



# Upgrading Democracy: Soft Laws, Good Laws and Effective Protection of Human Rights

By Roy Lee

**What is democracy, and how do you guard the elected guardians and other public officials in a democracy?**

Democracy is more than a mechanism to elect the Government once every few years. A true democracy requires democratic governance – effective and robust mechanisms to keep the Executive honest and ensure that the Executive does not abuse its powers, acts fairly and works hard for the people. Benchmarks such as accountability, transparency, fairness and independence are useful indicators of democratic governance. The traditional tripartite model of government consisting of the Executive, the Legislature and the Courts is outdated and inadequate to explain the complex tapestry of governance in a modern democracy. A more accurate model sees the Courts as simply one of several forces that comprise democratic governance in a true democracy.

In many older democracies, soft law institutions have been established and evolved to play a critical role in democratic governance, far from the glare of publicity surrounding court cases. Without relying on litigation, the courts or even a written constitution, these mechanisms operate effectively on a day-to-day basis to shape the conduct and thinking of public officials. Two examples will be discussed: (a) The Ombudsman, with reference to New Zealand (and first-hand experience advising a major New Zealand Ministry); and (b) The Crown Prosecution Service headed by the Director of Public Prosecutions in the UK.

Good laws play a critical role in democratic governance. Laws should meet certain criteria to be fit for purpose in a democratic society. Among those criteria is general compatibility with international benchmarks and international best practice. Particular attention should be paid to international human rights norms, as safeguards of basic freedoms that are the cornerstones of democracy, such as freedom of expression. International human rights norms are the common law of common sense. A regional court with power to make legally binding rulings on a regional human rights convention is immensely useful to safeguard democracy and to provide regionally- and culturally-appropriate guidance for policymakers, Parliament and the Executive. An example of this is the European Court of Human Rights in Strasbourg.

The talk will conclude with a few general recommendations for upgrading democracy in Malaysia.

## About the Speaker

**Roy Lee** is an "old boy" of Victoria Institution Kuala Lumpur. He graduated from Victoria University of Wellington, New Zealand with an LLB (Hons) degree, and is enrolled as a barrister and solicitor of the High Court of New Zealand and the Supreme Court of Victoria, Australia. He was a solicitor in the Ministry of Agriculture and Forestry in New Zealand for several years before venturing out in sole practice and as a legal consultant. Over the last two decades or so, he has practised public law, drafted legislation and consulted in Australia, New Zealand, Guernsey, the Caribbean (Guyana), Central Asia (Afghanistan and Kyrgyzstan) and the South Pacific (Cook Islands and Kiribati). He has also trained lawyers in New Zealand and legislative drafters in the Caribbean.

His former clients include the World Bank, IMF, UNDP, European Commission, Commonwealth Secretariat, and UNICEF.

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**2 Dec 2016 (Friday)**

**3:00 pm to 6:00 pm**

**Raja Aziz Addruse Auditorium**

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2 Leboh Pasar Besar, 50050 Kuala Lumpur

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Since 2009, he has been one of several Legislative Counsel in the Law Officers' Chambers in Guernsey. His work includes drafting legislation, advising law enforcement and prison officers, advising on regulatory enforcement and prosecutions, and advising on the interpretation and application of the European Convention on Human Rights and Fundamental Freedoms. His professional areas of practice include prison, customs, imports and exports, medicines, controlled drugs, medical and health professions, and police complaints.

You can view his profile at:  
<https://gg.linkedin.com/in/roy-lee-32390610>



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