Civil liberties in contemporary Malaysia
Progress, retrogression and the resurgence of ‘Asian values’

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The Malaysian government’s position on human rights has largely been based on the arguments that it is necessary to curtail some civil liberties in order to achieve economic development and national security, and that human rights should be subjected to interpretation based on local norms, values, religious traditions and national priorities (López 2001, 2007). Such a position goes against the United Nations’ formulation of human rights – that they are universal, that is, regardless of national, regional, historical, cultural and religious backgrounds; and indivisible and interdependent, that is, all rights must be respected at all times (UN 1993) – which many Asian governments, including Malaysia’s, have claimed to be ‘Western-centric’ (Bauer and Bell 1999).

A long-term assessment of the history of human rights in Malaysia has been described by historian Cheah Boon Kheng (2001: 57) as one of ‘progress and retrogression; of moving one step forward, only to step two steps backwards’. This chapter attempts to chart the progress and retrogression of civil liberties in contemporary Malaysia, with the aim of answering the following questions: how much have civil liberties in Malaysia progressed or regressed in recent years? How have changes of political leadership in the country in recent years influenced that progress or retrogression? What are the major challenges to substantive improvements in civil liberties in Malaysia?

Legal framework for civil liberties

Part II of the Federal Constitution provides guarantees of ‘fundamental liberties’: the rights to personal liberty, to habeas corpus, to be informed of the grounds of arrest, to be legally represented by a lawyer of one’s choice, and to be produced before a magistrate within twenty-four hours (Article 5); prohibits slavery (Article 6); protects from retrospective criminal laws and repeated trials (Article 7); grants rights to equal protection under the law (Article 8), freedom of movement (Article 9), freedoms of speech, assembly and association (Article 10), and religion (Article 11); and grants rights in respect of education (Article 12) and to property (Article 13). Besides these commitments, the constitution also enumerates citizenship rights (Articles 14–31), the right to be elected into parliament (Articles 47–48) and
the right to universal adult franchise (Article 119); and guarantees protection against racial discrimination in the public services (Article 136), among others.

Notwithstanding these guarantees, the Federal Constitution ‘subordinates individual rights to the need for social stability, security and public order’, and permits the imposition of various restrictions on fundamental freedoms (Shad 1999: 137). Laws that have subordinated individual rights in the name of ‘social stability, security and public order’ have included the Internal Security Act (ISA) and the Security Offences (Special Measures) Act (SOSMA), in contravention of the right to personal liberty (Article 5); the Printing Presses and Publications Act (PPPA), the Official Secrets Act (OSA), and the Sedition Act, which restrict the right to freedom of expression (Article 10); Section 27 of the Police Act and the Peaceful Assembly Act, which curtails the right to freedom of peaceful assembly (Article 10); and the Societies Act and the Universities and University Colleges Act (UUCA), which impose restrictions on the right to freedom of association (Article 10).

Right to personal liberty

Article 149 of the Federal Constitution empowers the parliament to pass laws to curb ‘subversion’ or acts that are ‘prejudicial to public order’. One such law was the Internal Security Act 1960 (ISA). The ISA was used extensively against political dissidents, students and labour activists (Koh 2004), purportedly for committing acts deemed ‘prejudicial to the security of Malaysia’ or threatening to the ‘maintenance of essential services’ or ‘economic life’. The ISA empowered the police to detain individuals for an initial sixty-day detention period in secret police holding centres for the purpose of investigation, with no judicial order required. Torture and other cruel, inhuman and degrading treatment were common occurrences during the initial detention period (for instance, SUARAM 2002; SUHAKAM 2003; Kua 2010). At the end of the sixty-day period, the Home Ministry could order further detention without trial for a term of two years, which could be renewed indefinitely.

In 2012, after years of public criticism, the ISA was abolished and was replaced by the Security Offences (Special Measures) Act (SOSMA). Another detention-without-trial law, the Emergency (Public Order and Prevention of Crime) Ordinance 1969, was also repealed. The SOSMA, nevertheless, permits detention of individuals for up to twenty-eight days without their being brought before the court, merely on the basis that the police have ‘reason to believe’ that the person may be involved in security offences. The law refers to the Penal Code, which was also amended in 2012 to include activities ‘detrimental to parliamentary democracy’, such as ‘to support, propagate or advocate any act prejudicial to the security of Malaysia or the maintenance or restoration of public order’, in its list of ‘security offences’.

Right to freedom of expression

Legitimate restrictions on freedom of expression are permitted under international human rights law, specifically Article 19 of the International Covenant on Civil and Political Rights 1966 (ICCPR) on the basis of national security or public order, but such restrictions may be imposed only if the proposed measures are proportional and necessary to meet certain narrowly defined objectives. Article 20(2) of the ICCPR further prohibits hate speech, incitement to or advocacy of national, racial or religious hatred, discrimination, violence or hostility. Restrictions on freedom of expression in Malaysia, however, have often been imposed, including through laws such as the Printing Presses and Publications Act (PPPA),
the Official Secrets Act (OSA), and the Sedition Act, without being subjected to tests of proportionality and necessity.

The PPPA requires all mass-circulation newspapers to obtain publishing permits, which previously had to be renewed annually. Amendments to the Act in 2012, however – part of the Najib Razak administration’s purported reforms to civil liberties and media freedom – have eliminated the annual renewal requirement. The 2012 amendments also allow publishers to challenge the Home Ministry’s decisions to revoke or suspend permits, a right that was previously absent. Notwithstanding these relative improvements, the Act has maintained its press censorship function with the requirement of publishing permits from the Home Ministry, which still has the power to revoke a permit at any time if a publication contains anything that is deemed ‘prejudicial to public order or national security’.

The OSA, in addition, criminalises the dissemination of information classified as ‘official secrets’, providing a maximum penalty of seven years’ imprisonment. Meanwhile, the Sedition Act criminalises ‘any act, speech, words, publication or other thing’ that has a ‘seditious tendency’, which includes exciting disaffection against any ruler or against any government; promoting hostility between races or classes of the population; and questioning ‘any matter, right, status, position, privilege, sovereignty, or prerogative established or protected by the provisions of Part III of the Constitution [provisions relating to citizenship] or Article 152 [national language], 153 [special rights of the ethnic Malays and natives of Sabah and Sarawak], or 181 of the Constitution [powers relating to the ruling chiefs of Negeri Sembilan]’ (Sedition Act 1948). The Act provides a maximum penalty of three years’ imprisonment, a RM5,000 fine, or both.

Rights to freedoms of peaceful assembly and association

Prior to 2012, restrictions on the right to freedom of peaceful assembly was imposed by Section 27 of the Police Act 1967, which required a police permit to be obtained fourteen days before any public assembly. Then in 2012, as part of Prime Minister Najib Razak’s reform agenda, this provision was replaced by the Peaceful Assembly Act, which introduced other restrictions, including prohibiting street protests, barring organisation of assemblies by persons below the age of twenty-one, and participation in peaceful assemblies by children below the age of fifteen.

The right to freedom of association is restricted by the Societies Act 1966, through which many organisations and societies have been subjected to refusal of registration, imposition of conditions on their activities, and deregistration by the government. The Universities and University Colleges Act 1971 (UUCA), on the other hand, prohibited students and faculty members from expressing support for, sympathy for or opposition to any political party or trade union (UUCA, Section 15(5)(A)); however, amendments were made in 2012 following a Court of Appeal ruling that the provision was unconstitutional. This ruling was a result of a constitutional challenge of the Act by five university students who had been subjected to disciplinary action by their university for being present at a parliamentary by-election campaign in April 2010. With the amendments, university students are now permitted to take up membership in any organisation, including political parties, although the Act still prohibits students from joining organisations that are deemed ‘unsuitable to the interest and well-being of the students or university’.


Mahathir Mohamad is generally viewed by human rights advocates as being responsible for having ‘inflicted serious harm to human rights in Malaysia’ during his twenty-two-year
Premiership (SUARAM, cited in Jason 2005). He was one of the most outspoken critics of universal human rights, which purportedly focus on individualism, advocating instead for adherence to ‘Asian values’, which emphasise ‘collective’ and ‘community’ rights (Khoo 2002; Verma 2002). Indeed, Mahathir even publicly defended authoritarian rule ‘in the interest of political stability and efficiency of governance’ (Khoo 2002: 58).

In assessing Malaysia’s civil liberties under the Mahathir administration, two major events – namely Operasi Lalang (1987) and the reformasi years (1998–early 2000s) – stand out, although these are far from exhaustive. Nevertheless, both instances saw highly publicised and well-documented cases of human rights abuses, and mass crackdowns on political opposition and civil society leaders. The Mahathir administration also introduced a number of legislative amendments that restrict civil liberties. Perhaps some of the most far-reaching in their impact upon civil liberties were 1989 amendments to the ISA, which removed the possibility of judicial review of the Home Ministry’s two-year detention orders or their renewal.

In October 1987, 106 political leaders (predominantly from the opposition) and civil society leaders were detained without trial under the ISA in an operation named Operasi Lalang. The arrests came against the backdrop of a major leadership crisis and split in UMNO in late 1986 and 1987, which coincided with the emergence of several critical ethnic-related issues in the country, including the switch to Malay language as a medium of instruction for optional courses in the departments of Chinese and Tamil studies at the University of Malaya in 1987, as well as the government’s appointment of more than one hundred Chinese teachers who did not possess qualifications in Mandarin as senior assistants in Chinese primary schools – resulting in demonstrations and counter-demonstrations that provided a pretext for the mass arrests (Munro-Kua 1996: 130–36; Crouch 1996: 110–11; Kua 2005a: 94–95). The government justified the mass ISA detentions on grounds of combating purported threats of racial extremism, liberation theology and communism (SUARAM 1989).

In September 1998, former Deputy Prime Minister Anwar Ibrahim was detained incommunicado under the ISA following his dismissal from all positions in the government and in UMNO, and was brought to court nine days later with a black eye, apparently resulting from assault by a police officer, who was later identified to be the then inspector general of police, Rahim Noor. Anwar was subsequently tried and convicted on charges of corruption and sodomy in a judicial process that was widely criticised for contravening international fair trial standards. Several other individuals linked with Anwar were also incarcerated under the ISA and subjected to torture in detention (Abolish ISA Movement 2005: 27–30).

Anwar’s sacking and subsequent detention catalysed growing calls for reforms, giving rise to the reformasi movement, which manifested in frequent street demonstrations in 1998–99. The government reacted by criminalising public assemblies relating to the reformasi movement and deployed excessive police force to disperse and arrest demonstrators. The police deployed tear gas, water cannon and batons, often causing injuries to demonstrators while dispersing or arresting them (SUARAM 2005).

It is against a backdrop of public outcry at both national and international levels against rampant human rights abuses in the detention and trial of Anwar Ibrahim and the crackdown on the reformasi movement that the Human Rights Commission of Malaysia (SUHAKAM) was established in 1999. The creation of SUHAKAM was, however, seen by critics as merely a window-dressing exercise of the government to deflect criticism of its human rights record. Critics have pointed out that SUHAKAM’s enabling law was hastily introduced by the government and passed in parliament without any public consultation, and as a result, falls short of the Paris Principles (Tikamdas and Rachagan 1999).
Notwithstanding the criticism over the establishment and mandate of SUHAKAM, civil society groups and reformasi activists soon began to engage with the commission, albeit critically. They referred cases of human rights abuses to SUHAKAM, with the view that it could utilise its mandates to hold investigations and public inquiries into alleged human rights violations and make recommendations to the government.

On 5 November 2000, a reformasi rally held on the premises of Parti Keadilan Nasional (National Justice Party) was dispersed violently by the police using water cannon and tear gas, resulting in scores of injuries. SUHAKAM, which had then only been in existence less than a year, subsequently conducted a public inquiry into allegations of human rights abuses during the rally and concluded the police had committed several human rights violations, including using excessive force, damaging private property, causing injury to persons in detention, delaying provision of medical treatment for injured detainees and failing to provide medication prescribed for injured detainees. SUHAKAM also made a list of recommendations, including for the police to review its methods of crowd dispersal, exercise restraint when dispersing assemblies, and provide demonstrators sufficient time to disperse (SUHAKAM 2001). This was considered a landmark report, which saw the newly established official commission confirming, through a public inquiry, allegations of human rights violations in an opposition-led rally; however, Mahathir dismissed SUHAKAM’s report and findings as ‘influenced by Western thinking’ (Ramlan 2001).

In April 2001, reformasi activists announced a plan to present SUHAKAM with a ‘People’s Memorandum’ on 14 April 2001 – the second anniversary of Anwar Ibrahim’s conviction on corruption charges – on ten key areas of human rights concern, including freedoms of expression and peaceful assembly, the independence of the judiciary, and the repeal of restrictive laws such as the ISA, the Sedition Act, the Police Act, the PPFA and the UUCA. The government responded to this plan by arresting and detaining seven key reformasi activists without trial under the ISA for allegedly planning to overthrow the government through violent means (López 2001: 55; 2007: 64). Contrary to the official allegations, however, affidavits filed by the detainees at the Federal Court later revealed that police questioning hardly touched on the actual allegations, but rather on ‘political strategies, information, structure and funding of political parties and NGOs, and alternative news websites’ (SUARAM 2005: 29).

In sum, the Mahathir administration’s legacy in relation to civil liberties in Malaysia has had far-reaching implications – in legislation, policy and practice – deeply entrenching elements of authoritarianism that have survived subsequent changes in national leadership, as will be demonstrated below.

Abdullah administration (2003–09)

When Abdullah Badawi took office from Mahathir in 2003, human rights advocates were cautiously optimistic about the possibility of changes in attitudes towards democracy and human rights in the country (SUARAM 2004). Indeed, from time to time during his premiership, Abdullah stated his intent to promote human rights and democracy.

One of the events of greatest significance vis-à-vis civil liberties during the Abdullah administration was the establishment of a Royal Commission to Enhance the Operation and Management of the Royal Malaysian Police, mandated to make recommendations for the improvement of the police force, in response to ‘allegations of torture, brutality, non-accountable shootings, deaths in custody, corruption, discrimination and abuse at the hands of the police’ (Kua 2005b: 2). The Royal Commission made 125 recommendations under
three broad categories: reduction of crime and the enhancement of public safety; eradication of the perception of widespread corruption within the Malaysian Police Force; and compliance with human rights. Among its main recommendations in relation to the police’s compliance with human rights were the establishment of an Independent Police Complaints and Misconduct Commission (IPCMC), an oversight body mandated to receive and act on complaints regarding the police; amendments to Section 27 of the Police Act with regard to police permits for public assemblies, Section 73 of the ISA, to require detainees to be produced before a magistrate within twenty-four hours of detention; the repeal of the Emergency (Public Order and Prevention of Crime) Ordinance 1969; and amendments to Section 117 of the Criminal Procedure Code to limit police detentions to a maximum of seven days for an arrest without a warrant, and not more than twenty-four hours for arrest with a warrant.

Despite Abdullah’s pledge to implement all recommendations, however, many were not implemented. The IPCMC, for instance, still has not been established, largely due to strong opposition from the police force itself. This was seen when a supposedly internal report of the police – which described the IPCMC as ‘unconstitutional, prejudicial to national security and public order, victimised the people, and could cause a state of anarchy which would undermine the ruling coalition’s power’ – was inadvertently posted on the Royal Malaysia Police website in May 2006 (Kuek 2006).

Meanwhile, the ISA continued to be used under Abdullah’s premiership. In a parliamentary reply on 9 July 2007, Abdullah said that ‘the ISA is significant because we use it to maintain peace and to ensure the security of the general public’ (cited in SUARAM 2008: 8; emphasis added). Such a statement reveals the fact that Abdullah, despite pledges to improve respect for human rights, did not depart from the Mahathir administration’s line of restricting civil liberties on grounds of ‘public stability’.

One of the more publicised of such cases was the detention of five Hindu Rights Action Force (HINDRAF) leaders in December 2007. Earlier, on 25 November 2007, HINDRAF had organised a massive rally in the capital Kuala Lumpur, demanding equality and fair treatment for ethnic Indian Malaysians, whom it claimed had been systematically marginalised and discriminated against (see Govindasamy, this volume). The rally was violently dispersed, with more than a hundred protestors arrested. In the run-up to the rally, three HINDRAF leaders were arrested under the Sedition Act for alleged inflammatory speeches made while on tour in several cities and towns around the country. In December 2007, after numerous repeated threats and warnings, five HINDRAF leaders were arrested under the ISA. The movement was subsequently officially banned by the government in October 2008. Brown (2011: 226) notes that the Abdullah administration’s heavy-handed response towards HINDRAF caused ethnic Indian Malaysian votes to swing against the Barisan Nasional (BN, National Front), causing major losses for the ruling coalition in the 2008 general election.

In March 2008, the ruling BN obtained its worst electoral result to date. That August, it then suffered a huge defeat in a by-election in Permatang Pauh, Penang at the hands of opposition leader Anwar Ibrahim. Soon after, Anwar publicly announced an invitation to members of parliament from the ruling coalition to cross over and join the opposition and to form a new government, signalling a direct challenge to power that put Abdullah’s leadership in question.

Against this backdrop, in September 2008, three individuals – Raja Petra Kamaruddin, a blogger and outspoken government critic; Teresa Kok, a member of parliament from the opposition Democratic Action Party (DAP); and Tan Hoon Cheng, a journalist for Chinese-language newspaper Sin Chew Daily – were arrested within a period of twenty-four hours
under the ISA for allegedly inciting racial tensions. Critics contend that these arrests were part of BN’s ‘modus operandi’ during times of political crisis – invoking the ISA to censor discussions deemed ‘too sensitive’ in a multi-ethnic society and raising the ‘spectre of racial conflict’ as a form of regime maintenance, as had been seen in 1987’s Operasi Lalang (SUARAM 2009). Criticism against the Abdullah administration’s misuse of the ISA was not confined to the political opposition and civil society, but also emerged from within the ranks of the government. Zaid Ibrahim, then minister in charge of law in the Prime Minister’s Department, strongly criticised the government’s actions and eventually resigned from his ministerial post. Subsequently, several BN component parties also called for the review of the ISA (SUARAM 2009).

While the Abdullah administration had pledged greater respect for civil liberties, resistance from within the establishment resulted in many of the pledges remaining unimplemented. On the other hand, heavy-handed responses towards dissent against the government eroded public support towards the ruling BN, eventually leading to Abdullah’s resignation in 2009.

Najib administration (2009–present)

Any assessment of the situation of human rights under Najib Razak can only be a preliminary one, since the sixth prime minister of Malaysia is currently still in office, having succeeded Abdullah Badawi in April 2009.

Having taken the helm in the context of eroding support for the BN and growing demands for reforms in democracy and human rights, Najib promised greater respect for civil liberties; however, in 2009 – Najib’s first year in power – close to 1,000 individuals were arrested for various forms of peaceful protest (SUARAM 2010). A massive anti-ISA rally held on 1 August 2009 saw 589 individuals arrested, the greatest number of persons arrested in a single public assembly in recent years. The BN’s takeover of the Perak state government from the opposition Pakatan Rakyat (People’s Alliance) coalition following the defection of three elected Pakatan state assemblypersons also sparked a wave of protests around the country in May 2009, which were met by a police crackdown and arrests of a total of 167 persons (SUARAM 2010: 94).

In September 2011, Najib announced plans to repeal the ISA and other restrictive legislation such as the Sedition Act, as well as emergency proclamations. Then in November 2011, the government hastily introduced the Peaceful Assembly Act, which replaced Section 27 of the Police Act. While the abolition of Section 27 was welcomed, the new law drew objections for a number of reasons, including the lack of public consultation in its formulation, as well as its continued restrictions on freedom of peaceful assembly, including the ban on street protests. Several UN human rights experts have cautioned that the definition of ‘assembly’ in the new law is too vague and imposes overly broad restrictions, and have expressed regret that neither SUHAKAM nor civil society was meaningfully consulted in its drafting (UN OHCHR 2011).

The ISA was officially repealed in April 2012 with the passage of its replacement, the Security Offences (Special Measures) Act 2012 (SOSMA). While the new law introduces improvements in some areas, critics contend that it imposes more restrictions in others. For example, the initial police detention period under the new law is shortened to a maximum of twenty-eight days, after which the attorney general must decide whether or not to charge a suspect, as compared with the previous sixty days’ initial detention followed by a possible two-year detention without trial under the ISA. Critics also note that the bill, coupled with
amendments to other laws, has introduced new restrictions, including broadening police apprehension and surveillance powers (Spiegel 2012). In October 2013, another law, the Prevention of Crime Act, was amended, resulting in what critics have claimed is the re-introduction of detention without trial similar to under the ISA.

Najib’s first general election as prime minister in 2013 was marred by allegations of numerous electoral irregularities and violations, including political violence, illegal campaigning, conveyance of voters and harassment of election observers (PEMANTAU 2013). Almost immediately after the elections, an opposition-led protest movement against allegations of electoral irregularities emerged, organising mass rallies, vigils and public forums. While the heavy-handed government response of the past – characterised by violent police crackdowns – was notably absent in the post-2013 election rallies, the government nevertheless embarked on a series of arrests and criminal charges under the Peaceful Assembly Act and the Sedition Act against individuals organising and participating in these events.

Human Rights Commission of Malaysia (SUHAKAM)

SUHAKAM was established through the enactment of the Human Rights Commission of Malaysia Act in 1999, amidst growing criticism of the serious human rights abuses at the height of the reformasi era. Civil society groups welcomed the government’s announcement of its plan to establish the Commission, especially in a context ‘where key public institutions such as the police, the judiciary and the Attorney-General’s Chambers have come under strong public criticism’, and further called for the government to hold public consultations on the drafting of the Commission’s founding law (Malaysian NGOs 1999). This call was never met, however, and SUHAKAM’s enabling law was enacted in September 1999 without any public consultation. The first batch of Commissioners was appointed in 2000 (Tikamdas and Rachagan 1999: 6). The Commission is mandated to:

- promote awareness and provide education in relation to human rights;
- advise and assist the government in formulating legislation and administrative directives and procedures and recommend necessary measures to be taken;
- make recommendations to the government with regard to subscription to or accession of treaties and other international instruments in the field of human rights; and
- inquire into complaints regarding infringements of human rights.

Since its establishment, SUHAKAM has been criticised for its apparent lack of independence and compliance with the Paris Principles. Among other aspects, the process of appointing commissioners has been criticised, as the prime minister has full discretion over appointments. The definition of ‘human rights’ in its mandate – limited to the fundamental liberties enshrined in Part II of the Federal Constitution – has also been criticised as restrictive (Rachagan and Tikamdas 1999; Burdekin 2007). The effectiveness of the commission has also been questioned, as the government has largely ignored its recommendations. None of SUHAKAM’s many reports has even been debated in parliament (SUARAM 2010).

The perceived lack of independence and effectiveness of SUHAKAM has led to a generally dissenting attitude by human rights groups towards the commission. In May 2002, thirty-two NGOs announced a hundred-day boycott of SUHAKAM, suspending all forms of engagement with the commission, in protest against the government’s poor response to SUHAKAM’s numerous recommendations (Yusof 2002). This was not the only time SUHAKAM was boycotted by civil society groups. In September 2005, thirty NGOs
boycotted its Malaysian Human Rights Day conference, for which former Prime Minister Mahathir Mohamad was invited to deliver a keynote address. The NGOs questioned the credibility of SUHAKAM’s conference on human rights if it ‘featured a leader who perpetrated extensive human rights violations’ and noted that ‘the Mahathir-led government inflicted some very serious harm to human rights in Malaysia’ (Jason 2002). In September 2009, forty-two civil society groups staged another boycott of SUHAKAM’s annual Malaysian Human Rights Day conference, in protest of the long-standing concerns over its lack of independence and effectiveness (Ong 2009).

In 2008, the International Coordinating Committee of National Human Rights Institutions (ICC-NHRI), the governing body of national human rights institutions (NHRIs) around the world, gave SUHAKAM a one-year notice to make improvements in its compliance with the Paris Principles – including by strengthening its independence through a more transparent appointment and dismissal process – failing which the Commission’s accreditation would be downgraded from ‘A’ status to ‘B’. The government responded by introducing amendments to the founding law of SUHAKAM on two occasions – in March 2009 and June 2009 – changing to a selection process which is relatively more transparent and inclusive of public participation, among other adjustments (SUARAM and ERA Consumer 2010; Renshaw et al. 2011).

The establishment of SUHAKAM in 1999 was widely considered a major milestone in the history of human rights in Malaysia. Yet, questions remain about its effectiveness in substantially improving human rights in the country. In September 2009, while commemorating the tenth anniversary of the law that established the commission, a conference was held to take stock of the work of SUHAKAM in the field of human rights in Malaysia. One of the speakers at the conference, human rights lawyer Ramdas Tikamdas, termed the first ten years of SUHAKAM ‘the lost decade’, noting that detention without trial under the ISA continued to be abused and misused, that peaceful assemblies continued to be quashed with excessive use of force, that custodial deaths and deaths caused by police shootings continued with alarming regularity, that freedom of religion continued to be denied, and that Malaysia’s rankings in press freedom indices continued to drop (Tikamdas 2009).

While some significant developments have subsequently occurred, including the repeal of restrictive laws such as the ISA and Section 27 of the Police Act in 2012, the following observation made by Andrew Khoo, chairperson of the Malaysian Bar’s Human Rights Committee, at the 2009 SUHAKAM conference highlighted a larger challenge to the fulfilment of SUHAKAM’s mandates, and more generally to the development of human rights in Malaysia: ‘The resurgence of the argument for a culturally-appropriate set of human rights and values places enormous challenges to the development of international human rights norms and standards in Malaysia’ (Khoo 2009).

Conclusion: ‘Asian values’ and their recent resurgence

While Mahathir’s successors have not been as outspoken as him in their defence of ‘Asian values’, successive administrations have continued to invoke the argument that ‘collective’ and ‘community’ rights should be prioritised over civil liberties. For instance, in 2009, during a review of Malaysia’s human rights record at the UN Human Rights Council, the Malaysian government once again invoked the ‘public stability and national security’ argument as the basis for curtailing some civil liberties, while noting the ‘unique character’ of Malaysia implied a subtle rejection of the universality of rights. The government did so, though, without explicitly spelling out its disagreement with the supposed ‘Western notion’ of human
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In considering the promotion and protection of human rights and fundamental freedoms, as it had done, for instance, during Mahathir’s administration:

In considering the promotion and protection of human rights and fundamental freedoms, including the exercise of international obligations, Malaysia’s unique character required prime importance be given to national unity, stability and security. . . . Today, Malaysia is a robust democracy fully committed to the principles of rule of law, good governance, integrity and accountability. Efforts have been largely devoted to achieving inter-racial harmony, and equitable socio-economic development, while taking into account individual human rights and fundamental freedoms.

(UN 2009: 3; emphasis added)

Indeed, a major stumbling block for sustained improvement in the relative progress attained thus far is the government’s continued rhetoric of the need to curtail some civil liberties on grounds of economic development, national security and public stability, especially in the context of Malaysia’s ‘unique’ character. This line of argument had in the past been strongly championed by Mahathir, but there has been a resurgence of cultural and regional particularistic arguments regarding human rights in the ASEAN sub-region in recent years. The establishment of the ASEAN Intergovernmental Commission on Human Rights (AICHR) in 2009 and the adoption of the ASEAN Human Rights Declaration in 2012 demonstrate this: the AICHR reaffirms the ‘ASEAN Way’ of non-interference and decision-making by consensus in its work, and the declaration incorporates principles of cultural and regional particularities in relation to human rights (FORUM-ASIA 2013). Yet, these developments in ASEAN also signal some form of shift through the states’ acceptance of – albeit with a view to steer – human rights discourse in the region. The same can be said about the Malaysian government, for instance, in its establishment of SUHAKAM, which as López (2001) notes, is a result of external influences, especially when linked with local struggles.

This chapter has attempted to chart the significant progress and retrogressions in civil liberties in contemporary Malaysia. The establishment of SUHAKAM in 1999 and the repeal of several restrictive laws, including the ISA in 2012, have been positive developments, but they have also been accompanied by retrogressions, such as new restrictions imposed by laws introduced to replace old ones. This trend of ‘moving one step forward, only to step two steps backwards’ (Cheah 2001: 57), it is argued, largely stems from the Malaysian government’s continued resistance towards the full acceptance of the principles of the universality and indivisibility of rights.

A major challenge is thus to shift the focus of discourse away from whether civil liberties should be granted relative to one’s location and culture, to when and under what specific circumstances limitations on civil liberties can be considered legitimate, proportional and necessary. Indeed, existing international human rights jurisprudence has already laid the foundations to questions regarding the latter. On the other hand, it is equally important to acknowledge that the progress seen in recent years – and indeed in the longer view of history – is a result of pressures, partly external, but more importantly, from the struggles of the Malaysian people.

Notes

1 The Principles Relating to the Status of National Institutions for Protection and Promotion of Human Rights (Paris Principles) establish international standards for national human rights
institutions, covering aspects including the need for independence, a broad human rights mandate, adequate funding, and inclusive and transparent selection and appointment processes.

2 ‘A’ status is accorded to NHRIs that are in full compliance with the Paris Principles. Only ‘A’ status NHRIs are recognised and given the right to make interventions at general sessions of the UN Human Rights Council.

3 In 2006, the Universal Periodic Review was created under the UN Human Rights Council as a mechanism of peer review of all UN member states’ human rights records.

Bibliography


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