

This is the post-refereeing version of the following article: YH, Khoo. 2014. Historical Accounts of the Human Rights Development in Malaysia from Independence to the Era of Tun Dr. Mahathir Mohamad. *Asian Profile*. 42 (1). 45-56.

**HISTORICAL ACCOUNTS OF THE HUMAN RIGHTS DEVELOPMENT IN
MALAYSIA FROM INDEPENDENCE TO THE ERA OF TUN DR.
MAHATHIR MOHAMAD**

KHOO Ying Hooi

Fellow

University of Malaya

Mailing Address: Department of International and Strategic Studies,

Faculty of Arts and Social Science, University of Malaya,

50603 Kuala Lumpur.

Malaysia.

yinghooi@gmail.com

This is the post-refereeing version of the following article: YH, Khoo. 2014. Historical Accounts of the Human Rights Development in Malaysia from Independence to the Era of Tun Dr. Mahathir Mohamad. *Asian Profile*. 42 (1). 45-56.

ABSTRACT

The issue of human rights in Malaysia has been an on-going debate and burning topic involving various parties including policymakers, scholars, political activists and individuals. Its pervasive awareness within the society has been more sharply felt since late 1970s with the emergence of human rights-related non-governmental organisations (NGOs). This study is inspired by an interest to understand the historical accounts of the roles and contributions of Malaysian NGOs on human rights to the Malaysian state and society from the Independence until the administration of Tun Dr. Mahathir Mohamad. My purpose here is to analyze human rights movements' issues in the social formation and in the process apprehend the character of the emergent civil society in Malaysia.

Keywords: *human rights, NGOs, Malaysia, Tun Dr. Mahathir Mohamad*

This is the post-refereeing version of the following article: YH, Khoo. 2014. Historical Accounts of the Human Rights Development in Malaysia from Independence to the Era of Tun Dr. Mahathir Mohamad. *Asian Profile*. 42 (1). 45-56.

1. Introduction

The Federation of Malaya achieved independence from the British colonial rule on 31 August 1957. Other than the pressure inserted by the nationalist and the anti-colonial movements of varying persuasions, it should be highlighted that the independence will not be achieved without the compact agreed between the British and the domestic ruling class. The compact, often regarded as the ‘*Merdeka* compromise’ was in fact allowing the ruling class to dominate and govern the Malaya¹.

Malaya was later on re-constituted into a larger entity with the incorporation of the Bornean states of Sabah, Sarawak, and Singapore in 1963. However, Singapore left Malaya in 1965. Malaysia has the basic features of a parliamentary system of government that similarly modeled from the Westminster parliamentary system with periodic multi-party elections and constitutionally defined separation of powers vested in the executive, the legislative and the judiciary.

The Federal Constitution in a way was adopted to strike a balance between the diverse communities in Malaysia. The main features of the Constitution were a bi-cameral government, Westminster style separation of power with the executive being part of the legislature and an independent judiciary, a monarch elected by a constitutionally protected group of sultans, Islam as the official religion, special privileges for Malays and natives of Sabah and Sarawak, and provision of sweeping

¹ Khoo Boo Teik, “Limits To Democracy: Political Economy, Ideology and Ruling Coalition”, in Mavis Puthuchery and Norani Othman (eds.), *Elections and Democracy in Malaysia*, Bangi: Penerbit Universiti Kebangsaan Malaysia (UKM), 2005, p. 19.

This is the post-refereeing version of the following article: YH, Khoo. 2014. Historical Accounts of the Human Rights Development in Malaysia from Independence to the Era of Tun Dr. Mahathir Mohamad. *Asian Profile*. 42 (1). 45-56.
emergency powers.² The Federal Constitution has been amended for quite a few times since the enactment, which is not quite normal to happen.

Second part of the Constitution provided a provision to protect fundamental liberties, which includes the liberty of the person, equality before the law, freedom of movement, freedom of speech and expression, freedom of assembly and association, as well as freedom of religion. All of the liberties mentioned are not guaranteed but are subject not only to express limits within the Constitution but in practice also subject to ordinary laws.³

After more than five decades of independence, many ambiguities in the actual practice of the idea of democracy emerged and it deepened from time to time. It cannot be deny that the heterogeneous nature of the population and the tendency for every political issue to be transformed into communalism is a significant feature in Malaysian socio-political context.⁴ Three essential components in an ideal democracy are extensive political competition, a high level of political participation and guaranteed civil and political liberties⁵. The imposing of strong laws with anti-democratic elements indicates that Malaysia is more of a “quasi democracy” since it only practices Westminster democracy partially⁶.

The political system in Malaysia is often discussed between the nature of democracy and authoritarianism. Since 1955, the Alliance regime or the *Perikatan* until

² Tan Poh Ling, *Human Rights and the Malaysian Constitution Examined through the Lens of the Internal Security Act 1960*, <<http://www.abc.net.au/power/conference/tan.pdf>>

³ Ibid.

⁴ Zakaria Haji Ahmad, “Malaysia: Quasi Democracy in a Divided Society”, in Larry Diamond, Juan J. Linz and Seymour Martin Lipset (eds.), *Democracy in Developing Countries: Asia*, Vol. 3, Boulder: Lynne Rienner, 1989, p. 351.

⁵ Diamond, Linz and Lipset (eds.), *Democracy in Developing Countries: Asia*, p. xvi.

⁶ Zakaria Haji Ahmad, “Malaysia: Quasi Democracy in a Divided Society”, p. 349.

This is the post-refereeing version of the following article: YH, Khoo. 2014. Historical Accounts of the Human Rights Development in Malaysia from Independence to the Era of Tun Dr. Mahathir Mohamad. *Asian Profile*. 42 (1). 45-56.

1969 and the National Front or *Barisan Nasional* (BN) has been the dominant in the political system without interruption since the independence. This coalition is comprised primarily of communal parties representing Malaysia's major ethnic groups, Malays, Chinese and Indians. Government under the BN combines democratic elements with significant restrictions on individuals' civil and political rights. Despite relative freedom to form political parties, the opposition parties' activities are often constrained by the overall legal environment.⁷

In Malaysia, the human rights NGOs are always seen as a revolt against the state's national interest or perceived as a threat to the state. Human rights NGOs at the same time can be called as social movements, civil society and voluntary organisations independent from the state. Human rights NGOs play a crucial role in creating and sustaining a rights-based society. It is deemed as the key for improving the quality of governance, strengthening people power, enabling development and strengthening democracy.

2. Human Rights Development and NGOs in Malaysia

Tunku Abdul Rahman (1957-1970)

The Federation of Malaya achieved independence in 1957 while the country was still in a state of emergency due to the communist insurgency. Although there was a Federal Constitution, which guaranteed several political and civil liberties, these were restricted by the Emergency Regulations which suspended these civil liberties. The

⁷ Meredith, L. Weiss and Saliha Hassan, "Introduction: From Moral Communities to NGOs", in Meredith L. Weiss and Saliha Hassan (eds.), *Social Movements in Malaysia: From Moral Communities to NGOs*, London: RoutledgeCurzon, 2003, p. 6.

This is the post-refereeing version of the following article: YH, Khoo. 2014. Historical Accounts of the Human Rights Development in Malaysia from Independence to the Era of Tun Dr. Mahathir Mohamad. *Asian Profile*. 42 (1). 45-56.

Emergency Regulations continued until 1960 when the emergency was terminated and most civil liberties were restored.⁸

The strong but authoritarian bureaucratic foundation for independence in Malaysia that provided by the British produced many of the Malaysia's early political leaders in taking charge with the administration of the country. However, it also bequeathed certain rules that restricted political activity which included Sedition Act 1948; laws enforcing strict licensing requirements on societies; restrictions on freedom of the press; and a law permitting detention without trial.⁹ Civil society forms in the post-independence period were strongly influenced by the means and ways the British instituted the social, cultural, economic and political transformations of the indigenous societies.¹⁰

The Internal Security Act (ISA)¹¹, which was enacted in 1960 in fact, replaced the Emergency Regulations. The Prime Minister at that time, Tunku Abdul Rahman assured Parliament and the country that the ISA would never be used to stifle legitimate opposition and silence lawful dissent.¹² On 21 June 1960, Tun Abdul Razak, the then Deputy Prime Minister and the Home Affairs Minister declared in the Parliament that the enactment of the ISA was to combat the subversive activities of the Communist

⁸ Cheah Boon Kheng, "From the End of Slavery to the ISA: Human Rights History in Malaysia", in Jomo K.S. (ed.), *Reinventing Malaysia: Reflections on its Past and Future*, Bangi: Penerbit Universiti Kebangsaan Malaysia (UKM), 2001, p. 78.

⁹ John Funston, "Malaysia: Developmental State Challenged", in John Funston (ed.), *Government and Politics in Southeast Asia*, Singapore: Institute of Southeast Asian Studies (ISEAS), 2001, p. 161.

¹⁰ Lee Hock Guan, "Introduction", in Lee Hock Guan (ed.), *Civil Society in Southeast Asia*, Singapore: Institute of Southeast Asian Studies (ISEAS), 2004, p. 10.

¹¹ The ISA has been repealed in 2012 and replaced with Security Offences (Special Measures) 2012 Act (SOSMA). This will be further explained in the Addendum.

¹² Rais Yatim, *Freedom under Executive Power in Malaysia: A Study of Executive Supremacy*, Kuala Lumpur: Endowment, 1999, p. 256.

This is the post-refereeing version of the following article: YH, Khoo. 2014. Historical Accounts of the Human Rights Development in Malaysia from Independence to the Era of Tun Dr. Mahathir Mohamad. *Asian Profile*. 42 (1). 45-56.

Party of Malaya (CPM).¹³ He also assured the public that the usage of ISA would not be abused.¹⁴ However, over the years, the ISA has been misused and abused. The ISA allowed the government to detain anyone for any length of time without the right to an open trial.

Throughout the 1960s, ISA arrested and detentions targeted those involved in communist activities, most particularly members of the then Labour Party, which formed part of the Socialist Front.¹⁵ On 26 November 1966, it arrested 70 people from various opposition parties in connection with alleged links with the Communist Party of Malaya. Zakaria Haji Ahmad reckons that the period from 1957 to 1969 may appropriately be characterized as “democracy on trial”, because the Westminster model was adopted without much modification, in spite of the communal nature of the plural society in Malaysia.¹⁶

The overwhelming dominance of the government was significant even though groups with differ views from the government were given some coverage in the national newspapers. There were certain restrictions in the freedom of media, which can be seen from the laws that require newspapers and other periodicals to renew their licenses every year while both radio and television are both state-owned. These restricted the opportunity of certain groups to communicate with the public.¹⁷ Nevertheless, it could not be denied that this period did provide some openings for

¹³ Koh Swe Yong, *Malaysia: 45 Years under the ISA – Detention without Trial*, Agnes Khoo (trans.), Petaling Jaya: Strategic Information Research Development (SIRD), 2004, p. xv.

¹⁴ Tommy Thomas, “Human Rights in 21st Century Malaysia”, *ALIRAN Online*, <<http://www.aliran.com/oldsite/hr/tt3.html>>

¹⁵ Nicole Fritz and Martin Flaherty, *Unjust Order: Malaysia’s Internal Security Act*, New York: The Joseph R. Cowley Program in International Human Rights Fordham Law School, 2003, p. 15.

¹⁶ Zakaria Haji Ahmad, “Malaysia: Quasi Democracy in a Divided Society”, p. 352.

¹⁷ Chandra Muzaffar, *Freedom in Fetters: An Analysis of the State of Democracy in Malaysia*, Penang: Aliran Kesedaran Negara (ALIRAN), 1986, pp. 232-233.

This is the post-refereeing version of the following article: YH, Khoo. 2014. Historical Accounts of the Human Rights Development in Malaysia from Independence to the Era of Tun Dr. Mahathir Mohamad. *Asian Profile*. 42 (1). 45-56.

organisations to function. Opposition rallies were allowed to take place even if permits for public rallies were delayed. University students were allowed to have their own political clubs in campus and issued statements and demonstrated on various issues that concerned in national and international agendas.¹⁸

Overall, Tunku's multi-racial style of leadership brought about political stability and economic success, until serious and widespread racial riots broke out in 13 May 1969, which was localized in Kuala Lumpur. The Yang di-Pertuan Agong declared a state of national emergency, Parliament and the Constitution were suspended and the government formed the National Operations Council (NOC) for 21 months to restore political order and the eventual return to parliamentary democracy. Followed up with the incident that marks the low in communal relations, the Emergency (Public Order and Prevention of Crime) Ordinance 1969 (POPO) was enacted. Even though POPO was devised as the direct response to the incidents and still remain in force, the ISA was being used widely to curb the so-called racial hostility.¹⁹

On the other hand, the incident is one of the reasons that brought the growth of human rights NGOs in Malaysia due to the major political, social, cultural and economic transformation in the country. Control of the press was very obvious right after the riot, the inability of the media to inform public of what was going on gave rise to all sorts of speculations which, in turn soared the existing ethnic tensions.²⁰

Tun Abdul Razak (1970-1976)

The emergency went on under the administration of Tun Abdul Razak, and the Parliament was restored in 1971. The effect of the 13 May racial riot on human rights

¹⁸ Chandra Muzaffar, *Freedom in Fetters*, p. 233.

¹⁹ Fritz and Flaherty, *Unjust Order: Malaysia's Internal Security Act*, p. 16.

²⁰ Chandra Muzaffar, *Freedom in Fetters*, p. 44.

This is the post-refereeing version of the following article: YH, Khoo. 2014. Historical Accounts of the Human Rights Development in Malaysia from Independence to the Era of Tun Dr. Mahathir Mohamad. *Asian Profile*. 42 (1). 45-56.

situation in the country was immense and drastic. Among is the Universities and University Colleges Act 1971 (UUCA), which was motivated largely by the need to provide an administrative basis for the establishment of new universities. However, the amended UUCA in 1975 prohibits students, academics, social groups and political parties the right to organize, and restricts freedom of expression.

There have been four or five major protests involving students between 1970 and 1974. Follow up from the 13 May racial riot, ethnic politics became part of student politics. In addition, UMNO factionalism has become interwoven into student activism.²¹ In 1974, student protests took place in Kuala Lumpur, together with discarded Malay urban squatters and impoverished farmers in Baling, the authorities arrested over a thousand students for illegal assembly. Over 20 students; academicians; and individuals were arrested under the ISA including Syed Husin Ali, former Professor of Anthropology of the University of Malaya and also Anwar Ibrahim, the then President of ABIM, who was held for 22 months.

Individuals, elites and groups opposed to repression did a few attempts to protect basic human rights by forming organisations due to the influence of international capitalist system. There were two such endeavors in 1975. Firstly was the formation of a human rights association. Secondly, the establishment of a foundation committed to the struggle of human rights. However both failed to obtain approval of the authorities.

Nevertheless, the era of 1970s saw the establishment of several new organisations in the country. Among were *Angkatan Belia Islam Malaysia* (ABIM),

²¹ Chandra Muzaffar, *Freedom in Fetters*, p. 13.

This is the post-refereeing version of the following article: YH, Khoo. 2014. Historical Accounts of the Human Rights Development in Malaysia from Independence to the Era of Tun Dr. Mahathir Mohamad. *Asian Profile*. 42 (1). 45-56.

Aliran Kesedaran Negara (ALIRAN) or National Consciousness Movement, Penang Consumer's Society, Women's Aid Organisation (WAO), and the Environment Protection Society. These organisations campaign strongly on issues such as corruption, protection of the poor, environment care, and the expansion of democracy.²²

In 1974, a group of people concerned with human rights set up the Human Rights Organisation of Malaysia under the chairmanship of national poet, Usman Awang. Other pro-term committee included Ahmad Boestamam, V. David, Kassim Ahmad, Azmi Khalid, lawyer Gamany and Professor Rohanna Ariffin. However, the establishment of the organization was failed due to the rejection of application for registration.²³

Tun Hussein Onn (1976-1981)

From October 1980 to March 1981, the attempt by the government to de-register ALIRAN, which had been a vocal advocate of civil liberties, was yet another point of some significance and the public has started to concern about the Societies Act issue. The ALIRAN de-registration issue had therefore created a certain awareness about the importance of defending the role of NGOs in the nation-building process. People had become aware of the threat to dissent and democracy from some of those who exercised power.²⁴

In 1981, the government amended the Societies Act 1966 which classified NGOs into two categories, "political" and "friendly". This amendment affected a large number of organisations from performing their legitimate role of lobbying or

²² Chandra Muzaffar, *Freedom in Fetters*, p. 66.

²³ Cecil Rajendra, *The Culture of Human Rights in Malaysia*, PRAXIS, March/ April 2006, Petaling Jaya: Selangor, p. 52.

²⁴ Chandra Muzaffar, *Freedom in Fetter*, p. 128.

This is the post-refereeing version of the following article: YH, Khoo. 2014. Historical Accounts of the Human Rights Development in Malaysia from Independence to the Era of Tun Dr. Mahathir Mohamad. *Asian Profile*. 42 (1). 45-56.

influencing government policy. A secretariat was headed by ABIM representing 115 organisations across the sectors coordinated a nation-wide campaign to oppose offending sections subsequently dropped by the government.²⁵

Tun Dr. Mahathir Mohamad (1981-2003)

By the middle of the 1980s, there are several controversial issues, which revolved around human rights aspects during the administration of Tun Dr. Mahathir Mohamad. Some of the issues are the enormous amount of legal and constitutional power at the expense of the traditional Rulers and the judiciary and the promotion of Asian values. One thing, which is to note is that during the period of 1981-2003, human rights condition is heavily lies on the policy of Tun Mahathir himself.

Despite the arguments from civil society that his regime has restricted citizens' rights and political growth, Mahathir maintains that it is sometimes necessary to limit civil and political rights in order to provide for the material needs of the populace. He insists that, "freedom from poverty and the wish to develop are also essential elements of human rights" and it is upon these rights that the state prefers to focus.²⁶ According to him, the crisis of liberal democracy is its lack of cultural values. He highlights the importance of a political model based on Asian values instead of individual rights.²⁷

Several laws have been introduced in the early 1980s such as the Printing Presses and Publications Act²⁸ and the Dangerous Drugs (Special Preventive Measures)

²⁵ Johan Saravanamuttu, "The State, Ethnicity and the Middle Class Factor: Addressing Nonviolent, Democratic Change in Malaysia", in Kumar Rupesinghe (ed.), *Internal Conflict and Governance*, New York: St. Martin's Press, 1992, pp. 51-54.

²⁶ Weiss and Hassan, "Introduction: From Moral Communities to NGOs", p. 7.

²⁷ Zakaria Haji Ahmad, "Malaysia: Quasi Democracy in a Divided Society", p. 168.

²⁸ Prime Minister Najib Razak announced on 15 September 2011 that there is no need for annual renewal of licenses. All licenses will remain valid indefinitely unless they are revoked, in common with broadcasting regulations in many Western nations.

This is the post-refereeing version of the following article: YH, Khoo. 2014. Historical Accounts of the Human Rights Development in Malaysia from Independence to the Era of Tun Dr. Mahathir Mohamad. *Asian Profile*. 42 (1). 45-56.

Act. The Printing Presses and Publications Act presented in 1984 was in some respects far more restrictive and retrogressive than the Printing Presses Ordinance promulgated in 1948 by the British in pursuing its own imperial interests.

The various shortcomings in the Dangerous Drugs (Special Preventive Measures) Act lead up to that inevitable question of how it stands in relation to human rights. Also to note is that Malaysia has already own the existing legislation, the Emergency (Public Order and the Prevention of Crime) Ordinance 1969²⁹ that also have certain provisions on drug traffickers.

In addition, the Official Secrets Act (OSA) amendments in 1986 imposed certain restrictions to the human rights movements in Malaysia. The National Union of Journalists in response managed to collect some 36,000 signatures to oppose the amendments made, however the government steamrolled them through parliament in the same year.³⁰

On 19 November 1985, the ISA was used on 36 alleged Muslim extremists under the leadership of Ibrahim Libya in Kampung Memali, Baling, at Kedah. It is interesting to note that the first Prime Minister, Tunku Abdul Rahman, opens the Democratic Action Party Convention on Human Rights in 1985. Tunku also wrote a regular column in *The Star* and in that role he was more vigorous in the defense of human rights than he had been as Prime Minister.

²⁹ Prime Minister Najib Razak also announced on 15 September 2011 that the Emergency Ordinance will be replaced by a law that will not compromise on national security and terrorism.

³⁰ Saravanamuttu, "The State, Ethnicity and the Middle Class Factor," pp. 51-54.

This is the post-refereeing version of the following article: YH, Khoo. 2014. Historical Accounts of the Human Rights Development in Malaysia from Independence to the Era of Tun Dr. Mahathir Mohamad. *Asian Profile*. 42 (1). 45-56.

Tunku made in affidavits at the *habeas corpus* hearing of Dr. Chandra Muzaffar, in 1987 stating that:³¹

The ISA introduced in 1960 was designed and meant to be used solely against the communists... My Cabinet colleagues and I gave a solemn promise to Parliament and the nation that the immense powers given to the government under the ISA would never be used to stifle legitimate opposition and silence lawful dissent.

During the seminar to commemorate the 40th Anniversary of the Universal Declaration of Human Rights on 10 December 1988, the NGO community in Malaysia, with the support from Tunku Abdul Rahman, Tun Hussein Onn, Dr. Tan Chee Khoo and Tan Sri Ahmad Nordin declared to form a National Human Rights Society (HAKAM) to promote and protect human rights in Malaysia. Tunku Abdul Rahman gladly accepted the offer to be the pro-term president.³² This is the first human rights NGOs in Malaysia that registered under the Societies Act, however it took HAKAM three years for the approval.

In the beginning of the administration of Tun Mahathir, he had released unconditionally in most instances some of the ISA detainees. However, 27 October 1987 witnessed the more serious event involving the direct abuse of human rights, when 106 Malaysians of varied background comprised of political crackdown on opposition leaders and social activists were arrested and detained without trial under ISA which served as the second largest arrest under ISA.

Among the prominent detainees were the opposition leader and DAP Secretary-General Lim Kit Siang, ALIRAN President Chandra Muzaffar, DAP Deputy Chairman Karpal Singh, MCA Vice President and Perak Chief Chan Kit Chee, Dong Jiao Zhong

³¹ Prof. Johan Saravanamuttu, Report on Human Rights in Malaysia, <http://www.aliran.com/oldsite/hr/js1.html>

³² Param Cumaraswamy, "Integrity Personified," *The Star*, 20 August 2007.

This is the post-refereeing version of the following article: YH, Khoo. 2014. Historical Accounts of the Human Rights Development in Malaysia from Independence to the Era of Tun Dr. Mahathir Mohamad. *Asian Profile*. 42 (1). 45-56.

or Chinese Education Associations Chairman Lim Fong Seng, Publicity Chief of the Civil Rights Committee Kua Kia Soong, PAS Youth Chief Halim Arshat, UMNO MP for Pasir Mas, Ibrahim Ali, and UMNO Youth Education Chairman Mohamed Fahmi Ibrahim. To show a semblance of impartiality, some members of the ruling coalition were also detained.

Although most of the detainees were released either conditionally or unconditionally, 40 were issued detention order of two years included Lim Kit Siang and Karpal Singh plus five other party colleagues, a number of PAS members and many social activists. Operation Lalang also saw the revoking of the publishing licenses of two dailies, *The Star* and the *Sin Chew Jit Poh* and two weeklies, *The Sunday Star* and *Watan*. In any case, the incident provided Tun Mahathir's government with the excuse to further tighten the executive stranglehold on politics by further restricting fundamental liberties. This incident did result in a noticeable change in the activism within the NGO community in Malaysia.³³ The Operation Lalang is one of the tactics to deter social activism that was slowly taken place.

The government came out with a white paper to justify the mass detentions. Interestingly, Tunku Abdul Rahman came up with a different view on the detentions and was quoted as saying that:³⁴

UMNO was facing a break-up. The Prime Minister, Dr. Mahathir Mohamad's hold on the party appeared critical when election rigging was alleged to have given him a very narrow victory against Tengku Razaleigh. The case alleging irregularities brought by UMNO members was pending in court. If the judgment were against him, he would have no choice but to step down. So he had to find a way out of his predicament. A

³³ Kua Kia Soong, *The Malaysian Civil Rights Movement*, Petaling Jaya: Strategic Information Research Development (SIRD), 2005, p. 4.

³⁴ K. Das, *The White Paper on the October Affair and the Why? Papers*, Petaling Jaya: SUARAM Komunikasi, 1989, p.10.

This is the post-refereeing version of the following article: YH, Khoo. 2014. Historical Accounts of the Human Rights Development in Malaysia from Independence to the Era of Tun Dr. Mahathir Mohamad. *Asian Profile*. 42 (1). 45-56.

national crisis had to be created to bring UMNO together as a united force to fight a common enemy – and the imaginary enemy in this case was the Chinese community... if there was indeed a real security threat facing the country, why was action not taken much sooner?

In the following year, the Printing Presses and Publishing Act was stricken where the printers and publishers had now to apply for new licenses annually whereas they were only required to renew them yearly before. In addition if any license is revoked, it could not be challenged in court. A prison term was added that publication of false news could land a publisher in jail for up to three years. Other than that, amendments were also made to the Police Act making it practically impossible to hold any political meeting, including a party's Annual General Meeting (AGM), without a police permit.³⁵

The important principle of indivisibility and interdependence of human rights is set out in clear terms in the 1993 Vienna Declaration as follows:³⁶

All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms.

The Vienna Declaration was endorsed by at least 180 countries including Malaysia. However, the government had argued both at home and abroad that it prefers so-called Asian values of human rights specifically during the period under the administration of Mohamad.

³⁵ Johan Saravanamuttu, *Country Study: Report on Human Rights in Malaysia*, Second Forum on Human Development, Rio de Janeiro: United Nations Development Programme (UNDP), 9-10 October 2000.

³⁶ See Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights in Vienna on 25 June 1993, <<http://www.ohchr.org/english/law/vienna.htm>>

This is the post-refereeing version of the following article: YH, Khoo. 2014. Historical Accounts of the Human Rights Development in Malaysia from Independence to the Era of Tun Dr. Mahathir Mohamad. *Asian Profile*. 42 (1). 45-56.

To date, Malaysia has not ratified any significant international human rights treaty particularly matters concerned on civil and political rights such as the International Covenant on Civil and Political Rights (ICCPR) and the United Nations Convention against Torture (CAT). The government has taken steps to ratify the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and Convention on the Rights of Child (CRC) in 1995, however with many reservations. Malaysia has also signed Convention on the Abolition of Slavery, Convention on the Nationality of Married Women (with a number of reservations), Convention on the Prevention of the Crime of Genocide, ILO Convention 98 on Principles of the Right to Organizer and to Bargain Collectively.

Although political NGOs have been fairly visible since the 1970s, the sacking of Deputy Prime Minister Anwar Ibrahim from his positions in the government and UMNO in September 1998 launched the massive Reformasi movement that brought unprecedented numbers of Malaysians on to the streets and into opposition parties and NGOs. All of a sudden, the issue of citizens' right to participate in political activities became a top priority even in generally apathetic sections of society.³⁷

In April 1999, days before the verdict in Anwar Ibrahim's first trial, Wan Azizah, his wife announced the formation of the *Parti KeADILan Sosial* or National Justice Party. By late 1999, KeADILan together with other opposition parties – PAS, DAP and *Parti Rakyat Malaysia* (PRM) joined together and formed *Barisan Alternatif* or Alternative Front.

³⁷ Weiss and Hassan, "Introduction: From Moral Communities to NGOs," p. 12.

This is the post-refereeing version of the following article: YH, Khoo. 2014. Historical Accounts of the Human Rights Development in Malaysia from Independence to the Era of Tun Dr. Mahathir Mohamad. *Asian Profile*. 42 (1). 45-56.

In combination with opposition parties, NGOs have indeed posed a threat at times to the political order Mahathir is so keen to maintain. The strongest challenge to his political regime was during the 1999 national elections, when the far-reaching Reformasi movement galvanized the main peninsular opposition parties to unite in the Alternative Front with the support of an array of civil society organisations and activists. This challenge came in the wake of a marked trend towards executive centralization under Mahathir and of the Asian economic crisis, which seriously impacted the Malaysian economy in the late 1990s.³⁸ Most importantly, Reformasi has led to the participation of many new forces of civil society in political developments and electoral politics quite unlike what had occurred in the past.³⁹ He was often criticized by the West for his authoritarian policies and use of state power to suppress opponents via the media, the judiciary and law enforcement agencies.

NGOs were intimidated by the 1987 actions, but did not fade away. SUARAM was established in direct response to these developments. The Bar Council of Malaysia emerged as a strong government critic in the wake of the judicial sackings in 1988. Others, such as the International Movement for a Just World (JUST) and HAKAM were established in the 1990s. The 1990s also saw the expansion of the newspapers, new editorially independent intellectual journals, and greater daring among the existing papers and television channels, particularly in the immediate aftermath of the economic crisis.⁴⁰

³⁸ Weiss and Hassan, "Introduction: From Moral Communities to NGOs," p. 7.

³⁹ Johan Saravanamuttu, "The Eve of the 1999 General Election: From the NEP to Reformasi," in Francis Loh Kok Wah and Johan Saravanamuttu (eds.), *New Politics in Malaysia*, Singapore: Institute of Southeast Asian Studies (ISEAS), 2003, p. 3.

⁴⁰ John Funston, "Malaysia: Developmental State Challenged", in John Funston (ed.), *Government and Politics in Southeast Asia*, Singapore: Institute of Southeast Asian Studies (ISEAS), 2001, p. 189.

This is the post-refereeing version of the following article: YH, Khoo. 2014. Historical Accounts of the Human Rights Development in Malaysia from Independence to the Era of Tun Dr. Mahathir Mohamad. *Asian Profile*. 42 (1). 45-56.

Many other independent groups also emerged and made their voices heard as the 1999 elections approached. Among of these groups included the Women's Agenda for Change (WAC), Citizens Health Initiative, People are the Bosses, Seventeen-Point Election Appeals, Election Watch or PEMANTAU, Malaysian Students Council and other initiatives.⁴¹

One of the notable progresses during the period of Mahathir was the setting up of a National Commission of Human Rights (SUHAKAM) through Act 157 that passed by the Parliament in 1999. While the government has gone ahead with the setting of the Commission, this move has occurred amidst the demands of 34 NGOs for public consultation on the draft bill and assurance of the transparency, independence and the proper implementation of its mandate.

The rights of Malaysians to participate in civil society, and protection of basic civil liberties, are spelt out at length under the second part of the Constitution, headed Fundamental Liberties. But virtually all of these freedoms are qualified by an overriding right of the government to decide otherwise if it wishes, in the interests of national security or public order. The steady expansion of executive power since independence has, in practice, left few guarantees of individual liberties.⁴²

On 10 December 1992, some of the NGOs that attended the book launch of "Agi Idup Agi Ngelaban", a book on the struggle of the indigenous peoples in Sarawak

⁴¹ Johan Saravanamuttu, "The Eve of the 1999 General Election: From the NEP to Reformasi", in Francis Loh Kok Wah and Johan Saravanamuttu (eds.), *New Politics in Malaysia*, Singapore: Institute of Southeast Asian Studies (ISEAS), 2003, pp. 12-14.

⁴² John Funston, "Malaysia: Developmental State Challenged", in John Funston (ed.), *Government and Politics in Southeast Asia*, Singapore: Institute of Southeast Asian Studies (ISEAS), 2001, p. 190.

This is the post-refereeing version of the following article: YH, Khoo. 2014. Historical Accounts of the Human Rights Development in Malaysia from Independence to the Era of Tun Dr. Mahathir Mohamad. *Asian Profile*. 42 (1). 45-56.
for their land rights, decided to initiate a Malaysian human rights consultation.⁴³

Subsequently from the outcome of feedback from the questionnaire and consultations, 50 NGOs in 1993, representing human rights organizations, trade unions, consumer associations, women's groups, environmental organizations, academic bodies and organizations of people with disabilities, finally endorse a Malaysian Human Rights Charter. This document identified a broad range of civil and political rights, as well as economic, social and cultural rights. Initially, the Malaysian Human Rights Charter would be a living document, with various NGOs completing periodic status reports. However, follow-up has so far been sporadic.

Mahathir during his administration has emerged as one of the main Third World leaders to call for a rethink on human rights. He has argued that developing countries like Malaysia need to have their own human rights standard befitting their level of development as well as their own cultural values. This argument prioritizes economic development over civil and political rights because, it is argued, as a developing nation, Malaysia has not yet reached the desired economic status to allow full realization of human rights. An extension of this argument is that Asian values place greater importance on the community and hence, collective rights should be given precedence over civil and political rights.⁴⁴

The government has used the fear of terrorism to justify the usage of ISA followed the September 11 attack at the World Trade Center. More than 70 individuals

⁴³ See Malaysian Charter on Human Rights, December 1994, Petaling Jaya: Suara Rakyat Malaysia (SUARAM), <http://www.hurights.or.jp/database/E/malaysian_hr_charter.pdf>

⁴⁴ SUARAM, *Malaysian Human Rights Report*, Petaling Jaya: SUARAM, 1998, p. 4.

This is the post-refereeing version of the following article: YH, Khoo. 2014. Historical Accounts of the Human Rights Development in Malaysia from Independence to the Era of Tun Dr. Mahathir Mohamad. *Asian Profile*. 42 (1). 45-56.

have been arrested and detained under its provisions, allegedly for involvement in militant Islamic activities.⁴⁵

Conclusion

The history of human rights in Malaysia can be well described as a history of progress and retrogression: of moving one step forward, only to step two steps backwards.⁴⁶ Despite the relatively early introduction of liberal political institutions based on the Westminster system, the distribution of civil, political and socio-economic rights was uneven and restricted.⁴⁷

Progress in addressing human rights concerns in Malaysia could consider as the product of decades of struggles for human dignity by Malaysians, individually and collectively. There is a need to mainstream human rights in Malaysia particularly on the area concerning civil and political rights. The various principles of human rights should be the foundation of Malaysian culture. Consequently, there is the need to recognize that the connotation of human rights is not negative or anti-government.

⁴⁵ Fritz and Flaherty, *Unjust Order: Malaysia's Internal Security Act*, p. 3.

⁴⁶ Cheah Boon Kheng, "From the End of Slavery to the ISA: Human Rights History in Malaysia", in Jomo K.S. (ed.), *Reinventing Malaysia: Reflections on Its Past and Future*, Bangi: Universiti Kebangsaan Malaysia (UKM), 2001, p. 57.

⁴⁷ Vidhu Verma, *Malaysia: State and Civil Society in Transition*, Boulder: Lynne Rienner Publishers, 2002, p. 4.

This is the post-refereeing version of the following article: YH, Khoo. 2014. Historical Accounts of the Human Rights Development in Malaysia from Independence to the Era of Tun Dr. Mahathir Mohamad. *Asian Profile*. 42 (1). 45-56.

References

- Cheah, Boon Kheng, "From the End of Slavery to the ISA: Human Rights History in Malaysia", in Jomo K. S. (ed.), *Reinventing Malaysia: Reflections on Its Past and Future*, Bangi: Universiti Kebangsaan Malaysia, 2001, pp. 57-78.
- Das, K. and SUARAM (eds.), *The White Paper on the October Affair and the Why? Papers*, Petaling Jaya: SUARAM Komunikasi, 1989.
- Fritz, Nicole and Martin Flaherty, *Unjust Order: Malaysia's Internal Security Act*, New York: The Joseph R. Cowley Program in International Human Rights Fordham Law School, 2003.
- Funston, John, "Malaysia: Developmental State Challenged," in John Funston (ed.), *Government and Politics in Southeast Asia*, Singapore: Institute of Southeast Asian Studies (ISEAS), 2001, pp. 161-189.
- Johan, Saravanamuttu, *Country Study: Report on Human Rights in Malaysia*, Second Forum on Human Development, Rio de Janeiro: United Nations Development Programme (UNDP), 9-10 October 2000.
- _____, "The Eve of the 1999 General Election: From the NEP to Reformasi," in Francis Loh Kok Wah and Johan Saravanamuttu (eds.), *New Politics in Malaysia*, Singapore: Institute of Southeast Asian Studies (ISEAS), 2003, pp. 3-18.
- _____, "The State, Ethnicity and the Middle Class Factor: Addressing Nonviolent, Democratic Change in Malaysia", in Kumar Rupesinghe (ed.), *Internal Conflict and Governance*, New York: St. Martin's Press, 1992, pp. 51-54.
- _____, Report on Human Rights in Malaysia, Aliran Kesedaran Negara (ALIRAN) Online. <http://www.aliran.com/oldsite/hr/js1.html>

- This is the post-refereeing version of the following article: YH, Khoo. 2014. Historical Accounts of the Human Rights Development in Malaysia from Independence to the Era of Tun Dr. Mahathir Mohamad. *Asian Profile*. 42 (1). 45-56.
- Khoo, Boo Teik, "Limits To Democracy: Political Economy, Ideology and Ruling Coalition," in Mavis Puthuchearry and Norani Othman (eds.), *Elections and Democracy in Malaysia*, Bangi: Penerbit Universiti Kebangsaan Malaysia (UKM), 2005, pp. 19-25.
- Koh, Swe Yong, *Malaysia: 45 Years under the ISA – Detention without Trial*, Agnes Khoo (trans.), Petaling Jaya: Strategic Information Research Development (SIRD), 2004.
- Kua, Kia Soong, *The Malaysian Civil Rights Movement*, Petaling Jaya: Strategic Information Research Development (SIRD), 2005.
- Lee, Hock Guan, "Introduction," in Lee Hock Guan (ed.), *Civil Society in Southeast Asia*, Singapore: Institute of Southeast Asian Studies (ISEAS), 2004, pp. 10-14.
- Malaysian Charter on Human Rights, December 1994, Petaling Jaya: Suara Rakyat Malaysia (SUARAM).
http://www.hurights.or.jp/database/E/malaysian_hr_charter.pdf
- Muzaffar, Chandra, *Freedom in Fetters: An Analysis of the State of Democracy in Malaysia*, Penang: Aliran Kesedaran Negara (ALIRAN), 1986.
- Param Cumaraswamy, "Integrity Personified," *The Star*, 20 August 2007.
- Poh Ling, Tan, *Human Rights and the Malaysian Constitution Examined through the Lens of the Internal Security Act 1960*.
<http://www.abc.net.au/power/conference/tan.pdf>
- Rais, Yatim, *Freedom under Executive Power in Malaysia: A Study of Executive Supremacy*, Kuala Lumpur: Endowment, 1999.
- SUARAM, *Malaysian Human Rights Report*, Petaling Jaya: SUARAM, 1998.
- Thomas, Tommy, "Human Rights in 21st Century Malaysia," Aliran Kesedaran Negara (ALIRAN) Online. <http://www.aliran.com/oldsite/hr/tt3.html>
- Verma, Vidhu, *Malaysia: State and Civil Society in Transition*, Boulder: Lynne Rienner Publishers, 2002.
- Vienna Declaration and Programme of Action, Adopted by the World Conference on Human Rights in Vienna on 25 June 1993.
<http://www.ohchr.org/english/law/vienna.htm>
- Weiss, Meredith, L. and Saliha Hassan, "Introduction: From Moral Communities to NGOs," in Meredith L. Weiss and Saliha Hassan (eds.), *Social Movements in Malaysia: From Moral Communities to NGOs*, London: RoutledgeCurzon, 2003, pp.3-8.

This is the post-refereeing version of the following article: YH, Khoo. 2014. Historical Accounts of the Human Rights Development in Malaysia from Independence to the Era of Tun Dr. Mahathir Mohamad. *Asian Profile*. 42 (1). 45-56.

Zakaria Haji Ahmad, "Malaysia: Quasi Democracy in a Divided Society", in Larry Diamond, Juan J. Linz and Seymour Martin Lipset (eds.), *Democracy in Developing Countries: Asia* (Vol.3), Boulder: Lynne Rienner Publishers, 1989, pp. 345-352.

Addendum

The ISA was originally enacted to succeed emergency laws aimed at combating the communist insurgency in the 1940s and 1950s. However at a later stage, it was often used against political dissidents. For decades, Malaysia has received international criticism in relation to the ISA including the foreign governments, notably that of the United States. The legislation violated internationally recognized human rights standards due to its draconian nature. For example, detainees were subject to an initial 60-day detention period and no judicial order is required for such detentions. Detainees were also denied access to lawyers. The issue of detention without trial particularly relates to the deprivation of a person's fundamental right to personal liberty, and clearly it was not consistent with the Universal Declaration of Human Rights. The issue of the usage of ISA previously has been subjected to a lot of criticisms in and out of the country including at the UN Human Rights Council.

By the yardstick established by the western democracies such as in the United States, Australia and Canada, Malaysia does not yet fully measure up in term of the human rights protection. Realizing the fact of the need to make necessary civil liberty reforms, the Prime Minister Najib Razak announced on 15 September 2011 that several

This is the post-refereeing version of the following article: YH, Khoo. 2014. Historical Accounts of the Human Rights Development in Malaysia from Independence to the Era of Tun Dr. Mahathir Mohamad. *Asian Profile*. 42 (1). 45-56.

draconian laws including the ISA and the three Emergency proclamations are to be repealed. The Security Offences (Special Measures) 2012 Act (SOSMA) was introduced to replace ISA. SOSMA reduces previously unlimited detention without trial to 28 days, after which the attorney general must decide whether to prosecute and on what charges. SOSMA also diminishes the unchecked power of the home affairs minister to decide cases, mandates judicial oversight and a fair trial, and provides immediate access to relatives and legal counsel.