



HUMAN RIGHTS IN MALAYSIA : THE LAST 10 YEARS

Presenter

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Theme:

***"Human Rights in Malaysia : The Last 10 Years"*
*" The Lost Decade "***

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“Human Rights in Malaysia : The Last 10 Years”

“The Lost Decade”

by

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1. It is indeed timely that as the Human Rights Commission of Malaysia (Suhakam) approaches the 10th year of its existence, a review be undertaken to determine whether human rights in Malaysia has improved, remained unchanged or has in fact further deteriorated. When the Human Rights Commission of Malaysia Bill was presented in Parliament on 15th July 1999, the Minister of Foreign Affairs, Dato' Seri Syed Hamid Albar declared that this “should be regarded as a positive development towards protecting the interest and realizing the aspirations of our people” and “the ultimate of aim of setting up the commission is to promote and protect the human rights of Malaysians”¹
2. What was the backdrop of the state of human rights then in 1999? This can be seen from the text of the speech delivered by the Leader of the Opposition, Y.B. Lim Kit Siang which brought attention principally to four issues impacting upon human rights then:²

One, Malaysians living under four Proclamations of Emergency declared in 1964 as a result of the Indonesian Confrontation,

the Sarawak political crisis in 1966, the May 13 riots in 1969 and the Kelantan political crisis in 1977 all of which were still subsisting collectively and had not been annulled;

Two, the damning report in December 1998 by the UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, Abid Hussain that freedom of opinion is systematically curtailed in Malaysia, the domestic press muzzled to the extent to which laws such as the Internal Security Act (ISA), the Sedition Act and the Printing Presses and Publications Act were used to repress expression and curb peaceful assembly;

Three, the Human Rights Day Message 1998 released by the National Human Rights Society (HAKAM) on 10 December 1998 on the 50th anniversary of the Universal Declaration of Human Rights 1948 ("UDHR") which recorded the state of human rights in Malaysia then as a "nightmare for human rights" considering the rampant abuse and misuse of the ISA, repressive police action against peaceful assemblies and the alarming number of deaths in police shootings;

Four, Malaysia's parochial human rights position in failing to ratify key UN human rights conventions which impeded the progress of human rights in the country according to international standards.

3. So today as we celebrate the 9th Malaysian Human Rights Day, we ask ourselves : “has anything changed?” and as we assess the current state of affairs, as against the above four issues debated in Parliament about ten years ago, we must perforce regretfully concede that nothing much has. That explains the parenthesis to the title of this Paper, “*The Lost Decade*”. We remain perhaps as the only member state of the UN perpetually under four dark clouds of constitutional emergency that Parliament just refuses to remove. This is a blot to our system of parliamentary democracy. We remain in the grip of the same colonial repressive laws from another era but now invoked at the turn of the century against our own citizens. We appear to be trapped in a time-warp insofar as our traditional approach to human rights is concerned.

4.1 The ISA, detention-without-trial law,³ continues to be abused and misused. A journalist who discharges her duties to report truthfully provocative statements by a politician from the ruling party, is arrested under the law ostensibly for her own personal safety. Similarly two others, an opposition Member of Parliament and state executive councillor and a blogger are also deemed a threat to national security⁴ and arrested under the same obnoxious law which has been used at regular intervals over the last ten years against the former Deputy Prime Minister Dato Seri Anwar Ibrahim,⁵ his Reformasi supporters, the HINDRAF leaders,⁶ together with some

members of the Islamic groups, Jemaah Islamiah (JI) and Kumpulan Militan/Mujahiddin Malaysia (KMM).

- 4.2 Peaceful assemblers who have stated their intent to merely send a memorandum to the King against the security law are met with an excessively aggressive police unleashing chemical-laced water cannons and volleys of tear-gas canisters; and blamed for the ensuing pandemonium.⁷ A candle-light vigil is deemed an offence on pain of immediate arrest and lawyers who attend to advise and represent their candle-holding clients are similarly arrested and detained.⁸
- 4.3 Custodial violence and deaths in custody and deaths in police shootings continue with alarming regularity.⁹
- 4.4 Dead bodies are taken from the grieving next of kin in the name of religion and the parents and families dispossessed the right to the last rites.¹⁰ Infants are converted without the knowledge or consent of the non-converting parent.¹¹ Monopoly is imposed by the state for the “name” of God,¹²
- 4.5 Countless persons born in the country but without state recognized papers are invisible and stateless and without state-recognized rights.¹³
- 4.6 In 2008, the US Committee for Refugees and Immigrants USCRI, an international refugee rights watchdog, in its “World

Refugee Survey 2008” ranked Malaysia as one of the ten worst places for refugees.¹⁴

- 4.7 Further according to Reporters Sans Frontiers (RSF) press freedom index 2008, Malaysia has been downgraded to 132nd position out of 195 countries, its lowest ranking ever.¹⁵

This therefore is the state of our human rights after ten years from the passing of the Human Rights Commission of Malaysia Act, 1999.

5. What is the reason for the mismatch between the Government’s stated intent for Suhakam to promote and protect human rights on the one hand and the decade of relative inertia on the other? One explanation for this can be seen from the following two events:

- (i) In Malaysia’s Aide-Memoire on its candidature to the UN Human Rights Council in 2006, the government unequivocally stated that its commitment to human rights is demonstrated by the establishment of Suhakam;¹⁶
- (ii) On the other hand, Suhakam’s Chairman Tan Sri Abu Talib Othman in an interview in the New Straits Times, 3rd August 2008 under the caption : “Suhakam treads an arduous path” states:

“Year after year, our reports to parliament detailing our activities and recommendations are never debated in Parliament, much less acted upon by the relevant ministries. On the contrary, there is a tendency to undermine our independence by certain ministries.”¹⁷

6. Therein lies the sorry reason for the lack of progress of human rights in the country with the Executive considering the establishment, without more, of Suhakam as a human rights gift to the people and at the same time ignoring Suhakam’s recommendations with impunity.
7. This state of affairs has unfortunately led to the embarrassment of the International Coordinating Committee of National Human Rights Institutions (ICC) in its review of Suhakam’s accreditation in April 2008, proposing to recommend to ICC that Suhakam’s status be downgraded from status A to B within one year unless there is compliance with the international standards of the Paris Principles and more engagement with the International Human Rights System.¹⁸
8. Needless to say, this would be a serious blow to Malaysia’s human rights record at the international level, especially in view of its membership in the UN Human Rights Council. The decision to avert such international embarrassment lies not so

much with Suhakam but its parent, the Government of Malaysia.

9. What then is the underlying reason for the lack of progress in the human rights situation? It is suggested that this is closely tied up with the fossilized doctrine of human rights in the country held hostage by its colonial and emergency-centric domestic laws from another era without being liberated by the international standards of human rights as exemplified by the UN human rights conventions which Malaysia has todate refused to ratify.
10. In my view, so long as the government continues to procrastinate in ratifying the core UN human rights conventions, our jurisprudence in human rights, the domestic laws and regulations, the mental make-up of the law enforcement agencies and the executive towards human rights will continue to be retarded. Seasonal pronouncements of a new hope by the executive will, as we have seen in the last ten years, be dashed by the action on the ground.
11. What then, is the first step to a solution? Suhakam itself in its first Annual Report 2000 had provided the answer, if only Parliament would listen.

In that Report, Suhakam recommended that Malaysia should ratify "*as soon as possible*":¹⁹

- (i) the International Covenant on Civil and Political Rights (ICCPR),²⁰
- (ii) the International Covenant on Economic, Social and Cultural Rights (ICESCR),²¹ and
- (iii) the Convention Against Torture and Other Cruel Inhuman and Degrading Treatment or Punishment (CAT),²²

and further identified as *“crucial to the protection of human rights”*.²³

- (iv) the International Convention on the Elimination of All Forms of Racial Discrimination (CERD),²⁴ and
- (v) the International Convention relating to the Status of Refugees.²⁵

12. To date none of these international human rights conventions have been ratified by Malaysia, resulting in the nation being behind most of the countries of ASEAN and in an increasingly isolated gallery of non-ratifiers among the 192 member states of the United Nations. As an illustration, 173 member countries of the UN have ratified CERD including the ASEAN countries of Cambodia, Indonesia, Laos, Philippines, Thailand and Vietnam. Most of these ASEAN countries have also ratified ICCPR, ICESCR and CAT. In respect of CAT, for example I refer to my

Article on the issue in 2001, where I stated and I repeat : “What reason would Malaysia have to continue to delay ratifying the Convention Against Torture unless it wants to reserve for itself the right to torture?”.²⁶

13. Malaysia has in the meantime only ratified The Convention on the Rights of the Child (CRC) and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), both in 1995, and even then, with significant and far reaching reservations relating to equality and freedom of speech and expression which epitomizes the nation’s continuing struggle with basic and fundamental concepts of human rights.
14. It would appear unbelievable but it is a fact that the government has found itself unable to accede to the provision of the CRC which calls upon state Parties to respect and ensure the rights of each child without discrimination irrespective of race, colour, sex, language, religion, political or social origin, or other status.²⁷ So too the government refuses to agree to the provision, even at the turn of the millennium, that guarantees to the child “the right to freedom of expression including freedom to seek, receive and impart information and ideas of all kinds regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child’s choice”, notwithstanding the permitted restrictions to protect the rights

and reputation of others or for the protection of national security or public order or public health or morals.²⁸

15. If the nation cannot even guarantee for its future generation the right to equality and freedom of expression after 50 years of independence, it is an open question as to the direction for the future of 1 Malaysia.
16. It is my firm view that the precondition to release the nation from the grip of the old colonial and emergency-centric lego-political framework and to usher in a new era of the human rights friendly national ethos is the ratification of the UN conventions and a National Human Rights Plan of Action to establish a new regime of laws consistent with the principles of the UDHR. Malaysia cannot continue to be in an isolated gallery of non-ratifiers if it seeks to achieve its goals of national integration and developed status in a globalised world.

Conclusion

16. Do we have a choice? A nation by its Executive and its regime of laws may try to condition the minds of its citizenry but it cannot condition new global and regional phenomena. It cannot do much about the new realities of globalization, real time internet communication and increasing civil society engagement in public affairs. Resorting to mottos, slogans and new mission statements can only do so much. There is no

option to instituting real systemic changes in line with the new realities. Just like religion and morals guide the ethics of individual persons, a nation's soul is conditioned by its respect for the Rule of Law which embodies justice and fairness, equality and liberty. A National Human Rights Plan of Action to systematically introduce the principles of the UDHR and the formulation of a new regime of human rights friendly laws to implement these principles in state governance is in my view the only answer for continued progress. For ourselves and the future generation, failure is not an option.

NOTES:

1. Rachagan & Tikamdas, (eds) Human Rights And The National Commission Kuala Lumpur : HAKAM, 1999, p. 106, 110.
2. Rachagan, 1999, p. 111-125 .
3. Besides the ISA, the other detention-without-trial laws are the Emergency Ordinance (Public Order and Prevention of Crime) 1969 (EO) and the Dangerous Drugs (Special Preventive Measures Act 1985 (DDA). At the end of 2008, there were 43 persons still detained under ISA. There are about 1000 people detained under the EO. On 6.5.2008, in response to a question in Parliament, the Home Minister Syed Hamid Albar revealed that between 2002 and March 2008, the DDA has been used against a total of 11,142 persons of which 5203 persons were given detention orders whilst another 6019 were given order of restricted residence.

4. On 12.9.2008, Police launched a series of arrests under the ISA. It began with Raja Petra Kamaruddin, webmaster of Malaysia Today. On the same day a journalist for the Chinese language newspaper Sin Chew Daily, Tan Hoon Cheng was also arrested and detained in connection with her report regarding derogatory remarks uttered by a leader of the ruling party UMNO against the Chinese community in Malaysia. The Home Minister claimed that she was detained for her own safety. Opposition MP and Selangor state executive councillor Teresa Kok was also detained for allegedly inciting racial and religious tension by calling for mosque officials to tone down their amplified calls to prayer, which accusation the mosque officials themselves denied.

5. Dato Seri Anwar Ibrahim after being dismissed as Deputy Prime Minister and Finance Minister, was initially arrested in his home on 20th September 1998 under the ordinary criminal laws which meant he would have to be produced before a Magistrate the next morning "*within twenty four hours*" as stipulated in Article 5 (4) of the Federal Constitution. However, in the middle of the night, his arrest was converted to an ISA arrest which meant he need not be brought before a Magistrate the next morning. It is now public knowledge that in fact on the night of his arrest, he sustained serious injuries at the hand of the Chief of Police with the scars still shockingly visible after nine (9) days when he was finally brought to court for trial. This episode leaves open the question whether the ISA was used in this instance to conceal a crime committed by the Chief of Police. See: Rachagan and Ramdas, 1999 at p. 115.

6. On 30.6.2007, the Hindu Rights Action Force (HINDRAF) sent a Memorandum to the Attorney General that 79 Hindu temples had been either demolished, served notices to be demolished, burnt down, relocated next to sewerage tanks or had deities removed from their premises between February 2006 – June 2007. On 25.11.2007, HINDRAF organized a rally of about 30,000 in Kuala Lumpur demanding equality and fair treatment of ethnic Indians as a minority group. On 13.12.2007, five HINDRAF leaders were detained under the ISA.

7. On 1.8.2009, a massive rally was organized by the Anti-ISA movement together with the Pakatan Rakyat at Kuala Lumpur with the stated intent to assemble peacefully and send a memorandum to the King. The Police retaliated with thousands of the Federal Reserve Unit (FRU) Force and blocked all roads leading to the Palace and at the same time unleashed water cannons and tear gas into the peaceful marchers resulting in pandemonium and about 500 arrests.
8. Suhakam has instituted a public inquiry on 14.8.2009 into the arrest and detention of 5 lawyers of the Kuala Lumpur Legal Aid centre who contend that they were arrested and detained when they went to the Brickfields Police Station to represent their clients who were arrested during a candle-light vigil on 7 May 2009.
- 9.(i) "RM2.5 million for ex-detainee". The Sun, 19 October 2007 reported the case of Abdul Malek Hussin who was detained in 1998 and proved in court the assault and torture upon his person while in custody with the Judge noting the existence of "torture chambers".
- (ii) Based on the recorded testimony of Sanjeev Kumar (SUARAM : Malaysia Human Rights Report 2008 at p. 29), Sanjeev Kumar was tortured, brutally punched, kicked, hit with a filled water bottle, forced to drink his urine, had his penis hit and a hard object inserted into his anus while under ISA detention from July 2007 to 9 September 2008. He was pronounced paralyzed and unable to move his left leg and hand.
- (iii) Prabakaran, a car park attendant who was detained from 23 – 28 December 2008 lodged a police report on 11.1.2009 claiming he was scalded with hot water by police. 7 police officers have been charged in court.
- (iv) On 3.3.2009 the Home Minister in a parliamentary written reply stated that there were 153 cases of death in police custody in the period between 1999 and 2008. Based on media reports in 2008 there were at least 44 deaths by police shootings.

10. SUARAM : Malaysia Human Rights Report 2008 at p. 120 reports that on 21.1.2008 the body of Gan Eng Gor, deceased was taken away by the police from a Chinese funeral parlour and three days later released to the Negeri Sembilan Islamic Religious Council for burial under Islamic rites after the Syariah Court ruled that he had embraced Islam in 2007; Also the case in January 2008 where religious authorities prevented a husband from claiming his wife's body after her death ostensibly on the ground she had converted from Christianity to Islam. After a three-week long dispute over the religion of the deceased in the Kuala Lumpur High Court, the body was released to the husband after the admission by the Federal Territory Islamic Council that the purported conversion of the deceased to Islam was not in accordance with Islamic Law. At p. 121, SUARAM reported in July 2008, religious authorities in Penang claimed the body of one B. Elangesvaran who had committed suicide by hanging himself; with his family disputing the alleged conversion. The tussle between the Civil Court and Syariah Court ended with the Parit Buntar Syariah Court in Perak ruling that the deceased died a Muslim and the civil court holding that it had no jurisdiction to overrule the Syariah Court decision. At p. 165 the case of S. Kalimmah, whose deceased husband's body (the Everest hero M. Moorty) was taken away by Islamic authorities who claimed he had converted to Islam. See: Tikamdas, "The Right To The Last Rites" m.malaysiakini.com/letters/45172, 30.12.2005.
11. SUARAM : at p. 165, the case of R. Subhashini who was denied her rights to custody of her elder son when her husband converted to Islam. See: also Aliran Monthly 2007 : Vol. 27, No. 2 at p. 7 "Subhashini's pain, Malaysia's anguish".
12. SUARAM : at pg. 119 ; In December 2007, the Cabinet decided that the Catholic Weekly "The Herald" could not use the word "Allah" in its publications as the use of the word is deemed by the government to be exclusive to Islam. "Cabinet : 'Allah' for Muslims only "The Sun, 4th January 2008; On 9.3.2008, the Roman Catholic Archbishop of Kuala Lumpur Murphy Pakiam filed a judicial review on behalf of The Herald against the Internal Security Minister (now known as the Home Minister) for inter alia a declaration that the word 'Allah' is not exclusive to Islam.

13. See: Tikamdas, "The Right to Identity and Citizenship under the Constitution and International Law". Forum on "Statelessness : An Obstacle to Economic Empowerment" by ERA Consumer : 28 March 2006 at Legend Hotel, Kuala Lumpur. http://www.fnfmalaysia.org/focus/invisible_malayans.html.
14. U.S. Committee for Refugees and Immigrants (2008) World Refugee Survey 2008 : Worst Places for Refugees, Washington DC – USCRI (p. 3 – 7).
15. Reporters Sans Frontiers "Press Freedom Index 2008 : <http://www.rsf.org>.
16. SUARAM, 2008 at p. 154.
17. "Suhakam treads an arduous path" New Straits Times, 3 August 2008.
18. International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights, "Report and Recommendations of the Sub-Committee on Accreditation", Geneva, 21 – 24 April 2008.
19. SUHAKAM : Annual Report 2000 at p. 37.
20. Adopted and opened for signature, ratification and accession by General Assembly resolution 2200 4 (XXI) of 16 December 1966 : Entry into force : 23 March 1976.
21. Adopted and opened for signature, ratification and accession by General Assembly resolution 2200 A (XXI) of 16 December 1966 : Entry into force : 3 January 1976.
22. Adopted and opened for signature, ratification and accession by General Assembly resolution 39/46 of 10 December 1984 : Entry into force : 26 June 1987.
23. SUHAKAM : Annual Report 2000 at p. 28.

24. Adopted and opened for signature, ratification and accession by General Assembly resolution of 21 December 1965 : Entry into force : 4 January 1969.
25. Adopted at special United Nations Conference on 28 July 1951 : often referred to as “the Geneva Convention”.
26. ERA Consumer : proceedings of the National Consultation on “SUHAKAM After One Year” (2001) Tikamdas, “SUHAKAM : Analysis of Maiden Parliamentary Report” at p. 38.
27. Article 2, Convention on Rights of the Child (CRC).
28. Article 13 (1) and (2) CRC.
