

**THEMATIC COMPILATION OF RELEVANT INFORMATION SUBMITTED BY  
MALAYSIA**

**ARTICLE 11 UNCAC**

**JUDICIAL AND PROSECUTORIAL INTEGRITY**

**MALAYSIA (EIGHTH MEETING)**

The Malaysian constitutional and legal framework to ensure the independence and integrity of the judiciary are provided for under the Federal Constitution and the Judicial Appointments Commission Act 2009 (Act 695). The superior court system of Malaysia has a three-tier superior court system:

- 1) the Federal Court- as the highest court of the country ;
- 2) the Court of Appeal -as an intermediary court between the Federal Court and the High Courts; and
- 3) the High Court of Malaya and the High Court of Sabah and Sarawak- as the lowest of the three-tier superior courts

**Independence and integrity of the Judiciary**

**a. Insulation from politics**

The Federal Constitution of Malaysia under Part IX (Art.121-131A) provides specific provisions to secure judicial independence from the control and interference of the executive and the legislature. The judicial power of the Federation is provided under Article 121(1) that there shall be two high courts of co-ordinate jurisdiction and status and they shall have jurisdiction and powers as may be conferred by or under federal law.

Article 127 of the Federal Constitution of Malaysia stipulates as follows:

The conduct of a judge of the Federal Court, the Court of Appeal or a High Court shall not be discussed in either House of Parliament except on a substantive motion of which notice has been given by not less than one quarter of the total number of members of that House, and shall not be discussed in the Legislative Assembly of any State.

**b. Contempt Of Court**

Article 126 of the Constitution confers on the courts the power to punish for contempt any person who, by word or deed, interferes with the administration of justice or challenges the dignity or independence of the courts.

**c. Judicial Immunity**

Judicial immunity is an aspect of judicial independence. In the performance of their **judicial functions (emphasis added)** all judges are immune from the law of torts and crime:-

- i. Section 6 (3) of the Government Proceedings Act 1956 provides no proceedings shall lie against the Government by virtue of Sec.5 in respect of anything done or omitted to be done by any person while discharging or purporting to discharge any responsibilities of a judicial nature vested in him, or any responsibilities which he has connection with the execution of judicial process.
- ii. Section 14 of the Courts of Judicature Act 1964 confers that no Judge or other person acting judicially shall be liable to be sued in any civil court for any act done or ordered to be done by him in the discharge of his judicial duty
- iii. The Defamation Act 1957 (Revised 1983) in section 11(1) confers absolute privilege on reports of judicial proceedings including pleadings, judgments, sentences or findings.
- iv. Article 122AB(1) of the Federal Constitution provides immunities for Judicial Commissioners but no explicit protection for other judges.

### **Appointment of judges of Federal Court, Court of Appeal and High Courts**

The Constitution provides the number of judges for the superior courts so that it is not easily possible for the government to pack the courts with political nominees. Under Articles 122, 122A and 122AA, currently the numbers are:

- i. The maximum number of judges for the Federal Court is eleven ( by PU(A)163/2009)
- ii. For the Court of Appeal, it is thirty-two. ( by the Constitution of the High Courts (Judges) Order 2006, PU (A) 384, 4 Oct. 2006)
- iii. The membership of the High Court in Malaya increased to sixty ( by PU(A) 164/2009)
- iv. In the High Court in Sabah and Sarawak the number increased to thirteen (by the Constitution of the High Courts (Judges) Order 2006, PU (A) 384, 4 Oct. 2006)

However in a contradictory move the Constitution gives power to the King to increase the number of superior court judges ( Refer to Articles 122(1), 122A(1) and 122AA(1))

### Article 122B

(1) The Chief Justice of the Federal Court, the President of the Court of Appeal and the Chief Judges of the High Courts and (subject to Article 122c) the other judges of the Federal Court, of the Court of Appeal and of the High Courts shall

be appointed by the Yang di-Pertuan Agong, acting on the advice of the Prime Minister, after consulting the Conference of Rulers.

(2) Before tendering his advice as to the appointment under Clause (1) of a judge other than the Chief Justice of the Federal Court, the Prime Minister shall consult the Chief Justice.

(3) Before tendering his advice as to the appointment under Clause (1) of the Chief Judge of a High Court, the Prime Minister shall consult the Chief Judge of each of the High Courts and, if the appointment is to the High Court in Sabah and Sarawak, the Chief Minister of each of the States of Sabah and Sarawak.

(4) Before tendering his advice as to the appointment under Clause (1) of a judge other than the Chief Justice, President or a Chief Judge, the Prime Minister shall consult, if the appointment is to the Federal Court, the Chief Justice of the Federal Court, if the appointment is to the Court of Appeal, the President of the Court of Appeal and, if the appointment is to one of the High Courts, the Chief Judge of that Court.

### **Appointment of Judicial Commissioners- Article 122AB Federal Constitution**

The Federal Constitution of Malaysia, as amended in 1963, provided for the first time the provision for the appointment of **judicial commissioners in the two High Courts of Malaysia**. Later in 1994, the method of appointment was amended in the following manner:

#### Article 122AB

- (1) For the dispatch of business of the High Court in Malaya and the High Court in Sabah and Sarawak, the Yang di- Pertuan Agong acting on the advice of the **Prime Minister after consulting the Chief Justice of the Federal Court, may by order appoint to be judicial commissioner** for such period or such purposes as may be specified in the order any person qualified for appointment as a judge of a High Court; and the person so appointed shall have power to perform such functions of a judge of the High Court as appear to him to require to be performed; and the appointment shall have the same validity and effect as if done by a judge of that Court, and in respect thereof he shall have the same powers and enjoy the same immunities as if he had been a judge of that Court.

Thus unlike the appointment of regular judges of the High Courts, the Prime Minister is not required to consult the Conference of Rulers (Majlis Raja- Raja) and the Chief Judge of the High Court concerned before tendering his advice to

the Yang diPertuan Agong as to the appointment of judicial commissioners in the High Court in Malaya and the High Court in Sabah and Sarawak. Furthermore, the appointment of the High Court Judges are subject to the consideration and report prepared by the Judicial Appointment Commission based on the criteria stipulated under the Judicial Appointment Commission Act 2009 (Act 695) apart from the criteria under the Federal Constitution. This report is for the purpose of advising the Prime Minister in considering the appointment of the High Court Judges.

Unlike the judges of the three superior courts, **the Federal Constitution does not limit the number of judicial commissioners to be appointed in the two High Courts of Malaysia.** The current numbers of Judicial Commissioners as of April 2016 is 37 out of which 33 judges are posted in High Court of Malaya and the rest are posted in High Court of Sabah and Sarawak.

## **Qualifications of judges of Federal Court, Court of Appeal and High Courts**

### Article 123

A person is qualified for appointment under Article 122B as a judge of the Federal Court, as a judge of the Court of Appeal or as a judge of any of the High Courts if-

- (a) he is a citizen; and
- (b) for the ten years preceding his appointment he has been an advocate of those courts or any of them or a member of the judicial and legal service of the Federation or of the legal service of a State, or sometimes one and sometimes another.

## **Tenure of office and remuneration of judges of Federal Court**

### Article 125

(1) Subject to the provisions of Clauses (2) to (5), a judge of the Federal Court shall hold office until he attains the age of sixty six years or such later time, not being later than six months after he attains that age, as the Yang di-Pertuan Agong may approve.

(2) A judge of the Federal Court may at any time resign his office by writing under his hand addressed to the Yang di-Pertuan Agong but shall not be removed from office except in accordance with the following provisions of this Article.

(3) If the Prime Minister, or the Chief Justice after consulting the Prime Minister, represents to the Yang di-Pertuan Agong that a judge of the Federal Court ought to be removed on the ground of any breach of any provision of the code of ethics prescribed under Clause (3b) or on the ground of inability, from

infirmity of body or mind or any other cause, properly to discharge the functions of his office, **the Yang di-Pertuan Agong shall appoint a tribunal in accordance with Clause (4) and refer the representation to it; and may on the recommendation of the tribunal remove the judge from office.**

(3a) Where a judge has committed a breach of any provisions of the code of ethics prescribed under Clause (3b) but the Chief Justice is of the opinion that the breach does not warrant the judge being referred to a tribunal appointed under Clause (4), the Chief Justice may refer the judge to a body constituted under federal law to deal with such breach.

(3b) The Yang di-Pertuan Agong on the recommendation of the Chief Justice, the President of the Court of Appeal and the Chief Judges of the High Courts may, after consulting the Prime Minister, prescribe in writing a code of ethics which shall also include provisions on the procedure to be followed and sanctions which can be imposed other than the removal of a judge from office under Clause (3), in relation to a breach of any provision of the code of ethics.

(3c) The code of ethics prescribed under Clause (3b) shall be observed by every judge of the Federal Court and every judicial commissioner.

(4) The tribunal appointed under Clause (3) shall consist of not less than five persons who hold or have held office as judge of the Federal Court, the Court of Appeal or a High Court, or, if it appears to the Yang di-Pertuan Agong expedient to make such appointment, persons who hold or have held equivalent office in any other part of the Commonwealth, and shall be presided over by the member first in the following order, namely, the Chief Justice of the Federal Court, the President and the Chief Judges according to their precedence among themselves, and other members according to the order of their appointment to an office qualifying them for membership (the older coming before the younger of two members with appointments of the same date).

(5) Pending any reference and report under Clause (3) the Yang di-Pertuan Agong may on the recommendation of the Prime Minister and, in the case of any other judge after consulting the Chief Justice, suspend a judge of the Federal Court from the exercise of his functions.

(6) Parliament shall by law provide for the remuneration of the judges of the Federal Court, and the remuneration so provided shall be charged on the Consolidated Fund.

(6A) Subject to the provisions of this Article, Parliament may by law provide for the terms of office of the judges of the Federal Court other than their remuneration.

(7) The remuneration and other terms of office (including pension rights) of a judge of the Federal Court shall not be altered to his disadvantage after his appointment.

(8) Notwithstanding Clause (1), the validity of anything done by a judge of the Federal Court shall not be questioned on the ground that he had attained the age at which he was required to retire.

**(9) This Article shall apply to a judge of the Court of Appeal and to a judge of a High Court as it applies to a judge of the Federal Court, except that the Yang di-Pertuan Agong before suspending under Clause (5) a judge of the Court of Appeal or a judge of a High Court other than the President of the Court of Appeal or the Chief Judge of a High Court shall consult the President of the Court of Appeal or the Chief Judge of that High Court instead of the Chief Justice of the Federal Court.**

(10) The President of the Court of Appeal and the Chief Judges of the High Courts shall be responsible to the Chief Justice of the Federal Court.

*Judges excluded from safeguards:* Rules about security of tenure laid down in Article 125 do not apply to several categories of judges and persons performing judicial functions. Among them are: the additional judge of the Federal Court appointed under Article 122(1A), Judicial Commissioners appointed for limited durations under Article 122AB, judges of Sessions and Magistrates Courts (who are answerable to the Judicial and Legal Services Commission under Article 138), Syariah court justices (who are appointed under state laws) and chairpersons of statutory tribunals (whose terms of service and tenure are derived from the enabling law that created the tribunal).

### **Establishment of the Judicial Appointments Commission in Malaysia**

The JAC was established under the **Judicial Appointments Commission Act 2009 (Act 695)** in relation to the appointments of judges of the superior courts, to set out the powers of the JAC, to uphold the continued independence of the judiciary and to provide for matters connected with the Judicial Appointments Commission. The Act is essentially to improve and compliment the constitutional method of appointing the judges of the superior courts; to ensure unbiased selection of judicial candidates for the consideration of the Prime Minister, who has the final say regarding the appointment of judges to the superior courts.

**Constitution of JAC.** Members of the JAC comprise the following:

- a) the Chief Justice of the Federal Court (Chairman)
- b) the President of the Court of Appeal
- c) the Chief Judge of the High Court in Malaya

- d) the Chief Judge of High Court in Sabah and Sarawak
- e) a Federal Court judge to be appointed by the Prime Minister; and
- f) four eminent persons, who are not members of the executive or other public service, appointed by the Prime Minister after consulting the Bar Council of Malaysia, the Sabah Law Association, the Advocates Association of Sarawak, the Attorney General of the Federation, the Attorney General of a State legal service or any other relevant bodies

The main functions of the JAC are stipulated under section 21 of Act 695 particularly to:

- 1) select suitably qualified persons who merit appointment as judges of the superior court for the Prime Minister's consideration;
- 2) receive applications from qualified persons for the selection of judges to the superior court; and
- 3) formulate and implement mechanisms for the selection and appointment of judges of the superior court.

#### **Selection criteria:**

Apart from the provisions of Article 123 of the Federal Constitution cited above, Section 23 of Act 695 has specified the following criteria:

- 1) integrity, competency and experience;
- 2) objective, impartial, fair and good moral character;
- 3) decisiveness, ability to make timely judgments and good legal writing skills;
- 4) industriousness and ability to manage cases well; and
- 5) physical and mental health.

#### **Selection procedure**

The Judicial Appointments Commission (Selection of Judges of the Superior Courts) Regulations 2009 or *Peraturan-Peraturan Suruhanjaya Pelantikan Kehakiman (Proses Pemilihan dan Kaedah Pelantikan Hakim-Hakim Mahkamah Atasan* in National Language) 2009, P.U.(A) 209/2009 provides a detailed and transparent procedure to be followed by the JAC in regards to the selection of Judges of Superior Courts.

The following procedure stipulated by the Regulation are as follows:

- 1) Application of the vacant posts in the High Courts and proposal from the designated personalities in respect of vacancies in the Federal Court and Court of Appeal.
- 2) Vetting and Screening of the application and proposal
  - a) the Secretary of the Commission who shall, inter alia, "vet the application or proposal that the applicant or candidate is qualified under Article 123 of the Federal Constitution";

b) the Secretary shall then send the names to four agencies, namely, the MACC, the Royal Malaysia Police, Companies Commission Malaysia and Department of Insolvency Malaysia- for verification of their educational qualification, financial position, tax payment record and credit, history as to arrest and conviction;

c) the Secretary then prepares a deliberation paper on each of the candidates about whom the relevant agencies have given satisfactory and positive reports for the consideration of selection by the Commission.

3) Selection of candidates by the Commission

The selection of candidates shall be made by “majority decision”(section 24(5)) i.e. on the basis of the majority votes received and the Commission shall select

a) not less than three persons for each vacancy in the High Court; or

b) not less than two persons for each vacancy where the vacancy is for judges of the superior courts other than the High Court.

4) The PM may require the Commission to recommend two more names for his consideration for appointments of office bearer positions to the 3 superior courts, namely, the Chief Justice of the Federal Court, the President of the Court of Appeal and the Chief Judge of the High Court of Malaya and the Chief Judge of the High Court of Sarawak and Sabah -and the judges of the Federal Court and the Court of Appeal, from the “reserve candidates”.

5) The PM then tenders his advice to the Yang di-Pertuan Agong after consultation with the Conference of Rulers.

### **Code of Conduct of Judges**

The Malaysia’s measure in implementing the provision under review is provided for under the **Judges ‘Code of Ethics 2009 P.U.(B) 201** which governs the conduct of all judges and to provide guidance to judges in setting and maintaining high standards of personal and judicial conduct.

Section 4(1) of the Judges’ Code of Ethic 2009 provides that “A judge shall comply with the provisions prescribed in this Code.” The code of conduct is under Part III, Paragraphs 5 - 12 of the Judges’ Code of Ethics 2009 as follows:

#### Paragraph 5- Upholding the integrity and independence of the judiciary

A judge shall exercise his judicial function independently on the basis of his assessment of the facts and in accordance with his understanding of the law, free from any extraneous influence, inducement, pressure, threat or interference, direct or indirect from any quarter or for any reason.

#### Paragraph 6- Avoiding impropriety and the appearance of impropriety in all judicial activities

(1) A judge shall act at all times in a manner that promotes integrity and impartiality of the judiciary.

(2) A judge shall not:-

- (a) allow any relationship to influence his judicial conduct or judgment;
- (b) lend the prestige of his judicial office to advance his or others' private interest; and
- (c) convey or permit others to convey the impression to any person that they are in a special position to influence him.

Paragraph 7- Performing judicial duties fairly and efficiently

- (1) The judicial duties of a judge shall take precedence over all his other activities.
- (2) A judge shall not participate in the determination of a case in which any member of the judge's family represents a litigant or is associated in any manner with the case.
- (3) A judge shall perform his judicial duties without bias or prejudice.
- (4) A judge shall dispose of all his judicial duties fairly, efficiently, diligently and promptly.
- (5) A judge shall refrain from giving any public comment about a pending or impending proceedings which may be heard before the judge's court in a manner which may suggest to a reasonable person the judge's probable decision in any particular case.
- (6) A judge shall not disclose or use any non-public information acquired in his judicial capacity for any purpose unrelated to his judicial duties.
- (7) A judge shall endeavour to diligently and efficiently hear and complete the cases in his court and promptly write his judgments.
- (8) A judge shall not conduct himself in a manner which is not befitting of a judge or which brings or is calculated to bring disrepute to his office as a judge.

Paragraph 8- Minimizing the risk of conflict with the judge's judicial obligations while conducting his extra-judicial activities

- (1) A judge shall ensure that his extra-judicial activities do not:-
  - (a) cast reasonable doubt on his capacity to act impartially as a judge; or
  - (b) interfere with the proper performance of his judicial duties.
- (2) A judge shall avoid close association with individual members of the legal profession, particularly those who practise in the judge's court, where such association might give rise to a reasonable suspicion or appearance of favouritism.
- (3) A judge shall refrain from any conduct as a member of any group, association or organization or participate in any public discussion which, in the mind of a reasonable person, may undermine confidence in the judge's impartiality with respect to any issue pending before the court.

(4) A judge shall not participate in any political activities or involvement and shall refrain from any conduct which may give rise to an appearance that the judge is engaged in political activity.

(5) Subject to proper performance of his judicial duties, a judge, with the written approval of the Chief Justice, may:-

(a) write, give lecture, teach and participate in activities concerning the law, the judicial system, the administration of justice and related matters;

(b) appear at a public hearing before an official body concerned with matters relating to the law, the judicial system and the administration of justice and related matters;

(c) serve as a member of an official body devoted to the improvement of the law, the judicial system, the administration of justice and related matters or as a member of a body approved by the Government of Malaysia;

(d) write or speak publicly on non-legal subjects and engage in historical, education, cultural, religious, sporting or social and recreational activities, if such activities are not detrimental to the dignity of the judicial office or do not otherwise interfere with the performance of his judicial duties in accordance with this Code; and

(e) participate in civic and charitable activities that do not reflect adversely on the judge's impartiality or interference with the performance of his judicial duties.

(6) A judge shall not be involved in charitable fund raising or membership solicitation.

(7) A judge shall not act in a manner which brings disrepute to his office as a judge.

(8) A judge shall not serve as the executor, administrator, trustee, guardian or in other fiduciary capacity, except for the estate, trust or person connected with a member of his family, if such service does not interfere with the proper performance of his judicial duties.

(9) A judge shall refrain from being engaged in any financial or business dealing which may interfere with the proper performance of his judicial duties or reflect adversely on his impartiality.

(10) A judge may receive compensation and reimbursement of expenses for his extra-judicial activities permitted by this Code, if such payments do not give the appearance of influencing him in the performance of his judicial duties or otherwise give an appearance of impropriety, provided that such compensation and reimbursement shall not exceed a reasonable amount that a person who is not a judge would receive for the same activities.

#### Paragraph 9- Declaration of assets

A judge shall, on his appointment or at any time thereafter as may be required by the Chief Justice of the Federal Court, declare in writing all his assets to the Chief Justice of the Federal Court.

#### Paragraph 10-Cessation of any connection with the firm

(1) A judge shall, on his appointment, cease to have any connection with the firm where he was practising as an advocate and solicitor prior to his appointment.

(2) For the purpose of subparagraph (1), the judge shall:-

- a. immediately relinquish all interest in the firm;
- b. ensure that he has no dealing with the firm or any member of the firm; and (c) ensure that his name is removed from the firm's name.

#### Paragraph 11- Administrative order or direction

A judge shall comply with any administrative order or direction issued by the Chief Justice of the Federal Court, the President of the Court of Appeal and the Chief Judges of the High Courts from time to time.

#### Paragraph 12- Complaint against judge

Any complaint against a judge who is alleged to have committed a breach of any provision of this Code shall be made in writing to the Chief Justice of the Federal Court.

#### **Establishment of Judges' Ethics Committee**

1. The Judges' Ethics Committee is set up under the Judges' Ethics Committee Act 2010 (Act 703) to carry out enquiry into complaints against a judge on breaches of the the Judges' Code of Conduct **in accordance to PART IV of the Judges' Code of Ethics 2009**

2. Jurisdiction of JEC: The Committee shall have jurisdiction in matters related to conduct and discipline of all judges other than removal of a judge from office under Clause (3) of Article 125 of the Federal Constitution (above cited). Sec.4 of Act 703 refers

3. Membership of JEC: Sec 5 of Act 703, refers.

a. Chairman- The Chief Justice of the Federal Court

b. Members- shall consist of persons who hold or have held office as the President of Court Appeal, Chief Judge of the High Court of Malaya, Chief Judge of the High Court of Sabah and Sarawak, Judge of the Federal Court, the Court of Appeal or a High Court as the Chief Justice of the Federal Court deems fit.

c. The appointment of the members shall be on ad hoc basis and members shall comprise of judges who are senior in the order of precedence to the judge who is the subject of a disciplinary proceeding.

4. Proceeding

Proceedings of the Committee shall be in camera (Sec 8 of Act 703 refers) and the decision of the majority (of members) shall be deemed to be the decision of the Committee. Sec 15(1) refers

#### 5. Decision

The decision of the Committee shall be final and **conclusive and shall not be challenged**, appealed against, reviewed, quashed or called in question in any court on any ground, and no court shall have jurisdiction to entertain or determine any suit, application, question or proceeding on any ground regarding the validity of such decision. Sec.15 (3) of Act 703 refers.

NOTE: In preparing a draft Code of Judicial Conduct (**The Bangalore Draft**) by the Judicial Group on Strengthening Judicial Integrity, references made to several existing codes included **the Judges' Code of Ethic**, prescribed by the Yang di Pertuan Agong on the recommendation of the Chief Justice, the President of the Court of Appeal and the Chief Judges of the High Courts in the exercise of powers conferred by Article 125(3A) of the Federal Constitution of Malaysia, 1994.

### **Training of Judges**

The **Judicial Academy (*Akademi Kehakiman*)** was set up as a training institute in 2012 to, inter alia, plan, organise and conduct training programmes and courses for judges of the superior courts. The objective of the Academy is to enhance judges' judicial skills in various dimensions of judge-craft. The Academy is headed by the Chief Justice of Malaysia as the Chairman and comprises the President of the Court of Appeal, the Chief Judge of Malaya, the Chief Judge of Sabah and Sarawak together with six judges of the Federal Court and High Court. The Academy receives its funding from the Judicial Appointments Commission (JAC). The JAC also acts as the Secretariat for the Academy. In 2012, a total of RM200,000.00 was allocated by the JAC for the setting up of the Academy and for the conduct of training courses and programmes for judges of the superior courts.

For the moment the Academy does not have its own premises. Hence, courses and programmes in 2012 had been conducted in a Government building located in Putrajaya. It is envisaged that funding will have to be sought from the government to build the Academy's own building and for it to have its own staff and training facilities. The course content of the training programmes are planned and coordinated by the Academy Director. The programmes and courses presently run by the Academy fall into the following categories:

#### **(i) Courses Conducted By Appellate Judge As Facilitators**

These are courses, usually held on weekends, conducted by judges from the Court of Appeal and Federal Court, in their capacity as facilitators, to train

judges in areas of the law mostly heard at the High Courts, and to address issues commonly raised in this forum. These courses are meant to be interactive where course participants are required to participate in the discussions and make oral and written presentations.

In the year 2012, a total of 84 judges attended 6 programmes conducted by the appellate judges under this category. The courses covered issues such as drug trafficking cases under section 39B of the Dangerous Drugs Act 1952, Injunctions, Election Petitions, Judicial Reviews and Appellate Interventions. In the year 2013, the following programmes were conducted:

- (a) Company Act;
- (b) How to deal with Cases Under Section 39B of the Dangerous Drugs Act 1952;
- (c) Appellate Intervention; and
- (d) Revision Appellate Judges Seminar.

#### **(ii) Seminars By Foreign Speakers**

Under this category, the Academy invites eminent foreign judges and speakers who are experts in their respective fields to conduct seminars/workshops and give talks in their specialised areas of the law. In 2012, three such seminars were organised by the Academy, namely, “Workshop on Implementing the International Framework for Court Excellence”, “Court Annexed Mediation: Shortcomings and Future Developments” and “Competition Law in Malaysia”; the latter was jointly organised by the Academy and the Malaysian Competition Commission. A total of 164 judges from all levels of the superior courts attended these lectures. In the year 2013, the following seminar were conducted:

- a. Dialogue Session Between the Honorable Society of Middle Temple and Malaysia Judiciary
- b. Construction Law: Issues and Challenges

#### **(iii) Outreach Programmes**

In view of the escalating number of ecological and environmental issues in the system, the Chief Justice conceived a programme which allowed judges to witness for themselves the harrowing destruction which had been caused to the environment. This Outreach Programme was also slanted towards engaging judges in some aspects of corporate social responsibility and strengthening their collegial harmony.

- a. Outreach Programmes in 2012 in Taman Negara, Cameron Highlands; and
- b. Kundasang and in 2013, in Pulau Gemia, Marang.

#### **(iv) Sponsoring Judges To Seminars Organised By Other Bodies/Institutions**

Under this category the Academy and JAC sponsor judges of the superior courts to attend courses organised by other local and international bodies or organisations. This is aimed at exposing judges to recent developments in the law and matters concerning the legal and judicial profession. One such programme was the “International Malaysian Law Conference” held from 26 to 28 September 2012 in Kuala Lumpur which was attended by 23 judges of the High Court. The Chief Justice of Malaysia, the President of the Court of Appeal and both the Chief Judges regularly attend these programmes. Their very presence continue to motivate members of the Judiciary to better equip themselves in dispensing justice. The next IMLC will be held in September 2016.

### **Subordinate Court Level**

Subordinate Courts in Malaysia are the Sessions Court, Magistrates Court, Penghulu Court and Juvenile Court. Response to the requirements of this article under review will focus only on the Sessions and Magistrates Courts as proceedings of anti-corruption matters are confined within the civil and criminal jurisdiction to these latter courts.

### **Appointment of judges of Subordinate Courts**

Unlike Judges of the Superior Courts highlighted above, judges of Subordinate Courts are not constitutional appointments but are part and parcel of the **Judicial and Legal Service** defined as public service under Article 132(1)(b) of the Federal Constitution, appointed by the Judicial and Legal Service Commission (Article 138 of the Federal Constitution).

Qualification for Judicial and Legal Service:

1. Citizen of Malaysia
2. Not less than 18 years of age
3. (i) Bachelor Law degree recognized by the government Institution of Higher Education or a qualification recognized as equivalent thereto; or  
(ii) Passed the Final Bar Examination
4. Pass Bahasa Malaysia/ Melayu at Sijil Pelajaran Malaysia Level or equivalent qualification recognized by the government

The appointment of judges (to positions of Sessions Court Judge or Magistrate) of Subordinate Courts level is being set out under the Subordinate Courts Act 1948 [Act 92].

1. Sessions Court

A Sessions Court is presided by a Sessions Court judge. A Sessions Court Judge (Malay: Hakim Mahkamah Sesyen) must be a member of the Judicial and Legal Service of the Federation. Section 60 of the Subordinate Court Act 92, refers. A Sessions Court judge is appointed by the Yang di-Pertuan Agong on the recommendation of the respective Chief Judge.

## 2. Magistrates Court

To qualify as a First Class Magistrate or *Majistret Kelas Pertama* in National Language), he must be a member of the Judicial and Legal Service of the Federation. In Malaysia, a First Class Magistrate for the Federal Territory is appointed by Yang di-Pertuan Agong on the recommendation of the Chief Judge whereas in each state, a First Class Magistrate is appointed by the State Authority on the recommendation of the respective Chief Judge. This is provided for under Section 78A of the Subordinate Courts Act 1948 [Act 92].

### Section 79 of the Subordinate Courts Act 1948 [Act 92]

The State Authority may appoint any fit and proper person to be a Second Class Magistrate in and for the state.

In the Federal Territory, a Second Class Magistrate is appointed by the Yang di-Pertuan Agong.

### **Code of Conduct (including Declaration of Assets) for Subordinate Court Magistrates and Judges**

Judges and magistrates of Subordinate Courts are subjected to the Public Officers (Conduct & Discipline) Regulations 1993

### **Training for Subordinate Court Judges and Magistrates**

A. Training for judges of Subordinate Courts are provided by the Judicial and Legal Training Institute (ILKAP). ILKAP has over 99 courses covering the following programmes:

1. Senior Management and Professional Programme
2. Prosecution Programme
3. Civil Programme
4. Civil Litigation Programme
5. Language Programme
6. Induction Programme

### B. Courses for Magistrates covers:

Character building, Magistrates' roles and jurisdiction, Ruled of Court 2012, court fee, recent amendments to the Criminal Procedure Code, summary trail conference, remand, inquest, Review, Exhibit (Criminal and Civil Cases), Types of Exhibits, Handling exhibits in court before trial, Handling exhibits in court

during trial, Handling exhibits after trial (exhibit disposal), Procedures of appeal and preparation of Manual Appeal Record and E-filing( Civil and Criminal cases), Techniques of recording proceedings in court and writing grounds of judgment, Effective practical writing of grounds of judgments (Civil and Criminal Cases), Procedures of criminal case management and trial, Court mediation process.

### C. Training curriculum:

- a) Judicial Ethics - Code of Ethics for Judges/ Judges' Ethics Committee Act/Principles of judicial officers ethic conduct policy. Applying ethical principles in and outside the office;
- b) Human Rights and/or Fair Trial Rights;
- c) ASEAN Instruments;
- d) International/Comparative Law and Conflict of Laws; and
- e) Continuing Judicial Education- updated development in laws and jurisprudence.

### **Transparency of Court Room Process**

The Malaysian courts are open and public, Section 15 of Courts of Judicature Act 1964, refers.

(1) The place in which any Court is held for the purpose of trying any cause or matter, civil or criminal, shall be deemed an open and public court to which the public generally may have access:

Provided that the court shall have power to hear any cause or matter or any part thereof in **camera** if the Court is satisfied that it is expedient in the interests of justice, public safety, public security or propriety or for other sufficient reason so to do.

(2) A Court may at any time order that no person shall publish the name, address or photograph of any witness in any cause or matter or any part thereof tried or held or to be tried or held before it, or any evidence or any other thing likely to lead to the identification of any such witness; and any person who acts in contravention of any such order shall be guilty of an offence and shall, on conviction liable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding three years or both.

(3) The Chief Registrar Office in 2011 had placed greater transparency to the judiciary system by placing monitoring technology system (CRT) in the courts to curb abuse of power and to encourage efficiency. The CRT records the trial proceedings and even during pre-trial case management.

## Measures against Conflict of Interest/Impartiality/Biasness of Judges

1. Section 417 (1) (a) of Criminal Procedure Code provides for power of High Court to transfer (criminal cases) whenever it is made to appear to the High Court **that a fair and impartial trial** cannot be had in any criminal Court subordinate to it, it may order that (aa) that any offence be tried by any Court not empowered under sections 121 to 126 but in other respects competent to try such offence; (bb) that any particular case or class of cases be transferred from a Criminal Court subordinate to it to any other such Criminal Court of equal or superior jurisdiction; or (cc) that any particular criminal case be transferred to and tried before the High Court.

2. Section 439 of Criminal Procedure Code provides that:

No Magistrates shall, except with the permission of the High Court to which an appeal lies from his Court, try any case to or in which he is a party or personally interested.

3. Recusal of trial judge for apparent biasness.

“The test favourable for ‘apparent bias’ or ‘real danger of bias test’ has been set out by the Federal Court ... However each case in which it is alleged that there arises a reasonable apprehension of bias will turn upon its own facts and be of little, if any, as precedent. (See “Residence Hotel and Resorts Snd Bhd v Seri Pacific Corp Sdn Bhd [2014] 10 MLJ 413 attached)

### **Accessibility of Court Judgements: Rules of Court 2012- Order 42**

#### Delivering judgment (O. 42, r. 1)

- i. Every judgment, after the hearing of a cause or matter in open Court, shall, subject to paragraphs (3) and (4), **be pronounced in open Court** either on the conclusion of the hearing or on a subsequent day of which notice shall be given to the parties.
- ii. Where a cause or matter is heard in Chambers, the Judge hearing it may, subject to paragraphs (3) and (4), pronounce the judgment in Chambers, or, if he thinks fit, in open Court.
- iii. Whenever a **written judgment is to be delivered, the Court may deliver it by directing copies thereof to be handed to the parties or their solicitors upon payment of the appropriate charges** therefor, and the original thereof signed by the Judge shall be filed.
- iv. When a Judge who has heard any cause or matter is unable through death, illness or other cause to pronounce judgment, the judgment written by him may be pronounced by any other Judge in open Court or in Chambers, as the case may be, and such other Judge may deliver it in Chambers by directing copies

thereof to be handed to the parties or their solicitors upon payment of the appropriate charges therefor, and the original thereof signed by the Judge who wrote it shall be filed.

Judgment in proceedings heard in camera (O. 42, r. 1A)

Where proceedings are heard in camera pursuant to any written law, any judgment pronounced or delivered in such proceedings shall not be available for public inspection except that the Court may, on such terms as it may impose, allow an inspection of such judgment by, or a copy thereof to be furnished to, a person who is not a party to the proceedings.

Inspection of judgment (O.42, r. 2A)

2A. Subject to rule 1A, a copy of every judgment delivered in any cause or matter heard in open

Court shall be **available for public inspection upon payment of the prescribed fee** and a copy thereof shall be handed to any member of the public upon payment of the appropriate charges therefor, and nothing in Order 60, rule 4, shall apply to this rule.

Entry of judgment in Cause Book (O. 42, r. 4)

The proper officer in the Registry shall enter in the cause book a minute of judgment or final order given or made by the Court.

**Other Sources of Court Decisions/Judgments to members of the public:-**

1. The Malaysian Court Homepage

This website contains Malaysian judicial information and links to recent judgments and superior courts rules and other related information, refer to [www.kehakiman.gov.my](http://www.kehakiman.gov.my)

2. The Official Portal of Attorney General's Chambers of Malaysia Refer to [www.agc.gov.my](http://www.agc.gov.my) <http://www.agc.gov.my>

3. Law Reports

Selected court cases are reported in any of three major law reports in Malaysia e.g. Malayan Law Journal (MLJ - 1932 to current), Current Law Journal (CLJ - 1982 to current) and All Malaysia Reports (AMR - 1992 to current). Lower courts judgments consisting the Magistrate Court and the Sessions are published online through e-Judgment, under the Reporting Unit, International Affairs and Reporting Division of the Chief Registrar's Office, Federal Court of Malaysia.