

Table of contents

1. Introductory part	6
1.1 Introduction.....	6
1.1.1 Research Question:	7
1.1.2 I argue/probable findings	8
1.2 Operationalization and working concepts	8
1.2.1 Sub-questions	9
1.2.2 International regimes	10
1.2.3 Human rights.....	12
1.2.4 Asian Values.....	13
1.2.5 Political regime-type	13
1.3 Review of literature	14
1.3.1 IR-tradition.....	14
1.3.2 Empirical data	15
1.4 Methodology	16
1.5 Theoretical framework.....	17
1.5.1 Neo-realism.....	17
1.5.2 Neoliberal Institutionalism	18
1.5.3 Neo-Gramscian	19
1.5.4 Added value of the theories	20
Chapter 1	22
2 The International human rights regime	22
2.1 Early history – the emergence of international human rights	22
2.2 The covenants – the enforcement of universal standards.....	23
2.2.1 The contentious provisions in the covenants	24
2.3 The Cold War-order – the momentum of the regime.....	25
2.4 ‘Asian Values’ and the 1993 Vienna World Conference on Human Rights	28
2.5 The current regime	30
2.6 Concluding comments.....	33
Chapter 2	34

3 The Malaysian human rights discourse.....	34
3.1 Early political history / institutional developments.....	34
3.1.1 Constitutional rights and restrictive laws	36
3.1.2 The 1969-riots.....	37
3.2 The era of Mahathir (Mahathirism)	39
3.2.1 Economic development on the agenda.....	39
3.2.2 Critique of the West	39
3.2.3 The Human Rights Commission – SUHAKAM	40
3.3 Current perspective	41
3.3.1 Official Malaysian human rights approach	41
3.3.2 Latest political development in Malaysia	42
3.4 The unofficial Malaysian human rights discourse	43
3.4.1 The influence of civil society and NGO’s	43
3.4.2 Independent NGO’s perspective on international human rights.....	45
3.4.3 Developments in the human rights discourse	46
3.5 Concluding comments.....	48
Chapter 3	49
4 The mismatch between national and international dynamics.....	49
4.1 Defining moments.....	49
4.2 Malaysia starting to integrate in the universal human rights regime?	50
4.3 Complexities with further ratifications	53
4.4 Asian Values – a distinctive set of values?	55
4.5 Institutional developments	57
4.5.1 Islam	57
4.5.2 Judiciary	57
4.5.3 The electoral system and UMNO businesses.....	58
4.5.4 Political economy	59
4.5.5 Constitutional control.....	60
4.6 The imposed democracy-model by the British under transformation	60
4.7 The result - Competitive Authoritarianism.....	62
5 Conclusions	64

6 Literatures	67
Appendices.....	74
Appendix 1	74
Appendix 2	79
Appendix 3	80
Appendix 4	82
Appendix 5	86
Appendix 6	88
Appendix 7	93
Appendix 8	104
Appendix 9	105
Appendix 10	107

1. Introductory part

1.1 Introduction

After WWII, the United Nations (UN) Commission on Human Rights started drafting an international bill and the UN General Assembly¹ unanimously adopted the Universal Declaration of Human Rights (UDHR) on December 10th, 1948. The UDHR is the first international bill of its kind declaring all people as having equal rights and fundamental freedoms, regardless of race, religion, gender and political belief or other statuses - a birth-right of everyone, because all belong to humanity (Appendix 1). The UDHR must be regarded as a landmark achievement in world history. When new countries seek membership in the UN they are obliged to adhere to the UDHR in order to be adopted and many countries also chose to sign it. The UDHR is based on principles and has strong moral force, but is not legally binding. Hurrell argues:

“For most people human rights are inherently universal, concerned with protecting and furthering the dignity and worth of all human beings. We are unavoidably dealing with rights that are enjoyed simply by virtue of being human. Yet the universality of both the notion of human rights and the nature of human rights has been, and remains, highly contested.” (Hurrell 1999: 291-292)

The commitment, to protect and promote human rights when accepting the UDHR, is merely moral. In order to develop the obligations for the member states, UN transformed the principles into legally binding instruments. The two International covenants on Civil and Political Rights (ICCPR) and on Economic, Social and Cultural Rights (ICESCR) are the direct explicit continuation of the moral text of the UDHR - the UDHR, the two covenants and the Optional Protocols are collectively known as ‘The International Bill on Human Rights’. The two fundamental covenants and further one convention (ICERD) were adopted in 1966 after almost two decades of negotiation and entered into force in 1976 and 1969, respectively. Since then, six treaties have been formulated and are referred to as the 9 core UN human rights treaties (Appendix 2), consisting of legally binding international covenants and conventions, for states that ratify² them. The two covenants protect fundamental rights to everyone; the 7 others are more specific and protect certain groups of people, e.g. the Convention on the Rights of the Child (CRC), which parenthetically is the most universally ratified treaty (UN1, unr.org).

The UDHR is ‘universal’, but does this universality only refer to the moral principles or does it also include the legal commitments? The starting point of this paper is to look into that notion of universality in enforcement in order to gain a better understanding of international human rights. This paper will

¹ At that time having 58 member states, 8 abstentions (Soviet Union + allies, South Africa, Saudi Arabia)

² Definition from Stanford Encyclopedia: A country ratifying a UN human rights treaty agrees to respect and implement within domestic law the rights the treaty covers. It also agrees to accept and respond to international scrutiny and criticism of its compliance. This is a significant, if non-coercive, form of accountability. A ratifying country does not necessarily agree to make the human rights norm “self-executing” — that is, directly enforceable in domestic courts. That often requires implementing legislation.

look into why the moral UDHR is practically impossible to universalize when it comes to implementation. While most countries sign the human rights treaties and formally accept the text, ratification is a whole other matter. According to Gibney:

“States have willingly, knowingly, and purposely agreed to be bound by the provisions in various human rights treaties – that is, they have signed and ratified certain international treaties (but perhaps declined to join others) and thereby have made this particular aspect of international law a part of their own domestic law.” (Gibney 2008: 9-10)

The majority of countries of the world have ratified most of the 9 treaties (Appendix 3). This indicates the universality is not only moral but also encompasses the implementation. But a number of countries lag behind.³ Among these (3 or less ratifications) are the US and a number of countries in Southeast Asia; Malaysia, Brunei, Singapore, and Burma. Malaysia has ratified 3 out of 9, but none of the two fundamental covenants. Malaysia is a member of the UN and therefore accepts the UDHR, and despite not having signed this declaration, is obliged to uphold its principles.

Some scholars, like Van Ness, argue it is important to show consistency in human rights diplomacy and practice what you preach; ratification of the two covenants from all countries should be the first step (Van Ness 1999: 279). Looking into human rights internationally and from a national Malaysian perspective might create a new understanding of the apparent missing universality in implementation of human rights. This paper will debate the puzzle and the conflicting tendencies between universality in international relations and domestic real-politics.

Malaysia has been a stable country after the race riots in 1969 and there are currently no major internal violent disputes that could explain a purely internal focus and neglect the international community. Malaysia has adapted more and more to the globalized world, politically and economically, and it is therefore interesting why it does not embrace the human rights regime, by ratifying the core treaties, when almost all other countries do. Amnesty International, Human Rights Watch and other NGO's highlight, abuses of different nature take place in Malaysia and therefore the missing embracement of the regime becomes apparent. In my view, these reasons justify and legitimize choosing Malaysia as the case and looking at the national dynamics that have hindered the Malaysian ratifications.

1.1.1 Research Question:

Why has Malaysia only ratified 3 out of the 9 core UN human rights treaties?

³ Important to keep in mind that two of the nine treaties are rather new (2006) and this explains the few number of ratifications of these two, since in some countries it takes some adoption or maybe amendments of the domestic Constitution in order to change the legal framework to correspond to these UN Treaties.

1.1.2 I argue/probable findings

I argue the reason why Malaysia has only ratified 3 out of the 9 core human rights treaties is the political elite have had such a fundamental grip of the political power that they did not take the civil interests of the Malaysian people into consideration. Furthermore the political leadership have been good at maneuvering both in the UN by, at crucial times, battling the international pressure and at the national level, by using religion and economic development to undermine the civil rights of the Malaysian people by making those privileges superior to human rights in the mind of most people. Internationally, I argue, the regime has been fragile and irregular and countries, among them Malaysia, quite easily have been able to avoid/combat the international pressure for ratification of the universal human rights, in the later stages by ratifying at crucial times. Domestically the pressure on the Malaysian political elite have been fractional and have been discarded by the authoritarian government, framing 'Asian Values', by intimidating the opposition and civil society, and by controlling the electoral system, the judiciary and the media. Najib has recently stated Malaysia should be the best democracy in the World, but I argue the notion of 'Democracy a la Malaysia' is inadequately valid in the understanding of 'rule by the people'.

1.2 Operationalization and working concepts

In order to conduct this research and find plausible answers to the research question the following section will shortly outline how the problem is operationalized and justify the main assumptions connected to it. Implicitly in the research question is an understanding that the nine core human rights treaties is more than just separate international agreements. The starting point is that an international regime in Krasner's terminology today exists within human rights. The regime is today based on consensus by the majority and institutionalized in the UN-organization, with several sub-institutions and committees, treaties and agreements. The nine core human rights treaties in this paper encompass both the two international covenants (ICCPR, ICESCR) and the seven (international) conventions. Krasner's conceptual framework to justify these assumptions will be outlined in the next section and will hence be operationalized.

Based on the existence of an international regime, it is subsequently necessary to trace the momentum of this regime. Human rights became internationally recognized after WWII, so the regime has been through different phases over more than 60 years of existence. Moreover the international dynamics in interaction with the national dynamics in Malaysia, to get a national understanding is requested to answer the main question. Despite the best intentions of those drafting the UDHR and the moral consensus among all countries in the UN at adoption, the following process of more than 15 years of formulating legally binding covenants was filled with conflict. This initial conflict seems to be incorporated in the structures of the regime and made future inconsistencies inevitable. The human rights regime, which will be further elaborated on after Krasner's terminology, is based on values, principles and norms and, according to Renteln, of utmost importance to consider:

“The question that must be born in mind throughout any discussion of the possible consensus on norms is whether it is realistic to expect states to comply with standards not consonant with the value systems of their citizens.” (Renteln 1990: 17)

Some scholars, like Renteln, argue the entire human rights-regime is based on Western values and substantial criticism from mainly Southeast Asian countries after 1992 confirm this skepticism. Asian leaders framed ‘Asian Values’ in 1992 to counter what they perceived as a Western bias of human rights. Asian Values will be outlined after explaining the understanding of human rights. However it is also worth remembering all the current 193 UN member countries accept the UDHR and therefore formally agree on an international fundamental set of human rights, despite all other religious and cultural differences. The moral of human rights is universally accepted but the enforcement is far from universal, as outlined in the introduction. What is the political motivation behind these different positions, is it a signal of truly different values among cultures or exploitation for political power-purposes? The political regime type and the position of Islam will also briefly be touched upon as part of the contextual framework of this analysis.

Firstly the consolidation and legitimacy of the universal human rights regime will be discussed. Hereafter focus will be on human rights seen from a national Malaysian perspective but in an international context, and the international regime’s ability to influence Malaysia will be the framework. It will be discussed in chapter 1 and chapter 2, respectively and will lead to a better understanding of the international and national level in regards to human rights. The basic understanding of Malaysia/the Malaysian state in this paper equals the Malaysian BN-government, with UMNO as the most dominant party, states ratify treaties. As it appears in the introduction a mismatch between the regime and the Malaysian discourse exist and these inherent differences will be discussed when they appear. A further analysis of the mismatch between them and deeper institutional national specifics will be debated in chapter 3 and hereby answer the main research question.

Lastly, it is of utmost importance to separate human rights, the international regime and the Malaysian discourse. Human rights are a normative idea based on values. The international regime is a set of institutionalized principles and norms with global recognition overseen by the UN, which by the Western dominant countries have had the label universal attached to it. The Malaysian discourse is a different understanding of human rights, with a specific attitude towards universal values initiated elsewhere and in a different context and with different timing.

1.2.1 Sub-questions

1. (Chapter 1): *How did international dynamics influence and direct the formation, persistence and consolidation of a universal human rights regime?*
2. (Chapter 2): *How did the formation of the international regime combined with the national dynamics affect the emergence of a human rights discourse in Malaysia?*

3. (Chapter 3): *What are the structural and institutional implications that cause the mismatch between the universal human rights regime (1) and the Malaysian human rights discourse (2)?*

This paper will investigate why Malaysia has not integrated in the international human rights regime. Focus will be given to those six treaties Malaysia are not parties to, special attention will be given to the two covenants as the basic building blocks and the most important treaties, especially the civil and political rights. Both ICERD and ICRMW are concerned with protecting minorities from discrimination, based on either race or country of residence accordingly. Both CAT and CPED are basically concerned with protecting prisoners and with avoiding deprivation of liberty, one specifically against torture the other from enforced disappearances. I will not categorically investigate the background for the missing ratification of each convention, but instead debate the general resistance in chapter 2 and explain why the specific sets of values the conventions represent are not adhered to by Malaysia in chapter 3, and therefore not ratified accordingly.

Chapter 1 is structured as a historical debate of the emergence of internationally recognized human rights and the emergence of an international human rights regime. When relevant, Malaysia's influence will be mentioned. Chapter 1 especially looks into the debate concerning the two covenants as they appear to be the core of the Malaysian resistance.

Chapter 2 debate the official discourse based on resistance and national human rights dynamics and is divided in three historic periods; the nation-building process, the era of Mahathir, and the current situation. Firstly the Malaysian political history until 1981 is described. Secondly, the era of Mahathir, with focus on economic development and critique of the West, his actions are crucial in understanding contemporary Malaysia and the national discourse. Thirdly the current challenges and tracing if changes are occurring after Mahathir stepped down. Lastly the growing importance of civil society and their influence on the national discourse will be debated. In this paper NGOs and civil society are regarded similar in function in accordance with the neo-Gramscian perspective, elaborated on later.

Chapter 3 will firstly look into the international and national pressure that might have influenced why Malaysia started ratifying treaties in 1995, but still did not wish to integrate fully. The covenants will be implicitly incorporated. After this discussion on the ratification record a deeper structural debate outlining the differences and explaining the overall mismatch between the Malaysian discourse and the international human rights regime will be the focus.

1.2.2 International regimes

This paper argues an international regime exists within human rights and adopts the regime-definition offered by Stephen Krasner. According to Evans: "The Krasner definition of an international regime has achieved such wide acceptance that few empirical studies find the need to do more than repeat it." (Evans 1996: 16) Krasner defines an international regime as:

“Sets of implicit or explicit principles, norms, rules, and decision-making procedures around which actors’ expectations converge in a given area of international relations.” (Krasner 1982: 186)

While principles and norms are the defining characteristics of a regime, modifications in rules and procedures on the other hand can occur within a regime if the principles and norms are unchanged (Krasner 1982: 187). Due to this distinction it is important to explain more explicitly, since the two first-mentioned defines a regime and if these change, the regime itself changes.

“Principles are beliefs of fact, causation, and rectitude. Norms are standards of behavior defined in terms of rights and obligations. Rules are specific prescriptions or proscriptions for action. Decision-making procedures are prevailing practices for making and implementing collective choice.” (Krasner 1982: 186)

In my perspective, principles are the understanding that all humans have human rights to ensure human dignity in order to live the good life. Norms are to treat other people with dignity and respect, accept the UDHR and protect and promote human rights. The individual are granted rights by the state but also has obligations to the state as the core unit in which life evolves. Rules are the legal framework and the possibility of bringing violations for a court of justice. Decision-making procedures are to ratify the treaties, at best without reservations and hand in the reports to comply with the rules of those treaties ratified.

Krasner has eventually linked his definition of international regimes with human rights, and despite this plurality I consider human rights as one moral regime:

“International regimes for human rights are designed to encourage some states to adopt policies that they would not otherwise pursue. The question of whether states adhere to such regimes is not a function of the extent to which a regime enhances information or discourages cheating; rather it is a function of the extent to which more powerful states in the system are willing to enforce the principles and norms of the regime.” (Krasner 1993: 140)

In my perspective, this statement by Krasner could further imply hegemony could be important to make the regime legitimate. Krasner’s final clarification concerns the difference between changes within or among regimes and the weakening of a regime:

“If the principles, norms, rules, and decision-making procedures of a regime become less coherent, or if actual practice is increasingly inconsistent with principles, norms, rules, and decision-making procedures, then a regime has weakened.” (Krasner 1982: 189)

Any type of patterned behavior cannot be maintained over time without turning into a regime. If international actors do the same, believe in the same, and talk about the same, a new regime has been established. Most scholars use the concept of international regimes and therefore accept the basic premises, though some scholars have criticized it and made specifications, among others, Susan Strange and Keohane respectively (Krasner 1982: 193). The main critique came from Strange, who questioned

the legitimacy of international regimes and claimed it was a misleading concept that conceals power and economic relationships, and rejects principles, norms, rules, and decision-making procedures are of noteworthy importance. She cautioned the regime-definition should not be exploited and applied in all studies (Strange 1982). Evans highlights an advantage of adopting regime analysis into an investigation about human rights:

“This is the possibility of gaining an insight into the complex relationship between value oriented, normative and interpretative aspects of international life on the one hand and formal, political, goal oriented and empirical aspects on the other.” (Evans 1996: 7)

If ratifications of these 9 core UN human rights treaties, which along the UDHR form the basis of the regime, are seen as the success-criteria for (having the legal framework of) improving human rights internationally, understanding why some countries have only ratified a few can develop the international human rights regime under the directory of the UN. A characteristic of the UN treaties are that it is possible to make reservations, opt-out to specific articles, states do not have to accept the entire text of the treaties. These reservations often reflect differences in culture and religious tradition. This undermines the objective of universality and is to be avoided (Smith 2005: 155). Smith further elaborates:

“In the initial stages of achieving universal ratification, reservations should perhaps be viewed as a necessary evil. As States ratify the six [nine] core instruments, the process of eliminating reservations and declarations is the next goal.” (Smith 2005: 156)

It is worth consideration if it is a goal to make all countries ratify, if they do not intend to uphold the principles, or if they have too many reservations. Ratification makes the regime stronger and the legal enforcement-procedures easier to conduct and on the surface strengthens human rights. On the other hand ratification is a formality with many reservations incorporated and if the human rights situation does not change and violations continue without international interference, ratification has no real values.

1.2.3 Human rights

When writing about human rights, three different fields of study may be the center of the investigation; the legal, the moral or the political perspective. In this investigation the concept refers to the political framework and the author will as far as possible avoid moralizing and legalizing the concept. Human rights in this paper are initially equaling the basic understanding in the UDHR meaning all people having equal rights and fundamental freedoms, regardless of race, religion, gender and political belief or other statuses, a birth-right of everyone, because all belong to humanity. In this understanding they are universal rights, because every human being has them. But as it has become evident human rights are basically a normative perception of what is regarded as right and wrong and could differ among different cultures, the world is very diverse, in history, culture and religion. The universality will be debated. The human rights discourse in Malaysia refers to the cultural and political norms and

institutions connected to it. Remembering the possibility of reservations suggest that ratification cannot be refused completely due to specific articles, an inherent resistance with the entire regime is the likely reason.

1.2.4 Asian Values

Southeast Asia is the region with the poorest ratification-rate in the World make the resistance of some of these countries, labeled as 'Asian Values', very important in debating the universality of human rights. The definition is not fixed but refers to a distinct cultural value-system in Asia, with focus on community over the individual and focus on duties and not only rights, respect for authorities, emphasis on respect for family ties and the elderly, frugality, hard work, and team spirit. These values and practices give rise to public morality, harmony, and social dynamism (Manan 1999: 363). 'Asian Values' was coined by the political elites in primarily China, Malaysia and Singapore and emerged as a critical perspective on the Western domination of the universal human rights regime. Leaders in some Asian countries called their system of government an "Asian democracy", claiming political stability and legal controls, including laws limiting democratic participation and the abuse of human rights, were necessary features for uninterrupted economic development. Economic development is a human right and periodically is more important than the rights of the individual. Some claim economic development will ultimately lead to liberal democracy and civil society. Moreover there is no such thing as universal ideas and the only universal value should be the tolerance of diversity. The Bangkok Declaration contains inconsistencies but questioned what the West had assumed despite not all pursuing them, namely that all people accepted freedom and human rights as admirable principles at all times (Jacobsen and Bruun 1990: 2-5). Freedom and human rights were not conclusive, as the West might have hoped after the demise of the Soviet Union, but still up for debate according to the proponents of 'Asian Values' (Patterson 1995: 132-133). Has the Malaysian political elite applied the notion of a distinctive Asian values-discourse to the people they represent, or abused it to stay in power? Managing a concept such as 'Asian values' requires the ability to distinguish between that notion of a normative value (morale) and transform it into the fundamental political policy it depicts. This will be debated in the analytical chapters.

1.2.5 Political regime-type

The political regime in Malaysia is formally a representative democracy after Westminster style. Elections have been held continuously since independence and speak in favor of democratic standards and a representative nature and imply the government act on behalf of the Malaysian people. Allegations on elections fraud, oppression of the opposition and corruption seriously challenge this perception. Many scholars have tried to label the regime-types of the many new nation states that got their independence after WWII, and despite different typologies, all refer to Malaysia as some sort of 'quasi-democracy, between a democracy and a authoritarian state. The starting point of this paper is a

quasi-democracy with specific Malaysian features and 'Democracy a la Malaysia'⁴, will be under review in the analytical chapters. The Barisan National-coalition government, with UMNO as the dominant party, plays a tremendous role in the Malaysian political system with uninterrupted power since independence in 1957. Levitsky and Way have developed 'Competitive Authoritarianism' as a framework for the many new hybrid democracies that have emerged. These new regimes combine democracy, authoritarianism and electoral competition to a varying degree and will be debated.

Islam is the official religion in Malaysia, but only applies to the majority Malay population, the minorities have freedom of religion. Islam is incorporated in the Malaysian Constitution, by the political elites, and therefore Islam is important to consider in conducting this research. However, my perspective on religion is that it cannot stand alone as something absolute. If religion was absolute, Islam might single-handedly answer the research question. Religion unaccompanied cannot control. It will always be interpreted by people in general and by clergies and politicians in particular, so in my perspective the answers required are mainly political, but under the influence of Islam.

1.3 Review of literature

The following section will look into the IR-tradition and the choice of empirical data to see what has been written on this topic previously.

1.3.1 IR-tradition

International regimes have been used frequently in the literature of International Relations-theory, but not until Krasner asked 'what is a regime?', and offered his own definition has the concept received almost universal acceptance. Some scholars have defended and further developed the applicability of the concept, such as Oran Young and Robert O. Keohane, as the most prominent. The main critique was substantiated by Susan Strange, who considers the term hollow and removing focus of what really matters, and this critique must not be underestimated. Krasner's definition remains the one most studies refer to. Keohane suggested replacing the consensus definition by Krasner with a less vague formulation. Keohane suggest regimes are defined as: "*institutions with explicit rules, agreed upon by governments that pertain to particular sets of issues in international relations.*" (Keohane 1989: 4) This definition, in my perspective, can accompany Krasner's definition when human rights are considered as institutionalized.

According to the structural realists and scholars such as Kenneth Waltz, John Mearsheimer, and Robert Jervis international regimes may have a significant impact even in an anarchic world of sovereign states restrained only by the balance of power and security. Nevertheless, realists argue the existence of a regime must be explained carefully. To counter this realist understanding Raymond Hopkins, Donald

⁴ Abdul Razak fostered 'Democracy à la Malaysia', recognizing the hybridization that Malaysia was becoming.

Puchala, and Oran Young argue, regimes exist in all areas of international relations. The argument is, in diplomacy statesmen are always, in their own objective, constrained by principles, norms and rules that control their behavior. Hopkins and Puchala take this a little further and circumvent the realist understanding of statism by suggesting that political elites are the real actors in international relations. A state is an abstraction and elites operate in a framework that does not stop at the territorial borders. Robert Keohane and the liberal institutionalist are somewhere in between, agreeing mostly with the realists, arguing international institutions and regimes are created by states and they have some importance if states have shared interests. Keohane and Joseph Nye in 1977 moreover published the groundbreaking book 'Power and Interdependence', arguing that technology and economic progress have changed the rules of the game, and changed power, influence and the entire diplomacy of international relations. Krasner is in his own perspective a realist but with his definition of international regimes, agreeing both with the realist understanding and the importance of international institutions

1.3.2 Empirical data

The literature on international human rights and the universal debate is massive. The author does not intend to mention every relevant contribution, since that is practically impossible. This review will focus on the political debate concerning universal human rights, and leave out philosophical and legal contributions. In this case, universal human rights in relation to religion (Islam), cultural relativism (Asian Values), and regime-type (democracy/authoritarian) are especially important. Malaysia identify with these concepts which have challenged the universal nature of the international regime. Accordingly, much literature touches directly on Malaysia or identifies concepts similar to the Malaysian context in relation to universal human rights. Tim Dunne and Nicholas J. Wheeler edit the book 'Human Rights in Global Politics' with contributions to the debate from among others Jack Donnelly, Andrew Hurrell, and Ken Booth. Moreover Wiktor Osiatynski, Tony Evans, Rhona K. M. Smith, William Korey and, David P. Forsythe all discuss the limits of implementing universal standards of human rights and some of the obstacles the universality encounters and enrich the debate in this paper. Scholars such as Meredith L. Weiss, K. S. Jomo, R. S. Milne, Diane K. Mauzy, Amy Gurowitz, and Boon Kheng Cheah are more specifically contributing with their books and papers on the special situation in Malaysia, some also setting up the context for the Southeast Asian region. These scholars connect the universality of human rights with Malaysia as a country either a proponent of political Islam, Asian Values, and democracy or in a combination. But in the historical debate of human rights a gap exists in the connection between the international dynamics and the national dynamics. Some researchers have touched on it but this area is vastly undiscovered. This paper will create a clear link between the human rights normative for universality on the one hand and the specific case of Malaysia on the other. The deeper historical and political logic underpinning the incomplete integration will be highlighted.

1.4 Methodology

This section will outline the qualitative inductive method used to investigate the research question. The strength of using a qualitative method in social science is, according to Bryman, a richer and deeper understanding of the issue. Quantitative research, formulating hypotheses based on theory and verifying or falsifying is often stiff, while a qualitative research is more flexible. In social science evidence is not created but plausibility is the measurement on which a research is validated. Bryman moreover clarify qualitative research is often attributed to observed phenomena. The researcher makes these observation based on the subjective understanding of the world from prior knowledge and objectivity is not achievable (Bryman 1984: 77-79). Educated within a Western tradition I believe in universal human rights, but understand that cultures, religion, and values differ, and open to the possibility my initial understanding is biased. This paper do not intend to falsify or verify but instead get a deeper understanding of an observed phenomena, namely the fact that Malaysia as one of only a few countries do not seem to believe in universal human rights. The analysis will shed new light on the connection between an international human rights regime and the Malaysian discourse and via logical inductive thinking create new understanding and theoretical concepts. Malaysia can be regarded as a spectacular case, since only a very few countries have ratified none of the two basic covenants.

In order to get the main question a little closer three sub-questions have been formulated to get different perspectives. The sub-questions are not hypotheses but working questions, and will not be tested and verified. Of course they have been formulated on the basis of theories, but are not formulated to test any theoretical perspective. The research is not deductive, but neither claim to be 'atheoretical'. The three main theoretical perspectives, presented next are part of the conceptual framework for conducting the analysis and will supplement the findings with concepts in International Relations-theory.

Furthermore I take pride in using national, regional and Western scholars as reference in debating the human rights discourse in Malaysia and the universal regime to get the widest possible perspective and in order to avoid a biased Western viewpoint. It is my objective to make a nuanced debate and discuss the case of Malaysia from both an international and a national perspective and see what dynamics have caused the human rights situation to develop as it has.

New empirical data have not been collected, since both the international regime and the national human rights debate in Malaysia is widely documented, in books, papers, reports, and news-articles. Articles are mainly from the news-portal Malaysiakini.com, who offers a critical angle, different from the official statements in the state-owned media. These sources are not available until 1999 but explain historical events and can be used for retro-perspective events as well.

This research is conducted as a document research; the major document contributions are dual. Firstly, a review of the existing literature, to understand both international human right and the validity of the human rights regime, and to examine the national Malaysian human rights discourse. Secondly, a news analysis to understand the current, mainly Malaysian, attitude regarding past and present events in

relation to the human rights discourse. News analysis is important to get an understanding of the human rights normative from opposition and civil society in Malaysia.

The analysis is process-based and argument-driven, explaining the process between national and international dynamics. Focus is on contentions debates, where the international regime and the inherent standards contradict the Malaysian understanding or the context, especially the covenants.

Same as other parts of political science, using a wider theoretical framework, combining different approaches and theories ensures a more comprehensive understanding and enables to produce new knowledge and contribute to the understanding both empirically and theoretically. Both liberal institutionalism and the neo-Gramscian perspective acknowledge the realist understanding, but deviations occur. The statism in realism is prevailing sometimes but maybe the international regime at other times and the civil society might also have influence or maybe a combination.

1.5 Theoretical framework

Three fundamental perspectives that clarify the case of Malaysia in correlation with the international human rights regime, represent the theoretical framework. Firstly, the theories will briefly be introduced. Later in this section their relevance and added value to this discussion will be elaborated.

1.5.1 Neo-realism

Neo-realists or structural realists, according to Waltz, have constructed a solid theoretical framework, combining Morgenthau's realism and system theory (Waltz 2008: 71). The realist thesis describes a power-struggle leading to anarchy, where all states are acting according to their national interest. The interactions among states create a security dilemma because of contending interest, making balance of power the nature of the system (Waltz 2008: 76). Morgenthau rejects a universal immanent consensus will ever exist among all states and all peoples, because interests differ. Instead he advocates for a universal nature in time and space in the struggle for power, because the human nature is based on a desire for power-maximization (Morgenthau 1978: 179 and Waltz 1990: 35). Lastly Morgenthau argues:

"All nations are tempted – and few have been able to resist the temptation for long – to clothe their own particular aspirations and actions in the moral purposes of the universe." (Morgenthau 2006: 12)

Neo-realism begins by suggesting a way of structuring the entire international political system by distinguishing internal and external factors. Structure in the interplay among states implies some actions are restrained others stipulated. Neo-realists additionally focus on the number of great powers and the emergence of hegemony and if the number of great powers change, the attitude of smaller states change too and this causes a new structure. The structure becomes an object of study as well, since both the states, and the structure in itself create outcomes. This also changes the causal link, and contrary to realism where the interactions among states create international outcomes, neo-realists

claim causes run in two directions. Still acknowledging states differ in form of government, ideology and constitutions, the units are part of a structure and therefore thought of as functionally similar units still focusing on national interests, but with different capabilities (Waltz 1990: 29-36).

The focus in the next section is the neo-liberal institutionalism which emerged as the main alternative to neo-realism. It offers an understanding of the world system as consisting also of central institutions and enables the occurrence and importance of an international regime.

1.5.2 Neoliberal Institutionalism

Robert O. Keohane firstly argues institutionalism only has relevance in IR-theory when states have mutual interests, where all actors in principle can gain by cooperating and moreover the different degree of institutionalization has significant effect on different state actions. Neoliberal institutionalism mostly agrees with realism, but claims to offer some wider perspectives, that realism misses, due to the narrow focus on states that only enables realism to explain changes based on a shift in relative state power (Keohane 1989: 1-3, 11).

World politics centers on states, but formal and informal rules are also important. Keohane claim that World politics has been institutionalized and define institutions as; “persistent and connected sets of rules (formal and informal) that prescribe behavioral roles, constrain activity, and shape expectations.” (Keohane 1989: 3) His main thesis is elaborated, namely differences in the institutionalization affect governments and their behavior. His key argument is international institutions impact all states, because whether or not states are fundamentally autonomous or receptive, institutions affect them. In Keohane’s own words, his work stresses “the importance of international institutions, constructed by states.” (Keohane 1989: 10) Keohane does not claim governments are controlled by international institutions but merely that state actions are subject to institutional procedures. International institutions can attain the form of an international regime (Keohane 1989: 2-4). Keohane claim, states and international institutions are mutually dependent:

“The way in which leaders of states conceptualize their situations is strongly affected by the institutions of international relations: states not only form the international system; they are also shaped by its conventions, particularly by its practices.” (Keohane 1989: 6)

The most important factor is still domestic interests and the integrated competitiveness in the state system, since the international social structures are not as strong as domestic or community structures and as a result states’ impact are higher on international institutions than the reverse (Keohane 1989: 6-7). Another argument is human action can transform the institution and the derived expectations and processes can cause severe changes in the state behavior. Keohane also agrees with realists that state leaders evaluate the costs and benefits of future actions. Keohane contribute to the ‘hegemonic stability theory’ in which hegemonic power structures created by a dominant state improve the emergence of strong international regimes (Keohane 1989: 9-11). To sum up, neoliberal institutionalism;

“insists on the significance of international regimes and the importance of the continued exploration of the conditions under which they emerge and persist.” (Keohane 1989: 14)

Nye argues for the importance of public diplomacy and developed the concept ‘soft power’ as an alternative to hard power. The ability to combine soft and hard power and public diplomacy is referred to as smart power. Soft power entails aspects of persuasion, argumentation but also the ability to entice and attract or the power to shape other actors preferences (Nye 2008: 95, 107). Nye elaborates:

“The soft power of a country rests primarily on three resources: its culture (in places where it is attractive to others), its political values (when it lives up to them at home and abroad), and its foreign policies (when they are seen as legitimate and having moral authority).” (Nye 2008: 96)

Finally Nye argues the best way to create liability about a country’s policies is for the government to support the ability for critics to present their views. If public diplomacy resembles propaganda it will not support soft power, but undermine it (Nye 2008: 106, 108).

1.5.3 Neo-Gramscian

Robert Cox pleads the concept of civil society, referring to autonomous group action, different from state and corporate power. In an authoritarian state context, civil society also refers to movements of opposition. Meaning civil society is a term used for a wide range of actions by collective groups separate from the conventional economic and political power capabilities (Cox 1999: 10).

“Civil society is not just an assemblage of actors, i.e. autonomous social groups. It is also the realm of contesting ideas in which the intersubjective meanings upon which people's sense of 'reality' are based can become transformed and new concepts of the natural order of society can emerge.” (Cox 1999: 10)

Civil society is commonly known as grass root-organizations and seen from a bottom-up perspective it is the chance for people crippled by globalization or other challenges to get their voices heard. Some views are community-based while others have an international frame of reference. Cox and others have opened the possibility of an emerging ‘global civil society’, where the national social movements together could evolve into an alternative world order where social practices converge worldwide. These linkages indicate that bottom-up initiatives are becoming more important and might become a power force with hegemonic potentials (Cox 1999: 10-11, 13). From a top-down perspective, states and corporate interests influence the dynamics in civil society. The hegemonic forces infiltrate the grass root-organizations and try to adopt some elements to stabilize the political and social environment.

Nation building in many of the former colonies has been ongoing since WWII, and the connection between the political elites and the people have been under repair. Cox argues in many countries the people have tolerated the government more than felt in dialogue with them. Civil society has ‘captured’ the political void between constituted elites and the everyday life of the people (Cox 1999: 13). With reference to the strength of civil society Cox highlights:

“A weak and stunted civil society allows free rein to exclusionary politics and covert powers. An expansive participant civil society makes political authority more accountable and reduces the scope for exclusionary politics and covert activity.” (Cox 1999: 14-15)

Cox furthermore concretize Gramsci's notion of 'passive revolution', which originally meant an imperfect transformation of society, into a modern context. A passive revolution can be reinforced if external pressures achieve partial domestic support, but still not enough momentum to combat the opponents view. None of the opposing forces are victorious and neither the revolution nor the restoration of society can be completely successful instantly and creates an ambivalent situation. Another passive revolution could be a strategic war, where the opposition manages to provoke the elites but not enough to transform the society (Cox 1999: 16).

Cox argues the massive economic growth in the Asian Tiger-economies have fostered large middle classes, created a more critical working class, and in some countries the power of the authoritarian elites has been deteriorating because of this economic development. Gramsci developed a notion of 'politico military', which refers to the consistency among people and their shared morale. If the degree of morale is low, the chances for revolution are minimal. Gramsci argued an oppressive regime will be maintained if the social disintegration is predominant in the population and most of them are passive. According to Cox a vibrant civil society is necessary to combat this social disintegration, in the era of globalization even stronger when community groups forge strong ties across borders (Cox 1999: 26-27).

1.5.4 Added value of the theories

The neoliberal institutionalist perspective contributes to validate both formal and informal rules have implications for states. Keohane moreover claim that an international institution, such as an international human rights regime, in the first place exists and secondly that it has importance in world politics. International organizations matter despite their formal power is limited and in this context gives validity to the actions of UN and human rights as an integrated part of UN activities.

The realist perspective facilitates the understanding why the implementation of the standards of the human rights regime has not prevailed in the case of Malaysia. Realism emphasizes states as the most important entity and that states act according to their national interests. This could immediately explain why Malaysia has only ratified three out of nine core treaties despite formally being a part of the regime. Morgenthau's understanding of states with power always will try to spread their ideas or their moral values to the rest of the world might apply to the actions of the US and Western World, if the regime, resembling the critique by Malaysia. Morgenthau rejects the possibility of lasting consensus of values among nations and thereby rejects universality and this pose a big threat to the legitimacy of the universal human rights regime.

The main contribution from neo-realism is that the structure in itself creates outcomes and in this context means state actions alone have not created the human rights regime, the structure also had implications. Furthermore the changing structure of the world system, according to the number of great

powers has transformed the structures and this facilitate that changes occur in the regime after the end of the Cold War. Neo-realism also sets the scene for the understanding of states as functionally similar units, but with different capabilities such as ideology and political regime.

Returning to neoliberal institutionalisms contribution, states are not obsolete but states and international organizations are mutually dependent. Though domestic politics are still dominating international concerns but the creation of strong international social structures might be changing this structure. The missing ratifications indicate that this power structure is also prevailing in Malaysia. The concept of hegemonic stability adds value to the role of the US in the creation and persistence of the regime. Nye's contribution, soft power, must be considered in the diplomatic negotiations between Malaysia and the proponents of the regime. Lastly Nye argues the best way for governments to create credibility for its policies is by allowing critique, in Malaysia this have been restricted via media control and restrictive laws.

The neo-Gramscian perspective contributes with an understanding states are not the only important actors, civil society might also play a role in Malaysia. The Malaysian people might have tolerated the elites but not felt in dialogue with them. The possibly growing significance of an active civil society might have forced the government to be more accountable for its actions and this could have improved the formal human rights situation. Malaysian NGO's don't have any formal power, but they have the ability to put pressure on the government and in this sense might have considerable informal power. The shared morale or the 'politico military' could be considered low and is linked with the relatively weak civil society, especially under Mahathir's rule. Maybe the emerging global civil society, has changed the situation in Malaysia as well, especially information available at the internet have opened up for critical perspectives on the actions of the political elites. Lastly Cox' notion of a 'passive revolution', might could characterize Malaysia, the international pressure for universal human rights has attracted the support of some fractions in Malaysia, but still not enough to convince the political authority. A 'passive revolution', in my perspective must lead to one side gaining momentum at some point, you cannot have status quo forever.

Chapter 1

2 The International human rights regime

In the following the evolution and the most important dynamics in the international human rights regime will be explained in order to understand the inherent logic. A special emphasis will be given to the two basic covenants, as none of these have been ratified by Malaysia, and therefore the covenant's emerging history is very interesting in regard to the scope of this paper. Furthermore, the time around 1993 (Vienna Conference) is highly important, since a change in the international regime and the understanding of universality took place. After 1993 is also highly relevant as this marks the current momentum of the international human rights regime.

2.1 Early history – the emergence of international human rights

The basic civil rights occurred in the constitutions of UK, France and US in the 18th century. The notion of individual rights and liberties stems from a Western cultural heritage (Smith 2005: 5). Human rights became internationalized after the WWII, which undoubtedly had a fundamental impact on the initial formation of the regime. Holocaust made international standards necessary on how countries treat their own citizens, according to the West. The West/Western bloc refers to the Western governments, but later also to Western based NGOs.

US started drafting a charter for an international organization with a stronger mandate than the League of Nations that could avoid a repetition of the Holocaust in the post-war period. UN was formed in 1945 to secure world peace and to promote human rights. It took three years to draft the UDHR, but despite this long period, the human rights-idea had immediate momentum in the West, mainly due to the memory of the WWII (Donnelly 1999: 73). The UDHR was signed in 1948, clarifying for the first time the responsibility of states on how to treat their own citizens and a human rights regime was created. According to Gibney:

“for centuries, the notion of ‘state sovereignty’ was used as a shield by oppressive governments. Fortunately, since the end of World War II we are well past this kind of thinking and states are no longer able to hide behind this principle – at least as it relates to their own domestic populations.” (Gibney 2008: 2)

The day before signing the UDHR, the UN adopted the Convention on the Prevention and Punishment of the Crime of Genocide⁵ (Donnelly 1999: 73). This demonstrates preventing a repetition of Holocaust was *a major* driving factor in the initial phase of the regime. The actual formulation of the UDHR was led by a committee, and as a natural consequence of the outcome of WWII it was chaired by an American representative. Soviet Union, the other emerging super power, did not think their wishes could be heard, and after pressure the Committee was enlarged from 3 to 9 members. The argument of Western

⁵ Not included among the nine basic core treaties

domination is validated, considering the educational background of some of the representatives (UN2, un.org). The vast majority of the 30 articles concern civil and political rights, articles 22-28 regard economic, social and cultural rights. The dominating philosophy behind human rights is based on Western concepts of liberty, freedom and democracy (Pollis and Schwab 1979: 4-5). Critics rightfully claim, that reaching consensus on a formal, but non-binding declaration, considering the Holocaust, does not equal international acceptance of universal human norms and rights (Evans 1996: 94).

Only a few African and Asian countries were represented in the UN in 1948 when the UDHR was adopted and more than 2/3 of the current UN member-countries did not participate. Malaya⁶ had not yet gained independence, but the separation from the Commonwealth was in process and Malayan representatives, along with other Asian and African countries, participated in the Bandung Conference in 1955, and declared their common support for human rights. Osiatynski claims in many colonies, human rights were thought of as a protection against the colonial West and not regarded to concern their own states. Self-determination, nation-building and state-controlled progress was superior to human rights (Osiatynski, 2009: 18-19). Osiatynski takes this argument a little further by claiming the support was merely symbolical and that the colonies remained convinced enforcement was unlikely and “Western powers had the same hopes. In fact, they had good reason to accept an unenforceable international mechanism.” (Osiatynski 2009: 21) This statement supports a point of view held by the author inclusive; the moral imperative of the UDHR is universal, but the enforcement, by many, was not intended to succeed. To sum up, Evans argues the UDHR was cautiously worded due to the immediate contradiction between the realist understanding of an international system of sovereign states dominated by self-interest and universality. This vagueness has led to political complexity and conflict:

“Fundamental disagreements were simply ignored in the haste generated by the political and social circumstances following the war. The consequences of this were felt during negotiations for the two Covenants and still present barriers to advancing the project of universal human rights today.” (Evans 1996: 94-95)

2.2 The covenants – the enforcement of universal standards

The arguments by Evans lead to an elaboration on the covenants. The initial concord and momentum did not last long, the Cold War side-lined the battle for human rights (Donnelly 1999: 73). In 1966 two basic covenants were finally formulated. ICCPR contains the ‘first generation’ of rights, and include the right to liberty, the right to life, the right to a fair trial and fundamental freedom of expression and religion. ICESCR comprises of the ‘second generation’ of rights and is among others concerned with the right to education, the right to proper housing, the right to social security, and the right to a safe and healthy working environment and adequate rest time (Appendices 4 and 5). Smith contests, that the

⁶ Malaya became independent in 1957, after merging with the Borneo-states (and Singapore) Malaysia was formed in 1963.

first generation should be somehow superior to the second generation and opens up an important debate.

“Rights pertaining to civil and political freedoms were deemed easier to legislate for, whereas those on social, economic and cultural rights require, in general, a long term approach and the injection of financial and technical aid to the economy of the State concerned. By its very nature, the Economic, Social and Cultural Covenant is restricted by the resources available in the State. However, it is submitted that many civil and political rights also require considerable financial resources on the part of States. Thus, this distinction is arguable artificial.” (Smith 2005: 49)

The long period of formulating the covenants reflects the major conflict of whether to have one or two covenants. The Western bloc focused on individual civil and political rights, the Soviet bloc wanted more emphasis on community based economic, social and cultural rights. One covenant as the direct continuation of the UDHR would have implied that all states had to accept all rights or none, but that seemed impossible and a compromise was reached. By this separation, the UN-system renders possible states of choosing between them. This represents the first big failure in the ambition of universality in enforcement in my perspective, and clearly demonstrates the ideological conflict in the UN. Despite the strength in the UN by the Western powers, especially the US, the power of the Soviet Union and the Second World cannot be overlooked (Renteln 1990: 32-33).

The two covenants did not receive enough ratification⁷ (35) to enter into force until 1976. This could be marked in history as the institutionalization of international human rights norms in regards to legal action and implementation (Gurowitz 2000: 878). The covenants entering into force is on one hand a big achievement and in Krasner’s perspective rules and decision-making procedures are strengthened with this consensus. On the other hand the long process reaffirms that human rights were a vibrant issue for international conflict and reaching consensus for implementation was very difficult, thus the foundation for the true universality is questioned. According to Dunne and Wheeler;

“the framers of these basic documents assumed that there was no necessary conflict between the principles of sovereignty and non-intervention and respect for universal Human Rights.” (Dunne and Wheeler 1999: 1)

The conflict, when considering the actual context in retrospective, could not be more obvious.

2.2.1 The contentious provisions in the covenants

The covenants are the most relevant to look into to get a full understanding of the differences between the international human rights regime and the Malaysian discourse, since none of these has been ratified by Malaysia. ‘The human rights regime’ might become rather vague and it is difficult to comprehend the differences, and the articles, that in my perspective are relevant to the case of

⁷ ICESCR on January 3rd, 1976 and ICCPR on March 23rd, 1976

Malaysia, materialize in appendix 4 and 5 respectively. Therefore these appendices are crucial to the understanding of this case. They are loaded with substance but at the same time the requirements of this paper makes it impossible to refer to them in full length. What is important at first hand is that human rights and democracy in the covenants are closely linked.

Since the provisions of the ICESCR, in the understanding of some Westerners, are linked with economic development they are irrational in a developing country-context and should be implemented gradually. Westerners of this perspective argue that civil and political rights are easy to implement and if developing states refuse, it is a sign of authoritarianism (Mauzy 1997: 227-228). Civil and political rights are considered the most important in order to secure the main goal of World peace by the original members still vastly controlling the agenda in the UN. Forsythe argues that the ICESCR always has been “the stepchild of the international human rights movement.” (Forsythe 2012: 104) Robertson, in his entire paper, argues that the Human Rights Committee has been working to make civil and political rights truly universal while the work of the Committee on Economic, Social and Cultural Rights mostly has been working to establish minimum standards for national requirements opposed to universal rules regarding socioeconomic rights (Robertson 1994). I argue the regime is Western in nature with most emphasis on civil and political rights, despite some socialist interference, visible with the division in two covenants.

One of the major critiques of the human rights regime is that many developing countries claim that implementing both covenants must happen simultaneously. The conflict, initially between the western and socialist bloc, was picked up by the Asian leaders, among them Mahathir. According to Mauzy:

“Many Asian leaders (and some Westerners) believe that there are preconditions for democracy and that political rights can be implemented only gradually, accompanying or following socio-economic development, the growth of a middle class and civil society, and institutionalization of administrative and political structures and processes.” (Mauzy 1997: 227)

Kirkpatrick takes this argument a little further, and argues “the predominant Western position now is that a democracy can be established anywhere, anytime, without pre-conditions or any other ‘excuses’.” (Kirkpatrick 1982: 11) The counter-response was that democratization in the West was a long and gradual process and this process was happening alongside economic development and modernization. The developing countries should have the same opportunities of simultaneous development and argue “timing and sequence are even more vital for development in the third world.” (Mauzy 1997: 227-228) The reasoning by some proponents of Asian Values is that values have changed over time and it is believed they will change in the future. The covenants, especially the provisions in the ICCPR, will be analyzed in relation to the specific case of Malaysia.

2.3 The Cold War-order – the momentum of the regime

The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) finally entered into force in 1965. The background was according to Gurowitz numerous incidents based on

anti-Semitism. The ICERD is one of the core international treaties and combined with the two covenants constitute the recognition of international human rights in the initial 30 years of existence. Though an important difference is that in 1976 only 35 states had ratified the covenants, ICERD was ratified by 90 states (Gurowitz 2000: 878). According to Donnelly ICERD was a highly valued convention by the former colonies, as they previously had felt subordinate to the imperialists (Donnelly 1999: 73). In this perspective ICERD must be regarded more important in the geo-political relations than in the domestic policies of these countries. This is immediately worth mentioning since the ICERD, in my perspective, aims at preventing national discrimination. This implies an inherent conflict, namely the original members of the UN saw the international human rights regime as mainly nationally rooted and based on how states treat their citizens, with the overall goal of securing World peace, the former colonies regarded the regime as basically internationally anchored. The importance of the colonial history and sovereignty must not be neglected.

The role of the US in the formation of the international human rights regime is worth some closer analysis. US was the leading country in the formation of the UN and ensured that human rights were on the agenda, but after the covenants were formulated failed to ratify and even sign them (Evans 1996: 66). The two superpowers were in conflict but had one thing in common, namely the fear that universal human rights had implications for their national sovereignty. Malaysia and many other former colonies also valued their sovereignty and non-intervention as a defining factor of their self-understanding. This explains the missing momentum of the regime during these years (Lauren 2003: 237). Krasner argues regimes are stronger when they are supported by strong powers, but during the Cold War, the human rights regime lacked hegemony, and their own dismal ratification-record moreover worsened the credibility as US had put human rights on the agenda.

The scene somehow changed when Carter was elected president in 1977. He had a strong emphasis on human rights, not so much domestically, but internationally. The former multilateral focus in conducting foreign policy was replaced by stronger demands in bilateral relations and conditionality for giving aid. This partly resulted in new momentum for the regime, illustrated by Carter in 1977 signed both covenants. The case of the US and their missing ratifications, due to specific constitutional specifics among others, is very interesting but outside the scope of this paper. Worth mentioning is it, that the participation of US as a signatory to the two basic covenants was important, though ratification still seemed unlikely. The 1970s moreover witnessed the fast growing appearance of national and international NGO's. Amnesty International winning the Nobel Peace Prize in 1977 could be seen as symbolizing the importance of human rights organizations as part of the regime (Donnelly 1999: 76-77). US' missing embracement of the regime is supported by the fact that the first international treaties ratified were ICERD and ICCPR both in 1992, and CAT in 1994 (UNHCHR1, unhchr.ch). It was necessary to show legitimacy in order to expand the democratization-agenda in my perspective.

Many countries still put heavy criticism on them for not ratifying the ICESCR and only ratifying the ICCPR with many reservations (Mauzy 1997: 222). US is not the main advocate for human rights if the observer look at their own ratifications, but at the same time the US is the most important international watchdog on human rights and that is quite a paradox. Other countries with less power have taken over

as the main advocate for universality and try to improve the treaty-system, but these states must work hard to prevent countries with dismal ratification-records from using US as the example for justification (Smith 2005: 155). US' role can partly explain the actions of other countries and the problems of the regime. Malaysia, especially under the reign of Mahathir, heavily criticized US and made their poor ratification record justify, why Malaysia did not integrate in the regime. It must be underlined the universal regime up to present day still suffers from the missing hegemonic leadership of the US, the double standards in promoting human rights in bilateral and multilateral relations, without ratifying the treaties themselves. And also double standards on ignoring violations in countries friendly to their interests and discrediting other 'less friendly' regimes for their violations (Kao 2011: 2-3).

In 1979 the Convention on the Elimination on All Forms of Discrimination Against Women (CEDAW) was formulated and entered into force in 1981. The Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (CAT) (1984) entered into force in 1987, the Convention on the Rights of the Child (CRC) (1989) in 1990, and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW) (1990) not until 2003 (Appendix 2). The number of core human rights treaties had reached seven. The UDHR and the covenants was intended to be lasting documents to safeguard universal human rights, but the counter-argument by Wright is that: "Many subsequent treaties on human rights indicate that turning universally acceptable standards into enforceable norms is very difficult." (Wright 2001: 1) In my perspective 'norms' in Wrights perspective differs from Krasner's norms and instead equal what Krasner refers to as decision-making procedures. It is important to notice that it took 13 years before ICRMW entered into force, and symbolize the protection of migrants and their families is not yet close to being a truly universal accepted value. It is a treaty most countries probably have difficulties ratifying, due to complex national contexts.

When scrutinizing the ICCPR it becomes obvious many of these new conventions are extended version of rights already ensured in this covenant, namely the rights of women, against torture, the rights of children and migrants. Four new conventions in eleven years indicate UN was forced to expand universal rights to rights to specific groups, after it became evident that enforcement of human rights in the covenants was not successful. One might also argue the pressure from countries not participating in formulating the UDHR at this point was so massive in the UN it could no longer be overheard, the universality was heavily questioned.

Part of this pressure came from a confederation of mainly Third World nations that advocated for the right to development⁸ to become a human right. If a state is too weak to ensure human rights, the international community should take steps to enable this, in other words, this resembles the right to aid. It is not the responsibility of the nation-state but of the international community (Kirchmeier 2006: 2-3). In 1986 the Declaration on the Right to Development (RtD) caused heavy debate. It got wide support in the UN system but was not accepted due to internal obstruction, mainly by the US, who simply ignored

⁸ 'third generation' of rights

the declaration that among others Malaysia favored. This was seen as the total disregard of other perspectives on human rights than the one promulgated by the US and has caused loss of credibility to the US and the regime-persistence was under fire by the developing world (Mauzy 1997: 222).

Despite the aspirations by the founders initially to make human rights and democracy applicable everywhere, it seems the regime had outer boundaries. The RtD was eventually incorporated as part of the Vienna Declaration in 1993 but only as a 'soft law', without any legally-binding commitments. Critics argue the RtD even represents 'the right to everything' in a Western perspective and therefore a threat to Western dominance, and rejected as legally binding on this behalf, and could explain the negligence by the US.

According to Booth, the very idea of universal human rights is connected to the idea of an ethical universal community. But since such a community does not exist yet, the internet might help create it, the universal human rights regime has no validity (Booth 1999: 33). Moreover during the Cold War the human rights agenda was peripheral in the international struggle for power despite being institutionalized in 1976. Renteln discuss the true universal character of the UDHR, and whether or not it represents truly universal values. The analysis so far verify the regime was Western dominated and controversy have arisen since those values are not universal in all parts of the World. Many new states emerging after the WWII did not participate in the formulation and does not share those values that the UDHR represent. Renteln summarizes by stating:

"States are probably more likely to comply with standards based on values to which they are committed. Therefore, if a document contains primarily Western values, this would seem to ignore the practical problems of implementation for non-Western countries." (Renteln 1990: 32)

2.4 'Asian Values' and the 1993 Vienna World Conference on Human Rights

In 1992, a group of Asian leaders met for a Conference in Bangkok on human rights. The apparent reason was to stand closer together before the Vienna World Conference a year later, to illustrate their resistance with the normative understanding of human rights. The Asian leaders, with Malaysian Premier Mahathir as one of the main proponents, labeled their stance 'Asian Values', stating that the distinctiveness of the Asian community and way of life must be recognized (Appendix 6). Furthermore the Declaration once again emphasized the importance of national sovereignty and non-interference in the domestic politics of states and advocating for avoiding using human rights as an instrument for political pressure (Baik 2005: 13). These perceived differences in Western and Asian culture fit with Huntington's thesis on the 'Clash of Civilizations'.

"The fundamental source of conflict in this new world will not be primarily ideological or primarily economic. The great division among humankind and the dominating source of conflict will be cultural . . . and conflicts of global politics will occur between nations and groups of different civilizations. The clash of civilizations will dominate global politics." (Huntington 1993: 22)

The ability to reach consensus among the diverse Asian states was an accomplishment, the alleged barriers was less significant and 40 states signed the Bangkok Declaration (Mauzy 1997: 220-221). Amnesty International referred to the declaration as 'a step backwards' for human rights (Smith 2005: 89). Framing 'Asian Values', was an obstacle in the promotion of universality and in the mid-1990s gave the Asian countries some bargaining power in the UN-system, the voice from Asia could no longer be overheard. Hurrell link Asian Values and human rights with democracy and argues that it could be politically motivated more than a genuine description of particular Asian values:

"Even if the challenge is political rather than cultural or civilisational, it is still powerful, with serious implications for both the international human rights regime and international efforts to promote democracy." (Hurrell 1999: 297)

171 states send their delegates and 841 NGO's⁹ participated in the second¹⁰ World Conference in Vienna in 1993. The number of participants clearly indicates the massive international acceptance of human rights as an integrated part of international politics (Patterson 1995: 132-133). The UDHR started as a moral document, but the encompassing vision was embraced by the people of the world and took on a life of its own (Lauren 2003: 238). Many Western delegates arrived with the hope of signing a new UDHR that would indefinitely grant all people human rights and freedom. But instead a new opposition occurred substantiated by 'Asian Values' (Osiatynski 2009: 40). The Vienna Conference in many way marks a shift in the international human rights regime. Firstly, the former recognition of human rights as a birthright in the UDHR is reinforced in the Vienna Declaration, stating it is the primary responsibility:

"Human rights and fundamental freedoms are the birthright of all human beings; their protection and promotion is the first responsibility of Governments." (Appendix 7)

On the other hand the regime was, by framing human dignity in the second paragraph of the Vienna Declaration, in my perspective faced with a challenge, that unintended might have sidelined human rights. In Krasner's theoretical understanding if the core principles and norms change it is not a change within the regime, it is changing the regime itself. According to Donnelly, the second paragraph also marks a historical particularity, never before has the human race had a common set of values exercisable against the state (Donnelly 1999: 81). Actually consensus was reached on the importance of the universality of human rights, and marks a reduced ideological conflict (Baik 2005: 14), paragraph five emphasizes:

"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,

⁹ A meeting prior to the Conference proposed to permit NGO's to "participate fully in its deliberations" and that NGO's were essential in all aspects of human rights, but some states, especially Asian obstructed this suggestion and a compromise was reached.

¹⁰ the first World Conference was held in 1968 in Teheran, Iran

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.” (Appendix 7)

Surprising was it, that especially the Asian countries, with Malaysia at the forefront agreed on the universality after their massive objections. It could be argued the opponents of universality managed to incorporate that *‘various historical, cultural and religious backgrounds must be borne in mind’* and reaffirms the missing universality in values. Though in accordance with Smith I argue since all states formally agreed on the importance of international standards and universality, the Vienna Conference gave universal human rights new momentum (Smith, 2005: 156). Using Krasner’s terminology after many years of crisis, a dissipation of the regime was accomplished (Krasner 1982: 195), and it could be argued the basic principles and norms was reconfirmed and could be seen as consolidating the human rights regime.

Additionally the declaration specifically emphasized the role of NGO’s and the establishment of the UN Office of the High Commissioner for Human Rights further strengthened the monitoring to ensure international standards. The decision to establish a High Commissioner became a symbol of the increasing strength of the INGO’s (Donnelly 1999: 88). A main target formulated in the Vienna Declaration was urging all states to ratify at least the CRC and CEDAW, with specific timeframes, 1995 and 2000 respectively (Appendix 7). Malaysia ratified both CRC and CEDAW in 1995, both with numerous reservations (Appendices 2 and 10), and for the first time indicated a willingness to integrate in the universal regime. Maybe ‘soft power’ was a factor.

According to Dunne and Wheeler there is a remarkable international normative consensus in the UDHR → the two covenants → 1993 Vienna Declaration (Dunne and Wheeler 1999: 7). This statement can be contested when considering that two covenants was formulated and the regime has structural weak spots, due to irreconcilable ideological, cultural and civilizational differences. But I partly agree, since these three achievements, could be seen as having created; institutionalized and demonstrated the persistence; and dissipation of the regime. More and more countries ratify both covenants and conventions and strengthen the treaty-system of which the regime is based. A possible fourth main goal is to convince all countries, among others Malaysia, to ratify the basic covenants.

2.5 The current regime

In 2006 the last two of the current nine core treaties were adopted, the Convention on the Rights of Persons with Disabilities (CRPD) and the International Convention for the Protection of All Persons from Enforced Disappearances (CPED), and entered into force in 2008 and 2010 respectively. This further justifies the process of giving rights to specific groups, instead of granting universal human rights. Malaysia ratified CRPD in 2010 (Appendix 2).

All countries accept the UDHR and all countries have ratified at least one of the nine core treaties (UN3, un.org), and moreover the vast majority of countries have ratified most of the nine core treaties. This

verifies that supposedly the regime is regarded as valid despite the account of flaws of the past, from most corners of the World, exclusive Southeast Asia. Human rights are today an institutionalized part of international politics. According to Dunne and Wheeler there is an almost universal acceptance of the universal human rights framework and argues that 'human rights' day has come! Furthermore;

"there is a normative consensus underlying the human rights regime is the fact that in the daily round of diplomacy, state leaders justify their human rights policies in term of these standards." (Dunne and Wheeler, 1999: 7)

Kao argues human right today is the most important global moral concept and that human rights have become an evaluative tool to decide the legitimacy of national political regimes. Furthermore Kao notes almost all countries have ratified the two covenants, by early 2011 the ICESCR was ratified by 160, the ICCPR by 167 states. This universal acceptance have resulted in adverse effects for the countries with poor ratification records, partly in the diplomatic ties, partly in their ability to seek financial support from the World Bank, IMF and other financial institutions (Kao 2011: 1).

A big problem, but very difficult to confirm, is some states sign and ratify without having the intention of fulfilling those responsibilities that follow. According to Kao, many countries have ratified for face-saving or other self-serving reasons and many of them with multiple reservations. On the surface the regime is valid, due to the wide acceptance of the UDHR and the high ratification-rate of most countries, but Kao and others argue essentially the regime is not as strong as it appears at first glimpse (Kao 2011: 3).

Huntington's 'Clash of Civilizations' between the West and the Rest offer a good explanation for the most fundamental internal regime-weaknesses within human rights, Huntington argues:

"At a superficial level much of Western culture has indeed permeated the rest of the world. At a more basic level, however, Western concepts differ fundamentally from those prevalent in other civilizations. Western ideas of individualism, liberalism, constitutionalism, human rights, equality, liberty, the rule of law, democracy, free markets, the separation of church and state, often have little resonance in Islamic, Confucian, Japanese, Hindu, Buddhist or Orthodox cultures." (Huntington 1993: 40)

It could be argue the Western World and especially US in regards to human rights act according to the superficial level in Huntington's thesis. The West has been dominant, and do not fully embrace the anti-thesis on real differences in culture at the basic level, that Huntington outlines above. Furthermore US take the role as the international watchdog securing world peace, using the human rights normative. This task might justify, in US' perspective, not always doing what they preach. Though, US still acting with double standards is a continuous problem that result in the lack of validity to universal human rights. To some countries it offers an excuse, not to ratify the treaties, when US does not follow the same rules as they incite on others. Recently US' hegemonic position in the World has been challenged by Asia in general and China in particular and could explain why the human rights regime is still struggling with universality.

New challenges have occurred besides 'Asian Values'. Firstly the war on terror took center stage, after 9/11, and shifted focus away from the dominant human rights focus after the end of the Cold War. Realists argue that security concerns outweigh human rights, others point out that human rights is an integral part of the war on terror. No matter which perspective, the role of the US is worth consideration. The fight on terror and the setting up of Guantanamo has worsened some countries view on the US as the human rights watchdog. Defenders say a higher purpose is served (Osiatynski 2009: 47-49). International human rights treaties are meant to regulate the way states treat their own citizens and give them individual rights, meanwhile the obligations to secure that these rights are upheld, is the responsibility of states. UN is supervisory and the main responsibility still lies with the nation state (Donnelly 1999: 85). An international regime of universal human rights is therefore still not a real alternative to the realist understanding in the theoretical framework. Institutional liberalism argues regimes at times can prevail over the statism if states have common concerns.

INGOs has become better at reporting on violations, writing monitoring reports and influencing policy documents, INGOs are setting the agenda and are simply better as human rights watchdog than states have traditionally been (Donnelly 1999: 88). INGOs have in particular strengthened the regime by starting to create what Booth described as an ethical universal community, by putting pressure on states to adopt treaties and gradually remove the statist dominance (Hurrell 1999: 289). The Secretary General, Kofi Annan stated in 1997 that, human rights 'principles' are an integrated part of all UN activities. According to Forsythe "there is almost a straight line progression on increasing action by Secretaries-General on human rights over time." (Forsythe 2012: 80)

The highly criticized Commission on Human Rights was replaced by the Human Rights Council in 2006¹¹, and some countries have seen this as a window of opportunity to restructure human rights, and in their view make it international instead of Western (Osiatynski 2009: 41-45, Hurrell 1999: 288-289). In Krasner's perception this would imply a change of the regime and not within the regime, since the basic 'principles' was changing, universality is the basis.

The internet is currently, and will undoubtedly even more in the future, bring pressure in order to improve the human rights situation in different countries, among these Malaysia. And maybe pressure the government to ratify treaties, but as the statement by Smith suggest increased internet penetration is not only for the better:

"Information technology represents both a challenge to international human rights and a lifeline: a challenge insofar as there are major problems of jurisdiction and related issues (...); a lifeline insofar as information, particularly on the human rights and its abuses, has never been as easily accessible to millions of people." (Smith 2005: 285)

The Committees that oversees the treaties interpret the enforcement and are therefore very important institutions. Minimalist consider the work a dialogue among sovereign states while the maximalists are

¹¹ The work of the Commission on Human Rights (1946-2006) was continued by the Human Rights Council (2006-)

stricter in their interpretation of inter-state-relations and insist that states report correctly and are in compliance with its legal responsibility. After the Cold War the maximalist approach has taken dominance and this has strengthened the regime (Forsythe 2012: 102). On the downside it might have discouraged countries to ratify since the actual enforcement is more comprehensive, this might had implications to Malaysia lagging behind. In other words when a regime becomes stronger it might entail that fewer countries are willing to integrate, that is the inherent paradox for improving human rights. The next chapter will look into the human rights discourse in Malaysia.

2.6 Concluding comments

Human rights 'ups and downs' at large follow the battle for power. During the Cold War, human rights were sidelined since security issues took center stage. After 1989 human rights captured a leading role, probably because the West wanted to exploit their 'win' and therefore advocated democracy, human rights and other virtues of the west in all other countries, similar to what realists would expect the victor to do. But after 9/11 center stage was captured by the war on terror, some argue, other argue that human rights today have reached hegemonic status. The conditions in the 1990's was optimal for the promotion of human rights, since it was not overshadowed by other more important security agendas and the Vienna Declaration is a sign of this international recognition in a realist understanding.

The emerging powers of the East combat the hegemony of US and challenge the fragmented framework that initially was reached between the two old superpowers. China is not fully a contestant in the battle for power and the voice of the East's is not 'strong enough' to counter the dominance of the US, but at different arenas, such as human rights, the East challenges the universal standards, by fostering Asian Values. Despite these heavy internal regime-weaknesses, almost all countries accept the regime (almost all countries ratify the treaties). Why all countries does not adopt it as universal, could despite these weaknesses also be based on inherent country specifics. The next chapter will look into Malaysia and the national perspective on the international human rights regime.

Chapter 2

3 The Malaysian human rights discourse

Chapter 1 established that most countries accept a common set of principles and norms as the basis for human right enforcement anchored in the UN and an international regime in Krasner's terminology is a valid nomination. Though the integration is not consistent, Malaysia is one of the countries that hinder that development. Malaysia became a member of the UN in 1957, but has not signed the UDHR. New members of the UN are obliged to accept the principle and the norms and after some time can gain influence and change the rules and procedures of the regime. Or can try and change the principles and norms and then the entire regime would change, is my interpretation of international regimes. This chapter will debate human rights in Malaysia in the framework of the international regime and the possible pressure imposed on Malaysia, mainly from a realist understanding. But the importance of other national actors such as civil society might also play a role in the national human rights discourse.

3.1 Early political history / institutional developments

Before independence, when Malaya was a British colony, Indian and Chinese laborers were invited to work at the colonial enterprises such as mines and plantations. At first on temporary basis, as it was not the intention to integrate the migrant workers in Malayan society (Gurowitz 2000: 867).

"The 1948 Federation of Malaya agreement, which laid the groundwork for future ethnic arrangements, recognized Malay as the dominant culture of the country and defined a Malay as someone who habitually spoke Malay, was a Muslim, and followed Malay custom." (Gurowitz 2000: 874)

When Malaya gained independence in 1957, the Constitution was naturally influenced by Western values. The Constitution¹² guaranteed basic human rights, but many restrictions initiated under British rule were incorporated (Sani 2011, 537-538). The protection of people was closely connected to duties in Malaya, the state would look out for the people if they performed in accordance with their duties for the better life of everyone (Mauzy 1997: 215).

Independent Malaya came into existence after a 'communal bargain' between the majority Malay and the Chinese and Indian communities. The Chinese and Indians were given full citizenship in Malaya, while as compensation from the British, since the land belonged to the Malays¹³, they were given the

¹² The Constitution was revised again after adopting the Borneo-states into the federation of Malaysia in 1963, Singapore was also adopted but left the federation again in 1965.

¹³ Actually power lies with the Bumiputeras – 'sons of the soil', comprising of Malays and the indigenous people on the peninsula and the Borneo-states Sabah and Sarawak, but practically with the Malays.

political power as an extension of the former 'special Malay privileges'¹⁴. Before independence the Chinese minority¹⁵ controlled the economy, so gaining political power was important and was powerfully advocated by the Malay-party UMNO, to avoid complete Chinese dominance in the country (Cheah 1999: 69-71). In the Malaysian mosaic, as part of the social contract agreed on at independence, in order to keep the political power the Malays were also ensured that Islam, the Malay language and the Malay Rulers (Agong) would hold a special position. In 1960 Islam was announced as the official religion, but Prime Minister Tunku Rahman spoke in favor of a tolerant Islam and sensitivity to the interests of non-Muslims, secularism was predominant under his reign (Means 2009: 82).

The nation-building focused on improving the economic situation of the Malays, since the Chinese continued to control the economy and on racial harmony. The other communities also wanted to make sure their political interests were protected, the Chinese and Indian communities formed MCA and MIC respectively. These three parties quickly formed a coalition based on common interests, known as the 'Alliance'. I argue the complexity of all spheres of the Malaysian society today originates in this colonial history and there is no doubt politics, especially government-politics, in Malaysia is first and foremost race-based. The following statement by Cheah briefly sums up and supports this argument:

"The origin of race politics in Malaysia goes back to the years before independence. The British colonial powers were faced with a multiracial nationalist movement that was anti-British and under the influence of the communists. The British responded very successfully by mobilizing the Malay feudal families and the Chinese trading community, as champions of the rights of their communities. The Malays were promised an entrenched special position with the civil service in their hands. The Chinese and the Indians were promised economic opportunities. Racial politics took root." (Cheah quoted in Rajakumar 2001: 146)

After independence Malaya was in a 'State of Emergency' due to the pre-independence, communist uprising, the Malayan Communist Party that (MCP) mainly consisted of Chinese. This uprising and the expulsion of Singapore, with its Chinese majority from the Federation in 1965, are strong indications of the Malay fear of further Chinese dominance in the country (Manan 1999: 364). The 'Emergency Regulations' suspended the civil liberties guaranteed in the Constitution. When the State of Emergency was abolished the civil liberties were restored and a human rights-discourse became evident for the first time in independent Malaya, but only on the surface. The Malayan Constitution, like many other constitutions administered partly by the British, has incorporated many principles of individual freedom and other civil and political rights also found in the UDHR. This would speak in favor of a widespread convergence with international standards, but this is not the case. The major difference is, rights guaranteed in some parts of the Constitution are cancelled elsewhere, for example article 10 (Appendix

¹⁴ Intake in the public administration on the lower levels was almost only Malays to help the British administer the federation.

¹⁵ The Chinese minority today comprise 22 % of the total official population of 28 million people.

9) (Manan 1999: 364-366). Moreover the constitution has been circumvented by ISA and other restrictive laws which the Alliance set up in the 1960's and 1970's (Cheah 1999: 78).

The Malaysian foreign policy was dominated by survival and state consolidation in the first years after independence. Under Tunku Rahman (1957-69) the foreign policy was naturally pro-Western and anti-communist, but when Abdul Razak (1970-76) took over the focus shifted and the foreign policy was aimed at neutrality and peaceful co-existence. Malaysia was a member of the Non Aligned Movement and this strongly indicate the country did not want to be on either side in the Cold War. Under the reign of Abdul Razak, Malaysia joined the Organization of the Islamic Conference (OIC) and started identifying itself as a 'Muslim Nation'. The formation of ASEAN in 1967 illustrates the Malaysian interest in regional cooperation and under the reign of Hussein Onn (1976-81) ASEAN became the cornerstone in the foreign policy (Malaysian Government¹, kln.gov.my).

Cheah claims "there was no explicit concept of human rights in Malay culture prior to Western notions of democracy and freedom." (Cheah 1999 quoted in Manan 1999: 364) Besides the moral responsibility connected with accepting the UDHR, enforcement of universal human rights was something imposed from the outside world on Malaysia. Implementing the economic, social and cultural rights in a developing country were according to the UN a step by step process. The pressure on countries to ratify this covenant without at the same time ratifying the ICCPR must be considered minimal.

3.1.1 Constitutional rights and restrictive laws

Formally there is freedom of speech, assembly and association in Malaysia. These freedoms were granted at independence, according to PROHAM:

"The founding fathers of Malaya in 1957 and Malaysia in 1963 made a clear commitment to human rights as contained in Articles 5 to 13 such as equality, freedom of speech, assembly and association, and also freedom of religion." (Malaysiakini¹)

But in reality, these freedoms are worth nothing, if it affects 'public order or morality'. These amendments have been inserted during the emergencies (Sani 2011: 540). I regard freedom of speech as one of the most important civil rights, as the basis for criticism, and therefore pivotal in resistance towards the political authority and the way they administer their power. In most other countries the constitution is the foundation other laws are compared to and which holds the politicians accountable. Article 10 (appendix 9) outlines that the Malaysian Parliament has almost unrestricted power to design laws that are not concurrent with the constitution. Sani argues;

"so wide is its sweep of power that the government has no difficulty in defending laws such as the Sedition Act, Official Secrets Act (OSA), ISA and Printing Presses and Publications Act (PPPA) as fully in accord with the basic charter." (Sani 2011: 540)

Restrictions on human rights are permitted by the constitution and therefore these acts are not unconstitutional and the legal framework is valid (Cheah 1999: 79). The legal force of the Malaysian constitution is low compared to other constitutions, because of these intrinsic weaknesses. The reason is undoubtedly that BN has had undisrupted control and has often held a 2/3 majority in Parliament, that have enabled lots of changes of the Constitution.

The restrictive laws mentioned above are very extensive in Malaysia. Most importantly, these laws limit the freedom of speech, expression and assembly of all citizens and implicitly civil society organizations and NGOs, via the Internal Security Act (ISA), which in practice enables infinite detention without trial; The Police Act, which limit individual freedom, as police permits are required to assemble outside in larger groups¹⁶; the Official Secrets Act, the Printing Presses and Publications Act, and the Sedition Act which all three limit sensitive issues from public coverage; the Universities and University Colleges Act and the Societies Act, giving unlimited power to the Registrar of Societies, in deciding which societies are legal and which are not - severely hindering the options of NGOs, when regarded as the peoples watchdog (Hassan and Lopez 2005: 116). ISA arrests are ordered by the Home Minister, who can issue a preventive warrant for 60 days or two years imprisonment, which can be further prolonged. ISA orders are issued by the Home Minister, while detentions under the Ordinance are enforced by the police and the only requirement for the police is they are acting in 'good faith'. This could be an example of the potential incapability of the Malaysian police since these arrests can bypass proper investigations. If the police cannot collect significant proof, they can hide behind the Emergency Ordinance (Centre for Public Policy Studies, ccps.org.my) (Manan 1999: 366-367). ISA has been widely criticized for being used frequently against political opponents, NGO-activists and journalists, despite the fact that ISA was aimed at obstruction of communist activity (Cheah 1999: 80; BBC.co.uk1; Malaysiakini2).

Any resemblance with the human rights regime was not noticeable in the first 20 years of independence and explains why the Malaysian government did not ratify the covenants when they were formulated. Before moving on to the era of Mahathir one single incident is crucial in understanding the human rights discourse in Malaysia, namely the riots in 1969.

3.1.2 The 1969-riots

The worst crisis in Malaysia and a defining event in the current situation took place in 1969. The Alliance suffered great losses at the May 10th General Election in 1969 and this eventually led to bloody riots on May 13th, 131 were reported dead. The Chinese community was dissatisfied with government and this resulted in heavy losses, mainly for MCA. The opposition Chinese-based parties Gerakan and DAP came out as the victors. The opposition parties celebrated and this caused grievances for the Alliance-parties, especially UMNO. The Malays main concern was that this election would bring into question the special

¹⁶ 3 or more is a larger group, where a permit is demanded if they gather to demonstrate

position of the Malays. The dissatisfaction eventually led to Abdul Razak taking over as Prime Minister after the Emergency Rule (Butcher 2001: 42).

According to Means the paramount goal of national unity and security led to restrictions on personal freedoms. The national ideology 'Rukunegara' was formulated after the 1969-riots, in order to avoid 'sensitive issues' on the political agenda. All citizens were requested to be sensitive, tolerant and respectful of the religious diversity among the communities. This did not only apply to the people but also to politicians. Democracy and authoritarianism was combined. Equally important, the balance between democracy and authoritarian powers were upheld by the Prime Minister, who therefore had extraordinary executive powers. After the Malays had reconfirmed their political position, ideas started surfacing bringing Islam to the forefront of politics, and replace the secular idiom that was currently dominant (Means 2009: 82-85).

The riots in 1969 annulled the government and a new State of Emergency was declared that once again cancelled the civil liberties and freedoms that the Constitution had guaranteed. Government was restored and the New Economic Policy (NEP), an affirmative action policy, was introduced by Abdul Razak in 1971, in order to further improve the living standard of the Malays and to secure the basis for national security in the future. The affirmative action policy, Bumi-laws, aimed at ensuring 30 % equity in the economy overall and to improve the Malay ownership in the economy via employment in all sectors, initially for a 20-year period. To achieve this, Malays were given preferential treatment in regards to getting public contracts, intake into civil service, government scholarships, intake in educational institutions, a reduced price system for house-purchasing and actively promoting professional positions both in public and private companies (Means 2009: 83-84). Due to the continuous lagging behind of the Bumiputeras, the affirmative action policies have not been nullified, nor has the State of Emergency (Sani 2011: 539). That is the official statement, critics argue the distribution have been inadequate due to 'money politics' and corruption, removing lots of funds from the economic circle. The special position of the Malays still causes some debate in Malaysia, but it seems to be institutionalized and people tolerate (not accept) the special division.

The civil and political rights were heavily restricted and racial discrimination was 'constitutionalized' after the NEP had been introduced in 1970 and the missing willingness to integrate is validated in these restrictions. Furthermore, US supported regimes (financially) in Southeast Asia to contain communism and in my perspective, Malaysia had not been under heavy international pressure to comply with human rights standards. US had bigger problems in the world in general and in the region specifically. The regimes in Vietnam, Cambodia and Burma, where ethnic discrimination led to killings and other horrors, drew attention away from the small problems in Malaysia. The Malaysian regime might have discriminated the Chinese and Indians, but status quo was supported, seen in the light of the Chinese-communist-relation.

It is important to keep in mind that no real alternative to run the federation existed and not until 1969 did an opposition become evident to the Alliance. DAP, Gerakan and PAS were in my perspective

incapable of forming a government because of diverging ideologies. The only issue that united them was opposing the government, so the votes of no real danger to unite into an alternative government.

3.2 The era of Mahathir (Mahathirism)

3.2.1 Economic development on the agenda

Mahathir took office in 1981 and remarkable changes occurred. The policies began to be economic in nature and investments from all parts of the world were welcomed in order to secure the basis for economic development. The survival of the nation was ensured and the goals became visionary under Mahathir - Malaysia should develop into a high-income nation by 2020. Nothing was too big for Mahathir, and his contribution to the transformation of Malaysia must be respected. In my perspective, economic development was *the* dominant target above all other policies. Mahathir wanted to create opportunities to the people, specifically to the Malays. Despite his, at times questionable methods, he was the architect of Malaysia's development and many Malaysian's respect this effort. Moreover Mahathir created a sense of national identity, gave Malaysia a voice in the world and was the architect behind impressive economic growth-rates (Martin, Malaysiakini3).

Mahathir combined universalist/moderate Islam, developmental nationalism, market-laissez-faire and mass appeal. Other important features of Mahathirism are that authority and order are more important than democracy (Langlois 2001: 14). While the economic path was quite open, the political focus was very nationalistic, even ethnic. The following statement by Hurrell outlines the consequences and is a valid argument explaining why human rights after a Western model were not on Mahathir's agenda:

"Human rights will always remain marginal for the nationalists who view the nation or the ethnic group as an objective phenomenon standing above the individual; (...) who argue that loyalty to the nation overrides all other loyalties." (Hurrell 1999: 294)

3.2.2 Critique of the West

A defining factor of Mahathir was massively attacking the West, to defend his national agenda to the Malaysian people. Mahathir countered the power, the wealth and the imperial history. In regards to the universal human rights regime he criticized the conspiracy of the West, and stressed human rights was covering up for economic protectionism and the West was exploiting human rights in an attempt to neutralize the position of the emerging Asian Tiger-economies (Hurrell 1999: 296; Mauzy 1997: 224). The critique of the West evolved around the missing public religion. Life in the West was instead based on hedonistic values as materialism. Furthermore Mahathir countered the basic western viewpoint of democracy, liberalism, individualism and the devaluation of the family. The morality of people in the West had disappeared, due to the strong emphasis on individual freedom. This critique is based on the

secular nature of the West. People are free but the freedom should not be unlimited, then people would pursue their personal passions and not the good of the community in general. Mahathir argued *“the West’s interpretation of human rights is that every individual can do what he likes, free from any restraints from government.”* (Mauzy 1997: 224) He continues his attack on the dangers of the western perception of rights, by stating what it implies:

“to carry guns, to flaunt homosexuality, to disregard the institution of marriage, to disrupt and damage the well-being of the community in the name of individual rights, to destroy a particular faith, to have privileged institutions which are sacrosanct even if they indulge in lies and institutions which undermine society.” (Manan 1999: 362)

These statements show Mahathir’s passionate resistance of the Western dominance and the universal regime of human rights and the implications for his development plans. Mahathir stated mostly as a provocation: *“European values are European values. ‘Asian Values’ are universal values.”* (Manan 1999: 362) Mahathir was the self-proclaimed ‘Voice of the East’ representing the global opposition to counter the hegemonic ideals of the West, his supporters even referred to him as the ‘Hero of the South’ (Langlois 2001: 14; Mauzy 1997: 224). Mahathir’s Deputy Anwar Ibrahim also made no mistake on his view on the imperial past and resistance towards the universal human rights regime, and could be seen as capturing the attitude of the majority of the Malaysian political elite, Anwar;

“... to allow ourselves to be lectured and hectored on freedom and human rights after 100 years of struggle to regain our liberty and human dignity, by those who participated in our subjugation, is to willingly suffer impudence.” (Far Eastern Economic Review 2 June 1994: 20 quoted in Mauzy 1997: 212)

Asian Values was briefly mentioned in chapter 1, one of the strongest proponents was Mahathir. According to him economic development favoring the entire country periodically could take precedence over the traditionalist individual human rights and should be integrated in the international regime. Values in the West and the East are learned differently and that the Western-style democracy and human rights can lead to undisciplined behavior that could hinder development and stability. Accordingly, it is justified to remove civil liberties and fundamental freedoms momentarily to ensure the material needs of the people. Mahathir have argued ‘too much freedom is dangerous’ (Manan 1999: 361-362). The political elite might have seen the British participation in setting up the constitution as neo-imperialism and continued control. As many other colonies, Malaysia wanted to be truly independent, and especially Mahathir was an advocate for this perspective and recommended South-South cooperation to avoid neo-imperialism.

3.2.3 The Human Rights Commission – SUHAKAM

The national human rights commission, SUHAKAM, was set up in 1999. Maybe the public upheaval due to the maltreatment of Anwar Ibrahim forced Mahathir to show some good-will and illustrate interest in civil rights. But SUHAKAM was not set up as an independent body as required by the Paris Principles (UN4, un.org), but under the Ministry of Foreign Affairs. SUHAKAM agrees with those limitations that

appear in the Constitution and confirms human rights are relative and not universal, human rights are referred to as 'the fundamental liberties as enshrined in the Constitution' (Suhakam.org.my). After the Human Rights Commission Bill was adopted in Parliament, Foreign Minister Syed Hamid Albar stated Malaysia should not blindly follow the model of other countries. SUHAKAM is a top down-driven institution and cannot be said to reflect the wishes of the people.

Lim Kit Siang (DAP) stated that SUHAKAM could end up as an alibi-institution that could legitimize the continued abuse of human rights, since the entire setup was in contradiction with the Paris Principles. The government formally adopts democratic practices, but continues to cover up human rights violations. Therefore setting up SUHAKAM could be viewed as only symbolic. Furthermore, all the commissioners are appointed by the political elite for a two-year term and the Prime Minister decide whether or not this should be prolonged. If they are 'too independent' the term will not be renewed (Hassan and Lopez 2005: 126- 128).

3.3 Current perspective

3.3.1 Official Malaysian human rights approach

In order to investigate the current Malaysian perspective on human rights, the most natural starting point is to look at the official statements and then scrutinize this in the following analysis:

"Malaysia takes a holistic approach to human rights in that it views all rights as indivisible and interdependent. In Malaysia, the rights of every citizen are protected by legal provisions in the Federal Constitution, which spells out the fundamental rights of all persons, including minorities. But these rights are not absolute and are subject to, among others, public order, morality and security of the country, which is consistent with the UDHR. While upholding the universal principles of human rights, Malaysia accentuates its human rights values which take into account the history of the country as well as the religious, social and cultural diversities of its communities. This is to ensure that the respect for social harmony is preserved and protected. The practices of human rights in Malaysia are reflections of a wider Asian value system where welfare and collective well-being of the community are more significant compared to individual rights. Malaysia has been a staunch supporter of human rights and Malaysia participates actively in the local arena and international fora in order to demonstrate that the country has been, and will remain, truly committed towards improving its human rights system." (Malaysian Government²; kln.gov.my)

The Malaysian government clearly still takes a relativist position on human rights in mentioning the *Asian Value system*. Despite formally 'accepting' the *universal principles* they are actually denied, by stating that *rights are not absolute* and emphasizing the Malaysian history and diverse society. Furthermore, it is noticeable that nothing about how to achieve the goal of improving human rights is mentioned, *truly committed* to the cause is still unlikely, opposite of what is stated at first glimpse to the ignorant observer. From this text it is evident Malaysia is not intending to close the gap between their

perception on human rights and the universality that most other countries today adhere to. The Mahathir-perception is thereby still dominant in Malaysia and has been extended by his predecessors. Perhaps things will not change fundamentally until Mahathir dies.

If the Malaysian political elite believe the values which the UDHR contains are not convergent with those of the Malaysian people, this justifies why Malaysia has not ratified either the covenants. If in reality it reflects the values of the Malaysian people is a whole other question. If the Malaysian people strive for integration in the regime, the normal channels for influence are; civil society, elections, demonstrations or revolutions. I argue some changes have occurred that have created possibilities for the people, the civil society and the opposition to get their voices heard, in a more genuine democratic and fair context, after more than 20 years under Mahathir's authoritarian rule. The opposition and the NGO-community are fighting harder than ever to improve the human rights situation and give the people civil and political and economic, social and cultural rights. The following analysis will substantiate this claim.

3.3.2 Latest political development in Malaysia

When Abdullah Badawi took over as Prime Minister in 2003 he started a reform-program, the most important issues on his agenda being to combat corruption. His reformist attitude led to dissatisfaction in UMNO, partly because some cronies of Mahathir were charged for corruption and he was consequently forced to step down in 2009. Mahathir left UMNO in protest over Badawi's administration. At the General Election in 2004 Badawi led UMNO to the best election result in many years, but the attitude among the Malaysian electorate changed in 2008. In my perspective this offered the Mahathir-faction of UMNO the perfect chance to kick out Badawi and replace him with Najib in 2009. (Wain 2009: 307-308) Najib has reestablished Mahathir's main goal of economic development, Badawi instead focused on consolidation. Mahathir's old vision of increasing the economic output and ensuring national unity has been revitalized, with Najib's 2020-plan¹⁷ and the 1Malaysia-slogan. Najib has officially continued Badawi's fight to combat corruption, though not nearly as radically as Badawi, in my perspective.

As stated above Mahathir still plays a major role in Malaysian politics. Firstly, the network he created both internally in the party and with business-associates and secondly the legacy of his policies, that cannot easily be overturned, according to the path-dependency-theory. Mahathir formally has no political power after he retired, but he is still active in trying to make the Prime Ministers follow the 'right' path for Malaysia. He often makes controversial statements about the current political leadership and the current challenges Najib is faced with. On the electorate he concluded: *"the government must adapt to the changing environment and respond to an electorate that is increasingly intelligent."* (Aw, Malaysiakini⁴) Referring to better levels of education today and the information available on the internet, Mahathir elaborates:

¹⁷ The goal is to make Malaysia a high-income nation in 2020.

"Information technology is a headache for everyone. Fortunately during my time they were not so sophisticated but the present government faces not so much from the newspapers and television but it is the alternative media that is the problem." (Aw, Malaysiakini4)

Najib acknowledges after more than 50 years in power, the government might be under the impression it will stay that way. He does not share this view and his reform-program has thus laid down a new path for Malaysia. He also admits that a change of attitude does not happen overnight, but claims that UMNO is 'ahead of the curve' to avoid a people revolution (Aw, Malaysiakini5). This is partly true but also electoral propaganda, and Najib concludes by saying that it is important the government wins the next General Election to be able to continue this transformation.

3.4 The unofficial Malaysian human rights discourse

The former sections have focused on the government perspective on human rights in Malaysia, especially the influence of Mahathir and verified that his administration does not willingly adopt to international human rights standards. But other actors might also have had impact on human rights in Malaysia; this section will look into the emergence of civil society/NGO in Malaysia.

3.4.1 The influence of civil society and NGO's

Civil society groups emerged on a large scale in Malaysia in the late 1970s. As mentioned earlier the overall pressure on the government domestically, was minimal before Mahathir took office. Originally, NGOs were mostly organized on ethnicity or religion, but later more issue-based with human rights protection as the major common denominator. The most influential human rights NGOs in Malaysia were ALIRAN and SUARAM. According to Weiss, there has been "at least some autonomous space" for civil society to develop in Malaysia, but their influence has often been limited. Civil society is important, but Weiss, in accordance with Iris Young, argues that despite the ability to promote social justice and democracy, there are limits of possible accomplishments in civil society alone. The efforts of the most persistent civil society agents (CSAs) can be mitigated by charismatic leaders (Weiss 2007: 31, 38-39).

One of the main reasons is 'Operation Lalang' in 1987. During this incident 106 activists were arrested under ISA, many of them imprisoned for 2-3 years. These activists were opposition leaders, unionists, social activists and leading NGO members. 'Operation Lalang' was a major setback to the emerging NGO community and the leadership of these civil society organizations. After this incident the whole community probably adjusted all their actions, due to the fear imposed by the government of ending up in prison for a long period. No doubt 'Operation Lalang' had a massive signaling effect to all groups in Malaysia and limiting the participation in civil society organizations and cancelling their opportunities for influence (Hassan and Lopez 2005: 118, 122). The strength of civil society depends on its leaders, so when some of them were arrested during 'Operation Lalang', the future faith of civil society came down to the new leaders and the members that carried on in a changed landscape.

This political 'landscape of fear' suppressing the NGOs were in place for another 10 years and to some degree still is. But in the late 1990s the dissatisfaction with government was too big and a new political activism came to light, civil society was reborn. The Asian Financial Crisis 1997-99 and Anwar Ibrahim being sacked in 1998 caused heavy criticism and it seemed these events were too massive to be controlled by government. The arrest, charges, prosecution and verdicts of both corruption and sodomy looked very much like a smear campaign by BN/UMNO and also caused international criticism from the democratic leaders of the world. Many Malays considered this maltreatment as a change of the traditional Malay norms and could be seen as the last drop tipping the previous support for BN and gave the opposition a joined cause at the 1999 elections (Hassan and Lopez 2005: 118-125). The emergence of a bottom-up human rights discourse similar to the civil and political rights gained support, the backbone for this discourse in Malaysia, was a resistance on sacking Anwar, the use of ISA and the financial crisis.

Human rights activism, NGOs and the political opposition are closely linked in Malaysia. That has both advantages and disadvantages. It is an advantage that violations of human rights often are close to the heart of the opposition politicians. It seems to be a major strength that the opposition officially can claim that the repeal of the restrictive laws is backed by the opposition and civil society, in unity. However at the same time opposition politicians use the human rights discourse to support their own political agenda. This could be a problem in regards to the Malaysian people, if this effort appears more aimed at political power than a genuine desire in the opposition for the repeal of the restrictive laws. The disadvantage could be that the allegations against opposition politicians true or false, are linked with the human rights movement. If the credibility of politicians are removed, especially Anwar, their cause might also lose momentum. It seems to be the strategy of the government to give these impressions. It is very difficult to establish if the Malaysian people believe that political power and improving human rights are juxtaposed and therefore in the sincerity of the opposition. The opposition has not been able to get steady support at elections, though the 2008 election gave the opposition the best result ever, and this indicate things are under transformation in Malaysia. Other reasons for the missing support to the opposition will be debated in chapter 3.

The first allegations against Anwar fostered supporters to create the 'Reformasi'-movement, demanding justice, but also created the opportunity to demand structural reforms, good governance and civil liberties (Weiss 2007: 32). The 'Reformasi'-movement has now expanded into the strongest political force, Pakatan Rakyat, BN/UMNO has ever faced. It is a derived consequence of Mahathir's character assassination of Anwar, he probably did not expect. Very important in this context, since the opposition advocate for improving the human rights record, and give the Malaysian population the option to 'choose human rights'. I argue the 'Reformasi'-movement is one of the most important changes consolidating human rights on the agenda in Malaysia. The other important reason is the internet and the 'free' information. Weiss further argues;

"the amount of space and level of autonomy CSA's and political parties enjoy under a given electoral authoritarian regime significantly conditions the trajectory of reformist efforts, the strategies and organizations involved and the sorts of change likely to occur." (Weiss 2007: 40)

CSAs only achieved poor results in putting human rights on the agenda; indicate the space and level of autonomy have been too limited. The most important question in Malaysia is whether the CSAs are closest to the people or closest to the political elites, when considering the close links between CSAs and opposition. If CSAs represent the voice of the people, the human rights discourse in Malaysia before 1993 must be regarded as a bottom-up-dynamic, with massive restrictions imposed from the government. On the other hand it could be argued the opposition parties have based their political resistance on the universal human rights regime and in this perspective the Malaysian human rights discourse represents a top-down-dynamic. In countries where human rights are not prioritized by the government, CSAs play an even more crucial role in promoting and protecting these rights. In Malaysia political NGOs increased their influence in the 1990s and the human rights discourse was converging with international standards.

3.4.2 Independent NGO's perspective on international human rights

SUHAKAM's poor reputation, is reinforced by the fact members of Reformasi and the NGO-community presented the 'People's Memorandum to the Human Rights Commission' in 2001. They asked for elimination of the restrictive laws, freedom of assembly, press and speech, an independent judiciary, investigation of police competencies, abolition of racial discrimination and investigation of corruption and last (but not least) the ratification of the international human rights treaties (Lopez 2007: 64) This would initially signal that all prominent human rights organizations in Malaysia fight for these same things, with varying emphasis. But the willingness of the NGO-community to make human rights in Malaysia compatible with the universal regime has still not been established.

The government responded by arresting seven Reformasi-leaders under ISA. The official explanation was that this fraction of Reformasi was planning an armed and violent overthrow of the government with a demonstration accompanying the presentation. Most of the leaders were detained for two years and hurt the back-bone of the Reformasi (Hassan and Lopez 2005: 130), and once again seriously injured the civil society-movement in Malaysia in my perspective. It is obvious the political elite condemn people advocating for the promotion and protection of human rights. It is a crystal clear example of an oppressive regime, where the restrictive laws people seek to amend are used against them. This is a symbol of the government does not represent the will of the people, but the revolution is only passive. This cannot be connected to ideological differences in Western and Asian values - but directly to an oppressive government clinging on to its power.

ALIRAN, does not perceive human rights as universal. The principles relate to the good life in the national context and the UDHR is not mentioned explicitly and this demonstrates that not only the government opposes the universal regime. ALIRAN is working to improve the living conditions in Malaysia, under the banner of human rights, but not based on universal rights (ALIRAN.com).

But according to Gurowitz, ALIRAN has pursued human rights from a national perspective only, not connecting ALIRAN with the universal human rights regime, because of the government's deep felt

resistance to the western values which the regime reflects. Connection to international standards would undermine the work nationally (Gurowitz 2000: 880-882). Gurowitz argues ALIRAN has instead followed another strategy;

“activists often call on the government to live up to its goal of making Malaysia a developed country by the year 2020, implying that development is determined not only along economic lines but includes abiding by certain international standards on noneconomic issue.” (Gurowitz 2000: 882)

After looking into the NGOs perspective on the universal human rights regime, it has been documented that in the era of Mahathir, the embracement was far from total and the bottom-up dynamic to pressure the government to improve the human rights record was not clear-cut. At the same time the government was not unfamiliar with oppressing CSAs. When discussing civil society movements in Malaysia, and the reason why they have not been able to put sufficient pressure on the Malaysian government to improve the human rights situation, Mary Kaldor argues:

“The lessons of the 1980s were that civil society has to be built from below through the efforts of self-organized groups of citizens working together across national boundaries. The lessons of the 1990s are that groups cannot succeed in a globalised uncivil world without responsive institutions at both local and transnational levels. Thus the concept of transnational civil society not only has to cross the global/local divide but also has to embrace both institutions and independent citizens groups. As a political project, it has to be relevant to individuals as power-holders as well as independent citizens.” (Kaldor 1999: 210)

In the 1980s most Malaysian might have been dazzled by the economic development and the interest in civil society was minimal and only along national lines, no ‘politico military’ existed. SUHAKAM in my perspective was not a receptive institution, but a national identity was beginning to take form. Over the last decade the internet might has helped create a global civil society with Malaysian participation. At the same time globalization, the widening of the market economy and the liberal capitalism combined with Southeast Asia emerging as a growth centre, has caused Malaysia to be integrated in the international system, economically and politically. Integration and adaptation can no longer be avoided and the pressure on Malaysia to improve its human rights record has increased as a consequence. (Gungwu 2001, 27) Osiatynski sums up the current Malaysian situation in my perspective:

“Authoritarian governments may be pressed by circumstances, by great powers, or by economic needs to pay lip service to human rights declarations but will resist the implementation of human rights instruments at home.” (Osiatynski 2009: 20)

3.4.3 Developments in the human rights discourse

According to the government the restrictive laws improve the quality of life and promote economic development by ensuring political stability and racial harmony. But both national and international NGOs consider these restrictive laws as outdated and unnecessary. Malaysia is in reality not in a ‘State of

Emergency', under which many of these laws evolved and under circumstances that could legitimize them. They must now be regarded as a mere means to exploit. The security of the nation is the official excuse for the restrictive laws and they have big implications for universal human rights. Sani argues the entire national legal framework has been centered on prohibitions seeking to uphold the cohesiveness and punish those countering this objective. This is evident when people express controversial views on the 'sensitive issues' which potentially could deteriorate the relationship among the ethnic groups (Sani 2011: 540). SUHAKAM Commissioner Denison Jayasooria sums up the agenda:

"The continued reliance on legislation which violates fundamental liberties such as the ISA on preventive detention, the Official Secrets Act and the Printing Presses and Publications Act on freedom of expression makes it difficult for Malaysia to ratify the UN bill of rights." (RPK, Malaysia-today.net1)

Moreover 9/11 caused new security issues in the World, and in the new fight against terrorism the restrictive laws found new legitimacy in Malaysia. The ability from the West to put pressure on Mahathir, for Malaysia's dismal ratification record, accordingly dropped from day to day. Bartlett argues:

"A major criticism had been his [Mahathir] use of a security law allowing indefinite detention without trial, but with alleged Muslim militants now the main targets and the US and other Western countries beefing up their own security laws, the objections have become muted." (Bartlett, Malaysiakini6)

Deputy Foreign Minister, A Kohilan Pillai, recently stated international treaties will be implemented in Malaysia. He offers a somehow valid argument when stating that reservations on CEDAW and CRC were recently retracted. Removing reservations on treaties already ratified shows good intentions, but this does not indicate 'real commitment' were the oppositions response. The allegations from the opposition of are regarded valid, when this comment by Kohilan about accepting the entire framework is taken into account.

"Article 2(2) of the International Convention on Economics, Social and Cultural Rights, for example, touches on rights of lesbians and gays. We have to consider (such matters) from the standpoint of our culture and racial diversity before we ratify (the treaty)." (Zakaria, Malaysiakini7)

With reference to the actual text of the ICESCR (Appendix 5) there is no mentioning of sexual orientation explicitly. But Kohilan's view is not totally incorrect, since the provision implies equality on all parameters. Lastly Kohilan sums up and this statement is included as it clearly demonstrates the issues that this paper is continuously evolving around.

"That is why there are many conventions we have yet to ratify, because of the cultural differences and our racial diversity. We must be careful, a lot of these modern activities have ... caused us headaches. Human rights are important but what is crucial is that we must follow our own mould, that would be best." (Zakaria, Malaysiakini7)

Cultural differences and racial diversity are not modern activities in the minds of the Malaysian politicians. What are causing the government headaches are probably the internet and the enlightenment of the people. In my perspective, human rights are still merely a foreign policy objective to the majority of Malaysian politicians, only with limited national anchoring.

3.5 Concluding comments

The government position is clearly that restrictive laws and affirmative action-policies are necessary to secure racial harmony, in clear contradiction with human rights treaties, which therefore cannot be adopted. Furthermore the entire regime is seen a new form of neo-imperialism by Mahathir and maybe to a lesser degree by his successors and opposed on these terms exclusively. This is countered by the argument by the NGO-community that restrictive laws are in place to combat opposition and keep UMNO in office and that affirmative action only help the Malays to a minor degree, the real beneficiaries are the Malay elite (UMNO and UMNO-affiliates). No real distribution is taking place. Competition can go hand in hand with racial harmony and conflict is more plausible if the affirmative action programs continue. This is the most explosive debate and I do not have an answer to the rhetoric question what would happen if the affirmative action-policies were abandoned earlier. Chapter 3 will discuss the political history more closely to understand why the six treaties have not been ratified and look closer at the government and the way they have administered their uninterrupted power, in regards to the institutional framework that enable them to rule without necessarily having to answer to the will of the people.

Chapter 3

4 The mismatch between national and international dynamics

The most important finding in chapter 1 was that the inherent structures of the institutionalized regime were stronger after the Cold War. The pressure on the UN member countries to integrate in the regime had massively increased. Chapter 2 disclosed that Mahathir and his successors perceived the human rights regime as consisting of Western values and the analysis established the passionate resistance. The majority of NGOs agreed Asian values are different, but still used as a front. After the Asian Financial Crisis the domestic pressure on the government has increased. In the following the possible implications from international and national dynamics, in opposition to the official standpoint on the Malaysian discourse, will be debated. This chapter will discuss important events in Malaysia which could serve as the background for the mismatch between the international regime and the national discourse. This discussion will evolve around why the Malaysian government cannot or will not grant the people; civil and political rights and some changes in the institutional developments with implications for the national human rights discourse and lastly the political regime-type.

4.1 Defining moments

At independence, the communal bargain formed the basis for racial separation and discrimination, as a consequence of the British bringing in foreign labor to Malaya. The colonial past cannot be underestimated in the current human rights discourse. After independence the different communities lived together peacefully and it seemed important, to both the Malay and the Chinese community, to keep the ethnic balance at status quo. The Chinese feared that if the Malay population increased relatively, their political room for maneuver would be even further reduced. In relation to integration of migrants it could imply the MCA was advocating to throw out especially migrants from Indonesia, due to their resemblance with Malay customs and language. Equally, the Malays feared an increase of the Chinese population, when expelling Singapore in 1965 (Gurowitz 2000: 866). Ethnic balance, security and the derived political status quo must be said to be the defining factor of the first twelve years of independence.

It was UMNO, especially Abdul Razak that 'constitutionalized' the racial segregation with the NEP. The official reason was to avoid racial tension, but when taking a retrospective look at the legacy of the 1969 election and the following State of Emergency, the riots may not have been between ethnic groups. It could be seen as a government taking a stand against the sprouting opposition. In the election, MCA suffered massive losses due to Chinese dissatisfaction. The opposition held a victory rally led by the Chinese and UMNO considered this as an intentional humiliation of the Malays and UMNO initiated a counter-rally. The official explanation is that the Malays feared losing their special political position with a strong Chinese opposition. But the fact remains, the Alliance had still won and the relative power of UMNO had even increased within the Alliance. Thus it seems there was no actual reason for the Malay majority to be fearful of the future, unlike the Chinese whose position had become weaker. Butcher

suggests the events in May 1969 could have originated in UMNO. There is no documented evidence that the riots in 1969 were encouraged to sack Rahman but a faction within UMNO wanted Abdul Razak to take over as Prime Minister and Rahman might have been the victim of a conspiracy. The riots did not begin until UMNO officials, among them Chief Minister in Selangor, Dato Harun who supported Razak, encouraged and organized a counter-demonstration. After the police refused to give permission for the demonstration, he signed it himself. Some people saw the continuance of the violent riots without the government interfering as an indication that some factions could 'use' the riots as a reason to suspend parliament and move in the direction of authoritarian leadership. A conspiracy to topple Rahman, and the riots occurring as an internal power-struggle in UMNO, is not impossible. Butcher refers to John Slimming as the source, but since this information is undocumented, the validity is limited. No matter if it was intended or not, the riots caused the downfall of the first Prime Minister of Malaysia and the democratic standards were replaced with authoritarian control (Butcher 2001, 42-44).

Besides ICERD, the eight other human rights treaties entered into force after these paramount events in Malaysia in 1969 and must therefore be seen in the light of this new national agenda, which became 'constitutionalized' by UMNO. According to Gurowitz;

"the imprint of the 1969 riots on the Malaysian psyche has been critical. Speaking to Malaysians of various ethnicities and political positions it is clear that people believe that it could, but must not, happen again." (Gurowitz 2000: 875)

It is impossible to say what might have happened if things had been different. The fact remains UMNO seized almost unrestricted power and since then has not voluntarily loosened its grip. As a result the national human rights discourse was dominated by UMNO's desire to hold on to power, and in order to do so, civil liberties were restricted.

4.2 Malaysia starting to integrate in the universal human rights regime?

According to Bauer, the 'Preparatory Meeting' in Bangkok in 1993 marked a change of attitude for Asian regimes and their willingness to deal with human rights question and not merely reject them as Western neo-colonialism (Bauer 1995, Carnegie Council.org). Mahathir said the UDHR was "*formulated by superpowers who did not understand the needs of poor countries*" and advocated for a revision before the Vienne Conference (Glen and Murgo, 2008: 598). In 1994 an international conference took place in Malaysia under the title 'Rethinking Human Rights'. It was sponsored by NGOs, which strongly implies that Asian governments are not alone in their criticism, they are backed by some NGO's that the human rights regime is biased (Mauzy 1997: 212). In my perspective the international pressure on Mahathir had increased in 1993 and Malaysia had promised to ratify the CRC and CEDAW as part of the outcome of the Vienna Conference. These attempts to rethink human rights might be seen as a last 'desperate' endeavor before integration.

Malaysia ratified CEDAW and CRC in 1995. According to Krasner; *'it is a function of the extent to which more powerful states in the system are willing to enforce the principles and norms of the regime'* (Krasner 1993: 140) The consensus on human rights in the Vienna Declaration was either too powerful to combat or perhaps Malaysia was willing to integrate into the human rights regime. I support the first argument. It is quite paradoxical why Malaysia signed the Vienna Declaration when the Asian countries had just found common ground with 'Asian Values' to counter the universality. The most probable cause is formulated by Baik who suggests that many international instruments, such as human rights, were adopted for deeper political motives and power (Baik 2005: 14). Soft power might have also played a role.

There might also be a correlation between national elections and Malaysia's integration in the international human rights regime. Despite the massive growth rates BN got 'only' 70.55 % of the seats at the general election in 1990, a decline from 83.62 at the last election in 1986. BN was getting dangerously close to losing the important 2/3 of the seats, required to amend the Constitution. The government needed to gather new support. In 1993 Malaysia promised to ratify the two covenants and these initiatives may partly be the reasons why the support for BN rose to 84.38 % of the seats at the 1995 General Election¹⁸.

Prior to the first ratifications in 1995 there had been a dispute between the Malay Rulers and UMNO, about the Rulers ability to veto government bills. In 1993 UMNO, headed by Mahathir, was trying harder to secure their grip on power and amended the constitution by removing the Rulers immunity to criminal offences in the Constitution, probably to demonstrate ultimate executive power (Cheah 1999: 66). Nonetheless it was regarded as a small victory for human rights in Malaysia since everyone, even royalty could now be charged for criminal activities and this was a proof of equality before the law, at least in theory. More importantly it also verified the autocratic power Mahathir was building up.

CRC is the most widely ratified treaty and it seems there is a genuine universal consensus to protect the rights of children. CRC was recently adopted (1989), and the short period from adoption to ratification by Malaysia could imply willingness. But it was made with many reservations, same as CEDAW, so willingness only on the surface. Some of the most prominent human rights NGOs in Malaysia were fighting for women's rights and Mahathir was not in direct opposition to improving women's right (Gurowitz 2000: 872), the ratification of CEDAW was made possible. Ratification of these two treaties could be an example of a joined endeavor by national civil society, international pressure, and some willingness from the government.

Yet critics could argue that Islam is largely dominated by men and the position of Islam was growing after Anwar joined UMNO and in this perspective women and children are of no immediate threat to the political elite and their continued power, so ratification is not a problem. Despite ratification of specific UN treaties providing women and children human rights, the patriarch of the family still has 'control' over his wife and children and can rebuke them if they step out of line, without the risk of causing

¹⁸ Furthermore the number of Parliamentary seats was increased from 180 in 1990 to 192 in 1995.

problems to the government, justified in the name of the Quran. The only thing the government had to do to ensure the continued dominance was to strengthen the position of Islam in society and the constitution. Some argue UMNO did exactly that when they for example amended the constitution in 1988. Law experts argue after this the civil court cannot hear matters that are within the jurisdiction of the Sharia courts (BBC.co.uk²). Furthermore in 1986 non-Muslims were prohibited from using the word 'Allah' (BBC.co.uk³). In my perspective Malaysia is still a moderate Islamic country, so this argument has limited validity, though these specific incidents pull in the opposite direction.

During the Asian financial crisis in 1997-8, many countries in the region were under massive pressure (currency depreciation), and in need of loans. They therefore accepted Structural Adjustment Packages (SAP) from the IMF, but not Malaysia. Probably because Malaysia's external debt was low, the crisis was less serious here. Mahathir was able to eschew the IMF-loans and after some time he chose to impose capital controls to try and stabilize the economy. The economic pressure from IMF demanding structural reforms, did in other countries lead to new political leaderships and eventually to improved human rights, but was successfully avoided by Mahathir (Freedman 2006: 107-109). Without going into detail the authoritarian nature of the Asian states did not avoid the crisis, though Mahathir managed to reduce it. Prior to the crisis Anwar was Finance Minister and acting Prime Minister, while Mahathir was taking a two month vacation. His views on how to combat the crisis were different, while Mahathir wanted to keep on spending, Anwar was more reluctant to cost restraints. It seems these differences were so massive that an internal battle in UMNO was inevitable. The result - Anwar was sacked (Freedman 2006: 109-112). The hypothetical question arises if things had looked different had Mahathir been in control, not just in relation to the economic crisis but the overall situation in Malaysia. The dispute between Mahathir and Anwar on the economy has, on a long-term outlook, severely challenged the power of the Prime Minister.

Malaysia was not involved in the main international body for protection of human rights, the Human Rights Council (HRC)¹⁹, until 1993. This clearly demonstrates that human rights in a top-down perspective were practically of no concern up till this point in history (OHCHR.org¹). The international pressure on Malaysia is bigger as a member of the HRC and this can also partly explain why Malaysia started ratifying treaties in this period. The reason why Malaysia accepted a nomination for a seat in the first place, could have been Mahathir's desire to transform the regime and rethink human rights.

The internationalization and Malaysia's integration into the World system cannot be neglected and according to Forsythe, the adaptation to the human rights regime in the 1990s partly originated in the fact that states and state leaders care about their international reputation, and accordingly made efforts to counter critical remarks. (Forsythe 2012: 259) One could argue Mahathir must be left out of this equation, though the economic development was so important to him that even he cared about Malaysia's reputation despite his very bombastic views and allegations. According to Gurowitz it is

¹⁹ Malaysia has been member of the Commission: 1993-98, 2001-03, and 2005-06; Council: 2006-09 and 2010-2013, and even chaired the Commission from 1995-96.

debatable if the Malaysian government cares about its international image. Until 1998, Mahathir often made strong remarks, while his deputy Anwar tried to level out the differences, to make sure the relationship with the West did not go from bad to worse. Gurowitz argues some activists claim the Malaysian government *is* concerned with its international image, and a bit embarrassed of the dismal ratification-record. If this is true, despite the rhetoric suggesting otherwise ratifications is important as part of Malaysia's status and recognition in international circles (Gurowitz 2000: 881-882). In my perspective, reputation was first and foremost important to Mahathir if it meant less foreign direct investment, economic development was his paramount objective and the reason why the SAP from IMF was rejected because they might dismantle his development project.

In 2010 Malaysia ratified the CRPD (Appendix 2). People with disabilities do not pose any threat to the political power of the government and it was likely to cause public criticism if they were not given these rights, due to wide acceptance of people with disabilities in Malaysian culture. Under the given circumstances it is very possible the government considered cost and benefits of this action and quite willingly granted these rights. With this action, they accepted the universal notion of human rights for this group of people and perhaps now partly accepted the human rights regime. I have not found any indication of this ratification being made under any specific circumstances of international pressure, more than the continuous pressure on states to ratify the treaties. The implications with the other treaties, especially the ICCPR, are more massive in the Malaysian case. International treaties are still not regarded to be superior to the national legislation and full integration in the human rights regime therefore seems unlikely as the following argumentation will elaborate.

4.3 Complexities with further ratifications

The missing ratifications are basically a symbol of the intrinsic resistance with the international human rights regime, especially under Mahathir. The provisions in the covenants are extensive and cannot be debated as group-specific, and the rights entailed in these permeate the entire paper. Many of the provisions in especially ICCPR are connected to the notion of democracy. Some indications why Malaysia has neither ratified the ICERD, CAT, ICRMW nor the CPED will be debated. Some reasons have been mentioned earlier, such as ISA and other restrictive laws. It is obvious why a country with affirmative action-programs does not comprehend with international standards to avoid racial discrimination and the reasons why ICERD has not been ratified.

The massive economic development created new structures in the Malaysian society. Firstly, the urbanization opened up for increased migration, since foreign workers were needed to fill the jobs in plantations and mines the Malaysians left, for a better life in the cities. Secondly, the growing Malaysian middle class in the 1980s started hiring domestic help to a massive extent. With those high demands for migrant workers, both rural and urban, the Malaysian government probably 'turned the blind eye' to rules and regulations being properly upheld (Gurowitz 2000: 865, 869). According to Chin, there was an estimated 300.000-600.000 undocumented migrants staying in Malaysia in 1983 (Chin 1997: 360). With the economic development continuing and the government's reluctance to control the migration,

Malaysia had one of the highest percentages of foreign workers in the world, with approximately 700.000 documented and one million undocumented migrants in 1999 (Migrant News 1999). The number today is estimated to be even higher. The government orders raids in order to get rid of the migrants but in my perspective both the government and the people are dependent on migrants, the low-income jobs are still fundamental in the Malaysian economy and the middle-class 'need' the domestic workers in everyday life. In this perspective the desire to grant everyone human rights might not be supported by the middle class, if it means they cannot afford the domestic help. Gurowitz sums up:

"Like many other countries with labor shortages, Malaysia needs these workers, but does not want them. Both of these facts are clearly reflected in government policies. There are frequent attempts to get rid of migrant workers, either in response to public concern or because of economic downturn, but with almost every halt to migration there is a corresponding exception allowing workers to stay or continue coming. Throughout this process there is little if any attention paid to the rights of migrant workers." (Gurowitz 2000: 863)

The issue of migrants is somehow connected to two other core human rights conventions, the CAT and the CPED, which mostly regard the treatment of prisoners. Torture and enforced disappearances are first and foremost connected to ISA. But these two conventions also apply in relation to migrants. In 1997 the government announced that deported migrants who returned to Malaysia could get six strokes with the rotan, a fine, a jail sentence or all (Gurowitz 2000: 867). This leads to a short debate about torture and judicial caning. In Malaysia's dual legal system with Sharia-courts and civil/criminal courts, strokes with the rotan can be ordered in both. In a report from 2010 Amnesty International states the number of offences punished by caning has reached 60 in criminal courts over the last years. Sam Zarifi, Amnesty International's Asia-Pacific director referred to it as 'epidemic proportions' (New York Times). A Sharia-court in 2010 caned 3 women under Sharia law for the first time, they were found guilty of extra-marital sex (BBC.co.uk4).

As part of the strategy to combat the issues with migrants the government has set up detention camps, according to Gurowitz, prisoners often live under horrible conditions, with no proper housing, beatings, deprivation of personal belongings and minimal nutrition and water (Gurowitz 2000: 866-869). Deportation, torture, ISA-arrests, and altogether denying migrants and prisoners human rights and freedoms are not uncommon in Malaysia and explains why the government has difficulties with ratifying these conventions. It could be argued that after deciding to ratify CRC and CEDAW with specific timeframes in the Vienna Declaration the next goal in the UN was improving the rights of detainees. But this objective might have been sidelined after 9/11 and the war on terror. Since ethnic issues cannot be debated in Malaysia, the 'ethnic balance' has circumvented the fight for migrants' rights. The lesson learned is multi-ethnic countries do not integrate migrants better than homogeneous societies does, based on the Malaysian case. There is undeniably a 'don't rock the boat' approach in Malaysia (Gurowitz 2000: 875). I end this debate by repeating Gurowitz argument: 'Malaysia needs these workers, but does not want them'.

Malaysia could maybe have ratified the ICESCR, since the provisions define that it should only be implemented gradually, but has not done so. The Malaysian perspective is that economic development and granting economic, social and cultural rights are converging, and maybe therefore ICESCR is not ratified until Malaysia become a developed nation. It is important to keep in mind that economic rights and economic development may not necessarily be converging. The colonial past cannot be neglected and Malaysia's policy-objectives must be viewed in this light, and possibly understand why 'economic independency' is so important. According to Pollis and Schwab:

"The colonial experience of economic exploitation gave credence to the notion of human dignity as consisting of economic rights rather than civil or political rights." (Pollis and Schwab 1979: 9)

Economic development and civil and political rights must be convergent. In regards to cultural rights, the missing ratification of ICESCR has been connected to homosexuality as stated in chapter 2, to give it mass appeal to the Muslim majority. Furthermore Deputy Foreign Minister, A Kohilan Pillai, recently stated that international human rights conventions cannot be taken '*in toto*', as some prohibit death sentence, since capital punishment is crucial for Malaysia's war against drugs (Zakaria, Malaysiakini⁷). Nazri Abdul Aziz, the 'de facto' Law Minister, has stated if a law is imposed on the country, the lawmakers first check if it is consistent with the Constitution and then with the Quran. If it does not stand both tests, it cannot be implemented in Malaysia (Yatim, Malaysiakini⁸). Laws that contradict the Quran are most often underlined as the main reason why the government does not ratify the two covenants, to give it mass/Muslim appeal.

4.4 Asian Values – a distinctive set of values?

The human rights regime is struggling with the universality versus the revival of cultural relativism and the continuous problem is the compliance gap and the fact that political communities, deliberately or not, interpret human rights inconsistently (Dunne and Wheeler 1999: 2). This section will debate the legitimacy of 'Asian Values'. The legitimacy of any particular value ascribed to Asians in general, representing more than 1/3 of the world's population can rightfully be criticized. Hurrell asserts that no distinctive culture or civilizations can be traced to Asia. The countries' history, political and economic systems and cultural traditions are miscellaneous and diverse. The term has, according to Hurrell, possibly been manipulated and abused by Asian governments but still outline an imminent inconsistency in the human rights regime (Hurrell 1999: 295-297). Jacobsen and Bruun continue by stating Asian Values have;

"opened a debate on the legitimacy of cultural interpretations of human rights, and second, the derived question of what social and political significance these interpretations have for Asian societies." (Jacobsen and Bruun 1990: 6)

According to Baik, the Asian Values argument was widely accepted both by political elites and the Asian people as a feature of the 'Asian Tigers' to explain their success connecting economics, politics, religion,

and human rights. After the financial crisis in 1997-1999, the 'Asian Values argument' deteriorated considerably, especially to the Asian people (Baik 2005: 13). This applies to Malaysia as well. However, in regards to the human rights discourse it seemed to have consolidated as countering universality and questions the basic principles and norms of the regime.

An alternative version of the Asian Values-discourse is that it is the political elite's alleged concept of a specific Asian culture is a disguise for justifying their own state ideologies and maintaining political dominance (Langlois 2001: 29). The claim made by proponents of Asian Values that government control has enabled the economic leap-through is not substantiated, according to Langlois: "there is no conclusively established link between authoritarian government and development." (Langlois 2001: 35) This clearly contradicts Mahathir's claim, but as Langlois puts it many authoritarian regimes have failed to develop and the outcome from the empirical data is that authoritarian government might be sufficient but it is not a necessity for economic development (Langlois 2001: 35-37).

Jacobsen and Bruun, characterize Asian Values with an 'organic' perspective. The state and society are viewed as one organism where the government rules for the common good of all citizens. The people have given the government the mandate to rule and this unity between government and citizens is the highest authority (Jacobsen and Bruun 1990: 3). In Malaysia this became visible when Mahathir regarded NGOs as 'undemocratic saboteurs', interfering in domestic human rights issues. The Mahathir-thesis states individual rights can be discarded if it damages the majority of the people and reserves the right to 'protect' the interests of the majority by restricting the individual freedom. (Hassan and Lopez 2005: 121) This argument is maybe valid if the government truly represents the interests of the majority, for example if there is a risk violent conflicts breaking out - rather no civil rights than civil war. In my perspective the argument is however invalidated when it is applied to restrict all critical views. It is never the majority that takes part in protests or starts a revolution, but the revolutionary might as well represent the attitude of the majority as the elected representatives. The unity between the government and the people can moreover be debated, since the political regime-type is still in question.

After the Cold War, the center-stage was incomplete with only one participant, in accordance with bipolar stability theory and Asian Values and their similar focus on community-rights took over the empty space. Asian Values may seem obsolete but the importance and the timing of the concept cannot be underestimated. "Experience proves that ideas flourish in favorable conditions." (Osiatynski 2009: 69). The interviews Gurowitz conducted for her research on human rights in Malaysia revealed that the majority of activist, despite agreeing with the government's criticism of the West, "believe that Mahathir's rhetoric and ideology of Asian values is a front." (Gurowitz 2000: 880) From my perspective, Asian Values was coined with perfect timing to fill the void in the World System after the collapse of the Soviet Union and the end of the Cold War, as a counter-hegemonic force on the new primary battleground - human rights.

4.5 Institutional developments

4.5.1 Islam

Due to the multi-religious constellation, Malaysia has taken the path of a moderate Islamic country. The UDHR is criticized for being secular and thereby discriminating against non-secular states as Malaysia, as the religious factor (of the majority) is not considered. As a member of the OIC, Malaysia signed the Cairo Declaration on Human Rights in Islam (CDHRI) in 1990, which is not legally binding. The CDHRI refers to the Sharia law as superior, and was a response from the entire Muslim world to the secular 'bias' of the UDHR. The CDHRI probably holds the same status in the Muslim, as the UDHR in the Western world, at any rate, it had almost the same number of signatories. The CDHRI was sought adopted at the UN, but the human rights jurists condemned it, as Sharia is regarded as the superlative power. (Smith 2005: 195-197). The international regime is secular and one of the fundamental rights in article 2 of the ICCPR is in fact freedom of religion. Critics of the condemnation argue individual freedom originates from a Christian perspective and this might be true. If so, one could argue universal values do not exist and religion will always play a role. From this perspective human rights could be seen as a modern type of religion, with the objective of a peaceful world with no conflicts or wars.

4.5.2 Judiciary

According to Langlois the Malaysian judiciary is deprived of independence and power. Sometimes the judiciary has ruled against the interests of the government, but then verdicts are often overturned in the Supreme Court or via Appeal Courts. (Langlois 2001: 14) Weiss agrees the legal system in Malaysia is skewed, even worse under the reign of Mahathir (Weiss 2007: 33), and numerous articles on Malaysiakini agree with this perspective (Malaysiakini9).

Badawi took office in 2003 and freed a number of political opponents and activists to boost the integrity of the judiciary, which was incredibly low. When the verdict against Anwar was converted in 2004 and he was released from jail shortly after, the integrity was further increased. After his release on September 2nd 2004 "Anwar thanked Prime Minister Abdullah Ahmad Badawi for not interfering in the judiciary, unlike his predecessor Dr Mahathir Mohamad." (Malaysiakini10)

The system of checks and balances in Malaysia is flawed, due to the aforementioned close ties among the government, the judiciary and the Prime Minister's Office. Osiatynski argues: "In the most basic sense, human rights are the foundation for modern democracy." And furthermore "Without the separation of powers that usually accompanies democracy, any protection of rights is only illusory, with the state presiding as the judge in its own case." (Osiatynski 2009: 72) Parliamentary democracy is based on the separation of powers. In Parliament the executive should be held accountable by the legislative branch and MPs through checks and balances. Malaysia seems not to qualify for this label. According to famous blogger RPK: "The government rules not by 'rule of law' but by 'rule by law'." (RPK, Malaysia-today.net1)

Separation of powers is of utmost importance to the protection of human rights and a simple answer why Malaysia have not integrated in the human rights regime, is because the governments carefully constructed institutional structure, have enabled them to control the criticism from the opposition, civil society and people without causing a violent uprising.

4.5.3 The electoral system and UMNO businesses

The elections in Malaysia are not free and fair. Among other things, the system favours the ruling parties, which gives UMNO/BN huge benefits:

“The parliamentary results of the 1999 general elections barely hide the shift in voter sentiment and instead highlight the inadequacies of Malaysia's electoral system. (...) Of the total 5,762,263 votes in Peninsula Malaysia, BN secured only 3,070,343 or 53.3% -- far from 66.66% (two thirds). But because of Malaysia's "first past the post" system and gerrymandering, this was enough to win 103 parliamentary seats (or 71.5%).” (Tan, Malaysiakini11)

At the same time the traditional BN-constituencies are very small compared to those of the opposition and moreover:

“UMNO enjoys the advantages of incumbency, namely the delineation of constituency boundaries. The 2004 electoral realignment added 26 new seats, none of them in areas where the opposition had any strength.” (Mauzy and Barter 2008: 7-8)

UMNO/BN has the ability to handicap the opposition, by using intimidation, fear tactics and repression on a regular basis. Additionally, UMNO/BN has advantages even before the elections with regards to the rules of electoral conduct. Mauzy and Barter argue “In the 2004 election, the campaign period was restricted to eight days, the shortest in history and the prohibition on outdoor campaign rallies remained in place.” (Mauzy and Barter 2008: 7) It is still prohibited to hold outdoor rallies and Pakatan even struggles to get permissions from the police to have political meetings indoor. Political gatherings are often dissolved by police if the crowd is too big, with the explanation that it is due to safety-reasons (Sabri, Malaysiakini12).

Another important factor is that many corporate organisations and the media are controlled by UMNO. This gives the party both the economic and the publishing power respectively in regards to spending and media coverage during the campaign period and in between elections. Mauzy and Barter state that: “With its control of government revenues, UMNO/BN spends extravagantly during election years.” (Mauzy and Barter 2008: 7) Moreover “UMNO businesses include much of the print media, while the government controls the non-print media.” (Mauzy and Barter 2008: 9) All major newspapers and radio and TV-stations are controlled by BN-parties and therefore the opposition is not given air-time or being interviewed on state-owned television and radio. The official excuse is that they might invoke racial hatred with their comments and since Malaysia is still ‘undeveloped’ that is not suitable. (Sani 2011: 543)

I conclude the government has never been, democratically elected and allegations of corruption and vote-buying further strengthen this view. Deputy Prime Minister Muhyiddin lately refuted these claims and referred to the 2008 General Election;

“the result of the last general election proved that the BN respected the democratic process and accepted the decision made by the people. (...) BN had lost several states and could accept the decision made through the democratic process and public election.” (Malaysiakini13)

Also Mahathir claims elections are ‘free enough’ for the opposition to take over Putrajaya:

“Malaysia is not the perfect model of a democracy but the electorate can, if they so wish, change the government simply by voting in free elections. That is the essence of democracy.” (Malaysiakini14)

To sum up, many restrictions are imposed on opposition-activities, while the government has numerous advantages. The most important ones are that UMNO/BN owns the national media, and GLCs offer them a gigantic financial advantage. In addition, the first-past-the-post electoral system, gerrymandering, vote-buying, a very short campaign-period and corruption in general also make the conditions uneven and it is debatable whether the government is legitimate among the Malaysian people.

4.5.4 Political economy

The Chinese controlling almost the entire economy, was very precarious to UMNO, and it could be argued UMNO missed legitimacy being financially dependent on Chinese support. This also meant MCA was more important in the Alliance being the financial pillar in the coalition. UMNO had to improve their economic situation for the entire Malay community in general and the party specifically. Given the political power they legislated in the favor of the Malay community in order to change this shaky political situation. This could also explain why factions of UMNO wanted to replace Tunku Rahman, since he did not manage to improve the economic situation of the Malays and the continued dependence on Chinese financial support. The most important characteristic of the NEP in 1971, was the mandatory 30 % equity share, that Malay companies were granted. Officially to enhance the role of Malay companies in the economy, but at the same time, through UMNO-owned or UMNO-linked corporate entities it also channeled enormous amount to the party apparatus. Later through the visionary projects and policies of Mahathir, UMNO has become a very wealthy organization (Wain 2009: 124-127).

Mahathir’s problem was that the economy, since the NEP, was state-controlled. People turned massively to the government to solve the financial crisis in 1997. If the Premier did not manage to act accordingly, it would in my perspective severely affect the state power in general and his legitimacy as a leader specifically. Anwar is clearly the scapegoat in Malaysia, but his sacking caused heavy criticism and is partly the reason why UMNO today is faced with a united opposition, that for the first time in history has a democratic chance of combating BN/UMNO, especially if electoral reforms are introduced, which in the Bersih-rallies has fostered extensive public support.

4.5.5 Constitutional control

The institutional development in Malaysia after independence strongly demonstrate that the government have sought to support their power base by strengthening the institutional backbone, such as in Islam, judiciary, the electoral system and the economy to make the system more coherent. The entire state administration has been made coherent to ensure the desired development and support the ruling government. Too much criticism could result in loss of credibility and this seems to be a strong argument for restricting civil liberties, such as e.g. freedom of speech to counter a declining confidence in the state administration (Sani 2011: 539).

Any government seeks to hold on to their power, some do it more sophisticatedly than others. Malaysia's constitutional amendment-record is effective, but not admirable. According to Manan the constitution in Malaysia is substantial in defining the human rights framework of the country despite having been amended more than 40 times since independence²⁰ (Manan 1999: 364). In the Malaysian Constitution the restrictions are incorporated for the dominant political parties to stay in power. However, some Malaysian politicians would probably argue that the entire setup of the universal regime has the same objective. According to Sani "the constitution also prohibits speech that advocates the forcible overthrow of the government." (Sani 2011: 540) A stronger proof of the manipulation by UMNO/BN to stay in power, is hard to find and justifies that a government staying in power for that long, absorbs bad habits, and with all means necessary cling on to their power. Sani sums up by stating:

"There is no reason for the government to restrict political speech except for the purpose of undermining the opposition, and maintaining its grip on political power." (Sani 2011: 543)

Prioritizing economic development is not wrong per se, but heavily restricting criticisms under the cover of stability and racial harmony is not what many would label as promoting democracy (Hassan and Lopez 2005: 116-117). Malaysia is proud of its representative democracy, though the 1969-riots changed the conditions and recently Najib expressed his vision for Malaysia as the best democracy in the world (Malaysiakini15).

4.6 The imposed democracy-model by the British under transformation

After its independence, Malaysia adopted a Westminster-type model for democracy. However, the government started questioning if this western model was suited for a developing Asian country and the appropriate way forward. This debate was intensified in the aftermath of the 1969-riots and Tun Razak fostered the idea of a 'Democracy à la Malaysia'. The regime-type should be relevant in the national context centered on ethnic lines. (Hassan and Lopez 2005: 118). The position towards the West was critical and Malaysia wanted to stand on its own two feet, a stance Mahathir severely intensified in his tenure. In the aftermath of the communitarian crisis in 1969 Mahathir said the following and despite the special circumstances the statement is still significant for his position of democracy.

²⁰ Until 2005, in the first 48 years of independence, the Constitution had been amended 42 times

“Let us not be slaves to democracy (...) if by practicing certain aspects of democracy we run the risk of causing chaos in our party and country, we have to choose our party and country above democracy.” (Langlois 2001: 13)

This statement diminishes representative democracy, belittles the people and justifies that the Malay political elites define the national interest. Mahathir even stated *“there is not going to be a democracy in Malaysia; there never was and there never will be.”* (Langlois 2001: 14) Mahathir declared the ‘Democracy á la Malaysia’ is similar to the earliest stages of democracy in the West. Newly independent countries with no experience need their own time to develop their regime, they cannot just adapt to the current level of democracy that the West reached much later in their evolution. Political stability is more important than democracy itself, claims Mahathir and stability is fundamental to economic growth. The rights of the people come in third place (Langlois 2001: 13-14). Mahathir is, to put it lightly, not enthusiastic about democracy which was enforced by the old colonial states. Mahathir added an alternative version of what democracy entails in Malaysia.

“If an individual or a small group tried to incite a (race) riot they are actually rejecting democracy and the right of the majority (...) That is why actions that seem undemocratic towards the individual or the minority need to be taken to protect real democracy (...) Anarchy can take place because of an obsession with democracy.” (Sani 2011: 541)

I understand this statement by Mahathir as claiming that the people have the right to vote and the elected representatives thereafter have the (unlimited) capacity to decide what is best for the people, since supported by the majority. The government does what the majority wishes, since majority gave them power to act on their behalf in the first place. This means the people only have ultimate rights once every five years. In my perspective, this concept is far from resembling an actual democracy. Between the elections the people should have the chance to make their opinion heard as well. And even so, the elections in Malaysia are, as was stated earlier, not free and fair. Osiatynski connects democracy and human rights and his statement sums up my argumentation:

“Although democracy and human rights are synergetic, there is also potential for tension between them. It is known that democracy may pose a threat to the rights of individuals and minorities, such as when the majority in power is tempted to manipulate political rights to increase its chances for reelection.” (Osiatynski 2009: 73)

People concerned with human rights issues and democracy hoped Mahathir’s retirement would create changes. But according to Sani, his successors Badawi and Najib in 2009, basically rule the same way as their predecessor. They have adopted the policies that restrict political freedom to officially ensure racial harmony and eliminate any threats to national security, while at the same time, enabling the government to retain power (Sani 2011: 541). Recently though, Najib promised to amend ISA and other restrictive laws and these amendments are in process.

Moreover the special position of NGOs and civil society agents in a democracy a la Malaysia must also be elaborated. In Malaysia activism must be anchored domestically, since connection with international

human rights NGOs undermine the work, with a possibility of *“being branded pawns of the West by a government that frequently profess Asian values.”* (Gurowitz 2000: 864) Mahathir argued;

“the activities of movements in civil society that tend to meddle in politics should be curbed as they clearly aim to weaken government authority and do not contribute to public good.” (Sani 2011: 542)

Mahathir even called human rights NGOs ‘anti-democratic saboteurs’, but Sani argues, rightfully from a Western perception on democracy, that these groups are essential in a political democratic system in Malaysia and furthermore to ensure the credibility of the judiciary, the police and the media. (Sani 2011: 542) Mahathir thinks NGOs and opposition parties are obstructing the country’s economic development and endangering the racial stability and claims the national organizations were influenced by Western powers as the reason why they were countered by the government.

I argue Mahathir, to a large degree, was able to prevent the influence from civil society. It has been documented that the missing power of the Malaysian NGOs is caused by political oppression and it is possible many NGOs feared the political leadership, until the late 1990’s. Both NGOs and opposition parties are monitored closely, since they could influence public opinion and most importantly could be a hindrance to well-planned national economic development. Human rights NGOs were labeled Western or anti-national. By using this ‘strong’ rhetoric the government tried to delegitimize the existence of NGOs to the ignorant, mainly rural population, by equaling NGOs with the threat to racial harmony and economic development (Sani 2011: 542). I argue that the government managed to leave the people with two options; human rights or economic development, they could not have both. Moreover, connecting human rights to demands imposed by outsiders not fitting with the Malaysian context, while economic development was connected with the government seems to have increased the nationalism in Malaysia. Donnelly also contributes to this debate by stating:

“...if it can be established that the sacrifice of human rights is not an imperative of development, but merely a convenience for those who control development policy (or even simply a cover for their self-enrichment) then repressive regimes are deprived of one important defense of their human rights violations.” (Donnelly 2003: 3)

If you transfer Donnelly’s ‘human rights violations’ to missing ratifications of treaties, which I argue is reasonable to do, human rights do not hinder economic development and that this ‘offer’ has zero validity. In the conceptual framework it has been suggested that Malaysia is placed somewhere in the middle on (an imagined) continuum between democracy and authoritarian rule. The direction will be pointed out in the following.

4.7 The result - Competitive Authoritarianism

Levitsky and Way have made an extensive analysis of the emerging nation states and refer to different types of hybrid regimes, also known as competitive authoritarian regimes. This type is more precisely

characterized as political systems where democratic institutions are not only a masquerade the opposition can compete for power via these institutions, but at the same time the authoritarian powers handicap the opposition in an uneven and sometimes dangerous playing field (Levitsky and Way 2006: 4)

“in which fraud, civil liberties violations, and abuse of state and media resources so skew the playing field that the regime cannot be labelled democratic.” (Levitsky and Way 2006: 4)

In competitive authoritarian regimes the opposition have the opportunity to gain power, but the competition is highly unfair and that makes power shifting much more unlikely. Still, elections are held regularly and opposition parties are not banned, they can act above ground, recruitment of candidates are respected, campaigns can be organized, and opposition-politicians are generally not forced to exile or imprisoned. The democratic procedures are so adequately meaningful that opposition parties take them serious in the contest for power (Levitsky and Way 2006: 6). These characteristics mostly fit with the Malaysian case, though the prosecution and imprisonment of Anwar and many political meetings dissolved by the police must be considered. These competitive authoritarian regimes can over the past twenty years, which approximately corresponds with the era of Mahathir, either be described as; in democratization, unstable authoritarian or stable authoritarian. According to their analysis, Malaysia is a stable authoritarian state (Levitsky and Way 2006: 86). This leads to the conclusion that some democratic features are traceable in Malaysia, but fundamentally so many rights and freedoms have been restricted, eschewed or manipulated that it sums up to oppression and a authoritarian political regime. After 2003 the internet, civil society, the reformist attitude by Badawi, and a stronger and united opposition has changed the playing field to some extent and the people now demand electoral reforms.

5 Conclusions

Human rights became an international phenomenon after WWII, to secure the basis for peaceful coexistence among all people in the world. During the Cold War, the consensus in the UN concentrated on avoiding another devastating World War based on ethnic rivalries that could ruin Europe once again. The bipolar world resulted in a fragile foundation on which the universal human rights idea was taking form. The year of 1976, when the covenants entered into force, marks the institutionalization of human rights in enforcement. The long process before then was characterized by a fragile structure and an almost unattainable consensus.

The core building blocks of the human rights regime are democratization and civil and political rights. These characteristics constitute most of the articles in the UDHR and are transformed into legally binding instruments in the ICCPR. Economic, social and cultural rights are important, but in accordance with Forsythe the ICESCR is perceived as the stepchild in the human rights regime. The other conventions principally deal with the same rights, although perhaps in more detail and granting them to specific groups of people. The conventions are largely a sign of that the covenants were not as successful as intended in spreading democratic standards and civil and political rights to the second and third world countries, in a Western perspective.

Malaysia got their independence in 1957 and joined the UN, but at the same time the country distanced itself from the Cold War as much as possible, not wanting to integrate in the World system but focus on national development. The importance of non-interference and sovereignty cannot be underestimated in the self-understanding of the political elites in Malaysia. This might explain that international human rights standards are denied in Malaysia simply due to these structural implications. Virtues, such as sovereignty, might be more important when you first attain it, later countries might start taking it for granted. The years 1969-1970 are crucial to understand the human rights discourse in Malaysia. The Malay majority feared losing power in their own country and consequently set up affirmative action programs, which diverge significantly from the Western notion of universal rights. The political elite feared, real or imaginative, that racial riots could happen again. The paramount objective of the government was ethnic balance, security and improving the positions of the Malays, officially. In order to do so many restrictive laws were set up limiting rights in individual freedoms. Gurowitz has resembled this situation with a figurative 'don't rock the boat'-attitude.

The Cold War overshadowed human rights, but after 1989 human rights and democratization took center stage in world politics. The international pressure on the newly politically and economically integrated countries also to integrate in the human rights regime was massive. This was maybe somewhat responsible for the formation of the Asian Values-concept. Being pressured might have enabled the Asian countries to work together and with one voice, they would also have a stronger mandate in the UN. The concept has been debated, and the conclusion is that it has legitimacy as values in the West and in Asia are not convergent and the universality is questionable. But most analysts of human rights in Malaysia and internationally regard 'Asian Values' as a front, exploited by Mahathir to keep his economic development on track. The concept is mostly used to defend the authoritarian and

restrictive laws that the Mahathir-administration had inherited from pre-independence, the State of Emergencies and the previous administrations which were kept in place for the government to stay in office. Mahathir also extended the affirmative action-programs.

Mahathir transformed Malaysia and many Malaysians respect this effort. Economic development was *the* paramount objective and as a result, all other policies suffered, under this in his reign. Mahathir did what he could to repel the idea of human rights in the minds of Malaysians, heavily attacking the notion as being Western in nature. After the economy took a downturn in 1997 Mahathir's policies and leadership lost credibility and a small window for human rights was opened. Other important aspects such as internationalization and the internet are also transforming the world order and making it harder for oppressive regimes to continue keep their populations in the dark. After Mahathir stepped down the pressure on the Prime Ministers has increased, and the national resistance-movement can now take the universal regime as the starting point for demanding improved human rights nationally. Under Mahathir any national activism resembling Western notions of human rights, was according to Gurowitz deemed to fail. The civil society organizations was under Mahathir's reign forced to base the national resistance on human rights violations in a strictly national context, with fear of being rejected as lackeys of the West if based on international standards. Due to the ethnic and religious division in Malaysia a common national identity has not been created and the strength of civil society suffers from this division. This divergence, in combination with repressive and restrictive measures imposed by the government, justifies the hitherto missing ability of civil society in the country. Based on the Malaysian human rights discourse, democracy is not the proper political regime-label. Restrictive laws often enforced in practice; suppression of the opposition and NGO community seen as representatives of an alternative people attitude; media and judiciary control cancelling the checks and balances, sum up to characterize an authoritarian regime. When the representative democracy moreover is under heavy criticism for being; not free nor fair, structurally skewed and infiltrated with corruption and money politics, the peoples final authority to choose its representatives is heavily jeopardized.

With Mahathir at the forefront and with Abdul Razak as the founding father for the Malaysian official resistance, the Malaysian political elites totally rejected the universal nature of human rights, in my perspective. The rejection was primarily targeted at civil and political rights, as these threaten the ruling BN's possibility to stay in power. The BN-coalition has an institutionalized belief that 'government knows best', and until recently the opposition was very fragmented and no real alternative to rule the federation somehow justify this position. Due to international pressure and consensus at the Vienna Conference, especially morally on the protection of children, a declining electoral support in 1990, some influence from a not unimportant national women's right civil society, the government was under so much pressure that CRC and CEDAW was ratified in 1995. In 2003 Badawi replaced Mahathir and loosened the tight grip and made some room for notions of human rights. Recently, some of the reservations attached to CEDAW and CRC have been retracted and in 2010 Malaysia ratified the CPRD and demonstrated, for the first time, a genuine willingness to partly integrate.

But with UMNO's history and their ability to overcome crisis, it seems the leaders of the country have too much at stake, to voluntarily risk losing the political control. If that happened and the opposition

took over, they would not be able to continuously defend the position of the majority Malays, to whom the land rightfully belong, keep money flowing into their own pockets and avoid charges of corruption, imprisonment or stricter punishment.

On the international arena, Malaysia is the opposition to the human rights regime, and the political elites (read UMNO), maybe think if they accept the framework, the international regime, then US and the West will continue to dominate international relations. In the exact same way as UMNO has been able to decide the framework in Malaysia to suppress the opposition on the national arena and prohibited them from influence. Whether or not Malaysia is able to counter the US/Western dominance in the human rights regime and whether Pakatan Rakyat will be able to counter BN/UMNO on the political scene in Malaysia in the future, is interesting to observe and worth further investigation.

The Malaysian political elite clearly advocate that universal values do not exist, but whether or not the people they claim to represent agrees is very hard to determine with the skewed institutional setup. Mahathir's claim that values in the human right regime are Western biased is mostly a top-down-perspective, the attitude of the people cannot be determined based on the undemocratic electoral system. Recently the Malaysians have demonstrated, at the 'Bersih'-rallies, to demand electoral reforms. This indicates that the electoral system is the most fundamental institution to improve if 'Malaysia' were to represent the Malaysian people, not just the Malaysian government.

The Malaysian case is very complex and this paper opens up to further studies of the electoral system in order to get a better understanding of the universality in human rights.

The role of Islam in the Malaysian case seems also to be under transformation, maybe the moderate Islamic country is not that moderate after all. If UMNO were under pressure they might turn to support from PAS as the last option to protect the Malay community and that would most probably lead to Islamization and be devastating to the ethnic balance and security.

6 Literatures

Ali, Syed Husin (2001) *'The changing faces of politics and suppression in Malaysia'*, Inter-Asia Cultural Studies, 2: 1 (115-126)

Baik, Tae-Ung (2005) *'Asia: The Reality of Human Rights'* in Smith, Rhona K. M. & van der Anker, Christien (2005) (Ed.) *'The Essentials of Human Rights'*, Hodder Arnold

Booth, Ken (1999) *'Three tyrannies'* in Tim Dunne and Nicholas J. Wheeler, (ed.) (1999) *'Human Rights in Global Politics'*, Cambridge University Press

Butcher, John G. (2001) *'May 13: A Review of Some Controversies in Accounts of the Riots'* in Jomo K.S. (ed.) *'Reinventing Malaysia: Reflections on its past and future'*, Penerbit UKM in association with Malaysian Social Science Association.

Bryman, Alan (1984) *'The Debate About Quantitative or Qualitative Research: A Question of Method or Epistemology'*, British Journal of Sociology Vol. 35, No. 1 (75-92)

Castellino, Joshua (2005) *'The Asian Regional Human Rights System'* in Smith, Rhona K. M. & van der Anker, Christien (2005) (Ed.) *'The Essentials of Human Rights'*, Hodder Arnold

Cheah, Boon Kheng (1999) *'From End of Slavery to the ISA: Human Rights History in Malaysia'*, Keynote Address at the Second International Malaysian Studies Conference, Kuala Lumpur, 3 August 1999 in Jomo K.S. (ed.) *'Reinventing Malaysia: Reflections on its past and future'*, Penerbit UKM in association with Malaysian Social Science Association.

Chin, Christine B.N. (1997) *'Walls of Silence and Late Twentieth Century Representations of the Foreign Female Domestic Worker: The Case of Filipina and Indonesian Female Servants in Malaysia.'* International Migration Review, Vol. 31, No. 2 (353-385)

Cox, Robert W. (1999) *'Civil Society at the Turn of the Millenium: Prospects for an Alternative World Order'*, Review of International Studies, Vol. 25, No. 1 (3-28)

Donnelly, Jack (1999) *'The social construction of international human rights'* in Tim Dunne and Nicholas, J.Wheeler (ed.) (1999) *'Human Rights in Global Politics'*, Cambridge University Press

Donnelly, Jack (2003) *'Universal Human Rights in Theory and Practice'* (2nd Ed.), Cornell University Press

Dunne, Tim and **Wheeler**, Nicholas J. (ed.) (1999) *'Human Rights in Global Politics'*, Cambridge University Press

Evans, Tony (1996) *'US Hegemony and the Project of Universal Human Rights'*, Macmillan Press Ltd (UK) or St. Martin's Press Inc (US)

Forsythe, David P. (2012) *'Human Rights in International Relations'* (3rd Ed.), Cambridge University Press

Freedman, Amy L. (2006) *'Political Change and Consolidation – Democracy's rocky road in Thailand, Indonesia, South Korea, and Malaysia'*, Palgrave Macmillan

Gibney, Mark (2008) *'International human rights law'*, Rowman & Littlefield's Publishers, Inc.

Glen, Carol M and Murgo, Richard C. (2008) *'United Nations Human Rights Conventions: Obligations and Compliance'*, Politics & Policy, Vol. 31, Issue 4, Nov. 2008

Gungwu, Wang (2001) *'Continuities in Island Southeast Asia'* in Jomo K.S. (ed.) *'Reinventing Malaysia: Reflections on its past and future'*, Penerbit UKM in association with Malaysian Social Science Association.

Gurowitz, Amy (2000) *'Migrants Rights and Activism in Malaysia: Opportunities and Constraints'*, The Journal of Asian Studies, Vol. 59, No. 4 (Nov 2000) (863-888)

Hassan, Saliha and Lopez, Carolina (2005) *'Human Rights in Malaysia: Globalization, National Governance and Local Responses'* in Francis Loh Kok Wah and Joakim Öjendal (ed.) *'Southeast Asian Responses to Globalization: Restructuring Governance and Deepening Democracy'*, Nias Press

Humphrey, J.P. (1984) *'Human rights and the United Nations: A great Adventure'*, Dobbs Ferry, NY: Transnational Publishers

Huntington, Samuel P. (1993) *'The Clash of Civilizations?'*, Foreign Affairs Vol. 72, No. 3 (22-49)

Hurrell, Andrew (1999) *'Power, principles and prudence: protecting human rights in a deeply divided world'* in Tim Dunne and Nicholas J. Wheeler, (ed.) (1999) *'Human Rights in Global Politics'*, Cambridge University Press

Kaldor, Mary (1999) *'Transnational civil society'* in Dunne, Tim and Wheeler, Nicholas J. (ed.) (1999) *'Human Rights in Global Politics'*, Cambridge University Press

Kao, Grace Y. (2011) *'Grounding Human Rights in a Pluralist World'*, Georgetown University Press

Keohane, Robert O. (1989) *'Neoliberal Institutionalism: A perspective on World Politics'* in (Ed.) *'International Institutions and State Power: Essays in International Relations Theory'*, Boulder: Westview Press

Kirchmeier, Felix (2006) *'The Right to Development - where do we stand?'*, Friedrich Ebert Stiftung in association with the Dialogue on Globalization No. 23, July 2006 (can be found following this link: <http://library.fes.de/pdf-files/iez/global/50288.pdf>)

Kirkpatrick, Jeanne J. (1982) *'Dictatorships and Double-standards'* in Wiarda, H. J. (ed.) *'Human Rights and US Human Rights Policy'*, Washington DC and London: American Enterprises Institute

Korey, William (1998) *'NGO's and the Universal Declaration on Human Rights'*, St. Martin's Press

- Krasner**, Stephen D. (1982) '*Structural Causes and Regime Consequences: Regimes as Intervening Variables*' International Organization, Vol. 36, No. 2 'International Regimes' (185-205)
- Krasner**, Stephen (1993) '*Sovereignty, regimes and human rights*' in Rittberger, Volker (ed.) 'Regime Theory and International Relations', Oxford University Press
- Lagoutte**, Stephanie & Sano, Hans Otto & Smith, Peter Scharff (2007) 'Human Rights in Turmoil' (ed.), Martinus Nijhoff Publishers
- Langlois**, Anthony J. (2001) '*The Politics of Justice and Human Rights – Southeast Asia and Universalist Theory*', Cambridge University Press
- Lauren**, Paul Gordon (2003) 'The Evolution of International Human Rights' (2nd ed.), University of Pennsylvania Press
- Levitsky**, Steven and **Way**, Lucan A. (2006) '*Competitive Authoritarianism: The Origins and Dynamics of Hybrid Regimes in the Post-Cold War Era*', (According to Levitsky and Way this article combines parts of Chapter 1 (Introduction) with Chapter 2 (Theoretical framework) of an early draft for a book manuscript: Levitsky, Steven and Way, Lucan A. (2010) '*Competitive Authoritarianism: hybrid regimes after the Cold War*', Cambridge University Press)
- Lopez**, Carolina C. (2007) 'Globalization, state and g/local human rights actors: contestations between institution and civil society' in (Ed) Gomez, Edmund Terence 'Politics in Malaysia: The Malay dimension', Routledge
- Manan**, Wan A. (1999) '*A Nation in Distress: Human Rights, Authoritarianism and Asian Values in Malaysia*', SOJOURN Vol. 14, No. 2 (359-381)
- Mauzy**, Diane K. (1997) '*The human rights and 'Asian Values' debate in Southeast Asia: trying to clarify the key issues*', The Pacific Review, 1997, Vol. 10, No. 2 (210-236)
- Mauzy**, Diane K. and **Barter**, Shane J. (2008), '*Learning to Lose? Not if UMNO Can Help It*', in Wong, Joseph and Friedman, Edward (Ed.) 'Learning to Lose: Adapting Democracy to One-Party Dominant Systems', (Routledge Publishers)
- Means**, Gordon P. (2009) '*Political Islam in Southeast Asia*', Lynne Rienner Publishers
- Milne**, R.S. (1999) 'Malaysian Politics under Mahathir', Routledge
- Morgenthau**, Hans J. (1978) '*Politics Among Nations – The Struggle for Power and Peace*' (5th ed.), Knopf
- Morgenthau**, Hans J. (2006) (revised by Kenneth W. Thomsen and W. David Clinton.) '*Politics Among Nations – The Struggle for Power and Peace*' (7th ed.), McGraw-Hill /Irwin Companies Inc.
- Van Ness**, Peter (1999) '*Debating Human Rights – Critical Essays from the United States and Asia*' (ed.), Routledge

Nye, Joseph S. (2008) *'Public Diplomacy and Soft Power'*, The ANNALS of the American Academy of Political and Social Science 2008 616 (94-109)

Patterson, Orlando (1991) *'Freedom – Vol 1: Freedom in the making of Western Culture'*, Basic Books

Patterson, Orlando (1995) *'Freedom, Slavery and the Modern Construction of Rights'* in Hufton, Olwen (ed.) *'Historical Change and Human Rights: The Oxford lectures 1994'*, New York: Basic Books

Pollis, Adamantia and Schwab, Peter (1979) *'Human Rights: A Western Construct with Limited Applicability'* in (Editing) *'Human Rights – Cultural and Ideological Perspectives'*, Preager Publishers

Rajakumar, M. K. (2001) *'Looking Back, Looking Forward'* in Jomo, K.S. (ed.) *'Reinventing Malaysia: Reflections on its past and future'*, Penerbit UKM in association with Malaysian Social Science Association.

Randhawa, Sonia & Puah, Pauline & Loone, Susan (1995) *'Freedom of Expression and the Media in Malaysia'*, Article 19 and SUARAM Publication

Rehman, Javaid (2007) *'Conflicting Values or Misplaced Interpretations? Examining the Inevitability of a Clash between "Religions" and "Human Rights"'* in Ghanea, Nazila & Stephens, Alan & Walden, Raphael (Ed.) (2007) *'Does God Believe in Human Rights?'*, Martinus Nijhoff Publishers

Renteln, (1990)

Robertson, Robert E. (1994) *'Measuring State Compliance with the Obligation to Devote the 'Maximum Available Resources' to Realizing Economic, Social, and Cultural Rights'*, Human Rights Quarterly, Vol. 16 No. 4 (November 1994) (693-714)

Said, Abdul Aziz (1979) *'Human Rights in Islamic Perspectives'* in Pollis, Adamantia and Schwab, Peter (Ed.) *'Human Rights – Cultural and Ideological Perspectives'*, Preager Publishers

Sani, Mohd Azizuddin Mohd (2011) *'Free Speech in Malaysia: From Feudal and Colonial Periods to the Present'*, The Round Table, Vol. 100, No. 416 (531-546)

Smith, Rhona K.M. (2005) *'Textbook on International Human Rights'* (2nd ed.), Oxford University Press

in Smith, Rhona K. M. & van der Anker, Christien (2005) (Ed.) *'The Essentials of Human Rights'*, Hodder Arnold

Strange, Susan (1982) *'Cave! Hic Dragones: A Critique of Regime Analysis'* International Organization, Vol. 36, No. 2 *'International Regimes'* (479-496)

Wain, Barry (2009) *'Malaysian Maverick: Mahathir Mohamed in Turbulent Times'*, Palgrave Macmillan

Waltz, Kenneth N. (1990) *'Realist Thought and Neorealist Theory'*, Journal of International Affairs, 1990, Vol. 44 (1) (21-37)

Weiss, Meredith L. (2007) *'What a Little Democracy Can Do: Comparing Trajectories of Reform in Malaysia and Indonesia'*, Democratization, Vol. 14, No. 1 (26-43)

Wright, Shelley (2001) *'International Human Rights, Decolonisation and Globalisation'*, Routledge

Online-articles

ALIRAN –National Consciousness Movement Aliran

<http://aliran.com/basic-principles>

Bauer, Joanne (1995) in Carnegie Council: *'Human Rights Dialogue 1.3: International Human Rights and Asian Commitment'*

http://www.carnegiecouncil.org/resources/publications/dialogue/1_03/articles/514.html December 4th, 2011

BBC webpage

1: <http://www.bbc.co.uk/news/world-asia-pacific-15933269>

2: <http://www.bbc.co.uk/news/world-radio-and-tv-14630851>

3: <http://www.bbc.co.uk/news/world-radio-and-tv-14649841>

Centre for Public Policy Studies

http://www.cpps.org.my/resource_centre/EO%20Factsheet.pdf March 5th, 2012

New York Times (December 6, 2010) Liz Gooch: *'Rights Group Says Caning in Malaysia is Torture'*

<http://www.nytimes.com/2010/12/07/world/asia/07caning.html> May 8th, 2012

Malaysiakini.com

1: <http://Malaysiakini.com/news/179914>

2: <http://Malaysiakini.com/news/255>

3: <http://Malaysiakini.com/news/3878> Simon Martin

4: <http://Malaysiakini.com/news/182628> Nigel Aw

5: <http://Malaysiakini.com/news/182610> Nigel Aw

- 6: <http://Malaysiakini.com/news/17680> Lawrence Bartlett
- 7: <http://Malaysiakini.com/news/181488> Hazlan Zakaria
- 8: <http://Malaysiakini.com/news/181958> Hafiz Yatim
- 9: <http://Malaysiakini.com/news/29676> and <http://Malaysiakini.com/news/29707>
- 10: <http://Malaysiakini.com/news/29624>
- 11: <http://Malaysiakini.com/news/1043> Jeffrey Tan
- 12: <http://Malaysiakini.com/news/150800> Abdul Rahim Sabri
- 13: <http://Malaysiakini.com/news/150810>
- 14: <http://Malaysiakini.com/news/149625>
- 15: <http://Malaysiakini.com/news/175970>

Malaysian Government webpage

- 1: <http://www.kln.gov.my/web/guest/evolution>
- 2: http://www.kln.gov.my/web/guest/md-human_right

Malaysia-today (edited by Malaysia's Raja Petra Kamarudin (RPK))

- 1: <http://www.malaysia-today.net/archives/19348-the-universal-declaration-of-human-rights-1948>
March 18th 2012

OHCHR – Office of the High Commissioner for Human Rights webpage

<http://www2.ohchr.org/english/bodies/chr/membership.htm> and
<http://www.ohchr.org/EN/HRBodies/HRC/Pages/PastMembers.aspx>

SUHAKAM – The Human Rights Commission in Malaysia

<http://www.suhakam.org.my/info/jawatan>

The Nation (August 11, 1997) '*Human Rights and one Dr Mahathir*'

<http://news.google.com/newspapers?nid=437&dat=19970811&id=saouAAAAIBAJ&sjid=AjIDAAAAIBAJ&pg=6357,3898437> April 6th, 2012

UN webpage

- 1: <http://www.un.org/rights/HRToday/declar.htm>

2: <http://www.un.org/en/documents/udhr/drafters.shtml>

3: http://www.un.org/en/documents/udhr/hr_law.shtml

4: <http://www.un.org/disabilities/default.asp?id=245>

UNHCHR – United Nations High Commissioner for Human Rights webpage

1: UNHCHR webpage:

<http://www.unhchr.ch/tbs/doc.nsf/NewhvVALISPRByCountry?OpenView&Start=1&Count=250&Expand=187#187>

Others:

Migrant News, (Davis, CA) 1999 edition

Appendices

Appendix 1

The Universal Declaration on Human Rights

<http://www.un.org/en/documents/udhr/>

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,

Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,

Whereas it is essential to promote the development of friendly relations between nations,

Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,

Whereas Member States have pledged themselves to achieve, in co-operation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms,

Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge,

Now, Therefore THE GENERAL ASSEMBLY proclaims THIS UNIVERSAL DECLARATION OF HUMAN RIGHTS as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

Article 1.

- All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 2.

- Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

Article 3.

- Everyone has the right to life, liberty and security of person.

Article 4.

- No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

Article 5.

- No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 6.

- Everyone has the right to recognition everywhere as a person before the law.

Article 7.

- All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Article 8.

- Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

Article 9.

- No one shall be subjected to arbitrary arrest, detention or exile.

Article 10.

- Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Article 11.

- (1) Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.
- (2) No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

Article 12.

- No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Article 13.

- (1) Everyone has the right to freedom of movement and residence within the borders of each state.
- (2) Everyone has the right to leave any country, including his own, and to return to his country.

Article 14.

- (1) Everyone has the right to seek and to enjoy in other countries asylum from persecution.
- (2) This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

Article 15.

- (1) Everyone has the right to a nationality.
- (2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

Article 16.

- (1) Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.
- (2) Marriage shall be entered into only with the free and full consent of the intending spouses.
- (3) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

Article 17.

- (1) Everyone has the right to own property alone as well as in association with others.
- (2) No one shall be arbitrarily deprived of his property.

Article 18.

- Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

Article 19.

- Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Article 20.

- (1) Everyone has the right to freedom of peaceful assembly and association.
- (2) No one may be compelled to belong to an association.

Article 21.

- (1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.
- (2) Everyone has the right of equal access to public service in his country.

- (3) The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

Article 22.

- Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

Article 23.

- (1) Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.
- (2) Everyone, without any discrimination, has the right to equal pay for equal work.
- (3) Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.
- (4) Everyone has the right to form and to join trade unions for the protection of his interests.

Article 24.

- Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

Article 25.

- (1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.
- (2) Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

Article 26.

- (1) Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.
- (2) Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.
- (3) Parents have a prior right to choose the kind of education that shall be given to their children.

Article 27.

- (1) Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.
- (2) Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

Article 28.

- Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

Article 29.

- (1) Everyone has duties to the community in which alone the free and full development of his personality is possible.
- (2) In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.
- (3) These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

Article 30.

- Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

Appendix 2

THE NINE CORE HUMAN RIGHTS TREATIES

[HTTP://WWW2.OHCHR.ORG/ENGLISH/LAW/](http://www2.ohchr.org/english/law/)

THERE ARE NINE CORE INTERNATIONAL HUMAN RIGHTS TREATIES. EACH OF THESE TREATIES HAS ESTABLISHED A COMMITTEE OF EXPERTS TO MONITOR IMPLEMENTATION OF THE TREATY PROVISIONS BY ITS STATES PARTIES. SOME OF THE TREATIES ARE SUPPLEMENTED BY OPTIONAL PROTOCOLS DEALING WITH SPECIFIC CONCERNS.

		<i>Adopted</i>	<i>Entering into force</i>
<u>ICERD</u>	<u>International Convention on the Elimination of All Forms of Racial Discrimination</u>	21 Dec 1965	<u>1969 (27)</u>
<u>ICCPR</u>	<u>International Covenant on Civil and Political Rights</u>	16 Dec 1966	<u>1976 (35)</u>
<u>ICESCR</u>	<u>International Covenant on Economic, Social and Cultural Rights</u>	16 Dec 1966	<u>1976 (35)</u>
<u>CEDAW</u>	<u>Convention on the Elimination of All Forms of Discrimination against Women</u>	18 Dec 1979	<u>1981 (20)</u>
<u>CAT</u>	<u>Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment</u>	10 Dec 1984	<u>1987 (20)</u>
<u>CRC</u>	<u>Convention on the Rights of the Child</u>	20 Nov 1989	<u>1990 (20)</u>
<u>ICRMW</u>	<u>International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families</u>	18 Dec 1990	<u>2003 (20)</u>
<u>CPED</u>	<u>International Convention for the Protection of All Persons from Enforced Disappearance</u>	20 Dec 2006	<u>2010 (20)</u>
<u>CRPD</u>	<u>Convention on the Rights of Persons with Disabilities</u>	13 Dec 2006	<u>2008 (20)</u>

Hvilke har Malaysia underskrevet: http://www.bayefsky.com/html/malaysia_t1_ratifications.php

- CEDAW (8) 1979 (Malaysia ratified July 5th 1995 and it entered into force August 4th same year)
- CRC (11) 1989 (Malaysian ratified February 2nd 1995 and it entered into force March 19th same year
- CRPD (15) 2006 (Malaysia ratified July 19th 2010 and it entered into force August 19th same year)

Appendix 3

List of countries by region and the number of core human rights treaties ratified by November 1. 2011

<http://www.bayefsky.com/bystate.php/alist/af>

Asia

[Afghanistan](#) 6

[Bahrain](#) 6

[Bangladesh](#) 7

[Bhutan](#) 2

[Brunei](#) 2

[Burma](#) 2

[Cambodia](#) 6

[China](#) 7

[India](#) 7

[Indonesia](#) 6

[Iran](#) 5

[Iraq](#) 5

[Japan](#) 7

[Jordan](#) 7

[Korea, North](#) 4

[Korea, South](#) 7

[Kuwait](#) 6

[Kyrgyzstan](#) 7

[Laos](#) 6

[Lebanon](#) 6

[Malaysia](#) 3

[Maldives](#) 6

[Mongolia](#) 7

[Nepal](#) 6

[Oman](#) 4

[Pakistan](#) 5

[Philippines](#) 8

[Qatar](#) 5

[Saudi Arabia](#) 5

[Singapore](#) 2

[Sri Lanka](#) 7

[Syria](#) 8

[Tajikistan](#) 7

[Thailand](#) 6

[Turkmenistan](#) 7

[United Arab Emirates](#) 3

[Uzbekistan](#) 6

[Vietnam](#) 5

North- and Latin- America

[Bahamas, The](#) 5

[Barbados](#) 5

[Belize](#) 6

[Canada](#) 6

[Costa Rica](#) 7

[Cuba](#) 6

[Dominica](#) 4

[Dominican Republic](#) 6

[El Salvador](#) 8

[Grenada](#) 4

[Guatemala](#) 8

[Haiti](#) 5

[Honduras](#) 8

[Jamaica](#) 7

[Mexico](#) 9

[Nicaragua](#) 8

[Panama](#) 7

[Saint Kitts and Nevis](#) 3

[Saint Lucia](#) 3

[Saint Vincent and the](#)

[Grenadines](#) 6

[Trinidad and Tobago](#) 5

[United States](#) 3

South-America

[Argentina](#) 9

[Bolivia](#) 8

[Brazil](#) 8

[Chile](#) 9

[Colombia](#) 7

[Ecuador](#) 9

[Guyana](#) 6

[Paraguay](#) 9

[Peru](#) 8

[Suriname](#) 5

[Uruguay](#) 9

[Venezuela](#) 6

Europe

[Albania](#) 8

[Andorra](#) 5

[Armenia](#) 7

[Austria](#) 7

[Azerbaijan](#) 8

[Belarus](#) 6

[Belgium](#) 7

[Bosnia and Herzegovina](#) 7

[Bulgaria](#) 6

[Croatia](#) 7

[Cyprus](#) 6

[Czech Republic](#) 6

[Denmark](#) 7

[Estonia](#) 6

[Finland](#) 6

[France](#) 7

[Georgia](#) 6

[Germany](#) 8

[Greece](#) 6

[Holy See \(Vatican City\)](#) 4

[Hungary](#) 7

[Iceland](#) 6

[Ireland](#) 6

[Israel](#) 6

[Italy](#) 7

Kazakhstan 7
Latvia 6
Liechtenstein 6
Lithuania 6
Luxembourg 6
Macedonia 6
Malta 6
Moldova 6
Monaco 6
Montenegro 5
Netherlands 7
Norway 6
Poland 6
Portugal 7
Romania 6
Russia 6
San Marino 7
Serbia and Montenegro 7
Slovakia 6
Slovenia 7
Spain 8
Sweden 7
Switzerland 6
Turkey 8
Ukraine 6
United Kingdom 7

Africa

Algeria 7
Angola 4
Benin 6
Botswana 5
Burkina Faso 9
Burundi 6
Cameroon 6
Cape Verde 7
Central African Republic 5
Chad 6
Comoros 3
Congo, Democratic Republic of the 6
Congo, Republic of the 6
Cote d'Ivoire 6
Djibouti 5
Egypt 8

Equatorial Guinea 6
Eritrea 5
Ethiopia 6
Gabon 8
Gambia, The 5
Ghana 7
Guinea 8
Guinea-Bissau 3
Kenya 7
Lesotho 8
Liberia 6
Libya 7
Madagascar 6
Malawi 7
Mali 9
Mauritania 7
Mauritius 6
Morocco 8
Mozambique 5
Namibia 7
Niger 8
Nigeria 7
Rwanda 7
Sao Tome and Principe 2
Senegal 8
Seychelles 8
Sierra Leone 7
Somalia 4
South Africa 6
Sudan 5
Swaziland 6
Tanzania 5
Togo 6
Tunisia 7
Uganda 8
Yemen 7
Zambia 6
Zimbabwe 5

Pacific

Australia 7
Cook Islands 3
Fiji 3
Kiribati 2
Marshall Islands 2

Micronesia, Federated States of 2
Nauru 1
New Zealand 7
Niue 1
Palau 1
Papua New Guinea 5
Samoa 3
Solomon Islands 4
Timor-Leste 7
Tonga 2
Tuvalu 2
Vanuatu 4

Appendix 4

An extract of the International Covenant on Civil and Political Rights

Adopted and opened for signature, ratification and accession by General Assembly on 16 December 1966, entry into force 23 March 1976.

<http://www2.ohchr.org/english/law/ccpr.htm>

Preamble

The States Parties to the present Covenant,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights,

Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant,

Agree upon the following articles:

Article 2

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 4

1. In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.

2. No derogation from articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18 may be made under this provision.

Article 6

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

Universal human rights in Malaysia

2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court.

Article 7

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

Article 9

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.

4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

Article 10

1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

Article 14

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

Article 18

Universal human rights in Malaysia

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

Article 19

1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include 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 his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

Article 21

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

Article 22

1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.

2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.

Article 23

1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

2. The right of men and women of marriageable age to marry and to found a family shall be recognized.

3. No marriage shall be entered into without the free and full consent of the intending spouses.

4. States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.

Universal human rights in Malaysia

Article 24

1. Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.

Article 25

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

- (a) To take part in the conduct of public affairs, directly or through freely chosen representatives;
- (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;
- (c) To have access, on general terms of equality, to public service in his country.

Article 27

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

Article 40

1. The States Parties to the present Covenant undertake to submit reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made in the enjoyment of those rights: (a) Within one year of the entry into force of the present Covenant for the States Parties concerned;

Article 50

The provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions.

Kelantan and others northern states might find it even more difficult since Islam is more dominant here.

Appendix 5

An extract of the International Covenant on Economic, Social and Cultural Rights

Adopted and opened for signature, ratification and accession by General Assembly on 16 December 1966, entry into force 3 January 1976.

<http://www2.ohchr.org/english/law/cescr.htm>

Preamble

The States Parties to the present Covenant,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights,

Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant,

Agree upon the following articles:

Article 2

1. Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.
2. The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
3. Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals.

Article 3

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.

Article 10

The States Parties to the present Covenant recognize that:

Universal human rights in Malaysia

2. Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits.

3. Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law.

Article 13

1. The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.

2. The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:

(a) Primary education shall be compulsory and available free to all;

(b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;

(c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;

3. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.

Article 17

1. The States Parties to the present Covenant shall furnish their reports in stages, in accordance with a programme to be established by the Economic and Social Council within one year of the entry into force of the present Covenant after consultation with the States Parties and the specialized agencies concerned.

2. Reports may indicate factors and difficulties affecting the degree of fulfilment of obligations under the present Covenant.

Appendix 6

FINAL DECLARATION OF THE REGIONAL MEETING FOR ASIA OF THE WORLD CONFERENCE ON HUMAN RIGHTS

<http://law.hku.hk/lawgovtsociety/Bangkok%20Declaration.htm>

The Ministers and representatives of Asian States, meeting at Bangkok from 29 March to 2 April 1993, pursuant to General Assembly resolution 46/116 of 17 December 1991 in the context of preparations for the World Conference on Human rights,

Adopt this Declaration, to be known as "The Bangkok Declaration", which contains the aspirations and commitments of the Asian region:

BANGKOK DECLARATION

Emphasizing the significance of the World Conference on Human Rights, which provides an invaluable opportunity to review all aspects of human rights and ensure a just and balanced approach thereto,

Recognizing the contribution that can be made to the World Conference by Asian countries with their diverse and rich cultures and traditions,

Welcoming the increased attention being paid to human rights in the international community,

Reaffirming their commitment to principles contained in the Charter of the United Nations and the Universal Declaration on Human Rights,

Recalling that in the Charter of the United Nations the question of universal observance and promotion of human rights and fundamental freedoms has been rightly placed within the context of international cooperation,

Noting the progress made in the codification of human rights instruments, and in the establishment of international human rights mechanisms, while expressing concern that these mechanisms relate mainly to one category of rights,

Emphasizing that ratification of international human rights instruments, particularly the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, by all States should be further encouraged,

Reaffirming the principles of respect for national sovereignty, territorial integrity and non-interference in the internal affairs of States,

Stressing the universality, objectivity and non-selectivity of all human rights and the need to avoid the application of double standards in the implementation of human rights and its politicization,

Universal human rights in Malaysia

Recognizing that the promotion of human rights should be encouraged by cooperation and consensus, and not through confrontation and the imposition of incompatible values,

Reiterating the interdependence and indivisibility of economic, social, cultural, civil and political rights, and the inherent interrelationship between development, democracy, universal enjoyment of all human rights, and social justice, which must be addressed in an integrated and balanced manner,

Recalling that the Declaration on the Right to Development has recognized the right to development as a universal and inalienable right and an integral part of fundamental human rights,

Emphasizing that endeavours to move towards the creation of uniform international human rights norms must go hand in hand with endeavours to work towards a just and fair world economic order,

Convinced that economic and social progress facilitates the growing trend towards democracy and the promotion and protection of human rights,

Stressing the importance of education and training in human rights at the national, regional and international levels and the need for international cooperation aimed at overcoming the lack of public awareness of human rights,

1. Reaffirm their commitment to the principles contained in the Charter of the United Nations and the Universal Declaration on Human Rights as well as the full realization of all human rights throughout the world;
2. Underline the essential need to create favourable conditions for effective enjoyment of human rights at both the national and international levels;
3. Stress the urgent need to democratize the United Nations system, eliminate selectivity and improve procedures and mechanisms in order to strengthen international cooperation, based on principles of equality and mutual respect, and ensure a positive, balanced and non-confrontational approach in addressing and realizing all aspects of human rights;
4. Discourage any attempt to use human rights as a conditionality for extending development assistance;
5. Emphasize the principles of respect for national sovereignty and territorial integrity as well as non-interference in the internal affairs of States, and the non-use of human rights as an instrument of political pressure;
6. Reiterate that all countries, large and small, have the right to determine their political systems, control and freely utilize their resources, and freely pursue their economic, social and cultural development;

Universal human rights in Malaysia

7. Stress the universality, objectivity and non-selectivity of all human rights and the need to avoid the application of double standards in the implementation of human rights and its politicization, and that no violation of human rights can be justified;
8. Recognize that while human rights are universal in nature, they must be considered in the context of a dynamic and evolving process of international norm-setting, bearing in mind the significance of national and regional particularities and various historical, cultural and religious backgrounds;
9. Recognize further that States have the primary responsibility for the promotion and protection of human rights through appropriate infrastructure and mechanisms, and also recognize that remedies must be sought and provided primarily through such mechanisms and procedures;
10. Reaffirm the interdependence and indivisibility of economic, social, cultural, civil and political rights, and the need to give equal emphasis to all categories of human rights;
11. Emphasize the importance of guaranteeing the human rights and fundamental freedoms of vulnerable groups such as ethnic, national, racial, religious and linguistic minorities, migrant workers, disabled persons, indigenous peoples, refugees and displaced persons;
12. Reiterate that self-determination is a principle of international law and a universal right recognized by the United Nations for peoples under alien or colonial domination and foreign occupation, by virtue of which they can freely determine their political status and freely pursue their economic, social and cultural development, and that its denial constitutes a grave violation of human rights;
13. Stress that the right to self-determination is applicable to peoples under alien or colonial domination and foreign occupation, and should not be used to undermine the territorial integrity, national sovereignty and political independence of States;
14. Express concern over all forms of violation of human rights, including manifestations of racial discrimination, racism, apartheid, colonialism, foreign aggression and occupation, and the establishment of illegal settlements in occupied territories, as well as the recent resurgence of neo-nazism, xenophobia and ethnic cleansing;
15. Underline the need for taking effective international measures in order to guarantee and monitor the implementation of human rights standards and effective and legal protection of people under foreign occupation;
16. Strongly affirm their support for the legitimate struggle of the Palestinian people to restore their national and inalienable rights to self-determination and independence, and demand an immediate end to the grave violations of human rights in the Palestinian, Syrian Golan and other occupied Arab territories including Jerusalem;
17. Reaffirm the right to development, as established in the Declaration on the Right to Development, as a universal and inalienable right and an integral part of fundamental human rights, which must be realized through international cooperation, respect for fundamental human rights, the establishment of

Universal human rights in Malaysia

a monitoring mechanism and the creation of essential international conditions for the realization of such right;

18. Recognize that the main obstacles to the realization of the right to development lie at the international macroeconomic level, as reflected in the widening gap between the North and the South, the rich and the poor;

19. Affirm that poverty is one of the major obstacles hindering the full enjoyment of human rights;

20. Affirm also the need to develop the right of humankind regarding a clean, safe and healthy environment;

21. Note that terrorism, in all its forms and manifestations, as distinguished from the legitimate struggle of peoples under colonial or alien domination and foreign occupation, has emerged as one of the most dangerous threats to the enjoyment of human rights and democracy, threatening the territorial integrity and security of States and destabilizing legitimately constituted governments, and that it must be unequivocally condemned by the international community;

22. Reaffirm their strong commitment to the promotion and protection of the rights of women through the guarantee of equal participation in the political, social, economic and cultural concerns of society, and the eradication of all forms of discrimination and of gender-based violence against women;

23. Recognize the rights of the child to enjoy special protection and to be afforded the opportunities and facilities to develop physically, mentally, morally, spiritually and socially in a healthy and normal manner and in conditions of freedom and dignity;

24. Welcome the important role played by national institutions in the genuine and constructive promotion of human rights, and believe that the conceptualization and eventual establishment of such institutions are best left for the States to decide;

25. Acknowledge the importance of cooperation and dialogue between governments and non-governmental organizations on the basis of shared values as well as mutual respect and understanding in the promotion of human rights, and encourage the non-governmental organizations in consultative status with the Economic and Social Council to contribute positively to this process in accordance with Council resolution 1296 (XLIV);

26. Reiterate the need to explore the possibilities of establishing regional arrangements for the promotion and protection of human rights in Asia;

27. Reiterate further the need to explore ways to generate international cooperation and financial support for education and training in the field of human rights at the national level and for the establishment of national infrastructures to promote and protect human rights if requested by States;

28. Emphasize the necessity to rationalize the United Nations human rights mechanism in order to enhance its effectiveness and efficiency and the need to ensure avoidance of the duplication of work

Universal human rights in Malaysia

that exists between the treaty bodies, the Sub-Commission on Prevention of Discrimination and Protection of Minorities and the Commission on Human Rights, as well as the need to avoid the multiplicity of parallel mechanisms;

29. Stress the importance of strengthening the United Nations Centre for Human Rights with the necessary resources to enable it to provide a wide range of advisory services and technical assistance programmes in the promotion of human rights to requesting States in a timely and effective manner, as well as to enable it to finance adequately other activities in the field of human rights authorized by competent bodies;

30. Call for increased representation of the developing countries in the Centre for Human Rights.

Universal human rights in Malaysia

Appendix 7

[http://www.unhchr.ch/huridocda/huridoca.nsf/\(symbol\)/a.conf.157.23.en](http://www.unhchr.ch/huridocda/huridoca.nsf/(symbol)/a.conf.157.23.en)

WORLD CONFERENCE ON HUMAN RIGHTS

Vienna, 14-25 June 1993

VIENNA DECLARATION AND PROGRAMME OF ACTION

The World Conference on Human Rights,

Considering that the promotion and protection of human rights is a matter of priority for the international community, and that the Conference affords a unique opportunity to carry out a comprehensive analysis of the international human rights system and of the machinery for the protection of human rights, in order to enhance and thus promote a fuller observance of those rights, in a just and balanced manner,

Recognizing and affirming that all human rights derive from the dignity and worth inherent in the human person, and that the human person is the central subject of human rights and fundamental freedoms, and consequently should be the principal beneficiary and should participate actively in the realization of these rights and freedoms,

Reaffirming their commitment to the purposes and principles contained in the Charter of the United Nations and the Universal Declaration of Human Rights,

Reaffirming the commitment contained in Article 56 of the Charter of the United Nations to take joint and separate action, placing proper emphasis on developing effective international cooperation for the realization of the purposes set out in Article 55, including universal respect for, and observance of, human rights and fundamental freedoms for all,

Emphasizing the responsibilities of all States, in conformity with the Charter of the United Nations, to develop and encourage respect for human rights and fundamental freedoms for all, without distinction as to race, sex, language or religion,

Recalling the Preamble to the Charter of the United Nations, in particular the determination to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, and in the equal rights of men and women and of nations large and small,

Recalling also the determination expressed in the Preamble of the Charter of the United Nations to save succeeding generations from the scourge of war, to establish conditions under which justice and respect for obligations arising from treaties and other sources of international law can be maintained, to promote social progress and better standards of life in larger freedom, to practice tolerance and good neighbourliness, and to employ international machinery for the promotion of the economic and social advancement of all peoples,

Emphasizing that the Universal Declaration of Human Rights, which constitutes a common standard of achievement for all peoples and all nations, is the source of inspiration and has been the basis for the

Universal human rights in Malaysia

United Nations in making advances in standard setting as contained in the existing international human rights instruments, in particular the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

Considering the major changes taking place on the international scene and the aspirations of all the peoples for an international order based on the principles enshrined in the Charter of the United Nations, including promoting and encouraging respect for human rights and fundamental freedoms for all and respect for the principle of equal rights and self-determination of peoples, peace, democracy, justice, equality, rule of law, pluralism, development, better standards of living and solidarity,

Deeply concerned by various forms of discrimination and violence, to which women continue to be exposed all over the world,

Recognizing that the activities of the United Nations in the field of human rights should be rationalized and enhanced in order to strengthen the United Nations machinery in this field and to further the objectives of universal respect for observance of international human rights standards,

Having taken into account the Declarations adopted by the three regional meetings at Tunis, San José and Bangkok and the contributions made by Governments, and bearing in mind the suggestions made by intergovernmental and non-governmental organizations, as well as the studies prepared by independent experts during the preparatory process leading to the World Conference on Human Rights,

Welcoming the International Year of the World's Indigenous People 1993 as a reaffirmation of the commitment of the international community to ensure their enjoyment of all human rights and fundamental freedoms and to respect the value and diversity of their cultures and identities,

Recognizing also that the international community should devise ways and means to remove the current obstacles and meet challenges to the full realization of all human rights and to prevent the continuation of human rights violations resulting thereof throughout the world,

Invoking the spirit of our age and the realities of our time which call upon the peoples of the world and all States Members of the United Nations to rededicate themselves to the global task of promoting and protecting all human rights and fundamental freedoms so as to secure full and universal enjoyment of these rights,

Determined to take new steps forward in the commitment of the international community with a view to achieving substantial progress in human rights endeavours by an increased and sustained effort of international cooperation and solidarity,

Solemnly adopts the Vienna Declaration and Programme of Action.

1. The World Conference on Human Rights reaffirms the solemn commitment of all States to fulfil their obligations to promote universal respect for, and observance and protection of, all human rights and fundamental freedoms for all in accordance with the Charter of the United Nations, other instruments relating to human rights, and international law. The universal nature of these rights and freedoms is beyond question.

Universal human rights in Malaysia

In this framework, enhancement of international cooperation in the field of human rights is essential for the full achievement of the purposes of the United Nations.

Human rights and fundamental freedoms are the birthright of all human beings; their protection and promotion is the first responsibility of Governments.

2. All peoples have the right of self-determination. By virtue of that right they freely determine their political status, and freely pursue their economic, social and cultural development.

Taking into account the particular situation of peoples under colonial or other forms of alien domination or foreign occupation, the World Conference on Human Rights recognizes the right of peoples to take any legitimate action, in accordance with the Charter of the United Nations, to realize their inalienable right of self-determination. The World Conference on Human Rights considers the denial of the right of self-determination as a violation of human rights and underlines the importance of the effective realization of this right.

In accordance with the Declaration on Principles of International Law concerning Friendly Relations and Cooperation Among States in accordance with the Charter of the United Nations, this shall not be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the principle of equal rights and self-determination of peoples and thus possessed of a Government representing the whole people belonging to the territory without distinction of any kind.

3. Effective international measures to guarantee and monitor the implementation of human rights standards should be taken in respect of people under foreign occupation, and effective legal protection against the violation of their human rights should be provided, in accordance with human rights norms and international law, particularly the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 14 August 1949, and other applicable norms of humanitarian law.

4. The promotion and protection of all human rights and fundamental freedoms must be considered as a priority objective of the United Nations in accordance with its purposes and principles, in particular the purpose of international cooperation. In the framework of these purposes and principles, the promotion and protection of all human rights is a legitimate concern of the international community. The organs and specialized agencies related to human rights should therefore further enhance the coordination of their activities based on the consistent and objective application of international human rights instruments.

5. 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.

6. The efforts of the United Nations system towards the universal respect for, and observance of, human rights and fundamental freedoms for all, contribute to the stability and well-being necessary for

Universal human rights in Malaysia

peaceful and friendly relations among nations, and to improved conditions for peace and security as well as social and economic development, in conformity with the Charter of the United Nations.

7. The processes of promoting and protecting human rights should be conducted in conformity with the purposes and principles of the Charter of the United Nations, and international law.

8. Democracy, development and respect for human rights and fundamental freedoms are interdependent and mutually reinforcing. Democracy is based on the freely expressed will of the people to determine their own political, economic, social and cultural systems and their full participation in all aspects of their lives. In the context of the above, the promotion and protection of human rights and fundamental freedoms at the national and international levels should be universal and conducted without conditions attached. The international community should support the strengthening and promoting of democracy, development and respect for human rights and fundamental freedoms in the entire world.

9. The World Conference on Human Rights reaffirms that least developed countries committed to the process of democratization and economic reforms, many of which are in Africa, should be supported by the international community in order to succeed in their transition to democracy and economic development.

10. The World Conference on Human Rights reaffirms the right to development, as established in the Declaration on the Right to Development, as a universal and inalienable right and an integral part of fundamental human rights.

As stated in the Declaration on the Right to Development, the human person is the central subject of development.

While development facilitates the enjoyment of all human rights, the lack of development may not be invoked to justify the abridgement of internationally recognized human rights.

States should cooperate with each other in ensuring development and eliminating obstacles to development. The international community should promote an effective international cooperation for the realization of the right to development and the elimination of obstacles to development.

Lasting progress towards the implementation of the right to development requires effective development policies at the national level, as well as equitable economic relations and a favourable economic environment at the international level.

11. The right to development should be fulfilled so as to meet equitably the developmental and environmental needs of present and future generations. The World Conference on Human Rights recognizes that illicit dumping of toxic and dangerous substances and waste potentially constitutes a serious threat to the human rights to life and health of everyone.

Consequently, the World Conference on Human Rights calls on all States to adopt and vigorously implement existing conventions relating to the dumping of toxic and dangerous products and waste and to cooperate in the prevention of illicit dumping.

Universal human rights in Malaysia

Everyone has the right to enjoy the benefits of scientific progress and its applications. The World Conference on Human Rights notes that certain advances, notably in the biomedical and life sciences as well as in information technology, may have potentially adverse consequences for the integrity, dignity and human rights of the individual, and calls for international cooperation to ensure that human rights and dignity are fully respected in this area of universal concern.

12. The World Conference on Human Rights calls upon the international community to make all efforts to help alleviate the external debt burden of developing countries, in order to supplement the efforts of the Governments of such countries to attain the full realization of the economic, social and cultural rights of their people.

13. There is a need for States and international organizations, in cooperation with non-governmental organizations, to create favourable conditions at the national, regional and international levels to ensure the full and effective enjoyment of human rights. States should eliminate all violations of human rights and their causes, as well as obstacles to the enjoyment of these rights.

14. The existence of widespread extreme poverty inhibits the full and effective enjoyment of human rights; its immediate alleviation and eventual elimination must remain a high priority for the international community.

15. Respect for human rights and for fundamental freedoms without distinction of any kind is a fundamental rule of international human rights law. The speedy and comprehensive elimination of all forms of racism and racial discrimination, xenophobia and related intolerance is a priority task for the international community. Governments should take effective measures to prevent and combat them. Groups, institutions, intergovernmental and non-governmental organizations and individuals are urged to intensify their efforts in cooperating and coordinating their activities against these evils.

16. The World Conference on Human Rights welcomes the progress made in dismantling apartheid and calls upon the international community and the United Nations system to assist in this process.

The World Conference on Human Rights also deplores the continuing acts of violence aimed at undermining the quest for a peaceful dismantling of apartheid.

17. The acts, methods and practices of terrorism in all its forms and manifestations as well as linkage in some countries to drug trafficking are activities aimed at the destruction of human rights, fundamental freedoms and democracy, threatening territorial integrity, security of States and destabilizing legitimately constituted Governments. The international community should take the necessary steps to enhance cooperation to prevent and combat terrorism.

18. The human rights of women and of the girl-child are an inalienable, integral and indivisible part of universal human rights. The full and equal participation of women in political, civil, economic, social and cultural life, at the national, regional and international levels, and the eradication of all forms of discrimination on grounds of sex are priority objectives of the international community.

Universal human rights in Malaysia

Gender-based violence and all forms of sexual harassment and exploitation, including those resulting from cultural prejudice and international trafficking, are incompatible with the dignity and worth of the human person, and must be eliminated. This can be achieved by legal measures and through national action and international cooperation in such fields as economic and social development, education, safe maternity and health care, and social support.

The human rights of women should form an integral part of the United Nations human rights activities, including the promotion of all human rights instruments relating to women.

The World Conference on Human Rights urges Governments, institutions, intergovernmental and non-governmental organizations to intensify their efforts for the protection and promotion of human rights of women and the girl-child.

19. Considering the importance of the promotion and protection of the rights of persons belonging to minorities and the contribution of such promotion and protection to the political and social stability of the States in which such persons live,

The World Conference on Human Rights reaffirms the obligation of States to ensure that persons belonging to minorities may exercise fully and effectively all human rights and fundamental freedoms without any discrimination and in full equality before the law in accordance with the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities.

The persons belonging to minorities have the right to enjoy their own culture, to profess and practise their own religion and to use their own language in private and in public, freely and without interference or any form of discrimination.

20. The World Conference on Human Rights recognizes the inherent dignity and the unique contribution of indigenous people to the development and plurality of society and strongly reaffirms the commitment of the international community to their economic, social and cultural well-being and their enjoyment of the fruits of sustainable development. States should ensure the full and free participation of indigenous people in all aspects of society, in particular in matters of concern to them. Considering the importance of the promotion and protection of the rights of indigenous people, and the contribution of such promotion and protection to the political and social stability of the States in which such people live, States should, in accordance with international law, take concerted positive steps to ensure respect for all human rights and fundamental freedoms of indigenous people, on the basis of equality and non-discrimination, and recognize the value and diversity of their distinct identities, cultures and social organization.

21. The World Conference on Human Rights, welcoming the early ratification of the Convention on the Rights of the Child by a large number of States and noting the recognition of the human rights of children in the World Declaration on the Survival, Protection and Development of Children and Plan of Action adopted by the World Summit for Children, urges universal ratification of the Convention by 1995 and its effective implementation by States parties through the adoption of all the necessary legislative, administrative and other measures and the allocation to the maximum extent of the available resources. In all actions concerning children, non-discrimination and the best interest of the child should be

Universal human rights in Malaysia

primary considerations and the views of the child given due weight. National and international mechanisms and programmes should be strengthened for the defence and protection of children, in particular, the girl-child, abandoned children, street children, economically and sexually exploited children, including through child pornography, child prostitution or sale of organs, children victims of diseases including acquired immunodeficiency syndrome, refugee and displaced children, children in detention, children in armed conflict, as well as children victims of famine and drought and other emergencies. International cooperation and solidarity should be promoted to support the implementation of the Convention and the rights of the child should be a priority in the United Nations system-wide action on human rights.

The World Conference on Human Rights also stresses that the child for the full and harmonious development of his or her personality should grow up in a family environment which accordingly merits broader protection.

22. Special attention needs to be paid to ensuring non-discrimination, and the equal enjoyment of all human rights and fundamental freedoms by disabled persons, including their active participation in all aspects of society.

23. The World Conference on Human Rights reaffirms that everyone, without distinction of any kind, is entitled to the right to seek and to enjoy in other countries asylum from persecution, as well as the right to return to one's own country. In this respect it stresses the importance of the Universal Declaration of Human Rights, the 1951 Convention relating to the Status of Refugees, its 1967 Protocol and regional instruments. It expresses its appreciation to States that continue to admit and host large numbers of refugees in their territories, and to the Office of the United Nations High Commissioner for Refugees for its dedication to its task. It also expresses its appreciation to the United Nations Relief and Works Agency for Palestine Refugees in the Near East.

The World Conference on Human Rights recognizes that gross violations of human rights, including in armed conflicts, are among the multiple and complex factors leading to displacement of people.

The World Conference on Human Rights recognizes that, in view of the complexities of the global refugee crisis and in accordance with the Charter of the United Nations, relevant international instruments and international solidarity and in the spirit of burden-sharing, a comprehensive approach by the international community is needed in coordination and cooperation with the countries concerned and relevant organizations, bearing in mind the mandate of the United Nations High Commissioner for Refugees. This should include the development of strategies to address the root causes and effects of movements of refugees and other displaced persons, the strengthening of emergency preparedness and response mechanisms, the provision of effective protection and assistance, bearing in mind the special needs of women and children, as well as the achievement of durable solutions, primarily through the preferred solution of dignified and safe voluntary repatriation, including solutions such as those adopted by the international refugee conferences. The World Conference on Human Rights underlines the responsibilities of States, particularly as they relate to the countries of origin.

In the light of the comprehensive approach, the World Conference on Human Rights emphasizes the importance of giving special attention including through intergovernmental and humanitarian

Universal human rights in Malaysia

organizations and finding lasting solutions to questions related to internally displaced persons including their voluntary and safe return and rehabilitation.

In accordance with the Charter of the United Nations and the principles of humanitarian law, the World Conference on Human Rights further emphasizes the importance of and the need for humanitarian assistance to victims of all natural and man-made disasters.

24. Great importance must be given to the promotion and protection of the human rights of persons belonging to groups which have been rendered vulnerable, including migrant workers, the elimination of all forms of discrimination against them, and the strengthening and more effective implementation of existing human rights instruments. States have an obligation to create and maintain adequate measures at the national level, in particular in the fields of education, health and social support, for the promotion and protection of the rights of persons in vulnerable sectors of their populations and to ensure the participation of those among them who are interested in finding a solution to their own problems.

25. The World Conference on Human Rights affirms that extreme poverty and social exclusion constitute a violation of human dignity and that urgent steps are necessary to achieve better knowledge of extreme poverty and its causes, including those related to the problem of development, in order to promote the human rights of the poorest, and to put an end to extreme poverty and social exclusion and to promote the enjoyment of the fruits of social progress. It is essential for States to foster participation by the poorest people in the decision-making process by the community in which they live, the promotion of human rights and efforts to combat extreme poverty.

26. The World Conference on Human Rights welcomes the progress made in the codification of human rights instruments, which is a dynamic and evolving process, and urges the universal ratification of human rights treaties. All States are encouraged to accede to these international instruments; all States are encouraged to avoid, as far as possible, the resort to reservations.

27. Every State should provide an effective framework of remedies to redress human rights grievances or violations. The administration of justice, including law enforcement and prosecutorial agencies and, especially, an independent judiciary and legal profession in full conformity with applicable standards contained in international human rights instruments, are essential to the full and non-discriminatory realization of human rights and indispensable to the processes of democracy and sustainable development. In this context, institutions concerned with the administration of justice should be properly funded, and an increased level of both technical and financial assistance should be provided by the international community. It is incumbent upon the United Nations to make use of special programmes of advisory services on a priority basis for the achievement of a strong and independent administration of justice.

28. The World Conference on Human Rights expresses its dismay at massive violations of human rights especially in the form of genocide, "ethnic cleansing" and systematic rape of women in war situations, creating mass exodus of refugees and displaced persons. While strongly condemning such abhorrent practices it reiterates the call that perpetrators of such crimes be punished and such practices immediately stopped.

29. The World Conference on Human Rights expresses grave concern about continuing human rights

Universal human rights in Malaysia

violations in all parts of the world in disregard of standards as contained in international human rights instruments and international humanitarian law and about the lack of sufficient and effective remedies for the victims.

The World Conference on Human Rights is deeply concerned about violations of human rights during armed conflicts, affecting the civilian population, especially women, children, the elderly and the disabled. The Conference therefore calls upon States and all parties to armed conflicts strictly to observe international humanitarian law, as set forth in the Geneva Conventions of 1949 and other rules and principles of international law, as well as minimum standards for protection of human rights, as laid down in international conventions.

The World Conference on Human Rights reaffirms the right of the victims to be assisted by humanitarian organizations, as set forth in the Geneva Conventions of 1949 and other relevant instruments of international humanitarian law, and calls for the safe and timely access for such assistance.

30. The World Conference on Human Rights also expresses its dismay and condemnation that gross and systematic violations and situations that constitute serious obstacles to the full enjoyment of all human rights continue to occur in different parts of the world. Such violations and obstacles include, as well as torture and cruel, inhuman and degrading treatment or punishment, summary and arbitrary executions, disappearances, arbitrary detentions, all forms of racism, racial discrimination and apartheid, foreign occupation and alien domination, xenophobia, poverty, hunger and other denials of economic, social and cultural rights, religious intolerance, terrorism, discrimination against women and lack of the rule of law.

31. The World Conference on Human Rights calls upon States to refrain from any unilateral measure not in accordance with international law and the Charter of the United Nations that creates obstacles to trade relations among States and impedes the full realization of the human rights set forth in the Universal Declaration of Human Rights and international human rights instruments, in particular the rights of everyone to a standard of living adequate for their health and well-being, including food and medical care, housing and the necessary social services. The World Conference on Human Rights affirms that food should not be used as a tool for political pressure.

32. The World Conference on Human Rights reaffirms the importance of ensuring the universality, objectivity and non-selectivity of the consideration of human rights issues.

33. The World Conference on Human Rights reaffirms that States are duty-bound, as stipulated in the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights and in other international human rights instruments, to ensure that education is aimed at strengthening the respect of human rights and fundamental freedoms. The World Conference on Human Rights emphasizes the importance of incorporating the subject of human rights education programmes and calls upon States to do so. Education should promote understanding, tolerance, peace and friendly relations between the nations and all racial or religious groups and encourage the development of United Nations activities in pursuance of these objectives. Therefore, education on human rights and the dissemination of proper information, both theoretical and practical, play an important role in the promotion and respect of human rights with regard to all individuals without distinction of any kind such as race, sex, language or religion, and this should be integrated in the

Universal human rights in Malaysia

education policies at the national as well as international levels. The World Conference on Human Rights notes that resource constraints and institutional inadequacies may impede the immediate realization of these objectives.

34. Increased efforts should be made to assist countries which so request to create the conditions whereby each individual can enjoy universal human rights and fundamental freedoms. Governments, the United Nations system as well as other multilateral organizations are urged to increase considerably the resources allocated to programmes aiming at the establishment and strengthening of national legislation, national institutions and related infrastructures which uphold the rule of law and democracy, electoral assistance, human rights awareness through training, teaching and education, popular participation and civil society.

The programmes of advisory services and technical cooperation under the Centre for Human Rights should be strengthened as well as made more efficient and transparent and thus become a major contribution to improving respect for human rights. States are called upon to increase their contributions to these programmes, both through promoting a larger allocation from the United Nations regular budget, and through voluntary contributions.

35. The full and effective implementation of United Nations activities to promote and protect human rights must reflect the high importance accorded to human rights by the Charter of the United Nations and the demands of the United Nations human rights activities, as mandated by Member States. To this end, United Nations human rights activities should be provided with increased resources.

36. The World Conference on Human Rights reaffirms the important and constructive role played by national institutions for the promotion and protection of human rights, in particular in their advisory capacity to the competent authorities, their role in remedying human rights violations, in the dissemination of human rights information, and education in human rights.

The World Conference on Human Rights encourages the establishment and strengthening of national institutions, having regard to the "Principles relating to the status of national institutions" and recognizing that it is the right of each State to choose the framework which is best suited to its particular needs at the national level.

37. Regional arrangements play a fundamental role in promoting and protecting human rights. They should reinforce universal human rights standards, as contained in international human rights instruments, and their protection. The World Conference on Human Rights endorses efforts under way to strengthen these arrangements and to increase their effectiveness, while at the same time stressing the importance of cooperation with the United Nations human rights activities.

The World Conference on Human Rights reiterates the need to consider the possibility of establishing regional and subregional arrangements for the promotion and protection of human rights where they do not already exist.

38. The World Conference on Human Rights recognizes the important role of non-governmental organizations in the promotion of all human rights and in humanitarian activities at national, regional and international levels. The World Conference on Human Rights appreciates their contribution to

Universal human rights in Malaysia

increasing public awareness of human rights issues, to the conduct of education, training and research in this field, and to the promotion and protection of all human rights and fundamental freedoms. While recognizing that the primary responsibility for standard-setting lies with States, the conference also appreciates the contribution of non-governmental organizations to this process. In this respect, the World Conference on Human Rights emphasizes the importance of continued dialogue and cooperation between Governments and non-governmental organizations. Non-governmental organizations and their members genuinely involved in the field of human rights should enjoy the rights and freedoms recognized in the Universal Declaration of Human Rights, and the protection of the national law. These rights and freedoms may not be exercised contrary to the purposes and principles of the United Nations. Non-governmental organizations should be free to carry out their human rights activities, without interference, within the framework of national law and the Universal Declaration of Human Rights.

39. Underlining the importance of objective, responsible and impartial information about human rights and humanitarian issues, the World Conference on Human Rights encourages the increased involvement of the media, for whom freedom and protection should be guaranteed within the framework of national law.

Extract from specific Action Programmes

3. The equal status and human rights of women

39. The World Conference on Human Rights urges the eradication of all forms of discrimination against women, both hidden and overt. The United Nations should encourage the goal of universal ratification by all States of the Convention on the Elimination of All Forms of Discrimination against Women by the year 2000. Ways and means of addressing the particularly large number of reservations to the Convention should be encouraged. Inter alia, the Committee on the Elimination of Discrimination against Women should continue its review of reservations to the Convention. States are urged to withdraw reservations that are contrary to the object and purpose of the Convention or which are otherwise incompatible with international treaty law.

4. The rights of the child

46. Measures should be taken to achieve universal ratification of the Convention on the Rights of the Child by 1995 and the universal signing of the World Declaration on the Survival, Protection and Development of Children and Plan of Action adopted by the World Summit for Children, as well as their effective implementation. The World Conference on Human Rights urges States to withdraw reservations to the Convention on the Rights of the Child contrary to the object and purpose of the Convention or otherwise contrary to international treaty law.

Universal human rights in Malaysia

Appendix 8

Below is an extract from a periodic report that Malaysia submitted to the Office of the High Commissioner for Human Rights in 2004 as a ratifying country of CEDAW, and according to Malaysia their own state structure can be characterized as (UNHCR):

[http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/CEDAW.C.MYS.1-2.En?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CEDAW.C.MYS.1-2.En?Opendocument)

Frameworks and System of Government

The Federal Constitution of Malaysia is both the basic and supreme law of Malaysia. It provides, for, among others, the following basic features of the nation:

- (i) The establishment of Malaysia as a Federation comprising 13 states and three federal territories (Kuala Lumpur, Labuan and Putrajaya);
- (ii) The division of powers between the Federal and the State authorities;
- (iii) A constitutional monarchy; and
- (iv) A Westminster type of parliamentary government which provides for the separation of power as follows:
 - a) Legislative authority, the power to make law vested in Parliament (Part IV, Chapter 4 of the Federal Constitution);
 - b) Executive authority, the power to govern which is vested in the *Yang di-Pertuan Agong* (the Supreme Head of the Federation) and exercisable, subject to the Federal Constitution; and
 - c) Judicial power which is vested in the judiciary (Article 121 of the Federal Constitution).
- (v) Islam as the official religion of the Federation with freedom to practise other religions is guaranteed under Article 3 (1) of the Federal Constitution.

Federal legislative authority

Article 44 of the Federal Constitution states that the legislative authority of the Federation “shall be vested in a Parliament.” The Parliament, which is elected for a maximum period of five years, comprises the *Yang di-Pertuan Agong*, the *Dewan Negara* (Senate) and the *Dewan Rakyat* (House of Representatives). Members of the *Dewan Rakyat* are elected by the people while the members of *Dewan Negara* are appointed by the *Yang di-Pertuan Agong*.

Executive authority

The executive authority of the Federation is vested in the *Yang di-Pertuan Agong*, exercisable by His Majesty or by the Cabinet or any Minister authorized by the Cabinet, subject to the provisions of the Federal Constitution.

The Prime Minister is appointed from the members of the *Dewan Rakyat*, who commands the confidence of the majority of the members of that House. The other Cabinet members and also the Deputy Ministers are appointed by the *Yang di-Pertuan Agong* on the advice of the Prime Minister.

Appendix 9

The Malaysian Constitution

<http://www.malaysia.gov.my/en/main/msiangov/govconstitution/pages/constitution.aspx>

The federal Constitution of Malaysia is the supreme law of the nation that distributes the power of governance in accordance with the practice of Parliamentary Democracy. The Constitution may be amended by a two-third majority in Parliament.

Official link to the Malaysian Constitution:

<http://www.malaysia.gov.my/en/relevant%20topics/society%20and%20life/citizen/legalmatters/constitution/pages/constitutionlegal.aspx>

Unfortunately this official link does not redirect, see instead:

<http://confinder.richmond.edu/admin/docs/malaysia.pdf>

Article 10 of the Malaysian Constitution:

10: Freedom of speech, assembly, and association

Clause 1: Subject to Clauses (2), (3) and (4) -

- (a) every citizen has the right to freedom of speech and expression;
- (b) all citizens have the right to assemble peacefully and without arms;
- (c) all citizens have the right to form associations

Clause 2: Parliament may by law impose:

- (a) on the rights conferred by paragraph (a) of Clause (1), such restrictions as it deems necessary or expedient in the interest of the security of the Federation or any part thereof, friendly relations with other countries, public order or morality and restrictions designed to protect the privileges of Parliament or any Legislative Assembly or to provide against contempt of court, defamation, or incitement to any offence;
- (b) on the right conferred by paragraph (b) of Clause (1), such restrictions as it deems necessary or expedient in the interest of the security of the Federation or any part thereof or public order;
- (c) on the right conferred by paragraph (c) of Clause (1), such restrictions as it deems necessary or expedient in the interest of the security of the Federation or any part thereof, public order or morality.

Universal human rights in Malaysia

Clause 3: Restrictions on the right to form associations conferred by paragraph (c) of Clause (1) may also be imposed by any law relating to labour or education.

Clause 4: In imposing restrictions in the interest of the security of the Federation or any part thereof or public order under Clause (2) (a), Parliament may pass law prohibiting the questioning of any matter, right, status, position, privilege, sovereignty or prerogative established or protected by the provisions of Part III, article 152, 153 or 181 otherwise than in relation to the implementation thereof as may be specified in such law.

Appendix 10

Malaysian reservations to CEDAW

http://www.bayefsky.com/html/malaysia_t2_cedaw.php

RESERVATIONS AND DECLARATIONS

(Unless otherwise indicated, the reservations and declarations were made upon ratification, accession or succession)

Reservations:

The Government of Malaysia declares that Malaysia's accession is subject to the understanding that the provisions of the Convention do not conflict with the provisions of the Islamic Sharia' law and the Federal Constitution of Malaysia. With regards thereto, further, the Government of Malaysia does not consider itself bound by the provisions of articles ... 9(2), 16(1)(a), 16(1)(f) and 16(1)(g) of the aforesaid Convention.

In relation to article 11, Malaysia interprets the provisions of this article as a reference to the prohibition of discrimination on the basis of equality between men and women only.

Note

On 6 February 1998, the Government of Malaysia notified the Secretary-General of a partial withdrawal as follows:

“The Government of Malaysia withdraws its reservation in respect of article 2(f), 9(1), 16(b), 16(d), 16(e) and 16(h).”

The same date, the Government of Malaysia notified the Secretary-General that it had decided to modify its reservation made upon accession as follows:

With respect to article 5 (a) of the Convention, the Government of Malaysia declares that the provision is subject to the Syariah law on the division of inherited property.

With respect to article 7 (b) of the Convention, the Government of Malaysia declares that the application of said article 7 (b) shall not affect appointment to certain public offices like the Mufti Shariah Court Judges, and the Imam which is in accordance with the provisions of the Islamic Shariah law.

Universal human rights in Malaysia

With respect to article 9, paragraph 2 of the Convention, the Government of Malaysia declares that its reservation will be reviewed if the Government amends the relevant law.

With respect to article 16.1 (a) and paragraph 2, the Government of Malaysia declares that under the Shariah law and the laws of Malaysia the age limit for marriage for women is sixteen and men is eighteen."

In keeping with the depositary practice followed in similar cases, the Secretary-General proposed to receive the modification in question for deposit in the absence of any objection on the part of any of the Contracting States, either to the deposit itself or to the procedure envisaged, within a period of 90 days from the date of its notification (21 April 1998), that is to say, on 20 July 1998.

Malaysian reservations to CRC

http://www.bayefsky.com/html/malaysia_t2_crc.php

CRC

RESERVATIONS AND DECLARATIONS

(Unless otherwise indicated, the reservations and declarations were made upon ratification, accession or succession)

Reservation:

"The Government of Malaysia accepts the provisions of the Convention on the Rights of the Child but expresses reservations with respect to articles 1, 2, 7, 13, 14, 15, [...], 28, [paragraph 1 (a)] 37, [...] of the Convention and declares that the said provisions shall be applicable only if they are in conformity with the Constitution, national laws and national policies of the Government of Malaysia."

19 July 2010

Declaration:

"With respect to article 28 paragraph 1 (a) of the Convention, the Government of Malaysia wishes to declare that with the amendment to the Education Act 1996 in the year 2002, primary education in Malaysia is made compulsory. In addition, the Government of Malaysia provides monetary aids and other forms of assistance to those who are eligible."

Note

Universal human rights in Malaysia

Subsequently, the Government of Malaysia informed the Secretary-General that it had decided to withdraw its reservation to articles 22, 28 paragraph 1 (b), (c), (d), (e) and paragraphs 2 and 3, article 40 paragraph 3 and 4, articles 44 and 45" made upon accession. It should be noted that, the Secretary-General had received from the following States, communications in regard to the reservations made by the Government of Malaysia upon accession, on the dates indicated hereinafter: