, Najib said:

“We must adhere to the laws of the country. Please don't take (political) advantage of the case. Our intention is to find out the truth”.

Sensing his statement sounded somewhat hollow, he quickly added that the Attorney General – the government's chief legal officer - will issue a statement to explain the details.

But the Attorney General's statement sounded even more hollow. His statement is a blatant attempt to mislead by deliberate omission of the relevant section of the law.

Citing section 2 of the Commissions of Enquiry Act 1950, Gani said it made clear reference to the inquiry into the conduct and management of the government officers and departments for the “public welfare”. He said welfare matters relate to the well being of society and “cannot be overstretched to cover an inquiry into the death of this nature.”

In this statement, Gani made two assertions. First, the Act covers only government departments and officers. Second, his definition of “public welfare” excludes inquisition of death.

On Gani’s first point. Under the same section quoted by Gani – section 2 of the Act – it is expressly stated under item (d) that the Commission is empowered to inquire into “any other matter in which an inquiry would, in the opinion of the Yang di-Pertuan Agong, be for the public welfare, ...”. So, Gani’s assertion is clearly contradicted by item (d) of section 2 of the Act.

On the second point. Gani’s narrow interpretation of the phrase “for the public welfare” is laughable. When the nation has been so incensed by the heinous injustice of this tragedy that it is almost on the point of revolt, appointing an RCI to probe into this death is not only legally and politically appropriate but the very minimum the government must do if it still wants to retain a remote semblance of rule of law in this country. And yet, our attorney general is telling us that making such a move is incompatible with “public welfare.” Then what will constitute “public welfare”? Waiting for violence to erupt in the streets – knowing fully well that public confidence in the existing law enforcement bodies including the courts is already non-existent?

Even when an RCI is commissioned to probe into the death, there is no assurance of justice done, judging from the government’s habit of ignoring recommendations of RCIs in recent times; but at least it will calm the highly strung nerves of the nation by showing that the government is finally taking steps in the right direction. And I can’t imagine any decent person will object to it by claiming that taking such a course does not fulfill national interests as implied by Gani’s narrow interpretation.

Much has been written and expressed by respectable legal minds, political parties and civil society leaders that the present set up of an RCI cum inquest to divide the task of resolving the present crisis is legally and technically untenable and morally unacceptable, and I will not elaborate further in this direction.

Suffice to say that Najib must decide, and decide now, which course he wants to take.

To salvage the image of the nation and redeem himself from a scandal-ridden past by appointing an honourably constituted RCI with proper terms of reference to take on the crisis, or relegate the task to a magistrate hamstrung by prosecutors and police, all of whom are deeply mistrusted by the public?

Postscript:

The Inquest commenced hearing on 5 Aug 2009 and is still on-going at the time of writing (October) though the original schedule was to have it completed within two weeks.

As for the proposed RCI, PM Najib said it will have to wait until the Inquest is over.

Race and Religion

Kuan Yew Causes Uproar Over Marginalised Chinese

During dialogue in a forum on the sidelines of World Bank-IMF meeting in Singapore, Lee Kuan Yew made a remark that Chinese in Indonesia and Malaysia have been marginalized, in the context of his justification for a strong government in Singapore; and that sparked off protests from UMNO leaders, chorused by their counterparts in MCA and Gerakan.

24.09.2006

In the chorus of angry protests against Singapore Minister Mentor Lee Kuan Yew's recent remark that Chinese Malaysians have been marginalized, can these angry protesters answer one simple question?

If there has been no racial marginalization, why has the word meritocracy been a taboo in Malaysian politics ever since the racial riot of May 13, 1969 – the only country in the world banning this concept?

A few more simple questions:

Why has there been a massive and unrelenting brain drain ever since the infamous debacle in 1969, resulting in countless Chinese Malaysians excelling in many fields in foreign lands?

Why has there been a virtual monopoly by one race – numerically as a whole, as well as the top hierarchy – in the entire spectrum of the public sector, namely, the army, police, civil service, judiciary, public universities, semi and quasi government bodies, and government-controlled financial institutions and enterprises?

Why have there been, year after year, the specters of top Chinese Malaysian students being barred from universities, only to be admitted later (only for some) upon begging by Chinese ministers in the Cabinet?

No doubt Lee may be faulted for lacking diplomatic niceties in his remarks, but he has spoken the truth. And I think every Malaysian irrespective of race knows that, at least in the deepest part of his heart if not outwardly.

Yes, we have been practicing racial discrimination, and that is a zero sum game. When race A is barred so that race B can get in, it is one side's loss to another side's gain, as simple as that. It is sheer dishonesty and hypocrisy to deny that any race has suffered a disadvantage as a result of this policy.

But the real question is: is such policy justified?

To answer that question, we have to go back to where such policy started – the New Economic Policy (NEP), formulated after the racial riots in 1969.

It is necessary to refresh our memory over the original concept of this NEP, since it has almost become a dirty word now, having been hijacked by politicians for self-gain and for perpetuating political hegemony.

The prime objective of NEP was to achieve national unity, and the strategy to achieve that was two-pronged: to eradicate poverty irrespective of race, and to restructure society so as to eliminate the identification of race with economic function.

There is nothing wrong with such an affirmative action policy, but the tragedy is that over the years, through racial hegemony, it has been transformed into a policy synonymous with racial privileges, totally forgetting the over-arching objective of national unity and eliminating poverty across racial lines. Through two decades of dictatorial rule by former premier Mahathir Mohamad, the NEP had been blatantly abused to justify uncontrolled corruption, cronyism and nepotism, which have continued to rage unabated under the present prime minister.

There is no question that in spite of these abuses, the NEP has achieved its limited objective of having elevated the status of Malays in the economic and educational fields to a respectable level, compared to those of other races. But the fallout of such abuses is devastating indeed, which is nothing less than the drastic plunge of the ethos of the Malaysian society, tantamount to a virtual breakdown of morality and law and order.

The chief setbacks of the abuses of NEP are rampant corruption and cronyism, worsening racial polarization, unrelenting brain drains, warped educational system, thwarted economic competitiveness, ineffectual bureaucracy, retarded economic growth and perverted social values.

Such anachronistic and regressive policy has no place in the present

globalizing world, and for that matter, in any civilized society. As it is, the pressure to dismantle such policy does not come from within the country – as the deprived races seem powerless to redress this wrong – but from the whole wide world who are our trading partners. Our trade negotiators should be able to testify how tough the going is when it comes to negotiating free trade agreements with foreign parties whether it is regional marketing pacts (Afta, WTO) or bi-lateral agreements such as those involving Japan, US, Australia, China and India (through Asean), etc due to the presence of Malaysia's race-based protectionist policies. Invariably, these NEP-inspired policies stand as stumbling blocks to the opening of a wider window for two-way trades and investments.

World trade liberalization is a one way road, and there is no turning back, whether we like it or not. So, how long can Malaysia buck the world trend without causing unacceptable damage to its own economy?

Even worse than the anticipated trade frictions is the loss of Malaysia's economic competitiveness in the face of heightening competition from abroad. Our prime minister has correctly diagnosed this malaise as the prevalence of our third world mentality, but he has done nothing to correct our uncompetitive culture or to stamp out the worsening racial and religious dissension within the country. In fact, he has done the opposite by intensifying the imprint of the perverted NEP philosophy on our economic plans, and prohibiting inter-religious and inter-racial discourse which would otherwise have contributed to greater understanding and harmony among the races.

Lee's comments have understandably riled many Malaysian leaders particularly those in the ruling coalition, but he should also have struck resonance among many who have silently put up with these unjust policies all these years.

As for the great silent majority in this country, they should now ponder what would serve their interests best: to save face by angrily rebutting Lee Kuan Yew or to stare at the ugly truth bravely and institute changes that will put the nation on the right path?

I think we have reached a stage in our history critical enough to warrant caution in putting too much trust in the incumbent leaders. The people of Malaysia have traditionally placed much trust in the ruling power, perhaps more than they should, as evident from the frequent and flagrant abuses of the authorities. The fact that we have scraped through as a nation in the past, despite such serious misrule, does not guarantee that we will be

similarly lucky in the future. Internal and external circumstances have so radically altered that we can no longer commit such major errors in policies and in the choice of leadership without putting our future in peril.

From this perspective, Lee's bitter medicine may yet work to our advantage if we are humble and brave enough to take this as a challenge to do some serious introspection that may eventually lead to our common good.

Untangling the Knotty Lina Joy Case

A Federal Court decision over Malay woman Lina Joy's life-long struggle to rid her Muslim identity has once again brought into attention fundamental issues of religious freedom and Muslim/non-Muslim legal conflicts. This article is an attempt to touch some of the bottom lines of these seemingly intractable controversies that have been confronting the country.

08.06.2007

The final judgment on the Lina Joy case has brought to a head the increasingly controversial and divisive issue of religious freedom in Malaysia.

In an apparent attempt to skirt a potential confrontation between the civil court and the Syariah court, both the Court of Appeal and the Federal Court (the nation's highest court) had narrowed the case down to one of pure administrative issue – whether the National Registration Department (NRD) had acted legally in rejecting Lina Joy's application to delete the word “Islam” from her identity card (IC).

That attempt to avoid confrontation has obviously failed, for the Federal Court judgment in rejecting Lina's request to delete the word “Islam” has aroused even greater consternation, this time attracting world-wide publicity, most of which is adverse to Malaysia's image.

It is not difficult to understand why the Federal Court has failed, for the bottom line of the Lina Joy's case is not one of mere technicality involving only the NRD, but one that touches on fundamental issues relating to the Constitution as well as those relating to religious faith.

When confronted by this case, the first question we must ask ourselves should be: Is Lina Joy a Christian or a Muslim? The answer to this question is vital, for if Lina is not a Muslim, then according to NRD regulations, she needs not even stipulate her religion to the NRD, and the court should therefore readily grant Lina's request.

Lina is a Malay woman, born in 1964 and brought up by her family as a Muslim. In her statutory declaration, she said she had never professed or practiced Islam since birth, and that she had embraced Christianity in 1990. She wanted to marry a Christian, but marriage between Muslims and non-Muslims are prohibited in this country. That prompted her to have her religious status of Islam in the IC deleted.

In any society, she would have been deemed a Christian. But obviously, the Malaysian courts do not think so, hence the prolong controversies which threaten to split the country, mostly along religious and racial lines.

Fundamental questions

Arising from these controversies, are a host of fundamental issues that beg for answers. These relate to personal conscience, religion, the Constitution, Syariah laws, and peculiar to this country, the unique relationship between the Malay race and Islam. I will attempt to explore some of these by asking the following questions:

1. How do you define a Muslim? When is the point of entry and when is the point of exit? When is a Muslim considered having left his religion?
2. Is there or isn't there religious compulsion in Islam? If negative, shouldn't Muslims be allowed to leave the religion as their conscience dictate? Are punitive apostate laws then contradicting the religion?
3. Article 11 of the Constitution states: "Every person has the right to profess and practice his religion." Does this include Malays and Muslims?
4. Article 8 of the Constitution proclaims all persons are equal before the law and prohibits discrimination "on the ground of only religion, race, descent or place of birth in any law", but does not prohibit "any provision regulating personal law". "Personal law" is understood to include family matters such as marriage, divorce, inheritance etc, but does it also include religion?
5. Islamic laws are legislated in the state assemblies and enforced by the Syariah courts. The scope of such legislations is prescribed in the Constitution under Schedule 9: List 2: para 1 of the Constitution. Among the items prescribed, which generally relate to family matters and administration of Islamic institutions, is one which empowers punishment on Muslims breaching "precepts" of Islam. There is however no mention of apostasy. Does this "precepts" include apostasy?

6. In 1988, Article 121 of the Constitution was amended whereby civil courts “shall have no jurisdiction in respect of any matter within the jurisdiction of the Syariah courts.” Arising from this amendment is the question of whether it is possible to have a clear-cut dividing line demarcating the boundary between the jurisdiction of the civil court and the jurisdiction of the Syariah court. What if the contending parties are Muslims vs non-Muslims – which jurisdiction does the case fall? What if there is a perceived conflict between the Syariah laws and the Constitution, or between the Syariah court and the civil court – which should reign supreme?
7. Should the Syariah system of justice be interpreted as parallel and independent of the Constitution and the civil courts?

It will be seen that the above questions tend to touch the base lines of the present conflict. Divergent views to these issues are expected due to differing backgrounds. However, I strongly believe that if we discourse with rationality and good conscience, considerable common grounds can be established among conflicting parties. I will start the ball rolling by volunteering some answers to them.

Answers

To Question 1: Islam & Muslims

A person who believes in and consciously follows Islam is a Muslim.

As for entry and exit, other than those born to Muslim families, Muslim converts have to go through well defined ceremony just like most other religions. However, unlike other religions which treat religious drop-outs as non-events, Islamic apostasy is taken more seriously; but Islamic opinions on apostasy vary widely, ranging from the extreme of those advocating for punishment by death to those in favour of peaceful exit. As in all religions, leaving Islam is not so well marked as at the time of entry. For instance, in Malaysia’s Federal Territories, where Lina Joy used to reside and where her apostasy case might have been handled, the Islamic laws there (Islamic Administration Act) have no provision regulating the leaving of Islam, though apostasy is considered catastrophic for Malays.

The reason for not highlighting the leaving of any religion is simple – when one ceases to believe, that religion doesn’t exist in him any more. Why beat the drum about it?

To Question 2: Religious compulsion

In spite of the fact that the name of Islam has been contaminated by contemporary violence around the globe, I still believe that main stream Islam is for peace. Similarly, I think main stream Islam accepts the concept of non-compulsion in religion as mentioned in the Koran. The question I want to ask Malaysian Muslims is: why is apostasy treated with such severity in this country, subjecting apostates to state punishment and social ostracisms, not excluding threat to lives? Aren't Malaysian Muslims in main stream Islam?

To Question 3: Article 11 (Freedom of religion)

The wordings in this article of the Constitution guaranteeing freedom of religion to every person in this country are clear and unambiguous. There is no "if" or "but". The only exception is the empowering of state legislatures to enact laws controlling or restricting the propagation of other religions to Muslims.

So, I don't see any reason why Malays and Muslims in this country should not enjoy the same protection of the Constitution to have their religious freedom.

If indeed religious freedom is not meant for Muslims and Malays, wouldn't our founding fathers and drafters of the Constitution have inserted words to this effect in this article?

To Question 4: Discrimination

Article 8 of the Constitution prohibits discrimination on the basis of race or religion but makes exception to those within the ambit of "personal law". Do the latter include religion? I leave it to people well versed in law to advance their opinions.

The answer to this question is relevant to the Lina Joy case, in that a negative answer would mean that NRD could not discriminate against Muslims by forcing them to declare their religious status in their IC while non-Malays are exempted from doing so. And that means it is illegal for NRD to reject Lina's request to have the word "Islam" deleted from her IC.

To Question 5: Apostasy included under "Religious precepts"?

The Constitution, under Article 74 (2), empowers state legislature to enact Islamic laws as prescribed in Schedule 9, among which is one pertaining to punishment for breaching "religious precepts" but with no mention of apostasy.

Is apostasy included in “religious precepts” for punishment? If it is, does it not contradict Article 11, rendering such legislation *ultra vires* the Constitution? If it is not, from where do the state legislatures derive its power to enact such apostasy laws?

To Questions 6 & 7: Amendment to Article 121

In a country where almost half the population is non-Muslims, creating a Syariah legal system which has the appearance (though not in fact) of a parallel system on par with the civil courts is an invitation for trouble. And that is what the 1998 amendment to Article 121 has done.

Legal experts should be able to tell that these two systems are in fact not parallel (in fact they converge somewhere), neither are they on par. This is because, Syariah laws are enacted in the state assemblies, and the latter derived its law making power from the Constitution, which is the supreme law of the land. And who administer the Constitution? The civil courts, of course. So naturally when a Syariah law contradicts the Constitution, the civil court has to step in. So is the case when a Syariah court judgment conflicts with the Constitution – the civil court must over-rule the Syariah court judgment.

If that is the case, why should there be so much confusion and turmoil arising from Muslim vs non-Muslim legal conflicts. The problem lies with the wording of the amendment as well as the timidity of Muslim judges in civil courts to adjudicate over issues involving Islam.

Take another look at the amendment to Article 121. The amendment was introduced through inserting the complete sub-clause (1A), which reads in full:

“The courts referred to in Clause (1) (meaning the civil high courts – insertion mine) shall have no jurisdiction in respect of any matter within the jurisdiction of the Syariah courts”.

Without qualifying the limitation to this division of jurisdiction, this sub-clause tends to mislead the reader who is not well versed in law into thinking that, Syariah courts have absolute jurisdiction over matters related to Islam even when their adjudication may come in conflict with non-Muslims’ constitutional rights or contradict fundamental provisions of the Constitution.

Unfortunately, even learned judges in the civil courts who are Muslims (who dominate our judiciary) also fall into this trap, therein lies the fermenting ground that gives rise to incessant inter-religious legal conflicts.

It is no coincidence that in the Lina Joy case, both the Court of Appeal and the Federal Court respectively return a 2 – 1 verdict that splits along religious lines, with two Muslim judges voting against the lone non-Muslim judge. Though in this case, the split is influenced less by lack of legal knowledge than by religious sentiments.

Islamisation

The increasing phenomenon of civil court Muslim judges abdicating their jurisdiction to Syariah courts, or lacking courage or intellect to deliver verdict free of religious prejudice as called for by the Constitution can be traced to one major cause. And that is the trend of Islamisation that has set in since the early eighties. There are indications that the fundamentalists have rapidly gained the upper hand under the weak leadership of Premier Abdullah Badawi, (who ironically has advocated his pet Islam Hadhari to reverse the fundamentalist trend), as evident by the spate of suppression of discourse and dialogue promoting religious harmony such as the proposed inter-faith commission, Article 11 movement, and the most recent abrupt cancellation of World Christian – Islam dialogue, an annual event participated by top scholars of both faith since 911. These suppressions bear the unmistakable hallmark of religious intolerance, and bode ill for the future of this multi-racial, multi-cultural and multi-religious country.

The demographic make-up of this country is such that if Malaysia were to survive as a nation it has to overcome its ever worrisome religious and racial fault lines. But that may be a bit of wishful thinking under a decadent political power that is hell bent to exploit racial and religious fissures for its own political survival.

The Constitution and Malay Rights

17.01.2008

The recent HINDRAF demonstrations against racial marginalization of Indian Malaysians have again brought into focus the issue of Malay “privileges” as provided for under the Constitution. Judging from public utterances in the press and websites, there seem to be continuing widespread ignorance, misrepresentation and misunderstanding of what our Constitution precisely provides on this issue.

The center of controversy is Article 153 of the Constitution which provides for what is popularly known as Malay “privileges”. Due to misrepresentation by UMNO in the past, many have come to identify Article 153 – and even the entire Constitution – as racially discriminatory. This is not so. In spite of numerous constitutional amendments, the egalitarian spirit of our Constitution in respect of racial equality remains largely intact. Public misunderstanding is attributed to UMNO hijacking Article 153 to practice unbridled racial discrimination for self-enrichment in the past few decades.

Due to the heightening racial tensions caused by UMNO’s retrogressive move to intensify its racial agenda under the NEP (New Economic Policy) and brewing racial discontent by HINRAF, it is imperative and urgent that the truth be known with regards to the true legal standing of the various races as provided for in our Constitution - the legal foundation upon which this nation is built. For this reason, I am reproducing as follows the main part of an article I wrote three years ago (see note at end of this article), which analysed and clarified these controversial issues.

Commencement of previous article

Forty seven years after Independence, racial issues continued to monopolise national politics, and championing Malay rights remains the single dominant ideology of UMNO - the only ruling power that this nation has known since Independence. Thousands of speeches have been made championing this Malay cause, using various terminologies such as Malay “special rights”, Malay “special privileges” or simply Malay “rights”, often invoking the nation’s Constitution as the legal back-up. But, of the many politicians who have used these terminologies, how many have read through the Constitution to find out what these “rights” really are? Very few, I am afraid.

Our Constitution is printed in a small booklet titled “Federal Constitution” that can be bought for RM10 in the book shops. Buy one copy and read through to find out what it says about these “rights”. After all, these issues - more than any others - have dominated our lives, and all citizens should know what these rights truly are as spelled out in our Constitution.

If you have read through the Constitution to look for an answer to these Malay “rights”, perhaps the first thing that has struck you is that, familiar terminologies such as Malay “special rights”, Malay “special privileges” or Malay “rights” are no where to be found in the Constitution. Instead, we only find the term “the special position of the Malays”, which appears twice, in Clause (1) and Clause (2) of Article 153, which is titled “Reservation of quotas in respect of services, permits, etc, for Malays and natives of any of the States of Sabah and Sarawak”.

(The words “natives of Sabah and Sarawak” were only incorporated into the Constitution upon the formation of Malaysia in 1963, during which Sabah, Sarawak and Singapore were merged with Malaya to form Malaysia. In this article, these words will not be repeated after the word “Malay” when I quote from the Constitution, for abbreviation purpose).

Any one who has read through Article 153 might be surprised to discover that the provisions favouring Malays are in fact quite moderate, and certainly no way as stretched out in intensity and scope as our politicians would want us to believe. Similarly, those provisions protecting the non-Malays as a counter-balance to the special position of the Malays under the same Article 153 are also surprisingly quite well conceived and fair. In fact, when read in conjunction with Article 8 (Equality) and Article 136 (Impartial treatment of Federal employees), Article 153 cannot be

construed as having significantly violated the egalitarian principles of our Constitution, contrary to common perception.

Since the egalitarian nature of our Constitution is largely intact, in spite of the presence of Article 153, then why should it have acquired such an adverse reputation as the legal root of all kinds of racial inequalities in this country?

Answer: the fault is not with our Constitution, but with our politicians twisting, misinterpreting and abusing it.

ARTICLE 153

It is perhaps high time we get to the bottom of Article 153.

Clause (1) of Article 153 states: *“It shall be the responsibility of the Yang di-Pertuan Agong to safeguard the special position of the Malays and the legitimate interests of other communities in accordance with the provisions of this Article”*.

So, the first understanding that we must have on Article 153 is that it is meant to protect the interests of not only the Malays, but also those of the non-Malays.

Next, note the deliberate use of the words “*safeguard*” and “*special position*” (instead of “special rights” or “special privileges”). The choice of these words must be understood in the historical context of the drafting of this Constitution half a century ago when Malays were economically and educationally backward in relation to other races. It was thought fit and proper then that there must be “*safeguards*” to protect the Malays from being swarmed over by other races. Hence, the creation of the “*special position*” of the Malays, which was obviously intended for defensive purpose: to protect for survival. The meticulous avoidance of using words like “rights” and “privileges”, and the choice of the word “safeguard” were clearly calculated to reflect its defensive nature. Under that historical context, the provision of the special position of the Malays in the Constitution certainly could not be interpreted to mean the endowment of racial privileges to create a privileged class of citizenship. If it were otherwise, this country would have been turned into a racist and feudal state right from day one of our Independence.

Clause (2) says that the Yang di-Pertuan Agong shall safeguard the special position of the Malays by reserving positions “*of such proportion as he may deem reasonable*” in a) the public service b) educational facilities and c) business licenses.

Clauses (3) & (6) say that the Yang di-Pertuan Agong may, for purpose of fulfilling Clause (2), give general directions to the relevant authorities, which shall then duly comply.

There is a separate clause covering the allocation of seats in tertiary education – Clause (8A). It says that where there are insufficient places for any particular course of study, the Yang di-Pertuan Agong may give directions for the “*reservation of such proportion of such places for Malays as the Yang di-Pertuan Agong may deem reasonable; and the authority shall duly comply with the directions.*”

As for the protection of non-Malays against possible encroachment of their existing interests, there are several provisions under different clauses in this Article, prohibiting the deprivation of the existing facilities enjoyed by them, whether in public service, education or trading licenses. Of these protective clauses, Clauses (5) and (9) are particularly significant.

Clause (5) consists of one sentence, which reads: “*This Article does not derogate from the provisions of Article 136.*”

Article 136 also consists of one sentence, which reads: “*All persons of whatever race in the same grade in the service of the Federation shall, subject to the terms and conditions of their employment, be treated impartially.*”

Clause (9) consists of one sentence, which reads: “*Nothing in this Article shall empower Parliament to restrict business or trade solely for the purpose of reservations for Malays.*”

ARTICLE 8

Reading Article 153 will not be complete without reading Article 8 (Equality). I will quote the more significant Clauses (1) and (2) of this Article in full, as follows:

Clause (1) of Article 8 states: “*All persons are equal before the law and entitled to the equal protection of the law.*”

Clause (2) states: “*Except as expressly authorized by this Constitution, there shall be no discrimination against citizens on the ground only of religion, race, descent or place of birth in any law or in the appointment to any office or employment under a public authority or in the administration of any law relating to the acquisition, holding or disposition of property or the establishing or carrying on of any trade, business, profession, vocation or employment.*”

Concluding Remarks

After reading through these Articles of the Constitution, we are able to draw the following conclusions:

1. The present clamour for Malay “special rights” as sacrosanct racial privileges of a privileged race, especially under the ideological ambit of *Ketuanan Melayu* (Malay the master race), is in conflict with the letters and spirit of the Constitution.
2. The special position of the Malays as prescribed under Article 153 of the Constitution is limited in scope to only the reservation of reasonable quotas in these 3 sectors: public services, educational places and business licenses. Hence, the present rampant racial discriminations practiced on almost every facet of our national life are mostly violations of the Constitution. Examples of these violations are:
 - a) Racial discrimination in the appointment and promotion of employees in publicly funded bodies, resulting in these becoming almost mono-raced bodies (particular so in their top strata). These bodies include: the civil service, police, army and various semi and quasi government agencies.
 - b) Barring of non-Malays from tenders and contracts controlled directly or indirectly by the government.
 - c) Imposition of compulsory price discounts and quotas in favour of Malays in housing projects.
 - d) Imposition of compulsory share quota for Malays in non-Malay companies.
 - e) Blanket barring of non-Malays to publicly funded academic institutions.
 - f) Completely lop-sided allocation of scholarships and seats of learning in clearly unreasonable proportions that reflect racial discriminations.
- 3) Our Constitution provides for only one class of citizenship and all citizens are equal before the law. The presence of Article 153 does not alter this fact, as it is meant only to protect the Malays from being “squeezed” by other races by allowing the reservation of reasonable quotas on certain sectors of national life. However, this Constitution has now been hijacked through decades of hegemony of political power by UMNO to result in the virtual monopoly of the public sector by a single race. The ensuing racism, corruption and corrosion of integrity of our democratic institutions have brought serious retrogression to our nation-building process in terms of national unity, discipline, morality and competitiveness of our people.

At this critical juncture, when nations in this region and around the world are urgently restructuring and shaping up to cope with globalization, our nation stagnates in a cesspool that has been created through decades of misrule. Unless urgent reforms are carried out, beginning with the dismantling of the anachronistic racial edifice, we are in for serious troubles in the days ahead.

End of previous article

Note: My previous article, titled “Unveiling the truth of Malay ‘special rights’” was written on 3rd Dec 2004 in response to a controversy in Parliament over Lim Kit Siang’s move to reprimand an UMNO minister for radical racial utterances in the freshly concluded UMNO annual assembly. The article is included in my book “Where to Malaysia – A future with Anwar’s Reformasi or back to Mahathirism?”, and it was also published in several websites.

Malaysia a Jurassic Park?

Selangor MB Khalid Ibrahim's suggestion to open 10% of UiTM's student admission to non-bumiputra and foreign students caused UMNO leaders to kick up a big row, accusing Khalid of "betraying the Malays". This is obviously an opportunistic move to sway the Malay electorate in the imminent Permatang Pauh by-election, through which Anwar Ibrahim is planning his return to Parliament.

14.08.2008

Will those people thumping their chests to condemn Selangor Mentri Besar Khalid Ibrahim's suggestion to allocate 10% of student admission of Universiti Teknologi Mara (UiTM) to non-bumiputra and foreign students please ponder over the following question:

Is there a single university in the world which practices 100% racial discrimination in its student enrolment?

If there is none, shouldn't these same people start to do some reflective thinking now as to whether it is a plus or minus for Malaysia to have this unique distinction?

Should they not contemplate whether they should be proud or not so proud of this 'achievement'?

Should they not be concerned of what the rest of the world might think of a country that is still fanatically defending its policy of total racial discrimination in its highest seat of learning when the whole world has either abandoned or criminalized racial discrimination of all kinds? Are they not worried that Malaysia may soon acquire the image of 'Jurassic Park' or 'Lost World' of this globalised age?

Yes, I use the word 'fanatically' because the outburst against Khalid's suggestion was swift, vituperative, irrational, racist and spearheaded by top

UMNO leaders and reverberated down to UiTM students who gathered in the thousands to protest in front of Khalid's office. Vocal assailants include unfortunately the minister of higher education Khaled Nordin and UiTM vice-chancellor Ibrahim Abu Shah; and vitriolic criticisms include 'traitor selling out Malay special privileges', 'insult to his own race', and ironically even 'playing with racial sentiments'.

Surprisingly, even the Constitution was brought in to defend UiTM's 100% racial discrimination policy, displaying wide-spread ignorance of the Constitution. Vice-chancellor Ibrahim specifically referred to Article 153 of the Constitution as legal basis for his refusal to open the door of UiTM to other races. Whereas the reverse is true – Article 153 empowers the Yang di-Pertuan Agong to request for the reservation of only a reasonable proportion of seats – not totality – in public funded educational institutions for the Malays and natives of Sabah and Sarawak. Coupled with Article 8 which prohibits discrimination of any kind on the ground of race, UiTM's 100% racial quota policy is clearly unconstitutional.

The fanatical zeal displayed by the ruling party (UMNO) in condemning even the tiniest opening of its mono-racial institution to others in this multi-racial nation half a century after independence is undoubtedly a terrible indictment on the miserable failure of nation-building under the governance of the only ruling power this nation has ever known – UMNO.

It should be pointed out that this UiTM fiasco is only the latest in a long string of world renowned scandals that have shamed this country in a short spell of time – starting with the Lingam tape that reveals our judicial rot, the farcical Mongolian murder trial (designed to protect the high and mighty) that is now drilling on endlessly and aimlessly, the Anwar sodomy frame-up saga II which symbolises the regime's moral and ideological bankruptcy, the violent disruption of Bar Council forum on family problems arising from conversion to Islam that displays religious intolerance. What alarms the public even more is that these scandals seem to roll in with increasing frequency and speed, destroying what little trust and confidence the people may still have in the government. Are we as a nation already in the reverse gear sliding into an abyss?

With these self-destructive maneuvers, apparently self-engineered for its own political survival, UMNO is actually stretching the political and social fabric of the nation into the danger zone. How then could Prime Minister Abdullah Badawi in all honesty announce that the country "is doing quite well in terms of the economic fundamentals" when the economy is already

deeply troubled with slumping demand amidst spiraling inflation in an ambience of administrative incompetence, and escalating political turmoil and uncertainty?

The latest two incidents – Bar Council forum and UiTM enrolment – appear to be linked to the imminent Permatang Pauh by-election through which Anwar Ibrahim is planning to make his grand return to Parliament. It is apparent that UMNO is hell bent to scrape and exploit every bit of potential religious and racial friction and blow it up to inflame the primordial instincts of the 70% Malay electorate in the Permatang Pauh constituency. Its policy seems to be that there is no price too high for UMNO to retain power, including stoking the fire of racial hatred and religious animosity that may eventually rip the nation apart.

The nation must decide whether it can tolerate such an incumbent political power continuing to hold the rein of government. And such collective decision, if in the negative, can be put into effect (to a significant extent) by the electorate of Permatang Pauh by giving Anwar Ibrahim a resounding victory.

Zaid Ibrahim Touches The Heart of Race Relations

In a landmark speech, Zaid Ibrahim took on the taboo subject of race relations by the horn, bravely and honestly recounted how racial politics have evolved to become the destructive force that has ravaged our country. He offered solutions and pointed the way forward to meet the globalised world.

06.11.2008

In one of the most important political speeches delivered in recent years, former de-facto law minister Zaid Ibrahim touched on the heart of race relations when he gave a rendition on the evolving racial politics in Malaysia that has so bedeviled the nation for the past few decades.

Delivering a speech titled “Malaysia – a lost democracy?” at the Law Asia 2008 conference in Kuala Lumpur on Oct 31, Zaid recounted how “a shining example of a working democracy” founded half a century ago on the principles of democracy and egalitarianism has degenerated into an authoritarian racist state that is now characterized by incessant racial and religious dissension and economic malaise.

When the country achieved independence in 1957, then Malaya was a model of parliamentary democracy, governed under a written constitution “that accorded full respect and dignity for each and every Malayan”. If at all there was a social contract – which should mean the pre-independence consensus reached among the founding fathers representing the various communities – it must be one “that guaranteed equality and the rule of law”, as subsequently reflected in the federal constitution.

The racial riots in 1969 changed the balance of political power, and UMNO, through the enlarged coalition of Barisan Nasional, eventually assumed absolute control of the country. With its coalition partners unable

to put up any resistance, UMNO became increasingly racist and the master affirmative action plan known as the New Economic Policy (NEP), which was intended to eliminate poverty and redress economic imbalance, became synonymous with Malay privileges. By the 1980s, UMNO's supremacist ideology became entrenched and found expression in "*Ketuanan Melayu*" (Malay supremacy) and it was then that the term "social contract" started to be flashed around to justify its racist conduct.

In parallel with the growth of racism was the steep rise in authoritarianism through amendments to the constitution and tightening a host of repressive laws. The rule of law was so subverted that democracy in Malaysia soon became history.

Ketuanan Melayu

Zaid said: "the *Ketuanan Melayu* model has failed". This is because "it has resulted in waste of crucial resources, energy and time and has distracted from the real issues confronting the country".

Citing the rise of Mukhriz Mahahir (who considered judicial reforms as threats to Malays) as a sign of UMNO leaning to the right, he said such trend would mean "more inefficiency, more corruption and a more authoritarian style of government". He further said; "We are a deeply divided nation, adrift for our having abandoned democratic traditions and the rule of law in favour of a political ideology that serves no one save those who rule".

To cope with globalization, Zaid calls for Malays to discard "*Ketuanan Melayu*" (Malay supremacy) and re-embrace democracy and rule of law to spur an economic renaissance of reviving innovation and creativity through co-operation and competition.

Predictably, UMNO's reaction to Zaid's speech was a chorus of abusive language from its leaders, ranging from "traitor to his race" to "apologise and repent, or get out of *rumpun Melayu* (Malay group)". And characteristically, none of these vocal critic engaged Zaid on any substance of his wide-ranging speech that also touched on religion, judiciary, economy etc., true to UMNO's traditional role as "big bully" who is good at telling people to shut up but unable to articulate why.

UMNO has not only told Zaid to shut up, but his speech has also been largely blacked out by the local press, which is another manifestation of how tightly the press is controlled to shield the incumbent power from any unfavourable exposure.

UMNO does not have the slightest intention to carry out any reform

that may alter the status quo of entrenched racism and corruption. That is evident not only from its angry rejection of Zaid Ibrahim's speech, but also from the thumping support given to ultras in the nominations for leadership post ahead of party elections, signaling a resurgence of the Mahathirist type of rule, and needless to say, more "*Ketuanan*".

BN component parties, which have cherished false hope of their own political survival through a reformed UMNO, would therefore be well advised to take note of this development.

Racial equality

UMNO's rejection aside, this Zaid speech must be studied by all Malaysians, for it touches the bottom line of race relation which has given us so much heartache and headache in the past and yet still proving to be elusive for a proper solution even to this day.

At the heart of the issue is racial equality. This may be a non-issue in most countries in the world, where racial equality is taken for granted, but not in Malaysia. Due to historical factors, and due to the intertwining of race and religion, and economic disparity among the races, racial equality is a sensitive subject in Malaysia.

Suffice to say that all races recognized the need for some kind of affirmative action in favour of the Malays and the natives of Sabah and Sarawak as they were conspicuously lagging in the educational and economic field at the earlier stage of our nationhood, hence the birth of NEP.

However, the problem arose when UMNO/BN became too powerful and ruled without any checks and balance. That bred unbridled racism and corruption in UMNO, and NEP, in addition to being used to uplift educational and economic level of Malays, was hijacked to enrich party leaders and cronies, who used it abundantly as master key to open up all kinds of channels to state wealth. As UMNO's hegemony grew, and through mass indoctrination, many had come to regard NEP privileges as birth rights of Malays, though this belief is fallacious. The line between constitutional rights and the privileges derived from a political agenda such as the NEP has thus become blurred and indistinguishable. It has deteriorated to the point that even a cabinet minister (Amirsham Aziz) was unable to answer a question from Lim Kit Siang in Parliament on Oct 29 as to whether NEP could be equated with Article 153 of the Constitution, which provides for the special position of Malays and natives of Sabah and Sarawak. (The answer is: no.)

One may thus ask: is there racial equality under our Constitution? The answer is yes, as this is clearly and unambiguously guaranteed under Article 8 and other articles of the Constitution. The existence of Article 153 does not detract from this guarantee. The racial privileges granted under Article 153 are limited to the provision of quotas. And these quotas, which fall in the fields of public service, education and commerce are meant as protective measures, and are to be applied to the extent deemed necessary and reasonable by the Yang di-Pertuan Agong. One must also understand that Article 153 mandates the Agong to safeguard not only the special position of Malays and natives of Sabah and Sarawak, but also the legitimate interests of other communities.

It will be seen from a study of our Constitution that many racial privileges and racial discriminations couched under the umbrella of NEP that have been implemented by BN, particularly those accorded to party leaders and cronies, are extra-constitutional.

Malays should not worry

Then, should Malays worry when NEP is removed as suggested by Pakatan Rakyat? Certainly not, affirmative action programs will continue to be implemented, except that these are need-based instead of race-based, which should engender more equitable distribution, promote justice, enhance national unity and eliminate abuses. The anticipated result of this policy should see ordinary Malays enjoying more benefits as the money that would otherwise have been leaked through massive corruption and cronyism could be redirected to the needy.

UMNO's recalcitrant leaders who are hell bent to cling on to this racial supremacist ideology for their personal political survival should realise that such thinking has already become extinct since South Africa abandoned its apartheid policy two decades ago. It has no place in this globalised world. It is an affront to universal values, besides conflicting with fundamental values of all religions including Islam.

Finally, it is detrimental to common Malays whose interests these leaders profess to champion, as continued racial hegemony will require increased repression which in turn will cause more political unrest and further economic retardation.

In such a downward spiral, no community will be spared.

Abdullah's Control-less Years

Sabah's Demographic Implosion – Royal Commission Needed

The nightmarish influx of illegal immigrants to pad up Sabah's electoral roll, a result of political conspiracy, has been inflicting incalculable hardship and injustice to the original Sabahans for many years, and it is high time a royal commission of inquiry is set up to alleviate this problem.

08.02.2006

Sabah's population has exploded by five fold since 1970, according to *Malaysiakini's* stunning news item recently.

In its news report titled "Sabah facing an epic problem", correspondent Tony Thien stated that the state's population has grown from 0.65 million in 1970 to 2.99 million in 2004 with Sabah NGO leaders estimating that out of the three million population, two million are illegal immigrants, many of them enjoying *bumiputera* privileges. (In making this estimate, consideration was given to the fact that 800,000 Sabahan Malaysians had left the State from 1995 to 2004, based on immigration records.) Sabah leaders are now petitioning for a royal commission of enquiry which should, among others, "investigate into why so many ICs were issued, who authorized it and under what law".

The phenomenon of Sabah's population explosion arising from the influx of illegal immigrants has undoubtedly been a major scourge confronting Sabah society for a long time. While Sabahans are asking the whys and hows now, it is pertinent to refresh our memory over the important revelations made by Justice Muhammad Kamil Awang in his judgment annulling the Likas election in Sabah in June 2001.

In a rare display of judicial independence under former Prime Minister Dr Mahathir Mohamad's rule, Justice Muhammad in his judgment chronicled

details of a massive illicit campaign to convert illegal immigrants into voters through the unlawful issue of blue ICs and the unlawful registration of these IC holders into the electoral rolls. These details of illegal activities included many instances of witnesses' testimonies, affidavits and incriminating government and political party correspondence and circulars. These evidences point irresistibly to the involvement of the National Registration Department, the Election Commission, police and Umno officials in a joint conspiracy to massively convert illegal Philippine and Indonesian immigrants into citizens and voters. In fact, this voter scam was so serious that the revealed evidences were described by Muhammad as only the "tip of an iceberg".

Muhammad's judgment also gave details of how repeated official complaints from the opposition parties on such fraudulent practices had been consistently stonewalled by the authorities all the way up to the highest levels of government, including a rejection for debate in Parliament.

Political conspiracy

In June 2001, I wrote an article titled 'In defence of Justice Muhammad and judicial integrity', countering the concerted attacks by Mahathir and former de facto law minister Rais Yatim against Justice Muhammad. In an obvious attempt to cover up ruling BN's wrong-doing, Mahathir and Rais accused Muhammad of using the judgment to vent personal grudges against the government through "politicking and anti-administration comments".

In my article, apart from exposing the falsehood of Mahathir's and Rais's accusations, I dwelled at length at the motivation behind this illicit campaign to turn illegal immigrants into citizens, and also at the fatal impact such devastating demographic changes in Sabah society had on the original Sabahans. I also outlined remedial steps that should be taken to undo these damages. These comments were as relevant then as they are now. Since the issue has now caught national attention, I would append relevant extracts of that article as input towards resolution of this current mess, which is obviously of crisis proportions to Sabahans now.

After stating in the article that the highest authorities in the National Registration Department and the Election Commission in Kuala Lumpur had been incriminated in this phantom voters scam, I wrote then:

What motivated these highest civil servants to commit such treasonous acts against the Sabah state in unlawfully admitting these tens of thousands of illegal immigrants

as citizens and voters? Personal gains can be ruled out, as these are more than offset by the heavy punishment that can be meted out for such high crimes against the country.

The only plausible explanation is that this is the political strategy of the Umno leadership to regain political power in Sabah from the Kadazan (mainly Christian) dominated PBS. The latter has won every Sabah election since 1986 save the last one in 1999. It does not take a genius to find out why. Until the last election in 1999, the Sabah electorate had been such that non-Muslim Kadazans and Chinese overwhelmingly outnumbered Malays (all Muslims) and other Muslims. 'With Umno's heavy emphasis on racial and religious privileges, which alienated the non-Malays and non-Muslims, there was virtually no chance that the Umno dominated Barisan Nasional could unseat the PBS government unless there was a drastic restructuring of the ratio of Muslim dominated constituencies to non-Muslim dominated constituencies and re-drawing of the electoral boundaries.

And this is exactly what happened. Through the massive infusion of illegal Philippine and Indonesian immigrants (who are all Muslims) into the electoral roll and gerrymandering, Muslim majority constituencies in Sabah in the 1999 electoral roll had suddenly and inexplicably increased from 30% to 50% of the total constituencies of 48 within a short period of five years. Given this numerical boost, Barisan Nasional swept the last Sabah election in 1999, after employing every dirty election trick available under the sun including the usual blatant abuses of government agencies and resources and the mass media which was completely under the thumb of the ruling coalition.

Proposed remedies

'Now that Justice Muhammad has established legitimacy to past complaints of serious electoral frauds that have hitherto been rejected by the election courts and denied by the government, we must pursue relentlessly to clean up this mess and restore justice to the people of Sabah. An independent commission of enquiry should be set up immediately with the following objectives:

i) On illegal issue of blue Ics:

- Uncover the syndicates that issue blue ICs to illegal immigrants.*
- Bring the offending politicians, National Registration officials and other government appointed officials to book.*
- Trace the offence to the highest-ranking politicians for directing this illegal campaign and uncover the political motive.*
- Ascertain and cancel all blue ICs illegally issued.*

ii) *On phantom voters:*

- *Cleanse the electoral roll of all phantom voters which include voters issued illegally with blue ICs, voters registered with temporary ICs and fake ICs, voters with duplicate IC numbers and voters disqualified through court convictions (all of these classifications of phantom voters were elaborated in Justice Muhammad's judgment).*
- *Ascertain officials of the Election Commission who collaborated in the operation to register phantom voters and who had given orders not to entertain objections to these phantom voters.*
- *Ascertain the motive and trace the offence to the highest-ranking politicians who initiated this operation."*

Injustice to Sabahans

Looking back historically, this illegal immigrant nightmare in Sabah started in the early seventies when the late chief minister Mustapha Harun (an ethnic Suluk born in Philippines) opened the floodgate for the Southern Filipinos (mainly Suluks) to swarm onto the shores of Sabah. Since then, the unrestrained inflow of illegal immigrants from both Philippine and Indonesia over the decades resulted in these immigrant societies growing to monstrous proportions. These immigrants have been not only posing grave security threats to the outnumbered Sabahans, but have now taken centerstage as phantom voters to dislodge the indigenous population from their legitimate seat of power.

Through such betrayal of Sabahans' trust in the Barisan Nasional federal government, Sabah's security has been endangered and Sabahans' constitutional rights of self-determination stripped. Is it not right and proper that a royal commission of inquiry be set up now to ascertain the true facts and strategise on remedial measures?

Must Sabahans continue to suffer silently? When will they rise up to be the masters of their own fate?

Cabinet Committees: Aiming for World Records?

At the rate it is going, the Malaysian Cabinet is well on its way to hit a new world record in creating the most numbers of cabinet committees.

11.03.2006

Just because the drinking water in an area was found to be smelly, another cabinet committee was quickly formed (on Mar 8), apparently to tackle this potential problem nation-wide! Only a week before that, the government hastily announced the formation of a cabinet committee to upgrade public transport, which was obviously a knee-jerk attempt to mollify public anger over the drastic increase in fuel price on Feb 28.

And so opposition leader Lim Kit Siang's question is timely indeed: are we breaking new records in forming cabinet committees? Malaysia already enjoys the dubious distinction of having one of the world's largest cabinet, and now, it looks like we going for another superlative – a government with one of the most number of cabinet committees in the world. The ease and frequency with which cabinet committees have been popping up is mind-boggling indeed! I bet few individuals, including cabinet ministers, are able to tell off hand how many cabinet committees we have now.

Perhaps few Malaysians are aware that a unique feature of Malaysian politics has taken shape in recent years. And that is, whenever a controversy crops up in a ministry, the minister would refer the matter to the cabinet for decision. Works minister Samy Vellu is particularly prone to this practice. So much so that he looks more like a courier than a minister, busy ferrying reports or decisions to and fro between his ministry and the prime minister,

deputy prime minister or the cabinet. The common habit among ministers to run to the cabinet for decision for matters other than major policies is an unmistakable reflection that our ministers are simply incompetent - lacking the capabilities of a) independent critical thinking b) good judgment c) self confidence d) authority & e) leadership.

The propensity to frequently create cabinet committees to tackle matters that straddle across ministries is a manifestation of the general lack of congenial co-operation and co-ordination among the ministers. The proliferation of cabinet committees under these circumstances will only bog down the leader and his team. As it is, the prime minister deputy prime minister and the ministers are already performing too many inconsequential functions that are purely public relations-driven or even worse, officiating minor commercial openings and launchings as free advertisement for private interests. These ministers do not give the impression that they have devoted the necessary energy and time in serious policy planning and implementation in their own ministries. That perhaps explains the incessant eruptions of crisis and scandals in our ministries, whether they relate to security, education, judiciary, health, transport, infrastructure, energy, local government, land, forests, religion, etc, in endless aspects of our national life.

The lack of individual competence and team spirit in an overcrowded and rudderless team makes an unwieldy cabinet. And that, in a nutshell, is the crust of Malaysia's political malaise today.

Zakaria's 'Palace': Fiasco for UMNO?

An UMNO local councilor's flaunting of wealth through building his palatial mansion has scandalised the nation with multiple breaches of law, and thoroughly exposed the entrenched culture of corruption and abuse of power by the ruling elite.

04.11.2006

The nonchalance with which UMNO supreme council shrugged off the raging multiple scandals involving former Klang municipal councilor Zakaria Md Deros must have stunned many people. This leads to the inevitable question: Has Prime Minister Abdullah Badawi's much hyped - but now almost forgotten - reform agenda to combat corruption and restore integrity to the government finally come to an end?

Zakaria, also a Selangor state assemblyman, has in the past week dominated headlines with a series of scandals that include illegally building his palatial mansion on a dubiously acquired land, operating an illegally built restaurant which squats on state reserve land, and practicing nepotism with his family occupying three seats in the Klang municipal council.

Against this background, the UMNO supreme council deliberated the Zakaria case on Nov 2. Emerging from the meeting, party president and premier Abdullah announced that the only action to be taken against Zakaria was to ask him to withdraw from the swearing-in ceremony for councilors scheduled on Nov 8. Asked why no further action would be taken, a including reviewing Zakaria's position as the party's Klang division chief, Abdullah said he had been a good division leader and his wrongdoings were not party matters. Abdullah said: "It has to do with the government. It is enough for us to decide that he should not be appointed councilor".

And so, with this announcement, the multiple transgressions of law which have enraged all decent minded people and have brought the integrity of the entire system of governance of the ruling coalition into serious question are now swept under the carpet.

Such arrogance and contempt for public opinion by UMNO and the Prime Minister in covering up the wrongdoings of the ruling elite is a matter of the gravest concern to the nation. It not only signifies that Abdullah has given up the pretensions of his reform agenda, but also casts doubt on his ability to uphold the rule of law in this country.

Multiple breaches of law

To understand the seriousness of the implications, we need to consider what exactly were involved in the Zakaria case:

1. He has constructed his luxuriously finished 4-storey 17 room mansion, reputed to cost RM 8 million, without building approval from the Klang Municipal Council (MPK).
2. The land on which the mansion was built, a 43,000 sq. ft. plot situated in a low-cost housing area, was alienated by the Selangor state government to Zakaria's wife for RM 180,000 which was grossly below the market value. The well-to-do recipient was obviously unqualified to apply for this land which was meant for the poor.
3. Zakaria built a restaurant without building approval, on an illegally occupied state reserve land.
4. He failed to pay assessment for his house for the past 12 years.
5. Zakaria, his son Zainuri and daughter-in-law Rosalinda Abdul Jamil were all appointed to the Klang Municipal Council (the latter two by virtue of leading UMNO Klang's male and female youth wing respectively).
6. Zakaria, appointed a senator on 30 July 1991, had illegally remained as senator since 10 Sept 1992 when he was declared a bankrupt and became disqualified.
7. He was said to be dubiously involved in a sale of land from the Selangor Development Corporation (PKNS) to the Selangor Badminton Association (SBA) in 2004. The 7-acre plot in Shah Alam was offered at RM18/sq ft, grossly below market price; Zakaria chaired the PKNS

land committee which approved the sale at a time when he was SBA president.

8. Apart from Zakaria, two other Klang Municipal councilors – Mazlynoor Abdul Latif and Faizal Abdullah – also built their mansions without building approval. (Mazlynoor is UMNO's Klang division deputy chief, while Faizal is UMNO's Kapar youth chief.)

Authorities closing eyes

Amid the complexity of the case against Zakaria, the first question that comes to the mind of any one who has seen a photo of the awesome mansion must be: Gosh, where did he find all that money to build this palace, being only a councilor, not a business tycoon? Regrettably (or rather expectedly), no one in the authorities has expressed similar curiosity. If Abdullah's government is determined to wipe out corruption, shouldn't the Anti-Corruption Agency (ACA) and the Inland Revenue Department have jumped in to investigate the legitimacy of Zakaria's apparent wealth and his tax records respectively? Why the deafening silence from all the relevant authorities? Or is it taken for granted that the ruling elite is entitled to ostentatious but unaccounted for wealth? The answer seems to be a resounding yes, judging from UMNO's handling of this case and the nonchalance of the law enforcing agencies.

With this understanding, it does seem logical that UMNO should have dispensed with the Zakaria case the way it has done – quit the council, full stop, lest it stirs a hornet's nest. Expressed alternatively, it is called optimum damage control – appearing to punish but actually preserving the status quo so that both the public and the culprit remain happy. UMNO is of course aware that if a full probe were conducted strictly according to law, the consequential damage may spread like wild fire, since its own structure is so fire-prone.

Under current political realities, citizens may be powerless to force the ruling coalition to enforce laws on the privileged elite, but surely the people are entitled to express concern over the serious ramifications arising wherefrom; and this is what I am going to do now.

Decadent political culture

By examining the ways Zakaria has breached the laws, we may draw a few irresistible conclusions, as follows.

First, UMNO leaders like Zakaria have been acting as if they are above the law.

Second, such breaches of law by the ruling elite are deemed acceptable by the authorities, since these have been going on with impunity for many years.

Third, these breaches of law (which are corrupt practices) - such as alienating state land on illegitimate ground or at grossly below market value - could not have been committed without wide collusions from authorities, such as the land office, state executive council and the state chief minister. Thus, apart from the beneficiaries of these corrupt acts who are surely guilty, other people connected to these acts may also be found guilty for either abetment or dereliction of duties.

Fourth, all the relevant authorities willfully condoning these breaches of law such as allowing building without approval or allowing illegal occupation of state land are guilty of neglect and the officers responsible ought to be subjected to disciplinary action or severe punishment if found to be involved in corruption.

Fifth, the culture of corruption, elitist abuses, inefficiency and apathy has seeped through both the political leadership and the civil service of the state of Selangor all the way from the chief minister to the state executive council to the municipal council. Equally alarming is that all the federal law enforcing bodies such as the ACA, police, attorney general as well as the ministry of local government have been proven impotent in averting or bringing the culprits to book.

Sixth, since UMNO completely dominates the ruling coalition Barisan Nasional, the political culture exemplified by the conduct of Zakaria and his associates must be also prevalent in the entire country with the exception of Kelantan, which is controlled by PAS.

Indefensible condonation

Returning now to Abdullah's press conference, I fail to see his logic in letting Zakaria off lightly.

He said Zakaria's political position in the party should not be disturbed because transgression of law is a government matter, not a party concern. If that is the case, why wasn't his case handled by the cabinet? Why should his fate have been decided by the UMNO supreme council, and not the federal cabinet? (Incidentally, doesn't this incident confirm the oft expressed opinion that it is UMNO which wields real power in this country, not the coalition?)

Abdullah also said Zakaria was a good party leader. This exertion is strange indeed. Can a scandal ridden leader known as a habitual and atrocious transgressor of the law be a good political leader? If a prime minister can answer yes to this question, what can we make of him and his leadership?

Abdullah considers the deprivation of municipal councillorship is good enough punishment for Zakaria. But what about the legitimacy of his wealth, tax records, dubious acquisition of state land and alienation of state land to a third party at a price injurious to the state? Since this scandal has assumed top prominence, creating a crisis of confidence, shouldn't a good prime minister have promptly ordered proper action – waking the ACA and police from their slumber – and restore confidence to the government?

With the dictatorial power vested in the government, there is no doubt that UMNO will ride roughshod over this incident without hindrance, but it will serve them well to ponder how far they can go in the same direction without bringing calamity to themselves and the nation.

As for Malaysians, this provides a good insight and a chance to take stock of the true state of governance that our elected leadership is providing.

Can we afford to let the status quo continue? If not, is there any hope that the same leadership will bring the necessary changes to avert eventual disaster?

Endgame for UMNO?

While UMNO delegates to the annual assembly were merrily indulging in their ritualistic game of race-bashing to the exclusion of everything else, did they really think that they could have the cake and eat it – enjoying permanent prosperity and power in a permanently corrupt autocracy?

19.11.2006

Amidst the sound and fury on the sensitive issues of race and religion, much of which bordering on sedition, the just ended week-long UMNO annual general assembly were eerily silent on the greatest scourge that has been slowly but surely destroying UMNO and the country – uncontrolled corruption. Equally sidelined was the one policy (hitherto tabooed) that is most likely to revitalize UMNO and the country – restoration of meritocracy.

Instead of confronting the real threats of economic challenges of globalization, delegates were overwhelmingly obsessed by the imaginary threats to race and religion.

That makes one wonder: Is UMNO still relevant to this country in this revolutionary era of borderless battle of the brains, where the fate of a nation is decided by the efficiency, creativeness and competitiveness of its people?

Let us go to the bottom line quickly. Why were the UMNO delegates so angry, if not because many are experiencing economic hardships? Why is prosperity slipping through our fingers, if not because new investments are dwindling? And why are new investments dwindling, if not because investors' confidence is wanting? In simple language, Malaysia has become increasingly uncompetitive.

Take our stock market, the true picture is not pretty, though UMNO president and premier Abdullah Badawi seemed proud that its closing index

hit 1040, claiming it a new height and a signal of investors' confidence in UMNO's rule. But the truth is that the index of 1040 is still some 20% below our previous height, while many indices in this region have been repeatedly hitting new historical heights in recent days. Worse than the index is our market capitalization. While others' have grown by multiples, we have shrunk and slipped from the second largest in Asia (excluding Japan, in 1996) to the bottom rank, a pale shadow of the past.

Leadership failure

No amount of excuses can hide the failure of our leadership in the disastrous performance of our economy, including Pak Lah's empty boast that he could have doubled our FDI overnight had he relaxed our investment rules. If what he says is true, how does he explain the fact that private investment was 36% of our gross domestic product (GDP) in 1995 while it is only 12% now, when our investment rules have only become more liberal?

The plain truth is that our political leadership has been fooling around in the steering of this nation with untenable ideology and outrageously antiquated policy for far too long. In the course of this, UMNO has not only failed the nation, but also the Malays for whose interests UMNO claims to be the only reason for its existence.

It is easy for deputy party chief Najib to put the blame of UMNO's failure to achieve the objectives of the New Economic Policy (NEP) on colonialists, but the facts just don't tally. I quote from Najib's speech (*Star*, Nov 14):

"The Malay Agenda is UMNO's main task in uplifting the status of the Malays. In the course of history, from 1511 to 1957, we were under the rule of foreigners. After those 446 years of oppression, it is impossible that what is owed to the Malays can be repaid in a mere 20 or 30 years. In this struggle for the Malays, it must be firmly said that there is no time limit".

Najib seems to suggest that for the Malays to progress satisfactorily, the following must be fulfilled:

- a) The Malays must be adequately compensated by this country for the centuries of wrongs done to them by the colonialists.
- b) UMNO must be given a long duration to upgrade the Malays, so as to bear a reasonable proportion to the 4 ½ centuries of oppression (say 1 or 2 centuries?).

This assertion cannot bear any rational analysis and can best be debunked by looking at some examples.

Japan and Germany were physically and literarily flattened and much of their male populations annihilated during World War II, and yet within two decades, these two economies rose like phoenix from the ashes to eventually become the second and third most powerful economies in the world.

Nearer home, Singapore, which was part and parcel of Malaysia only 4 decades ago, ascended to the rank of the developed and the richest within 3 decades of its separation from Malaysia.

Weren't the Japanese and Germans in more terrible shapes than Malaysians, who had the good fortune of receiving their Independence from the colonialist on a silver platter half a century ago? Didn't the Singaporeans also suffer the same colonial yoke as the Malaysians?

Did the Singaporeans, Japanese and Germans arm themselves with the mentality that the world owed them a living?

Why should Malaysia lag so far behind Singapore, not to mention Japan and Germany? (By the emphatic insistence of all UMNO leaders, Malay Malaysians are lagging even further behind than the average Malaysian).

The answer must lie in the qualities of its people and competence of its leadership, not the colonial or wartime past. Singapore certainly cannot be considered better endowed by nature than Malaysia. Neither could Japan or Germany.

Then what is wrong with our people and our leadership? This is where Malaysians must search their conscience and look for honest answers, if we want to extricate ourselves from the present quagmire of economic malaise and endless squabbles on race and religion.

Manipulation of NEP

If an independent body of consultants is engaged to provide answers as to what plague this country, I am quite sure it will come up with the usual list of ills that we are all familiar with - rampant corruption, cronyism and nepotism; low integrity and efficiency of the government; impaired education system producing unemployable graduates; uncontrollable crime rates; deteriorating morality and social problems etc

All these ills could be traced to a corrupt and inefficient political leadership plagued by racism and corruption. But isn't Malaysia practicing democracy? Why do the people return a corrupt political leadership again

and again to misrule the country? The answer lies in the fact that the people have been compartmentalized into racial groups, and brainwashed into voting along racial lines. This explains why UMNO has to constantly whip up racial sentiments, so as to ensure that its bedrock of electoral support remains sufficiently consolidated to face off electoral challenges. Further, the ruling coalition's electoral superiority has been constantly and critically augmented through devious manipulations of the election process by abusing the power of incumbency.

How does UMNO keep its sheep within the fence all these years? By manipulation of the NEP, which is an affirmative action plan originally intended to alleviate the poor but soon degenerated into a gigantic umbrella that shelters all kinds of corruption, cronyism and nepotism to enrich UMNO leaders and their supporters and associates (known as umnoputras or cronies) under the guise of helping the Malay masses. This is done through dishing out government contracts at inflated prices or through dubious disposal of public assets in opaque circumstances to umnoputras and cronies. Thus billions were lost from the public coffers, in addition to hampering a competitive economy and stifling genuine entrepreneurship.

True, under NEP, many Malays have benefited through easily available education facilities and economic opportunities resulting in the creation of a respectable middle class of Malay professionals and businessmen, but the vast majority remains relatively poor and neglected. Rampant self-enrichment by umnoputras has resulted in the Malays having the worst intra-community disparity of wealth, and Malaysia in turn ranks among the worst in income disparity in this region.

It is not difficult to see why UMNO has been fighting tooth and nail, even to the extent of publicly drawing a *keris* (Malay dagger) and threatening to shed blood to keep the NEP. It is in many ways their life line. It enables the leaders to amass wealth which oils the political machinery to maintain or ascend the political ladder within the party (known as money politics). UMNO also needs massive cash in national elections to buy its way to victory. Above all, NEP is an invaluable instrument to hoodwink the Malay masses into giving UMNO undivided support during elections.

Catastrophe ahead

While delegates may have walked away from the conference hall with the satisfaction that their tribal cries must have hit their targets, and that NEP is

for keeps, and UMNO's hegemony is ensured, they should be well warned of the serious consequences ahead. The lingering tenure of NEP in its present form, in an ambience of intensifying racial and religious extremism, is a sure recipe for disaster in such a multi-racial and multi-religious country like Malaysia in this age of quickening globalization. The minority races may be too weak to force any changes, but global market forces will mete out punishment to such an anachronistic society sooner or later. National disintegration is on the cards when economic noose tightens. By then, Malays may be the biggest losers, for they have been made least equipped to fend for themselves.

Does UMNO really think that it can have the cake and eat it – bringing long term prosperity to themselves and their race without discarding their illegitimate privileges and illegal sources of income?

How long can a political power - propped up on the twin pillars of racism and corruption - sustain the status quo in the present context?

Najib Runaway Train Halts Pak Lah Express

Najib's sudden award of the shelved mammoth double-tracking project to a contractor, apparently by-passing the cabinet and without tender, calls into serious questions of Pak Lah's leadership. Such dubious exercise of Najib's unbridled power not only exposes Pak Lah's tenuous hold on power and brought disrepute to Najib himself, but it is also potentially exposing taxpayers to huge losses in years to come, as the project is hopelessly unviable financially and economically.

18.03.2007

Deputy Prime Minister Najib Tun Razak's announcement of the award of the shelved double tracking project on Mar 16 invoked the nightmarish abuse of power by former premier Mahathir Mohamed in the lingering days of his reign in the previous award of this massive project.

On 22 October 2003 - nine days before Mahathir stepped down on 31 October 2003 - the project was abruptly and clandestinely awarded to the MMC Corp Bhd-Gamuda Bhd consortium at the price of RM14.5 billion, despite the existence then of un-revoked letters of intent, issued earlier to state-owned Indian Railway Construction Co. (Ircon) and state owned China Railway Engineering Corp (CREC). These two companies had worked on the investigations and design of this project for years under a government-to-government agreement. The contract price of RM14.5 billion covered two stretches: the northern stretch from Ipoh to Padang Besar (330 km) and the southern stretch from Seremban to Johor Bahru (290 km).

The circumstances under which this 2003 award was made were most dubious indeed.

FIRST, the announcement was strangely not made by the government

but by the contractor who claimed in a press conference on 22nd Oct 2003 that it received the letter of award on the previous night – Oct 21.

SECOND, the incumbent contractor Ircon-CREC consortium was reported to have submitted a price of RM 14.3 billion in the morning of 22nd October 2003, the same day of MMC-Gamuda's announcement of award (which perhaps explained why MMC-Gamuda had to claim it received the letter of award on the night of 21st October 2003).

THIRD, the contract was awarded in such a hurry that both the Indian government and Chinese government were not notified of this abrupt award to a third party while negotiations were still on-going, and neither were the letters of intent revoked, thus breaching diplomatic norms and professional ethics.

FOURTH, Mahathir had apparently never submitted this project for proper discussions, not to mention approval, by the cabinet, judging from the reportedly heated Dec 10, 2003 cabinet meeting chaired by Prime Minister Abdullah Badawi, during which there was a flurry of attempt to call for technical and financial inputs from the ministries of transport and finance respectively as well as technical details from MMC-Gamuda so as to enable the cabinet to make the final decision.

FIFTH, no body in the government dared to answer critical questions on this most improper award such as: who made the decision, when was it made, who issued the letter of award, and when.

It is a testimony of the strict clamp-down on media freedom in the Mahathir era and a demonstration of the non-transparency of the Barisan Nasional government that, to this day, these critical questions have not been answered by either the press or the government. Ironically, the mystery was unveiled by a foreign newspaper the Asian Wall Street Journal (AWSJ) which reported on 13th Nov 2003 and again on 11th Dec 2003 that it was Mahathir who directed the ministry of transport to make this award on 22nd Oct 2003. To date, these AWSJ reports have not be corrected or denied.

To the credit of the new Abdullah administration then, the cabinet decided to shelve this project in December 2003, on the commendable ground that this project must give way to other sectors of higher priority, namely, health, education and agriculture.

(Fuller details of this double tracking episode including analysis on the project viability are described in articles 69 and 71 in my book "Where to, Malaysia?")

Now, three years later, Najib tells us that this project will be resumed immediately.

Announcement deplorable

Quite apart from the project's miserable economic and financial viability, which will be dealt with later in this article, Najib's announcement is most deplorable on multiple grounds.

FIRST, according to local media (*Bernama*, *Star*, *Sin Chew* etc), the decision to go ahead was made by the Cabinet Committee on Public Transport, in a meeting chaired by Najib on Mar 16 – the day he announced the award. Najib announced that the northern portion (Ipoh – Padang Besar: 330 km) will go to MMC-Gamuda which will start work upon finalizing the price, while the southern portion (Seremban to Johor Bahru: 290 km) to an Indian company to be nominated by the Indian government. Shouldn't such an important decision, labeled as the single biggest project in the country, be made by the full cabinet rather than by a cabinet committee? Has the cabinet fully deliberated and approved? If so, why didn't the cabinet announce the decision? If not, it must be the height of irresponsibility to entrust such an important decision to a committee. Or has Najib usurped the authority of the prime minister?

SECOND, Najib justified the resumption of project on the ground that completing the whole project "will optimize government expenditure" already spent on completing the Ipoh-Rawang stretch. This rationale is totally unacceptable. The project must first be assessed for its viability in its entirety covering all aspects: economic, financial, social & political. Only when this full assessment yields a net positive benefit to the country should this project be embarked upon. This process of project scrutiny was obviously not carried out in Mahathir's time, neither is it known to have been carried out in Abdullah's administration.

Just because part of the project was completed is no good reason to resume a shelved project, unless the entire project is proven to be viable. To do so would be to throw good money to chase after bad money, and compound the losses.

THIRD, Najib said he did not know the cost of the project yet, adding that it will be determined only after negotiating the prices with the contractor. How irresponsible can a leader be - embarking on a project costing tens of billions without first knowing its total costs? This is the clearest admission that a serious cost/benefit analysis has not been carried out for this project. Besides, how could the government bargain effectively with the contractor in a negotiated contract as in this case, if the government has not in the first place done its own homework of completing a realistic calculation of the costs?

FOURTH, why was there no open tender for this massive project? We have already seen the folly of not calling tender for this project in the last episode in 2003, when the quoted price of the invited consortium of Ircon-CREC tumbled all the way from RM 42 billion to RM 24 billion to RM 20 billion to a reported RM 14 billion, when a competitor appeared on the scene to bid for the project. Awarding such huge contract without tender is another serious breach of promise by Abdullah (who has repeatedly pledged to re-instate open tenders for all government contracts), coming so soon after the RM 3 billion Second Penang Bridge contract was granted to the UMNO-linked UEM group, also without tender. Needless to say, this will lead to incalculable leakages of public funds and inevitable corruption.

Practicing such cronyism through open violation of standard government procurement procedure (which stipulates competitive tenders) on such a massive scale is grand betrayal of the people's trust and a criminal breach of government regulations.

Totally unviable

Simple arithmetic will show that the entire project is outright unviable, economically and financially.

The total project cost of this electrified double tracking railway when completed from the northern border (Padang Besar) to the southern border (Johor Bahru), traversing some 900 km, is likely to exceed RM 25 billion. This estimate is based on the last quoted price of RM 14.5 billion (in Oct 2003) for the proposed Padang Besar-Ipoh and Seremban-Johor Bahru sectors (totaling 636 km) and the costs on the completed sector of Ipoh-Seremban plus land acquisition and other costs.

But the pan-nation total revenue received by the perennially loss-making state-owned railway monopoly KTM Berhad at present is estimated at RM 500 million per year (it was reported in 2003 to be RM 400 million).

Hence, the current total revenue is so small that it can only cover one third of the financing cost of about RM1.5 billion, based on the capital outlay of RM 25 billion. Given that the completion of the project will boost revenue, say optimistically by 200%, the total revenue could hardly meet the financing costs, not to mention the hefty operating costs and depreciation of assets. Thus, the projected losses could quickly run into billions, worse than the infamous Perwaja Steel project.

The simplest test of the project's financial feasibility is to throw open the project for self-financed private investment. Investors will surely scoff at such offer as totally unrealistic.

In fact, common sense tells us that given the geography of peninsular Malaysia - a small land mass well served by strategically located ports and efficient highways - there is little chance that the railway company can compete and prosper against other means of transportation such as motor vehicles and coastal vessels. Unlike other countries of high populations with vast landlocked hinterland, where railway serves as important economic lifelines, Malaysia is simply not cut out for high-scale development of railway transportation.

Some may argue that this is a social project that brings convenience to the people. True, but at what price? Keeping in mind that Malaysia already enjoys excellent land and marine transportation, can that bit of extra convenience in transportation brought by this project outweigh the immense benefit that could otherwise accrue to the people if these huge sums of money are spent to improve the livelihood of millions of people who live in poverty, many residing in infrastructure-starved areas?

Pak Lah's full circle

The Abdullah administration already made the wise decision to shelve this project in favour of others of higher priority at the outset, so what prompted Pak Lah to change his mind now? Or has he lost his direction as well as his control of the government?

This mammoth project has all the characteristics of a classical Mahathir era mega project – huge scale, high costs, irrational, crony-driven, non-transparent and uncompetitive.

With its re-launching, the self-proclaimed reformist leader Pak Lah seems to have signaled that he has traveled one full circle, starting out as a crusader to wipe out the vices of the Mahathir era, dithering and stumbling on the way, evading and retracting when challenged, and finally back to the comfort zone crafted out by Mahathir – the world of cronyism, corruption and nepotism, where the corrupt ruling elite roam with impunity.

Ijok By-Election: Real Losers and Winners

The Ijok by-election on April 28 between PKR and BN was the first major opportunity for Anwar to re-establish his mass support and strengthen his hand to forge an opposition alliance ahead of the general elections. Aware that a resurgent Anwar would pose the greatest threat, UMNO/BN embarked on a no-holds-barred election campaign that breached all election laws and ethics, in the hope of nibbling the threat in the bud.

29.04.2007

Despite the ruling Barisan Nasional (BN) obtaining higher votes in the Ijok by-election against opposition PKR, the real losers are BN and Malaysia.

Why? In an orgy of abuse of power and violation of the Constitution and election laws, BN's villainous role is exposed to the hilt, Malaysian election has been debased to the lowest level imaginable, and Malaysia has lost the last semblance of a democracy.

How? Through massive official and covert bribery, phantom voters, and violence.

Is there a winner in this election? Yes, it is Anwar Ibrahim and the entire opposition.

Why is that so? BN's desperate attempt to win at all costs – committing the worst breaches of laws and exposing Malaysia to ridicule of the world – is by itself a demonstration of the extent of its fear of the Anwar factor in Malaysian politics. Through conducting the dirtiest election in Malaysian history, BN has ironically achieved the opposite of what it set out to do – to snuff out the Anwar resurgence and to prove to Malaysians and the world that Anwar is a spent force. In the process, Anwar has re-emerged as the undisputed icon of the masses with his fire-power intact, opposition parties have been thrown closer together than ever, and BN has proven to be the

rogue that tramples on the Constitution and betrays the people's trust.

The great tragedy is that, except for those who follow the election through the Internet, most Malaysians sleep through the entire catastrophe without realizing it, thanks to the abetment and cover-up of these crimes by the local press and television channels.

You might ask: what is the proof of all that? Evidences are plenty, enough to fill up a whole book. For this article, I can only briefly relate the more important ones.

Bribery

Even before nomination day on April 19, BN had commenced instant infrastructure projects just like cooking instant noodles. Numerous construction teams had already been working around the clock all over the Ijok constituency to pave and widen roads, install street lightings, construct drains, lay water pipes etc under an instantaneous fund allocation of RM 36 million announced by Selangor Menteri Besar Mohd Khir Toyo.

In addition to this RM 36 million allocation, BN leaders led by Deputy Prime Minister and Najib Tun Razak had been announcing new and instantaneous fund allocations amounting to many millions almost daily throughout the 9-day campaign period in this constituency of only 12,000 voters. These are for the construction of a new mosque in Taman Purnama (RM 5 million), refurbishing and upgrading numerous mosques, suraus, schools, including a donation of RM 1 million to Yuk Chih School to complete a new hall, rehabilitation of a land fill (RM 2.3 million) etc. Also, 400 land titles were awarded on the spot.

To further entice the electors, Works Minister and MIC President Samy Vellu proudly announced to the voters in Tuan Mee on April 26 that he had got estate owner K L Kepong Bhd to agree to the low cost housing proposal put up by them only two days ago (according to Samy). This project, announced in the presence of the company's senior manager Chuan Chong Meng, will give options to the estate workers (who are also voters) to purchase at the preferential price of RM 35,000 per unit against the list price of RM 42,000 for others. No doubt, this is another feather in the cap for Samy in his effort to rope in the corporate sector to grant instantaneous favour to voters with the obvious purpose to induce votes in favour of BN.

Perhaps the most dramatic of such vote-inducement is the moment when Najib was caught red-handed doing a land-for-vote deal in the video, which is now widely circulated in the Internet. Just hours before the closing

of election campaign at midnight April 27, Najib announced in Tuan Mee to a jubilant crowd of Indian voters that he personally guaranteed that the land applied for by the Indian community there would be speedily granted by the BN government. In return, the audience promised to make Tuan Mee the district that would give BN the strongest electoral support in the by-election.

Earlier, the residents were given 200 units of sewing machines as gifts by MIC.

For such explicit vote-buying and supported by such irrefutable evidence, Najib and Samy should be charged under Section 10 (a) and (c) of the Election Offences Act 1954 and punished under Section 11 of the same Act, which stipulates that such convicted offender shall be barred for election for five years, in addition to a maximum imprisonment of two years and fine of RM 5,000.

The Election Commission and the Attorney General should therefore waste no further time to charge these offenders, failing which PKR should initiate immediate court action to bring the culprits to book.

Meanwhile, PKR should seek a court injunction to suspend the result of this election, pending a hearing to declare this election null and void.

Abuse of power

Since the beginning of the election campaign, the entire Ijok constituency was heavily manned by police and the Federal Reserve Unit (FRU) armed with riot gear, giving Ijok the appearance of a war zone. Then, just days before polling day, the police, backed by FRU, began to move in to disrupt opposition ceramah (political talks) on the ridiculous ground that the opposition had no police permit, when no such permit was ever needed during elections. This sudden clamp down by police was obviously prompted by their political masters, who must have felt panic in the rising tide of support to PKR, following the arrival of the top guns of DAP and PAS to reinforce PKR's campaign.

As a result of this police disturbance, many opposition rallies were halted and cancelled. This is a breach of police discipline, as its function in the election is to maintain peace among contesting parties and not to play partisan political role.

BN's abuse of government machinery had also extended to the other ministries such as those of the Tourism ministry, Information ministry and Higher Education ministry, whose personnel and resources were

unabashedly deployed to support BN's campaign.

The worst abuse takes place at the Election Commission (EC), which have been made to function more as an arm of UMNO rather than an independent body under the Constitution to conduct free and fair election. Worse than doing nothing to check the avalanche of abuses that had destroyed the legitimacy and legality of this election, the chairman of EC Rashid Rahman abetted such abuses by declaring that these instantaneous allocations of development funds to induce votes during the election is an acceptable practice that does not amount to vote-buying. With such endorsement from EC, is it any wonder why BN had gone haywire in its unrestrained throwing of public funds to buy votes?

Opposition members of parliament should move to censure the EC chairman in Parliament for this betrayal of his constitutional role. And the Barisan Nasional should also be similarly censured for making a complete mockery of our election system through such blatant abuses.

Phantom voters

Through a door-to-door checks against the electoral roll, PKR had found many cases of irregularities and discrepancies, grouped as follows:

- non-existent electors: Malay voters' addresses are occupied by Chinese who have been living there for decades. And vice-versa. In one village alone, there are 35 such cases.
- Electors cannot be found at the listed addresses, where the current occupants profess no knowledge of the listed electors.
- Electoral roll stuffed with improbable voters: there are 31 voters aged above 100, and over 200 voters aged above 90.
- Many electors are long deceased.

The above dubious electors are fertile loopholes for phantom voters to cast their votes.

Coupled with those who sell their votes for cash (recorded clips of such wheeling-dealing are circulated in the Internet), PKR estimated before polling that there would be 1,700 to 1,800 phantom voters (in a constituency of 12,000).

Indeed on polling day, 2 bus loads of some 80 women from Perlis leaving the Bukit Badong poll station were intercepted by PKR at 4 pm on tips that

some on board the buses were carrying two ICs. A scuffle between the two camps of supporters erupted and the buses were taken to Ijok police station. The Perlis women were released at 8:15 pm while PKR leaders who made the police report were detained. They were released only at 9:30 pm upon police bail, while UMNO leaders who made similar police report were allowed to walk out freely.

According to PKR leader Ezam Moh Noor who was at the police station, in addition to being barred from talking to the Perlis women, PKR was totally kept in the dark as to what actually transpired in the investigation of the Perlis women. PKR was not even informed when the Perlis women left the police station. If there was nothing to hide, why the total secrecy and why the attempt to deliberately isolate the complainants and keep them in total darkness?

Look at the blatant double standard in treating PKR leaders and UMNO leaders, while the former were detained as suspected criminals, the latter were allowed to walk out freely. And as usual in this country, culprits walk free while whistle-blowers are criminalized. And this, I am afraid, is the label of the Barisan Nasional government.

Najib and other BN leaders have denied there was any phantom voter, but the facts speak for themselves. In the Bukit Badong polling station, where the two suspected buses were parked, the polling rate was an implausible 90.1%. Similarly, the overall polling rate for the entire constituency is also an unprecedented 83.1%.

Violence

One feature that marks off this election from any other election is the abundant and ready use of violence to sabotage the opponent, and the main culprit is UMNO Youth. The latter used violence to prevent PKR election workers to enter areas deemed BN territories, and even PKR leaders were attacked. PKR candidate Khalid Ibrahim himself narrowly escaped attacks twice by UMNO youth members while a photographer in his entourage was wounded.

In another incident on April 27, where 50 UMNO Youth members encircled and blocked 15 PKR workers at the entrance to Taman Sunuh Bestari at Rantau Panjang, PKR pamphlets were forcibly taken away and torn to pieces, while PKR leader Xavier Jayakumar was kicked.

Opposition solidarity augers well for future

An unexpected windfall to the opposition was the solidarity forged during the embattled campaign by PKR. Alarmed and disgusted by BN's dishonorable tactics of rampant bribery, squandering of public funds, abuses of government machinery and excessive use of violence, both DAP and PAS quickly joined forces with PKR to fend off BN's mounting assault. The vigorous efforts put in by PAS' president and deputy president, and by DAP's top leaders including opposition leader Lim Kit Siang at the last phase of the campaign auger well for co-operative effort among opposition in future election.

As for PKR, it should take pride and comfort that in spite of such intensely adverse conditions, it could clinch half of both the Chinese and Malay votes. (PKR lost due the constituency's substantial Indian electorate voting heavily for BN). This is an achievement of great significance, for Ijok's mixed race and rural characteristics represent the kind of constituency where BN is traditionally the strongest. Garnering half of Chinese votes in a rural area is indeed a breakthrough for PKR, for the former are traditionally BN supporters. And retaining half of Malay support despite the advocacy to replace the sacrosanct NEP with Anwar's non-racial Malaysian Economic Agenda is a reassuring signal that Anwar is on to a good start in his reform crusade among the Malays.

Top Law Enforcers Exonerated in Clouds of Suspicion

The Abdullah administration was rocked in the early part of the year when three top law enforcers – heads of police and ACA and deputy internal security minister – were embroiled almost simultaneously in corruption scandals. After sleeping on these investigation reports for months, the AG suddenly and almost simultaneously pronounced the trio innocent with explanations that totally lacked credibility.

31.07.2007

In a space of two weeks, the Attorney General (AG) Gani Patail has absolved three top law-enforcers of corruption allegations.

On July 27, the AG absolved both the Inspector General of Police (IGP) Musa Hassan and former Director General of the Anti-Corruption Agency (ACA) Zulkipli Mat Nor. Two weeks earlier, he did the same on the Deputy Internal Security Minister Johari Baharum, whose ministry oversees the police.

And so with a stroke of the pen, the AG has miraculously rescued the Abdullah leadership from the crisis of confidence precipitated by the almost simultaneous eruption of these scandals earlier this year.

Not only that, the AG has also turned the table around on the webmasters and bloggers who brought these scandal to light and allowed the embattled UMNO leadership to launch a counter offensive against these cyberspace “trouble makers”.

Having sat on these corruption reports for months for no creditable reasons, the AG’s sudden burst of energy to almost simultaneously pronounce these tainted parties innocent is met with widespread skepticism.

And indeed the AG's announcement to the press begs more questions than answers.

I will deal with the three cases separately:

IGP Musa Hassan

What the AG said:

Based on ACA investigations, allegations of corruption against Musa were found to be groundless, because a check on his bank account statements and properties revealed nothing suspicious.

On the specific allegation of IGP and his officers receiving RM 2 million bribe to free three detainees of a betting syndicate detained in Kluang, AG explained that the trio were wrongfully detained on 30th March 2007 based on a fake statement bearing forged signatures of six individuals, five of whom were in Kluang police lockup and the sixth taken to court at the stipulated time. The trio were released on April 6 on order of CID deputy director (intelligence/operations) Khalid Abu Bakar, who was instructed by Musa to probe the case upon a tip-off that there was victimization. Khalid also suggested disciplinary action against police officers involved.

My questions:

1. If police officers perpetrating this victimization are guilty, why haven't they been charged in court?
2. If the three detainees are innocent, why haven't they complained about wrongful detention for seven days and sought compensation?
3. If it was such a simple case of victimization, why did Deputy Minister Johari insist that ACA must probe the corruption allegations? Johari was reported as late as July 11 to have said that he was not satisfied with the several explanations given by the police. He also said that he did not get the documents he asked for, following the corruption allegations in the web.
4. Why didn't AG also touch on other equally if not more important aspects of allegations in the web against Musa, such as his intimate relations with underworld kingpins, whose names were clearly spelled out?
5. Is it the ACA modus operandi to check only the suspect's bank statements and properties? Will a criminal allow illegal income be reflected in his

bank statements and properties?

6. If Musa is innocent, shouldn't he have defended his honour and that of the police force by demanding justice from his accusers?

Former ACA Director General Zulkipli Mat Nor

On 26th February 2007, *Malaysiakini* revealed that then newly-retired head of ACA in Sabah, Ramli Manan lodged a corruption report in July 2006 against then Director General of ACA Zulkipli Mat Nor whose extended contract was due to expire at end March 2007. Ramli claimed in the report that ACA already knew as long ago as 1997 that Zulkipli had corruptly amassed wealth and had also been investigated by police for sexual assault against a woman when he was police chief in Johor. Among Zulkipli's alleged assets were houses and petrol stations in the name of Zulkipli's sons and sister. Ramli's said report, copies of which were also extended to the Prime Minister, AG, auditor general and civil service director-general, was however ignored.

Following the *Malaysiakini* revelation this time, a task force led by the police was immediately formed to investigate Ramli's allegations. Musa said in April that the police had already completed investigations and the report submitted to the AG.

After keeping quiet for more than three months, AG suddenly announced on July 27 that Zulkipli was cleared of Ramli's allegations, as these were found to be only assumptions that Ramli could not substantiate with documentary evidence. Neither could Ramli reveal the third parties who supplied the information. The AG however said that interviews with 43 witnesses including Ramli had been concluded.

My questions are:

1. Is it common practice to expect whistle-blower to produce hard evidence for prosecution? Is it not the job of the law enforcing agency to search for these evidences since it has been equipped with all the legal power and resources necessary to pursue criminals?
2. The AG said investigations into sexual misconduct by Zulkipli conducted in 1997 were referred to the public prosecutor, and were declared NFA (no further action) due to lack of evidence. This assertion is contradicted by a press report on Mar 1 (*Sin Chew*) which quoted IGP Musa as saying that the police did in fact carry out such an investigation in 1997, but

after submitting its report to the AG for decision as whether to file charges, the AG simply never responded. Musa added that the police had just submitted another report to the AG on the previous day, and was then awaiting AG's instruction. This Musa statement clearly implied there is sufficient evidence to warrant the consideration of charges, in contrast to AG's claim of NFA due to lack of evidence. Will AG please explain the contradiction?

3. If Ramli's allegations were found to be completely baseless in April (or March), why didn't the AG announce the finding there and then, thus sparing the Abdullah administration of prolonged acute embarrassment occasioned by the simultaneous assault on its reputation? Wouldn't a prompt announcement then be the natural choice of action by a clean AG in a clean government?
4. If Zulkipli is truly innocent and the investigations above board, why didn't the government promptly charge Ramli for making such serious but baseless accusations so as to salvage the image of the government?
5. Similarly, shouldn't Zulkipli have personally taken legal and disciplinary action against Ramli in the first instant as self-protection for himself as well as for the entire organization? Mind you, Ramli's accusations were leveled in July 2006 when he was still a subordinate of Zulkipli, and such accusations were circulated to all relevant parties including the prime minister.
6. Is the government prepared to make full disclosure of the investigations to dispel the cloud of suspicion?

Deputy Minister of Internal Security Johari Baharum

The "freedom for sale" allegation against Deputy Internal Security Minister Johari Baharum became public knowledge on 3rd March 2007 when the *Star* picked up this information from an anonymous website: Freewebs.com. This website specifically accused Johari of improperly releasing three gangster bosses operating vice syndicates in different parts of the country, for which Johari received a total bribes of not less than RM 5.5 million.

These three underworld bosses, who were named, were arrested at various times between October and December 2006, and released in mid-January 2007. The first came from Sitiawan, Perak, a younger brother of a deputy minister, who was also named. The second came from Kota

Kinabalu, Sabah, for whose release a bribe of RM 3 million was allegedly paid. The third came from Cemor, Perak, detained in Oct 2006, then placed in restricted residence in Tampin, Negeri Sembilan, and finally set free in mid-Jan, for the price of “not less than RM 2.5 million”.

Upon the news break-out on Mar 3, ACA was already reported to have started its investigation, with the police seeking to ascertain whether these three detainees had been illegally released. Musa even recommended then that the detainees be re-arrested after investigations.

On Mar 8, the *Star* reported that two of the three detainees had already been re-arrested including the alleged younger brother of a deputy minister. The police then said that “with these arrests, we should be able to carry out a comprehensive probe”.

On April 21, ACA acting director general Ahmad Said Hamdan was quoted in *Malaysiakini* to have said that investigations were completed shortly after Johari was questioned on Mar 19. He said that the investigation papers were in the hands of AG.

Since then, nothing was heard from the AG until July 11, when he announced that Johari was cleared of the corruption allegations, as “the ACA was unable to find any statement to link Johari to the alleged offence”. AG explained that “the said criminals had denied giving Johari money as a bribe”, that “related statements of accounts were scrutinized” and that “several criminals who are important witnesses could not be traced after their release”.

And why did it take the AG so long to come to this conclusion? He answered: “the ACA investigation took some time as statements of accounts had to be analysed and statements had to be taken from relevant witnesses, and tracing witnesses also took some time.” What a pack of lies when the ACA acting DG already confirmed that investigations were completed shortly after Mar 19!

As for the criminals’ denials and the lack of evidence in the relevant accounts, what do you expect – criminals admitting giving bribes and their accounts showing millions of bribes? As seasoned crime busters and law enforcers, such admission of ineptitude is really shameful. The AG must have taken the public for fools if he expects such lies to be easily swallowed.

Then what about the detention, release and re-arrest (and most likely re-release) of these criminal bosses? Who is in fault – Johari or the police? Was it wrongful detention or wrongful release? Since these are big-time criminals – a fact which the police have not denied – why release them in

the first place? Isn't the Emergency Ordinance created specifically to detain without trial this type of criminals? Why keep the small fries and spare the bosses?

Attorney General Gani Patail

Keen observers of politics must have noticed the powerful position of AG when it comes to criminal prosecution, for he has the discretion under the Constitution (Article 145: subclause 3) to prosecute or not to prosecute any criminal case (save Syariah cases and court-martial). The AG's already powerful position was further enhanced in the Mahathir era when ACA was also made to channel their cases to the AG for prosecution (in addition to the police cases) – a move obviously and deviously designed to make AG the ultimate filter to prevent unintended big fishes from being netted in the courts. This move undoubtedly facilitated the rapid expansion of cronyism and corruption among the UMNO elites in the Mahathir era, and looks set to further serve similar pursuits of the Abdullah leadership, its continued effectiveness being so dramatically demonstrated in the current AG move to cover up the dirty tracks of the ruling elite.

Another useful observation is that when it comes to criminal investigations of VIPs that might embarrass the ruling power, the law enforcing agency tasked with the investigations whether police or ACA would choose to keep silent and push the dirty investigation papers to AG where these may sleep for an indeterminate period only to be re-activated when the occasion so suits the political masters or when there was no alternative. Thus, when it comes to high level criminal investigations, AG has become the escape-route of law enforcing bodies such as police and ACA, which in turn have always served as safe harbour for the corrupt elite where their dirty linen is habitually bleached.

Pak Lah disappoints

Perhaps the saddest part of the current AG scam is the response of the Prime Minister. Pak Lah expressed satisfaction at the AG announcement and requested the issues of corruption by Musa and Zulkipli be dropped henceforth since there was no such evidence. However, when reporters pressed for details of the investigation reports, Pak Lah snapped back: "Don't ask me on the contents of the investigations. These are not my jobs." (*Sin Chew*, July 29).

Mr. Prime Minister, if this is not your job, then what is? All these scandal-ridden officials report to you as PM and internal security minister. Don't you realize that there has been a crisis of confidence arising from these corruption scandals, and the current sham AG announcement has not only failed to restore public confidence but has instead caused further disillusionment of your leadership?

As prime minister, it is you – not the IGP or the ACA head – who is directly answerable to the people who elected you. So, is it too much of the reporter to ask you on the substance of the investigations to allay public mistrust?

Thus far, you have answered critical questions with “I don't know” too many times. Don't let the answer “This is not my job” be another trade mark of your premiership.

RM6.75 Billion Naval Vessels Scandal: Najib Must Answer or Quit

A mega contract to construct naval vessels awarded dubiously to cronies in the Mahathir era is playing havoc in the Abdullah administration, causing leakages in the billions through criminal negligence and collusions, for which Najib must bear the brunt public fury.

12.09.2007

While the nation is still reeling from the RM 4.6 billion PKFZ “Ghost Town” scandal, another mega bombshell hits the national screen – the RM 6.75 billion patrol vessel scandal.

A RM 5.35 billion contract to build naval vessels awarded in the nineties that has been inflated to RM 6.75 billion is now teetering on failure, under circumstances that have exposed the utter incompetence and decadence of the Malaysian political leadership and administration.

The 2006 Auditor General’s Report, tabled in Parliament on Sept 7, revealed astounding details of criminal mishandling of this contract. They include the dubious award of the contract to an obviously unqualified contractor, failure of technical and financial management, hefty illegitimate contract price increases and overpayment, unjustifiable waiver of penalties, huge undocumented payments and complete failure of ministry oversight.

The history of this mega scandal could be traced back to the nineties when a company owned by an UMNO stalwart Amin Shah Omar Shah was awarded a contract in Sept 98 to design and build six patrol vessels for the Royal Malaysian Navy for the contract price of RM 5.35 billion. The company is PSC-Naval Dockyard Sdn Bhd (PSC-NDSB), which is a subsidiary of Penang Shipbuilding & Construction Sdn Bhd, a company owned by Amin Shah.

Contract breaches & irregularities

Under the terms of contract, the contractor was obligated to deliver the vessels in stages, starting from March 2004 and completing delivery in April 2007. However, PSC-NDSB could only deliver the first two vessels in mid 2006, and the remaining four are still remote from their final stages of construction, with their status estimated at 19% to 56% of full completion as of Dec 2006. And even the first two vessels delivered were hardly operational, as they were riddled with defects (298 recorded complaints) and were found to have 100 and 383 uncompleted items respectively.

It is obvious that as far as contract performance is concerned, PSC-NDSB is a total disaster. Its failure is attributed to serious financial mismanagement and technical incompetence, the latter being apparent from its track record of only having built trawlers and small police boats in the past.

However, instead of terminating the agreement and demanding for compensation as good governance would have so demanded, the government has done the exact opposite. The ministry of defence has not only kept the contractor but also made hefty overpayment, increased the contract price drastically and waived all penalties - all without any justification.

The contract price was increased from RM 5.35 billion to RM 6.75 billion in Jan 2007, for which the auditor general could find no justification. Neither could he find valid ground for the generous payment of RM 4.26 billion to the contractor up to Dec 2006 when value of works done was only RM 2.87 billion - an overpayment of RM 1.39 billion or 48%. Further, there was no reason for the cabinet's decision in Nov 2006 to waive the imposition of penalty for late delivery amounting to no less than RM 214 million.

The AG also noted the abnormally generous payment of RM 1.07 billion as down payment, which amounts to 20% of contract price, upon signing the agreement.

Most alarmingly, the ministry of defence is found to have made huge payments to the contractor without supporting documents. Between Dec 1999 and Jan 2002, fourteen progress payments amounting to RM 943 million were made, for which no payment vouchers or relative documents were found.

In spite of these enormous overpayment and contract price increases, the AG found the contractor in serious financial deficit and warned the government of further losses ahead due to contractor's weaknesses.

The auditor general criticized the project steering committee – headed

by defence minister cum deputy prime minister Najib Abdul Razak – for failing to provide the necessary oversight over the project.

Government failure

Reviewing the entire fiasco, one cannot escape the conclusion that this is a classic example of contemporary Malaysian mega failure that transcends the Mahathir/Abdullah era division. It demonstrates that the weaknesses of the Mahathir era have not only been carried over but have further been compounded with new weaknesses characteristic of Abdullah's leadership. In simple words, while Mahathirism is characterized by corruption and cronyism, Abdullah allows these characteristics to flourish and at the same time compounding them with his unique brand of hands-off leadership - indecision and indifference. Abdullah would let nature take its own course. Needless to say, such policy (or the lack thereof) would spell disaster on a mega project gone foul.

Take the present patrol vessel scandal. No doubt Mahathir is faulted for having awarded such a huge and high-skill project without tender to an obviously incompetent crony – a glaring case of corruption and cronyism, but mind you, Abdullah was the leader who allowed the failed contractor to drag on and dubiously rewarded him with contract price escalation and overpayment, entailing all sorts of irregularities with criminal implications, causing the public to loose billions with no end in sight.

Agreed that the real decision-maker in this case may not be Abdullah but Najib, but still as the Prime Minister, he must take responsibility for having failed to provide the kind of leadership that could have averted the deterioration of this disaster. In fact, I doubt whether the cabinet has been properly briefed or consulted, much less given meaningful deliberation over the relevant issues, in spite of their stupendous nature in monetary terms.

I wouldn't be surprised if the current Abdullah cabinet is merely a continuation of that inherited from the Mahathir era as largely a rubber stamp, busy-body over trivial issues such as the Namawee Negarakuku furore, but oblivious to massive haemorrhage of public funds through mega fiascos as this RM 6.75 billion patrol vessel contract or the RM 4.6 billion PKFZ "Ghost Town" project.

Najib must take brunt

There is no doubt that Najib must bear the brunt of blame for the present disaster. As minister of defence and leader of the project steering committee monitoring and overseeing the progress of the project, he is responsible for major decisions and development relating to the contract. And he must now answer the following crucial questions:

- Why wasn't the contract promptly terminated when the contractor committed a major breach through its severe failure to deliver the vessels?
- Why was the contract price increased from RM 5.35 billion to RM 6.75 billion? Who authorized the increase?
- Why was the penalty for late delivery amounting to no less than RM 214 million waived? Who authorized the waiver?
- Why was the contractor overpaid by 48% by Dec 2006 – being paid RM 4.26 billion for works done valued at RM 2.87 billion? Who authorized the payment?
- Why were there no payment vouchers or other supporting documents relating to 14 progress payments amounting to RM 943 million made between Dec 1999 and Jan 2002?

Unless Najib can provide satisfactory answers to the above question, he must resign forthwith.

Meanwhile, the Anti-Corruption Agency should waste no further time in commencing earnest investigations into the many serious irregularities of this project, in particular, criminal collusions with the contractor and breach of trust by top government leaders and officials, including those implicated in the dubious award of this contract.

Tour of Pak Lah's Police State

A series of high-handed repressions culminating in the ridiculous arrests of opposition and civic leaders in Parliament was the last straw that plunged Malaysia into a virtual police state. It is reflective of a paranoid UMNO in the wake of a host of mega scandals amid economic hardship that sapped public support for the unpopular regime.

13.12.2007

Who in his wildest dream would have imagined Malaysian Prime Minister Abdullah Badawi's 'reformed' Malaysia would so dramatically degenerate into a virtual police state, all in the space of two elections?

There was the ridiculous spectacle of arrests of opposition party and civic leaders (who only wanted to present a petition) in Parliament and road blocks that sealed off the building on Dec 11 – in the complete absence of any threat of attack or violence.

That morning, the PAS headquarters was also cordoned off by police so as to prevent leaders of the party from going to Parliament House to present the petition, which ironically was a noble appeal to BN not to rush through a constitutional amendment to extend the retirement age of Election Commissioners. The purpose of this amendment is obviously to enable the retiring pro-UMNO Election Commission Chairman Rashid Rahman to continue to helm the coming general election.

Where on earth can you find a democratic country indulging in such high-handed acts of contempt for democratic principles and such uninhibited abuse of police force? What a big slap on the face of the Prime Minister, who only days before shamelessly declared to the world through an article in the Asian Wall Street Journal (Dec 7) what glorious democracy Malaysia had been practicing!

Frantic repressions

To get a further view of the state of repression the country has descended to, I will list relevant events in reverse chronological order:

- Dec 11: Arrests in and around Parliament house, and cordoning off PAS headquarters.
- Dec 9: World Human Rights day. Arrest of Bar Council human rights committee chairman for preventing government officials from removing a human rights banner in the council premises. Arrest of lawyers and activists who were walking in a small group toward the council premises, after the Bar Council had cancelled its annual walk under pressure from the government.
- Dec 9: Scores of activists including opposition party leaders were arrested in different parts of the country for participating in the Nov 10 rally organized by the Coalition for Clean and Fair Elections (Bersih).
- Nov 25: Hindraf rally of 30,000 in Kuala Lumpur to protest against marginalization and discrimination of Indian Malaysians . Brutal suppression with endless volley of tear gas, chemically laced water and use of batons by police. Subsequent arrest of 31 protesters for attempted murder for wounding a policeman; arrests of Hindraf leaders and later detained under the Internal Security Act.
- Nov 10: BERSIH rally of 40,000 in Kuala Lumpur to present a petition to the King requesting for electoral reforms. Police blockades and use of tear gas, water cannon and batons.

In an attempt to exonerate himself from accusation of reckless repression, Pak Lah said in a speech on Dec 10: “If the choice is between public safety and public freedom, I do not hesitate to say here that public safety will always win.” He had earlier alluded to demonstrators as law-breakers who threatened public safety and vowed to apply the dreaded Internal Security Act if necessary.

But what blatant lies these assertions are, when there is not a shred of evidence to indicate there has been any intent, act or weaponry of violence on the part of participants throughout these assemblies. In fact these protesters should be commended for having exhibited exemplary conduct of discipline and self-restraints, particularly when subjected to harsh treatment from the police.

Rebuke from Suhakam

In an apparent rebuttal to the Prime Minister's wild accusation of "threats to public safety", the Chairman of Malaysia's Human Rights Commission (Suhakam) said:

"The possibility of public disorder should be based on evidence, not speculation or imagination.

"Suhakam regrets the government had ignored its repeated call to repeal the law requiring permits for public assemblies and processions. In London you can hold peaceful assemblies and the police are around to prevent public disorder. But here a group needs a permit even to present a memorandum.

"Suhakam wants Section 27 of the Police Act 1967 (which requires a police permit for an assembly of more than three) repealed, because it goes against the Universal Declaration of Human Rights, and appears to be inconsistent with the spirit of the Federal Constitution." (*Star* Dec 12).

His statement further said:

"Currently, it appears that arrests and prosecutions are selective and seemingly biased. Suhakam calls on the authorities to respect and uphold the law and to implement it equally as guaranteed by Article 8 of the Federal Constitution. Suhakam regrets that many of its recommendations remain unheeded, and this has not enhanced our national human rights status." (*Malaysiakini* Dec 12)

It should be clear, therefore, who the villains are in these shameful episodes of trampling of the people's constitutional rights.

Paranoid reflexes?

Why would Pak Lah and his cabinet resort to such dastardly acts that have put Malaysia to shame? I venture to suggest two main reasons.

FIRST, Abdullah's government has been rocked by endless series of mega scandals of corruption and abuse of power since early this year. These included the grisly murder of a Mongolian girl with links to top political hierarchy; dubious commissions that run into hundreds of millions of ringgit paid in respect of purchases of submarines and fighter jets; the almost simultaneous investigations of the top three crime-busters – deputy minister of home security, inspector general of police and former anti-

corruption agency chief; the inflated spending of RM 4.6 billion to create a “Ghost Town” in Port Klang; the inflated RM 6.75 billion naval vessel contract that ran foul; the Auditor General’s 2006 report that reveals pervasive corruption across the full spectrum of the government; and the Lingam video clip that exposed judicial rot of the worst kind.

Any of the above scandals would have dealt a fatal blow to any democratic country. But in Malaysia, thanks to collusion of local press and TV, these are largely hidden from the masses. However, with increasing influence exerted by critics through a growing Internet, the government is beginning to feel the heat of critical public opinion. Needless to say, the regime’s popular support will change in inverse proportion to the spread of public knowledge of the ruling coalition’s incompetence and corruption.

Economic hardships caused by spiraling inflation in an uncompetitive economy help to fester growing dissatisfaction against a leadership that is increasingly exposed as one which feathers its own nests by abusing the NEP. These abuses, built on racial discriminations, have in turn heightened resentment among minority races as well as accentuated class conflicts due to widening disparity of wealth. To cling to power, UMNO has to depend on a manipulated electoral system as pillar to its political hegemony. This is why it is so determined to retain current Election Commission chairman Rashid Rahman’s service, to the extent of amending the Constitution to extend the retirement age of the commissioners.

And so, when tens of thousands of people take to the streets to demand for fair elections (by BERSIH) or protest against racial marginalization (by Hindraf), UMNO has reasons to panic. What if these crowds were to swell to over a hundred thousand? What if news of the evil deeds of the regime spread like wild fire through word of mouth among the disgruntled masses?

As UMNO’s popularity wanes, would the party implode in the midst of worsening internal power struggle? Or would it be deserted by its racial hangers-on (the component parties of BN) who have been scrounging on UMNO’s power, but whose roles as champions of their own racial groups are increasingly untenable in the light of UMNO’s recent surge in racial arrogance and dominance under the competitive influence of Pak Lah’s ambitious son-in-law Khairy Jamaluddin?

These nagging thoughts are fair assumptions, judging from the paranoia displayed by UMNO in clamping down so recklessly and insanely on any public expression of dissent.

SECOND, Pak Lah seemed to have been emboldened by the favourable findings of a recent opinion poll commissioned by the UMNO owned *New Straits Times*, judging from his recent smugness over the poll results and sudden tightening of the police noose on the opposition of late. The spin doctors and sycophants who have insulated him from the real world might have convinced him that it is now safe and timely to strike as hard a blow as possible against the opponents irrespective of what the Constitution prescribes.

Caution to Pak Lah

A word of caution for Pak Lah. Since when is opinion poll in a highly repressed state like Malaysia taken seriously? Democracies like the US or Australia which practice exemplary democracy can rely on opinion poll to predict election outcome to the nearest percent or two. But haven't we noticed that opinion polls on political support are rarely conducted in countries in Africa, Middle East, the former Soviet Union and large parts of Asia? Why? It is simply because the people there have been so repressed that few would feel at ease to give honest answers openly, especially those answers deemed unfavourable to the ruling power. The same goes with Malaysia, where long entrenched political culture of submission under threats and inherent fear of punitive consequences will preclude any meaningful results from such an opinion poll. Taking this into consideration, it is safe to assume that there will be a large margin of error in favour of the ruling power, if at all such a poll is conducted.

A case in point was the opinion poll conducted by the Merdeka Centre for Opinion Research in 2004 when Pak Lah won a sweeping electoral victory. Although his popularity rating then was found to be 91%, his Barisan Nasional coalition (BN) could only garner 64% of the popular votes. Projecting this trend onto his present popularity rating at, say 70%, means he may only garner 49% of the popular votes for BN, a prospect not at all comfortable for the mighty and haughty UMNO/BN.

Regardless what the true level of Pak Lah's popular support is, he will be well advised to stand on the right side of history by honouring his oath of allegiance to the country and the Constitution. For any betrayal of his oath, such as the rampant violation of the constitutional rights of the people as being committed now may bring misfortune to himself and his party in due course, as truth will eventually triumph. By then, his name would have been defiled in eternity.

Double-Tracking Railway Hustle

19.12.2007

The award of the RM 12.5 billion no-bid contract to well connected Gamuda-MMC to build the double-tracking railway from Ipoh to the Thai border is destined to create a huge white elephant.

This is crystal clear from a cursory glance at the current operation of the state-owned monopoly Keretapi Tanah Melayu Berhad (KTMB) or The Malayan Railways Ltd.

KTMB serves the Malaysian Peninsular with a network of 1,700 km of railways, but it collected only RM 269 million in transportation revenue in 2006, made up as follows:

Intercity services	RM 71 million
Commuter services in Kuala Lumpur areas	RM 85 million
Freight services	<u>RM 113 million</u>
Total	RM 269 million

Excluding the commuter services in KL areas (175 km), the total transportation revenue is RM 184 million from a network of 1525 km of railways. Apportioning 30% of this total revenue to the Ipoh-Padang sector (329 km) – which forms only 22% of the 1525 km network – the corresponding revenue is RM 55 million.

Granted that traffic volume will increase substantially after completion of the double-tracking project, but there is a limit to this increase. Assuming a generous revenue growth of 7 folds far in the future, such expanded annual revenue for this sector will be RM 386 million – a mere 3.1% of the initial capital investment of RM 12,500 million.

Better alternatives

Such meager revenue in comparison to the capital outlay means that this sector will be running at huge losses. Neither could its operation be expected to have significant impact on the economy upon completion.

On the other hand, let us pause for a moment to ponder over what this astronomical sum of public funds – RM12,500 million - means to the people.

In the first place, it means every family in this country will have to shoulder an average burden of RM 2,500/-.

Then, if this money is spent for other purposes, the government can complete any one of the following feats:

- plant 1.2 million hectares of matured oil palm, which are capable of generating annual revenues of RM 10 billion (5 million tons of palm oil @ RM 2,000 per ton), or
- build 400,000 low cost housing units, which are capable of housing 2 million have-nots, or
- establish 100 medium sized institutions of higher learning, capable of taking in 300,000 students for tertiary education, or
- build 1,200 km of expressways (equivalent to one more north-south expressway plus one more east-west highway).

The glaring contrast in returns between the double-tracking project (Ipoh-Thai Border sector only) and any of the alternatives clearly indicates that this project is of very low priority, at least at this stage of our development when the country is still short of funds to address many social economic needs. But our government has chosen to implement it, and worst, doing it in circumstances that are most deplorable.

Award questionable

First, there has never been a proper cost/benefit analysis. For a project that is labeled as the largest ever undertaken when completed from north to south, this omission is shocking, though perhaps understandable, as the cabinet must have been aware that the project proposition could not have survived the preliminary round of analysis.

Second, this project has never been properly discussed in the cabinet – neither in Mahathir’s reign when the contract was first dubiously awarded to Gamuda Bhd-MMC Corp Bhd joint venture in Oct 2003 before being shelved in Dec 2003 after Mahathir left office, nor during Abdullah’s premiership when it was revived in Mar 2007.

Third, it was the Cabinet Committee on Public Transport – not the Cabinet – which resurrected the project and awarded the contract to the same contractor in a transport committee meeting held on 16 Mar 2007 chaired by Deputy Prime Minister Najib Tun Razak, who also made the announcement. That such an important project should have been left in the hands of Najib’s committee reflects Abdullah’s weak leadership as well as serious flaw in the decision-making process of his government.

Fourth, no open tender was called. The decision to re-award the contract to Gamuda-MMC was made even before prices were known to the government, thus weakening the latter’s bargaining position and throwing the door wide open for collusion and corruption. For a contract of this size, billions of ringgit could easily have been leaked, further burdening the taxpayers. What happened to Abdullah’s promises of open tender, transparency and accountability?

Fifth, it is most improper that the momentous announcement on the official award of this contract with a finalized price should have been left to the contractor, who also spoke at length on the project’s economic justification, while the government kept silent. Is it the contractor’s business to justify public expenditure? Shouldn’t that be the responsibility of cabinet ministers? Shouldn’t the ministers have appeared to bask in the glory of launching of such a stupendous project, if they really believe it will yield handsome rewards to the people?

Noting the absurd return of this project in relation to its huge capital outlay, a series of serious questions beg for answers.

Why did former premier Mahathir Mohammad push for the double-tracking project so urgently, to the extent of clandestinely issuing the letter of offer to Gamuda-MMC only days before he stepped down on 31 Oct 2003? The contract then was for the construction of both the northern Ipoh-Thai border sector and the southern Seremban-Johor Bahru sector totaling 630 km for a total contract sum of RM 14.5 billion.

Having rightly shelved the project by the new Abdullah cabinet in Dec 2003 due to its low priority, why was it revived in Mar 2007?

Finding no compelling economic or social rationale, what conclusion can we draw other than to attribute the motivation behind this project to the base human instinct of greed – both on the part of giver and recipient of the contract?

Pak Lah's Sunset: in Blazing Sky or Dim Eclipse?

The days surrounding September 16 not only saw Anwar making intensive moves to unseat the BN government through the constitutional process, but also witness the final curtain lowered on Pak Lah in a dramatic UMNO supreme council session. While Anwar's efforts are on-going, will Pak Lah ensure that none will use unconstitutional means to derail Anwar should the latter succeeds in getting his majority support?

21.09.2008

Anwar Ibrahim may have failed to assume the premiership on the very day of September 16 as promised, but he has certainly brought the nation to cross-roads that may mark the most important turning point in the nation's history. Within days from now, the nation may know its fate – whether it will be a future that is nothing more than the status quo of racial fragmentation and corrupt rule or a bold new frontier that promises national unity and vigorous growth.

The week ending September 20 is indeed a week of high political dramas. On one side, an aspiring prime minister-in-waiting is relentlessly seeking to take over power with his supposed parliamentary majority; while on the other, the incumbent prime minister looks set to succumb to party pressure to relinquish his post to his deputy.

Anwar promptly and swiftly made his moves on Sept 16 and the following days. On Tuesday 16th, he announced that he had already secured the support of the majority of members of Parliament and requested to meet Prime Minister Abdullah Badawi (Pak Lah) to ensure a peaceful transition of power. Pak Lah rejected the request on the same day, calling Anwar's claim a "mirage". Failing to secure a meeting, Anwar then requested on

Thursday 18th that an emergency session of Parliament be convened not later than Tuesday 23rd to debate a motion of no confidence. Again Pak Lah rejected the request on the same day.

After these two rejections, Anwar appears to be embarking on the third course, which is an audience with the King to establish evidence of Anwar's majority support, thereby seeking a royal intervention. This may result in the King calling for an emergency parliamentary session to settle the issue of who actually commands the confidence of the majority in Parliament; or he may choose to ask for the change-over of government to take place – resignation of Abdullah and his cabinet, followed by appointment of Anwar and his cabinet –, if His Majesty is fully satisfied of Anwar's majority support, and if so requested. But of course, Pak Lah could always pre-empt such a royal intervention by promptly exercising his privilege as prime minister to call Parliament into session to debate the issue.

Pak Lah cornered

Meanwhile, in the UMNO Supreme Council meeting on Sept 18, under forceful presentations by council members, Abdullah must have silently admitted to himself that he had lost the confidence of the party hierarchy. The remaining question is whether he will step down in the coming party election in December or before October 9 as requested by his dissidents. Oct 9 is the first day of the month-long period during which UMNO divisions will hold their annual meetings and nominate candidates for the party leadership. Ostensibly, Oct 9 was suggested to avoid the embarrassment of Abdullah failing to receive his nominations for presidency, but in reality, it is to give enough time for his deputy Najib Tun Razak to take such measures as necessary to face off potential challenges from Pakatan Rakyat with its supposed majority as claimed by Anwar, when Parliament resumes its seating from October 13.

There is no doubt that Abdullah is facing perhaps the most momentous decisions of his political life – not just about when he will resign, but also about what he will do between now and the day he steps down. Now that he is free of the necessity to fortify himself with repressive measures in order to prolong his political life, he should now reflect on his long-cherished ambition to reform our dilapidated institutions of state and restore some shine to our faded democracy. Granted that he may not have the time or the clout to institute these reforms now, he could at least with his awesome power as the prime minister provide a benevolent shield to enable the on-going democratic process to proceed without unlawful sabotage from any quarter.

If it is shown that Anwar does not have the majority, well and good, the people should thenceforth be satisfied with Barisan Nasional's legitimacy to rule and extend their co-operation accordingly. However, if Anwar has successfully established his majority, whether through a vote in Dewan Rakyat or through other legitimate demonstration of free choice of members of Parliament, then Pak Lah and his cabinet should resign to pave the way for a change of government in accordance with the provisions of the Constitution.

What the nation is most concerned with at this moment is whether Barisan Nasional will unleash a repressive dragnet to thwart such a constitutional transition, as it has been prone to such indulgence in the past. The latest example was the recent wanton arrests of innocent civilians using the draconian Internal Security Act, though the Act was only meant to be used against armed insurgency. And even Anwar himself appeared to have been threatened with such ISA arrest when Pak Lah on Sept 17 suddenly described Anwar as a threat to national economy and security – the code word that hints at an impending ISA arrest. The tension was only eased the next day when Pak Lah said he had no intention of making any ISA arrest during his press conference after the fateful UMNO Supreme Council meeting where he was pressured to quit.

Crowning achievement

Will Pak Lah behave like a democratic gentleman in his lingering days of power and allow the Constitution to take its natural course which may see Anwar coming into power, or will he condone laws and institutions to be abused to frustrate the constitutional process?

In this respect, it is pertinent to recall that Pak Lah played a positive role on two important turning points in the democratization process of the country. The first was when he allowed the court to act without political interference that resulted in the freeing of Anwar on 2nd Sept 2004. The next was his graceful acceptance of the stunning set back suffered by Barisan Nasional in the general election of 8th March 2008. These events could not conceivably have occurred under the repressive rule of former autocrat Mahathir Mohamed.

In view of Pak Lah's expressed intentions to carry out reforms in the past and his propensity towards more liberal rule, he may yet preside over, as premier, the third and perhaps the final turning point towards complete democratization by safeguarding the Constitution from being violated by

unscrupulous politicians. If he does that, his final days as premier may yet be moments of his crowning achievement – a fair-minded prime minister who courageously stands by his pledge to ‘preserve, protect and defend the Constitution’ at the crucial moment of transition of power, thus becoming instrumental in ushering a new era of reconstruction and rejuvenation from the current decrepit state of the country.

BN beyond salvation

Yes, the nation badly needs a complete overhaul, and the UMNO-led Barisan Nasional has already reached a dead end with no hope of salvation.

Former de-facto law minister Zaid Ibrahim, who was recruited by Pak Lah after the March election to specifically spearhead the much promised reforms, recently quit the cabinet in sheer despair of his colleagues’ dogmatic adherence to racist ideology and recalcitrance in perpetuating corrupt governance. He said:

“I faced a brick wall! I can’t translate or make them understand the basic thing that we are a county that is fair to all races, we have the same rights under the federal constitution.”.

Zaid, who used to own the largest legal firm in the country and is regarded by many as the only honest soul in UMNO, said:

“I truly feel that the institutions of government, the courts, the police and the judiciary need a major overhaul.....a major clean-up”.

“(They are) not ready for a process-driven system, not ready for meritocracy, not ready for greater levels of accountability and a truly independent judiciary. They would like to cling on the leverages of power based on discretion and privileges.”

Zaid lamented that his efforts to bring reforms and restoration of rule of law had only earned him widespread scorn from his party and cabinet colleagues for being “not a true fighter for my own race and religion”.

These words of Zaid only confirm public knowledge that since the punishing March 08 election, UMNO instead of learning the lesson, has crawled deeper into its racist cocoon.

And leaders of satellite racial parties like MCA, MIC, Gerakan seem to be collectively suffering from mass denial syndrome when they claim that they can get UMNO to shed its racial hegemony and recoup the lost support from their respective communal groups. It is far better for these

politicians to bravely face the truth now and move according to what is best for themselves and their electorate, than to be rudely woken on the day of next election when they will find their parties completely obliterated by electorate that have long abandoned them.

Najib too scandalized

With regards to the imminent passing of baton from Pak Lah to his deputy Najib Razak, one cannot help but be alarmed by such a move. This is due to the fact that the dark clouds that have gathered over Najib's head arising from his alleged link to the Altantuya murder has not been cleared. The court might have sat for one year over this case, but the fact remains that the three accused who were close to and who worked for Najib do not appear to have credible motive to kill the girl. And yet no one has explained to date why Najib and his aide-de-camp Musa Safri (who was an important link in the events that lead to the murder) have been completely left out in the police investigation and the subsequent court hearings.

Even more damaging to Najib is the explosive affidavit by private investigator P. Balasubramaniam (Bala) which was announced in a press conference on 4th July 2008. In this affidavit, Bala gave intimate details revealing publicly for the first time the alleged triangle of Najib-Altantuya-Razak (the third accused) – directly contradicting Najib's oft-repeated vow that he neither met nor knew the girl. Bala also claimed that during the 7-day interrogations by police, he revealed every thing he learned from Razak and Altantuya regarding their links to Najib, but when he signed on the police statement, none of these details was included. The police promised to investigate into the facts revealed in this affidavit, but nothing has come out of this investigation so far. And Neither was this affidavit allowed to be presented to court, in spite of such application by the lawyer of Altantuya's family.

Most shockingly, Bala and his entire family mysteriously disappeared a day after he announced the affidavit (on July 4) and never re-appear until to-day.

It is obvious from the foregoing that justice cannot possibly be served in this murder case, unless proper explanations are provided to the many intriguing questions that are crying out for answers. And unless an independent panel has conducted a transparent probe into the veracity of Bala's affidavit and the circumstances surrounding the mysterious disappearance of Bala and his family, Najib should not hold any public office, least of the premiership.

Mahathir's Last Hurray

Stop the Half Bridge Nonsense

Soon after resuming works on the crooked half bridge to Singapore, Pak Lah suddenly announced the abandoning of this project, instantly triggering off an open rift with Mahathir. This article explains how Pak Lah was forced into this decision by external factors, and analyses into why the official reasons put up for the project are fallacious. It is in truth a project driven by personal greed and gratification – a common feature of the Mahathir era mega project.

19.04.2006

Malaysia's embarrassing flip-flop on the Johor Bridge project is only the tip of an ice-berg of a deeply flawed government – one that continues to be plagued by Mahathirism. Yes, Mahathirism still alive, in spite of the paradoxical scene of an angry Mahathir shouting his juvenile protests against the government for having scrapped his signature project - the infamous “crooked half bridge”.

Let us be very honest at the outset. This very expensive project was never motivated for the benefit of the people. It is a typical Mahathir era mega project – grandiose, high costs and crony-driven for bumper profits without a tender being called and with no proper rationale.

Having been suspended for two and a half years since Abdullah Badawi (Pak Lah) took over the premiership, the half bridge recently sprang to life when Deputy Prime Minister Najib Tun Razak signaled the immediate resumption of works by declaring on Mar 18 that no country could deny Malaysia's right to construct the bridge in its sovereign territory. Najib said it was “imperative” that the causeway be demolished as it was “no longer feasible” as traffic volume and pollution in the Straits had reached “dangerous levels” (*Straits Times*, Mar 18). He expressed Malaysia's determination to

complete the bridge come what may. If Singapore agreed to a straight full bridge, fine, we would have a full bridge. If not, Malaysia will do its “scenic bridge” to replace its half of the causeway. Pak Lah echoed the sentiment a few days later.

Start and stop, why?

Then, out of the blue, the Prime Minister’s office released a statement on April 12 that there would be no bridge – all works and negotiation on the bridge was to cease forthwith. This abrupt U turn has shocked and puzzled many people. Why suddenly stopped? What happened? The answer lies perhaps in a statement made in Singapore’s Parliament on April 3.

Singapore’s Second Foreign Affairs Minister Raymond Lim then said in Parliament that Malaysia did not have the right to unilaterally replace its half of the causeway with a bridge without the concurrence of Singapore. He reminded Malaysia that it had in 2003 applied for an injunction to the International Tribunal of the Law of the Seas (ITLOS) to stop Singapore’s reclamation works despite the fact that these works were carried out in Singapore’s sovereign territory. While rejecting Malaysia’s injunction application, ITLOS had then ruled that all future engineering works in the Johor Straits would henceforth be subjected to the joint scrutiny of the two neighbours. This rule is premised on the principle that works in one sovereign territory in the Straits can affect the other.

The Malaysian government must have woken up to the fact that it could no longer practice double standard and that there was no way it could escape a bruising legal battle, particularly in reference to the water pipelines to Singapore, unless Malaysia was prepared to agree to the trade-off of selling sand to Singapore and allowing the Singapore air force to take off over the southern tip of Johor. But the Malaysian government could not overcome the hostile local sentiments to make that trade-off. Hence the decision to abandon the bridge.

Sheer cronyism

No sensible person would quarrel with the government over its latest decision. In fact, Pak Lah has won praise all round for making this logical move. But the question is: why made out the bridge project to be a life-or-death issue in the first place? UMNO leaders from the top guns down have been hyping, in collusion with the local media, that this so-called southern

gateway project is such a critical and glorious project; that Malaysia, in particular Johor, could not live without it. We have been repeatedly bombarded with publicity that this project is absolutely indispensable to the solution of the Straits pollution problem and causeway traffic congestion, and that the project will bring economic boom through boosting tourism, opening up shipping in the Straits and spurring growth in our Pelepas port and Pasir Gudang port (to the detriment of Singapore, of course), enhancing beauty and prestige etc. But now, all of a sudden, we are told that we will be just doing fine without the bridge.

Aren't we worried about the unbearable pollution, choking traffic or stagnant economy, now that we have no bridge? No, apparently not.

The truth is: All this hype is mere propaganda to provide a façade for the cronies and hidden beneficiaries to reap a bonanza from this mega project. Before I dwell into the shady side of this project, let me first set the record straight by scrutinising the official rationale. I will be brief as I have already debunked each of these official claims of justification in past articles.

Analysis

Pollution

The cause of pollution is the discharge of untreated sewage and waste water from industries, agriculture and urban dwellings into the Straits through Sungei Skudai, Sungei Segget, Sungei Tebrau, Sungei Johor and Pasir Gudang. This was confirmed in the Murray-North report which was commissioned by the two governments in 1993. This report also stated that opening up the causeway had only marginal effect on the pollution level of the waters, and could not be justified in benefit/cost term.

Traffic congestion

Traffic bottleneck is at the immigration check point and has nothing to do with the width or length of the bridge or causeway. By increasing the number of immigration booths at the present causeway and employing fast track clearance such as the long-proposed electronic smart card system, traffic flow can be spectacularly increased. In any case, traffic congestion nowadays is much more serious at the Singapore end, as could be verified from frequent commuters. So, building a bridge would not help, unless Singapore takes steps to expedite its immigration and security clearances.

Navigation

It's a fallacy that ocean going vessels will prefer to sail through the Straits, as there is no saving in distance. On the contrary, the narrow and shallow channel and height restriction will preclude any such navigation, save small vessels (even more so in the case of the crooked half bridge).

Port development

Can Pasir Gudang Port be linked to Pelepas Port via the Straits? Yes, for smaller vessels only. Even that is not economical, as it is cheaper and faster to transfer goods from one port to another by trucks than by ships. So, the bridge project will not be a catalyst to the growth of the ports.

Environment

The bridge will allow free flow of water and free passage to boats through the Straits, though sailing time is restrictive due to the operation of the rail bridge.

Esthetics and prestige

The crooked half bridge looks queer and will more likely attract ridicule than admiration. The straight full bridge looks acceptable though not spectacular due to its short span over the water. But it is debatable whether it looks more impressive than the present causeway, keeping in mind that the rock-filled causeway exudes solidity and invokes rich memory of historical links between the two countries and their peoples.

Tourism

There is no reason whatsoever to assume that the bridge will bring in more tourists. On the other hand, drastic reduction of the present rampant crime rate and the development of worthy tourist attractions (there is none now) will definitely boost tourist arrival to Johor Bahru and its vicinity.

Functionality

The bridge is less user-friendly, as it is twice as long and involves climbing a height equivalent to an eight storey building, while the causeway crossing is leveled and serves as the shortest link between the two territories. Structurally, the causeway is better equipped to withstand natural or man-made disasters such as hurricanes, earthquakes, or sabotage and wars; and it is almost maintenance free.

Costs

While it costs very little to expand the immigration check point at the causeway, the entire bridge cum custom complex project costs a whopping two and a half billion ringgit. That works out to be an average burden of RM 500 per Malaysian family. And what benefits do the people get in return? Negligible, compared to the costs.

Mahathir must answer

It is apparent from the above deliberation that this project could not withstand the first round of a cost/benefit analysis, not forgetting the messy problem of the water pipelines to Singapore and the railway crossing arising from the construction of an elevated bridge. Then why was it pursued with such dogged determination and urgency?

It is recalled that shortly before Mahathir stepped down in 2003, he traveled twice within a month to Johor Bahru, first to witness the signing of the construction contract, and the second time to witness the launching of construction work. Noting that the contractor was appointed and the price fixed without tender, and knowing the poor justification for this project, can one be blamed if he imputes improper motivation in the unusual haste with which the retiring premier was forcing through the implementation of this project in the lingering days of his office? In this connection, will Mahathir please answer these questions:-

1. Would he agree to an open debate on the merits and demerits of this project – the full bridge as well as the crooked half bridge?
2. Has there been a cost/benefit analysis? If yes, disclose the details. If not, why not?
3. Why was there no tender for such a major project?
4. On what basis was the contractor appointed? What was the financial status and construction track record of the contractor?
5. How was the price negotiated? What mechanism was employed to ensure that the price was fair and competitive?
6. What was the compelling reason for forcing the implementation in such haste, to the extent of risking infamy through launching a crooked half bridge?

Since the halting of the bridge construction by Pak Lah, Mahathir has been quite vocal spewing adverse comments, some of which have the effect of stirring up animosity across the Straits. But does Mahathir realize that unless he can give satisfactory answers to the above questions, he has very little credibility in his words and further comments could only bring greater disrepute to him.

Pak Lah's indecision

As for Pak Lah, he missed the great opportunity to stop the construction of the Customs, Immigration and Quarantine (CIQ) Complex when it was just off the ground at the time of taking over the premiership from Mahathir. He allowed indecision to drag on until the fast shaping CIQ Complex increasingly assumes the look of a white elephant without the bridge to Singapore. Since the CIQ was already a fait accompli, there were two viable alternatives then: construct a full bridge with Singapore's concurrence or build a land connection from the causeway to the CIQ Complex. When it was apparent that the stalemate with Singapore could not be resolved, there was only one viable option left – go for the land connection. Why didn't the government do just that? Why embarked on a preposterous third alternative of a crooked half bridge as announced by Najib on Mar 18?

The aggressive language used by Najib in re-launching the crooked half bridge was perhaps worthy of his reputation as torch bearer of Mahathir's legacy, noting that the announcement was instantly applauded by a jubilant Mahathir. And Pak Lah's weak rejoinder later only reflects the current political realities in Malaysia – a weak reformist leader being led instead of leading.

Now that the bridge is scrapped and Mahathir is thumping his chest, does that mean Mahathirism is on the wane? Certainly not. Giving up the bridge could not be construed as an act of defiance against Mahathir's wish, but rather as an involuntary decision forced upon Malaysia due to the failed Malaysia-Singapore negotiation. In fact, the Mahathirists led by Najib did try, but failed – due to the external factor of Singapore which stood its ground to disagree to the building of the bridge without a trade-off.

Though Mahathir may not have the final say on certain administrative decisions, the corrupt and feudal system created by him is well entrenched and continues to be upheld by its beneficiaries who cover the entire spectrum of the ruling elite.

Favouritism on show

Turning now to the contractor undertaking the project Gerbang Perdana Sdn Bhd (GPSD), many must be wondering what this entity is and who are behind it that it should have received such favourable treatment from the government.

When Pak Lah announced the cessation of the bridge project, he also said that the contractor would be compensated with RM 100 million with promises of award of future government projects. As the half bridge was billed at RM 620 million, the compensation of RM 100 million alone would constitute 16% of the contract price. Considering a contractor would normally build in a profit margin of around 5% for a project of this size in his tender, and if awarded the contract, he may or may not make any money, isn't Pak Lah's compensation package indecently excessive? Why compensate a contractor for not doing the works a sum that equals many times the anticipated profit of a contractor who actually does the works? Or does the quantum of this compensation imply that GPSD's built-in profit margin under the negotiated contract for this project is many times 16%?

It is a fundamental legal principle in a construction contract that the contractor is not entitled to claim for loss of profits. He can only claim for the additional costs incurred in mobilizing and demobilizing his plant and men on site in the event of an abortive project. In this instant, the compensation to GPSD should be in the thousands, not millions (certainly not a hundred million). And the promise of further award of government projects, particularly non-tendered ones, is certainly out of order.

Why should the government have felt such indebtedness to the contractor that it has already showered generosity that borders on criminal collusion? Hasn't the government done enough favours by awarding such huge contracts (RM 2.4 billion) without tenders? What powerful people are behind the contractor as to deserve such preferential treatment from the government?

Pak Lah must now come clean with the people.

Just to think of it, only days ago our leaders were exhorting the people to go for a change of life style to cope with the steep escalation of fuel prices, so that the government could save a few billions in subsidies. And now the same leaders are squandering billions of the people's money without batting an eye-lid. What a great irony!

Now, let us take a closer look at the contractor GPSD.

Parasitic shareholder?

GPSD was incorporated on 26th Sept 1998 and has a paid up capital of RM 7.6 million. Its shareholders are Merong Mahawangsa Sdn Bhd (60%), Detik Nagasari Sdn Bhd (20%) and DRB-HICOM BERHAD (20%).

It is interesting to note that 20% holder Detik Nagasari is owned by a RM 2 company. Detik's entire paid up capital of RM 100,000 is held by Fabulous Channel Sdn Bhd, which was incorporated on 14th Dec 2004, and has a paid capital of RM 2.

Prior to 2005, Detik was wholly owned by Hyundai Berjaya Corporation Bhd, a company originally controlled by Vincent Tan (a close business associate of Mahathir) but was subsequently taken over by the Sime Darby group towards the end of 2004. It is apparent that Fabulous Channel must have been hastily set up then to take over the 20% interests in the southern gateway project when Vincent Tan parted control of Hyundai Berjaya.

Who control Detik? The company has two directors, both from the Berjaya group, meaning Vincent Tan is still in control. And who owns the RM 2 paid up shares in Fabulous Channel which in turn wholly owns Detik? Two ladies of the same surname, one aged 58, the other 25.

Considering that GPSD holds two government contracts (one for the CIQ Complex, one for the bridge) valued at RM 2.4 billion, which were won without tender, its eventual profits from this project could potentially run into many hundreds of million ringgit. So, Detik's 20% share of profits in this venture could well exceed RM 100 million eventually. Is it not unusual then that this huge fortune is landed on the laps of two unknown ladies, who have only subscribed RM 2 to the company? If Berjaya or Vincent Tan is the real beneficiary of this fortune, it is most unlikely that either would have carried this asset in such fashion. So, isn't it obvious that the two ladies, who are the sole registered owners of this fortune are indeed proxies for some one else?

Whoever is the lucky owner of this 20% stake in this project, he is instantly richer by RM20 million, following Pak Lah's announcement of the RM100 million bumper compensation to GPSB.

Shouldn't this be an interesting subject for the Anti-Corruption Agency to look into?

Other glaring irregularities in the award of this project are the absence of competition, the lack of transparency in the awarding procedure and inadequate financial standing and mediocre track record of the appointed contractor for a project of this size. In fact, if not for the RM 1.7 billion

medium term facilities secured with the “unconditional and irrevocable” guarantee provided by the government, the contractor could not have carried out its works. Suffice to say that GPSB might not even have been pre-qualified, not to mention awarded, if a proper tender was held.

In retrospect, the entire saga of the CIQ Complex cum bridge project up to this point is reflective of a flawed system of governance that has transcended the leadership transition from an autocrat to a self-professed reformer.

New Scandal in Half Bridge Saga

Within days of stopping works on the aborted half bridge, Works Minister Samy Vellu hastily announced the award of a new contract without tenders in the sum of RM 250 million to the existing contractor GPSD to construct a land connection from the causeway to the CIQ complex. This latest award smack of cronyism and collusion and highlights the murky relationship between the contractor and the government.

27.04.2006

The scandal-ridden half bridge cum CIQ (Customs, Immigration and Quarantine) Complex project looks set to continue its scandal-making streak.

Works Minister Samy Vellu announced on April 20 that the project contractor Gerbang Perdana Sdn Bhd (GPSD) had been awarded a RM 250 million contract to build the land connection from the causeway to the CIQ complex, adding “I have met the contractor Wednesday (April 19) and told them to start work as soon as possible” (*Bernama*, April 20).

But it was only on April 12 that the Prime Minister Abdullah Badawi made the stunning announcement that the crooked half bridge project was to be abandoned forthwith and a land connection to the CIQ complex be built instead. It is mind-boggling indeed as to how this multi-million ringgit new contract could be awarded within 7 days without seriously compromising the professional ethics of both the government (as employer) and the contractor respectively.

Just look at the great amount of works that both the contractor and the government must complete before the government can talk about awarding the contract:

1. Contractor to complete the design of the newly decided land bridge/flyover from the causeway to the CIQ complex.
2. Government to complete deliberating and approving the design.
3. Contractor to complete preparing the bill of quantities that cover not only the land bridge/flyover, but also demolition of existing structures and modifications at the CIQ complex. (Bill of quantities is a full list of itemized quantities of works under the contract with their respective prices and it also shows the total contract sum.)
4. Government to complete scrutinizing the bill of quantities, negotiating and approving the prices.

Since these stages of works are to be carried out consecutively, it is not possible to complete the entire process within days.

Contract award improper

That the contract was awarded with a contract price within the unholy haste of 7 days could only imply there had been improper collusion between the government and the contractor with the probable scenario of a government approving automatically everything that the contractor proposes including the prices.

In fact the subconscious attitude of treating the contractor as part of the government seems to prevail all the way to the top. This was demonstrated in the strange phenomenon of a prime minister announcing the compensation package that consists of RM 100 million among others, when the professionals in the government had not even scrutinized the contractor's claim of RM 99.7 million compensation submitted earlier for scrapping the half bridge.

Contrast this lightning speed of award with Samy's claim that it will take "between 14 and 16 months for a contractor to be appointed via open tender", when he used this lengthy process to justify in Parliament the government's decision to award the contract to GPSD without a tender (*Star*, April 26). And so to Samy, it is perfectly alright to take only seven days to award the contract to GPSD, but to award the same to someone else, it must take at least 14 months. Making such ridiculous assertions is really an insult to members of Parliament.

The procedures prior to the actual award of contract in both instances - awarding to GPSD by negotiation or awarding to any successful bidder

through open tenders - is almost identical; and these are: design, bill of quantities, tender evaluation and award decision. The latter case takes a bit extra time, due to having to advertise for tenders. However, this can be minimized by resorting to invited tenders.

A reasonable tendering period in an invited tender for an urgent project like this is: one week for project brief and invitation, six weeks for tender preparation and submission and two weeks for evaluation and award, totaling nine weeks. This time frame could possibly be shortened by two weeks in the event of direct negotiation with GPSD.

However, for a project of this size, competitive tendering should be mandatory as it is the only means by which the government can be certain of getting the best deal, and the inevitable saving in millions could more than justify the slightly longer time taken to award the contract.

Other reason given by Samy for awarding the contract to GPSD is that the latter has completed 30% of the aborted bridge, most of which could be re-used for the present land bridge, thus saving the government considerable costs. This claim of saving, if awarded by negotiation to GPSD, is fallacious, as the existing structures to be re-used have already been paid for and belong to the government, and whoever undertakes the land bridge construction will bring the same savings to the government. It is therefore dishonest of Samy to suggest otherwise.

Ridiculous compensation

Regarding the compensation claim of RM 99.7 million by GPSD, Samy explained that this was for the stoppage of works directed by the government lasting from Feb 5, 2004 to Jan 18, 2006 totaling 712 days. Samy added:

“But in the end, we have to pay compensation for the 712 days, as GPSD’s machines, their people, their contractors and engineers were all there but they could not continue with their work as the government had yet to make a decision.” (*The Sun*, April 25).

Is Samy telling us that GPSD’s plant and men had been sitting at the site doing nothing all this time and expect the government to fully pay their wages and machine charges for 712 days? Why couldn’t the men and machines be alternatively and gainfully employed in this long duration of two years while the project was suspended? Of course they could. And in fact that was exactly what happened. In addition, all abortive works have been more than amply paid for by the government.

Samy's suggestion to pay for the 712 days of idle hours for men and machinery originally deployed for the abortive bridge is therefore completely out of order.

What does the compensation figure of RM 99.7 over 712 days mean? It means a compensation of RM 140,000 per day or RM 4.3 million per month. Even if the government had ordered GPSB's men and machines to be on site doing nothing for 712 days with promise of full payment, in which event Samy should have been sacked long ago for giving such a stupid order, the compensation due to GPSB could not remotely approach a fraction of RM 4.3 million a month. So where did GPSB pluck the figure of RM 99.7 million from?

I pointed out in my previous article on 19th April 2006 that GPSB had been accorded a privileged status with all kinds of preferential treatment, and I also exposed GPSB's substantial parasitic shareholdings that could be interpreted as proxy for some very important hidden beneficiaries. I suggested then that the Anti-Corruption Agency stepped in to conduct its investigations. And now, with the latest award of the RM 250 million contract to GPSD in such questionable circumstances, it appears even more imperative that a proper ACA investigation be carried out now to return credibility and transparency to the government as so earnestly and repeatedly advocated by Prime Minister Abdullah Badawi.

Mahathir Eclipses But Mahathirism Thrives

In a frenzy of attacks against Pak Lah, Mahathir has stepped on the toes of Pak Lah's cabinet colleagues. As a result, UMNO's top hierarchy turned against Mahathir, and Najib for the first time declared his loyalty to Abdullah in the most unequivocal language. However, despite the fading of Mahathir's power, all indications point to Abdullah continuing his predecessor's policy of nepotism, cronyism and corruption.

18.08.2006

The week that started Monday 7th August 2006 will probably go down in history as the turning point that marked the final eclipse of Mahathir Mohamad as a political power in this country.

Malaysians must have been taken by surprise by the sudden turn of events that saw the former autocrat stumbled and UMNO's top hierarchy swung unequivocally to the side of Prime Minister Abdullah Badawi.

How did it happen? Wasn't Mahathir doing just fine upon his recent return from London when he merrily stepped up his offensive against Abdullah in tandem with new repressive threats against the media spearheaded by Mahathir loyalist Maidin Zainuddin (minister of information) while the rest of UMNO remaining largely quiet? What happened since then that caused the table to turn against Mahathir suddenly? To understand how this came about, let us trace the events over that fateful week.

On Monday, August 7: Abdullah gave his first TV interview to defend himself since Mahathir embarked on his onslaught. That was a lackluster interview. In particular, Abdullah's denial of nepotism and cronyism involving his son and son-in-law lacked credibility. However, UMNO leaders led by deputy premier Najib Tun Razak gave their polite endorsement to Abdullah's position, as expected.

On Wednesday, August 9: perhaps encouraged by Abdullah's weak showing, Mahathir revved up his attacks by accusing ministers of corruption and UMNO leaders of money politics and threatened to reveal relevant evidences, "one at a time". In the same press conference, he also washed his hands off the infamous "*Operasi Lalang*" crackdown on dissidents in 1987.

On Friday, August 11: Najib broke his lukewarm stance by making his first unequivocal declaration of allegiance to Abdullah. Using unusually colourful expressions, he said in spite of rumours to the contrary, he was giving Abdullah his "full and undivided support" and promised to be the "best deputy possible" and "to stand by him to weather the storm together until the end". He added, "just because there is a storm brewing, don't think I will abandon the ship".

Saturday, August 12: a chorus of UMNO ministers voiced strong support for Abdullah while criticizing Mahathir.

Monday, August 14: a media blitzkrieg against Mahathir. Newspapers splashed front page headlines carrying frontal attacks against Mahathir by UMNO's ministers across the spectrum. Mahathir scrambled to deny any attempt to topple Abdullah.

On Tuesday, August 15: Najib urged that "all parties" cease to air the Mahathir issues forthwith, saying "there should be a finality to the issues". Significantly, Khairy Jamaluddin, son-in-law of Abdullah and UMNO Youth deputy leader, acknowledged Najib's call as a directive, to which he pledged his compliance.

Since then, news on the Mahathir challenge seems to have largely disappeared from the newspapers.

Fatal errors

It is not difficult to see from the abovementioned events that in his tussle with Abdullah, Mahathir made the fatal error of treading on the most sensitive spot of the UMNO hierarchy – corruption. His threat to reveal evidence of corruption, "one at a time", must have unnerved and angered his former colleagues; after all, who among them could lay claim to a clean slate, right up to the very top of UMNO? Mahathir's misstep must have been an important contributing factor that tipped the balance.

In fact Mahathir made more than one blunders in the press conference on Aug 9. He lost the last vestige of his credibility when he shamelessly denied the undeniable – his role in *Operasi Lalang*. For it has been common knowledge that Mahathir was the master mind behind that black operation

that placed his crown – as undisputed leader of the country - beyond challenge, but in the process, crippled democracy, the scars of which are still felt today. His blatant denial has therefore infuriated the liberals as well as disillusioned the moderates. And so in one stroke, Mahathir has alienated the left (the liberals), the central (the moderates) and the right (the UMNO juggernaut).

Najib's pivotal role

Another important observation we can make is the pivotal role played by Najib in the entire episode. Note the avalanche of support to Abdullah that followed Najib's crucial declaration of allegiance to the former, and also note how the curtain on the entire episode was lowered a few days later – by a directive from Najib. It should be clear who has been calling the shots. It is also apparent that Najib's power has not been diminished as a result of the eclipse of his mentor Mahathir, thanks no doubt to Najib's astute judgment in pouncing on the right occasion to make the decisive move.

With Mahathir fading from the radar screen, will Abdullah set sail on his promised land of reforms that had kindled so much hope in the early days of his premiership? Apparently not. In fact, he seems to have all but forgotten his earlier promises. This is evident from the way he used the term “walk the talk” a few days ago – not to refer to his much avowed reforms but to refer to rolling out the Ninth Malaysia Plan. (For one fleeting moment, my spirit was elated when I saw *Star*'s headline on Aug 16 : “PM: Time now to walk the talk”, naively thinking that Pak Lah had finally decided to bite the bullet to fulfill his election pledges, only to be disappointed seconds later when I found out that Abdullah's so called walking the talk had nothing to do with reforms.)

Ironically, Abdullah's miserable record as a reformer is mercilessly reflected in the comical swapping of roles between himself and Mahathir recently - Mahathir attacking Abdullah for suppressing media freedom and corrupt practices, which were the very vices of the Mahathir era, on which Abdullah built his reform platform that enabled him to romp home with unprecedented electoral victory two and a half years ago.

Granted that Mahathir might have been talking nonsense on the crooked bridge and M.V. Augusta issues, but his shrewd allegations of nepotism and corruption in relation to Abdullah's son and son-in-law were on the dot.

Nepotism and cronyism

As finance minister himself, Abdullah could not escape the taint of conflict of interests and favouritism in the rather one-sided reverse take-over of government linked investment company Avenue Capital Resources Bhd by the relatively small ECM-Libra Bhd which was associated with son-in-law Khairy. Further, there was no denying that ECM-Libra Bhd's earnings had been lifted through Khairy's political influence, as exemplified by its underserved role as co-host of the Malaysian Global Road Show to London and New York led by Abdullah himself in September 2005, when ECM-Libra as a small domestic outfit without the required international networking was obviously unqualified for such a prestigious undertaking.

As for Abdullah's flat denial of his son Kamaluddin's Scomi Group having involvement with government linked projects, evidences fly in Abdullah's face of such involvement as large contracts received from national oil company Petronas, national railway KTM Bhd and national power company TNB. Other government linked multi-million ringgit projects under active pursuit are the Penang Monorail System and mass fabrication of buses for the state-owned transport company Syarikat Prasarana Negara Bhd. Under such circumstances, Abdullah's ill-advised declaration of non-involvement has only widened his credibility gap.

Raising our gaze from the businesses of Abdullah's family to the larger picture of the Ninth Malaysia Plan (9 MP), which lately seems to have consumed Abdullah's premiership completely, what expectations can we have of this master plan? Will it salvage Abdullah's premiership from the present doldrums both economically and politically? Or will it be like 9 MP's scandal ridden predecessors (8 MP, 7 MP etc) – characterised by the prevalence of corruption, inflated prices, delayed completion, cost escalation and defective structures?

9 MP's wrong signals

As Abdullah rolled out his long anticipated master plan recently, the initial signals emitted by him were disappointing. On Aug 2, Abdullah announced with big fanfare the approval of the much heralded second bridge and a monorail for Penang island. Unfortunately, he also announced in the same breath that the 24 km long bridge, estimated to cost RM 3 billion, had already been awarded to the politically favoured UEM Group without tenders for

no credible reasons. Such dubious award of probably the single biggest and most glamorous project in 9 MP on the opening bang of the master plan is not exactly exhilarating news for investors and the general public who had been watching intensely on how Abdullah intended to “walk the talk” on his earlier promise to award all projects under 9 MP through open and transparent tenders save some exceptional cases for reasons of security or exclusive technology.

Close on the heel of the above award, was another announcement of a pre-determined contractor for another prestigious project, this time the monorail for Johor Bahru. A little known company Jalur Mudra Sdn Bhd announced on Aug 8 that it was arranging finance as well as finalising the technical aspects in preparation for the launching of this project. So Bang! Another major project gone without tenders within days!

People are beginning to wonder: will it be status quo ala Mahathir for the rest of the 9MP?

Mahathirism thrives

In fact if one looks around for signs of change in governance from the Mahathir era, one cannot fail to observe that nothing seems to have changed.

Take for instance Abdullah’s political hot potato at hand – the nutty issue of how to appease the racially inspired resentment against Singapore-based Parkway Holding Ltd’s controlling interests in Malaysian healthcare group Pantai Holding Bhd. At the core of the controversy are two 15-year concessions in healthcare supplies and services granted by the Malaysian government to Pantai’s subsidiaries Fomena and Medivest respectively. These are lucrative monopolies awarded without tenders to bring long term enrichment to the politically favoured in the name of NEP, in this case granted to Mahathir’s son Mokhzani during Mahathir’s reign. Now that these gold mines have fallen into foreign hands, this issue could naturally be exploited by those bent on reaping political capital, never mind the fact that the potential bumper profits of these monopolies had already been factored in during the transaction conducted on a willing seller to willing buyer basis.

Perhaps it would be more pertinent to ask why such one-sided monopolies were created in the first place. Were these not intended to enrich certain pre-determined individuals at great detriment to the taxpayers? Who were guilty of such flagrantly corrupt act? But of course our Prime Minister

will not ask these questions. Instead, another set of politically favoured individuals will emerge to take over these gold mines.

Another scandalous government monopoly was exposed a few days ago. A RM2 company Lembah Sari was quietly granted a lucrative 3-year monopoly worth RM 70-100 million a year to provide security labeling to local manufacturers of cigarettes, in effect replacing the last concession, given to Kod Efisien during Mahathir's reign. The circumstances surrounding this monopoly are dubious as a) it was awarded in secrecy without tender, b) its effectiveness in combating smuggling and fake products is questionable, and c) its rewards are far disproportionate to the nominal services provided by the concessionaire - acting as mere middlemen to convey the equipment and ink from the Swiss-owned Sicpa Holdings SA to the manufacturers. As such, its existence is seen as comparable to a parasite sucking on the consumers. And as far as this corrupt practice is concerned, the only difference brought by Abdullah's administration is the change of players, not the act.

Guess who is the lucky owner of Lembah Sari? One named Haris Onn Hussein, younger brother of education minister and UMNO Youth leader Hishamuddin Hussein.

There are good reasons to believe that this is only the tip of an iceberg of massive acquisition of wealth by ruling politicians all over the country.

With such easy supply of enormous funds, is it any wonder why illegitimately acquired money has flooded to corrupt every UMNO party election as well as every state or national election in the country, rendering democracy void of meaning in this country?

And so, Mahathir may have lost the battle for power, but he can certainly find comfort in the thoughts that the system of governance created by him has continued to flourish under the leadership of his successor(s).