

Institutional Reform: Rebuilding of the nation must not be delayed | The Edge Markets



The Pakatan Harapan Manifesto has an entire chapter dedicated to institutional and political reform. It is the second of the coalition's five pillars to "rebuild this nation and fulfil the hopes so that we once again become a country that is envied by all". What difference has the Pakatan Harapan government made in this area and where has it not lived up to expectations? Here is a non-exhaustive summary.

Positive differences

1. Parliament

The reform of parliament started well with a distinguished choice for

Speaker, former Court of Appeal judge Datuk Mohd Ariff Md Yusof. Ariff is well-respected and has been trying to cultivate a new parliamentary culture and minimise the extent of unparliamentary behaviour during sessions.

More importantly, substantial reforms have been instituted to restore parliament's role as a check and balance on the other two pillars of democracy — the executive and the judiciary. Six parliamentary committees have been set up — Consideration of Bills, Budget, Defence and Home Affairs, Rights and Gender Equality, States and Federal Relations and Major Public Appointments. More committees to deal with issues such as the environment, international affairs and human rights are being planned. It is hoped that these committees will play their roles in scrutinising draft legislation as well as in maintaining oversight of the respective ministries.

An opposition member has now been appointed to head the important Public Accounts Committee, although this was temporarily in jeopardy when the former chairperson Datuk Seri Ronald Kiandee left Umno to join Bersatu.

There are also plans to revive the Parliamentary Services Act to provide autonomy to Parliament and to enable it to hire its own staff.

A sign that parliamentary reforms are proceeding quickly is that the Speaker has actually had to announce that reform efforts would be slowed down to enable members of parliament to adjust to the changes. He has also had to allay fears, including from within the executive, that parliament may become too powerful with the reforms. It is hoped that the executive appreciates that parliament was a weak rubber stamp during Barisan Nasional's tenure and that the recent measures are just little steps in restoring parliament to its rightful role as the third pillar of government.

2. Elections and Election Commission

The Election Commission has been completely rejuvenated with the appointment of lawyer Azhar Harun as the chairperson as well as other new Commissioners. It is heartening to see fresh faces in the commission, including the youngest commissioner in history, Zoe Randhawa. The newly minted Election Commission has shown a refreshing independence, calling out both the government and the opposition for election offences.

The Election Commission has also been taking steps to clean up the electoral roll and plans to reform election laws, particularly to make the use of government machinery for election campaigning an offence.

The Election Commission has been developing new guidelines for redelineation exercises to ensure that they abide by the constitution. It has also been engaging actively with political parties and civil society organisations.

A special Electoral Reforms Committee has also been set up to examine the electoral system as a whole and to make recommendations. These include examining the first-past-the-post system and whether political parties should be registered under the Election Commission instead of the Registrar of Societies.

3. Judiciary

The judiciary has made some headway under the leadership of Chief Justice Tan Sri Richard Malanjum, who has just retired.

He instituted a collegiate style of governance among the four top judges. He also implemented a system of e-balloting for the empanelling of judges in the appellate courts to ensure that there can be no allegations that certain judges are selected to hear certain appeals. He has engaged

more with the Bar and has established a consultative committee on the promotion of judges. The judiciary has also been proactive in staying up to date with legal matters, with the holding of various judicial dialogues and colloquiums, including on human rights issues such as the freedom of expression.

During Malanjum's tenure, the judiciary also worked with the United Nations Development Programme to produce a report on the International Framework for Court Excellence Malaysia 2018, which focused on key areas such as court leadership, resources, procedures as well as building public trust and confidence.

It is also very encouraging to see the historic appointment of the first woman chief justice, Tengku Maimun Tuan Mat. We look forward to further progress in the judiciary under her leadership.

A Royal Commission of Inquiry is due to be held to investigate allegations of interference with judicial decisions and corruption. This is a golden opportunity to strengthen the independence of the judiciary.

The Judicial Appointments Commission (JAC) should also be made more representative and not only consist of judges and former judges. Currently, its recommendations are not binding on the prime minister and constitutional amendments are necessary to strengthen the position of the JAC and to remove the prime minister's absolute discretion over the appointment of judges.

Further areas for improvement

The following reforms are crucial for Malaysia and must be implemented without delay.

1. Independent Police Complaints and Misconduct Commission (IPCMC)

An independent commission to investigate complaints of misconduct against police was proposed as far back as 2005 by a Royal Commission of Inquiry, following a string of deaths in custody. Prime Minister Tun Dr Mahathir Mohamad announced last September that the

IPCMC would be set up and this was welcomed by then deputy inspector general of police Tan Sri Noor Rashid Ibrahim, who said that the commission would "ultimately enable us to deliver a better service for the public". Inspector-General of Police Tan Sri Mohamad Fuzi Harun also agreed to the IPCMC, provided that some of the police's conditions were taken into account, such as the presence of a police officer in the commission and for police welfare to be considered.

However, six months after Mahathir's announcement, the IPCMC has yet to materialise. In March, Home Minister Tan Sri Muhyiddin Yassin said that the government must obtain further feedback and views and that there was a fear of bias in the formation of the commission. Fuzi now says that the police do not want to hand over power to the IPCMC to take disciplinary action.

It is important to consult with the police further and to allay their fears of the IPCMC. From our research, we believe that all the concerns can be addressed. For instance, a two-tier system could be devised where disciplinary charges can be referred back to the police for less serious offences and to a disciplinary tribunal jointly constituted by IPCMC members and Police Force Commission members for more serious offences.

There have been serious allegations of misconduct by the police. Deaths in custody have still occurred in the last year. There have also been troubling allegations of enforced disappearances and cover-ups in the discovery of human trafficking camps.

This state of affairs cannot be allowed to continue unchecked and the

setting up of the IPCMC is one of the most immediate and crucial reforms that must be undertaken.

2. Term limits

Pakatan Harapan has promised a two-term limit for the prime minister and chief ministers of states. This is a simple reform involving a constitutional amendment that must be carried out without delay. Malaysia was extremely fortunate that we were able to work together to vote out the Barisan Nasional government and thereby remove Datuk Seri Najib Razak as our prime minister. If that had not occurred, it is likely that Najib would still be our prime minister today, despite the facts of the 1MDB scandal becoming widely known since 2015.

We can never again be left in such a situation without any recourse.

All prime ministers, chief ministers and menteri besar must be subject to term limits as an additional safeguard against the dictatorial tendencies of any leaders.

3. Separating the powers of the Attorney General and Public Prosecutor

This is also an important manifesto promise. We saw during the final years of Najib's administration how the executive-appointed attorney general, who was also the public prosecutor, cleared Najib of all wrongdoing, despite glaring evidence to the contrary. He also refused to sign requests of mutual assistance to enable the Malaysian Anti-Corruption Commission to seek legal assistance from foreign governments to continue its investigations on the missing funds from 1MDB.

It is vital that the public prosecutor be independent from the office of the attorney general to prevent any potential conflicts of interest in the

future.

4. Anti-corruption measures

The government has launched the National Anti-Corruption Plan, which contains progressive measures to combat corruption, including the imposition of term limits and the separation of the prosecution function from the attorney general's role, as discussed above. If all the measures are carried out as stated in the plan, they would go a long way towards addressing corruption.

To properly combat corruption, the MACC also has to be strengthened. The plans to make the appointment process for commissioners more independent and overseen by a parliamentary select committee must be carried out.

Ultimately, the MACC should be made a constitutional body in order for them to be really effective and independent. It has been recommended that an Independent Anti-Corruption Commission be created under the constitution, with a separate body, the Anti-Corruption Agency, carrying out investigations and reporting to the commission.

To enable the MACC to properly gather evidence, it is also necessary to amend and strengthen the Witness Protection Act and Whistleblower Act.

5. Appointment process for key institutions

While progressive and bold appointments have been made to key institutions such as the Election Commission, the judiciary and the Attorney General's Chambers, these appointments are still made entirely at the discretion of the executive. While a parliamentary committee has been set up to scrutinise major public appointments, it is still unclear how this committee will function.

It is important that the process for such appointments be made more transparent and accountable. Appointments to key institutions such as the Election Commission, the Malaysian Anti-Corruption Commission, the Judicial Appointments Commission and the Malaysian Communications and Multimedia Commission should be subject to open competition where candidates must be interviewed by a panel. Any such appointments should also contain safeguards and ministers should not have the power to revoke appointments unless there is reasonable cause.

6. Institutional Reforms Committee Report

Finally, as a member of the Institutional Reforms Committee (IRC) that was formed shortly after Pakatan Harapan took power, I would like to see the IRC's report, which was submitted last July to the prime minister, made public.

I was alarmed to hear that some ministers have not even had sight of the report. This has resulted in unnecessary replicating of work that has been done by the IRC, which is a possible reason for the delay in implementing reforms. In any event, the public has a right to know of the reforms proposed and it must be allowed to present its feedback. It is indeed frustrating to have to keep raising this issue with no positive response from the government.

Datuk Ambiga Sreenevasan is an eminent lawyer and public interest figure