PARTI BERSATU SABAH
(Sabah United Party)
Block M, Lot 4, 2nd & 3rd Floor
Donggongon New Township
89500 Penampang Sabah, Malaysia
Tel(60)-88-702111 (60)-88-702116 Fax (60)-88-718067

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YB Datuk Teo Chee Kang
Pengerusi
Jawatankuasa Kajian Hak-Hak Sabah Dalam Perjanjian Malaysia
Merangkap Menteri Tugas-Tugas Khas
Jabatan Ketua Menteri
Sabah

YB Datuk

SESI PENDENGAARAN JAWATANKUASA KAJIAN HAK-HAK SABAH DALAM PERJANJIAN MALAYSIA DENGAN PARTI-PARTI POLITIK

The above matter refers.

Pursuant to the hearing of the above on the 26 January, 2017, and as per the requirement, the following are the outlines of our preliminary submission:

1.0 Borneonisation.

Borneonisation of the Sabah public services was an objective of the Federation of Malaysia as stated in the Malaysia Solidarity Consultative Committee (MSCC), 20-Points Memorandum, Cobbold Commission of Enquiry, Inter-Governmental Committee Report 1962 and recognised in the Malaysia Agreement 1963.

The following are among the assurances and contractual promise regarding the Borneonisation:

1.1 "……Moreover in our future constitutional arrangement the Borneo people can have a big say in matters on which they feel strongly, matters such as immigration, customs, **Borneonisation,** and control of their state franchise……..." (Speech by Tunku Abdul Rahman in the Federal Parliament on 16 October, 1961). *Source: Arkib Negara*.

1.2 Malaysia Solidarity Consultative committee - Point No. 28
Assurance on Civil Service:

> ….With regard to the public services in the Borneo territories, it is agreed that all civil service appointment would be under the control of the respective state Government. In the case of Federal services, the committee welcomes the assurance given by the Prime Minister of the Federation of Malaya (Tunku Abdul Rahman Al Haj) on the 6 January 1962, at the Kuala Lumpur meeting of the committee when he stated, " I can also give a categorical assurance that there would be a progressive Borneonisation of the public services in Borneo territories and in addition to the people of Borneo territories would have opportunities to serve high appointments in the Federal service".

1.3 20 Points Memorandum - Point 8: Borneanisation

..... Borneanisation of the public service should proceed as quickly as possible.

1.4 Report of the Cobbold Commission of Enquiry

….. The Cobbold Commission, formed to ascertain the views of the people of North Borneo (now Sabah) and Sarawak on the Malaysia proposal, accepted the Borneonisation condition in their report of June 21, 1962 as follows: "Borneonisation of the public services should proceed as quickly as possible".

1.5 Report of the Inter-Governmental Committee, 1962.
Annex B. The Public Service. The Interim Period. - No.9

…..To reassure officers seconded or transferred to the Federal Public Service, and to reassure officers in the States that Borneonisation will be given first priority in the Federalised Departments, the Federal Constitution will provide for the establishment of a separate branch of the Federal Public Service Commission in each State…….. …

The Malaysia Agreement dated July 9, 1963 binds the government of Malaya, North Borneo (now Sabah) and Sarawak to the Borneonisation.

Article VIII of the Malaysia Agreement 1963 states that the Governments of the Federation of Malaya, North Borneo and Sarawak will take such legislative, executive or other action as may be required to implement the assurances, undertakings and recommendations contained in Chapter 3 of, and Annexes A and B to, the Report of the Inter-Governmental Committee signed on 27th February, 1963, in so far as they are not implemented by express provision of the Constitution of Malaysia.

The above assurances and contractual promises on Borneonisation clearly point out that the Borneonisation of the public services in the Borneo states is one of the major objectives of policy in the Federation of Malaysia. It is therefore contingent upon the Federal Government to

make the necessary arrangements to fulfil this objective and to protect the legitimate interests of the Natives people of Sabah. However, after 53 years within the Federation of Malaysia, the promise of Borneonisation is still far from being fulfilled. Currently, there are 104 Federal Departments and 46 Federal Statutory Bodies in Sabah. Of the total number of staff in the Federal Departments and Federal Statutory Bodies in Sabah resepectively, less than 35 percent of the staff are Sabahans. Similary the number of Sabahans holding the senior posts in the Federal Departments is less than 35 percent. The representation of Sabahans in the Federal Statutory Bodies is even lower where less than 30 percent of the staff are Sabahans and less than 30% of the senior posts are held by Sabahans.

There are 1.2 million Bumiputra staff in the Federal Departments throughout Malaysia of which only 8.3 percent are Sabahans. Currenlty, there are only 323 Diplomatic Officers who are Sabahans out of the 8,826 Diplomatic Officers in Malaysia. *(a more detail statistics of staffing and the composition of Sabahans in the Federal Departments and Federal Statutory Bodies in Sabah is being compiled).*

There were 1,466,652 applicants for the job vacancies in the Public Service Commission throughout Malaysia. Out of these applicants, about 115,151 were called for interview including 8,051 applicants were from Sabah. The total number of person employed was 14,089 thoughout Malaysia. However, only 1,243 or 9 percent were Sabahans .

As evidenced from the above figure, it cannot be denied that the number of Sabahans who are employed in Federal Departments and Federal Statutory Bodies in Sabah are very small. This is inconsistent with the Borneonisation in line with the objective of the Federation of Malaysia as required in the relevant documents and agreed in the Malaysia Agreement 1963. Therefore, PBS would like to call upon the review of the implementation of Borneonisation.

2.0 Autonomous Administration of Courts in Sabah and Sarawak

The law* (the Court of Judicature Act and the Federal Constitution) had set up two High Court systems in Malaysia: that of the High Court of Malaya and the High Court of Sabah and Sarawak. It also provides that these separate High Courts shall be headed by its own Chief Judge. Similarly, the law provides that the other two superior courts, i.e. the Federal Court and the Court of Appeal shall be headed by the Chief Justice and the President respectively. Each of these courts has its own registrars. Although the registrar of the Federal Court is styled "Chief Registrar", the relevant provision states that he or she is the registrar of the Federal Court only. Therefore, under the scheme of the law, there is no central authority in charge of the entire judiciary.

2.1 Special position of the High Court of Sabah and Sarawak

For historical reasons, the High Court in Sabah and Sarawak had been granted an "entrenched" independent status under the law.

**Article 121 of the Federal Constitution*

When Sabah and Sarawak joined the Federation, existing Borneo High Court was not subsumed into the High Court of Malaya but allowed to continue its separate existence under the Malaysia Agreement 1963.

Furthermore, article 161E** guaranteed its independent status as no amendment to the law without the consent of the TYT could be made that affected the constitution of the Borneo court. That is why it can be said that the independent and separate status has been "entrenched".

2.3 Reality on the ground

Despite the constitutionally guaranteed independent and separate status with its own Chief Judge, a different picture emerges at the ground level. Over the years since independence, especially since the era of Tun Eusoff Chin as the Chief Justice of the Federal Court, the office of the Chief Judge of Sabah and Sarawak had been slowly but surely reduced to that of a titular figurehead.

This is ironic given that the law had envisaged the Chief Justice of the Federal Court to be only the titular head of the Judiciary. This is because he heads the Federal Court only under the law whereas the Chief Judge of the High Court is in charge of all the branches of the High Court and the subordinate courts. The administrative and supervisory power over all the subordinate courts and the High Court officers had slowly become vested in one person in recent years, i.e. the Chief Registrar of the Federal Court. Insofar as Sabah and Sarawak courts are concerned, any exercise of administrative authority by the Chief Registrar without the consent or acquiescence of the Chief Judge can be considered illegal in view of article 161E. Apart from contravening constitutional provisions, the exercise of administrative and financial authority and control over the Sabah and Sarawak High Court by the office of the Chief Registrar has caused practical difficulties which are normally associated with over centralization of power. Some of these are listed down below:

*** 161 E (2) No amendment shall be made to the Constitution without the concurrence of the Yang di-Pertua Negeri of the State of Sabah or Sarawak or each of the States of Sabah and Sarawak concerned, if the amendment is such as to affect the operation of the Constitution as regards any of the following matters: ……*

(b) the constitution and jurisdiction of the High Court in Sabah and Sarawak and the appointment, removal and suspension of judges of that court;

(i) Poor communications and lack of funds

As is well known, the population distribution in Sabah and Sarawak is scattered over a geographical area. Poor road systems further reduce accessibility of the people to major towns where magistrates' courts are located. In West Malaysia, almost every administrative district has a Magistrates' court.

The converse is true over in Sabah. For example for the entire West Coast from Kudat to Sipitang, a distance of over 300 km, the Resident Magistrates' court is only located in Kota Kinabalu. For this reason, circuit courts are the norm throughout Sabah and Sarawak.

Although the Magistrates and Session Judges travel according to a fixed schedule, they sometimes increase the frequency of their sittings when are urgent remand cases or old cases pending. However, the perennial problem faced is chronic lack of funding for travelling purposes. It is quite impossible to plan a year or two years ahead when requesting for funding from the Chief Registrar's office when cases are being registered every day.

(ii) Mobile Courts

The same problem arose in the operation of the mobile courts recently. The Sabah and Sarawak courts were accused of having exhausted their travelling allocations because of running these courts. In fact, the magistrates only visited the mobile courts concurrently with their circuit sittings. This means that they had worked extra hard and had claimed less than they are entitled to in providing a much needed social service to rural folk.

(iii) Issuance of authority card, recruitment and training of officers

Although the law provides that the Chief Judge is the head of the Sabah and Sarawak High Court system, even the authority cards for the magistrates are issue under the hand of the Chief registrar. Needless, to say all recruitment exercises, even for support staff and training programmes are centralised in the office of the Chief Registrar. This gives rise to frequent

vacancies as sometimes officers and support staff are transferred without replacement for a long time.

Recommendations:

(i) Call for restoration of the original role of the Central Registry at Kuching

Devolution of responsibilities to the Registrar of the Sabah and Sarawak court to enable him or her to have direct hand in recruiting and training of officers and support staff will go a long way in avoiding the problem of over centralisation of power in the office of the Chief Registrar. After all as pointed out earlier the Federal Constitution and the Court of Judicature Act had envisaged *de jure* separate administration of the Sabah and Sarawak High Court. Over the years, creeping centralisation and usurpation of the independent administrative powers of central registry of the High Court of Sabah and Sarawak based on the expediency argument has resulted in neglect of special needs of the local courts.

(ii) Financial control

The financial allocations for the Sabah and Sarawak Courts should come directly from BAHEU (the Legal Division of the Prime Mininster's office). Therefore the local courts would be able to articulate and justify their financial requirements directly instead of pleading with the Chief Registrars' Office which has responsibility over the whole of the West Malaysia. The problems and needs of the Sabah and Sarawak courts are different due historical and geographical reasons. Therefore it is just possible that the officers of the Chief Registrars' officer may not be able to fully appreciate the special needs and the different local conditions that obtain over here. In fact BAHEU had even been queried when on a rare occasion they had given an allocation to Sabah and Sarawak courts without going through the Chief Registrar's Officer. Moreover separate and independent administrative control by the Central Registry of the High Court in Sabah and Sarawak as provided by the law has no meaning if the local courts are not even in a position to obtain allocations on their own. Instead the present position is akin to "pleading" or "begging" from the Chief Registrars' office whenever some financial need which is not budgeted for in advance arises.

(iii) Appointment of Judicial officers and staff

The original position at Merdeka Day was that the all recruitment and transfers of Judicial officers and support staff was done at the principal registry in Kuching under the authority of the Chief Judge of Sabah and Sarawak. This was what was intended by the Inter Governmental Committee Report, Malaysia Agreement 1963 and the Federal

Constitution in maintaining the existing Borneo High Court within legal system of the Federation. As pointed out earlier, over the years, the administrative responsibility of the Chief Judge and the Registrar of the Sabah and Sarawak High Court was whittled away until the point where even the transfer of a driver or peon has to be done a thousand miles away in Kuala Lumpur in the Chief Registrar's office. The only way to adhere to the spirit of the Malaysia Agreement and the Federal Constitution in establishing a separate High Court system complete with a separate principle registry and its own Chief Judge is to restore all its powers of appointment and transfer of Judicial officers and support staff. Otherwise the principal registry at Kuching is nothing more than an extension of the office of the Chief Registrar and the Chief Judge would amount to no more than a ceremonial figurehead of the High Court of Sabah and Sarawak.

2.4 Disregard of rights accorded to High Court of Sabah and Sarawak

When Sabah and Sarawak joined the Federation in 1963, pursuant to the Report of the Inter Governmental Committee Report and Malaysia Agreement 1963, some crucial protections were accorded to them in the form of a constitutional provision namely Article 161E(2). This provision gives some "entrenched" rights to the State in respect of some vital matters, namely, citizenship, religion, native rights etc. This provision can be said to accord "entrenched" rights because the said rights cannot be taken away or reduced without the concurrence of the Yang Di Pertua Negeri. If concern here in light of recent developments is paragraph (b) which reads as follows:-

161 E (2) No amendment shall be made to the Constitution without the Concurrence of the Yang di-Pertua Negeri of the State of Sabah or Sarawak or each of the States of Sabah and Sarawak concerned if the amendment is such as to affect the operation of the Constitution as regards any of the following matters: …….

(b) the constitution and jurisdiction of the High Court in Sabah and Sarawak and the appointment removal and suspension of judges of that court.

2.5 Power to determine the number of Judges

Under Article 122AA, the number of High Court judges in Sabah and Sarawak cannot exceed ten unless the *Yang Di-Agong by order* provides otherwise. The words "the Yang di-Pertuan Agong by order otherwise provides" was substituted for "Parliament otherwise provides" in Clause (1) by Act A354, s.26, in force from 27 August 1976. The effect of this amendment is as follows:

On Malaysia Day, the number of Judges in Sabah and Sarawak is up to the Parliament to decide. However, after the said amendment, this power was delegated to the Agong who acts on the advice of the Federal Government. The number of judges in Sabah and Sarawak has since then been increased through an Order by the Agong. However, Clause (b) of the 161E (2) says that no amendment can be made to the "constitution" of the High Court in Sabah and Sarawak without the concurrence of the Yang Di Pertua Negeri "Constitution" in its ordinary meaning, apart from referring to a legal document such as the Federal Constitution also refers to the composition, structure or make up of something. In the above mentioned clause it also refers to the makeup of the High Court in Sabah and Sarawak which consists of a specific number of judges. Therefore it follows that any change to this number necessarily affects the "constitution" of the court and TYT need to give his consent.

Question Posed

The question that arises is whether the Federal Government had consulted the State TYT whenever the number of High Court Judges in Sabah and Sarawak had been varied or when the power was delegated to the Agong. We have reliably learnt, subject to confirmation from the Sabah Attorney General's office, that no consent was sought or given.

2.6 Appointment of Judicial Commissioner

Prior to 24th June 1994, the following sub-clause was found in Article 122A:-

(3) For the dispatch of business of the High Court in Borneo in an area in which a judge of the Courts is not for the time being available to attend to business of the court, the Yang di-Pertuan Agong acting on the advice of the Lord President of the Supreme Court, or for an area in either State the Yang di-Pertua Negeri of the State acting on the advice of the Chief justice of the court, may by order appoint to be judicial commissioner in that area for such period or for such purposes as may be specified in the order an advocate or person professionally qualified to be admitted an advocate of the court.

Under this clause the TYT could appoint a Judicial Commissioner in Sabah or Sarawak on the advice of Chief Judge of the High Court in Sabah and Sarawak for a specified period if there was no judge available in any area of the state. This is a very practical and useful power to allow the Chief Judge to ensure that the business of the court is not affected because of temporary vacancies. However the power of the Chief Judge to advice the TYT to appoint

Judicial Commissioners under this provision was removed *vide* Act A885 w.e.f 24 June 1994.

Question Posed

The question that arises here is whether the TYT was consulted when this power of the Chief Judge to advise the TYT on appointment of Judicial Commissioners for a specified period was removed by the Federal Parliament. This is because "constitution and jurisdiction of the court" must necessarily include the power of its Chief Judge to administer his court according to the then existing provisions of the law including the original Article 122A. We have reliably learnt, subject to confirmation from the Sabah Attorney General's office, that no consent was sought or was given.

2.7 Restyling of "Chief Justice" to "Chief Judge"

The change from Chief Justice to Chief Judge to refer to the head of Sabah and Sarawak High Court was effected in 1994. It cannot be denied that "Chief Justice" is a term used to designate the head of court system almost throughout the entire Commonwealth irrespective of whether it is a state court system or a federal court system. The term Chief Justice was used from time immemorial during the colonial period right up to 1994 in Sabah and Sarawak. The same situation obtained in respect of the position of the head of the High Court in Malaya. Admittedly the term Chief Justice is a more venerable or dignified title that befits the head of a court system in the Commonwealth. The change in name was perhaps merely cosmetic to distinguish the post of Head of the Malaysian Judiciary that was styled in 1994 as the Chief Justice of the Federal Court commonly known as Chief Justice Malaysia. However title of the head of the Sabah and Sarawak High Court is an important element of the constitution of the court.

Question posed

The question that arises in relation to Article 161 E is whether the TYT had given his consent to the restyling of the title. We have reliably learnt, subject to confirmation from the Sabah Attorney General's office, that no consent was sought or was given.

2.8 Erosion of the status of the High Court in Sabah and Sarawak

The purpose of this note is to explain briefly the independent status of the High Court of Sabah and Sarawak which was agreed upon at independence in the 20 Point Memorandum and the recent slow and creeping erosion of that status through the loss of financial and administrative control.

2.8.1 Position at Malaysia Day

On the eve of Malaysia day, there were three High Court systems, that of Malaya, Singapore and Borneo with its own head styled as Chief Justice. Although the administration of justice fell under federal list, the High Court of Borneo was not subsumed or absorbed into a monolithic High Court system with jurisdiction in all the states of Malaysia. In their wisdom, the founding fathers of Malaysia allowed the High Court of Borneo to continue its separate existence pursuant to the agreement reached by the Inter-Governmental Committee. Thus under Article 121 a separate High Court system for Sabah and Sarawak is provided. This is essentially a continuation of the then existing High Court of Borneo.

2.9 Continued Special Status of High Court in Sabah and Sarawak

A number of statutory provisions still allude to the special status of the High Court in Sabah and Sarawak and special role of the Sabah and Sarawak state governments in connection therewith:

1. Article 161E of the Federal Constitution provides that no amendment can affect the "constitution and jurisdiction" (including appointment and removal of its judges) of the High Court in Sabah and Sarawak without the consent of the TYT of both states. This clearly a provision to "entrench" the special status of the High Court of Sabah and Sarawak.

2. The constitution also provides that the High Court in Sabah and Sarawak shall have its own principal registry. The Chief Ministers of both states have to be consulted on its location.

3. Before the Chief Judge of the High Court in Sabah and Sarawak is appointed, the Chief Ministers of the two states must be consulted. There is no similar provision for consultation with other states before the Chief Judge of Malaya is appointed.

2.10 Rationale for the Existence of the Separate High Court In Borneo

For a good number of reasons, the founding fathers of Malaysia had agree to the separate High Court system for Sabah and Sarawak.

It was tacit recognition that the different historical development had resulted in different needs and problems. They are presumably as follows;

1. These Borneo states are about one thousand miles from Kuala Lumpur High Court registry. The court system does not merely include High Court branches in major towns but includes numerous Sessions Courts and Magistrate courts in the interior areas. The wide geographical area requires a decentralized High Court system or in other words a separate system for better management and exercise of discretion.

2. Administration of justice is unlike the administration of government Departments with a central authority in a far off place like Kuala Lumpur. Conditions in Sabah and Sarawak vastly differ from more advanced towns of Semenanjung. Therefore some of the rules and practices that obtain there may not be suitable over here. One example would be the granting of bail. In Semenanjung, pursuant to court practice, banks passbooks or land titles are required to be deposited in courts before bail can be granted. This procedure would cause injustice in Sabah and Sarawak as there are no banks in some small towns. As for land titles, many families share a land title and for NCR (Native Customary Rights), titles are not issued. Fortunately the courts here, under the authority of its own circulars and Chief Judge, use their discretion and only requirepart or a fraction of the bail money to be deposited on a case by case basis.

3. Another recent example would be the establishment of the mobile courts. Due to the generally good road and communication systems in Semenanjung, the public have little trouble in accessing the courts. However, the reverse is true in Sabah and Sarawak. It was for this reason that the Chief Judge introduced the mobile courts.

4. In conclusion, the separate court system as provided in the Constitution cannot be viewed as a mere historical anomaly. Due to reasons of geography and history, there are sound reasons. In other jurisdictions of the Commonwealth, state court systems are common. For example, in Australia, India, and United States which have a huge geographical area each state in the federation has its own state court system.

2.11 Administration and Finance

Like in any other organization, administrative and financial control is essential for the betterment and smooth running of the courts in Sabah and Sarawak. The fact the Federal Constitution provided for the setting up of the "principal registry" in either Sabah or Sarawak means that courts are to be administered separately and independently. From the scheme of the Court of Judicature Act and Subordinate Court, the Chief Judge has administrative control and oversight of the courts here. This administrative role is envisaged to be exercised through the office of the Registrar of the High Court in Sabah and Sarawak. Otherwise the establishment of the "principal registry" as provided in the supreme law of the land would be completely meaningless. This was the position in the early days after the formation of Malaysia. However in recent years, the "principal registry" has been forced to divest itself of its administrative role through loss of financial control.

Suggestions

To correct this anomaly and allow the principal registry to perform its proper constitutional role, the financial and administrative powers which had been taken away over the years should be restored. This would allow the Chief Judge and Registrar to do better planning for the

development and efficient running of all the courts in Sabah and Sarawak. As a starting point in adhering to the spirit of the Inter Government Committee Report, the Legal Division of the Prime Mininster's Department (BAHEU) should be allowed to allocate completely separate funding for the running and management of the High Court of Sabah and Sarawak. At present all operation and development funds for the court in Sabah and Sarawak are managed and channelled through the office of the Chief Registrar of the Federal Court. If the present state of affairs continues, its status would degrade to that of a branch of the High Court of Malaya.

2.12 Suggestions for the improvement of the Judiciary

The suggestions that will be made here are in respect of judicial leadership, policy making process and the internal administration of the judiciary. Other suggestions such as better salary grades for Sessions Judges have been discussed in detail in a separate memorandum. Nonetheless, the issues that have given rise to these suggestions are no less important as they impact upon the general administration of law and justice in the country.

2.12.1 Collective leadership

The constituent courts of the Malaysian Judiciary are:

1. The Federal Court
2. The Court of Appeal
3. The High Court of Malaya
4. The High Court of Sabah and Sarawak

Each court is headed by its own Chief Justice. President or Chief Judge. Federal Constitution. Court of Judicature Act and Subordinate Courts Acts intend that the overall administration of each court is in the hands of its own head. For sake of practicality and cohesiveness. The Chief Justice of the Federal Court is also referred to as the Chief Justice of Malaysian or in other words as the Head of the Malaysian Judiciary (in Malay as the Ketua Hakim Negara) although such a designation is not legally provided for. Nonetheless over the years especially since time the post was held by Tun Eusoff Chin, practically all administrative powers in respect of judicial policy and administration has been vested in the office of the Chief Justice of Malaysia. This was not a good development for the administration of justice for two reasons. Firstly, the federal Constitution does not envisage a top-down hierarchy with the Chief Justice of Malaysia at the apex in respect of the overall management and the setting of judicial policy. The constitution had actually prescribed for

the creation of a head of each court styled Chief Judge or President for the other three courts. This simply means that a collective leadership of judiciary was envisaged by the framers of the constitution insofar as overall judicial policy and administration was concerned . Secondly, centralisation of power in the hands the Chief Justice of Malaysia would not be conductive to good administration or management. The Malaysian judiciary encompasses hundreds of courts throughout the country. The Chief Judges of the two High Courts are legally responsible for the administration of almost all the courts. The only exceptions are the Federal Courts and the Court of appeal. Therefore a top-down leadership emanating from the office of the Chief Justice in respect of overall judicial policy and administration for all the courts would certainly be deficient as it may not take into account the different needs and perspectives that prevail on the ground. It is therefore proposed that the Chief Justice of the Federal Court and the other Chief Judges including the President of the Court of Appeal provide a collective leadership. In practice, this means no decision on judicial policy or administration should be taken by the Chief Justice of the Federal Courts that affect the entire judiciary without proper and meaningful consultation with the President of the Court of Appeal and the Chief Judges of the High Courts.

2.12.2 Proposed decentralisation of the Chief Registrar's power

The Court of Judicature Act provides that the Chief Registrar shall be the principal administration officer of the Federal Court only. Neither the said Act nor any other law provides for the Chief Registrar to assume the role of an administrative supremo of the entire judiciary. However that is what had happened in practice. The law (Court of Judicature Act and Subordinate Courts Act) had envisaged that the Registrars of the High Court under the oversight of respective Chief Judges shall be directly responsible for the administration of the two High Courts and the lower courts. The reality on the ground is that the Chief Registrar's office overseas and controls every facet of court administration in a rigid top-down hierarchical style. Therefore mere lip service is accorded to the office of the High Court Registrar and that of the Chief Judge. In these circumstances, the Chief Registrar becomes. The actual superior officer of the Registrar instead of the Chief Judge. For better administration of justice and for sake of conformity with the law as well, it is proposed that the Chief Registrar should properly and meaningful consult the Registrars of the Hig Court before taking action on matters that concern their courts instead of merely issuing instructions.

2. 12.3 Special position of Sabah and Sarawak Courts

The High Court of Sabah and Sarawak as a court system had existed long before the formation of Malaysia. The Malaysia Agreement and Inter-government agreement guaranteed its status as an autonomous court system. Practically the only different was that appeals from its High Court branches would be heard by the then Federal Court. Its principal registry was maintained at Kuching. These guarantees were incorporated in the Federal Constitution and the Court of Judicature Act. Under Article 161 E no change can be effected to the status of the High Court of Sabah and Sarawak without the consent of the TYT. The Federal Constitution also provides that the judicial appointments in Sabah and Sarawak require the consultation of the Chief Judge of Sabah and Sarawak. In the Court of Judicature Act and Subordinate Court Act it is provided that any rule of court drafted by the Rules Committee that affects Sabah and Sarawak must have the assent of Chief Judge of Sabah and Sarawak. Therefore the Chief Judge and the Registrar of the High Court of Sabah and Sarawak are not mere figureheads but have been actually vested with authority to set judicial policy and oversea court administration. It is therefore legally incumbent on the Chief Registrar to consult the Chief Judge and Registrar before making any decision that the affects the administration of the courts in Sabah and Sarawak. These should include appointment and transfer of officers and staff, selection of officers for training courses and allocation of funds. Since the Chief Registrar's office is the conduit to obtain funds and posts from other important agencies such as the JPA, JPM and the Ministry of Finance, it is proposed that all meetings with these agencies include the Registrar of the High Court of Sabah and Sarawak. Otherwise it can be said that consultation on matters that affects the Sabah and Sarawak Courts would be meaningless. This step would also promote joint or collective leadership of the administrative component of the judiciary envisaged by the law.

3.0 Revision of the History On the Malaysian Formation In the School Syllabus

Parti Bersatu Sabah has set up a panel comprising experts to look key facts about the formation of Malaysia which had been left out of school textbook. The commiteee will come up with a submission for the Ministry of Education to do a revision of the history on the Malaysian formation syllabus.

The existing syllabus provided minimal treatment on the Malaysian formation, which should be taught in detail in the school curriculum beginning from the Malaysia Solidarity Consultative Committee (MSCC), Cobbold Commission Report, the 20 Points (for Sabah and 18-Points for Sarawak), the Inter-Governmental Committee (IGC) and their recommendations which led to the establishment of the Malaysia Agreement 1963 (MA63).

The facts on the formation of Malaysia were compressed only to a chapter and limited to a few pages in the school history books. This has resulted in the lack of understanding about Malaysia's founding among students and even civil servants. They become ignorant on the sacrifices of Sabahans and Sarawakians and what the leaders from East Malaysia had to go through during the process towards the birth of Malaysia. Before the Malaysia Agreement 1963 was formulated, there were a series of historical events that took place to make the country's formation possible. However, these facts, have been given either minimal details or none at all in the school syallibus.

The detailed studies of the formation of Malaysia and the recommended relevant syllibus to be included in the school texts books are being compiled. A copy of the said detail study will be made to available the State Committee upon completion.

Concluding Remarks.

We would like to clarify that although PBS focuses its submission to the above scope and as a political party whose core struggle is to protect the rights of Sabahans within the Federation of Malaysia, other Sabah rights and safeguards as envisaged by the forefathers which are enshrined in the Malaysia Agreement 1963 and other related documents are worth pursuing. PBS welcome and support the proposals in this submission by other parties and individual which pursue the restoration of genuine Sabah rights within the framework of Malaysia Agreement.

"PATRIOTISME ASAS PERPADUAN'.

Thank you.

YB Datuk Johnny Mositun, *JP*
Secretary General, Parti Bersatu Sabah