THE ESTABLISHMENT OF ONE HIGH COURT FOR MALAYSIA: A PIPE DREAM OR A POSSIBILITY?

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Abstract

On 9 July 1963, the Malaysia Agreement was signed in London for the formation of Malaysia, which would consist of among others, the Federation of Malaya, Sabah and Sarawak. Malaysia officially came into being as a sovereign nation on 16 September 1963. The 1957 Federal Constitution (which hitherto only applied to the Federation of Malaya) was then extensively amended to make it into a Federal Constitution for Malaysia. However, many aspects of the judicial and legal system as it was before the formation of Malaysia were maintained, as a compromise for the states of Sabah and Sarawak to join Malaya and become the Federation of Malaysia. On the advent of the formation of Malaysia, the Cobbold Commission was of the view that due to the distance between West and East Malaysia, there should be a separate High Court in the Borneo territories presided over by its own Chief Justice, with appeals going to a Federal Supreme Court for the whole of Malaysia. The two High Courts in Malaysia have remained in place until now, almost 60 years later. This paper seeks to explore whether there is still a need for there to be two High Courts in Malaysia, and whether there is at least the possibility of establishing a single High Court for the whole of Malaysia in place of the current two High Courts of co-ordinate jurisdiction and status in Malaysia.

Keywords: High Court in Malaya – High Court in Sabah and Sarawak – co-ordinate jurisdiction and status – constitution of High Court – Malaysia

I INTRODUCTION

On 9 July 1963, the Malaysia Agreement was signed in London for the formation of Malaysia, which would consist of among others, the Federation of Malaya, Sabah and Sarawak.[1] Malaysia officially came into being as a sovereign nation on 16 September 1963. The 1957 Federal Constitution (which hitherto only applied to the Federation of

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[1] Singapore was initially part of the newly formed Malaysia in 1963, but left the Federation in 1965: see Mohamed Suffian, *Tun Mohamed Suffian's An Introduction To The Constitution of Malaysia* (Pacifica Publications, 3rd edn, 2007) 14.

Malaya) was then extensively amended to make it into a Federal Constitution for Malaysia. However, many aspects of the judicial and legal system as it was before the formation of Malaysia were maintained, as a compromise for the states of Sabah and Sarawak to join Malaya and become the Federation of Malaysia.

One of these enduring aspects, which is also perhaps one of the most unique and peculiar aspect of Malaysia's judicial system, is the setting up of two High Courts of co-ordinate jurisdiction and status when Malaysia was formed. On the advent of the formation of Malaysia, the Cobbold Commission was of the view that due to the distance between West and East Malaysia, there should be a separate High Court in the Borneo territories presided over by its own Chief Justice, with appeals going to a Federal Supreme Court for the whole of Malaysia.[2] Therefore, the formation of two High Courts in Malaysia was largely for geographical reasons. Following therefrom, by *Section 13(1) of the Malaysia Act 1963*, *Article 121* was inserted in the Federal Constitution to provide for the constitution and the jurisdiction of the High Courts. *Article 121(1)* provided, among others, that there shall be two High Courts of co-ordinate jurisdiction and status, namely one in the States of Malaya, which shall be known as the High Court in Malaya; and one in the Borneo States, which shall be known as the High Court in Borneo (later re-named the High Court in Sabah and Sarawak).

The two High Courts in Malaysia have remained in place until now, almost 60 years later. The two High Courts give rise to various legal conundrums with no clear resolution, for example the inability to transfer cases between the High Court in Malaya and the High Court in Sabah and Sarawak,[3] the use of different languages in both these courts, separate legal profession for West Malaysia, Sabah and Sarawak respectively, and different laws on the same subject matter between East and West Malaysia on issues such as limitation, the application of English laws, interpretation and revision of laws. For example, there are three laws on the legal profession in Malaysia: the *Legal Profession Act 1976*, the *Advocates Ordinance 1953* in Sabah and the *Advocates Ordinance 1953* in Sarawak. The *Advocates Ordinance 1953* in Sabah prohibits advocates and solicitors from West Malaysia and Sarawak from practising in Sabah. Similarly, the *Advocates Ordinance 1953* in Sarawak prohibits advocates and solicitors from West Malaysia and Sabah from practising in Sarawak. All this has led to confusion and inconsistency in the application of the law between East and West Malaysia.[4]

This paper therefore seeks to explore whether there is still a need for there to be two High Courts in Malaysia, and whether there is at least the possibility of establishing a single High Court for the whole of Malaysia in place of the current two High Courts of co-ordinate jurisdiction and status in Malaysia. For the purpose of this research, a qualitative research method is adopted. The data collection method is document analysis

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2 See paragraph 159 of the Cobbold Commission Report.

3 See for example *Fung Beng Tiat v Marid Construction Co.* [1996] 2 MLJ 413 and *The Board of Trustees Of The Sabah Foundation & Anor v The Board Of Trustees of Syed Kechik Foundation & Ors; Syed Salam Albukhary & Ors (Discovery Defendants)* [2009] 1 LNS 799.

4 For a more detailed discussion on the problems associated with the system of two High Courts in Malaysia, see Ramalingam, S., Sabaruddin, J. S., & Dhanapal, S. *The Legal and Practical Issues Related to the System of Two High Courts in Malaysia*. Asian Journal of Law and Policy Vol 3 No 1 (January 2023) 1–19. https://doi.org/10.33093/ajlp.2023.1. eISSN: 2785-8979. MMU Press.

consisting of both primary and secondary sources such as the Federal Constitution, Federal Acts of Parliament, textbooks, journal articles, published law reports, online articles, media reports, and case law.

II THE JUDICIARY

Article 121(1) establishes two High Courts of co-ordinate jurisdiction and status, namely one in the States of Malaya, which shall be known as the High Court in Malaya; and one in the Borneo States, which shall be known as the High Court in Sabah and Sarawak. However, although there are two High Courts in Malaysia, there are several branches of the High Court in different states.[5] The location of the High Court will then determine whether it is a branch of the High Court in Malaya or the High Court in Sabah and Sarawak. The local jurisdiction of the High Court in Malaya is the territory comprising of the states of Malaya namely Johor, Kedah, Kelantan, Melaka, Negeri Sembilan, Pahang, Penang, Perak, Perlis, Selangor, Terengganu and the Federal Territories of Kuala Lumpur and Putrajaya. In the case of the High Court in Sabah and Sarawak, the territory comprises the states of Sabah, Sarawak and the Federal Territory of Labuan.[6]

Appeals from both High Courts lie in the Court of Appeal, and thereafter to the apex court in Malaysia known as the Federal Court. The current civil court system in Malaysia may roughly be divided into the superior courts which comprise of the Federal Court, the Court of Appeal and the High Courts in Malaya and in Sabah and Sarawak; and the subordinate courts which consist of the Sessions Court and the Magistrates' Court.[7] Figure 1 sets out the current hierarchy of courts in Malaysia which is retrieved from the Malaysian Judiciary's website:

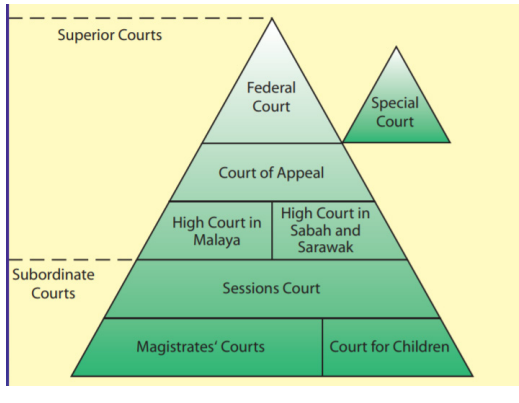

Figure 1: Hierarchy of Malaysian courts

Source: Malaysian Judicial Structure, retrieved from: http://www.kehakiman.gov.my/sites/default/files/document3/POJ-LAPORAN%20TAHUNAN/ENGLISH/IA-PT2.pdf

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5 See for example *Sova Sdn Bhd v Kasih Sayang Realty Sdn Bhd* [1987] 1 LNS 55.

6 See the Courts of Judicature Act 1964, s 3.

7 The Malaysian Judicial Structure, retrieved from: http://www.kehakiman.gov.my/sites/default/files/document3/POJ-LAPORAN%20TAHUNAN/ENGLISH/IA-PT2.pdf

Figure 2 sets out the current organization chart of the judiciary in terms of its administration, which is also retrieved from the Malaysian Judiciary's website:

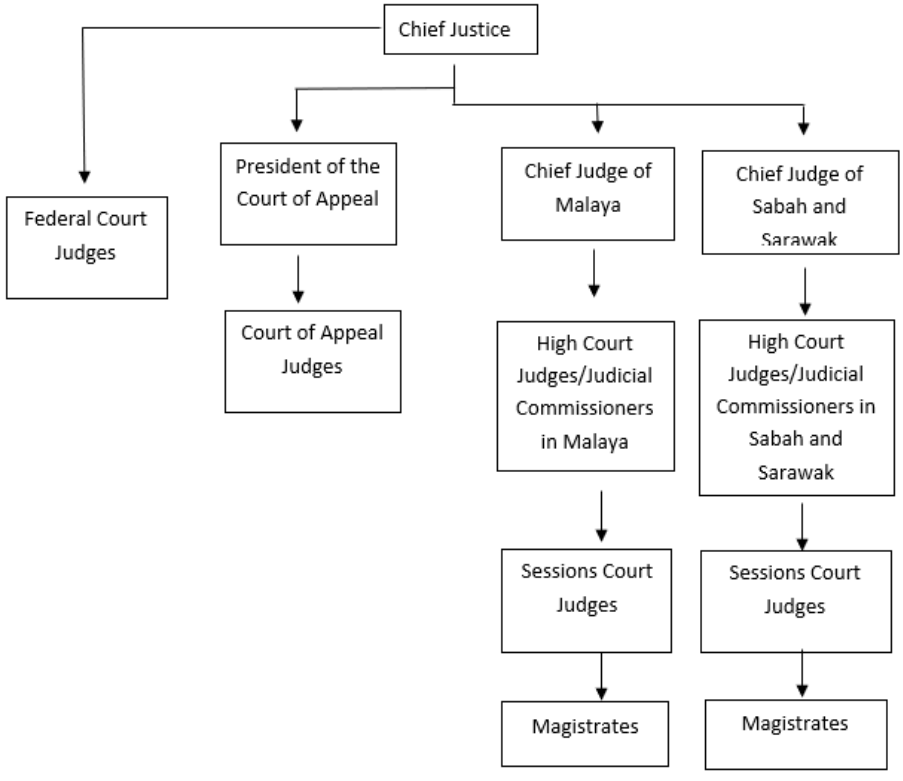

Figure 2: Organisation Chart of the Judiciary (Administration)

Source: Malaysian Judicial Structure, retrieved from: http://www.kehakiman.gov.my/sites/default/files/document3/POJ-LAPORAN%20TAHUNAN/ENGLISH/IA-PT2.pdf

A *The Cobbold Commission Report*

The Cobbold Commission was of the view that due to the distance between East and West Malaysia, there should be a separate High Court in the Borneo territories presided over by its own Chief Justice, with appeals going to a Federal Supreme Court for the whole of Malaysia.[8] It was also recommended that Judges of the Malayan High Court be made available to sit as Judges of the Borneo High Court as and when required and *vice versa*.[9] The Malayan members of the Commission[10] made further recommendations on the judiciary i.e. that there should be one Supreme Court for the Federation of Malaysia

[8] See paragraph 159 of the Cobbold Commission Report.
[9] Ibid.
[10] Dato' Wong Pow Nee and Enche M. Ghazali Bin Shafie.

with unlimited jurisdiction, appellate and original, throughout the Federation.[11] The High Court in Borneo should have unlimited original jurisdiction in all matters arising in the area,[12] and it should also be a court of appeal.[13]

It is clear from the recommendations of the Cobbold Commission that the establishment of two separate High Courts was due to the distance between East and West Malaysia. It is important to point out that this recommendation appears to have come from the members of the Cobbold Commission themselves, and not from representations made by the people of Sabah and Sarawak. If one reads the Cobbold Commission Report, one would see evidence and representations presented by the people of Sabah and Sarawak on issues such as immigration[14] and citizenship.[15] This is absent on the recommendation for the establishment of the High Court in Borneo (as it then was). Therefore, there is some doubt as to whether the people of Sabah and Sarawak themselves wished for a separate High Court. What is abundantly clear is that on record, the High Court in Sabah and Sarawak was established due solely to geographical reasons.

Another important recommendation is that the Commission clearly envisaged that the qualifications of the judges for both the High Courts were to be the same since it was recommended that judges may interchangeably sit in the High Court in Malaya as well as the High Court in Sabah and Sarawak. Therefore, in short, the Cobbold Commission recommended two exact same High Courts for East and West Malaysia respectively, separate only for geographical reasons.

B *The Inter-Governmental Committee Report*

The recommendations on the judiciary are found in paragraph 26 of the Inter-Governmental Committee Report. It stipulates that there shall be a Supreme Court of Malaysia for the whole of Malaysia in Kuala Lumpur. Normally at least one of the judges of the Supreme Court should be a judge with Bornean judicial experience when the court is hearing a case arising from a Borneo State; and it should normally sit in a Borneo State to hear appeals in cases arising in that State. What is 'Bornean judicial experience' is not spelt out in the report. One author opines that what this must mean is a judge who has either served in the High Court in Sabah and Sarawak or who has practised before that High Court, i.e. someone who has 'Sabah or Sarawak connections'.[16]

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11 See paragraphs 213 and 236(b)(i) of the Cobbold Commission Report.

12 Ibid.

13 Ibid.

14 See for example paragraph 148(g) of the Cobbold Commission Report.

15 See for example paragraph 148(k) of the Cobbold Commission Report.

16 Fong, J. C. *Constitutional Federalism in Malaysia*. (2nd Edition) (2016). Kuala Lumpur: Thompson/Sweet & Maxwell Asia, p 159. Section 2 of the Advocates Ordinance 1953 of Sabah defines a person with 'Sabah connections' as someone who was (a) born in Sabah or the Federal Territory of Labuan; (b) is ordinarily resident in Sabah for a continuous period of five years or more; or (c) domiciled in Sabah. Section 2 of the Advocates Ordinance 1953 of Sarawak defines a person with 'Sarawak connections' as someone who was (a) born in Sarawak; (b) is ordinarily resident in Sarawak for a continuous period of five years or more; or (c) domiciled in Sarawak.

The Inter-Governmental Committee also recommended that there should be separate High Courts for East and West Malaysia respectively.[17] Therefore, the Inter-Governmental Committee followed the recommendations of the Cobbold Commission, and preserved the position of there being one High Court for West Malaysia and one High Court for East Malaysia, as was the position before the formation of Malaysia. Each of the High Courts should have unlimited original jurisdiction and such appellate and revisionary jurisdiction over inferior courts. The High Court of the Borneo States should consist of a Chief Justice and not less than four and not (unless the Federal Parliament provides otherwise) more than eight Puisne Judges. The Chief Justice of the High Court of the Borneo States should be appointed by the Yang di-Pertuan Agong on the advice of the Prime Minister of Malaysia, after consulting the Conference of Rulers, the Chief Justice of Malaysia, the Chief Justices of the High Courts and the Chief Ministers of the Borneo States. The Puisne Judges of the High Court of the Borneo States should be appointed by the Yang di-Pertuan Agong on the advice of the Prime Minister, after consulting the Conference of Rulers, the Chief Justice of Malaysia and the Chief Justice of the Borneo States.

The qualifications for appointment as a judge of the Supreme Court or any of the High Courts should be as provided in the existing Federal Constitution.[18] It was also recommended that the Yang di-Pertuan Agong be empowered to transfer a Puisne Judge from one High Court to another. The provisions establishing the High Court of the Borneo States and providing for the appointment and removal of judges and for the court's jurisdiction may not be repealed or amended without the concurrence of the Governments of the Borneo States. Judicial Commissioners in the Borneo States should be appointed on the lines of the existing *Section 10(i)(b) of the Sarawak, North Borneo and Brunei (Courts) Order-in-Council* subject to the following two modifications; firstly that there should be two methods for the appointment of Judicial Commissioners i.e. by the Yang di-Pertuan Agong on the advice of the Chief Justice of Malaysia; and by the Head of State of North Borneo or Sarawak on the advice of the Chief Justice of the High Court; and secondly, Judicial Commissioners should be appointed only from among persons qualified under *Section 4(1) of the Advocates Ordinances of North Borneo and Sarawak* to practise as advocates before the High Court.

C *Amendments to the Federal Constitution and the Judiciary today*

Following the recommendations of the Cobbold Commission and the Inter-Governmental Committee Report, various amendments were made to the Federal Constitution on the judiciary.

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[17] In this paragraph the term 'Borneo States' could include Brunei; see (*) footnote to paragraph 26 of the Inter-Governmental Committee Report.

[18] Namely Article 125(1) on retirement age, Article 125(3) on removal of judges and Article 125(5) on suspension of judges.

1 *The establishment of two High Courts*

By *Section 13(1) of the Malaysia Act 1963*, *Article 121* was inserted in the Federal Constitution to provide for the constitution and the jurisdiction of the High Courts. *Article 121(1)* provided, among others, that there shall be two High Courts of co-ordinate jurisdiction and status, namely one in the States of Malaya known as the High Court in Malaya, with its principal registry in the States of Malaya as the Yang di-Pertuan Agong may determine; and one in the Borneo States known as the High Court in Borneo (later re-named the High Court in Sabah and Sarawak) with its principal registry at such place in the States of Sabah and Sarawak as the Yang di-Pertuan Agong may determine. In determining where the principal registry of the High Court in Borneo is to be, the Yang di-Pertuan Agong shall act on the advice of the Prime Minister, who shall consult the Chief Ministers of the Borneo States and the Chief Justice (now Chief Judge) of the High Court in Borneo.[19]

Although there are two High Courts in Malaysia, there are several branches of the High Court in different states. In *Sova Sdn Bhd v Kasih Sayang Realty Sdn Bhd*,[20] it was held as follows:

> *It is quite obvious that in creating a branch of the High Court in Malaya in each state, the legislature had two things in mind:*
>
> *(i) to enable the parties of a civil suit to have easy access to a branch of the High Court in Malaya located in a state where either the plaintiff or the defendant resides. When a person is sued for breach of contract or for that matter a tortious act when the breach or the tort was committed in the state where he resides, it is certainly unreasonable to require him to travel all the way, say, to Kuala Lumpur to defend himself…*
>
> *(ii) the obvious reason for the setting up of a branch of the High Court in Malaya in every one of the 11 states is to facilitate the disposal of cases in Malaya and to cut down, even if it is not yet possible to obliterate, the backlog of cases pending in any one or more of the branches of such High Court.*

The location of the High Court will then determine whether it is a branch of the High Court in Malaya or the High Court in Sabah and Sarawak. The local jurisdiction of the High Court in Malaya is the territory comprising of the states of Malaya namely Johor, Kedah, Kelantan, Melaka, Negeri Sembilan, Pahang, Penang, Perak, Perlis, Selangor, Terengganu and the Federal Territories of Kuala Lumpur and Putrajaya. In the case of the High Court in Sabah and Sarawak, the territory comprises the states of Sabah, Sarawak and the Federal Territory of Labuan.[21]

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19 See of the Malaysia Act 1963, s 13(4) and the Federal Constitution, Art 121(4).

20 [1987] 1 LNS 55.

21 See the Courts of Judicature Act 1964, s 3.

The High Court has two types of jurisdictions: original and appellate. Basically, the original jurisdiction of the High Court includes the jurisdiction to hear criminal and civil cases. The original jurisdiction of the High Court is unlimited in the sense that it may award a maximum sentence in criminal cases and in civil cases it may decide on matters where the claim exceeds RM1,000,000.[22] *Section 22 of the Courts of Judicature Act 1964* describes the criminal jurisdiction of the High Court to include offences committed (a) within its local jurisdiction, (b) on the high seas on board of a ship or on an aircraft registered in Malaysia, (c) by a citizen or a permanent resident of Malaysia on a ship or on an aircraft, or (d) by any person on the high seas where the offence is a piracy by the law of nations.

Section 23(1) of the Courts of Judicature Act 1964 states that the High Court shall have jurisdiction to try all civil proceedings where - (a) the cause of action arose; (b) the defendant or one of several defendants resides or has his place of business; (c) the facts on which the proceedings are based exist or are alleged to have occurred; or (d) any land the ownership of which is disputed is situated. *Section 24 of the Courts of Judicature Act 1964* allocates the specific jurisdiction of the High Court to include (a) jurisdiction in divorce and matrimonial cases, (b) jurisdiction in matters of admiralty which is similar to the jurisdiction of the High Court of Justice in England as stated in the United Kingdom Supreme Court Act 1981, (c) jurisdiction relating to bankruptcy or to companies, (d) jurisdiction to appoint and control guardians for infants as to the person and to the property, (e) jurisdiction to appoint and control guardians to idiots, mentally disordered persons and persons of unsound mind, (f) jurisdiction to grant probate of wills and testaments, and letters of administration of the estates of deceased for property situated within the High Court's territorial jurisdiction.

The appellate jurisdiction of the High Court also includes jurisdiction to hear criminal and civil appeals. *Section 26 of the Courts of Judicature Act 1964* states the jurisdiction of the High Court to hear criminal appeals from the subordinate courts within its territorial jurisdiction. For civil appeals, *Section 28(1)* prescribes that the High Court in general shall not hear civil appeals from subordinate courts which amount is RM10,000 or less except on the question of law. However, on matters relating to maintenance of wives or children, the High Court shall hear such appeals from the subordinate courts regardless of the amount involved.[23]

In any proceedings in the subordinate court, matters regarding the effect of any provision of the Constitution must be referred to the High Court.[24] For that the High Court may order the records of the particular proceedings to be submitted for the purpose of examination and decision and that it shall be carried out in accordance with *Section 84* of the Act.[25] The decision on the particular issue will be deemed as rules of court for the purposes of *Article 128(2) of the Federal Constitution.*[26] However, the High Court

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22 See the Subordinate Courts Act 1948, s 65(1)(b) which limits the civil jurisdiction of the Sessions Courts to hear a claim where the amount in dispute or the value of the subject matter does not exceed RM1,000,000.00.

23 Section 28(2) of the Courts of Judicature Act 1964.

24 Section 30(1) of the Courts of Judicature Act 1964.

25 Section 30(2) of the Courts of Judicature Act 1964.

26 Section 30(3) of the Courts of Judicature Act 1964.

in discharging this function is acting within its original jurisdiction.[27] The High Court also has general revisionary and supervisory jurisdiction over all the subordinate courts in both civil and criminal cases.[28] An overview of the jurisdiction of the High Court is provided in Table 1:

TABLE 1: OVERVIEW OF THE JURISDICTION OF THE HIGH COURT

Civil jurisdiction	Criminal jurisdiction	Appellate jurisdiction
All civil matters, where amount in dispute exceeds RM1,000,000. Matters relating to divorce and matrimonial cases, appointment of guardians of infants, the granting of probate of wills and testaments and letters of administration of the estate of deceased person, bankruptcy and companies, admiralty.	All matters, generally for offences which the Magistrates and Sessions Courts have no jurisdiction, e.g. offences which carry the death penalty.	Appeals from the Magistrates and Sessions Courts in both civil and criminal matters. For civil cases, amount in dispute must exceed RM10,000 except where it involves a question of law. Monetary limit does not apply to maintenance of wives and children. General revisionary and supervisory jurisdiction over all subordinate courts.

2 *The constitution of the High Courts*

By *Section 16 of the Malaysia Act 1963*, *Article 122A* was inserted in the Federal Constitution to provide for the constitution of the High Courts. *Article 122A* initially provided that each of the High Courts shall consist of a Chief Justice (now Chief Judge) and not less than four other judges and shall not, until Parliament otherwise determines, exceed eight. *Article 122A* has been amended several times. *Article 122A* has been renumbered as *122AA*, and *Article 122A* in its present form deals with the constitution of the Court of Appeal. *Article 122AA* now provides that each of the High Courts shall consist of a Chief Judge and not less than four other judges; but the number of other judges shall not, until the Yang di-Pertuan Agong otherwise provides, exceed sixty for the High Court in Malaya and thirteen for the High Court in Sabah and Sarawak.[29]

By *Section 17 of the Malaysia Act 1963*, *Article 122B* was inserted in the Federal Constitution to provide for the appointment of, among others, the Chief Justices of the High Courts and (subject to *Article 122C*) the other judges of the High Court by the Yang di-Pertuan Agong, acting on the advice of the Prime Minister, after consulting the Conference of Rulers.[30] Before tendering his advice on the appointment of the Chief Justice of each of the High Courts, the Prime Minister shall consult the Chief Justice

[27] Compared to the role of the Federal Court, where discharging of the same function under Article 128(2) of the Federal Constitution would be within its referral jurisdiction.

[28] Section 35 of the Courts of Judicature Act 1964.

[29] See Amending Order P.U. (A) 384/06 Constitution of the High Court (Judges) Order 2006.

[30] Federal Constitution, Art 122B(1).

of each of the High Courts and, if the appointment is to the High Court in Borneo, the Prime Minister shall consult the Chief Minister of each of the Borneo States.[31] If the appointment is of a judge to one of the High Courts, the Prime Minister before tendering his advice shall consult the Chief Justice of that High Court.[32] These provisions echo the recommendations made in the Inter-Governmental Committee Report. *Article 122B* was amended several times principally to effect changes to the names 'Supreme Court' to 'Federal Court', 'Lord President' to 'Chief Justice' and 'Chief Justice' to 'Chief Judge'.[33] The High Courts have a Chief Judge for both Malaya and for Sabah and Sarawak. However, in order of precedence, the Chief Judge of the High Court in Malaya takes precedence over the Chief Judge of the High Court in Sabah and Sarawak.[34]

By *Section 19 of the Malaysia Act 1963*, the qualifications for appointment as a judge of any of the High Courts were provided for in *Article 123 of the Federal Constitution*. A person is qualified for appointment under *Article 122B* as a judge of the Federal Court or as a judge of any of the High Courts if he is a citizen; and 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. By *Section 22 of the Malaysia Act 1963*, the provisions in *Articles 125 to 127 of the Federal Constitution* on the retirement age, removal, suspension and remuneration of the judges of the superior courts (including the High Court) were adopted.[35] High Court Judges are not public servants as they fall under the exception of the service as provided under *Article 132(3)(c) of the Federal Constitution*. This means that the Judge is independent, his monthly remuneration is sourced from the Consolidated Fund of the country (which is not subject to the yearly country's budget)[36] and that his remuneration plus other terms of his office (including pensions) shall not be altered to his disadvantage.[37]

Some of the duties of the Chief Judges are to determine the dates and places for sittings of the Court,[38] issue directions on the distribution of business among High Court Judges whether of a particular or general nature,[39] issue directions on the distribution of business in the various departments of the High Court Registry,[40] and determine the days and hours when the High Court Registry shall be open to the public.[41] With regard to subordinate courts, Sessions Court Judges are appointed by the Yang di-Pertuan Agong on the recommendation of the Chief Judges,[42] and the Sessions Courts are located at such

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31 Federal Constitution, Art 122B(3).
32 Federal Constitution, Article 122B(4).
33 See Constitution (Amendment) Act 1966 (Act 59), Constitution (Amendment) Act 1983 (Act A566) and Constitution (Amendment) Act 1994 (Act A855).
34 See the Courts of Judicature Act 1964, s 8.
35 See the Federal Constitution, Arts 125(1), (3B), (3) and (4).
36 Federal Constitution, Art 125(6).
37 Federal Constitution, Article 125(7).
38 See the Courts of Judicature Act 1964, s 19.
39 See the Courts of Judicature Act 1964, s 20.
40 See the Rules of Court 2012, Order 60 rule 1.
41 See the Rules of Court 2012, Order 61 rule 3.
42 Subordinate Courts Act 1948, s 59(3).

places as the Chief Judge may direct.[43] First Class Magistrates are appointed by the State Authority on the recommendation of the Chief Judge.[44] The dismissal or termination of service of these officers are referred to the Judicial and Legal Service Commission,[45] of which the two Chief Judges are members.[46] Lastly, the Chief Judges with the concurrence of the Yang di-Pertuan Agong are also empowered to appoint as many subordinate officers as necessary for the due administration of justice.[47]

One important provision which affects the judiciary is *Article 161E(4) of the Federal Constitution* which provides for the control of immigration i.e. the entry into and residences in the East Malaysian States. As a result, *Section 66(1) of the Immigration Act 1959/63* provides that a citizen shall not be entitled to enter an East Malaysian State without having obtained a Permit or Pass in that behalf. However, this restriction is not applicable to, among others, judges of the Federal Court or of the High Court in Sabah and Sarawak, or members of any Commission or Council established by the Federal Constitution or by the Constitution of the East Malaysian State.[48] A learned author opines that this exception should now also include the Judges of the Court of Appeal and judges of the High Court in Malaya (who may be invited to sit as a judge of the Court of Appeal).[49] However, as it stands now, it would appear that a Judge of the High Court in Malaya sitting as a Judge of the Court of Appeal at Kuching, would require a Permit or Pass to enter East Malaysia. Similarly, a Judge of the High Court in Malaya who is transferred to the High Court in Sabah and Sarawak would be required to obtain a Permit or Pass. This actually contradicts the spirit of the recommendations of the Cobbold Commission which called for the interchangeability of judges between the High Courts.

3 *Appointment of Judicial Commissioners*

In accordance with *Section 16(3) of the Malaysia Act 1963*, the original *Article 122A(3)* provided that for the dispatch of business of the High Court in Borneo in an area in which a judge of the court is not available, the Yang di-Pertuan Agong acting on the advice of the Lord President, or for an area in either State, the Yang di-Pertua Negeri of the State acting on the advice of the Chief Justice of that court, may by order appoint Judicial Commissioners in that area for such period of for such purposes as may be specified in the order, an advocate or person professionally qualified to be admitted as an advocate of the court. On the powers of the Judicial Commissioner, *Article 122A(4)*[50] provided that a Judicial Commissioner shall have the same functions, powers and enjoy the same

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43 Subordinate Courts Act 1948, s 59(4).

44 Subordinate Courts Act 1948, s 78, applicable to the Federal Territory via P.U. (A) 43/1974.

45 See the Federal Constitution, Arts 138 and 144. See also Hamid, Y. T. S. D. A. (2012). *Administration of Justice in Malaysia*. The Denning Law Journal, *2*(1), 1-22, at page 16. Retrieved from: file:///C:/Users/Sheila%20Lingam/Downloads/156-520-1-PB.pdf

46 See the Judicial and Legal Service Commission website at http://www.spkp.gov.my/portal/eng/ahliSuruhanjaya.php

47 Subordinate Courts Act 194, s 106.

48 Immigration Act 1959/63, Section 66(1)(c).

49 Fong, J. C. *Constitutional Federalism in Malaysia*. (2nd Edition) (2016). Kuala Lumpur: Thompson/Sweet & Maxwell Asia. Page 158.

50 See the Malaysia Act 1963, Section 16(4).

immunities as a judge of that court. A similar provision for the appointment of Judicial Commissioners of the High Court in Malaya was provided for under *Article 122A(5)*.

It would be noted that different criteria apply in the appointment of Judicial Commissioners under *Clause (3)* and under *Clause (5) of Article 122A*. A Judicial Commissioner appointed for an area in the Borneo State under *Clause (3)* would be any advocate or person professionally qualified to be admitted as an advocate of the court and, subject to the limitations or conditions imposed by the order appointing him, shall have power to perform such functions of a judge of the High Court in Borneo. Whereas a Judicial Commissioner appointed for the dispatch of business in the High Court in Malaya under *Clause (5)* can be any person who is qualified for appointment as a Judge of the High Court (i.e. he must satisfy the conditions in *Article 123*) and his appointment is not subject to any limitations or conditions. *Article 122A* was amended by the *Constitution (Amendment) Act 1994,* by which amendment, *Clauses (3)*, *(4) and (5) of Article 122A* were deleted and a new *Article 122AB* was inserted for the appointment of Judicial Commissioners of both the High Courts. By the deletion of *Clause (3) to Article 122A* the constitutional right accorded to the Yang di-Pertua Negeri of Sabah and of Sarawak to appoint Judicial Commissioners on the advice of the Chief Judge of the High Court in Sabah and Sarawak was abrogated. Also, the deletion of *Clause (3) to Article 122A* revoked the requirement that a Judicial Commissioner appointed for a Borneo State should be an advocate or person professionally qualified to be admitted as an advocate of that court i.e., someone with 'Sabah connections' or 'Sarawak connections'.

In 2009, the Judicial Appointments Commission was set up under the *Judicial Appointments Commission Act 2009* mainly to assist the Prime Minister when advising the Yang di-Pertuan Agong regarding the appointment of superior court judges. The Judicial Appointments Commission comprises of the Chief Justice as the chairman of the Commission, President of the Court of Appeal, Chief Judges of the High Courts, a Federal Court Judge to be appointed by the Prime Minister and four eminent persons who are not members of the executive or the public service, appointed by the Prime Minister after consulting the Bar Council of Malaysia, the Sabah Law Association (now known as the Sabah Law Society), the Advocates Association of Sarawak, the Attorney General of the Federation, the Attorney General of a State legal service or any other relevant bodies.[51]

In addition to the qualification of superior court judges as stipulated in *Article 123 of the Federal Constitution*, *Section 23(2) of the 2009 Act* provides for further or other criteria of a candidate to be selected, which includes competency, integrity and experience; objective, fair, impartial and good moral character; decisiveness, ability to make timely judgments and good legal writing skills; industriousness and ability to manage cases well; and physical and mental health. A judge or judicial commissioner who has three or more pending judgments or unwritten grounds of judgments overdue for more than 60 days must not be selected.[52] A candidate who may provide diversity in the fields of

51 Judicial Appointments Commission Act 2009, s 5.

52 Judicial Appointments Commission Act 2009, s 23(3).

legal expertise and judicial knowledge will have a greater chance to be selected by the Commission.[53]

The 2009 Act is seen to have established a more standardised and systematic process of selecting superior court judges; however, it can also be seen as another 'encroachment' of the executive into the judiciary as it empowers the Prime Minister to select or remove members of the Commission and to decide on their allowances. The Prime Minister may or may not accept the recommendation by the Commission in that if he is unsatisfied with the recommendation of the Commission, he may request for further names to be recommended and the Commission shall adhere to that request.[54] However, the stipulated requirements as to procedures and related qualifications of the members of the Commission need to be adhered to strictly in order to ensure the quality and good reputation of those entrusted with the management of the judiciary.[55]

The constitutionality of *Article 122A* and the *Judicial Appointments Commission Act 2009* was addressed in *The Government of Malaysia v Robert Linggi*.[56] In this case, the respondent argued, among others, that the amendments to *Article 122A(3) and (4) of the Federal Constitution*, and the new *Article 122AB of the Federal Constitution* are null and void in so far as they concern the removal of the power of the respective Yang di-Pertua Negeri of Sabah and Sarawak to appoint judicial commissioners. In particular, the respondent argued that the amendments were contrary to *Article 161E(2)(b) of the Federal Constitution* which provides that the concurrence of the Yang di-Pertua Negeri of Sabah and Sarawak is required when any amendment to the Federal Constitution affects the constitution and jurisdiction of the High Court in Sabah and Sarawak and the appointment, removal and suspension of judges of that court, which concurrence was not obtained when amending *Article 122A*. In the High Court, it was held that the amendments to *Article 122A* and the insertion of *Article 122AB* took away the powers of the Yang Di-Pertua Negeri of Sabah and Sarawak to appoint judicial commissioners, who were held to be judicial officers of the court and therefore constituted part of the structure of the court. As the removal of such power affected the 'constitution' of the High Court, there was thus a non-compliance with *Article 161E(2)(b) of the Federal Constitution*. This made the amendments void. The decision of the High Court was, however, reversed on appeal to the Court of Appeal. In allowing the appeal, the Court of Appeal held that the appointment of judicial commissioners does not amount to the appointment of 'judges of that Court' within the meaning of *Article 161E(2)(b) of the Federal Constitution*.

Arguably, the effect of *Article 122AB of the Federal Constitution* is that the appointment of judicial commissioners to the High Court in Sabah and Sarawak is now no longer within the purview of the Yang di-Pertua Negeri of Sabah and Sarawak. This is then something which goes against the spirit of *Article 161E(2)(b) of the Federal Constitution* but has been condoned by the Court of Appeal in the *Robert Linggi* case.

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53 Judicial Appointments Commission Act 2009, s 23(4).

54 Judicial Appointments Commission Act 2009, s 24.

55 Ashgar Ali Ali Mohamed (General Editor). *Malaysian Legal System*. (2014). Selangor: The Malaysian Current Law Journal Sdn. Bhd. Chapter 25, pages 678-683.

56 [2015] 1 LNS 1515.

4 *Other matters*

The recommendation of the Inter-Governmental Committee that normally at least one of the judges of the Supreme Court should be a judge with 'Bornean judicial experience' when hearing a case arising in a Borneo State and that it should sit in that Borneo State, was not specifically provided for in the Federal Constitution. There is a case involving a timber company in Sarawak, Keruntum Sdn. Bhd., which lasted about 30 years in litigation over the issue of a revocation of a timber licence. Keruntum Sdn. Bhd.'s appeal was finally dismissed by the Federal Court on 15 March 2017.[57] However, in a review application,[58] it was then argued on behalf of Keruntum Sdn. Bhd. that the decision of the Federal Court should be set aside because in accordance with paragraph 26(4) of the Inter-Governmental Committee Report, at least one of the Federal Court judges should have 'Bornean experience' when hearing a case originating from Sabah and Sarawak. The Sarawak Government argued that this was not a legal or constitutional right.[59] The Federal Court in the review application held that a litigant could not enforce the recommendation under paragraph 26(4) of the Inter-Governmental Committee Report as such a recommendation was never implemented by legislative, executive or other action by the governments of the Federation of Malaya, Sabah or Sarawak, and was never incorporated into the Federal Constitution.[60] This position was affirmed and followed by the majority in the subsequent Federal Court decision of *TR Sandah ak Tabau & Ors*.[61]

What is of particular interest here is the unwavering stance taken by the Sarawak Government which is to move away from the recommendations of the Inter-Governmental Committee Report and, it is argued, move towards a more unified judiciary that is not delineated by mere geography.

By *Section 18 of the Malaysia Act 1963*, *Article 122C* was included into the Federal Constitution which provided for the transfer of a judge from one High Court to another. However, this is arguably still subject to immigration restrictions provided under *Article 161E(4) of the Federal Constitution* and *Section 66(1) of the Immigration Act 1959/63*. *Section 20 of the Malaysia Act 1963* provided for *Article 124 of the Federal Constitution* regarding the taking of the oath of office and allegiance as set out in the *Sixth Schedule of the Federal Constitution* by among others, High Court Judges. A person taking the oath on becoming a judge of a High Court shall do so in the presence of the Chief Judge of that Court or in his absence, the next senior judge available of that Court.[62] *Section*

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57 The Borneo Post Online. (2017, 16 March). *Timber company loses 30-year court battle*. Retrieved from http://www.theborneopost.com/2017/03/16/timber-company-loses-30-year-court-battle/

58 Pursuant to the Rules of the Federal Court 1994, rule 137.

59 V Anbalagan. (2017, 15 August). *Govt lawyer: No need for judge with Bornean experience to hear case.* Free Malaysia Today. Retreived from: http://www.freemalaysiatoday.com/category/nation/2017/08/15/govt-lawyer-no-need-for-judge-with-bornean-experience-to-hear-case/

60 *Keruntum Sdn Bhd v The Director of Forests & Ors* [2018] 4 CLJ 145.

61 *TR Sandah ak Tabau & Ors (suing on behalf of themselves and 22 other proprietors, occupiers, holders and claimants of native customary rights (NCR) land situated at Rumah Sandah and Rumah Lajang, Ulu Machan, 96700 Kanowit, Sarawak) v Director of Forest, Sarawak & Anor and other appeals* [2019] 6 MLJ 141, 164-6 [25-7]. But see the dissenting judgment of David Wong CJ (Sabah and Sarawak) (as he then was), especially at page 193 [96].

62 See the Malaysia Act 1963, s 20(5); Federal Constitution, Art 124(5).

21 of the Malaysia Act 1963 introduced *Article 131A of the Federal Constitution* which provided for the performance of duties of superior court judges in the event of a vacancy or inability to act.

From the data stated in the paragraphs above, a concise comparison of the recommendations made by the Cobbold Commission, the recommendations of the Inter-Governmental Committee and the amendments made to the Federal Constitution and various Acts of Parliament on the judiciary is provided in Table 2:

TABLE 2: COMPARISON OF THE RECOMMENDATIONS OF THE COBBOLD COMMISSION, THE INTER-GOVERNMENTAL COMMITTEE AND THE AMENDMENTS TO THE FEDERAL CONSTITUTION AND OTHER LEGISLATION ON THE JUDICIARY

Recommendations by the Cobbold Commission	**Recommendation of Inter-Governmental Committee**	**Amendments to the Federal Constitution / Federal Acts**
Due to the distance between Borneo and Malaya, a separate High Court was recommended in the Borneo territories presided over by its own Chief Justice, with appeals to a Federal Supreme Court.	There should be two High Courts in Malaysia of co-ordinate jurisdiction and status i.e. the High Court in Malaya and the High Court in Borneo.	*Article 121(1)(b) of the Federal Constitution* established 2 High Courts of coordinate jurisdiction and status namely the High Court in Malaya and the High Court in Borneo (later the High Court in Sabah and Sarawak)[63].
The High Court in Borneo should have unlimited original jurisdiction in all matters arising in the area, and the High Court should also be a court of appeal.	Each High Court should have its own Chief Justice and unlimited original jurisdiction in the States for which it is established, as well as appellate and revisionary jurisdiction over inferior courts in those States.	The High Court in Sabah and Sarawak has its own Chief Justice (later Chief Judge), and the Chief Ministers of Sabah and Sarawak must be consulted on the appointment of the Chief Judge[64].
There should be one Supreme Court for the Federation of Malaysia with unlimited original and appellate jurisdiction.	There shall be a Supreme Court of Malaysia.	Both High Courts have original and appellate jurisdiction[65].

The commonalities between the High Court in Malaya and the High Court in Sabah and Sarawak are provided in Table 3:

63 Malaysia Act 1963, s 13(1)(b) and Federal Constitution, Article 121(1)(b).

64 Malaysia Act 1963, s 17(3) and Federal Constitution, Article 122B(3).

65 See generally the Courts of Judicature Act 1964, s 22 to 35.

TABLE 3: THE COMMONALITIES BETWEEN THE HIGH COURT IN MALAYA AND THE HIGH COURT IN SABAH AND SARAWAK

Subject Matter	Legal Provisions
Jurisdiction	• Original civil jurisdiction (Sections 23, 24 and 30 of the Courts of Judicature Act 1964). • Original criminal jurisdiction (Section 22 of the Courts of Judicature Act 1964). • Appellate jurisdiction (Sections 26 and 28 of the Courts of Judicature Act 1964). • General supervisory and revisionary jurisdiction over all subordinate courts (Section 35 of the Courts of Judicature Act 1964).
Qualification of judges	Article 123 of the Federal Constitution
Retirement age, removal, suspension and remuneration of judges	Articles 125 to 127 of the Federal Constitution
Appointment of judicial commissioners	• Article 122AB of the Federal Constitution • Judicial Appointments Commission Act 2009
Duties of Chief Judges	• Sections 19 and 20 of the Courts of Judicature Act 1964 • Order 60 rule 1 and Order 61 rule 3 of the Rules of Court 2012 • Sections 59(3), 59(4), 73 and 106 of the Subordinate Courts Act 1948 • Articles 138 and 144 of the Federal Constitution

The differences between the High Court in Malaya and the High Court in Sabah and Sarawak are provided in Table 4:

TABLE 4: THE DIFFERENCES BETWEEN THE HIGH COURT IN MALAYA AND THE HIGH COURT IN SABAH AND SARAWAK

Subject matter	High Court in Malaya	High Court in Sabah and Sarawak
Principal registry	Such place in the States of Malaya as the Yang di-Pertuan Agong may determine[66].	Such place in the states of Sabah and Sarawak as the Yang di-Pertuan Agong may determine on advice of the Prime Minister who shall consult the Chief Ministers of the Borneo States and the Chief Judge of the High Court in Sabah and Sarawak.[67]
Constitution of High Court	Consists of a Chief Judge and not less than 4 and not more than 60 other judges.[68]	Consists of a Chief Judge and not less than 4 and not more than 13 other judges.[69]

[66] Federal Constitution, Art 121(1)(a).
[67] Federal Constitution, Art 121(1)(b) and (4).
[68] Federal Constitution, Art 122AA(1)(a).
[69] Federal Constitution, Art 122AA(1)(b).

TABLE 4: THE DIFFERENCES BETWEEN THE HIGH COURT IN MALAYA AND THE HIGH COURT IN SABAH AND SARAWAK (continued)

Subject matter	High Court in Malaya	High Court in Sabah and Sarawak
Appointment of Chief Judges of the High Courts	By the Yang di-Pertuan Agong acting on the advice of the Prime Minister, who shall consult the Conference of Rulers,[70] the Chief Justice[71] and the Chief Judge of each of the High Courts.[72]	By the Yang di-Pertuan Agong acting on the advice of the Prime Minister, who shall consult the Conference of Rulers,[73] the Chief Justice,[74] the Chief Judge of each of the High Courts[75] and the Chief Minister of each of the States of Sabah and Sarawak.[76]
Appointment of judges of the High Court	By the Yang di-Pertuan Agong acting on the advice of the Prime Minister, who shall consult the Conference of Rulers,[77] the Chief Justice[78] and the Chief Judge of the High Court in Malaya.[79]	By the Yang di-Pertuan Agong acting on the advice of the Prime Minister, who shall consult the Conference of Rulers,[80] the Chief Justice[81] and the Chief Judge of the High Court in Sabah and Sarawak.[82]
Exemption from control of entry into Sabah and Sarawak	Judges from the High Court in Malaya must obtain a Permit or Pass under *Section 66(1) of the Immigration Act 1959/63* to enter Sabah or Sarawak	Judges of the High Court in Sabah and Sarawak are exempted from obtaining any Permit or Pass under *Section 66(1)(c) of the Immigration Act 1959/63*

D *Establishing a single High Court in Malaysia*

It would be remembered that the sole reason for establishing two High Courts is for geographical reasons, as stated in the Cobbold Commission Report.[83] That was in 1962. Since then, technology and travel have advanced manifold so that distance and geographical location are no longer a hindrance or concern.

For the two High Courts, there is now in place the integrated electronic court management system named the E-Court. The Courts in the Klang Valley and Putrajaya

70 Federal Constitution, Art 122B(1).
71 Federal Constitution, Art 122B(2).
72 Federal Constitution, Art 122B(3).
73 Federal Constitution, Art 122B(1).
74 Federal Constitution, Art 122B(2).
75 Federal Constitution, Art 122B(3). See also the Federal Constitution, Art 161E(2)(b).
76 Ibid.
77 Federal Constitution, Art 122B(1).
78 Federal Constitution, Art 122B(2).
79 Federal Constitution, Art 122B(4).
80 Federal Constitution, Art 122B(1).
81 Federal Constitution, Art 122B(2).
82 Federal Constitution, Art 122B(4).
83 Paragraphs 159 and 236(b)(i) of the Cobbold Commission Report.

were the first to be equipped with the E-Court system,[84] starting in stages from as early as 2009[85] and now has been extended to the High Courts in Johor Bahru, Ipoh, Kuala Terengganu and Kuching.[86] There are currently six technology applications adopted:[87] (i) E-Filing System which allows for electronic submission of court documents for purposes of filing and registration using the Internet; (ii) Case Management System (CMS) to improve service efficiency in handling cases managed by the court through a computer system. It allows for the computerisation of court processes, retrieval of information online, easy monitoring of performance and generates statistics automatically which in turn causes uniformity in reporting; (iii) Queue Management System (QMS) which is an electronic system that arranges for the attendance of lawyers in court; (iv) Court Recording and Transcription (CRT) which consists of video and audio recording both in open court and in chambers. All hearing and trials transcribed are stored electronically. Judges and lawyers may have access by way of compact disks; (v) Audio and Video Conference System (VCS) to conduct hearings and trials without the need of physically being present in court which saves transport fares, accommodation and related allowances. The system also allows users to share documents, picture files, images and the like among those in remote locations. This system is at the moment only used in the High Courts in

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84 Mohamed, D. *Electronic court system (E-court): development and implementation in the Malaysian courts and other jurisdictions*. (2011). The Law Review, 476-489 at page 479. Retrieved from: http://irep.iium.edu.my/7628/1/E-court_by_Duryana_Mohamed.pdf

85 Ibid.

86 Zain, N. A. M., Saman, W. S. W. M., & Yatin, S. F. M. *Managing Electronic Records in Malaysian Civil Courts: A Review of Literature*. (2017). International Journal of Academic Research in Business and Social Sciences, *7*(8), 909-919. Retrieved from: http://hrmars.com/hrmars_papers/Managing_Electronic_Records_in_Malaysian_Civil_Courts_A_Review_of_Literature.pdf

87 See Hamin, Z., Othman, M. B., & Mohamad, A. M. *Socio-legal implications of courtroom technology*. In *Humanities, Science and Engineering (CHUSER), 2011 IEEE Colloquium on* (pp. 143-147). IEEE. Retrieved from: https://www.researchgate.net/profile/Ani_Munirah_Mohamad/publication/261039454_Socio-legal_implications_of_courtroom_technology/links/0c960528c8ff0eb9a9000000.pdf, Hamin, Z., Othman, M. B., & Mohamad, A. M. (2012, June). *Benefits and achievements of ICT adoption by the High Courts of Malaysia*. In *Humanities, Science and Engineering Research (SHUSER), 2012 IEEE Symposium on* (pp. 1233-1238). IEEE. Retrieved from: https://www.researchgate.net/profile/Ani_Munirah_Mohamad/publication/258653167_Benefits_and_achievements_of_ICT_adoption_by_the_High_Courts_of_Malaysia/links/0c960528c9160c5fb0000000.pdf, Saman, W. S. W. M., & Haider, A. *The Implementation of Electronic Records Management System: A Case Study in Malaysian Judiciary.* In *AMCIS*. (2011). Retrieved from: https://pdfs.semanticscholar.org/887c/054381073aab08d6fafc29c5321a3ae0dbd8.pdf, Saman, W. S. W. M., & Haider, A. *Electronic court records management: a case study* (Doctoral dissertation, IBIMA-International Business Information Management Association). (2012). Retrieved from: https://pdfs.semanticscholar.org/1a78/dbd9f0dfe211755a0458c2b4f3c1ce69fbfb.pdf, Saman, W. S. W. M., & Haider, A. *E-court: Information and communication technologies for civil court management*. In *Technology Management in the IT-Driven Services (PICMET), 2013 Proceedings of PICMET'13:* (pp. 2296-2304). IEEE. Retrieved from: http://egov.ufsc.br/portal/sites/default/files/06641835_0.pdf, Wan, S., Mohd, S. W., & Haider, A. *E-court: technology diffusion in court management.* (2013). Association for Information Systems. Retrieved from: http://search.ror.unisa.edu.au/record/UNISA_ALMA51108680010001831/media/digital/open/991591020110 1831/12143259650001831/13143257590001831/pdf, and Kamal Halili Hassan & Maizatul Farisah Mokhtar. *The E-Court System in Malaysia*. 2011 2nd International Conference on Education and Management Technology IPCSIT vol 13. Singapore: IACSIT Press.

Sarawak; and (vi) Integrated Community and Advocates' Portal (CAP) to enable easy communication between the courts and the public via Short Messaging System (SMS) to notify on change of hearing or trial dates. Apart from effectively clearing backlog and increasing the settlement rate of cases,[88] the E-Court system is also an effective way of bringing the country closer together.

A new *Order 63A* was also included in the *Rules of Court 2012* on electronic filing. *Order 63A* establishes an electronic filing service which allows most pleadings and court documents to be electronically filed. Therefore, there is now no longer any real need for there to be two High Courts of coordinate jurisdiction and status. There can only be one High Court, with branches in all states, just like what is in place today. The problem with 'distance' envisaged by the Cobbold Commission all those years ago has been bridged with technology. A party who is electronically filing a Writ and Statement of Claim need only look at *Section 23 of the Courts of Judicature Act 1964* to determine which branch of the High Court would be the most appropriate to hear the claim. There will no longer be the issue of non-transferability of cases from one High Court to another.

For more effective administration, the High Court in Malaya at Kuala Lumpur has specialised divisions, namely the Criminal Division, Civil Division, Commercial Division, Appellate and Special Powers Division, Family Division, Muamalat Division, Intellectual Property Division and Information Technology Division. The New Commercial Court deals with matters such as admiralty, banking and financial transactions (except Muamalat cases), company law, partnership, insurance, maritime, sale of goods and agency. A Construction Court was also established pursuant to the *Construction Industry Payment and Adjudication Act 2010*, a specialized court which is a branch of the High Court in Malaya and deals with disputes involving the construction industry.[89] The divisions within the High Court can also be introduced to the High Courts in bigger cities such as Penang, Johor, Kuching and Kota Kinabalu where the volume of cases are high. If there is only one High Court, this can easily be done because there will be no need to obtain the consent of the Yang Di-Pertua Negeri of Sabah or Sarawak. With a single High Court, this will be properly under the purview of the judiciary alone which arguably makes a more efficient administration of justice.

There are already many similarities between the current two High Courts, such as the jurisdiction of the courts, the qualification of judges, the retirement age, removal, suspension and remuneration of judges, the appointment of judicial commissioners and the duties of Chief Judges. The main differences between the two High Courts are the appointment of the Chief Judges and judges of the High Court, the constitution of the High Court, principal registry and the entry into Sabah and Sarawak of judges of the High Court in Malaya.

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88 Wan, S., Mohd, S. W., & Haider, A. (2013). *E-court: technology diffusion in court management.* Association for Information Systems. Retrieved from: http://search.ror.unisa.edu.au/record/UNISA_ALMA51108680010001831/media/digital/open/9915910201101831/12143259650001831/13143257590001831/pdf.

89 Ashgar Ali Ali Mohamed (General Editor). *Malaysian Legal System*. (2014). Selangor: The Malaysian Current Law Journal Sdn. Bhd. Chapter 17, pages 404-413.

Chief Judges of the High Courts are appointed by the Yang di-Pertuan Agong on the advice of the Prime Minister who shall consult the Conference of Rulers,[90] the Chief Justice,[91] and the Chief Judges of each of the High Courts.[92] If there is only one High Court, the Prime Minister now needs only to consult the Conference of Rulers, the Chief Justice and the Chief Judge of the one High Court. The only difference is that for the appointment of the Chief Judge of the High Court in Sabah and Sarawak, it is provided that the Prime Minister must also consult the Chief Ministers of Sabah and Sarawak.[93] In addition, there is also the requirement of obtaining the concurrence of the Yang di-Pertua Negeri of Sabah and Sarawak.[94]

If there is only one High Court, it is submitted that the only relevant consultation left in *Articles 122B and 161E(2)(b) of the Federal Constitution* is that with the Conference of Rulers and the Chief Ministers of Sabah and Sarawak. This is because the Judicial Appointments Commission set up under the *Judicial Appointments Commission Act 2009* to assist the Prime Minister when advising the Yang di-Pertuan Agong regarding the appointment of superior court judges already comprises of the Chief Justice as the chairman of the Commission, President of the Court of Appeal, Chief Judges of the High Courts, a Federal Court Judge to be appointed by the Prime Minister and four eminent persons.[95] As for the Yang di-Pertua Negeri of Sabah and Sarawak, *Article 38 read together with the Fifth Schedule of the Federal Constitution* provides that the Conference of Rulers consist of the Royal Highnesses the Rulers and the Yang di-Pertua Negeri of States not having a ruler.[96] Further, the Yang di-Pertua Negeri of Sabah and Sarawak are bound by the essential provisions of the *Eighth Schedule of the Federal Constitution* to act on the advice of the State Cabinet and shall accept such advice.[97] The head of the State Cabinet is the Chief Minister.[98] Therefore, the only real consultation with regard to the appointment of a Chief Judge of a single High Court would be the Conference of Rulers and the Chief Ministers of Sabah and Sarawak. Perhaps it would even be a good idea to include the Chief Ministers of Sabah and Sarawak as members of the Judicial Appointments Commission, to make the process of appointments of superior court judges more open, transparent and fair. If that is the case, then the only body that needs to be consulted would be the Conference of Rulers.

For the appointment of judges of the High Court, if there is only one High Court, the appointments may be made by the Yang di-Pertuan Agong acting on the advice of

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90 Federal Constitution, Article 122B(1).

91 Federal Constitution, Article 122B(2).

92 Federal Constitution, Article 122B(3).

93 Federal Constitution, Article 122B(3).

94 Federal Constitution, Article 161E(2)(b).

95 Judicial Appointments Commission Act 2009, s 5.

96 The Yang di-Pertua Negeri of States not having a ruler shall not be members of the Conference of Rulers only for the purpose of electing or removing the Yang di-Pertuan Agong or the Timbalan Yang di-Pertuan Agong, or in proceedings relating to the privileges, position, honours and dignities of Their Royal Highnesses or to religious acts, observances or ceremonies – see Item 7 of the Fifth Schedule of the Federal Constitution.

97 See the Constitutions of the States of Sabah and Sarawak, Art 10(1).

98 Constitution of the State of Sarawak, Art 6(3)(a) and Constitution of the State of Sabah, Art 6(3).

the Prime Minister who shall consult the Conference of Rulers and the Chief Judge of the High Court (instead of the respective Chief Judge of the High Court in Malaya for the appointment of judges to the High Court in Malaya, and the Chief Judge of the High Court in Sabah and Sarawak for the appointment of judges to the High Court in Sabah and Sarawak).[99] For the constitution of the High Court, *Article 122AA(1)* would have to be amended to provide for the number of judges for the single High Court instead of the two separate High Courts, with the concurrence of the Yang di-Pertua Negeri of Sabah and Sarawak as stipulated in *Article 161E(2)(b) of the Federal Constitution*. For the principal registry of the High Court, *Article 121(1)* would have to be amended to provide that it will be in such place as the Yang di-Pertuan Agong may determine. Since the High Court will have branches all over Malaysia with registries of their own, the principal registry of the High Court is of little consequence in terms of administration and dispensation of justice. The situation is analogous with the Court of Appeal and Federal Court, both of which were established for the whole of Malaysia but with only one principal registry for each respective Court.

Finally, with regard to the control of entry into Sabah and Sarawak, all judges of the superior courts should be allowed entry into Sabah and Sarawak without the need for a Permit or Pass. Therefore, *Section 66(1) of the Immigration Act 1959/1963* would have to be amended so that the immigration restriction would not be made applicable to all superior court judges, including judicial commissioners. This would actually be in line with the recommendations of the Cobbold Commission and the Inter-Governmental Committee which called for the easy inter-changeability of judges from one High Court to another.[100]

It is submitted that establishing one High Court for the whole of Malaysia, with branches of the same High Court in each state including in Sabah and Sarawak actually puts Sabah and Sarawak on equal footing as the States of Malaya because now, the Chief Judge of the High Court may be of Bornean descent, and so can be the third most important person in the judiciary. Currently, the Chief Judge of the High Court in Sabah and Sarawak is only at fourth place in order of precedence after the Chief Judge of the High Court in Malaya.[101] It is therefore submitted that having one High Court for the whole of Malaysia in fact puts Sabah and Sarawak on equal footing as the States of Malaya. According to *Article 161E(1) of the Federal Constitution*, the two thirds majority rule and the consent of the Yang di-Pertua Negeri may be dispensed with if the amendment is to put Sabah and Sarawak on equal footing as the States of Malaya. However, to maintain harmony and to avoid any conflicts, the researcher recommends that any amendments made that would affect the jurisdiction, status and constitution of the High Court in Sabah and Sarawak must be made with the consent of the Yang di-Pertua Negeri (this can be *via* the consultation with the Conference of Rulers) and more importantly, with the consent of the Chief Ministers of both States.

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99 See Federal Constitution, Article 122B(4).

100 See paragraph 159 of the Cobbold Commission Report and paragraph 26 of the Inter-Governmental Committee Report.

101 See Courts of Judicature Act 1964, s 8.

It cannot be denied that it is generally good to have East Malaysian judges in Sabah and Sarawak who understand and appreciate the local customs and peculiarities, and who would be able to address these local issues more effectively. For example, the former Chief Judge of the High Court in Sabah and Sarawak initiated the mobile courts for the interior parts of Sabah and Sarawak to dispense justice to rural folk, a system that may not be relevant or necessary in West Malaysia.[102] However, it is respectfully submitted that firstly, the duties of judges remain the same, which are to interpret the law. In that sense, it does not really make a difference as to whether the judge presiding over a matter is East or West Malaysian. Secondly and even more importantly, the solution proposed by the researcher will not in fact drastically change the current position of the judicial system, apart from having one High Court in place of the current two High Courts. The jurisdiction, status, constitution and provision on judges and judicial commissioners (such as the retirement age, remuneration, appointment, removal and suspension) will all remain the same. The only difference is that administratively, there will now be only one High Court with different branches throughout Malaysia.

Nevertheless, as a show of good faith, compromise and to convince the people of Sabah and Sarawak that the establishment of a single High Court is not taking away any of their entrenched rights, the researcher also proposes to give to the people of Sabah and Sarawak a further entrenched right by including in the Federal Constitution, an original recommendation of the Inter-Governmental Committee which was unfortunately omitted. This is the recommendation that when hearing a case arising from Sabah or Sarawak, the Court of Appeal or Federal Court shall, so far as is practicable, physically sit in Sabah or Sarawak, and that at least one of the judges on that panel of the Court of Appeal or Federal Court shall be a judge who is ordinarily resident in Sabah or Sarawak.[103] With regard to the latter part of the recommendation, the original wording used in the Inter-Governmental Committee Report is a judge with 'Bornean judicial experience'. However, since this term is not defined or explained anywhere, and therefore may give rise to further confusion and misunderstanding, the researcher suggests a more straightforward and clearer term, i.e., a judge who is ordinarily resident in Sabah or Sarawak or alternatively, a judge with 'Sabah connections' within the meaning of the *Advocates Ordinance 1953 of Sabah* or with 'Sarawak connections' within the meaning of the *Advocates Ordinance 1953 of Sarawak*.

Further, to avoid any fears of domination by West Malaysians in the judiciary, there can also be specifically provided in the Federal Constitution a fixed number of judges to be appointed as judges sitting in one of the High Court's branches in Sabah and Sarawak, to be judges who are ordinarily resident in Sabah and Sarawak. Currently, the Federal Constitution only provides for the maximum number of judges to be sitting in the High Court in Malaya and in the High Court in Sabah and Sarawak respectively.[104] Technically, this can also mean West Malaysians sitting as judges of the High Court in Sabah and Sarawak. With the amendment proposed by the researcher, the quota of East

[102] See Shaila Koshy. (2011, 19 December). *Mobile court service for rural folk.* The Star Online. Retrieved from: https://www.thestar.com.my/lifestyle/features/2011/12/19/mobile-court-service-for-rural-folk/

[103] See paragraph 26 of the Inter-Governmental Committee Report.

[104] See Federal Constitution, Article 122AA(1).

Malaysian judges will be preserved by the Federal Constitution, which in fact elevates the rights of East Malaysians.

Therefore, it is entirely plausible to set up a single High Court in Malaysia. However, this must be done by properly and delicately balancing the rights of all parties involved, especially East Malaysians who may (inaccurately) view this exercise as an abrogation of their special privileges. The benefits of having a single High Court are manifold, for example it will resolve the issue of non-transferability of cases between the current two High Courts, and East Malaysia will be on equal footing as West Malaysia as far as the judiciary is concerned. There will also be more independence in the judiciary in that the single High Court can now administer to its own specialised divisions such as the Civil Division, Commercial Division, Criminal Division, Intellectual Property Division and so on without the need of consent from the Chief Ministers or Yang Di-Pertua Negeri of Sabah and Sarawak. There can also be streamlined guidelines and practice directions for the single High Court which will be applicable throughout Malaysia, and not divided between East and West, which will contribute to a more effective and efficient administration of justice. All these serve to promote consistency, clarity and harmony in the law, which brings us closer to obeying the rule of law and the doctrine of *stare decisis*, and therefore brings us closer to having an ideal judiciary.

The establishment of a single High Court in place of the current two High Courts is in theory legally and administratively entirely plausible. The advancement of technology, infrastructure and technical development has effectively bridged the geographical gap between the two High Courts. There are many similarities between the two High Courts, and the differences between the two High Courts may quite easily be overcome legally and administratively, and practically by compromising and balancing the rights of all parties involved. The establishment of a single High Court in Malaysia has many benefits, and most importantly would resolve the issue of non-transferability of cases between the two High Courts and contribute to the overall efficiency of the administration of justice in Malaysia.

III LEGAL MECHANISM TO ESTABLISH A SINGLE HIGH COURT

A *Amending the Federal Constitution*

The Federal Constitution is not cast in stone. It may be amended to keep up with changing times. In this regard, the Reid Commission in drafting the original Constitution wrote:

> Method of amending the Constitution should be neither so difficult as to produce frustration nor so easy as to weaken seriously the safeguards which the Constitution provides – by way of Act of Parliament to amend the Constitution, must be passed in each House by a majority of at least two-thirds of the members voting. This is a sufficient safeguard for the States because the majority of members of the Senate will represent the States.[105]

[105] The Reid Commission Report 1957, Chapter IV, paragraph 80. The safeguard envisioned by the Reid Commission, i.e. that the majority of members of the Senate will represent the States is no longer true today

The conditions and procedures for amending the Federal Constitution is provided for in the Constitution itself in *Articles 159* and *161E*. *Article 159 of the Federal Constitution* envisages four ways in which the Federal Constitution may be amended. Firstly, some parts of the Constitution may be amended by a simple majority in both Houses of Parliament such as that required for the passing of any ordinary law, as enumerated in *Article 159(4)*. Secondly, articles which are set out in *Article 159(5)* may be amended by a two-thirds majority in both Houses of Parliament and with the consent of the Conference of Rulers. These articles include, among others, the status of the national language.[106] Thirdly, articles which are of special interest to the East Malaysian States as set out in *Article 161E* which requires a two-thirds majority in both Houses of Parliament and additionally, the consent of the Yang di-Pertua Negeri of the State concerned. This includes, among others, the constitution and jurisdiction of the High Court in Sabah and Sarawak and the appointment, removal and suspension of judges of that court, as well as the powers of the State Authority to control the entry of, or residence by persons who do not belong to these States.[107] Lastly, amendments made pursuant to *Article 159(3)* (which is basically all other Articles in the *Federal Constitution* apart from those excepted under *Article 159(4)*, and amendments to any law passed under *Article 10(4)*) requires a majority of two-thirds in both Houses of Parliament.[108]

One interesting point to note is *Article 161E(1) of the Federal Constitution* which reads as follows:

> As from the passing of the Malaysia Act, no amendment to the Constitution made in connection with the admission to the Federation of the State of Sabah and Sarawak shall be excepted from clause 3 of Article 159 by clause 4(bb) of the Article; nor shall any modification made as to the application of the Constitution to the State of Sabah and Sarawak be so excepted unless the modification is such as to equate or assimilate the position of that State under the Constitution to the position of the States of Malaya.

Shorn of its convolutedness, what this Article says is that after the passing of the Malaysia Act, if the Constitution is modified for application to Sabah and Sarawak, the two-thirds majority rule and the concurrence of the Yang di-Pertua Negeri of those States do not apply if the modification of the constitutional provisions 'is to put Sabah and Sarawak on the same footing as the States of Malaya in regard to those provisions'.[109]

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because appointed senators now outnumber State senators 44 to 26: see Lee, H. P., Foo, R., & Tan, A. (2019). *Constitutional change in Malaysia*. The Journal of Comparative Law, 14(1), 119-138. However, the methods of amending the Federal Constitution as provided in the Constitution remain the same.

106 Federal Constitution, Art 152.

107 Federal Constitution, Arts 161E(2) and (4).

108 See Federal Constitution, Art 159. See also the judgment of Raja Azlan Shah FJ (as His Royal Highness then was) in *Loh Kooi Choon v Government of Malaysia* [1977] 2 MLJ 187.

109 Fong, J. C. *Constitutional Federalism in Malaysia*. (2nd Edition) (2016). Kuala Lumpur: Thompson/Sweet & Maxwell Asia. Page 208.

B *Dispute resolution mechanism*

In the event no amicable solution can be reached between the Federal and State Governments, *Article 128 of the Federal Constitution* confers the Federal Court with original and consultative jurisdiction to settle disputes between the States or between the Federation and any States. Further, *Article 130 of the Federal Constitution* enables the Yang di-Pertuan Agong (acting on the advice of the Federal Cabinet) to refer to the Federal Court for its opinion, any question on the provisions of the Constitution, and the Federal Court shall pronounce in open court its opinion on the same. In *Dato' Menteri Othman bin Baginda & Anor v Dato' Ombi Syed Alwi bin Syed Idrus,*[110] Salleh Abas, FJ (as he then was) held that where an advisory opinion of the Federal Court is sought under its consultative jurisdiction, the decision of the Federal Court is binding on the parties, 'although there is no provision in the Federal Constitution to say it is so'.[111]

Apart from this, there are also bodies established under the Federal Constitution for consultation on various subjects, one of which being the Conference of Rulers.[112] *Article 159(5) of the Federal Constitution* requires the consent of the Conference of Rulers whenever any law seeks to amend, among others, the provision relating to the National Language embodied in *Article 152 of the Federal Constitution*, and for the appointment of members of the Judiciary embodied in *Article 122B of the Federal Constitution*. It must be noted that although the appointment of judges is technically made by the Yang di-Pertuan Agong, by virtue of *Article 40(1) of the Federal Constitution*, His Majesty is bound to follow the advice of the Prime Minister.

'Consult' is not defined anywhere in the Federal Constitution or any of the interpretation statutes in Malaysia. In this regard, Lord Morris of Borth-y-Gest, delivering the judgment of the Privy Council in *Port Louis Corporation v Attorney-General of Mauritius*[113] held that 'the requirement of consultation was never to be treated perfunctorily or as a mere formality'. There is the opinion that based on the Reid Commission Report and the subsequent Government White Paper, the intention of the framers of the Constitution was clear in that when each member of the Conference of Rulers gives advice in respect of a candidate for, among others, judicial appointments, such advice is a personal exercise as a state representative, to be distinguished by an exercise of discretion that requires each member to accept the advice of the Prime Minister, Menteri Besar, Chief Minister or State Executive Council[114]. Therefore, if the Conference of Rulers disagrees with any of the candidates proposed by the Prime Minister, the Prime Minister has a 'constitutional obligation to inquire into the opinion of the Conference of Rulers and, to deliberate within the forum of the Conference on any findings that arise from the inquiry and, thereafter,

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110 [1981] 1 MLJ 29

111 At page 34.

112 See the Federal Constitution, Art 38, on the Conference of Rulers.

113 [1965] AC 1111.

114 Choo, C. T. & Lucy Chang, N. W. *Constitutional Procedure of Consultation in Malaysia's Federal System*. (2015). Malayan Law Journal. Volume 4. Page xiii. The learned authors in this article disagreed with the Court of Appeal's decision in *In the matter of an oral application by Dato' Seri Anwar Bin Ibrahim to disqualify a judge of the Court of Appeal* [2000] 2 MLJ 481 where it was held, among others, that in the matter of appointment of judges, the Yang di-Pertuan Agong is not bound to accept the advice, opinions or views of the Conference of Rulers.

to arrive at *consensus ad idem* with the Conference'.[115] In the words of a learned author: 'To ignore the substance of an advice given after consultation is to turn our back on the true intent carefully prepared by the framers of the Federal Constitution and our own constitutional history'.[116]

In summary, although what exactly is meant by 'consultation' is open to debate, it is submitted that free and frank consultation among all relevant stakeholders on the proposal of setting up a single High Court in Malaysia is a good mechanism to be utilised. Such a mechanism may potentially avert misunderstanding and conflict between the Federation and the States.

C *Summary of legal mechanisms*

From the discussion in the foregoing paragraphs, it is submitted that the most appropriate legal means to establish one High Court for the whole of Malaysia is through amendments to the Federal Constitution. This means obtaining two thirds majority in both Houses of Parliament, and the consent of the Yang di-Pertua Negeri and the Chief Ministers of Sabah and Sarawak. In the past, amendments were made to the Federal Constitution which, it is submitted, circumvented the requirement of concurrence of the Yang di-Pertua Negeri of Sabah and Sarawak. For example, the amendment to *Article 122AB of the Federal Constitution* on the appointment of judicial commissioners to the High Court in Sabah and Sarawak which is now no longer within the purview of the Yang di-Pertua Negeri of Sabah and Sarawak.[117] Another example is the amendment in 1988[118] to the jurisdiction of the High Courts which took away the judicial power of the Federation which was originally vested in the High Courts, to such jurisdiction and powers as may be conferred by or under Federal law. This may also be seen as a breach of *Article 161E(2)(b) of the Federal Constitution* as the amendments were effected without the concurrence of the Yang di-Pertua Negeri of Sabah and Sarawak.[119]

In theory, the Federal Government may use its powers under *Articles 74 and 77 of the Federal Constitution* to establish a single High Court and unify all laws affecting legal practice by making use of *Item 4 of List 1 (Federal List) of the Ninth Schedule of the Federal Constitution*, which clearly lists 'civil and criminal law and procedure and the administration of justice'. In addition to this, the Federal Government is also free to utilize *Article 161E of the Federal Constitution* which does away with the two thirds majority rule and the consent of the Yang di-Pertua Negeri if the amendment is to place Sabah and Sarawak on the same equal footing as the States of Malaya.

So, while there are loopholes that can be taken advantage of to unify the judicial and legal system in Malaysia, it would be best to respect the safeguards provided in the

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115 Ibid.

116 Ibid.

117 See the Constitution (Amendment) Act 1994 (in particular ss 15 and 16), and the case of *The Government of Malaysia v Robert Linggi* [2015] 1 LNS 1515.

118 Constitution (Amendment) Act 1988 (Act A704).

119 See Fong, J. C. *Constitutional Federalism in Malaysia*. (2nd Edition) (2016). Kuala Lumpur: Thompson/Sweet & Maxwell Asia. Page 143, footnote 51.

Federal Constitution itself,[120] and also to make full use of all consultation processes, in order to avoid any dissatisfaction or unhappiness, especially among the people of Sabah and Sarawak. The safeguards entrenched in the Federal Constitution, as sought by the people of Sabah and Sarawak and as evidenced in the Cobbold Commission Report, the Inter-Governmental Committee Report and the Malaysia Agreement, are very much a live issue, as can be seen recently when the Federal Government announced the tourism tax without consulting Sabah and Sarawak. The Sarawak Government led by its Chief Minister Abang Johari Openg was cited as announcing that he was sending a team of lawyers to London to study the details of the Malaysia Agreement.[121]

IV CONCLUSION

In conclusion, it is submitted that the justification for having two High Courts in Malaysia, purely for geographical reasons, is no longer justifiable some 60 years later. It is totally plausible for there to be one High Court for the whole of Malaysia, the same as there is only one Court of Appeal and one Federal Court for the whole of Malaysia.

However, this must be done by properly and delicately balancing the rights of all parties involved, especially East Malaysians who may (inaccurately) view this exercise as an abrogation of their special privileges. The benefits of having a single High Court are manifold, for example it ensures that East Malaysia will be on equal footing as West Malaysia as far as the judiciary is concerned. There will also be more independence in the judiciary in that the single High Court can now administer to its own specialised divisions such as the Civil Division, Commercial Division, Criminal Division, Intellectual Property Division and so on without the need of consent from the Chief Ministers or Yang Di-Pertua Negeri of Sabah and Sarawak. There can also be streamlined guidelines and practice directions for the single High Court which will be applicable throughout Malaysia, and not divided between East and West, which will contribute to a more effective and efficient administration of justice.

The most suitable and appropriate legal mechanism to establish a single High Court would be to amend the relevant provisions of the Federal Constitution as well as all other relevant legislation in accordance with the prescribed methods stipulated in the Federal Constitution itself. However, in order to avoid any acrimonious scenarios and to promote harmony, it would be best to undertake the unification exercise with all the stakeholders being fully aware, and willingly confer their blessings. The basic policies must be freely agreed to before any amendments to the laws are made. This is because in the end, the quest to unify the judicial and legal system is to strengthen the administration of justice in Malaysia which will be beneficial to all Malaysians.

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120 This is also in line with the 'basic structure doctrine' as expounded in *Kesavananda Bharathi v State of Kerala* AIR 1973 SC 146, and now accorded a place in Malaysian jurisprudence: see for example *Sivarasa Rasiah v Badan Peguam Malaysia &Anor* [2010] 2 MLJ 333, *Semenyih Jaya Sdn Bhd v Pentadbir Tanah Daerah Hulu Langat and another case* [2017] 3 MLJ 561 and *Indira Gandhi a/p Mutho v Pengarah Jabatan Agama Islam Perak & Ors and other appeals* [2018] 1 MLJ 545.

121 *5 Facts You Didn't Know About the Malaysia Agreement 1963*. Retrieved from: https://asklegal.my/p/5-facts-about-the-malaysia-agreement-1963

The advancement of technology, infrastructure and technical development has effectively bridged the geographical gap between the two High Courts. There are many similarities between the two High Courts, and the differences between the two High Courts may quite easily be overcome legally and administratively, and practically by compromising and balancing the rights of all parties involved. The establishment of a single High Court in Malaysia has many benefits, and most importantly would contribute to the overall efficiency of the administration of justice in Malaysia.