

Can Malaysia judge its judges?

Wednesday 30 January 2008, by [Correspondent\(s\)](#) (Date first published: 30 January 2008).

A Royal Commission in Kuala Lumpur expands to embarrass the bench, becoming a free for all in the process.

OUR CORRESPONDENT

A Royal Commission appointed to probe questions of political favoritism in the appointment of some top judges is threatening to spin out of control and envelop the entire Malaysian judiciary in charges of deceit, corruption and factionalism. Fingers are also being pointed at some of the would-be reformers in the Malaysian Bar Association.

The commission was appointed by the government last year after opposition leader Anwar Ibrahim made public an eight-minute segment of a 2002 videotape purporting to show a prominent lawyer discussing the appointment of top judges.

With Malaysia's courts often accused of being under the thumb of the country's political leaders, the commission's work offers up a tantalizing look into how the judiciary may be compromised by intervention from on high. It remains to be seen if there is any real appetite to rattle the skeletons in the judicial closet, however.

VK Lingam, the lawyer on the tape, is seen in conversation with Ahmad Fairuz Sheikh Abdul Halim, then the country's third-ranking judge who was in charge of most senior judges. The conversation seemed to indicate that Mahathir Mohamad, then the prime minister, was closely involved in the appointment of malleable judges. The videotape purports to show that some of Mahathir's closest cronies, particularly gaming tycoon Vincent Tan, were involved as well. Ahmad Fairuz later became chief justice of the Supreme Court, now called the Federal Court.

However, Mahathir's involvement has been largely pushed into the background as the case has gone well beyond Fairuz to reel in the names of other judges and attorneys, including some in the reform movement. The commission has widened its terms of reference to go well beyond the issue of a single lawyer – Lingam – discussing a limited number of judges to delve into wider allegations, including charges that the bar association is not above seeking favors itself.

A hearing by the commission turned into a free-for-all Monday when Lingam accused Robert Lazar, a lawyer representing the Malaysia Bar Council, of seeking Lingam's help to become an appellate court judge, bypassing the lower courts. Lazar denied the charge.

Anwar, who made the original tape public on September 20, has not been asked to testify, adding to suspicions over its independence. In response, Anwar held a press conference Monday to release a five-minute continuation of the original 14-minute tape, showing more purported judicial chicanery.

Commission chairman Haidar Mohd Noor described Anwar's revelation as "news" and questioned why he hadn't forwarded the tape earlier. In a press statement, Anwar said that "the decision by the commission to arbitrarily disallow me to testify would certainly lead one to the conclusion that some unseen hand is at work. This hand is so powerful that the commission will stop at nothing to prevent

me from giving evidence, even though the evidence concerned will definitely shed light on the testimony given so far. “

In one tape made public by the commission itself, Dzaidin Abdullah, who served as chief justice between 2000 and 2003, is implicated for accepting gifts and payments from Lingam. In addition, as an example of the factionalism in the court, Dzaidin was asked to explain yet another videotape, in which Lingam claimed that he hated his predecessor, Eusoff Chin, and that Chin had blocked his chances to become a candidate for state honors.

In the meantime, both Fairuz and Lingam have dodged all questions with a fusillade of excuses. Lingam has refused to acknowledge that it was his voice on tape although conceding that “it looks like me and sounds like me.” In a kind of half admission that it could have been, he said he was “bullshitting and bragging,” and that “this is my house. I’m in the privacy of my home,” he was quoted as saying by local reporters. “I can talk rubbish in my own home.” On other occasions, he has said he might have been drunk when he made the call.

Fairuz has also denied he was the person that Lingam was speaking to when the tape was recorded. Both Lingam and Mahathir repeatedly told investigators they had no recollection of the events on the tapes.

In the instance involving Dzaidin, Lingam was also said to have been videotaped by the son of a Chinese businessman alleging that he and Vincent Tan had given the former chief justice “the most expensive gift,” making it unlikely that Dzaidin could “attack us.” Lingam also acknowledged meeting Eusoff Chin in New Zealand, saying that “people, see you know more, like Eusoff Chin, because I met him in New Zealand.”

Lingam said that when he argued with Dzaidin in court, Dzaidin was polite to him.

“I have been sending cakes every Hari Raya (the feast day ending the Muslim fasting month). Vincent (Tan) has been sending. He can’t go and say he is very clean, correct or not?”

In the latest clip, according to local media, Lingam also says he was close to the late Court of Appeal President Wan Adnan Wan Ismail and repeated how he had “helped” former Chief Justice Ahmad Fairuz attain his position. “But he is sometimes a bit scared.” Lingam reportedly says on the tape. “I must play shadow from behind.”

“The whole inquiry puts the judiciary in absolute shame,” a senior lawyer told Asia Sentinel. “It’s all fault-finding and from hereon in the judiciary will continue its decline with no hope. This whole thing tarnishes lawyers and judges vis-à-vis the public.”

Malaysia’s judiciary has faced a long series of allegations over fairness and corruption. The independence of the court has been severely undermined since 1988 when Mahathir sacked the several top judges and effectively ended court autonomy.

The system largely remained under Mahathir’s control from that point onward. Some months ago, the Conference of Rulers, made up of the country’s nine sultans, stunned Prime Minister Badawi by refusing to ratify his candidate to become chief judge. The position remained vacant for several months. In addition, the Perak Sultan, Raja Azlan Shah, later made an unprecedented speech indirectly criticizing the judiciary.

Several recent cases, particularly the trial of three defendants for the brutal murder of Mongolian translator Altantuya Shaariibuu, have underscored the court’s problems. One of the defendants, Abdul Razak Baginda, is a close friend of Deputy Prime Minister Najib Razak, whose name has

surfaced during the trial but who has never been questioned. The case has droned on for seven months, raising suspicions that both prosecutors and defense would like to draw it out until it disappears. In addition, tycoon Eric Chia, a close friend of Mahathir's, was abruptly acquitted last year of criminal breach of trust involving the scandal-tainted Perwaja Steel Corp. The judge summarily shut down the trial after the prosecution presented its case.

Prime Minister Badawi came to power in 2003 promising to clean up corruption and depoliticize the judiciary. So far, however, he has made little progress. The current panel cannot compel witnesses to testify or interview those implicated although it is questionable how far the probe would go in any case.

P.S.

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