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Param replies to Dr M's letter

The Sun
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THE letter of Tun Dr Mahathir Mohamad (Speak up, April 8) and in particular the allegations he levelled at me should not go without a response.

The sworn testimony of Shafee Yahya (June 2000)

In the second trial of (Datuk Seri) Anwar Ibrahim, Mahathir was served with a subpoena by the defence. He applied and had the subpoena set aside on April 21, 2000. The trial continued until August 2000. (Former Anti-Corruption Agency director-general Datuk) Shafee Yahya gave his testimony on June 12, 2000. Cross-examination by the Public Prosecutor did not cast any doubt on the truthfulness of Shafee's testimony. Mahathir knew or ought to have known of that testimony. It was serious in nature. The proceedings were reported in the media the following day. Surely the Public Prosecutor, who was (now Tan Sri) Abdul Gani Patail, could have advised Mahathir to appear in court and refute the testimony under oath if Mahathir thought it was untrue.

Seeing the serious nature of the testimony against him, Mahathir could have volunteered to appear to clear his reputation but he never did. The irresistible inference is that he was afraid of giving sworn testimony in a court of law. There clearly is no justification for him to now complain that he "should at least be heard". He had every opportunity.

It is learnt from media reports on Wednesday that investigations against Mahathir were carried out following Shafee's sworn testimony and the papers submitted to the Attorney-General on **Feb 15, 2000**. This sounds incredible. Shafee's testimony was recorded by the court only on **June 12, 2000**. What investigation papers were submitted to the AG in February 2000? In any event as Shafee's was sworn testimony and in the public domain, was a sworn statement then taken from Mahathir, and if so can that be made public? The Inspector-General of Police is also reported to have said that the then AG, Tan Sri Mohtar Abdullah, decided there was no case. Going by how that same AG in November 2000 cleared the then Chief Justice, Eusoff Chin, of any wrongdoing over the CJ's holiday trip to New Zealand with (Datuk) V.K. Lingam, the integrity of some of Mohtar's decisions during the Mahathir era will remain questionable. It is also learnt from Wednesday's media reports that the ACA's investigation of the EPU director-general took three years from 1998, was completed and submitted to the AG's Chambers in 2001 and the file closed for "lack of evidence". This is puzzling. The then EPU director-general was appointed to the high office of Bank Negara governor in September 1998 and served until April 2000. Does this mean that Malaysia had a governor of the central bank who had an investigation for corruption pending against him throughout his tenure? What happened to the policy Malaysians were always told of that those appointed to high office are always cleared by the Special Branch and other agencies before they are appointed?

There is something very unsettling about the statements of these three high officials of our enforcement agencies as reported in the media.

My 'hatred' of Mahathir

This is really amusing. Mahathir obviously ascribes to others his own motives and outlook. It is well known that since about 1985, because of my public criticism of attempts to tamper with fundamental rights in the country, he has hated me. I was told by some ministers of his remarks about me, sometimes even in cabinet meetings. His hatred spilled over into New York and Geneva. On Sept 29, 1999 at the podium of the UN General Assembly in New York, he attacked me personally and the UN for appointing me as a special rapporteur. In Geneva in April 2000 he directed the Malaysian mission there to block my reappointment as special rapporteur by the Commission on Human Rights. That failed. Malaysia appeared a laughing stalk before that commission session.

about a fellow Malaysian and sought immunity as the statements had nothing to do with matters related to my UN work are just outrageous.

It is well documented now since the advisory opinion of the World Court in 1999 that the statements I made and quoted in the Commercial International Litigation journal were within the parameters of my UN mandate on the independence of judges and lawyers. It was a universal mandate from the UN Commission on Human Rights. The immunity from legal process sought was not personal to me but that of the UN. The UN sought the immunity under the Convention on Privileges and Immunities of the United Nations which Malaysia ratified without reservation. The reference to the World Court was made by a resolution of the UN Economic and Social Council. The opinion of the World Court was binding on Malaysia pursuant to the convention.

Four suits were filed against me in 1995 by corporations and two individuals claiming a total sum of RM280 million in damages for defamation. The two individuals are well known to Mahathir, hence his further anger when Malaysia lost in the World Court.

The statements I made about the state of the Malaysian judiciary after the infamous Ayer Molek case and reported in the journal in 1995 are justified in the light of recent developments and proceedings of the Royal Commission on the Lingam video clip. Lingam was one of the individuals who sued me. No court, however, found my statements libellous.

The fear over the want of independence, impartiality and integrity of the Malaysian judiciary during the Eusoff Chin era is best illustrated by developments in four other suits filed by the same parties for defamation against a large Kuala Lumpur law firm and two of its partners. The suits were over remarks made by the two partners and published in the same article in the International Commercial Litigation. The total amount claimed was RM280 million. The defences of the law firm and partners were handled by professional indemnity insurers whose headquarters were in London. Realising that the defence was constantly losing on interlocutory proceedings in the suits, they no longer had any faith in obtaining justice before our courts. Rather than being saddled with a colossal award in the region of RM280 million after trial, they decided and agreed to settle the four suits for a total of RM17.7 million.

Having recorded the terms before the courts here and paid the agreed sum, the insurers filed proceedings in London before the High Court of England and Wales in 1999 against the publishers to recover the RM17.7 million or part thereof by way of indemnity and/or contribution. In their defence, the publishers pleaded, among others, "that the claimants' insurers decided to capitulate and pay the original plaintiffs' exorbitant sums by way of ostensible damages and costs only because they apprehended that the claimants would not have received a fair trial at the hands of Malaysia's internationally discredited judiciary and legal system".

By June 2000 Mahathir's attention was drawn to the conduct of Eusoff Chin and his breach of the Judges' Code of Ethics, justifying the setting up of a tribunal under article 125 of the Constitution. He was shown those infamous New Zealand holiday photographs. Yet he refused to take any action, whereas in 1988 he went out of his way to find flimsy evidence to act against Tun Salleh Abas. His motives were highly questionable.

Set up Royal Commission

In the light of all that I have set out (and there are many other instances) there is justification for Mahathir to be investigated for abuse of power during his tenure as prime minister. As he himself has welcomed such an investigation, I urge the government to seriously consider and set up a Royal Commission of Inquiry to look into not just abuse of power during his tenure as prime minister but also how he consolidated that power during his tenure.