

MISPLACED DEMOCRACY

Malaysian Politics and People

SOPHIE LEMIÈRE
(ed)

Cartoons by


patriot

Misplaced Democracy

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Misplaced Democracy

Malaysian Politics and People

Edited by
Sophie Lemière



Strategic Information and Research Development Centre
Malaysia

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Foreword

Where Malaysia Stands Today: A Personal Introduction to a Timely Collection of Essays

Malaysia's first post-independence political framework or dispensation, born with Merdeka in 1957, came abruptly to a violent end in 1969.

In the wake of its collapse, a second post-independence framework was created, and with it a twenty-year pro-Malay affirmative action plan known as the New Economic Policy (NEP).

The NEP was to be implemented by a strong, or greatly strengthened, state, and one that was now to be considered 'Malay-centric' in cultural terms. That agenda, with its enabling new political architecture that now became Malaysia's second post-independence political framework, was, by publicly declared intention, to last from 1970 to 1990.

But by the mid-1980s, and as hopes for rapid Malay advancement were blunted by Malaysian experience of a worldwide economic slowdown, people began to ask, 'After 1990, what?' and 'After NEP, what?' – and especially if, as was beginning to seem likely, the major NEP objectives would not be realised by 1990.

That is when, to meet this ominous anticipation, a creative new doctrine and strategy were developed.

Ketuanan Melayu: An Idea for Its Moment, a Response to a Problem

In a major address in Singapore in 1986, the UMNO's great political 'ideas man' Abdullah Ahmad launched the notion of *ketuanan Melayu* (Malay political ascendancy).

This was now a doctrine of explicit Malay political primacy and domination, one that went well beyond the NEP-era notion of simply the centrality of Malay culture to Malaysian national culture.

That was one-half of the new approach.

The other, and craftier, part was to assert that this notion of Malay

ascendancy or domination was, and had been since 1957, part of the nation's foundational 'social contract': that it had been an explicit or inherent part of the Merdeka agreements that had duly become embedded within the Federal Constitution itself.

Radically revisionist, historically unfounded and even heretical when Abdullah Ahmad announced it, this idea was in following years powerfully promoted, and with insistent determination.

As, in those ensuing years, that revisionist view was repeatedly reasserted, it became a kind of received truth. Nobody seemed to remember any more that things had ever been different, and that people had generally understood them differently.

In great numbers, people who had never before heard of the idea, who were totally innocent of any familiarity with the intellectual traditions of modern political philosophy, and who had never heard of Locke or Hobbes now pronounced upon the notion of a 'social contract' and upon (as they now saw it) the ancient sanctity of Malaysia's.

Such people would now be surprised to learn, if they would only listen, that the idea of a 'Malayan social contract' was no explicit or recognised part of the discussions leading to Merdeka in 1957; that it is merely a retrospective 'construct', an idea that was later fashioned, with a partisan political purpose, and then imputed, or 'read back', by its inventors into the Federal Constitution – or their revisionist ideas of its provisions and meaning.

Yet the idea that everybody in the weeks and months leading to August 1957 had explicitly and solemnly assented to this doctrine of Malay ascendancy in perpetuity as the nation's defining principle, and that in doing so they had bound and committed their descendants for all time to that form of 'ethnocracy' or ethnic overlordship, has now taken on the status of a cardinal truth, unquestioned and unquestionable.

But, later implanted there by Abdullah Ahmad and his followers, the subsequently confected idea of *ketuanan Melayu* had been no part of the Merdeka process.

The Merdeka Moment and Its Constitution

The Federal Constitution embodying the inter-communal understandings that were reached prior to independence, and as a condition of its declaration, had been something else.

Those who designed and negotiated its terms, and the entire 'Merdeka generation', were agreed that the Federal Constitution rested upon a basic

assumption: that the country was launched on an evolutionary course towards becoming a largely secular, modern and democratic nation, and that the Constitution was to provide the foundation for its emergence. The Constitution, people then understood, was intended to serve the nation as its primary instrument to facilitate the growth of such a nation and to encourage its consolidation.

It had been understood and was widely recognised at the time as the constitution of and for a progressive, modernising, secular, social democratic nation-in-the-making: a nation based not simply upon the official coordination from above of great ethnic political 'blocs' but upon incrementally advancing inter-communal cultural conciliation and political convergence, from the ground level upwards, in the lives of all of its people.

As a modern nation, it was to be one whose foundations rested upon popular democratic sovereignty, the sovereignty of the people: of all of its people, the joint and shared sovereignty of all of its citizens. A nation that would be held together by means of a shared national custodianship that was to be together held in common trust by all of its socially and culturally diverse citizen-stakeholders.

Overcoming the Merdeka Moment

But during the 1990s and especially in the following decade, Abdullah Ahmad's – and soon UMNO's – new doctrine of Malay ascendancy evolved quickly: from its origins as an ingenious if historically perverse contrivance or imaginative fabrication, to a powerfully promoted partisan or 'ethno-sectarian' political 'myth' or charter of political legitimacy, and ultimately (for many ill-informed Malaysians these days) an ancient, venerable and incontestable historical truth.

Those who promote and others who simply subscribe to and endorse this newly-fashioned revisionist view now seem to imagine, in their historical ignorance, that things have always been so, as Abdullah Ahmad encouraged them to believe, and that they had never been otherwise.

Yet, until that ingenious doctrine was promulgated, and the idea of 'Malay ascendancy in perpetuity' was retrofitted onto (or read back into) the Federal Constitution, Malaysian national development during those first two post-independence political dispensations or under their frameworks – from 1957 to 1969, and then from 1970 on to 1990 – had been based upon the original principles of interethnic conciliation and convergence of the Federal Constitution as it had originally been understood.

Ketuanan Melayu: The Task of a Doctrine

So what purpose, we may ask, did the revisionist idea of *ketuanan Melayu* or Malay ascendancy achieve? What was its intended purpose?

Quite simply, it served, and was intended to serve, to extend and prolong the NEP period and the force of its underlying logic which highlighted the need for continuing and comprehensive measures of pro-Malay affirmative action, and to 'keep that logic going' well past the NEP's originally intended 'sunset year', 1990.

As Malaysia entered the economic trough of the Asian Financial Crisis from 1997 and the ensuing political turmoil of the Reformasi period, this new political doctrine became ever more useful politically, and hence increasingly central to national politics.

The national political and economic leadership of Tun Dr Mahathir Mohamad had to be restored. He would not leave office until his achievements had been secured and his legacy assured.

As a result, and now under the aegis of the new doctrine of an everlasting Malay ascendancy, the NEP era and its logic came to enjoy a long, and extraordinarily protracted, 'afterlife'.

An Idea That Outlived Its Time

As Dr Mahathir and Malaysia struggled to cope with the fall-out of the dual crisis, economic and political, of the late 1990s, a time for some creative new political thinking and organisational renovation went begging. Instead, some useful old ideas were updated, and pressed again into new, and slightly modified, service.

But behind the appearance of continuity – both of the NEP's affirmative action logic and of fidelity to the Constitution – a major shift of defining political orientation had been engineered. That engineering was so subtle that it was barely noticed by most people.

In place of the nation's founding political commitment to the creation of a modern liberal democratic state as the birth-right equally of all of its citizens, regardless of their origins and their pathway into national citizenship, the doctrine of ethnic political hegemony had not just been substituted. More, the idea of this doctrine's historical authenticity and national political legitimacy had been smuggled, by means of a retrospectively fashioned and misleading notion of 'the Malaysian social contract', into the Federal Constitution – or at least into the ruling party's own preferred understanding of its meaning.

For those in charge, the NEP objectives had still to be pursued and, now rooted in the doctrine of *ketuanan Melayu*, the political framework that permitted and favoured their continuing pursuit lived on. As it did, and so long as Dr Mahathir remained Prime Minister, the NEP idea and its logic lived a strangely protracted afterlife.

Because it was politically useful in sustaining the man and the political order that was centred upon him through a great crisis, the NEP idea, now repackaged in *ketuanan Melayu* wrapping, was made to outlive its original lifespan and its own time.

As it hung on, the NEP era was not only extended. It became a spectre that continued to haunt and subdue the national political imagination.

True, many Malays might still lag behind on all sorts of performance criteria and achievement indices. Many might feel that their stake as Malays in national life was uncertain, even insecure.

But by now the remedy for that situation, for the Malay performance and achievement shortfall, was social and cultural, attitudinal and psychological, not mechanically programmatic.

The time of the specific package of NEP measures, as originally developed and in their various later and vastly inflated forms and, even more, of the malign and reckless ethno-supremacist political culture that the NEP era had spawned was over.

Together, the NEP itself, as originally conceived, and the culture of unending Malay resentment as a basis of continuing demands for further entitlement had reached their 'use by date'.

Towards GE12

When Abdullah Ahmad Badawi succeeded as Prime Minister, he sought, but failed, to be a reformer: to be not a wrecker or radical transformer of the system that he had inherited, not a Malay Gorbachev, but a system-reformer.

But, for reasons that need no repeating here, he failed.

And as he did, as he marched on grimly towards his moment of truth in GE12, the general elections of 2008, he did not see that the unduly prolonged but by then exhausted political dispensation that he had inherited had in effect collapsed.

The BN framework was still there, outwardly intact. But its foundations had been eroded, not least by the dramatic actions of some of the more fiery UMNO leaders and 'leadership hopefuls', who by now had begun to build party careers upon public symbolic affirmations and enactments of the idea of *ketuanan Melayu*.

With this new burden, the familiar BN framework could no longer deliver electorally. It could no longer deliver the widespread, broadly-based political allegiance, consent and support, and hence the indispensable regime-legitimation, that the UMNO/BN-centred political system needed from it.

The old ruling formula and logic were no longer serviceable. Various elements or segments of Malaysian national society – each for its own reasons and in its own way – began to desert it en masse.

The old political game was over.

As they deserted UMNO/BN at the 2008 polls, Malaysia's second post-independence political dispensation, or regime framework, simply collapsed.

And Now, What?

An important new question was now ready to surface: not 'What went wrong?' or 'Why the oppositional tsunami?' but 'What will the necessary new third post-independence political framework and dispensation now be, and how will it be formed and 'bedded down' politically?'

Many saw that the old post-1970 and, in its extended form, the post-1990 political order was finished.

Many who had supported the opposition saw in those developments (and perhaps all too easily foresaw) the overdue and now irresistible beginnings of a new democratic, post-'ethnicist' political era.

But the reaction on the UMNO/BN side was very different. While some saw that UMNO could only retrieve its plausibility, regain control, and reassert its democratic leadership of national life by moving back to the political centre and so becoming a genuinely 'centrist' party, others felt differently.

Perhaps, they felt, it might be a good idea eventually to return to the centre, but first UMNO had to shore up its own primary political base among the more culturally conservative and politically conventional Malay voters. It had to be certain of its Malay strength, its Malay roots, and of the continuing support of the majority of Malays living in the 'rural heartlands' before it could begin to move to the centre, or even imagine doing so.

Its political self-confidence rattled by its disappointing GE12 performance and results, an uncertain and divided UMNO hesitated.

And, as it did, others seized the moment, and the initiative.

That was when Perkasa and the entire constellation of smaller pro-Malay pressure groups that are arrayed behind and within Perkasa came into being.

With powerful backing, they sent a clear message: not a backward step, no retreat from the doctrine of *ketuanan Melayu*, its pursuit, its further implementation and regime-promoted institutionalisation.

In this way, from UMNO's poor election performance came not a weakening of Malay political determination. Instead, based outside UMNO and directed disapprovingly against it and what it had recently become and achieved, there now came the powerful new Perkasa demand for Malay political centrality, primacy and ascendancy.

Onward to GE13

For five years, four of them under the new prime minister Najib Tun Razak's leadership, UMNO and BN prepared to seek a renewed and, it was hoped, a strengthened mandate from the ensuing national elections, GE13, which were eventually held in May 2013.

Even a year ahead of the elections certain things were clear to keen observers of Malaysian politics. First, that there were four possible outcomes: a decisive UMNO/BN victory (though this seemed unlikely), a narrow but unsatisfactory and destabilising UMNO/BN victory (which seemed the most likely outcome), an indecisive electoral result (a so-called 'hung parliament') or a narrow opposition victory.

And, second, while it was not certain which of these outcomes would eventuate, something else was quite clear. It was evident that whichever of these possibilities might eventuate, each of them – though each in its own way, for its own reasons, and following its own logic and dynamics – would result in the post-election emergence of a government that would be even more assertively Malay in substance, and Islamist-Malay in style and tone, than that which had ruled Malaysia in the years since GE12 and throughout recent times generally.

And that situation, readily foreseen, is the situation that after GE13 now presents itself.

But not all of what happened was as foreseeable. The ultimate outcome offered a paradox: the paradox of the strengthened power of a weakened governing bloc.

With its powerful campaign directed (especially via *Utusan* and its sympathetic television channels) at popular Malay concerns and anxieties, and drawing upon a fear that Malaysian Islam might soon be in great peril, UMNO/BN went to the voters on what was, in substance if not fully in style and tone, a very 'Perkasa-like' line and approach.

Not surprisingly, this 'Perkasa mild' campaign was very successful where it could succeed, and a terrible failure where it would never be popular and where it could achieve no political 'grip' or 'traction'.

That is to say, it worked with a large part of the overall Malay electorate, especially among the more conservative and apprehensive Malays in the many rural, Malay-majority constituencies.

But it failed, and failed badly, elsewhere: among many urban and semi-urban Malays but most particularly among the nation's non-Malay voters, to whom it offered little except an affirmation of their 'non-centrality' (or, less politely, their marginality) to national political life. Little, that is, but the assurance (and it was one that offered them little or no reassurance) that they had to see themselves if not as spectators and bystanders to the 'main national political game' then as 'price-takers' to the values and priorities which that game created.

Hence the paradoxical overall result of GE13.

After GE13: Malaysian Politics Now

From GE13 emerged a badly weakened Barisan Nasional, whose total number of seats now fell further, from the disappointing 140 won in 2008, to 133; but there also emerged a far more powerful UMNO, now holding overall 88 seats, more than the 78 that it won in 2008.

If we see peninsular UMNO as the core of national political power and of the nation's political arithmetic, then UMNO is now a party that is hardly constrained by the weight, or any need for UMNO greatly to consider the sensibilities, of its old, long-term non-Malay partner parties of the Alliance and the ensuing post-1970 eras (MCA, MIC and Gerakan) – its main allies under the first two post-independence dispensations. In peninsular Malaysia UMNO now won 73 seats (as compared with 65 in 2008), while its old allies in 2013 together won a mere 12 seats (MCA 7, MIC 4, and Gerakan 1). Within BN, peninsular UMNO has been largely denuded of non-Malay partners.

Nor, under Malaysian parliamentary conditions and political circumstances generally, is UMNO and its peninsular core a governing party that needs to give much heed to, or which stands to have its room for political manoeuvre greatly curtailed by, the political opposition.

The only forces outside itself that peninsular UMNO needs to accommodate, manage and placate in any serious way are the UMNO of Sabah and Labuan (together holding 15 seats) and, from Sarawak, the locally dominant PBB which, as an avowedly indigenist-ethnicist party, is a

'kindred' party to UMNO, a party made of the same sort of mind and soul and sensibilities as UMNO itself (14 seats).

A New Paradigm? The Next Political Dispensation and Era

This is the post-GE13 situation.

It is one in which UMNO, for a while anyway, can do pretty much as it pleases. It is one where UMNO has the opportunity not just insistently to promote pro-Malay and Malay-Islamic policies for a finite period but, by promoting them with an implacable determination, to transform Malaysian society and politics over the next five years, when the next national elections are due to be held.

It will be UMNO's objective in the years immediately ahead to use its post-GE13 parliamentary and political dominance to fundamentally transform Malaysian society, culture and political life. That is, to ensure that UMNO/BN will face a completely different situation, a completely different challenge, and a greatly changed nation at GE14 from all that they faced in GE13 in 2013.

UMNO, that is to say, is now engaged not simply in the politics of 'striking while the iron is hot', of making the best of good times while they last, of simply making good use, for this parliamentary term, of the advantages and favourable political numbers delivered by GE13.

It is engaged in the politics not simply of enjoying, while it lasts, a temporary advantage but of using that advantage to effect deep and permanent changes, in favour of its supporters among the nation's Malay citizens and in the name of Islam, to the national political life of Malaysia.

As they seek to do so, one must wonder: will they succeed? What resistance may they yet encounter? And, if they do, to what extent will that resistance, or oppositional reaction, permit them to succeed in realising that objective?

In the interplay of those forces between now and GE14, the basic structure of Malaysia's third post-independence political dispensation, or national regime-framework, will be decided and laid down.

These are fatefully important things to think about.

And this important collection of independently-minded essays that Sophie Lemièrè has brought together between these covers helps us all to do exactly that.

Clive Kessler

Sydney

November 2013

Introduction

Surfing Tsunamis

The results of the last two general elections in 2008 and in 2013 were political breakers challenging the rule of the United Malays National Organisation (UMNO) and the fragile balance of its multi-ethnic coalition. The 12th general election, in March 2008, revealed a greater political maturity of Malaysians, as the electors voted beyond the traditional ethno-religious cleavages; and the end of the government monopoly over the media thanks to the emergence of the Internet as an alternative and credible source of information. The victory of the Pakatan Rakyat in five states signalled the departure of the UMNO and BN leader and Prime Minister Abdullah Ahmad Badawi, who resigned in November 2008. The 12th general election was rapidly qualified by the media as an electoral tsunami.

The 13th general election, in May 2013, confirmed that Malaysians were marching hand-in-hand towards the end of ethnic politics. Pakatan Rakyat gathered 51 per cent of the popular vote, and it was only thanks to a favourable gerrymandering for the Barisan Nasional (BN) coalition that UMNO managed to retain power. Prime Minister Najib Razak, in an attempt to re-possess the expression that was synonymous with UMNO's partial defeat in 2008, qualified the 2013 results as a 'Chinese tsunami'. The country's leader justified his mild victory by the desertion of Chinese voters from the ranks of the Chinese component (Malaysian Chinese Association, MCA) of the ruling BN coalition.

When succeeding Abdullah, Najib was expected, from the first few days of his prime ministership, to call for an early election to legitimate his power. Instead, he chose to stretch his rule to the far end of its legal mandate, a strategy allowing him to gain popular support. Those four years looked like the longest political campaign: four years of campaign to regain non-Malay votes, four years of promotion of national unity under the banner

of '1Malaysia', four years' efforts reduced to rubble in one controversial expression: 'Chinese tsunami'. The day after his victory speech, Najib Razak was calling for national reconciliation. The question is: are Malaysians ready to go on a honeymoon with their Prime Minister?

At the time of writing this introduction the Black 505 movement has not ceased its efforts to denounce the alleged electoral fraud and demand for the resignation of the top officials of the Election Commission (EC). Tents are being planted in Padang Merbok, in Kuala Lumpur, by a group of approximately 200 students, as a symbol of resistance.¹ The government has not yet shown any sign of moving towards the demands of the people and there has not been any further investigation regarding the alleged fraud that was denied by the EC.

The time for illusion has gone, eliminated by political awareness and the strengthening of the public sphere: the media, the NGOs and individual citizens' actions. It seems that Malaysians want to re-orient the flow of history that has been going in favour of the ruling party since the country's independence; but today the wave of people marching in the streets of Kuala Lumpur showed that Malaysians are fully aware of the meaning of democracy. Malaysia is marching towards a change that has yet to be determined.

This project is the fruit of a three-year collaboration between academics who have chosen Malaysia as their speciality. The richness of our team mirrors the diversity of the Malaysian people. The quality and credibility of this intellectual initiative resides in its inter-disciplinarity: urban studies, political economy, international relation, political sociology and anthropology, film studies, literature, law, strategic studies, etc. Fifteen researchers from Australia, Malaysia, Singapore, France and the United Kingdom whose interest in Malaysia goes beyond passion – but always with reason – have come together to take readers on an intellectual quest to identify the contemporary nature of Malaysia in order to presage where the country and its people may be heading.

Misplaced Democracy: Malaysian Politics and People aims to unveil the many realities of an emerging democracy embedded in authoritarian

¹ Watch the TV report at <http://www.kinitv.com/channel/8/iq7YauDi0ic/Black+505+rally+ends+but+NGOs+set+up+camp+at+Padang+Merbok?t=1371912146566>" (accessed on 22 June 2013) or the Malaysian Insider report at <http://www.themalaysianinsider.com/malaysia/article/black-505-1-pitch-tent/>.

practices and rules, describe its ambiguities and its strengths, and contribute to the re-invention of Malaysia.

The Making of Malaysia

The first part of our reflection sketches the contours of Malaysia. These chapters give a hint to the way one may look at Malaysia by exploring its political system and its relationship to the region and to the world through the prism of history, international relations, architecture and urban studies.

Geoffrey Wade goes back to the origins of the Malaysian diversity and its ambiguities. He revisits the history of Malaysian political power by looking closely at each founding element of what he call an 'ethnocracy'. The main ambition of this chapter is to understand how stable a system can be when only one of the many ethnic groups has political power.

The Malaysian federation is rooted in a system of privileges that was set up by the British and then maintained by the ruling power since independence in August 1957 (UMNO). The constitutional ambiguities and the imbalance existing in the social contract have created a culture and a practice of exclusion. Inter-ethnic solidarity exists, and Malaysian history is full of individual or communal success stories, but state institutions neither support nor encourage social and cultural hybridity. Each community seems separate – socially, culturally, religiously, economically and politically – in accordance with the constitution and its ambiguities. The New Economy Policy and its successive reforms have contributed to the deepening of the communal gap, without actually reaching their goals – the correction of economic imbalance and the eradication of poverty.

Delphine Allès analyses the foreign policies of the successive governments. She looks closely at the internal, external and idiosyncratic variables that have shaped diplomacy. In five decades, Malaysia has been a laboratory exploring the entire range of options allowing a State to free itself from its colonial heritage to become a medium-level power beyond the Southeast Asian region. Despite their affirmation of continuity in their foreign policy, the successive governments have adopted contradictory positions: Tunku Abdul Rahman's adherence to the West bloc contravened Mahathir's contestation of a world order presented as an emanation of the West, and that opposed the recent more consensual positions of Abdullah Ahmad Badawi or Najib Razak.

By facing the Malacca Strait, Malaysia occupies a strategic position, and its attitudes towards its neighbour and the rest of the region and the

world have been influenced by its coastal privilege. Between the Indian Ocean and the Pacific Ocean, the strait has been a major axis of navigation since the early days of the commercial and cultural exchanges between the Malay Peninsula and the other continents. Today, Malaysia is a key partner of countries which have economic and political interest in the area. The Malacca Strait has made the richness and diversity of Malaysia, but is a genuine security challenge for the region's stability. Pirates have been active in the area since the 7th century and have nurtured fantasies and fear in the entire world. Eric Frecon looks at piracy and how successive Malaysian governments have met the challenge.

Beyond the architecture of politics, the building of a city may tell a great deal about the making of a country. The Twin Towers have marked the landscape and the 'mind-scape' of millions of people who have enjoyed the fast pace of Kuala Lumpur and others who have never been to Malaysia but have seen its image in a movie, on a postcard or on a t-shirt. Kuala Lumpur is a city that travels, and Tim Bunnell's chapter is an invitation to follow the city's progress from the past to the future. While it is widely recognised that cities are interconnected in terms of transportation and communications technologies, most urban analysis continues to focus on forms and practices contained *within* city boundaries. Tim Bunnell proposes a different spatiality of the city and urban region, looking not so much at what cities 'contain' as at where they come from and where they travel. This means tracing the importation of urban forms, expertise and models that have contributed to the making of greater Kuala Lumpur. It also involves considering the way in which contemporary urban Malaysia is, in turn, being drawn upon as an aspirational model by cities in other Asian countries.

Re-inventing Political Identities

These chapters are a genuine reflection on the very idea of the Malaysian nation and how the deepening of ethnic frontiers is a 'creation' embedded in political interests, and the poisonous fruits of power strategies. Sophie Lemièrè offers a rare exploration of the relationship between political parties and gangs through the case study of a criminalised network referred to as Pekida in which she developed the concept of 'connivance militancy' as the articulation of this relationship. This very original work is the result of more than five years of field research. According to her theory, a gang that is involved in political actions, whether out of pragmatism or ideology, becomes a connivance militant group. Gangs are the mirrored expression

of the ambiguities of society, thus they play a role in the system as shadow extensions of political parties in the public sphere. Sophie Lemière exposes the context that favoured the development of connivance militancy, the nature of Pekida and its satellite groups, and finally reveals the relationship between gangs and the ruling party (UMNO).

James Chin traces the political marginalisation of the main Bumiputera (indigenous) political grouping in the East Malaysian states of Sarawak and Sabah, an issue too often ignored by scholars working on Malaysia. Since the early 1990s, politics in Sarawak and Sabah can best be described as an unequal contest between the three main groups: the Muslim Bumiputera (MB), the Non-Muslim Bumiputera (NMB) and the Chinese. The largest NMB political grouping in Sarawak is the Dayak and in Sabah the Kadazandusun. James Chin gives an alternative academic account as well as his personal views, as a Sarawakian, on what he analyses as the 'political plight and marginalisation of the indigenous by the Muslim powerbrokers' in both states in the past two decades. To him this strategy is symbolic of the making of a 'Malay Muslim' state, rather than the promise of a multi-ethnic and multi-religious Malaysian federation. In theory, the Bumiputera are favoured in all political, economic and social spheres under the infamous New Economic Policy (NEP). They are supposed to get easy access to government jobs, scholarships and places in public universities, special licences and easy credit. In reality, it appears that these benefits are only available to Muslim Bumiputera (MB) while the majority Bumiputera, being non-Malay and non-Muslims, are marginalised or get very little benefit from the NEP and other affirmative action policies.

The exposure and involvement of Malaysian youth in politics represent another essential element to understanding the country's dynamic. Islamic student movements have always played an important role in the development of the Malaysian political system. Malaysian politicians with Islamic orientations tend to hail from these student movements. While the activism of Islamic student movements in the 1960s, 1970s and 1980s has been well documented, little is known about the Islamic student movement from the 1990s onwards. Mohamed Nawab succeeds in unveiling the activism of Muslim students through a study of one of the most important Islamic student movements in Malaysia, the Gerakan Mahasiswa Islam Malaysia (Malaysian Muslim Undergraduate Movement, GAMIS). To Nawab, the rise and decline of GAMIS has largely been affected by political developments within its parent organisation, the Islamic Party of Malaysia (PAS).

Khoo Gaik Cheng walks us through the world of independent filmmaking in Malaysia which has become more overtly political due to national events over the decades. She discusses documentary filmmaker Amir Muhammad's commemoration of Reformasi and its linkage to the Hindraf (Hindu Rights Action Force) mass rally in late 2007 which highlighted the continued marginalisation of ethnic Indian Tamil Hindus in Malaysia. It was controversial for attempting to sue the British government for importing cheap labour from India during the colonial era and for the dismal state of poverty its descendants continue to be mired in. Its strictly communal politics were not progressive, but proved popular. To Khoo, the cross-ethnic patriotic spirit of Reformasi is thriving in Kuala Lumpur within the liberal arts community of theatre, social activists and independent filmmakers and musicians: they are a younger digitally-savvy generation compared to the 'arts workers' Mandal and Heryan described during Reformasi.² Independent films and videos are 'acts of citizenship'³ which create solidarity with fellow citizens regardless of ethnicity.

The Contested Rules of an Authoritarian Game

The judicial system is at the origin of recurrent controversies; beyond the issue of corruption, the function (or dysfunction) of the system is put into question. Civil liberties are limited, even if freedom of expression has increased, and are often jeopardised by the lack of independence of parts of the judiciary. The Malaysian legal system was inherited from the British and is of a hybrid nature between common law, Islamic and customary law.

Muslims only are subject to Islamic law and cannot derogate from it. The constitution does not specify which branch of Islam a Malay must profess, but the official dogma promoted by the state religious and legal institutions is Sunni Islam of the Shafi school. The Department of Islamic Development Malaysia (JAKIM) thus considers other interpretations of Islam as deviant.⁴ JAKIM, which is under the Prime Minister's Department, is a federal

² Mandal, S. (2004) 'Transethnic Solidarities, Racialisation and Social Equality', in E.T. Gomez (ed.), *The State of Malaysia: Ethnicity, Equity and Reform*, London: Routledge Curzon.

³ Isin, E.F. and G.M. Nielsen (eds) (2008) *Acts of Citizenship*, London and New York: Zed Books.

⁴ Department of Islamic Development Malaysia (JAKIM), 'About Jakim', <http://www.islam.gov.my/en/about-jakim> (last accessed on 22 June 2013).

institution in charge of promoting and regulating Islamic practices as well as implementing Islamic laws and procedures at the state level. Each state branch of JAKIM operates independently from the others. Islamic laws are not harmonised at the federal level, but vary according to each state's legislation. The states are authorised by the constitution to legislate on matters pertaining to the Islamic religion by defining offences.⁵

The Islamic judicial system is independent. Since 1988, Syariah courts are no longer subordinate to civil courts. Hence, the Islamic judiciary is a parallel system to the civil judiciary, which does not have power over the Syariah court jurisdiction, which is protected and defined. Nevertheless, there are still jurisdictional conflicts, specifically when cases involve Muslim and non-Muslim parties, conversion in and out of Islam (or child custody and divorce).

Maznah Mohamad examines the modern application of Islamic law in Malaysia, considered as being from a divine source, and how it regulates the life of modern Muslim families despite its cultural mix and syncretic practices. According to Maznah there are two sites through which the new Islamic family is being shaped and outlined. The first is Syariah law reforms and the second is Syariah court litigations involving family disputes. Both of these sites afford a window to the kinds of gender struggles, negotiations and reconstitutions that transpire for Muslims in their everyday life. They also actualise the nature of discipline, control and punishment to which women and families are being subjected. The language of legalism can be read as sets of codes, repeated and reiterated, as a didactic process where appropriate behaviour and attitudes can be moulded and sanctioned. Focusing on these two sites, Maznah identifies the essence of the reforms, and presents examples of how Syariah litigation plays its role in reifying the Islamic family in modern Malaysia.

This reflection on family continues with Alice Nah's chapter on the difficulty foreign spouses face to receive fair legal treatment and the obstacles that non-citizens face in gaining redress for grievances. In Malaysia, an impressive array of laws can be applied for the protection of the rights of non-citizens. However, in practice, non-citizens – in particular, foreign workers and foreign domestic workers – face numerous challenges to obtain redress for grievances through formal adjudication mechanisms. An illusion of rights exists, as government officials emphasise the existence

⁵ Within the framework provided by List II of the 9th Schedule.

of these laws as evidence that non-citizens have rights; however, social and legal institutions and practices fail to protect them.

Azmi Sharom offers another point of view on Malaysian legal apparatus and citizen's access to public information by looking at environmental issues. In a context of proliferation of information, there is an international tendency to minimise information retention. But it seems that the Malaysian government and state institutions have been reluctant to grant citizens access to information that should be public. Azmi explores the possibilities of changes that could be made and denounces a lack of political will.

Finally, Andrew Ng explores the limitations of liberty through the 'exercise of literature'. Recent Malaysian history has been filled with examples of book banning, and more specifically the banning of cartoons, but self-censorship is a factor restricting the arts and the media that we cannot ignore. In Andrew's words, the vibrancy of the Malaysian arts is not always apparent due largely because local talents are few, and those who dare worry ideological boundaries even fewer. There are still many things which cannot be discussed or written about in Malaysia. Broadly, the issues that must be approached with great care by the arts can be divided into two main categories: (1) issues that contravene the Sedition Act, and (2) issues that question or undermine Islam and/or the Malay way of life. The lines that separate these two categories, however, are porous, fundamentally because the relationship between race and religion in Malaysian is a deeply symbiotic, and therefore contentious, one.

However, as Andrew Ng notes optimistically, while such legal and social manacles may be an attempt to limit creativity they actually enhance the ambition of the youth to tease it and lead to magnificent and strategic exercise of creations.

The Eye of the Malaysian Tiger

The economic development of Malaysia impulse by Mahathir Mohamad in the early days of his prime ministership in 1981 has turned Malaysia into an economic success story. The country was thus given the nickname of 'Tiger' along with South Korea, Indonesia, Thailand and Singapore, thanks to the spectacular transformation of an economy based on primary resources such as latex and tin into a secondary economy based on exports via direct foreign investment rich of construction companies, technology industries and the success story of Proton, the national car company.

Terence Gomez offers a very fine analysis of the development of large enterprises in Malaysia, through privatisation, industrialisation and the promotion of Malay-owned conglomerates, that reveals the fierce opposition and antagonism within the United Malays National Organisation (UMNO), the hegemonic institution within the state, to these policies, as well as the reasons for the symbioses between these very different policies. One feature of Malaysia's political economy under Mahathir was the growing concentration of power in the office of the executive, which came to be known as 'Mahathirism'.⁶ Mahathir was willing to experiment with different economic models as he saw value in neoliberalism, the developmental state and affirmative action, which he adopted and adapted to pursue his vision of development for Malaysia. The business conduct of firms, specifically of big business, provides insights into the outcome of the government's mix of policies from these different development models.

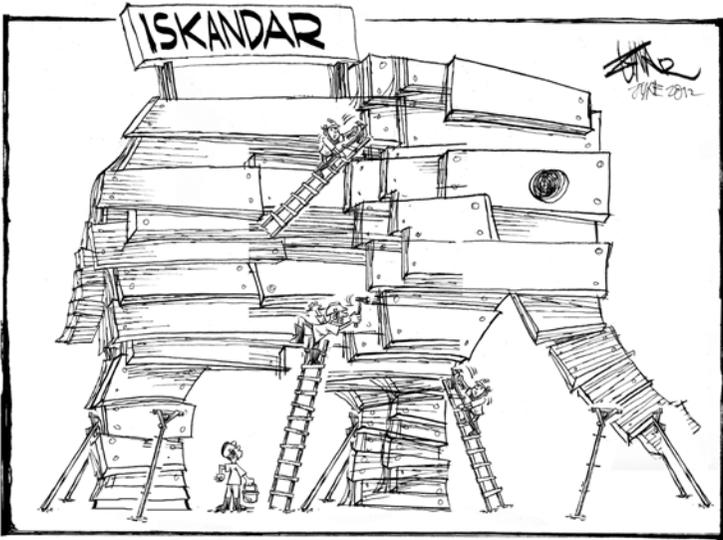
About 40 per cent of Malaysia's revenue comes from its oil and gas sector, run by national oil company PETRONAS, wholly owned by the government of Malaysia. National development is therefore dependent on this revenue. Although Malaysia has not suffered from the 'resource curse' in its worst form, it is important to examine whether natural resource revenue has been responsibly used for social good. Tricia Yeoh provides background to the oil and gas sector in Malaysia, examines resource management through the expenditure, savings and subsidy mix employed by the government, industry sustainability for future generations, and transparency and public reporting of the industry. Tricia gives a few suggestions on what could be done by the government, the private sector and civil society to work towards good governance in managing the oil and gas industry.

The ambiguities and abuses of the Malaysian administration are shown in Claire Lh riteau's study of the Federal Land Development Authority (FELDA) and identifies the main challenges that a successful economic model has to overcome in order to keep its original promises. FELDA is aimed at eradicating poverty in rural Malaysia and creating a new elite who are able to efficiently cultivate on their own. It is considered a model abroad and has truly contributed to the rise in both productivity and rural standards of living. FELDA is now mature enough to encounter its first internal contradictions, mainly related to the settlers themselves. Hence

⁶ Khoo Boo Teik (1995) *Paradoxes of Mahathirism: An Intellectual Biography of Mahathir Mohamad*, Kuala Lumpur: Oxford University Press.

the authority's reluctance to award ownership to the mostly Malay farmers is the first step toward internal contestation. It seems that efficiency has been favoured over the settlers' autonomy, which has now become a mere illusion. All in all, current financial issues but also political infiltration and bargaining, reinforced by the more powerful third generation of settlers, are deeply challenging FELDA in its own system.

Sophie Lemière



Part One

The Making of Malaysia

Chapter 1

The Origins and Evolution of Ethnocracy in Malaysia

Geoff Wade

Ethnocracy – the systematic political and administrative employment of race-based policies – constitutes the greatest threat to social justice in Malaysia today. In an effort to disguise the perniciousness of these policies, the Malaysian government chooses to term its racial policies ‘affirmative action’, assigning the system a far more beneficent and desirable description than its effects deserve. It is the ‘negative’ effects rather than the ‘affirmative’ actions, and their potential for social disruption, which are deserving of our attention. In investigating this phenomenon, we must ask how is it that today, in the diverse, multi-ethnic polity of Malaysia (where government figures give a population breakdown of 65 per cent Bumiputera, 26 per cent Chinese and 8 per cent Indian), a single ethnic group completely controls – and occupies virtually all positions in – the judiciary, public administrative organs, the police, the armed forces and, increasingly, the universities. While Malays (and the diverse peoples grouped under that rubric by the Malaysian Constitution)¹ constitute a majority of the population of this nation, their presence in all these spheres of power far exceeds their ratio within the general population. How did this situation emerge and how has it evolved?

It will be argued below that the ethnic injustices currently observed in Malaysia together with the concurrent ethnic streaming derive essentially from the 1948 Federation of Malaya Agreement which was created by

¹ Under Article 161 of the Malaysian Constitution, ‘Malay’ means a person who professes the religion of Islam, habitually speaks the Malay language [and] conforms to Malay custom. The commonly-used and very flexible term ‘Bumiputera’ is a political construct without any legal definition and subject to frequent abuse. For some of the debates on this issue, see the essays in Barnard (2004).

the British in alliance with UMNO following the breakdown of the 1946 Malayan Union structure, partly on the basis of British fears of the Chinese – who were almost all considered, if not Communists, at least potentially so – in the Cold War environment at that time. The Constitutionally-mandated special place for the Malays provided for in the 1948 Agreement and subsequently in the 1957 and later Constitutions has been used as a basis for all manner of exclusionist and discriminatory policies which have become increasingly socially encompassing, producing a situation where non-Malay members of Malaysian society feel themselves excluded and thereby ignored in terms of access to ‘public’ facilities, funds and opportunities. The March 2008 election results were in part a reflection of sentiments over this socially inequitable situation.

The History of Ethnocracy in Malaya/Malaysia from 1942

British political and military power was key in the creation of Malaysian ethnocracy. The British interests and powers in the peninsula pre-WW II lay in: 1) The British territories of the Straits Settlements. 2) Nine peninsular states where British power was nominally subordinate to the power of sultans by treaty, but which were mainly administered from Singapore. Essentially, all functions of a state were fulfilled by the British throughout the peninsula, with the Colonial Office noting of their efforts in the 1930s: ‘Our policy has been to maintain the sovereignty of the Malay Rulers, and to make it continually more real in those States where it had tended to become overlaid by our own direct Administration under the pressure of economic development (e.g. the decentralisation policy in the Federated Malay States). Our declared policy has also been to promote the well-being and efficiency of the Malay peoples and their educational fitness to fill the official services in their own territories. The continued and legitimate fear of the Malays has been that they would be swamped by the more efficient and numerous Chinese and to a lesser extent the Indians.’² British political intentions post-war were also being set down in the early Pacific War years. ‘It may be necessary after the war to take steps to achieve some form of closer union of the Malay states (probably not only with each other but involving the Straits Settlements also) with a view to ensuring a common policy in matters of concern to Malaya generally.’ Singapore was also to be included in this federation.

² CO 825/35/4 No. 52, Stockwell (1995: Part I, p. 24).

Soon thereafter, however, even before the end of 1942, the British, concerned about maintaining their post-war power in Asia, decided that Singapore should not be included in the post-war union. In a report by Sir W. Battershill, G.E.J. Gent and W.L. Rolleston on lessons from Hong Kong and Malaya, it was noted: 'It is therefore suggested that the island [Singapore] should be excluded from any federation and/or customs union that may be established in the rest of the peninsula.'³

At the same time, the political ramifications of the proposed union were being discussed in Whitehall, the centre of British Empire decision-making in London. There was concern that in the Malay states it had not been possible to 'establish the status of Chinese born in a Malay State as British protected persons'. This was important as 'the Malay rulers have never been ready to recognise Chinese, however long established in their states, as being nationals of those states. It is desirable, even at this stage, that the formal status of "British protected persons" should be given to those Chinese who are domiciled in the Malay States.'⁴ Another dilemma was expressed by Lord Hailey thus: 'Actually, the greater part of the administration is carried out, in the Federated Malay States at all events, by officers or departments acting under direct orders of the Governor. Sooner or later we will have to face squarely the question whether we are to allow the façade of Sultan-rule to persist, with all the difficulties which it presents to the attainment of any form of self-government, or to build up a constitution on the basis of realities' (Stockwell, 1995: I, 49). While exploring this, he saw that Britain 'shall be obliged to face two questions, first, whether the system is capable of being adjusted to the promotion of self-governing institutions, and secondly whether it will enable a suitable status to be given to those Chinese and Indian immigrants who may acquire a permanent interest in the country' (Stockwell, 1995: I, 48). His major concern was 'autocratic rule in the hands of the sultans and their Malay advisers'.

As the Pacific War turned in the interests of the Allies through 1944, the War Cabinet was also involved in the planning of post-war Malaya, generally following Colonial Office recommendations. In the appendices to the War Cabinet memorandum on Policy in Regard to Malaya and Borneo, presented on 18 May 1944 to Clement Atlee, it was noted that in post-war Malaya there needed to be movement towards self-government involving the people of all communities 'subject to a special recognition of the political,

³ CO 877/25/7/27265/7 No. 1 (4 Dec 1942) Stockwell (1995: Part I, p. 42).

⁴ CO 877/25/7/27265/7 No. 1 (4 Dec 1942) Stockwell (1995: Part I, p. 43).

economic and social interests of the Malay race.⁵

However, into these smooth Colonial Office preparations for a Malay-dominated post-war Union in Malaya stepped a problem. Lord Louis Mountbatten, Supreme Commander of Allied Forces in South East Asia, based in Ceylon, began to engage himself in post-war planning. In terms of overall political power, he expressed opposition to the reinstatement of the Sultans: 'I am not in favour of reinstating the Sultans even as constitutional rulers and certainly not as autocratic rulers. ... But we must be careful not to abolish the Sultans ruthlessly.'⁶ He urged some sort of Upper House position for them in a future legislature.

But it was the Colonial Office's desire to assign a special position to the Malays in the post-war administrative structure that drew most of his ire. In July 1944, responding to the Colonial Office memo to the War Office, Mountbatten was to note: 'My second point refers to the sentence in Para 1 of the Directive which reads that "Participation in the Government by all the communities in Malaya is to be promoted, subject to a special recognition of the political, economic and social interests of the Malay race." I cannot help feeling that in the long run nothing could perhaps do more to perpetuate sectional antagonisms, to the risk of which you pointedly refer in your letter, than the giving of special recognition to one race. I feel that our objectives should be to break down racial sectionalism in every way open to us, politically, economically and socially, and to endeavour to substitute for it the idea of Malayan citizenship.'⁷

The Colonial Office mandarins obviously felt that Mountbatten did not really understand the exigencies of the situation in Malaya, and Mr Stanley of that office responded to the Supreme Commander's concerns, informing him of the situation as their officers perceived it:

The Malays are, by general consent, not at present capable of competing on equal terms economically and educationally with the 'immigrant races' – Chinese and Indian. From the beginning of our relations with the States we have pursued in the Malay States the policy of taking positive measures to prevent the submergence of the Malays in the public services and in

⁵ 'Policy in Regard to Malaya and Borneo': War Cabinet memorandum to Mr Atlee. Appendices: I 'Draft Directive on policy in Malaya' and II 'Draft Directive on policy – Borneo', CAB 66/50, WP (44) 258, Stockwell (1995).

⁶ Letter from Admiral Mountbatten Supreme Allied Commander to Maj. Gen Hone, 4 Feb 1944, 'Letter on publicity for post-war policy', Stockwell (1995: Part I, p. 72).

⁷ Mountbatten to Stanley, CO 825/42/3 No. 25 (29 July 1944), Stockwell (1995: Part I, p. 83).

the ownership of land by the more energetic, competent and resourceful Chinese. The most damaging criticism of our new policy will be precisely on these grounds, since we are endeavouring to admit non-Malay communities to a political equality with the Malays in the State territories. We shall make certain of estranging the Malays unless we can assure them of measures not only in the political and social field, which will prevent such 'equality' inevitably resulting in their submergence, but also in such matters as the reservation of Malay lands, which otherwise will certainly pass into the hands of the ubiquitous Indian money-lender.⁸

Mountbatten was however unimpressed, responding:

I fully appreciate that the social basis of Malayan society cannot for some time be other than communal, and that the fostering of the three peoples of Malaya of the conception that they are in fact Malaysians, will be an uphill business. ... I am sorry to see from your letter that the Malays should by general consent be found incapable of competing on equal terms, 'economically and educationally', with the Chinese and Indians. I have no reason to suppose that this opinion is not fully borne out; but it seems to me that indigenous peoples sometimes appear lazy and unambitious, largely because they are unwilling to compete with lower standards of living and wage conditions established by immigrants, who are without roots in the country, and cannot afford to turn down a standard of wages which those who have homes and relations on the spot are not forced to sink to. I do not suggest that the Malayan is at the mercy of cheap coolie labour from China; but it is so easy to give a dog a bad name that one is inclined to fear that an opinion of the natives' qualities may become an *idée fixe*, which will militate against a proper appreciation of their potentialities under improved conditions.⁹

Thus, by August 1944 the lines were clearly drawn. On the one side was the Colonial Office arguing for a special protected position for the Malays, and on the other Admiral Mountbatten urging a general Malayan citizenship with all having equal rights and responsibilities.

The Malayan Union (1946) and the Federation of Malaya

With the Japanese surrender in August 1945, the urgency of new administrative and constitutional arrangements increased and, in

⁸ Stanley to Mountbatten CO 825/42/3 No. 27 (21 Aug 1944), Stockwell (1995: Part I, p. 84).

⁹ Mountbatten to Stanley CO 825/42/3 No. 28 (6 Sept 1944), Stockwell (1995: Part I, p. 86).

preparation for the new Union proposed by the British, Sir Harold MacMichael was sent to Malaya to meet with the various Sultans. He was tasked with gaining their signatures on documents which would see their vestigial power being turned over to the British crown, as a precondition for the establishment of the Malayan Union.¹⁰ Under the Malayan Union proposals, the Sultans were relegated to a Council of Sultans which would discuss Islamic matters. Each state was to have a Malay Advisory Council, consisting of the Sultan and other Muslims appointed by the Sultan, just to advise the sultan on matters of religion. In matters of citizenship, any person born in the Malayan Union or Singapore, and any person who had resided in the Malayan Union or Singapore for ten years would be citizens, as would persons born of fathers who were citizens of the Malayan Union.¹¹ This Union, which in many ways followed the ideas of Mountbatten, was implemented in April 1946.

‘If this plan had been fully implemented, Malaya would have become more of a “Malayan” nation-state than a “Malay” nation-state’ (Cheah 2002: 2). However, the Malayan Union was to last but two years and during this period it was subject to a remarkable turnaround on the part of the British. Through 1946 and 1947 there was a 180-degree turn from a proposed polity with equal citizenship to one where Malays were dominant, privileged and power-brokers. Some of this story has been detailed by Albert Lau in his account of the Malayan Union (Lau, 1991), but many documents remain unreleased by the British. The full story of this reversal and the huge effects this had on the subsequent development of Malaysia remains to be written.

However, a major element was the creation of a Malay political party during this period – the United Malays National Organisation (UMNO), which was led by the Johor political elite and headed by Dato Onn Jaafar. One of its key standpoints was opposition to the Malayan Union arrangements.

By July 1946 the British responded to Malay concerns about the Malayan Union by creating a 12-man ‘political working committee’ comprising six government representatives, four royal delegates, and two UMNO representatives to consider and recommend a new constitutional framework for the Malayan Union. The essential question remains as to why it was decided that only Malay representatives were to negotiate

¹⁰ Cabinet meeting CAB 128/1 CM 27 (45)3 (3 Sept 1945) Conclusions authorising the MacMichael Mission, Stockwell (1995: Part I, p. 122).

¹¹ A1838 413/2/1/4 Part 1 BTSEA [British Territories in South East Asia] – Malayan Constitutional Reforms (National Australian Archives).

the future of Malaya with the British. Was it simply the Colonial Office officials reasserting their paternalistic concern for Malay people, or was it an awareness of the growing power of the Left, represented predominantly by Chinese persons, which sparked this remarkable change? Regardless of the reasons, this decision must be seen as the most fateful and harmful decision in the British decolonisation of Malaya. It was this decision that saw movement towards a potential multiethnic democracy reversed and replaced by a system of ethnic privilege underpinned by religious autocracy under a system of feudal hereditary rulers. It was this decision which created the ethnocracy we witness in Malaysia today.

This committee, in a remarkably rapid six months, concluded its deliberations in December 1946 and made recommendations¹² which reversed the Malayan Union proposals and, through its negotiations solely with Malay representatives, provided the basis for future Sultan-backed ethnocracy. Key to these recommendations were the citizenship proposals. A new Malayan citizenship – which was not to be a nationality – was proposed in the Federation plan. This was an addition to nationality and the committee explained it as a possible qualification for electoral rights, membership of Council or other privileges and obligations. Federal citizenship would be acquired by: 1) Any subject of the ruler of any state. This included all Malays and excluded all non-Malays. 2) British subjects born locally. 3) Children of fathers who were federal citizens.

The Constitution had obviously been drafted by the Colonial Office in London. Shortly thereafter a consultative committee under Harold

¹² The recommendations included: 1) A Federation of Malaya to replace the Malayan Union. This was to comprise nine peninsular states together with Penang and Malacca; 2) A central government comprising a High Commissioner, a Federal Executive Council and a Federal Legislative Council; 3) In each Malay state the Government shall comprise the ruler assisted by a state Executive Council and a Council of State with legislative powers. In each of the Straits Settlements, there will be a Settlement Council with legislative powers; 4) There will be a Conference of Rulers to consult with each other and with the High Commissioner on state and federal issues; 5) Defence and external matters will be under British control; 6) Rulers would undertake to accept the advice of the High Commissioner in all matters relating to government, but this would exclude matters relating to Islam and Malay customs; 7) The Legislative Council would comprise the High Commissioner, three ex-officio members, 11 official members, 34 unofficial members including heads of government in the nine states and two settlements and 23 seats for representatives of industries, etc.; 8) UMNO and Sultans would agree to this only following the scrapping of the MacMichael treaties.

Cheeseman, Director of Education Malaya, was convened to collect views offered by ‘all interested individuals and groups’. While the Governor-General and the Colonial Office both declared that there would be no final decision on the Constitution without wide-ranging public consultation, it was obvious that all previous proposals of an egalitarian society had been scrapped, the feudal rulers were to be maintained to bolster Malay claims to power, the Legislative Council was to be powerfully weighted towards the Malays and all other communities were to be essentially sidelined. The proposed Constitution was thus a blueprint for Malay ethnocracy.

Reactions to the Federation of Malaya Proposals 1946–48

On the same day as the new Constitutional proposals were released – 14 December 1946 – a Pan-Malayan Council of Joint Action (PMCJA) was established in Singapore to oppose the proposed Constitution.¹³ The initial meeting was attended by 75 delegates, including representatives of the Malay Nationalist Party,¹⁴ the Malayan Democratic Union and various trade unions. Tan Cheng Lock was elected as chairman. The Council adopted three principles to guide their opposition: 1) A united Malaya inclusive of Singapore; 2) Responsible self-government through a fully elected central legislature; 3) Equal citizenship rights for all who make Malaya their home.

The first principle was opposed to everything the British were working toward with the new proposals. By including Singapore in the new Malayan polity, the ethnic proportion of Malays would fall below that of Chinese,

¹³ The PMCJA was formed through the coming together of organisations comprising diverse ethnicities – including the Malayan Democratic Union, Malay Nationalist Party, Malayan Communist Party, Malayan Indian Congress, Pan-Malayan Federation of Trade Unions, Singapore Chinese Association and Associated Chinese Chambers of Commerce – which pledged to work for a constitution for Malaya based on the following three principles: (a) A United Malaya inclusive of Singapore; (b) Responsible self-government through a fully elected central legislature for the whole of Malaya; and (c) Equal citizenship rights for all who make Malaya their home and the object of their undivided loyalty. Their first act was ‘to oppose the undemocratic and secret methods by which the new proposals were drawn up’. For some background to the organisation, see the various works of Martin Rudner, including ‘The Structure of Government in the Colonial Federation of Malaya’. For a contemporary perception from 1947, see John Eber, ‘The Pan-Malayan Council of Joint Action’, appended to Tan Cheng Lock (1947).

¹⁴ Parti Kebangsaan Melayu Malaya (PKMM), which was a Leftist party opposed to UMNO and also opposed to continuing the role of sultans.

which would nullify the alleged validity of the proposals.¹⁵ In any case, the British were unwilling to give up the security and economic benefits of retaining Singapore as a Crown Colony. Britain was at this time heavily involved with deciding on how to deal with larger problems – India and Burma, and a decision was taken in February 1947 that Britain would withdraw from India by June 1948, a date which Mountbatten later changed to August 1947 (Tarling, 1998). The importance of retaining Singapore was stressed early in 1947 by the British Foreign Minister Bevin who noted: ‘Our imminent withdrawal from India and Burma makes South East Asia the main centre of British interest and influence (Ibid.: 188).’

The year 1947 was to prove a year of political wrangling, and one where UMNO was to attempt to consolidate the foothold which the Colonial Office had provided them. In January of that year, at the opening of the UMNO General Assembly in Kedah, the Sultan of Kedah urged that ‘the Malay rulers and UMNO must join hands in carrying out the constitutional proposals for the benefit of the Malays’, while Dato Onn emphasised that the peninsula was the home of the Malays and ‘we shall preserve it as the home of the Malays’ (*Straits Times*, 10 January 1947).

Meanwhile, both Malayan Left and Right combined in opposition to the proposals. On 12 January 1947 the Malayan Communist Party¹⁶ issued a statement condemning the Constitutional proposals and announcing support for the Pan-Malayan Council of Joint Action. On 26 January the PMCJA held a meeting in Kuala Lumpur, passing resolutions calling for members of the Consultative Committee and Advisory Council to resign. The Penang Chinese Consultative Committee also rejected the constitutional proposals on the grounds that they were ‘a direct violation of the United Nations declaration regarding non-self-governing territories’ (*Straits Budget*, 13 February 1947). On 24 February 1947 the Pan-Malayan Chinese Chamber of Commerce passed a resolution at Kuala Lumpur rejecting the constitutional proposals and urging that a Royal Commission be established to examine the possibility of giving Malaya full dominion status. In response, Edward Gent, Governor of the Malayan Union, publicly responded only to Tan Cheng Lock, chairman of the Pan-Malayan Council

¹⁵ The 1947 census showed a total population of Malaya including Singapore of 5.8 million. Chinese numbered 2.6 million and Malays 2.4 million. This was the first time the Chinese outnumbered the Malays. See Minute of 17 August 1948 NAA A1838 410/1/1 Part 1: BTSEA [British Territories in South East Asia] – General Information.

¹⁶ Still a legal party at this time.

of Joint Action, advising that the government could not recognise the Council of Joint Action as the sole body with which to conduct negotiations on constitutional issues (*Straits Times*, 16 January 1947).

But the opposition crowds grew larger, and at a gathering of 4,000 persons on 18 February 1947 in Malacca, Tan Cheng Lock denounced the federation proposals because of the difficulties of acquiring citizenship they would entail: 'We demand for Malaya a constitution based on democratic and liberal principles which will guarantee the fundamental rights and liberties of its citizens who are permanently settled here and who are prepared to give Malaya their undivided loyalty, with the proviso that the stronger members of the Malayan community must extend a helping hand to the weaker ones, particularly our Malay brothers who must be uplifted to the economic level of the other inhabitants of this land.'

On 22 February 1947 a new coalition of Malay political and cultural organisations called Pusat Tenaga Ra'ayat (PUTERA)¹⁷ was organised to act as a counter-weight to UMNO. A total of 29 organisations including PKMM, Barisan Tani Se-Malaya (Peasants' Union or BATAS) and Hizbul Muslimin were part of this coalition. The following month PUTERA formed an alliance with PMCJA to coordinate their efforts against the draft Federation Constitution. The PMCJA-PUTERA alliance then decided in May to draft their own proposed constitution and a committee was formed for that purpose.¹⁸ In that month a huge rally was organised by PMCJA-PUTERA against the constitutional proposals. Again they urged: 1) A united Malaya including Singapore 2) Elected central, state and settlement legislatures 3) Equal rights for all who made Malaya their home. Despite the widespread opposition to the British proposals from members of all ethnic communities of both Left and Right, the Cheeseman Consultative Committee report was completed and published by 19 April 1947 – again a remarkably swift period of 'consultation' on such a key issue, underlining that the Colonial Office did not want to see their plans upset. As expected, the Cheeseman report did not recommend any radical changes.¹⁹

¹⁷ Literally 'Centre for the Power of the People'. PUTERA was formed on 22 February 1947 as a coalition of Malay organisations, led by the Malay Nationalist Party, opposed to the Anglo-UMNO agreement.

¹⁸ Reprinted in PUTERA-AMCJA (2005).

¹⁹ The minor changes proposed included: 1) Seven instead of five unofficial members to be appointed to the Federal Executive Committee; 2) Legco to be comprised of 52 instead of 34 unofficial members and 23 instead of 14 official members; 3) Residence qualifications to be five out of previous ten years.

Within four days of the release of the report, on 23–24 April 1947, Malcolm MacDonald met in Kuala Lumpur the members of the Governor-General's Advisory Committee, comprising only the Malay Rulers, representatives of the United Malays National Organisation and government officials, in order to discuss the Cheeseman report. On 24 July 1947 the Summary of the Revised Constitutional Proposals was published. This included a provision for a Malay majority in the proposed Malayan legislature, a provision not endorsed by the Cheeseman Committee, which preferred an equal balance between Malay and non-Malay interests. Again we see the Colonial Office and Malcolm MacDonald joining with Dato Onn in laying down the basis for Malay ethnocracy in the new Malaya. These proposals were then submitted to the British Government.²⁰ The speed with which this was done and the fact that it was essentially Malays who were engaged in the deliberations shows that the Colonial Office would brook no opposition to its policies.

As noted, key to Malay aspirations to power and concerns by the other communities were the citizenship provisions of the proposed Federal Constitution. It provided for Federal citizenship for a range of persons, including: 'Any subject, wherever born, of His Highness the Ruler of any State' and 'Any person born at any time in any of the territories now to be comprised in the Federation, who habitually speaks the Malay language and conforms to Malay custom.' These provisions gave citizenship to every 'Malay'²¹ person in the peninsula, regardless of length of residence there, while the other provisions imposed residential requirements on persons of other communities. Again we see a concerted effort to exclude non-Malay persons from the polity and further efforts toward creating Malay ethnocracy.

The Colonial Office validated this as follows: 'The present scheme is designed to include in a common citizenship all those, whether Malays or non-Malays, who can fairly be regarded as having Malaya for their true home. The Malays, however, are peculiarly the people of the country. They have no other homeland, no other loyalty. They thus have a special and

²⁰ W Garrett, Official Secretary, Office of the High Commissioner for the United Kingdom, Canberra to Prime Minister's Department, Canberra, 5 May 1947: NAA A1838 413/2/1/4 Part 1, BTSEA – Malayan Constitutional Reforms.

²¹ The Constitution proposal noted: 'The word "Malay" here means a person who: i) habitually speaks the Malay language; and ii) professes the Muslim religion; and iii) conforms to Malay custom.' This definition was later incorporated into the Federation of Malaya Agreement 1948 under Article 124(3).

justifiable interest in immigration policy, which it would be inequitable to refuse them.²² The refusal to acknowledge that the ‘Malays’ had migrated and continued to migrate to the peninsula from many other places in the archipelago and beyond was conveniently ignored in this disingenuous effort at validating Malay supremacy. Control over immigration was thus ceded to the sultans. ‘Holding that the Malays have a special and justifiable interest in immigration policy which it would be inequitable to refuse them, the British Government has agreed that it shall be the particular duty of the High Commissioner to consult the Conference of Rulers from time to time on the immigration policy of the Government, and in particular when any major change in such policy is contemplated by the Federal Government.’²³

Local press reaction (excluding the *Straits Times*, which was the mouthpiece of the Colonial Office and Malayan government) was scathing. The editorial of Singapore’s *Morning Tribune* pulled no punches when it noted: ‘The final Constitutional proposals, which were published in a White Paper yesterday, are bitterly disappointing. They constitute capitulation to pressure from the Malays.’²⁴

The claim that ‘the Malays form an absolute majority among those who regard Malaya as their permanent home and the sole object of their loyalty’ was neither demonstrated nor supported, but it was an effective hook on which to hang British Colonial Office policy. Over the following months, Governor-General Malcolm MacDonald made repeated radio broadcasts stressing the bases for the new Constitution. On 5 October 1947 MacDonald broadcast as follows:

To begin with, let this be remembered. The negotiations leading up to the Constitution ended a period of sharp political unrest and agitation which stirred to their depths the feelings of the entire Malay population. Eighteen months ago a peaceful and orderly, but unanimous and passionate Malay opposition to the Malayan Union cast a dark shadow across the once sunlit and placid political scene in Malaya. Virtually the whole people of the majority race in the country had lost confidence in the Government.²⁵

Again in January 1948, he told radio listeners that ‘Malay Kingdoms ruled by Malay princes date back many hundreds of years. They are the truest sons

²² United Kingdom Colonial Office, 1947: 8, Item 18.

²³ ‘Immigration Policy Change: “Special Interest for Malays”’ *Straits Times*, 25 July 1947.

²⁴ *The Morning Tribune*, Friday 25 July 1947, p. 4.

²⁵ NAA A1838 413/2/1/4 Part 1, BTSEA – Malayan Constitutional Reforms.

and daughters of the Malayan soil.²⁶

However, the British seemed quite content to ignore the other communities who were actively expressing their loss of confidence in the government, and had been in the peninsula in many cases far longer than recent 'Malay' immigrants from Sumatra, Java, the Middle East, and Sulawesi. Hartals²⁷ were held in Malacca, Perak and Singapore throughout October. Shops were closed, plantation work ceased and commerce was absent during these days of protest. Opposition came from the Left – the Pan-Malayan Federation of Trade Unions, All-Malaya Council of Joint Action, PUTERA, as well as the Right – the Chinese Chamber of Commerce. An entire alternative constitutional proposal was in fact put forward by PUTERA and AMCJA.²⁸ The Associated Chambers of Commerce of Malaya held a meeting on 18 January 1948 and agreed to boycott the Federal Legislative Council and the various State Councils under the new constitution. The *Malaya Tribune* in an editorial on 24 January set down the overall objections to the procedures.

For reasons best known to themselves, the British Government has seen fit to completely ignore Chinese representations on the constitutional issue. The original proposals for a broader based legislature and the creation of a national status came from Great Britain, only for the last named to be withdrawn immediately on protests from the right-wing Malays whose boycott immediately brought the British Government to heel and all conduct of affairs since has been at the virtual dictation of the Malays ... the facts considered, it is hardly surprising that Chinese opinion is not prepared to see its leaders enter into the farce of serving upon the Malay-dominated Council and thus giving the appearance of seriously accepting the constitution as a reasonable stepping-stone towards political advancement.²⁹

But the plans of the Colonial Office would brook no delay and on 21 January 1948 state and Federation Treaties were signed by Malayan Union Governor Sir Edward Gent and eight of the Malay Rulers. On 1 February 1948 a Malay-dominated Federation of Malaya was initiated.

²⁶ Broadcast speech by the Governor-General, 4 January 1948. NAA A1838 413/2/1/4 Part 1, BTSEA – Malayan Constitutional Reforms.

²⁷ A Gujarati term used in reference to the closing of shops and business activity in protest. Derived from Gandhi's use of hartals in anti-British activities in India. These hartals in 1947 are the subject of a film *Sepuluh Tahun Sebelum Merdeka* by Fahmi Reza. See: <http://10tahun.blogspot.com/>

²⁸ These have recently been republished.

²⁹ Editorial, *Malaya Tribune*, 24 January 1948. NAA, A1838 413/2/1/4 Part 1: BTSEA [British Territories in South East Asia] – Malayan Constitutional Reforms.

The Federation of Malaya Agreement 1948 (United Kingdom Colonial Office, 1952) made between the British government and the Sultans of the respective states provided for a high commissioner, who was responsible for ‘the safeguarding of the special position of the Malays’, a Federal Executive Council, a Legislative Council and a Conference of Malay Rulers to exercise political power. It also set down restrictive regulations governing citizenship which precluded many residents of the peninsula from assuming citizenship (*ibid.*: 40–3). Malays of the peninsula and the settlements automatically became federal citizens. The High Commissioner was also required to consult the Conference of Rulers on matters relating to immigration policy (*ibid.*: 28). The basis of ethnocratic rule premised on Malay dominance underpinned by feudal rulership in the Federation of Malaya was thus established. The British had thereby created an anti-Communist bastion in their global Cold War struggle through assuring the Malays of political power in the Federation of Malaya and precluding any possibility of seizure of control of the polity by the Malayan Chinese (who were seen as potential Communists).

The 1948–57 Period

In the middle of 1948 the Malayan Communist Party launched armed rebellion against the new federation and the British state which controlled it. The degree to which British failure to include Chinese aspirations in the 1948 constitutional arrangements precipitated the rebellion or encouraged the assistance it was to receive from the Chinese and other communities remains an issue for further study.

But it also provided a further avenue by which UMNO could dominate the political firmament of the Federation and further exclude Chinese participation. The Colonial Office political report for November 1948 noted: ‘The Emergency has given the Malays an opportunity to improve their political position which they have not been slow to take. They point to the leading part which the Malay community is taking in the fight against terrorism, through the Malay regiment, the regular police and the special and auxiliary police. They contrast this with the behaviour of the Chinese.’³⁰ The Colonial Office was likewise coming to recognise some of the abuse which the Constitutional arrangements they had created were leading to:

³⁰ CO 537/3746 Federation of Malaya – Political Developments (1948), f. 28.

‘There is no doubt that UMNO is aiming at a form of government in which non-Malays will have little share and in this they are influenced in the hope of “rapprochement” with the MNP. The latter party has been lying low since the emergency and Dato Onn is known to hold the view that the two parties must work together at this stage and sink their differences at least until the Malays have gained a more secure foothold in the Federal Government.’³¹

At the same time, an anti-Chinese attitude became manifest among many of the British administrators. A letter from Gimson, the Governor of Singapore to J.O. Higham on 15 October 1948 included a report by an unnamed person relating to revision of the Register of Electors. The report included the following: ‘I am convinced the attitude of 90 percent of the Chinese is this: 1. Singapore and Malaya belong to them, virtually at present, factually in due course; 2. The British are weak and growing weaker. Japan walked in seven years ago with ease. The Chinese are already in; they are merely biding their time; 3. In one respect, they are all agreed, whether they be KMT or Communist, they are anti-British.’ The report, which Gimson chose to circulate, noted that the Government had to strike immediately and strike hard at all Chinese movements. This demonisation of the entirety of the Malayan Chinese population validated, in the eyes of many, their further exclusion from the Malayan political process and strengthened the burgeoning Malay ethnocracy. This short period following the war had been an opportunity for non-ethnicised politics – an opportunity which was completely bypassed by Malaysians. This missed opportunity must be in part assigned to the earlier activities of Dato Onn himself, but equally to the policies of the British in terms of their absolute enthusiasm for Malay-dominated ethnicised politics in the peninsula as a counter for the potential Communism of a Chinese-dominated polity.

The year of 1951 was to be another crucial year for the peninsula. The founding leader of UMNO, Dato Onn Jaafar, who had had been so dogmatic in championing the rights of the Malays, left the party in that year to set up the Independence for Malaya Party (IMP) in September following UMNO’s refusal to open its membership to non-Malays. He was replaced as head of UMNO by Tunku Abdul Rahman.³²

³¹ Ibid.

³² Tunku Abdul Rahman Putra Al-Haj ibni Almarhum Sultan Abdul Hamid Halim Shah (1903–90) was a son of the Sultan of Kedah. Trained as a lawyer, he became president of UMNO in 1951 and later first Chief Minister of the Federation of Malaya from 1955, and the country’s first Prime Minister from independence in 1957.

This year also saw the effective containment of the MCP revolution which had been launched in 1948. By 1951 local elections were being held and in January 1952 an 'Alliance' was entered into by UMNO and the Malayan Chinese Association (MCA) to contest the Kuala Lumpur elections. State elections were held in 1954 with the Alliance winning 226 of the 268 seats nationwide. The first federal elections were held in July 1955 with the now UMNO-MCA-MIC Alliance winning 51 of the 52 seats available, and forming the first Malayan government, with Tunku Abdul Rahman as Chief Minister.³³

A London conference with Secretary of State for the Colonies Alan Lennox-Boyd to discuss eventual independence was then held in January 1956. As a result of the discussions, the British government agreed to grant Malaya independence on 31 August 1957. In preparation, a commission was established under Lord William Reid to devise a constitution for the future Federation of Malaya. The Reid Commission, which under its terms of reference was required to 'safeguard the special position of the Malays and the legitimate interests of the other communities', met on over 100 occasions in 1956 and submitted its draft constitution to a Working Committee in February 1957.³⁴ This Working Committee consisted of four representatives from the Malay rulers, another four from the Alliance government, the British High Commissioner, the Chief Secretary, and the Attorney General, ensuring that it was essentially the interests of Britain and the Malay community which were being represented. On the basis of their recommendations, the new Federal Constitution was passed by the Legislative Council on 15 August and on 31 August the Federation of Malaya became an independent state.

Under this new Constitution, Article 153 provided: 'It shall be the responsibility of the Yang di-Pertuan Agong to safeguard the special position of the Malays and natives of any of the States of Sabah and Sarawak and the legitimate interests of other communities in accordance with the provisions of this Article.'

It also detailed various areas of Malay privilege. However, this provision was intended only as a transitional measure. The Reid Commission in

³³ In the 1955 election, Malay voters made up about 80% of the total electorate. Although the Chinese made up close to 50% of the population, they constituted only about 20% of the total electorate because the stringent criteria in the 1948 Federation Agreement, albeit modified slightly in the early 1950s, meant that only a minority of Chinese were eligible for Malayan citizenship.

³⁴ For details of the entire process, see Fernando (2002).

1956 saw the danger in one community in the country enjoying preferential treatment into the indefinite future. Although the Commission reported it did not find opposition to the continuance of the existing privileges for a certain length of time, it stated that ‘There was great opposition in some quarters to any increase of the present preferences and to their being continued for any prolonged period.’ The Commission recommended that the existing privileges should be continued as the ‘Malays would be at a serious and unfair disadvantage compared with other communities if they were suddenly withdrawn’. However, ‘in due course the present preferences should be reduced and should ultimately cease’. The Commission suggested that these provisions be revisited in 15 years, and that a report should be presented to the appropriate legislature. The ‘legislature should then determine either to retain or to reduce any quota or to discontinue it entirely’. Although Article 153 would have been up for review in 1972, fifteen years after Malaysia’s independence in 1957, it remained unreviewed. In 1970 a Cabinet member declared that Malay special rights would remain for ‘hundreds of years to come’, while in 2007 Deputy Prime Minister Najib Tun Razak said that there would be no time limit for the expiration of the ‘Malay Agenda’.³⁵

The 1957 Constitution (Appendix 1, Article 8) also noted Islam as the ‘official religion’ of the Federation. The Alliance’s memorandum to the Reid Commission during the drafting of the constitution did not propose to include Islam as the official religion in the constitution and neither was it suggested in the draft constitution. However, it was suggested by Abdul Hamid, the Pakistani representative in the Reid Commission, in his separate memo attached to the draft constitution. Subsequently, in the Working Party which deliberated on the constitution, the UMNO elites successfully argued for its inclusion in the constitution.³⁶ This was subsequently given huge prominence by the inclusion of an expanded version of this provision as Article 3 of the Malaysian Constitution.

1957–69 – Ethnocracy Consolidated

Under the new Federation of Malaya, UMNO became increasingly assertive in promoting Malay dominance, an assertiveness not matched by the

³⁵ The ‘Malay Agenda’ is a term which has come into use since 2000 as generic reference to Malay political primacy and *ketuanan Melayu* (Malay supremacy) premised on the special privileges granted to the Malays under the Malaysian Constitution and subsequent extensions of these provisions.

³⁶ For fuller details, see Fernando (2006).

Malayan Chinese Association president Tan Cheng Lock³⁷ in promoting the interests of his constituency. It was partly this attitude which saw Lim Chong Eu³⁸ and his supporters – mainly Chinese-educated – seize power in the MCA with Lim becoming the MCA president in 1958. The feisty newcomers clashed swiftly with UMNO in asserting the interests of the Chinese and seeking political equality as well as Chinese language and cultural rights. Matters came to a head with the 1959 election. The MCA under Lim Chong Eu felt that the 1957 Constitution provided insufficient safeguards for the Chinese community, and that in order to prevent a two-thirds majority of parliamentary seats going to UMNO (allowing them to change the Constitution at will), they sought from Tunku Abdul Rahman an increase in allocated seats from 28 to 40 (out of a total 104). If MCA could contest and likely win one-third of the seats for the Alliance, no ethnic group would have absolute control of Parliament. The Tunku rejected this and Lim and his supporters resigned from the MCA, allowing Tan Cheng Lock and his son Tan Siew Sin to return to the leadership. The seats were eventually allocated as follows: UMNO 69, MCA 32 and MIC 4. The Alliance coalition was to go on and win 74 out of 104 seats, allowing a two-thirds majority, sufficient to amend the Constitution at will. Cheah Boon Kheng notes of this election that it was the last general election in which the Alliance would allow for this free play of democratic forces and that, thereafter, it would resort to constitutional gerrymandering of constituencies to ensure communal representation. A 1962 amendment to the Constitution provided for rural weightage in the determination of electoral districts. As the majority of the rural population was Malay, this provision ensured a high representation of Malays in Parliament (Cheah, 2002: 92). Such policies promoted and strengthened Malay ethnocracy.

³⁷ Tun Dato Sri Sir Tan Cheng Lock (1883–1960) was a Malaysian Chinese businessman and politician who had his roots in Melaka. He was nominated as a Malacca Council Commissioner in 1912 and later an unofficial member of the Straits Settlements Executive Council. A key figure in the founding of the Malayan Chinese Association in 1949, he was later seen as the major representative of the Chinese in Malaya.

³⁸ Tun Dato' Seri Dr Lim Chong Eu (1919–2010) was a medical doctor and Malaysian politician. In 1951 he was appointed to the Penang Local Council and in 1955 as a member of the Federal Legislature. In the March 1958 MCA elections he challenged Tun Tan Cheng Lock and won the presidency of the party. Subsequently leaving the MCA, he established the United Democratic Party in 1962 and was a founder member of the Gerakan Party in 1969. He went on to serve as Penang Chief Minister from 1969 to 1990.

Creation of Malaysia (1963)

UMNO victory in the 1959 elections, in alliance with an emasculated MCA, gave the Tunku confidence, but before he could begin to fully pursue and promote further preferential policies for the Malays, another major political opportunity presented itself. The British-instigated plan to establish a new state of Malaysia,³⁹ as expressed in the late 1950s and early 1960s, and made public as a proposal in speeches by the Tunku in 1961,⁴⁰ was in part a Cold War strategy of the British by which to prevent Singapore and the Borneo territories from becoming Communist bases, and ensure that the British could maintain bases in the region by which to pursue their own global strategies. The anti-Communism which drove this agenda was often manifested as anti-Chinese sentiments among both the British and the Malays. The Tunku eventually advised that he was amenable to the new arrangements if, in addition to Malaya and Singapore, the new state definitely included Sabah, Sarawak and Brunei. The aim was to ensure that the Chinese did not constitute a majority in Malaysia. It was in the negotiations leading up to this new state that a new Constitution was enacted, in which the Malay special rights were also made available to the 'natives' of Sabah and Sarawak, and on 31 August 1963, Malaysia (excluding Brunei) came into being.

With a new mandate in a new state, an increased 'Bumiputera' population, British support, broad anti-Communist sentiments and the Chinese community divided between Left and Right, the Tunku began further reforms in pursuing a Malay-dominated state. Pushed by Tun Abdul Razak and Dr Ismail,⁴¹ the Tunku approved the creation or expansion

³⁹ The 'Grand Design' for integration of British territories in Southeast Asia had been a part of British decolonisation policies since the 1950s. 'On 18 April 1961, the question of the Grand Design was considered at a meeting of the Colonial Policy Committee, during which it was decided ... the development of a political association between Malaya, Singapore and the three Borneo territories as "an ultimate aim of policy". 'In pursuing this policy, it was clear that politics and security were foremost considerations. Only through a greater Malaysia were the British confident of granting self-government status to the Borneo Territories and Singapore.' See Tan (2008: 20–5).

⁴⁰ Tan Tai Yong suggests that the Malaysians were the least enthusiastic about the idea of an expanded polity such as Malaysia. See Tan (2008: 20–1).

⁴¹ Tun Dr Ismail Abdul Rahman (1915–73), a member of the Johor elite, was elected as vice-president of UMNO in 1951. In the mid-1950s he was a member of a Malayan government delegation sent to Britain to negotiate terms for independence from the British and in 1959 was appointed as External Affairs Minister and later Home

of Malay-targeted institutions – Majlis Amanah Rakyat (MARA),⁴² the Federal Agricultural Marketing Authority (FAMA), the Rubber Industry Smallholders Development Authority (RISDA) and Bank Bumiputera. More broadly, however, there were cultural moves afoot, with both the governmental institution Dewan Bahasa dan Pustaka (DBP),⁴³ led by Syed Nasir Ismail, and the National Language Action Front (NLAFF) strongly reacting against Chinese opposition to the 1960 Rahman Talib report on education, and strongly urging the adoption of Malay as the national language.

But it was Singapore, led by Lee Kuan Yew, which was to be the most actively engaged in actions which were aimed at working against the emergence of an ethnocracy in Malaysia. It was during the two years when Singapore was a part of Malaysia that Lee Kuan Yew led the Malaysian Solidarity Convention (MSC) – a coalition of political parties which called for a Malaysian Malaysia as opposed to one with Bumiputera privileges. The MSC declared:

A Malaysian Malaysia means that the nation and the state is not identified with the supremacy, well-being and the interests of any one particular community or race. ... The special and legitimate rights of different communities must be secured and promoted within the framework of the collective rights, interests and responsibilities of all races. The people of Malaysia did not vote for a Malaysia assuring hegemony to one community. Still less would they be prepared to fight for the preservation of so meaningless a Malaysia (Tan, 2008: 196).

After two years of struggle, racial riots and gradually widening views on the future directions of the country, and particularly increasing perceptions by the Chinese in Singapore that the Federal Government in Kuala Lumpur was working against rather than for in their interests, it was obvious that the Malaysian government could not effectively pursue its ethnocratic agenda with Singapore inside the Federation. At the urging of the Tunku,

Affairs Minister. In 1970 he was appointed as Deputy Prime Minister under Tun Razak, a position in which he passed away. For a biography, see Ooi (2006).

⁴² Majlis Amanah Rakyat (People's Trust Council) is a Malaysian government agency created out of the Rural Industrial Development Authority in 1966 to train Malays in the areas of industry and business. MARA operates colleges and a university from which non-Malays are essentially excluded.

⁴³ Dewan Bahasa dan Pustaka (Institute of Language and Literature) is a Malaysian government institution responsible for planning Malay language use and for publishing government-approved publications. It was established in 1956.

on 9 August 1965 the Malaysian Parliament (excluding the Singapore members) voted 126–0 in favour of the expulsion of Singapore from the Federation. As such, Singapore was ousted from Malaysia and began life as an independent state on that day.⁴⁴ The departure of Singapore and its largely Chinese population from Malaysia allowed UMNO to further consolidate the ethnocracy which now clearly marked federal and state politics. In opposition to the increasing privileges and separateness of the Malays, the Democratic Action Party (DAP), which had evolved out of the Malaysian branch of the People's Action Party, continued calling for a 'Malaysian Malaysia', urging the adoption of Mandarin as one of the official languages, and noting that Bumiputera 'special rights' had only benefited the Malay elite and done nothing for the rural poor. The same claim echoes today, particularly from the political parties involved in the opposition alliance Pakatan Rakyat.

Over the last 35 years there has been a continuing process of entrenching this ethnocracy in Malaysia by further promoting Malay special position/rights and socially and politically marginalising the other ethnic communities. Legislation has also been instituted to ensure that such special position is not queried. In 1969, following the riots which derived from the results of the 10 May elections,⁴⁵ a National Operations Council (NOC) led by Tun Abdul Razak took over government. Employing the unsubstantiated claim that the violence of May/June 1969 had been due to economic inequalities,⁴⁶ the NOC had two years to act at will with no parliamentary oversight, and it put forward proposals making it illegal (even among members of Parliament) to discuss the topic of abolition of those provisions of the Constitution dealing with Malay rights. When the Parliament was eventually reconvened in 1971, an amended Sedition Act including these provisions was passed.⁴⁷

⁴⁴ For further details of the process of Singapore's departure from Malaysia, see Keith (2005).

⁴⁵ The 10 May 1969 federal elections in Malaysia had seen a great swing to the Opposition, resulting in much greater potential influence of the Opposition in federal and state politics. On 13 May rioting occurred and on 14 May a state of emergency was declared. On 16 May the National Operations Council was established and, with Parliament suspended, it became the supreme organ of power in the country. For further details, see Kua, 2007.

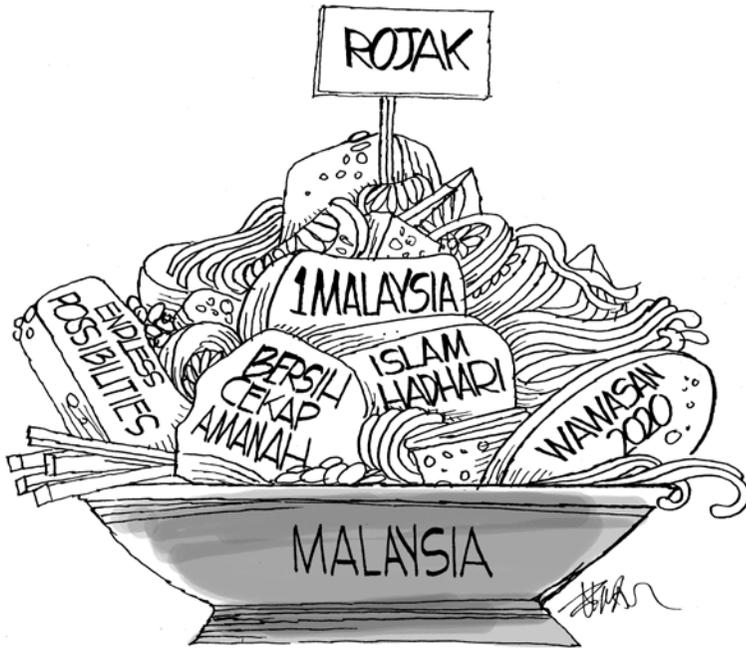
⁴⁶ It is increasingly apparent that UMNO concerns about loss of political power had been the key element in the outbreak of violence and there are numerous claims that senior UMNO figures had directed their minions to initiate violence to allow the declaration of a state of emergency.

⁴⁷ The Sedition Act was originally enacted by the British in 1948 but it was adopted

Today, as we view an increasingly riven and divided society in Malaysia, we need to turn back and examine how it was that this state and its Constitution were created. When we recognise that the Malaysian Constitution (and indeed the Malaysian state) grew out of a Cold War environment where British concerns about a burgeoning China were reflected in Constitutional provisions – decided by only the British, the Sultans and UMNO – which were neither democratic nor egalitarian, and where one ethnic group and the feudal rulers of the peninsula were provided with unjustified privilege, the need to revisit, revise and reform the basis of the Malaysian political structure shows itself to be essential. Only through the removal of provisions where one ethnic group is constitutionally advantaged, and where only one cultural sphere is promoted and endorsed as the sole legitimate manifestation of ‘Malaysian culture’ will it be possible to move towards a new Malaysia where social justice is pursued rather than repressed.



under the Federation of Malaya. Section 4 of the Sedition Act specifies that anyone who ‘does or attempts to do, or makes any preparation to do, or conspires with any person to do’ an act with seditious tendency, such as uttering seditious words, or printing, publishing or importing seditious literature, is guilty of sedition. This is specifically aimed at precluding any questioning of Articles 152, 153 or 181 of the Malaysian Constitution, the very provisions used to create and maintain Malaysian ethnocracy.



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Chapter 2

The Construction of Malaysia's Foreign Policy since 1957:

An Emerging Middle Power's Choice to Follow, Challenge or Compromise with the Global Order¹

Delphine Alles

Independent since 1957 and a founding member of the Association of Southeast Asian Nations (ASEAN)² ten years later, Malaysia has tried constantly to assert itself beyond Southeast Asia. The steady increase in staff and number of permanent missions abroad of the Ministry of Foreign Affairs demonstrates the commitment of successive governments to be heard globally. In the early 1960s Malaysia had only six embassies.³ However, by 1965 it had 21 and by 1980 about 40 (Jeshurun, 2007: 325 ff). In 2012 Malaysia had 105 diplomatic missions worldwide (66 embassies, 16 high commissions, three permanent representations, 19 consulate offices and one friendship and trade centre). In the same year there were 114 foreign permanent missions installed in Kuala Lumpur, reflecting the mutual interest of the rest of the world in a country straddling the Malay Peninsula and the north of the island of Borneo.

¹ The original version of this article was written in French in 2011.

² Founded in 1967 by Indonesia, Malaysia, Thailand, Philippines and Singapore, the Association of Southeast Asian Nations (ASEAN) now groups 10 states in a loose institutional framework based on cooperation, consensus and respect for the national sovereignty of its members. See Boisseau du Rocher (1998).

³ These embassies were in Washington, Canberra, New York, New Delhi, Jakarta and Bangkok.

The meandering course of Malaysian foreign policy, however, is enlightened neither by the political continuity at the government level,⁴ nor by the similar general objectives put forth by its national leaders since 1957 – such as national independence, territorial integrity, national survival, economic development, sovereignty.⁵ As in a musical score, the use of a tonal system does not predetermine the tune to be played. While claiming continuity with the principles of previous administrations, the various Malaysian prime ministers have, in effect, navigated among conflicting positions: membership in the Western bloc (Tunku Abdul Rahman); challenge to Western domination of the international order (Mahathir Mohamad); or, more recently, conciliation of the ‘West’ with ‘the rest’⁶ (Abdullah Badawi and Najib Razak).

To follow, challenge or to compromise: for five decades, Malaysian diplomacy has employed the full range of options available to a country that seeks to free itself from dependence and achieve the status of a middle power.⁷ It is therefore an interesting test case to analyse foreign policy by observing the orchestration of internal, external and idiosyncratic variables. The evolution of the relationship between these three variables (the first section) which throws light on the nuances in Malaysian foreign policy, and its increase in intensity until the early 2000s (second section) explain the more measured record that has been preferred since the end of the Mahathir era (third section).

⁴ The Barisan Nasional (National Front) coalition, dominated by the Malay nationalist party UMNO (United Malays National Organisation) has been in power uninterrupted since 1957.

⁵ Saravanamuttu (2010: 13 ff) defines foreign policy objectives that are broadly similar for all countries. Theorised by Arnold Wolfers in 1962, these cover ‘objectives of possession’ (which are designed to meet national needs and values, such as economic development) and ‘objectives of milieu’ (which transcend national boundaries, such as the promotion of peace). The objectives are distinguished by a state’s postures, strategies and actions. This study focuses on the evolution of these three categories, insofar as they have evolved, while the factors for the formulation of the objectives have remained constant.

⁶ ‘The rest’ is symbolised by Malaysia, which aspires to speak for the developing countries although it is on the verge of acquiring developed country status. Malaysia is a meeting place of several Asian cultures, has a Muslim majority and Chinese and Indian minorities.

⁷ Cf. Camroux (1994); Ping (2005); Saravanamuttu (2010).

The Explanatory Variables of a Middle Power Diplomacy

Malaysian foreign policy analysts⁸ who have addressed specific periods of the country's foreign policy⁹ focus on the observation of three main categories of independent variables: (1) idiosyncratic variables related to policy makers' personalities; (2) internal variables related to the need to maintain the political and social system as well as the version of national identity favoured by the governments; (3) systemic variables, corresponding to the position of the country in the international system and in relation to its partners. This international system determines the context in which foreign policy is conducted and frames the options envisaged.

Personality of Decision-makers – Insufficient to Explain the Intricacies of Malaysian Diplomacy

The personality of different decision-makers and their respective worldviews constitute the first variable (Jervis, 1976). However, this factor tends to be over-emphasised in developing countries' foreign policy analysis (Korany, 1986), where the influence of the head of state or government seems to be reinforced by the weak institutionalisation of decision-making mechanisms. Malaysia's foreign policy is no exception, reflecting the preferences of a very small elite. Marvin C. Ott observed that in the beginnings of Malaysian statehood, the key decisions were taken by four or five men, and largely dominated by the personality of the Prime Minister, who also held the Minister of Foreign Affairs' portfolio (Ott, 1972).

Convergences are observed between the personal orientations of leaders and their foreign policy options. An 'English gentleman' (ibid.: 225), Tunku Abdul Rahman,¹⁰ the founding father of Malaysia, was an anti-communist aristocrat, closer to the former colonial administration than to Third World leaders. Mahathir Mohamad,¹¹ on the other hand, had studied medicine in British-ruled Singapore (unlike his predecessors, who were trained in the humanities) and was more concerned with social issues. Attributing the plight of disadvantaged Malays to colonial heritage and pre-modern Malay traditions, he advocated a specifically Malaysian modernisation (Mahathir,

⁸ For example, Holsti (1992); Hill (2003); Breuning (2007).

⁹ For example, Saravanamuttu (2010); Dhillon (2009); Camroux (1994).

¹⁰ Tunku Abdul Rahman (1903–90) became the Federation of Malaya's Chief Minister in 1955 and its Prime Minister after the country's independence in 1957 until 1970.

¹¹ Mahathir Mohamad (1925–) was the 4th Prime Minister of Malaysia from 1981 to 2003.

1970).¹² His bold denunciations of the injustices of a Western-dominated international order frequently led to open confrontations with the United States or the United Kingdom. Finally, the religious background of Abdullah Ahmad Badawi,¹³ a graduate in Islamic Studies, may have stimulated his ambition to make Malaysia the spearhead of Islam Hadhari ('civilisational Islam'), which was supposed to illustrate the compatibility between religion, modernity and institutions. Abdullah intended to promote Islam Hadhari as the key to rapprochement with the West (Abdullah, 2006).

The decision makers' personal paths and worldviews, however, do not constitute a sufficient explanatory variable. They do not explain some apparent contradictions, such as the contrast between the virulently anti-American statements of Mahathir and his government's close relationship with the USA in matters of security and military cooperation.¹⁴ Furthermore, political leaders' ideological orientations and political preferences can be considered in a larger context as reflecting the tendencies of their era or generation.

Domestic, Binding and Programmatic Variables

More satisfactory and adapted to the case of Malaysia is the explanation that foreign policy is determined by the internal political debates of the country under observation. Putnam's analysis that domestic constraints influence a government's international behaviour (Evans et al., 1993) is further reinforced if we take into account the flexible dimension of foreign policy, by contrast with other public policies, in the case of Malaysia. Since foreign policy is the outcome of relatively light administrative procedures and a concentrated decision-making process, it can be easily transformed. It is, moreover, rather adaptable as it is expressed through discourses.¹⁵ In

¹² Controversial from the moment it was published shortly after the inter-ethnic riots that shook Malaysia in 1969 which led to the implementation of the NEP, this book was republished by Marshall Cavendish in 2010.

¹³ Abdullah Ahmad Badawi (1939-) was the 5th Prime Minister of Malaysia from 2003 to 2009.

¹⁴ Of note is that the two countries signed a bilateral agreement of military cooperation in 1984 that allowed joint training. Despite officially condemning this military intervention, the Malaysian government authorised American troops to fly over its territory during Operation Enduring Freedom in Afghanistan, and also cooperated in the arrest of presumed terrorists of the 11 September 2001 attacks in the United States. See Ku (2004).

¹⁵ The estimated Foreign Ministry budget for 2011 was RM579,843 million (approximately €130 million) out of a total government budget of RM162,805,323,000

the case of Malaysia, foreign policy is conducted in tandem by the Prime Minister and the Ministry of Foreign Affairs; apart from the signing of treaties it is largely beyond the control of Parliament.¹⁶ Foreign policies may thus mirror domestic constraints as perceived by the leaders and reflect their intention to send a message to their constituents, even before the implementation of public policies requiring greater mobilisation of budgetary, human and administrative resources.

Foreign policy can be used as a tool to publicise the unified discourse on the national identity that a government seeks to promote, both to its citizens and outside its borders, especially when that identity is not firmly established. This hypothesis is particularly acute in the case of Malaysia which, since the 1969 ethnic riots,¹⁷ has been in search of a national identity referent that would satisfy the Malay majority without excessively marginalising the Chinese and Indian minorities. Parallel to the post-1970 establishment of the NEP (New Economic Policy), based on a quota system in favour of the Malay population, and the political competition since the 1980s between the United Malays National Organisation (UMNO) and the Islamist party PAS (Party Islam Se-Malaysia, Pan-Malaysian Islamic Party)¹⁸ were variations in Malaysian foreign policy discourses intended to send a positive message to the Malay community, mainly through the promotion of Malaysia as a Muslim country displaying solidarity with the

(about €37 billion). This ranked as the 23rd ministerial budget allocation – lower, for example, than that of the Ministry of Tourism. (2011 estimates, from a document published by the Malaysian Treasury, accessed on 23 December 2010.)

¹⁶ Saravanamuttu (2010: 365): 'One inescapable conclusion from the survey of Malaysian diplomatic history over the past fifty years is that the Prime Minister of the day was inevitably the chief architect of the nation's foreign policy right from the days of Tunku Abdul Rahman Putra himself.'

¹⁷ Following the general elections of 10 May 1969 which saw an opposition victory in Selangor state and the Barisan Nasional losing its 2/3 majority in Parliament, violent riots broke out, mainly in Kuala Lumpur, between the Chinese communities which were Gerakan and DAP supporters and the Malays close to UMNO. Officially, 169 persons were killed in these riots even though official testimonies noted the number of victims to be very much higher. Subsequent to the repression of the riots, known as the May 13 Incident, the Malaysian government declared a state of national emergency in the country, suspended Parliament and established the National Operations Council that ruled the country till 1971. Thereafter, the New Economic Policy was implemented with the goal of favouring Malays to catch up economically.

¹⁸ Faced with growing competition from the opposition Islamic party PAS (Partai Islam SeMalaysia), the Malay ethno-nationalist party UMNO gradually Islamised its speeches, policies and the country's institutional framework. See Farish (2001).

rest of the *ummah*, the community of believers (Nair, 1997). More recently, the aspiration to reconcile the different communities has resulted in prime ministers Abdullah Badawi and Najib Razak's moves towards less vocal foreign policy postures. While maintaining the specific role of the Islamic factor, a necessary condition to maintain the support of the Malay electorate, Abdullah and Najib have, indeed, attempted to promote Malaysia and their respective administrations as reliable inter-religious and intercultural mediators.

The International Context: Framework of Possible Diplomatic Moves

The place of a country in the international system also contributes to determining its foreign policy alternatives. The latitude available to a government is related to its independence vis-à-vis other countries, as well as its relative power and degree of integration within the international system. Compared to its regional and global partners, Malaysia has emerged as a middle power. This concept – which is both relative and normative – has been analysed in the Southeast Asian context by Jonathan Ping, who holds up Malaysia and Indonesia as two archetypal examples of a middle power.¹⁹ Despite its limits, the middle power concept provides a useful analytical framework to identify the range of possible behaviours for a country based on its relative position (real and perceived) in the international system. Although the middle power concept has frequently been studied in foreign policy analysis, most academic studies have addressed established middle powers, such as Canada or Australia, which are well integrated within the international system.²⁰ Consequently, the literature on the subject has long held that the middle power label involves foreign policy behaviours such as pursuing multilateral or cooperative solutions to international issues (Cooper et al., 1993: 19).²¹ This descriptive approach cannot, however, explain the sources of these behaviours, nor can it shed light on postures which depart from this rule, as has been the case in Malaysia, especially under Mahathir. While corresponding to the descriptive criteria of a middle powermanship, Malaysian diplomacy has adopted, from

¹⁹ The criteria proposed by Jonathan Ping (2005) are simultaneously statistical, normative (self perception and perception by others) and political (statecraft).

²⁰ For example, Holbraad (1984); Cooper et al. (1993); Baker Fox (1980).

²¹ Cox (1989: 826–7): 'The middle power role has become linked to the development of international organization. ... The middle power is likely to be in the middle rank of material capabilities, but it also stands in the middle in situations of conflict.'

the 1980s, protest postures which are far removed from the mediator role that classic works on this matter attribute to middle powers.

Hence other factors come into play. Ping explains the specificity of middle powers: unlike great powers that can choose and defend the model of governance of their choice, and unlike small powers that do not have sufficient resources to defend their models, middle powers have intermediate resources. They, therefore, seek to maintain their status by incorporating external influences, while trying to control the process of hybridisation (Ping, 2005: 226). This specificity explains the need for non-Western middle powers to combine ('hybridise') their own political and diplomatic traditions with those that dominate within the international system. This is not the case, for example, with Canada, whose values, a priori, match those promoted by the UN. The theory of hybridisation identifies three possible types of behaviour: (1) anti-hegemonic behaviour, (2) behaviour of influence on international governance, and (3) behaviour that seeks to identify external influences that could be adapted to the local context (Ibid.: 191 ff). Protest postures, therefore, tend to be favoured by non-Western middle powers attempting to influence the international system to accept their priorities and operating modes. This approach sheds light on the evolution of the postures of Malaysia.

A small dependent country at the time of its independence, Malaysia did not intend to spearhead any revolutionary message, unlike neighbouring Indonesia. On the contrary, it recognised its limited power and tried to seize opportunities favourable to its economic development. Between 1957 and 1969 the foreign policy adopted by Malaysia's Tunku Abdul Rahman manifested a certain adherence to Britain (the former colonial power) and to the Western bloc, within which Malaysia sought support in the context of a double confrontation, internally with communist guerrilla forces²² and externally with Indonesia's Sukarno. The end of the conflict with Indonesia in 1966 (see below) relieved Malaysia from its main external security constraint, allowing it to gain a first step to autonomy on the world stage,

²² From 1948 till 1960 the armed forces of the Commonwealth were fighting the Malayan National Liberation Army (MNLA), the armed branch of the Malayan Communist Party (MCP). The conflict was termed the 'Malayan Emergency' due to demands from tin and rubber producers since insurance would not cover losses resulting from war. The end of this communist insurrection, which claimed 11,000 victims, was proclaimed on 31 July 1960. A second communist insurrection was launched in 1967 by MCP leader Chin Peng, supported by Beijing where he was exiled. This conflict officially ended in 1989.

notably through the creation of ASEAN (Association of Southeast Asian Nations), which offered Malaysia new economic and political opportunities as well as a new forum for expression.

Tun Abdul Razak,²³ who was constrained domestically by the communal clashes of 1969²⁴ and the establishment of the New Economic Policy in favour of the Malay majority, could distance himself from the pro-Western tropism of his predecessor to get closer to partners of the Organization of the Islamic Conference (OIC)²⁵ or the Non-Aligned Movement (NAM).²⁶ By expanding alliances he began to expand the autonomy of Malaysia on the world stage. It was, however, only with Mahathir Mohamad, who was appointed as Malaysia's Prime Minister in 1981, that the country's foreign policy adopted a confrontational posture. Mahathir championed the Look East policy as an instrument of his opposition to American hegemony as well as to consolidate Malaysia's relations with countries of the South and the Muslim world. Mahathir could afford this development because economic growth in Malaysia was based not on development aid, but on economic partnerships between its private sector and Western economic actors.²⁷ Moreover, Malaysia enjoyed opportunities in other areas of cooperation in Asia (ASEAN, East Asia) and in the Muslim world (OIC). However, even at the height of his diplomatic opposition to the former British colonial power and U.S. hegemony, Mahathir was careful to maintain economic and strategic partnerships with the United States and to preserve Malaysia's place in the Commonwealth.²⁸

²³ Tun Abdul Razak Hussein (1922–1976) was the second Prime Minister of Malaysia from 1970 to 1976.

²⁴ See note 17.

²⁵ Founded in 1969 and located in Jeddah, the OIC changed in name to the Organization of Islamic Cooperation in 2011. It includes 56 states and aims to foster cooperation among Muslim countries. Although the only religious multilateral organisation to be represented at the UN, it deals in political, economic and social issues.

²⁶ Founded in 1961 at the Belgrade Conference, the Non-Aligned Movement has one of its origins in the Afro-Asian Conference of Bandung (Indonesia) in 1955. In the context of the Cold War, it rallied the states which did not want to align with either of the two blocs. Today NAM still has 118 member states; they are gathered primarily around the principles of national independence and the struggle against all forms of imperialism.

²⁷ The United States remains the largest trading partner of Malaysia (which conversely is the 18th partner of the United States), with US\$33.7 billion in trade (2009 figures, source: WTO).

²⁸ Since 1926 the Commonwealth has been an association of former colonies or

Mahathir's contentious postures contributed to distinguishing Malaysia's voice on the world stage, while attracting strong opposition from its Western partners. Mahathir's successors – Abdullah Ahmad Badawi in 2003–09 and Najib Razak since 2009 – have tried to be more conciliatory. For them, the goal was no longer to transform (hybridise) the system, but rather to reintegrate Malaysia in it so as to restore relations with partners who had turned away by the end of the Mahathir era, especially the United States. While conserving the dividends of Mahathir's activism and prestige, which had conferred Malaysia with a more visible role on the world stage, the task now is to appease the partners who had been offended by the confrontational approach during the years of contentious diplomacy.

From Bandwagoning to Anti-conformism: A Young Country in Search of a Place in the International Scene

The Development of a Practical Diplomacy

The independence of Malaya in 1957 and the formation of Malaysia in 1963 were beset by political instability, internally and externally. In 1957, when Malaya obtained its independence after relatively peaceful negotiations with the British government, the imperative then for the young country was to ensure internal stability as it was in the throes of a war (the Emergency) that had been declared in June 1948 by the British colonialists against the communist guerrillas backed by the Chinese Communist Party. If the risk of internal instability faded after 1960, the external threat became more prevalent in 1963 when, in protest against the inclusion of Singapore as well as Sabah and Sarawak (in northern Borneo) in the Federation of Malaysia, Sukarno launched a war of confrontation (Konfrontasi) against Malaysia (Mackie, 1975). His policies were increasingly oriented towards the Eastern bloc, and had indeed taken a dim view of the formation of what he considered to be a pro-Western bastion able to control the Malacca Strait. In fact, Tunku Abdul Rahman was anti-communist and opposed the Third World rhetoric of his counterpart and neighbour. This security priority constrained Malaysia in its early years: already tied down in the anti-communist struggle internally, it had to choose the Western bloc, whose support was vital in the face of Indonesian aggression. Nevertheless, Malaysia had to adopt a more neutral tone as it also needed the support of

protectorates of the British Empire. Its 53 member states are autonomous but united by common interests.

the member states of the Non-Aligned Movement in the General Assembly of the UN who were, a priori, reluctant since they considered Malaysia to be a neocolonial entity. These considerations hindered any possibility of an independent foreign policy for Malaysia.

Confronted with such constraints during its early years, the Malaysian government tried to seize the opportunities that opened on two fronts. While the West was looking for a Southeast Asian relay to complement the Philippines and Thailand, Malaysia appeared as a perfect candidate since it could control, at least partially, the indispensable Malacca Strait, which is bordered on the other side by Indonesia. On another front, the Malaysian government did not hesitate to play on the sentiment of a common religion to secure the support of Middle Eastern partners, who had been disregarded by the Indonesian authorities who feared, notably, the transfer of Islamist movements from Arab countries.

While Sukarno avoided special relationships with Muslim countries for fear of repercussions on the fragile quasi-secular institutional balance of Indonesia,²⁹ Tunku Abdul Rahman took advantage of these relationships to find new partners for Malaysia in its quest for support on the world stage. Increased travels to the Middle East, during which Tunku never failed to bring up the special ties between Malaysia and its Muslim partners, so attested.³⁰ Malaysia could, therefore, count on the support of Arab and Western partners in the UN, in the face of an Indonesia in decline and ostracised by the organisation. Sukarno's regime became increasingly alienated from the UN due to the President's diplomatic excesses. Meanwhile, Malaysia managed to secure a non-permanent seat on the UN Security Council in 1963, against Sukarno's will. In retaliation, Sukarno withdrew Indonesia from the international organisation. Diplomatic speeches from this period emphasised pragmatism as the main principle of Malaysia's foreign policy, a rhetoric preserved by all governments even when their foreign policies took a more ideological tone, especially with the arrival to power of Mahathir. Malaysian diplomacy thereby contrasts with that of Indonesia, which has coloured its discourse with ideological postures (in the context of its 'independent and active' foreign policy) even during the most 'aligned' years of the Suharto period.

²⁹ The Indonesian constitution cannot be described as secular since the first principle of its national ideology, Pancasila, postulates belief in one God. However, it guarantees freedom of religion and equality among the six recognised religions: Islam, Protestantism, Catholicism, Hinduism, Buddhism and Confucianism.

³⁰ Confirmed by consulting the archives of the *New Straits Times* in the period when Tunku Abdul Rahman was Prime Minister (1957–70).

The Progression towards Autonomy in Malaysian Diplomacy after 1965

In Indonesia, the transfer of power from Sukarno to his anti-communist successor, Suharto, facilitated the end of Konfrontasi, freed Malaysia from its main external threat and allowed Malaysian diplomacy greater autonomy. The five anti-communist countries of the region – Malaysia, Indonesia, Singapore, Philippines and Thailand – began the process of setting up a regional organisation that had previously been envisaged, establishing the Association of Southeast Asian Nations (ASEAN) in 1967. This organisation of cooperation was originally intended to provide mutual support among these countries endangered at their borders by communist Vietnam and domestically by Beijing-backed insurgency groups. ASEAN provided the possibility of a regional horizon for its members. For the first time, the five countries undertook a cooperative venture from which the West was institutionally absent – although its ideological weight was quite obvious. For Malaysia, ASEAN represented the beginning of a diversification of partnerships and an opening up to spheres other than those of the Commonwealth.

Freed from the direct threat of the Indonesian Konfrontasi – the only open conflict in which it had ever been involved – Malaysia nevertheless remained constrained, on the one hand by the Cold War, as the authorities' concern over the communist guerrillas continued; and on the other hand, domestically. The latter gradually assumed significance as the inter-communal balance between the Bumiputera³¹ majority on the one side, and the Chinese and Indian communities on the other, crumbled. The political pragmatism invoked by successive Malaysian governments since independence has been based primarily on their perception of domestic political games and national interest, which has been dominated since 1957 by UMNO, the Malay ethno-nationalist party, even though this domination has been regularly challenged. The 1969 inter-ethnic riots forced Tunku Abdul Rahman to resign, highlighting the growing tensions among the various components of Malaysian society. Succeeding Tunku, Tun Abdul Razak Hussein implemented the New Economic Policy, which aimed to ensure that Malays caught up in the economic sphere while maintaining their political privileges and dominant position in the government sector.³²

³¹ 'Sons of the soil' – the Malays and indigenous people of Malaysia, who comprise 67 per cent of the population (Malaysian Department of Statistics, 2010).

³² The Malays, who make up about 51 per cent of Malaysian society, have, on average,

Meanwhile, foreign policy served as an instrument to display UMNO's Islamic values. In the face of growing criticism inside the country from the Islamist opposition, UMNO exploited religion as a factor for political mobilisation. This trend in foreign policy grew over the following decades with the consequence that the conduct of foreign affairs became a function of the close domestic links between religion and politics. In committing Malaysia in 1969 to the creation of the Organization of the Islamic Conference (OIC) of which he was the first Secretary General in 1971, Tunku Abdul Rahman officially inscribed the notion of religious solidarity in the country's international agenda.

Always keeping in mind its goal to diversify its international partnerships, Malaysian diplomacy also turned towards the East. The idea of establishing diplomatic relations with the People's Republic of China had been raised in 1959 by Foreign Minister Tun Dr Ismail Abdul Rahman after his return from France where President Charles de Gaulle had convinced him that such a development was unavoidable. However, in the face of objections from the Tunku, who retained control over foreign affairs on which he imprinted a non-negotiable anti-communist orientation, Tun Dr Ismail was forced to resign. Nevertheless, Malaysia was the first country in the region to implement a pragmatic approach to this issue. If we exclude Sukarno's Indonesia, whose close relations with Beijing came to an end with the arrival in power of General Suharto, Malaysia was the first ASEAN country to normalise relations with the Peoples' Republic of China on 31 May 1974. In doing so, it opened a new phase in the diversification of its international partnerships, which was confirmed by Tun Hussein Onn, who succeeded Tun Abdul Razak after the latter's death in January 1976.

Mahathir and the Pragmatic Disruptions of a Rising Middle Power

It was against the backdrop of Mahathir's appointment as Prime Minister of Malaysia on 16 July 1981 that Malaysia really entered the international arena. The arrival of this strong personality, who wished to see the

less wealth than the Chinese and Indian minorities, due in particular to British policies that kept the natives in the countryside. The immigrants from China or the Indian subcontinent could not acquire land and had to go into industry and the tertiary sector, the fastest growing sectors. When looking at these data, which form the base of the pro-Malay positive discrimination policies, the inherent limitations of macroeconomic indicators that do not allow individual career paths to be taken into account must be borne in mind.

Federation achieve greater autonomy and take its due place on the world stage, coincided with the emergence of an international and domestic environment conducive to the country taking initiatives on the world scene. Malaysia was no longer the small country – dependent and threatened – of the years following British withdrawal. Economically independent, its leaders could do without development aid, which was replaced by foreign direct investment less subject to political contingencies.

Mahathir quickly saw the political opportunity of capitalising on the North–South divide, rather than the East–West division (Dhillon, 2009: 116). It was for this purpose that he established the South-South Commission in 1986 (Ahmad Faiz, 2005). On the world stage, the end of the Cold War permitted middle powers to finally speak out without having to take sides in the bipolar game (Nossal and Stubbs, 1997). In the quest for a new role in the post-Cold War era, Mahathir also intended to rejuvenate the Non-Aligned Movement to make it an instrument of the South and a forum to denounce a world order deemed unjust. At the Rio Earth Summit in 1992 he accused the North of being responsible for the global environmental issues and was described as the ‘new voice of the Third World’ by the *Far Eastern Economic Review*.³³

Domestically, from the 1980s Mahathir faced increased competition from PAS. The Islamist party had gone into opposition after the failure of its brief co-optation by the ruling coalition between 1974 and 1978 (Farish, 2003). The intensification of the diplomatic relationships with the Muslim world – a reflection of domestic policies, also aimed to capture the Malay electorate – is to be understood in this context. This was particularly so in the case of Mahathir’s support for the Palestinian people, an iconic international issue for the majority of Muslims, who identify with this cause. However, this constraint related to consideration of the Malay electorate ran parallel with having to respond to the growing dissatisfaction of Malaysia’s ethnic minorities. The Look East Policy, as well as the emphasis put on Malaysia’s plural identity (for example, with the Malaysia, Truly Asia slogan), served this second purpose while it also contributed to national economic development by diversifying Malaysia’s economic partnerships (Camroux, 1994).³⁴

Despite his calls for a new international order, the Prime Minister was aware of the limited capacity of Malaysia, confined to the status of a middle

³³ *Far Eastern Economic Review*, 20 August 1992, cited in Saravanamuttu (2010: 116).

³⁴ David Camroux’s reflection in 1994 as he observed the attempts to promote the multiracial nature of Malaysian society.

power. This prompted him to favour regionalism or specialised international organisations for the country's international emergence. However, the possibilities offered by regionalism remained limited for Malaysia, which could not hope to exert more influence within ASEAN than Indonesia, which de facto dominated the organisation by virtue of the size of its territory and population despite its lower economic development. The OIC, where Malaysia could pose as a model of a developed Muslim country, provided an alternative forum for Mahathir's ambitions.

The Mahathir years were also marked by oscillations between protesting outbursts and pragmatism. At the height of his anti-American protests, Mahathir maintained strategic cooperation with the United States and economic partnerships with the West. Malaysia remained a member of the Commonwealth even while Mahathir launched the Buy British Last campaign, which urged Malaysian citizens to boycott British products. These pragmatic aspects distinguished Mahathir's postures from the strategies qualified as 'deviant' of Hugo Chavez (President of Venezuela, 1999–13) or Mahmoud Ahmadinejad (President of the Islamic Republic of Iran, 2005–13) that isolated their countries from the international arena (Badie, 2008). In addition, despite his vehement postures, Mahathir never lost sight of the fact that Malaysia's development relied on its integration into globalisation. Malaysia hence joined the World Trade Organization (WTO) in 1995.

However, the controversial statements of the Prime Minister, in particular on the Israeli issue, eventually damaged Malaysia's diplomatic relations to the extent of provoking repercussions on its development.³⁵ While Malaysian diplomacy contributed to improving its status within the OIC and NAM, Mahathir's image deteriorated progressively in Western countries, as with ASEAN members. Tensions multiplied, especially with Singapore, which crystallised anti-Chinese sentiments. They broke out for the first time on the diplomatic front in 1986, with the Malaysian government's viewing the visit of the Israeli President Chaim Herzog to Singapore as an affront to its anti-Israeli position, while the government of the city-state saw it as an opportunity to assert its independence from its neighbour. The tensions culminated with the cessation of military

³⁵ Mahathir has made numerous anti-Israeli statements, but the most controversial is undoubtedly his speech at the opening of the Tenth Islamic Summit Conference held in Putrajaya on 16 October 2003, when he said: 'We are actually very strong. 1.3 billion people cannot be simply wiped out. The Europeans killed 6 million Jews out of 12 million. But today the Jews rule this world by proxy. They get others to fight and die for them.'

cooperation following the discovery of an espionage programme in 1989 (Acharya, 2008: 23), and have resurged regularly around disagreements over specific issues concerning the water reserves which Malaysia contractually sells at a cheap rate to the city-state, the causeway linking the two countries that Mahathir wanted to replace with a bridge, territorial disputes about sovereignty over the islands in the Johor Strait or the location of the Malaysian border post on the railway between the two countries.³⁶

Despite these many controversies, several bases of Malaysia's diplomacy were laid or consolidated during the Mahathir years: the diversification of the country's international partnerships, South-South relations, regionalism and close relations with the rest of Asia and the Muslim world. The Prime Minister's fierce desire for independence, manifested by his refusal to resort to conditional aid proposed by the IMF during the financial crisis of 1997-98, put Malaysia on the world map and gave it the attributes of a middle power.

Attempts at Appeasement since 2003: Malaysia in Search of a Middle Way

How has the situation evolved since the end of the Mahathir era? Concerned on the domestic front with regaining a stability damaged by the erosion in interracial consensus, the governments of Abdullah Ahmad Badawi and Najib Razak chose to favour appeasement. Foreign policies have continued

³⁶ These elements are developed in Tan (2001). The title of the book (*Malaysia-Singapore Relations: Troubled Past and Uncertain Future?*), published towards the end of the Mahathir years, is revealing. It was supplemented in 2006 by a more optimistic work (*Singapore-Malaysia Relations under Abdullah Badawi*), reflecting the improved political climate following a change in prime minister (Saw and Kesavapany, 2006). On 23 May 2008 the International Court of Justice ruled on the dispute over the islands of Pulau Batu Puteh; it gave sovereignty over Pedra Branca to Singapore, while Middle Rocks was returned to Malaysia. The question of South Ledge, located at the junction of the territorial waters of the two countries, has not been decided. Diplomatic wrangling over the location of the border-crossing post between Malaysia and Singapore for railway passengers broke out after 1 August 1998 when the Singapore government moved its Customs, Immigration and Quarantine (CIQ) posts from the Tanjong Pagar railway station in the heart of its territory to the north of the island to be close to the Malaysian border. At first, the Malaysian government refused to recognise the change, resulting in a paradoxical situation that saw train travellers obtaining their visa to enter Malaysia before receiving their exit visa from Singapore. An agreement was signed on 24 May 2010 to move the Malaysian border-crossing post to the north of the island.

to serve as a vector of the image that the leaders want to disseminate among Malaysian citizens.

The Return of Internal Constraints and Role of Religious and Interracial Appeasements

The end of the Mahathir era was marked by a weakening of the consensus that he had been able to maintain, thanks to the economic development of Malaysia and his international postures which captured the public's attention, channelling their frustrations. For Abdullah Ahmad Badawi, who took over the government on 31 October 2003, the priority was to appease public opinion and strengthen national cohesion. His foreign policy sought to promote his vision of a moderate Islam, consistent with the institutions he wished to have in Malaysia, and to renew partnerships meant to boost the Malaysian economy. Though observers wondered which course the new Prime Minister's foreign policy would take, they were reassured by the affirmation of his intention to depart from his predecessor's most vocal postures. The Barisan Nasional coalition's big victory in the general elections of March 2004 provided him with enough resources to implement his ambitions (Lee, 2007).

The Islam Hadhari (civilisational Islam) doctrine introduced by Abdullah contributed, among other goals, to repositioning Malaysia as a serious diplomatic partner for the West. Expounded in ten principles – which were criticised for their lack of direct links with Islam – Islam Hadhari aimed to combine faith and devotion with a fair and reliable government, a free and independent people, the pursuit and mastery of knowledge, balanced and comprehensive economic development, a good quality of life for the people, protection of the rights of minorities and women, cultural and moral integrity, preservation of natural resources and the environment, and strong defence capabilities.³⁷ The idea met with relative success among Malaysia's Western partners, but was greeted with scepticism in the Muslim world while Malaysia was chairing the OIC from 2003 to 2006. The Arab countries saw it as a misplaced attempt to introduce a new version of Islam and were suspicious of it, while local Muslims hardly considered these declarations of good intentions.

³⁷ Abdullah Ahmad Badawi, speech delivered at the 55th General Assembly of UMNO, 23–25 September 2004. These principles were reiterated in his speech 'Islam, Malaysia and the Wider World', delivered in the Centre for Islamic Studies of the University of Oxford, UK, 1 October 2004. See Abdullah (2006) for a compilation of his speeches.

Abdullah practised appeasement in all areas, including relations with neighbouring countries. This was particularly the case with Singapore, with whom relations had deteriorated during the Mahathir years. On 11 April 2006 he cancelled the project of the 'crooked bridge' planned to replace the Malaysian side of the causeway linking Singapore and Malaysia (Malaysian Prime Minister's Office, 2006). Both countries even accepted the jurisprudence of the International Court of Justice to resolve their territorial and maritime disputes. The commitment of Malaysia to ASEAN was made easier by these more conciliatory positions. Abdullah also supported the expansion of East Asian regional cooperation through the ASEAN Plus Three (APT)³⁸ as well as numerous meetings of varying geometry³⁹ aimed at making Southeast Asia a pivot of East Asian international relations, between India and China. In contrast, relations with Indonesia became increasingly strained because of several strategic disputes. Both countries had previously claimed sovereignty over the islands of Sipadan and Ligitan in the Celebes Sea, which were attributed by the International Court of Justice to Malaysia, based on the effective authority exercised by the latter over these territories.⁴⁰ Indonesia and Malaysia's claims to the maritime bloc of Ambalat, rich in gas and underwater resources, have given rise to repeated tensions since 2005, which culminated during the autumn of 2009 when Indonesian military vessels were mobilised following a report of a Malaysian incursion into the neighbouring waters (Budianto, 2010). The treatment of Indonesian workers in Malaysia was another source of diplomatic wrangling, with several cases of abuse drawing criticism from the Indonesian government (*Jakarta Post*, 2011). Other disagreements of a more symbolic nature revealed the difficult relations between the two countries: Indonesia's opposition to Malaysia's use of traditional Balinese music to promote tourism, or the origin of batik (finally assigned to Indonesia by UNESCO in 2009). In autumn 2009 these fraternal quarrels (Liow, 2005) were combined with the strategic crisis involving Ambalat, and culminated with Indonesian popular mobilisations hostile to Malaysia (Adamrah, 2010).

³⁸ Held since 1997, ASEAN Plus Three (APT) is the meeting of the 10 member states of ASEAN with China, Japan and South Korea during the ASEAN Summits to counterbalance the influence of the European Union, NAFTA, especially within the WTO.

³⁹ Especially the ASEAN Regional Forum (ARF) initiated by ASEAN in 1993 and now bringing together 53 member states on both sides of the Pacific.

⁴⁰ International Court of Justice, Judgment of 17 December 2002, 'Case concerning Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia/Malaysia)'.

Globally, Abdullah's policies strengthened Malaysia's position in international trade networks, as evidenced by the signing of several free trade agreements.⁴¹ Such was the context when the director of the WTO, Pascal Lamy, welcomed the openness of Malaysia's trade policy during a speech in Kuala Lumpur on 17 August 2007, at the invitation of Minister of International Trade and Industry, Rafidah Aziz (Lamy, 2007). In line with this foreign policy combining pragmatism and religion, Abdullah also promoted marketing channels linked to Islamic economics, especially the halal trade and Islamic finance, which contributed to further reinforce relations with the Muslim world.⁴²

The Restoration of Relations with the West

Less than two years after his inauguration, Abdullah's popularity began to crumble, prompting him to slightly transform his foreign policy. The adjustment was all the more necessary since the political opposition had gained ground, helped not only by the non-Muslim minorities' irritation over policies favouring the status of Malays or racist statements by UMNO members (Yow, 2011), but also by corruption scandals involving government officials (*Economist*, 2007). The return to Malaysia from an overseas lecture tour of opposition leader Anwar Ibrahim, who had for a long time been considered as Washington's protégé⁴³ and ousted from government in 1998 for favouring the IMF, contributed to the weakening of the government. It also stirred questions from the Western chancelleries, which had long regarded Anwar as the liberal ally in Mahathir's regime. Hence Abdullah sought appeasement in response to the urgent need to reduce the United States' tendency to support the opposition leader. This approach did not fail to be noticed by Mahathir, who became the most virulent critic of his former dauphin.⁴⁴

⁴¹ Free trade agreements were signed with Japan and Pakistan in 2006, and negotiations are ongoing with the United States, Australia and New Zealand.

⁴² This dimension is developed in a previous article (Alles, 2010).

⁴³ Anwar Ibrahim, appointed Deputy Prime Minister in 1993 after having served in many responsible posts within the majority party and the government since 1984, was regarded as the designated successor to Mahathir until his expulsion from the government on 2 September 1998. Sentenced in 1999 to six years in prison for corruption, and then in 2000 to nine years for sodomy, he was released in 2004. After expiration of his ban from public office on 14 April 2008, he regained his seat as a Member of Parliament via a by-election on 26 August 2008. On 29 June 2008, he was charged again for sodomy.

⁴⁴ See the blog launched on 1 May 2008 by former prime minister, Mahathir

It was in this context that the intellectual Abdullah was succeeded by the pragmatic Najib Razak, appointed Prime Minister on 3 April 2009, following UMNO's setback in the parliamentary elections of March 2008.⁴⁵ The social and political crisis weighed even heavier on Najib's mandate than on that of his predecessor. To appease an increasingly polarised public opinion, in particular the street demonstrations of more than 20,000 Malaysians of Indian origin in November 2007 against the injustices they had suffered since the colonial era (Lemiere, 2009), Najib proceeded to release political prisoners held under the Internal Security Act because of their participation in these demonstrations.⁴⁶ Domestically, the implementation of the ambitious 1Malaysia policy was supposed to strengthen the cohesion between the various ethnic groups within one national community (<http://www.1malaysia.com.my>). However, this policy was regarded with scepticism by the minorities when, despite efforts towards a relative liberalisation – especially in the private sector – Najib made a point to affirm that reforms would be exercised in accordance with the constitutional provisions guaranteeing Malay primacy. Priority was therefore placed on domestic issues, and Najib showed no revolutionary ambitions on the diplomatic front – with the exception of the unusual appointment, as Minister of Foreign Affairs, of Anifah Aman, a native of the disadvantaged state of Sabah who was considered a rebel for refusing in 2008 to become Deputy Minister of Transport (Saravanamuttu, 2010: 321). Nonetheless, Najib needed urgently to send a positive message, especially to the US partner, whose support was all the more critical as democratic credits began to be eroded by the political, moral and financial scandal that constituted the Altantuya Shaariibuu case⁴⁷ and the second sodomy trial brought against

Mohamad, <http://chedet.cc/blog/>.

⁴⁵ The Barisan Nasional retained its majority of seats but lost, for the first time since 1969, the 2/3 majority necessary to amend the constitution without forming alliances.

⁴⁶ Mainly activists of the Indian organisation Hindraf, imprisoned as a result of the previous year's demonstrations, and Islamist activists accused of maintaining links with terrorist organisations. The Internal Security Act, inherited from the British system, allowed indefinite detention without trial of any person accused of threatening state security.

⁴⁷ The destroyed body of this Mongolian interpreter (mistress of an adviser close to Najib while the latter was Defence Minister) was found in 2006 in the Malaysian jungle. She was alleged to have been the intermediary in a contract worth about one billion euros between the French company DCN (Direction des constructions navales) and the Malaysian government, concluded in 2002, for the purchase of two

Anwar Ibrahim. Interestingly, despite suspicious circumstances strongly resembling those of 1998–99, this trial⁴⁸ attracted little official condemnation from foreign governments. Indeed, it did not seem as urgent to weaken the Malaysian government by strengthening the opposition, since the orientations of Mahathir's successors now met the expectations of Malaysia's international partners. Thus, during Anifah Aman's trip to Washington on 14 May 2009, a question from a reporter on Anwar's case was avoided by Secretary of State Hillary Clinton, who preferred to take questions on the role of Malaysia in the reconciliation between the West and the Muslim world (US Department of State, 2009). Although Najib continued on the path hewn by Abdullah on the reconciliation between Islam and the West, he nevertheless abandoned the promotion of Islam Hadhari, considered too ambitious by the Malaysian diplomats themselves.⁴⁹

Conclusion: A New Middle Power on the Path to Reason?

Over five decades since independence, Malaysia has achieved enough autonomy to join the club of middle powers. During its early years it had forged alliances, while the Mahathir era provided it with a visibility that it still enjoys today in its relations with the 'South'. After fluctuating between 'toeing the line' in its early years and the excessive protests of the Mahathir era, Malaysia has striven to reconstruct its diplomatic relations with the Western world. It displays a moderation which seems to reflect greater confidence internationally. Possessing multiple identities, Malaysia has many advantages. In particular, it attracts investors from the Muslim world, thanks to its strengths in the halal economy and Islamic finance (Alles, 2010). It has a strategic position between India and China, where its minorities provide it with unique openings.⁵⁰ The current foreign policy aims to highlight these strengths rather than the demand for a new world order. Nevertheless, it will only be effective if the Federation can rest on solid foundations, which

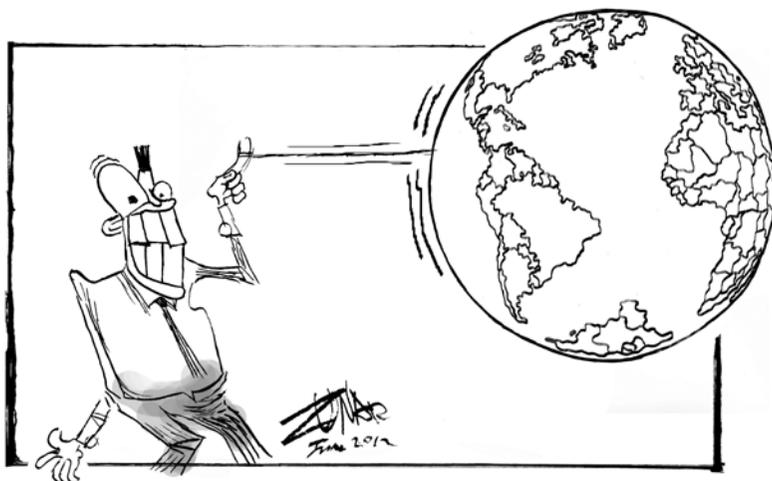
Scorpène submarines. According to the Malaysian opposition and, in particular, Suaram, a human rights organisation, one reason for her murder could be her insistent demand for her commission from this transaction. See Dubus (2010).

⁴⁸ The trial was still on-going when this article was being written.

⁴⁹ Meeting with an officer for public diplomacy at the Ministry of Foreign Affairs at Putrajaya in March 2009.

⁵⁰ This argument seems diminished by the intercommunity tensions from which Malaysia suffers, a source of dissatisfaction in particular of the Indian minority. The links between the minorities and their respective country of origin remain no less a forceful argument for the promotion of investments in Malaysia.

implies consolidating the legitimacy of the political authorities to succeed in easing inter-communal tensions and in meeting the growing demand for individual and political freedoms.



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Chapter 3

The Imports and Travel of Urban Malaysia

Tim Bunnell

While it is widely recognised that cities are interconnected in terms of transportation and communications technologies, most urban analysis continues to focus on forms and practices contained *within* city boundaries. In this paper, I propose a different spatiality of the city and urban region, looking not so much at what cities ‘contain’ as at where they come from and where they travel to. This means tracing the importation of urban forms, expertise and models which have contributed to the making of greater Kuala Lumpur. It also involves considering the way in which contemporary urban Malaysia is, in turn, being drawn upon as an aspirational model by cities in other Asian countries. The paper thus situates Kuala Lumpur in a growing body of research on urban inter-referencing and the ‘travel’ of cities.

Introduction

Cities are conventionally understood in terms of what they contain – from tall buildings and agglomerations of economic activity to dense congeries of people and impersonal social relations. In this chapter I seek to examine contemporary Kuala Lumpur (KL) through a very different geographical framing of the city. Rather than looking at what KL is, or what it contains, my concern is with where KL comes from and goes to. What I mean by this is simply: the range of inputs, influences and agencies that are imported into the city, on the one hand; and outflows from KL, especially the travel of imagery and the uptake of ideas from KL elsewhere, on the other hand. It is from these two dimensions of KL-as-process – its ‘imports’ and ‘travel’ – that the chapter derives its title.

The chapter has a very simple structure. The first of the three parts deals with where contemporary KL comes from, geographically as well as historically. The second part seeks to provide a sense of where KL travels to, considering both popular and tourist consumption of the city as well as how it is being vaunted as an urban model to be referenced or even emulated. In the third and concluding section I consider what these outputs or travels tell us about KL's place in the world and what this means for contemporary Malaysia more broadly.

Where Does Kuala Lumpur Come From?

The emergence of KL as we know it today is conventionally charted in terms of a series of chronological stages: pre-colonial, British colonial, Japanese colonial, post-colonial, post-13 May 1969 among many other possibilities. Some of these stages or periods imply connections to distant 'elsewheres' – Britain and Japan most obviously among the examples above – yet issues of geography are usually secondary to issues of history in chronological chartings. In this section I propose to invert this conventional order of things, giving primacy to issues of geography and space as opposed to history and time in answering the question of '*where* does KL come from?'

One way to begin to consider this question concerns the origins of the people who founded and built KL. In the context of post-colonial Malaysia, even such a seemingly simple and innocent matter as this leads one into a minefield of contested historical narratives. Were the miners who established the settlement all men who would be classified as 'Chinese' in the racialised post-colonial scheme of things? Is it true that the population of KL was also predominantly Chinese for the first century of its existence? And if it is possible to answer both of these questions in the affirmative, what does this mean for racialised conceptions of 'original inhabitant' and 'migrant' in contemporary metropolitan Malaysia? Today, as most readers of this volume will not need reminding, the dominant representation of Kuala Lumpur is as the capital city of a national territory in which Malays are officially the original or indigenous (Bumiputera) group who form the majority of the population. However, if we scale down the frame of reference from the national to the city level – following the boundaries of the federal territory of KL – then it is not inconceivable that one might invert the national scale hierarchy of belonging. Taking KL as a bounded unit of geohistorical analysis, 'Chinese' may be cast as the original, indigenous folks, while Malays

become part of the mass of migrant 'non-Chinese'.¹ I am not suggesting for one moment that anyone should follow such an inversion through as a serious suggestion. The problem, as far as I am concerned, lies not in whether it is the 'Malays' or 'Chinese' who are positioned as original, but rather in the whole logic of racialised hierarchies of belonging. As such, my reference to the 'Chinese' origins and demographic dominance of KL is intended as a provocation to think about how geographical frames of reference shape possibilities for certain narratives of history and associated power relations.²

Getting back to the main thrust of this chapter, foregrounding the position and role of the 'migrant' Chinese in KL's history is a way into the diverse geographical origins of the city in terms of its demographic composition. It is very difficult to imagine there being a resident of the city who does *not* have some strand of ancestry that can be traced to territories beyond the boundaries of contemporary Malaysia, whether from India, southern China, Sumatra, Java, Thailand, the Arabian Peninsula and/or Western Europe. The linkages are not necessarily direct, of course, with migrants and ancestors from such distant territories having settled elsewhere along the way: in tin mining settlements along the west coast of Peninsular Malaysia; in plantation estates in Selangor and beyond; in coastal towns that were the main centres of commerce and demographic diversity in the era before independence; and, of course, in kampungs scattered across the peninsula. If we were to represent these geohistorical routes cartographically, they would generate maps of tangled lines flowing into KL from locations both near to and distant from the boundaries of the city. Each one of the lines would represent a person or people who have contributed to the (re)making of KL from the outside. The nature and degree of these

¹ It should be noted, however, that although the miners whose labour established KL were Chinese, these prospectors were sent by Raja Abdullah, chief of Klang. On the one hand, I am tempted to dismiss such historical Malay-isation as yet more evidence of Malay nationalist narratives of indigeneity. On the other hand, Sardar (2000) has argued that histories in which agency is attributed to British colonialism and associated migrant labour inflows smack of Eurocentrism, ignoring pre-colonial Malay enterprise, including in tin mining. In other words, there are contested notions of whether assertion of a Malay role in the founding of KL amounts to uncritical Malay nationalism or whether in fact it represents a critical assertion of Malay agency in pre-colonial and colonial times.

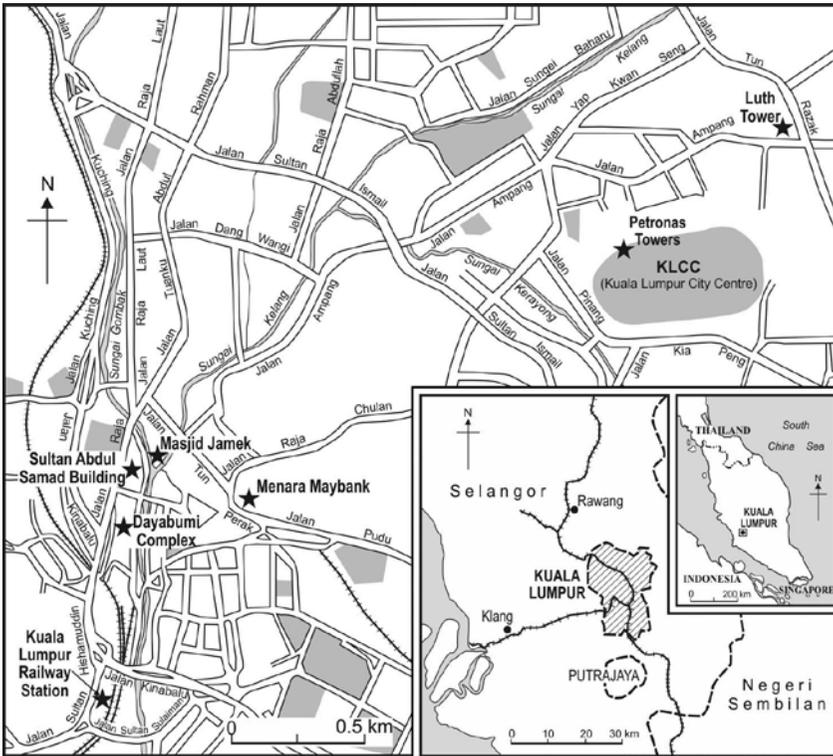
² Official statistics show that even by the year 2000 a greater proportion of the population of Kuala Lumpur were classified as Chinese (46.5 per cent) than were classified as Bumiputera (38.6 per cent) (Department of Statistics Malaysia, 2001).

contributions of course varies a great deal: from the lives of impoverished workers whose names find no place in official documentary material and whose agency is not visible in the material landscape of the city; to the 'great' men (and the gendered language here is sadly justifiable – they *are* almost invariably male) who are recognised in history textbooks, street names and other toponyms in the city today.³

The absence of empirical material about the former group poses problems for those who wish to write social or people's histories of the city and its external geographies. However, recognition of this should also serve as a reminder not to overlook the continued contributions of migrant workers to the ongoing (re)construction of the city and its wider urban region. Many people in KL and beyond know the names of the architects who designed the city's iconic buildings – and, of course, the names of the politicians who were the key proponents of these developments – but how much is known about the men and women whose hands performed the material work of building the LUTH Tower or the Petronas Towers? This question is posed as much to myself as to other scholars of Malaysia or members of Malaysian society more generally. In the 1990s I conducted fieldwork in KL about urban megaprojects such as the Kuala Lumpur City Centre (KLCC) project of which the Petronas Towers forms the most celebrated part (see Fig. 3.1). I was desperate to interview architects, project managers, engineers and other mostly expatriate 'experts' involved in the construction of the project. On the rare occasions that I managed to secure such interviews, I tended to leave my room in Brickfields very early in the morning so as to beat 'the jam'. This meant killing time around the KLCC construction site and I did so by having breakfast at stalls around the perimeter, which were also frequented by migrant construction workers. I remember speaking to groups of Indonesians – mostly about English football! – but I never bothered to find out much about their lives in KL. In other words, I have been guilty of privileging the role of 'important' men in the external reconstitution of KL over the roles of the ordinary men and women who have made the city as we know it today (and who continue to remake it in mostly modest, incremental and even imperceptible ways).

³ Examples include roads named after the leaders of the three parties which formed the Alliance government: Tunku Abdul Rahman (UMNO); Tan Cheng Lock (MCA); and V.T. Sambanthan (MIC).

Figure 3.1. Kuala Lumpur and the location of some of its landmark buildings



Source: Mrs Lee Li Kheng

While more clearly needs to be done to acknowledge the agency of 'ordinary' people, it is undeniable that some people or groups of people have contributed more to the (re)making of KL than others. The legacy of British colonial architects, planners, engineers and designers continues to be clearly visible in the built environment of Malaysia's capital city. Many of KL's most celebrated landmarks are 'Moorish'-style buildings which reflect the orientalist fantasies of the colonial British (King, 2008). Buildings such as Masjid Jamek, Kuala Lumpur Railway Station and the Sultan Abdul Samad Building were inspired by Mughal architecture which the British had grown to admire in India. Professionals from Britain and other Commonwealth countries were heavily involved in the first generation of post-independence architecture although by this time the predominant form had shifted to International Style (Lai, 2007). Even subsequent attempts by Malaysian architects to develop more 'indigenous' or 'tropical' bioclimatic architecture owe much to 'external' influences, knowledge and expertise (Hijas Kasturi

who designed the LUTH Tower (completed 1984) and the Maybank Building (completed 1988), for example, was trained in Adelaide and Melbourne; Ken Yeang of bioclimatic skyscraper fame studied in London and Cambridge).

With the Look East policy introduced in the second year of Mahathir Mohamad's time as Prime Minister (in 1982) there was a shift away from former colonial and Commonwealth connections and correspondingly towards Asian regional knowledge and expertise. A Japanese company was selected to build the Dayabumi Complex in the 1980s (completed in 1984), while a decade later Japanese and South Korean companies each awarded responsibility for building one of the twin Petronas Towers raced each other to the top (see Bunnell, 2004a). It is worth noting that one Asian country whose influence in shaping political and economic aspirations for KL during the Mahathir era was not often referenced is Singapore. While the break-away city-state to the south of Peninsular Malaysia clearly had a profound influence on Mahathir (Wain, 2009) and Mahathirism (Khuo, 1995), fractious geopolitical relations meant that Singapore was rarely explicitly mentioned as a model.⁴ Despite Mahathir's strident anti-occidental rhetoric, one did not have to look hard to find American influence during his time as Prime Minister. One story that I heard during doctoral fieldwork in the 1990s was that Mahathir was inspired to build twin towers in KL after having seen the World Trade Center in New York. In realising the Petronas Towers, therefore, Mahathir was seeking to effect what has been termed 'Manhattan transfer' (King, 1996) by mimicking the visual spectacle of the New York skyline. However, another major shift in the geography of influence on KL during the Mahathir era concerned the growing prominence of ostensibly Islamic architecture and design. The LUTH Tower and the Petronas Towers, among many others, included Islamic design references as material landscape expressions of wider processes of Islamisation. Urban design in Malaysia has come to have a penchant for forms of architecture that have been labelled 'High Islam' (Moser, 2012). Sarah Moser uses this term to refer to Malaysian efforts to look to and borrow from supposedly more 'sophisticated' Muslim cultures with much longer urban and architectural histories. The irony of this mode of asserting Malay identity in opposition to supposedly neo-colonial influences and non-Malay segments of the population⁵ is that it positions KL, Malaysia and,

⁴ See Columbijn (2005) for a comparative examination of KL and Singapore.

⁵ This may be traced back, in particular, to a national culture policy in the early 1970s

indeed, the wider Malay World as a relatively unsophisticated periphery of an Islamic world supposedly centred in the Middle East. As Moser has shown, although there is evidence of High Islam in the skyline of KL-proper, it is in Putrajaya – a separate federal territory from KL but forming part of an extended Kuala Lumpur Metropolitan Area (see Bunnell et al., 2002) – that represents the ‘pinnacle of Malaysia’s new fantasy Middle Eastern expression’. In Putrajaya’s Putra Mosque, for example, the minaret is a replica of that in Baghdad’s Sheikh Oman Mosque, a basement wall is similar to Casablanca’s King Hassan Mosque, while other elements are taken from Arabian, Egyptian, Persian and Turkish sources (Moser, 2012). Efforts to market Malaysia in Islamic countries (see Henderson, 2003) have led to increased numbers of Arab tourists in KL, especially after 9-11 (Al-Hamarneh and Steiner, 2004).⁶ The changes that have accompanied these increased flows, such as the establishment of new eateries and other services catering to Arab customers, serve as a reminder of the influence that tourist arrivals have on landscapes and livelihoods in the city.

So far, my consideration of where KL comes from has been largely concerned with intangible external influences on the city such as design styles and expertise. To the extent that I have considered more tangible flows, these have been limited to human bodies, the mobilities, lives and labour which have contributed to the (re)making of KL. However, it is important also to consider the non-human material ‘stuff’ that has been imported in vast quantities into KL to make the city what it is today. This is easier said than done, of course, and I have certainly not attempted to trace which proportions of which kinds of construction materials have originated from which parts of the world. However, we can once again look at a building such as the Petronas Towers as a specific landscape artefact that is sufficiently high-profile for information on its building materials (and their origins) to be publicly available. Unfortunately, that building, as a national

according to which the national culture of Malaysia – including, but certainly not limited to, architecture – was to be based ‘on the cultures of the people indigenous to the region’ (i.e. Malays and other Bumiputera groups; see Tan, 1992: 283). It should be noted that the policy also stated that ‘elements from other cultures which are suitable and reasonable may be incorporated into the national culture’. However, in practice, this has meant little more than tokenism. A recent example is the refurbishment of ‘Little India’ in Kuala Lumpur which was, in large part, a symbolic response to ethnic Indian protests against being ‘second-class citizens’ such as the Hindraf Rally of November 2007 (Bunnell et al., 2010).

⁶ I am grateful to Meaghann Ormond for directing me to these sources on Islamic tourism.

icon, is one where there is a nationalist imperative to emphasise Malaysian contributions in terms of resources as well as labour. The official website for the Petronas Towers notes: 'Although many foreign firms participated in the construction process, a great deal of the work was done by local Malaysian companies. It is estimated that sixty per cent of the materials used in the construction were obtained locally. All of the concrete and construction timber was Malaysian in origin as were many of the interior finishing materials including marble, ceramic tiles, and drywall materials.' However, it is worth noting that even 'just' forty per cent of the materials for two such huge towers amounts to vast amounts of steel, glass and aluminium among many other imported materials. In addition, given the nationalist importance of the Petronas Towers being seen to be Malaysian-constituted, it is reasonable to expect that in the cases of the dozens of other (admittedly mostly much smaller) high-rise buildings that have mushroomed over the past two decades, the proportions of imported materials would be higher. I am not making this point judgmentally – although some would no doubt highlight the huge carbon footprint associated with importing building materials over long distances – but merely to flag the significance of another external input that has gone into the making of the KL skyline.

The Travels of Kuala Lumpur

While there are few scholars who have explicitly considered cities in terms of their constitutive imports, in the case of KL there is at least work – mostly by architectural historians (e.g., Lai, 2007) – that helps to map such external connections and influences. In contrast, there are virtually no existing scholarly works that help to map the other end of KL-as-process, namely the way in which the city may, in turn, be understood to have travelled. This absence is quite remarkable when one considers the academic as well as political attention that has been given to the marketing or so-called 'imaging' strategies of cities over the past two decades. This is not the place to delve in any detail into the existing literature on this topic in urban studies, human geography or urban sociology (though see Olds, 1995). Suffice it to say that there has been a proliferation of research on the ways in and through which cities are materially and symbolically remade to render them visible to would-be investors and visitors internationally (a body of research which includes some of my own earlier work on KL, e.g., Bunnell, 2004a). One might reasonably expect, therefore, that scholars would have sought to examine how or the extent to which city images have actually travelled. In fact, the existing literature has almost all focused on the

production of new city imagery within cities rather than on the consumption of such imagery elsewhere.

This is another case where I acknowledge that such critique may be applied as much to my own work as to that of urban scholars in general. My doctoral research included consideration of the efforts that were being made by city authorities – meaning primarily at that time Prime Minister’s Mahathir, since City Hall reported directly to the PM’s office – to re-image KL for international audiences. Most famously, the record-breaking height of the Petronas Towers was far from accidental – it was intended to mark KL and Malaysia (as Mahathir himself put it) ‘on world maps’ (see Bunnell, 1999). Put another way, the construction of the Petronas Towers was intended to help KL and Malaysia to ‘travel’. I analysed the official speeches, marketing material and media coverage of the building during the period when it was emerging on the KL skyline until around the time (in 2004) when it was eclipsed by Taipei 101 as the tallest building in the world. By the time the book from my doctoral work was published in 2004, I had had enough of working on greater KL and especially on its megaprojects (I looked at Putrajaya, Cyberjaya and Kuala Lumpur International Airport as well as KLCC; Bunnell, 2004a). However, despite the fact that the empirical focus of my subsequent research was on Liverpool (in the UK) and Banda Aceh (Indonesia), KL seemed to haunt me almost everywhere I went, usually in the form of images of the Petronas Towers (in posters, on t-shirts, on building height charts, in advertisements for a diverse array of products, and even in souvenir replica form). It was only after I had got over an initial period of feeling as though I was being stalked by KL – a period during which I actively sought to evade signs of the Petronas Towers in particular – that I began to see such encounters as a resource for examining (to borrow a phrase) ‘the consumption of KL’ (Sardar, 2000) at a distance.

I began to make a note of encounters with KL – in a variety of media – outside of Malaysia. The list is already very long and continues to grow, not least because friends and colleagues who know of my eccentric research interest in the ‘travel’ of KL frequently send me images of the Petronas Towers arising from their own travels. In the following section, I have identified three means through which KL’s high-profile developments, and in particular the Petronas Towers, have ‘travelled’: (1) in film and the media; (2) in building height charts; and (3) as an urban model.

Film and Media Travels

The imaging strategies that I have referred to already are motivated by concerns to be noticed in a globalising world of mobile people and

investment capital. Megaprojects such as the Petronas Towers were built, in part, to be filmed, screened and projected internationally. However, it is important to specify that the goal is not merely to be seen but to be seen *in particular ways*. An example of the significance of this distinction concerns the furore that arose from the way in which the Petronas Towers (and, by extension, Kuala Lumpur and Malaysia more broadly) were depicted in the Hollywood movie *Entrapment* (see also Bunnell 2004b). On the one hand, there was considerable excitement and anticipation in Malaysia at the prospect of KL's Petronas Towers appearing on big screens across the world. In pre-release press reports, the film's British director, Jon Amiel, enthused how 'the Towers provided an impressive backdrop for our climactic scenes' (cited in Bunnell, 2004b), and advertising for the *akan datang* release in Kuala Lumpur and around the world featured a cat-suited Catherine Zeta-Jones alongside the building, with Sean Connery looking on. On the other hand, however, the makers of *Entrapment* had not followed Mahathir's developmentalist script for Kuala Lumpur and Malaysia. While the Petronas Towers were (in the director's words), 'the architectural star of the show', the building was also juxtaposed with river scenes shot in Malacca. It was the spliced scene that stole the headlines in Malaysia following prime ministerial criticism. Mahathir was reported to have been 'horrified' to discover that the Twin Towers were shown rising from 'slums' (cited in *New Sunday Times*, 30 May 1999). While in Western Europe and North America urban re-imaging strategies have typically sought to turn around perceptions of post-industrial or de-industrialising urban decline, Malaysia's imaginative anxieties centre around issues of colonial underdevelopment. The problem for Mahathir, the chief proponent of the Petronas Towers and would-be architect of a 'fully developed' Malaysia, was that the way in which KL travelled through *Entrapment* only served to reconfirm orientalist preconceptions of Asian underdevelopment.

Even before the Petronas Towers got its big break in *Entrapment*, the building had been projected to international television audiences through coverage of the 16th Commonwealth Games (in 1998). Unlike *Entrapment*, BBC coverage of the opening of the games that I watched in the UK largely conformed to the script intended by city and national authorities: 'The city of Kuala Lumpur was awarded the celebration of these games six years ago. In that short time, it's been transformed. There's been a tremendous acceleration of development, new highways, a new light railway, a superb sports complex – indeed it could be the envy of the world' (see also Silk, 2002). The implications or effects of such positive coverage are extremely difficult to evaluate or quantify. However, if world-wide viewership figures are any indication, then

the cumulative effects could be highly significant: some 500 million people watched the Games on television (van der Westhuizen, 2004).

Charting KL

The characteristic of the Petronas Towers which makes it cinematically and televisually spectacular is its sheer size. Throughout history, large and especially tall buildings have conferred fame and visibility upon the cities in which they are located. By the time of *Entrapment* and the Commonwealth Games in the late 1990s, the Petronas Towers were officially recognised as the tallest building (or should it be buildings?) in the world. The building(s) had been topped out in March 1996. It might be suggested – as I did in my research in KL (Bunnell, 1999) – that such ‘symbolic capital’ is ephemeral (Dovey, 1992). Any record will inevitably be challenged by taller buildings (and usually sooner rather than later). The Petronas Towers were eclipsed in 2004 by Taipei 101, which has since in turn been eclipsed by Dubai’s Burj Khalifa and, as I have noted elsewhere, ‘there is nothing particularly thrilling about being the second or third tallest building in any “world”’ (Bunnell, 2004a: 72). However, I have to acknowledge that the visibility of the Petronas Towers – and, by extension, the global visibility of city and country – has not necessarily decreased following the completion of taller buildings in other cities. Rather, stories of each new ‘tallest building’ – or even just plans for a new tallest building – formulaically include reference to previous as well as existing holders of the record. The Petronas Towers are part of a series of previous record holders that also includes the Eiffel Tower and Empire State Building, buildings marked as ‘an obligatory passage point’ necessarily acknowledged by successors and would-be successors (Barnes, 2002: 487). Stories of each ‘tallest building’ chart a history and geography of record-breaking buildings, including the Petronas Towers in KL.

Such buildings are also more literally charted in diagrammatic representations of world building height evolution. One example of this which I have written about before was a chart published in the British newspaper, *The Guardian*, at the time in 1996 when the Petronas Towers was officially declared the tallest building in the world. In an article entitled ‘High and mighty: how the world’s tallest structures line up through the years’, building height evolution is charted from the Great Pyramid completed in 2,580 BC to, in turn, Lincoln Cathedral, Eiffel Tower, Chrysler Building, Empire State Building, World Trade Center, Sears Tower and, finally to ‘Petronas Twin Towers, Kuala Lumpur, 1996’ (see Bunnell, 2004a: 74). Interestingly, in this diagram it is only in the cases of the ‘Great Pyramid, Giza, Egypt’ and the Petronas Towers that city and national

location are specified. Since the time when this was published in 1996, however, the world's tallest buildings have been serially re-charted such that 'the world' has come to know that the Petronas Towers are in Kuala Lumpur, which is in Malaysia. My own most recent encounter with such charts was on vacation in Melbourne, Australia where I visited the Skydeck of the recently-constructed Eureka Tower in February 2010. A 'skyscrapers of the world' postcard which I purchased at the souvenir shop of the 300-m Eureka Tower included a line-up of the usual suspects of tall buildings from around the world, including the 452-m Petronas Towers and several even taller recent buildings. Such chartings, I argue, do more than merely represent the sites and sights concerned. It is through building height charts, in newspapers and magazines or on websites, that Kuala Lumpur is actively presented to new audiences worldwide through the image of the Petronas Towers. The chart, in other words, is itself a technology through which KL travels.

KL as Model

Despite my early critique of the Petronas Towers and other megaprojects in and around KL, I have to acknowledge that Kuala Lumpur/Malaysia successfully 'travelled' internationally. It is not surprising, therefore, that KL has become a model for other cities and nation-states concerned to promote their own global visibility.⁷ As I have already noted, the Petronas Towers were followed by a rash of other skyscraping towers, including many in the Asia-Pacific region. Some such projects were, in fact, initiated prior to the completion of the Petronas Towers which cannot, therefore, be considered to have been a direct inspiration (see King, 1996). However, there is evidence of cases where the spectacular development of KL has inspired urban policy decisions elsewhere. The Chief Minister of the Indian state of Andhra Pradesh, Chandrababu Naidu, for example, was clearly impressed by KL after a visit in the 1990s. When Mahathir travelled in the other direction to visit Hyderabad in 2002, Naidu told the Malaysian prime minister that 'we are trying to emulate your model' (BBC Monitoring South Asia, 17 October 2002; cited in Bunnell and Das, 2010: 3).⁸ Chandrababu

⁷ While high-profile investment has really been concentrated in and around Kuala Lumpur, it should be noted that other parts of Malaysia may also be said to have 'travelled'. Apart from the diverse sites and sights encapsulated in the Malaysian Tourism Board's global publicity campaigns, the listing of Malacca and George Town (Penang) as UNESCO World Heritage sites means that these settlements now circulate in extensive cultural and heritage networks.

⁸ I am grateful to Diganta Das for unearthing this connection in his doctoral work

Naidu was particularly smitten with Mahathir's high-tech forays and sought to replicate them in Hyderabad's extended urban region. The wider adoption of KL-as-model for Andhra Pradesh is acknowledged in Naidu's biography (Naidu and Ninan, 2000).

Particularly during Mahathir Mohamad's time as Prime Minister, political authorities in Malaysia actively sought to promote the country as being worthy of international emulation, particularly in other parts of the Islamic World. A common trope in these discourses was of Malaysia as a technologically-advanced society in which Malay Muslims form a demographic majority, making it a model for Islamic technological development more widely. Various reports in the *New Straits Times* suggest that Malaysia's Multimedia Super Corridor – a high-tech zone extending southwards from the federal territory of KL (see Bunnell, 2004a) – has been adopted as such in countries including Indonesia, Saudi Arabia and Algeria (see for example, *New Straits Times*, 8 March 2000; 3 July 2004; 6 February 2005). Finally, as a scholar of Malaysia based in neighbouring Singapore, I cannot resist pointing to the way in which the city-state has belatedly jumped onto the bandwagon of urban re-imaging projects that have been so prominent in KL as far back as the 1990s.⁹ Just as Malaysian political authorities have rarely admitted to looking over their shoulders at their prosperous southern neighbour, no one on the Singapore side, as far as I am aware, has officially acknowledged or referenced KL. However, the fact is that this is one developmental trend where Singapore has followed a regional trail blazed by KL.

Conclusion

Capital cities have long been recognised as revealing how states imagine themselves, how they aspire to be and how they wish to be seen by others (Vale, 1992). However, cities are never reducible to state visions or aspirations. Even in cities such as Brasilia that are built from scratch, ordinary people live, practise and rework urban space in ways that variously diverge from or even transgress official designs and prescriptions. In the case of Kuala Lumpur, state authorities are faced with added limitations imposed by the existence of layers of inherited landscape change and human

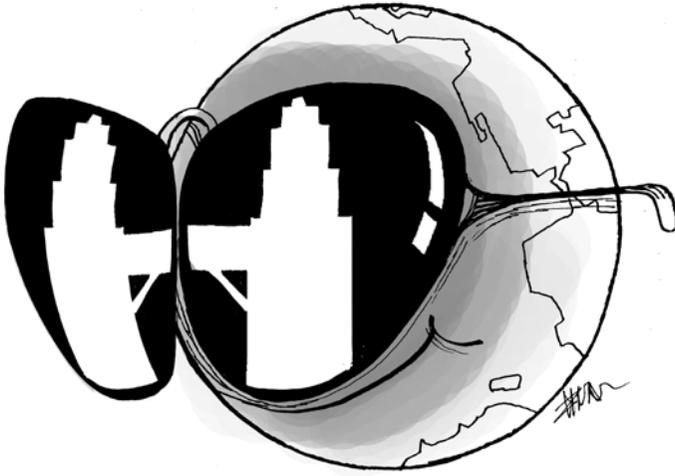
on the making of Cyberabad, the centrepiece of Andhra Pradesh's high-tech push, which drew inspiration from Malaysia's Cyberjaya project.

⁹ Examples include projects such as the Esplanade and the recently completed Marina Bay Sands Hotel.

investment. It is widely acknowledged that such cities are products of their pasts and that these point to the influence of other places, especially in terms of constitutive colonial connections. However, scholars have rarely given explicit attention to where cities come from. In this chapter, I have sketched some such geographies considering the ‘import’ of design styles, human populations and even the materials which go into urban (re)construction. I have also looked at the other end of what I have called ‘KL-as-process’, in considering the ways in which KL has ‘travelled’ to other places through media and film, in stories and charts of building height records and even as a ‘model’ for emulation in cities such as Hyderabad in India. I have shown that it is, above all, the record-breaking height of the Petronas Towers that has enabled KL to travel.

Whatever reservations one may have about the environmental or social costs of urban megaprojects, it is indisputable that the Petronas Towers (as part of the wider KLCC megaproject) have successfully put contemporary Malaysia on world maps. Perceptions of this ‘success’ have inevitably resulted in efforts to emulate or replicate what has been done in KL. Each such case confers considerable legitimacy on the efforts of the state in Malaysia – if KL is a model for country X or Y, then Malaysian planners and policy makers must be doing something right. However, it is worth asking what the mega urban developments for which KL is famed do for the lives of ordinary KL-ites. KLCC, of course, provides lots of upmarket shops and a popular public park, and there is the issue of national pride to be derived from national association with a one-time tallest building in the world. Yet one wonders whether at least some of the billions of ringgit of oil and gas monies that have been poured into a series of megaprojects in Malaysia – and especially in and around KL – might have been more usefully deployed in other ways. At the time of writing this chapter, there are plans to build a new tower (Warisan Merdeka) which will be even taller than the Petronas Towers.¹⁰ Surely it is time that city authorities sought to make KL renowned for things other than being home to tall buildings, so that the city might have a chance of ‘travelling’ in the future as a model for such things as livability, effective and affordable public transit or environmental sustainability.

¹⁰ If approved, the proposed 100-storey tower will be built on a site adjacent to the Merdeka Stadium.



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The Pirate Issue

Contemporary Malaysia Challenged in Its Maritime Manoeuvres¹

Eric Frécon

Introduction

The Malaysian maritime community faced a state of emergency in 2005: Lloyds designated the Malacca Strait as a war-risk zone due to an upsurge in acts of piracy (see Table 4.1). The stakes were high since it involved the cost of insurance premiums affecting port attendance. With a sea area of over 600,000 km² and a 41 per cent increase in the passage of freighters and container ships between 2000 and 2010 in the Malacca Strait, Malaysia was worried about its coastal activities.² However, in 2006 order was restored.³ The active lobbying deployed on this occasion demonstrated the close links between Malaysia and the maritime security and safety organs.⁴ In 2003 Prime Minister Mahathir Mohamad had hoped, for example, to develop tourism, with a target of one visitor per inhabitant, that is 23 million tourists a year. According to him, among the items for further study was marine pleasure craft, especially in the Malacca Strait, modelled after the Mediterranean (*Straits Times*, 2003). In this context, again, the pirates upset Malaysia's plans.

¹ This article is partly the result of detailed research in Frécon (2011).

² MIMA, 'Malaysia's Maritime Resources': http://www.mima.gov.my/index.php?option=com_content&view=article&id=22&Itemid=27&limitstart=1.

³ *AFX News* (2006); *Nation* (2006); Bernama (2006b, c); *Lloyd's List* (2006a, b); *Daily News* (2006).

⁴ Security covers threats from pirates and terrorists, while safety deals with shipping accidents.

Table 4.1. Comparison of number of attacks in the official statistics of Malaysia and those of IMB

Year	Number of attacks recorded by the Maritime Enforcement Coordination Centre (MECC)	Number of attacks recorded by IMB
1993	37	3
1994	34	3
1995	57	0
1996	42	0
1997	20	2
1998	17	5
1999	5	0
2000	18	9
2001	14	9

Source: Mak Joon Num. *Pirates, Renegades and Fishermen: The Politics of Sustainable Piracy*. s.l.n.d.

The collaboration between pirates and merchants goes back in time. Besides, were they pirates or corsairs in those days? The Orang Laut and other peoples of the seas had levied taxes on passing ships since the thalassocracies of Srivijaya (7th–8th centuries), based in Sumatra with influence reaching to the peninsula, or during the Sultanate of Malacca. The sultanates in the region had, for many years, led maritime raids to supply what was known as a regional entrepôt economy. Thus, brigands often operated for the power-that-be while other bands took advantage, during delicate transitions between two regimes or dynasties, to stalk at will and hold ships to ransom. The colonial powers also quickly realised that, to impose their power, they had to eliminate the rival pirate, whether he was in the pay of a prince or a freelancer. In 1846–48 Cornets de Groot reported mapping efforts undertaken for this purpose (Lombard, 1979: 242–9). Then, all had to be undertaken anew at independence. Between 1946 and 1949 the pirates set up their dens in Sumatra. They included the Malaysian Tan Lian Lay from Perak who went to Bagan Siapi-Api in northern Riau.⁵ In

⁵ Now, a temple is dedicated to this ‘general and pirate king’ who nevertheless did not hesitate to massacre eleven members of his family to avoid being accused of collaboration with the Japanese during World War II. Without doubt it is for self-redemption that his spirit gives out lottery numbers to inhabitants of the region, to the extent that the local leader had to have recourse to the blood of a black dog in order to put an end to this ‘cheating’. See Lee and Khoo; Sia (2009).

this period of communist insurgency, mafia activities developed in this area, which was not under the control of Jakarta but of the Kuomintang.

The issue arises again with the re-emergence of piracy, especially after the end of the Cold War. The challenge now confronts the young local powers. Even if often it concerns only piracy in territorial waters and not on the high seas,⁶ the same menace exists. The reputation of the countries is at stake. Malaysia, which wants to join the ranks of developed nations, should respond. Superseded on the criminal front, then repressive, Kuala Lumpur responded at sea better than on land.

Malaysia Threatened Especially by Pirates from its Surroundings

‘You and I have the same basic problem between “those who have” and “those who have not”; that is what we must keep in mind. The dark and squalid streets of London, Paris and New York are haunted by unscrupulous armed robbers; you accept them as part of your daily life. Well, that’s exactly how it is with us with respect to what you call piracy’ (Fursdon, 1995).

⁶ All states that have ratified the Convention of Montego Bay (CMB) which came into force on 16 November 1994 (Annex – extracts of the CMB) agree on the definition as outlined in article 101, that piracy consists of any of the following acts:

- a) any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed:
 - (i) on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft;
 - (ii) against a ship, aircraft, persons or property in a place outside the jurisdiction of any State;
- b) any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft;
- c) any act of inciting or of intentionally facilitating an act described in subparagraph (a) or (b).

Nevertheless, the practitioners deem it preferable to supplement this very restrictive definition. The solution finally came from the International Maritime Organization (IMO) which, since 2001 and the adoption of resolution A.922(22), has incorporated in its resolution, piracy and armed robbery against ships (considered here as synonymous to maritime banditry). This last category completes article 101 of the Convention of Montego Bay in designating:

Any unlawful act of violence or detention or any depredation or threat thereof, other than an act of piracy, committed against a vessel, or against persons or property to its edge, in an area under the jurisdiction of a State with jurisdiction over such offences. Piracy will therefore be a question, for academics, of whether it is piracy in the strict sense or maritime banditry.

So a Malaysian official confided in 1995. In general, it is very difficult to assess the threat, probably because many fishermen are not connected to the Internet, unaware of the existence of anti-piracy centres or unwilling to complain due to their irregular situation in Malaysian waters. Thus, piracy is rarely mentioned officially. However, rumours and accounts in the maritime community relate stories of attacks as, for example, in the case to the north of Langkawi Island on peninsular Malaysia's west coast. For a long period the authorities hardly did anything to obtain an accurate picture of the situation. Hence, the works of Mak Joon Num are revealing in this regard. They show how the International Maritime Bureau (IMB), which depends on the International Chamber of Commerce, had initially neglected to take into account Malaysia's handling of its maritime affairs even while local authorities fretted. But after the hostage-taking at Sipadan in 2000 (*New Straits Times*, 2000; Bertrand, 2001), with its national reputation tarnished, Kuala Lumpur moved to try to reduce the danger level in affected locations. For the sake of credibility, the IMB realised the need to include this area within its spectrum, where the curves – one representing an increase in attacks and the other, a decrease – intersected between the beginning and end of the 1990s.

Despite obstacles, it is still possible to make an inventory of the pirate threat to Malaysia. The first victims are fishermen who often face organised crime. In 2004, off Kuantan on the east coast of Peninsular Malaysia, pirates ordered fishermen to pay RM300–400 per month for fishing rights. In return, the fishermen got a certificate. Those unable to display it were fined up to RM90,000 and their boat could even be seized by the pirates. On the west coast of the peninsula also, fishermen had to pay RM400–500 per month to pirates who were so cocky that they did not hesitate to divulge their Indonesian bank account number for the victims to pay the fines within the shortest possible time (McIntyre, 2004). Of the 200 fishing boats that went out daily in the Malacca Strait, 80 per cent paid this tax according to Abdullah Jaafar, local head of the Fisheries Department (*Star*, 2004b). To gather more information, Malaysian researcher Mak Joon Num spent two years (2005–06) with fishermen of Hutang Melintang village on the west coast of the peninsula. These people were regularly victims of this type of extortion or kidnappings committed by pirates from Sumatra. The initial findings of his research revealed a quasi-economic practice of consistent and organised piracy in the area north of the Malacca Strait, where trans-border agreements were lacking. Moreover, according to him, the fishermen are not willing to stop paying such taxes. During his research, his calculations revealed that, compared to the fishermen's total investment, the payment of these taxes seemed almost painless (Mak, 2006).

Table 4.2. Attacks, 1991–2012

	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
World	107	106	103	90	188	228	247	202	300	469	335	370	445	329	276	239	263	293	410	445	439	297	264
Malaysia	1	2	0	4	5	5	4	10	18	21	19	14	5	9	3	10	9	10	16	18	16	12	9
<i>Malacca Strait</i>	32	7	5	3	2	3	0	1	2	75	17	16	28	38	12	11	7	2	2	2	1	2	1
<i>Singapore Strait</i>	0	0	0	3	2	2	5	1	14	5	7	5	2	8	7	5	3	6	9	3	11	6	9
<i>South China Sea</i>	14	7	69	32	47	17	19	10	6	20	17	0	2	8	6	1	3	0	13	31	13	2	4
Indonesia	55	49	10	22	33	57	47	60	115	119	91	103	121	94	79	50	43	28	15	40	46	81	106
Sailors killed	3				26	26	51	78	3	72	21	10	21	32		15	5	11	10	8	8	6	1
<i>Ships hijacked</i>	1	0	0	5	12	5	17	17	10	8	16	25	19	11	23	14	18	49	49	53	45	28	12

* The first three-quarters of 2012.

These attacks could be attributed to the intrigues of GAM (Gerakan Aceh Merdeka or Aceh Independence Movement) on the other side of the Malacca Strait. This secessionist group of North Sumatra had been accused of engaging in illegal maritime activities,⁷ which it denied. Nevertheless, it is legitimate to raise the following hypothesis: even if these acts were not terrorism in the strict sense, i.e. a threat to the Straits and its traffic, GAM had been able to use piracy and variations such as hostage-taking to finance itself. The frequent kidnappings in the region just before the tsunami in Aceh should be addressed. The crews of tugboats and small merchant vessels were easy prey for these marauders of the mangroves.

In addition to local fishermen and sailors, the villagers' fate can also be subject to the whims of criminal and coastal gangs. Although it is not piracy as defined under the Convention of Montego Bay,⁸ the same people are, in general, affected by the raids of these outlaws of the seas. The Malaysian 'Far East' lends itself perfectly. The east coast of Sabah is 1400 km long and there are more than 500 islands nearby. With a powerful engine, one can reach international waters in just twenty minutes. And the Philippines, where Malaysian patrols cannot penetrate, is only a few hours away. Jimlan Panglima, in charge of the security of Semporna, near Sipadan Island, recalled when speaking to *The Star* in 2000 that his village had been attacked at least four times in fifteen years by 'pirates'. The article concluded that these were not isolated acts, but rampant piracy (*Star*, 2000b). Semporna was in turn sacked and even controlled by bandits in 1952 and 1954. In September 1985 it was the turn of Lahad Datu, situated slightly further north, to be attacked by about fifty 'pirates' who took control of the town for about an hour. The attack killed ten people (Perret, 1998: 135). Seven 'pirates' were killed in 1998 during a robbery attempt at a supermarket in Tawau. By the end of the twentieth century, public order did not always prevail in Sabah. Marked with bullet holes, the police posts of this seaside town bear the scars of those attacks.⁹

Faced with this threat, Noor Azman bin Hj Othman, an official of the Malaysian Maritime Enforcement Coordination Centre (MECC), complained – in spring 2000 in Tokyo – of the financial burden upon his

⁷ Lau (2003); Urquhart (2003, 2004); Nadarajan (2004); Boey (2004); *Star* (2004e, 2005a); AFP (2005); *Straits Times* (2005).

⁸ See the United Nations Convention on the law of the sea of 10 December 1882, the so-called 'Convention of Montego Bay'; full text at www.un.org/depts/los/convention_agreements/texts/.../unclos_e.pdf.

⁹ Research in eastern Sabah in November 2000.

country incurred by the fight against piracy. ‘The Malaysian government is ready to fight against this scourge,’ he asserted, ‘but it lacks the means’ (AP, 2000). In this context it was logical to be overwhelmed, not only by these buccaneers or ‘écumeurs’ (scum), as literally understood by François Villon in 1460, who ‘removed the scum’ of globalisation, but also by the punitive aspect.

Malaysia Faces Competition from Pirate Hunters, Especially from the West

Piracy poses another kind of threat to the sovereign state of Malaysia. Already challenged by pirates who contest its monopoly on violence,¹⁰ Malaysia has to face competition from other external actors. Firstly, foreign naval powers have tried to interfere in its territorial waters; foremost of these is the United States. The pretext is based on the hypothetical terrorist threat. It is true that the previous attacks against the USS *Cole* in 2000 and the oil tanker *Limburg* in 2002 portended new threats from the nebulous Al Qaeda. In parallel, Asian researchers emphasised the otherwise tenuous links between KMM (Kumpulan Militan Malaysia – Malaysian Activist Group), Abu Sayyaf in the Philippines and Jemaah Islamiyah based in Indonesia after the return of Abu Bakar Bashir from Malaysia (Abuza, 2002; Desker, 2003; Conboy, 2005). In justification, the brains behind the USS *Cole* attack could have conjured up the same type of attack in Malaysia in 2000. The KMM was alleged to have planned an ambush against an American speedboat in a Malaysian port in 2002 (Ong-Webb, 2006: xxviii). Publications on the law of *jihad* state persistently that a terrorist attack at sea is worth more than ten carried out on land; according to the same source, it is preferable to act in the morning or evening rather than during the day (Abdurrahim Al Hudri, 2000: 99, 104). These scenarios have dramatically upped the tension a notch. Finally, the pamphlet by Michael Richardson referred by the U.S.

¹⁰ ‘Obviously, violence is not the sole normal means of the State – there is no doubt about that – but it is its specific means. In our days, the relationship between State and violence is particularly intimate. The most diverse political groupings have always – starting with kith and kin – all used physical violence as a normal means of power. On the contrary, the contemporary state should be conceived of as a human community which, in a determined territorial limit – the territorial notion being one of its characteristics – demands with success the monopoly of legitimate physical violence. What is, in effect, typical of our epoch is that all other groups or individuals are granted the right to appeal against violence in so far as permitted by the State – this is the only source of “right” against violence’ Weber (1919: 310–11).

Embassy in Singapore to overly curious journalists poured oil on fire anew (Richardson, 2004).

Deep in this psychosis and sudden panic that were certainly ill-founded but fuelled by publications and editorials in the Singapore daily *Straits Times*, the Americans, already engaged in their global war against terrorism, felt that they could legitimately offer their services. On 31 March 2004 Admiral Fargo suggested to Congress that a marine patrol be sent to the Malacca Strait. In an international context marked by interventions in Afghanistan and Iraq, this idea of interference did not find support from the Muslim-majority governments of Malaysia and Indonesia.

The proposal was as much resented as it would seem unfounded to many. In this respect, Mak Joon Num talked about 'self-awful prophecy', that is to say, a speech fuelling terror in addition to inspiring terrorists, if need be.¹¹ No doubt one sees a manifestation of the Don Quixote syndrome, which could have stricken a panel of experts, composed mostly of Singaporeans.¹²

'In short, our nobleman became so caught up in reading that he spent his nights reading from dusk till dawn, and his days reading from sunrise to sunset; and so with too little sleep and too much reading his brains dried up, causing him to lose his mind. His fantasy filled with everything he had read in his books, ... and he became so convinced in his imagination of the truth of all the countless grandiloquent and false inventions he read, that for him no history in the world was truer' (Cervantes (2002/1605)).

However, before inciting against these security windmills, it is necessary to look at them twice. Nasir Abbas, former emir of the Jemaah Islamiyah's Mantiqii III which included eastern Sabah, the southern Philippines and Sulawesi, had said that it was easier for his group to drop a gym bag full of bombs in a pub than to transform a tanker into a floating bomb, without guaranteed results.¹³ The experts also supported the idea of a possible collusion between terrorists and pirates. However, some of the latter are Christians, not Muslims like Jemaah Islamiyah (JI) or Jemaah Ansharut Tauhid (JAT) members. Even for money, it would be hardly appropriate for pirates to take part in an operation which would provoke a series of patrols disastrous for their own activities. Finally, as has already been said, these pirates are more preoccupied with the prostitutes in their dens than the

¹¹ Interview with Mak Joon Num at Orchard Hotel, Singapore on 23 September 2004.

¹² The most significant example is that of Richardson (2004).

¹³ Interview with Nasir Abbas in Jakarta, October 2005.

virgins promised in paradise of the jihad.¹⁴

Without a solid foundation for doing so, Western interference did not occur. In contrast, Malaysia was powerless against the development of private security companies. During the last war in Iraq, two companies emerged. Based in Singapore, they plied Malaysian waters. One was BARS (Background Asia Risk Solutions), founded in 2004 and initially co-directed by Alex Duperouzel and Brian Toki. It was well known in the milieu. The other was Glenn Defence Marine. The first proceeded with about six escorts per month and cost \$50,000–100,000 for the service of a dozen guards per boat on journeys over 24 hours (*Star*, 2005b). The second also organised escorts by former Gurkhas with discreet material support from the U.S. Navy. But after the discovery of weapons aboard a vessel escorting a merchant ship in the Malacca Strait, Malaysia's Foreign Minister was concerned about possible abuse. Being not limited to Singapore waters, these companies represented a serious violation of the sovereignty of states traversed. The reactions were swift. The very wise Mark Valencia advised Malaysia and Indonesia to demand that Singapore withdraw the authorisation granted to private security companies, unless it was valid only in Singapore waters. More radically, relying in part on the Law of the Sea and the specific status of the straits which allows only the innocent passage of ships in their 'normal' configuration (articles 38, 39, 300 and 301 of the Montego Bay Convention) – and armed otherwise with national provisions such as the Private Agencies Act 1971 in Malaysia – Jakarta and Kuala Lumpur were entitled to prohibit such practices in their territorial waters.¹⁵

In their defence, the leaders of these companies asserted that they were in constant contact with the Malaysian Marine Police, qualifying their manoeuvres as strictly defensive. However, the police pronounced that it was against such practices. In Malaysia, intercepting these escorts was even considered, reflecting an entente that was hardly cordiale. Moreover, company officials caused surprise several times with aggressive talk that they do not exclude the retaking of hijacked ships. Nevertheless, it was legitimate

¹⁴ The Qur'an (4: 74) refers to a 'huge reward for those who fight for the cause of God, be they killed or winners'. It is question of 'virgins' in verses 44: 54 and 52 (see the fundamentalist site: <http://www.thereligionofpeace.com/French/Quran/018-suicide-bombing.htm>, accessed in November 2012). These extracts, of course, should be rigorously interpreted and not interfere with the general – and peaceful – message of the holy book.

¹⁵ Anis (2005); Liss (2005); Habibu (2005); Nik Khusairi (2005); Sharidan (2006); on Malaysian provisions, see Sativale (2005).

for such companies to take advantage of this 'niche', in the words of Mark Valencia. The approaches of BARS & Co. thus could be counted among one of the last proven acts of private anti-government competition, especially against Malaysia along the Malacca Strait, between Port Klang and Singapore (Valencia, 2005).

Malaysia ensures the safety of the merchant ships' grain and oil barrels. Far from being overtaken by pirates and their hunters, she finally reacted after a few risky steps.

Initial Reactions of Malaysia – Diplomatic and Limited

The initiatives on the ground were not the most convincing. On 1 October 1992 a branch of the International Maritime Bureau (IMB) was set up in Kuala Lumpur. The International Maritime Organization (IMO), integrated into the UN system, was involved. This was, therefore, a great achievement for Malaysia, especially since the centre's reports and statistics quickly became references. However, this agency was decried for its private funding. Described as 'judge and jury', it was criticised, for example, for its very broad definition of piracy, which included acts committed in international waters for private reasons – such as the crime is defined in the Montego Bay Convention (see above) – as well as violence for political motives or in territorial waters. The bureau also mixed attempted and actual attacks, which allowed it to inflate and exaggerate the threat according to national law enforcement agencies.

Then, on Japanese initiative and at the close of a series of lectures, the ReCAAP (Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia) set up the Information Sharing Centre (ISC) in 2006 to connect the coast guards or maritime police forces of member countries. Its location was the subject of a diplomatic battle. Singapore was chosen because it offered to provide the office space. Kuala Lumpur was upset. The IMB branch viewed it as indirect competition. In the end, Malaysia decided not to join ReCAAP despite its long coastline along major sea lanes of maritime communication in Southeast Asia. Similarly, in 2009 when the Information Fusion Centre was established by the Singapore Navy, it welcomed to its naval base in Changi, foreign liaison officers from New Zealand, Australia, America, France, India, Thailand and even Indonesia but no Malaysian. The Royal Navy of Malaysia excluded itself. Even if informal contacts existed, the fact remained that the security of the straits advanced without waiting for Kuala Lumpur.

Nevertheless, the Maritime Institute of Malaysia (MIMA) afforded a

diplomatic and academic visibility of the Malaysian state. It was created in 1993, shortly after an upsurge of piracy in Southeast Asia and the establishment of the IMB branch. Currently, it is located a few hundred metres from the latter. Most importantly, it allowed its ministerial sponsors to strengthen the maritime vocation of the country. In 2008 it opened a centre for research solely on the Malacca Strait, as if to better emphasise its strategic importance to the peninsula. The decisive step came from the administration's decision to set up the Malaysian Maritime Enforcement Agency (MMEA) to coordinate the activities of the various administrative services involved in maritime safety and security. It was the hijacking of the *Nepline Delima* in June 2005, widely reported in the media, which accelerated its creation. These pirates ironically propelled the need for a competent and operational force as soon as possible. Thus, over 4,000 stations, divided into five regions to cover seventeen districts and nine bases, were originally planned by the government. The Director-General, responsible for ensuring the safety of the country's maritime zones through federal laws enforcement, was appointed by the King and placed under the direct authority of the Prime Minister. In addition, he was to report regularly to the Minister of Defence (Bernama, 2005, 2006a; *Kyodo News*, 2006).

This initiative, capable of linking the obstacles on land and challenges at sea, was accompanied by another equally weighty decision. In response to the bold U.S. proposal of 2004 (see above), the three littoral countries of the Malacca Strait decided to establish trilateral patrols, first under the name of Malsindo (Malaysia, Singapore, Indonesia) and later called Malacca Strait Sea Patrols. It was not to conduct joint cross-border operations; but at the very least to coordinate to facilitate the relay in the event of pursuits of pirates. A year later, Malaysia agreed to participate in an aerial component called Eyes in the Sky; then in 2006 it joined the component facilitating the exchange of information. Later, Thailand signalled its intention to join the group. Already in the early 1990s such bilateral or trilateral initiatives existed before withering. But this time, international pressure imposed an obligation to perform.

At first glance, the obstacles were many and discouraging. There were local sensitivities; if Indonesia lacked equipment, the other partners' equipment was too heavy and inappropriate for maritime anti-guerrilla activities. From a plane, flying in the daytime, several thousand feet high, how was one to distinguish a fisherman from a pirate who had the same equipment and preferred to operate at night? Especially if the initial idea was to conduct flights over different territorial waters with multinational crews; in reality, very few such operations were conducted. At present, there are

only about fifteen such operations per year. Finally, tensions have emerged along the borders, reminiscent of the nationalist overtones on both sides of the Malacca Strait following debates ranging from cultural matters, domestic worker issues to territorial disputes off the area of Ambalat between Sabah and East Kalimantan,¹⁶ Malaysian and Indonesians wrangled with each other between Johor and the Riau archipelago. In August 2010 Malaysian maritime police detained members of the Batam fisheries authorities who had previously arrested Malaysian fishermen (*Jakarta Post*, 2010). Similarly, the majority of illegal workers were from Indonesia. In 2007 it cost clandestine workers 500,000 rupiah (less than 50 euros at the time) each to leave the island of Karimun, for Pisang Island in the middle of the Malacca Strait where they would be transferred and directed to a small village south of Kukup.¹⁷ Migrants still continue to leave these *pelabuhan tikus* (literally ‘mouse ports’, often informal or illegal) and try their luck further north.

However, the psychological impact remains. The pirates also read newspapers and can even watch Malaysian and Singaporean television in the Riau islands. They, therefore, get wind of these operations. Combined with their advanced age – some began their career in the early 1990s – many prefer not to take further risks. In the *kampung*, these buccaneers prefer to become taxi boat drivers and see their children grow up. Indirectly, Malaysia has contributed to the manoeuvres of deterrence.

This is unfortunately not the case for urban pirates, still waiting for phone calls to take part in possible hijackings. To the left of the exit of Nagoya Hill shopping centre on the island of Batam, several people are gathered looking for jobs in the coffee plantations of Sumatra, many peering into the directory of their mobile phones for contacts and opportunities from without. There is always manpower. Worse, former rogues of the Strait who have left to invest their loot around Banten in Java, such as Bulldog, or in the pepper plantations in Sulawesi, such as David, are back in Batam, on the small island of Belakang Padang, not far from Batu Berhenti, the narrowest point of the Malacca Strait. From a mother ship, they are the origin of clusters of attacks along the Malaysian coast since late 2008. In the

¹⁶ Lee (2009a, b); Osman (2009a, b); *Straits Times* (2009); Hermawan (2009); *Jakarta Post* (2009) and on the issue of maids: Kurniawati and Diani (2009). Each year, 700,000 Indonesians leave to work abroad; 75 per cent are women. The 4.3 million migrants – to whom are added 2–4 million illegals – sent back 8.2 billion dollars in foreign currency in 2008, which makes the subject delicate to manage; see Beauge (2010). On the dispute around Ambalat see Bernama (2009).

¹⁷ Research in Karimun in July 2007.

stalls in Batam, whispering while smoking clove cigarettes, sailors waiting for work, legal or not, are evocative of a gang from Palembang in South Sumatra which indulges occasionally in a few raids before returning to their *kampung*.¹⁸ The coastal countries bordering the straits should not lower their guard. Malaysia understands that.

Mouse ports in the Riau and Riau Islands provinces, in Indonesia



Source/credit: RSIS/RSIS Commentaries (original publisher)

¹⁸ Investigations on the ground in Belakang Padang as well as Nagoya and Jodoh in Batam, Indonesia, during repeated visits between 2009 and 2011.

Recent reactions of Malaysia – Naval and Convincing

Pressure on Kuala Lumpur came not only from the international maritime community. At times, piracy has become an issue in domestic politics. Hence in 2004 the main opposition party of Malaysia, the DAP (Democratic Action Party), urged the authorities to protect fishermen against pirate attacks in the Malacca Strait. According to this party, ‘The government has to prove to the world that it is capable of containing the threats in the Strait’ to protect the people of the coast. This appeal followed a series of kidnappings. On the east coast of Sabah, one of the two Malaysian states in Borneo, it was the same. By 2000 Senator Datuk Tibok Vanhout had called for ‘more aggressiveness against the pirates of Sabah’ (*Utusan Express*, 2000; *Star*, 2000a, 2004a, c, d; *Straits Times*, 2004). Sheak Chee Chew, Secretary-General of the Sandakan Fishing and Tongkang Association, said later in 2004 that few of its members still dared to go to sea after the last wave of kidnappings in Sulu, in particular the kidnappings of the sailors of the *East Ocean 2* (Then, 2005). In 2005 the International Shipowners’ Association of Malaysia (ISOAM) urged the government to secure the national waterways. Even the secretary general of the Committee for Fisheries, Agriculture and Rural Development had hoped for a strong government response after repeated attacks against Johor fishermen, near Muar in 2002. ‘Useless to hide behind easy excuses such as lack of resources,’ he had daringly put forward.

Unable to act against the roots of the evil of piracy – economy, housing, protection of the coastal environment in the Indonesian dens – Kuala Lumpur took off on its own. Its initiatives were based on past experience. In the 2000s Malaysia could count on the commando Paskal (Pasukan Khas Laut – Special Naval Forces). A major exercise called Naga Emas (Golden Dragon) was held in February 2001 aboard the container ship *Bunga Teratai* in the presence of journalists, with seven false pirates simulating a boarding. Thirty armed commandos armed with MP5 regained control of the ship in only ten minutes. It was the 39th such exercise since 1984 (*Star*, 2001a). Operations such as Pagang I and II followed, at the beginning and end of 2001, with interesting results: one attack reported in the first six months against twenty-eight in the same period of the previous year (*Star*, 2001b; Sim 2001). The head of the Malaysian Marine Police said the department even engaged in infiltrations.¹⁹

With these achievements, Malaysia advanced without compromising its sovereignty. First, it attempted to work effectively on a bilateral basis, as

¹⁹ Interview in Kuala Lumpur in September 2002.

in the case of the United States Navy; the port calls of its vessels increased from ten to around fifty annually. The U.S. also completed the installation of its radar in eastern Sabah. Without a physical presence, Washington thus signalled its presence through cooperation in equipment and training. Relations with Indonesia tended to be more constructive. 'Both countries have shown great pragmatism in managing their relationships, continuing to see themselves as partners, even in times of crisis,' explained Bruno Hellendorff. An Indonesian ambassador confirmed, 'Beyond the difficulties, what is important for us is that we are part of the big family of ASEAN (Association of Southeast Asian Nations) and committed to defending peace and stability.'

Secondly, Malaysia took the lead alone. Toward this end, its army modernised and kept guard over the approaches to its waters. The MMEA coordinated the operations and pushed back the threats of piracy. The results spoke for themselves. After the return of piracy in the vicinity of the Tioman islands at the end of 2008, Malaysian patrols were conducted. As in Somalia, where the European Operation Atalanta chased the thugs of the Gulf of Aden to the Lakshadweep in India or the Seychelles, out of reach of the naval force, the bandits in the Malacca Strait had to move further east. In 2009 the pirates operated around the Anambas islands near the border between Malaysia and Indonesia. However, due to growing pressure, they were found in 2010 near West Kalimantan and in 2011 they deserted the border areas to the south of the South China Sea.

To deter and dissuade the pirates, showing the tip of a prow was not enough. To arrest was more effective. Thus Malaysia moved to act and was no longer content to simply deter. In March 2009, for example, the police intercepted seven pirates who had infiltrated into its territorial waters. After forty minutes of chase and gunfire exchange, they were apprehended. One was an officer of the Indonesian police, stationed in a team engaged in the anti-narcotics fight in Batam. He tried to flee to Indonesia with his accomplices (Arnaz, 2009).

Several arrests made in 2011 caused uneasiness among the pirates. The gang that conducted multiple attacks off Tanjung Ayam was dismantled in March. According to sources who had access to prisoners, these men came from Riau regularly to clean the ships waiting near the Malaysian and Singaporean docks. These professional tasks quickly became the location for larceny committed on their non-working days.

Then another success was scored in the south of Johor in September when six pirates were spotted boarding one of three ships targeted. Alerted, the pirates decided to flee, but not for long. They surrendered at the first

shots fired by the authorities from the patrol in the area, proving once again showing that they were cowards rather than pure criminals or terrorists (AFP, 2011).

Meanwhile, Indonesia also showed its goodwill by dismantling a gang to the north of the Malacca Strait. This group was led by a prisoner from a penitentiary in North Sumatra! He was discovered after the hijacking of *Galant* in early September and the demand for a ransom of about US\$77,000. The booty was to be divided between the pirates and their leader, with 10 per cent reserved for orphans. There could be no doubt that on the other side of the strait, among the Malaysian fishermen, at times harassed or robbed, this news was greeted with relief (Lamb, 2011).

Further away, but in the same vein, Malaysia upset many pirate schemes in the wake of initiatives taken in eastern Sabah. By focusing on cooperation without compromising its sovereignty, Malaysia enjoyed the best of American support while conducting patrols with the Philippines. Operation Pasir (Pandanan and Sipadan Island Resorts), launched in 2000 after the hostage-taking of Jolo, included various army corps. The goal was to regain any grey areas,²⁰ and its range covered an area extending from northern Sabah to eastern Kalimantan. The United States and even France supplied and installed radars in the region.²¹

But Malaysia, like Sisyphus, is condemned to ceaselessly rolling a rock to the top of a mountain, from whence the stone will fall. Thus, in 2011 an unusually high number of attacks took place in southern Johor, not only to the east but also to the west of Singapore. The office in Kuala Lumpur reported that 41 attacks were perpetrated between Sumatra and the Malay Peninsula in the first ten months of 2011. Was the same gang of Orang Buton from south Sulawesi which operated around Tioman at the end of 2008 again involved? These bandits located in Belakang Padang had connections on the island of Karimun, not far from Kukup in Malaysia.

²⁰ A radar technician describes a zone as 'grey' when it is beyond the airwaves of his/her equipment; by extension, 'grey' areas are so-called when they are beyond the control of the authorities (Holden-Rhodes and Lupsha, 1993: 212). On these 'grey' areas, see also Chaliand and Conesa (2001).

²¹ Interview with Captain (Navy) Delbrel, Defence Attaché at the French embassy in Kuala Lumpur, 11 October 2011.

Conclusion

In periods of 'transnational turbulence' (Rosenau, 1990), piracy can appear as a threat to contemporary Malaysia; it was especially so at the height of the Mahathir era. But as a fine connoisseur of martial arts and *silat*, Malaysia, on the contrary, was able to use the strength of the opponent to equip, reaffirm its presence along the coast and take part in various diplomatic forums on the topic. If ASEAN had not shown a particular zeal in the fight against piracy and maritime banditry, fuelled by the regional ambitions of the United States, what would have happened to the East Asia Summit? In 2004 who would have foreseen a security escalation in the Malay straits, especially around Malacca and Makassar to the southeast of Sabah, after the proposals of Admiral Fargo? Perhaps the solution is external financing from straits' users, via a kind of sea toll, as is already the case for maritime safety via the cooperation mechanisms launched in 2005. That formula worked and could be extended in the field of security beyond the coordination of patrols.

With due respect to Kuala Lumpur, the threat remains. Before offering advice on how to rid the Gulf of Aden of piracy or on the parading of Somalian prisoners, Malaysia should watch out for pirates from Indonesia. At 3 am on 10 October 2011 a new tug was attacked south of the Malaysian port of Tanjung Pelepas. It was the sixth attack in the area since January 2011 and the ISC called for vigilance.²²

In the long term, regional, unilateral or trilateral measures must be taken at a higher level to tackle in depth the root causes of the problem on land, not only at sea. As in the Horn of Africa or in the Gulf of Guinea – other areas affected by piracy – it is above all the decline in fish stocks, pollution of the surrounding environment, lack of sanitation, socio-political crises and unemployment that have propelled coastal communities towards crime at sea. Also, the countries concerned have to urgently learn how to cooperate not only with regional partners, but also non-governmental organisations (NGOs), to meet the needs of the coastal populations at the local level, so as to defuse as soon as possible the threat posed by piracy. Indeed, who could be better placed than transnational and non-state actors in international relations, who work very closely with the people, to respond to a transnational and non-state threat, created by the poorest of village communities? NGOs could be the guide needed by the government to focus its response via funding and interposed cooperation.

²² See the report of the ISC (Information Sharing Centre): <http://www.recaap.org/Portals/0/docs/Latest%20IA/19-11%20Britoil%2071%20%2810%20Oct%2011%29.pdf> (accessed in October 2011).



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Chronology

- 1981 : Creation of the International Maritime Bureau (IMB).
- 1992 : Opening of IMB's sub office in Kuala Lumpur (Piracy Reporting Centre): 106 attacks reported in the world, 49 in Indonesia, 7 in the Malacca Strait and Singapore, 2 in Malaysia and 7 in the South China Sea.
- 2000 : World record of acts of piracy in one year: 469 attacks in the world, 119 in Indonesia, 80 in the Malacca Strait and Singapore, 21 in Malaysia and 20 in the South China Sea.
- 2000 : Hostage-taking in Sipadan (eastern Sabah).
- 2004 : Proposal of American patrols in the Malacca Strait by Admiral Fargo.
- 2004 : Implementation of MALSINDO naval patrols (Malaysia-Indonesia-Singapore).
- 2005–06: Due to piracy, the Malacca Strait was classified as a war-risk zone.
- 2005 : Implementation of trilateral air patrols (Malaysia-Indonesia-Singapore) – Eyes in the sky.
- 2006 : Establishment of the Malaysian Maritime Enforcement Agency (MMEA).
- 2006 : Establishment of ReCAAP-ISC (Information Sharing Centre) in Singapore; Malaysia did not sign the agreement.
- 2009 : Establishment of Information Fusion Centre (IFC) in Singapore; Malaysia is not a stakeholder.
- 2011 : 439 attacks reported in the world, 46 in Indonesia, 16 in Malaysia, 12 in the Malacca Strait and Singapore and 13 in the South China Sea.

Part Two

(Re-)Inventing Political Identities

Chapter 5

Gangsta and Politics in Malaysia

Sophie Lemière

This chapter is a short exploration of the relationship between political parties and gangs through the case study of Pekida. The articulation of this relationship is the central concept of this study: we define it as ‘connivance militancy’. In our scheme of thought, a gang that is involved in political actions, whether out of pragmatism or ideology, becomes a connivance militant group. It is because gangs do have an existence out of politics that they are seen as ‘opportunist’. Our main argument is that gangs are the mirrored expression of the ambiguities of society; thus they play a role in the system as shadow extensions of political parties in the public sphere. This chapter exposes the context that favoured the development of connivance militancy, the nature of Pekida and its satellite groups, and finally reveals the relationship between gangs and the ruling party (UMNO). So, if UMNO is on a honeymoon with gangsters, is this opportunist relationship ephemeral or the symptom of a systemic phenomenon?

Gangsta out of the Shadows

The ‘political tsunami’ of March 2008 was seen as the end of ethnic politics, eclipsing the violence of May 1969 (Ooi et al., 2008). The desertion of voters from the ranks of the ethnic-based parties of the ruling coalition to the benefit of a relatively more multicultural opposition has been seen as an attempt to overthrow the political majority of the Malays. After all, the opposition coalition is led by a man with low morals and by Chinese pigs (sic).¹

¹ ‘Chinese Pig’ or ‘Cina Babi’ is one of the many racist insults used by some pro-Malay militants.

In this context of virtual siege, pro- or ultra-Malay groups, as self-proclaimed defenders of the Malays, started to voice out their concerns in the streets and in the media, and new groups, such as Perkasa,² were created in 2009. Every newspaper and blog, whatever its political affiliation, and whether to criticise or to support them, has been giving gigantic coverage to these groups. Ironically, just a few organisations managed to attract enormous attention to their cause due to a thorough media strategy: how and why an ethno-nationalist movement has succeeded while supporting the vestiges of an out-dated pro-Malay and communal discourse.

In December 2011 – that is 17 months before the 13th general elections – in Shah Alam, the predominantly Malay capital of the state of Selangor, Prime Minister Najib Razak attended the annual meeting of one of the most controversial (but registered) pro-Malay organisations, Pertubuhan Kebajikan dan Dakwah Islamiyah SeMalaysia (Association of Islamic Welfare and Dakwah of Malaysia (Pekida)). Najib's promise of government aid in exchange for political support from the organisation's members on that night has been seen by the alternative media as an endorsement of the controversial, and often seen as 'racist' or 'extremist', discourse of Pekida.³ The question is why the Prime Minister would risk endorsing such a controversial organisation in a pre-electoral context where non-Malay votes do count. Is there any link between the emergence of a 'new' ethno-nationalist movement and the setback to UMNO's hegemony?

Rumours about Pekida accuse its members of being responsible for political violence and the harassment of opposition members. According to some, Pekida is the 'UMNO thug' (Magick River, 2010), a shadow paramilitary group or 'the UMNO fifth column' (Hakim Joe, 2012). Pekida is, in fact, a complex network of discrete NGOs that has been created by gangs in order to ally with political parties. Pekida is the name of one of the numerous NGOs created by a national gangsterised network composed of several autonomous gangs in order to offer political support, legalise parts of their activities, and ease the reception of funds. Pekida, being the most famous, has thus become a generic name that is being used to describe the network and each of its satellites (whatever their original name may be). Militancy is a business opportunity; gangsters have become militants to support the political parties with which they may share interests.

² Pertubuhan Pribumi Perkasa lead by Ibrahim Ali, former member of parliament for Pasir Mas constituency, with the support of Mahathir Mohamad.

³ Please refer to alternative media: Malaysia Today (2012); Mariam (2011); Chi (2011); Masami (2011).

This chapter presents some of the findings of my doctoral research:⁴ the fruit of 5 years' fieldwork (2008–2013) in Malaysia and nearly 50 interviews with members of Pekida and satellite organisations, as well as politicians, journalists and other Malaysians.⁵ This chapter will explore the context that favoured the development of connivance militancy, the nature of Pekida and its satellite groups, and finally reveal the mechanisms of the relationship between the gangs and the ruling party. UMNO is on a honeymoon with gangsters: is this opportunist relationship ephemeral or the symptom of a systemic phenomenon?

Defining Connivance(s)

The ethno-nationalist movement – in its contemporary form – is an umbrella that has been created in answer to UMNO's need for support. In that sense, UMNO's ties to this movement are stronger than those of any other party because (1) UMNO has created the need, and (2) it has maintained a favourable context for the development of such a movement. In another political, sociological, historical and geographical contexts, the ideological umbrella could have been leftist, anarchist or feminist; and the main entertainer of these movements could have been any other political party in need of support – whether it is a ruling party or an opposition party. In that sense, these 'new' NGOs, and Pekida specifically, are connivance militants which discourse and actively serve the interests of the ruling party.

Connivance militancy is a secret political arrangement by which a formal political actor (i.e., a political party, a government or a politician) sub-contracts legal and/or illegal political actions serving its interests – ranging from advocacy to demonstrations and violence – to groups of individuals. Connivance militant groups (CMG) may be seen as entrepreneurs of mobilisation and/or violence who offer their services in exchange for money or advantages, and thus become informal political actors. In the Malaysian context, connivance militants represent the 'muscle' and 'numbers' a formal political actor may need when challenged by its opponents during every occasion of political life: elections, campaigns, demonstrations, controversies, etc. Three types of CMG are observed:

⁴ Submitted in October 2013.

⁵ All the information described here was given by free will or found on the Internet. Every person interviewed in this context was fully aware of the research project and the identity of the author.

(1) *de facto* militant groups (DMG) for which militancy is a *raison d'être*, (2) opportunist militant groups (OMG) for which militancy is a business opportunity, and (3) marginal militant groups (MMG), a category that covers marginalised groups (e.g., a banned group or a political advocacy group without a party) for which the coalition to a political party is a way to keep a foot in the political scene.

While all types of militancy were observed during the research, this work focuses mainly on the second type of militancy: 'opportunist'. This choice is justified by the fact that it covers an area that is not a new phenomenon in Malaysia but that was previously not exposed by scientific study. So, who are the 'opportunists'?

Defining Gangs

The relationship between gangsters and politics has been widely studied in Indonesia during the New Order and after the fall of Suharto. *Preman*, formerly known as *jago*, describes a freelance entrepreneur in force who is operating for the State authority in a grey zone both inside and outside the law (Ryter, 1998; Wilson, 2010). As Ian Wilson explains, 'by the 1990s *preman* was synonymous with street thugs, gangsters and an extensive networks of racket run by criminals but coordinated by the State'. The *preman* is a 'figure of public revile, embodying the intersection between criminal violence and state power' (Wilson, 2010: 12–13). Interestingly, there has not yet been any similar research conducted in Malaysia.

As Hagedorn (1998, 2008) noted: 'The debate on the definition of gang is long and rancorous', thus the definition of gang has been reshaped and updated according to the context and object of this study and implies the following characteristics. Here, 'gang' is defined as:

- (1) A structured and hierarchical group federated under a leader to realise an ultimate pragmatic objective or (pseudo-) ideological cause, or both, which implies that members are involved in illegal activities and use various degrees of violence;
- (2) The sustainability of the group is ensured by its flexibility and its potential for adaptation to political and social changes;
- (3) The degree of institutionalisation (identity and structure) allows its longevity and credibility in the eyes of insiders, outsiders and the members of other gangs.
- (4) An entity that transcends space and time. Gangs are neither the exclusive products of cities and urbanisation, nor a consequence of industrialisation; in that sense they may be grounded in rural or semi-urban areas, and pre-industrialised or industrialised societies.

- (5) Authoritarian or transitional political contexts are favourable for the development of an opportunistic relationship between gangs and political parties. In this context, gangs may become entrepreneurs of politics or connivance militants to whom political actions are sub-contracted.

Gangster's Paradise: Ground for Connivance Militancy

For gangs, stepping into politics runs the risk of attracting attention to their illegal activities. Hence, their image changes into militant groups, and their illegal nature remains unseen. This work looks at the interaction between gangs and political parties through the prism of connivance militancy. By definition, the shadow identity of OMG remains unknown to the public, as well as connivance to political parties. The first step to identifying 'the invisible' is to understand the system of connivance that allows and favours its existence.

Political, structural and socio-cultural factors have set the foundation for the development of connivance militancy in Malaysia, and the rise of CMG in the form of an ethno-nationalist movement in the aftermath of March 2008.

Abdullah's UMNO's Need for Support

The democratisation process that followed Mahathir's resignation in 2003 put Malaysia on the road to democracy. Despite its multipartism, Malaysia should not be defined as a democracy per se, but rather as an 'authoritarian democracy' (Heryanto and Mandal, 2004). So, this relative opening of the public sphere resulted in an increase in public demand for democratic reforms; among these were the suppression of repressive laws and the revision of the privileges given to Malays. The relative liberalisation of public expression reshaped the Malaysian public sphere, promoting the rise of new political actors (NGOs) and giving them an opportunity to play a more active and direct role in politics (Weiss, 2006). Over the past decade, NGOs from different religious and political persuasions started to mushroom all over the country, inviting all layers of society to rally to their cause.

The years of Abdullah Ahmad Badawi's Prime Ministership (2003–09) witnessed the blossoming of ethno-nationalist NGOs which use a rhetoric based on religion and identity that was previously unknown or non-existent. According to a Pekida group leader based in Subang Jaya, 'The Abdullah years have been the golden age of Pekida; he is our godfather.' In the early dates of his office, Abdullah – who became Prime Minister by

Mahathir's designation, not by election – was in need of strong support. In order to maintain his party's influence, Abdullah used the network of the organisation to which he was introduced as patron.⁶ Nevertheless, the opposition's victory in five states in the March 2008 election seriously hit UMNO's credibility for the first time since independence. Confronted by the emergence of alternative media on the internet (Weiss, 2012), the controversial ruling party's electoral machinery was shown to be not strong enough to retain strategic states like Selangor. Thanks to the development of new media that resulted in the emergence of greater political awareness, a large number of urban and rural traditional Barisan Nasional's (BN)⁷ voters cast their vote for the opposition, cutting across the traditional communal political cleavages. The results that led to the resignation of Abdullah Ahmad Badawi less than a year later symbolise the death-knell of the UMNO's electoral superiority to the profit of the opposition, Pakatan Rakyat.

In February 2009 the defection of three Pakatan state assemblyman challenged the majority of the Perak State Assembly. This event resulted in several episodes of violence and demonstrations against Pakatan leaders who were in favour of dissolution of the State Assembly after the loss of their representatives. It was at this stage that Pekida members appeared, publicly waving flags bearing their organisation's colours (yellow, red and green), and wearing yellow (the royal colour) headbands that read 'Daulat Tuanku'.⁸ Despite their violence, none of the Pekida's militants involved were arrested.

In April 2009 Abdullah stepped down from his office. In February 2010 the Court of Appeal overturned the High Court decision declaring Barisan's takeover of the Perak State Assembly as unlawful, and confirmed the appointment of Zambry Abdul Kadir as Menteri Besar (Chief Minister) of Perak. Since then, Zambry has been guest of honour at every martial arts assembly organised in Perak and Kuala Lumpur by the Pekida NGO network. Perak is indeed a stronghold for Pekida groups – and the place where I did most of my field research. Soon after the events, several leaders and members interviewed in Perak mentioned BN's takeover with pride and explained that they and 'their guys' were involved in the violence, or 'would have been ready to go anytime if UMNO's politicians needed more muscles'.

⁶ Date unknown. All Pekida members interviewed recognised Abdullah as the organisation's patron.

⁷ Barisan Nasional (BN) is the ruling coalition lead by the United Malays National Organisation (UMNO).

⁸ 'Long live the Sultan'.

The Myths of a Nation: Sociohistorical Factors

Malays are the dominant group in Malaysia. As in every group of people, their sense of belonging to the same community lies in their belief they are sharing a common ancestry, a common history or myths. Most Malays perceive (or are made to believe) that they are the original inhabitants of Malaysia – the myth of the indigenous – thus this is used to justify the fact that they have a special position which entitles them to special privileges and rights – the myth of sovereignty – and must defend these rights against the others – the myth of resistance. The three myths are intertwined and made more complex by the religious element; the idea of the need for protection of Islam amplifies tremendously the myth of resistance. These myths, perpetuated by state institutions and political parties' propaganda, have set the foundation for ethnic tensions and fears.

Malay nationalism has been a key element in the discourse of Islamist reformist and secular traditionalist anti-colonial movements. Since its creation, in 1946, before independence, UMNO has embodied Malay nationalism and propagated the three myths described above. Today, the myth of the Malays as a homogeneous group of people is a historical fantasy that serves the contemporary ethno-nationalist rhetoric used by CMG. Ethno-nationalist groups are today the self-proclaimed defenders of the Malay myths and use this rhetoric to recruit supporters. Perkasa claims to defend Malay rights, while Pekida NGOs argue that they are the sole guardian of the Malay culture and its tradition.

The Shadows of May 1969

The 10 May 1969 election was the third general election after independence. The ruling coalition, the Alliance, was confident of retaining its two-thirds majority in the Federal Assembly. The result of the election in favour of the opposition parties was an abrupt revelation of the fragility of a superficial inter-ethnic consensus. The coalition managed to maintain a weak majority on a federal level, but lost the states of Perak and Selangor – two economically vital states with large Chinese constituencies – to opposition parties. This loss was interpreted as a switch of Chinese voters who could not remain faithful to the MCA and a risk for Malays to lose power to the Chinese. The reactions among the most extreme UMNO members were first, to challenge directly the credibility of the Alliance, and – in a more subtle way – to question the possibility of governing a multi-ethnic country within a democratic system (Goh, 1971: 17). To some, these poor results were the consequences of giving citizenship to the non-Malays after independence

which had indeed been a way for them to acquire political power that should remain in the hands of the Malay community. Goh (1971) describes a leaflet in which the author urged that 'the extra-parliamentary government instituted upon the declaration of State of emergency be perpetuated and democracy forsaken'. This election gave UMNO supporters the impression that the country was on the verge of falling into the hands of 'immigrants' (ibid.).

The riots opposing Chinese and Malays started on 13 May and continued until 18 May. Malaysian history books present the event as a 'spontaneous outburst of racial violence in a multi-ethnic society' (Kua, 2013); the official figures indicate that 196 persons were killed, 180 wounded by firearms and 259 by other weapons; 9143 persons were arrested and 5561 charged in court; 6000 persons were rendered homeless, 211 vehicles were destroyed (at least) and 753 buildings were damaged or destroyed by fire (ibid.: 9).

Kua questions the role of the State apparatus (police and army) and the political party leaders and members – more specifically, the ruling party UMNO youth branch. The author reads the orchestration of ethnic violence by the ruling party as 'a fascist trend which threatens to sabotage democracy in Malaysia'. According to Kua (ibid.), the event of May 1969 was the bloodiest clash of the many other racial outbursts to come. He argues that all were orchestrated violence. He draws the conclusion that the responsibility for the violence that has occurred in Malaysia since 1969 goes to UMNO leaders who have been manipulating UMNO Youth members, together with the leniency of the army and the police (a conclusion drawn from their reluctance to interfere in the clashes).

Kua (ibid.: 7) addresses the responsibilities of political parties and emphasises the role of UMNO and its youth branch. Unfortunately, the author does not push his analysis further to understand the reasons for such manipulation; to him the ethnic violence that occurred in Malaysia, 13 May being the most violent, is 'the physical expression of a fascist ideology run by UMNO', and used to instigate fear. The analysis needs to be pushed further. The reason for such political manipulation cannot be simplistically defined as the expression of an ideology, but should rather be seen as a way to secure political power. Secondly, the individuals or groups that were assimilated into UMNO Youth may fall under the typology of connivance militants operating under the legal banner of UMNO Youth.

The Overlap of the Spheres of Power: Structural Factors

Malaysian political theatre shall be depicted as a trio of intertwined spheres of actors, which play an active part in the design of contemporary politics. The political sphere (1) encompasses political parties, including the ruling party, the government and the state institutions. The economic sphere (2) is one of entrepreneurship, private and public companies; it is the 'corporate world'. And finally the public sphere (3) is the one of non-governmental organisation (NGOs) and the media. The nature of interactions between the elements of this trio is at the core of the political dynamics in the country. The structure of the Malaysian political theatre sets the lines along which the game of politics is played, and the way individuals (or groups of individuals) act in, out or across the spheres. The porosity of the spheres is one of the specificities of this system where political actors or individuals are allowed to play one or more roles. For example, politicians sit on the boards of private and public-listed companies, and mainstream media companies (TV, radio and newspaper) are owned by leaders of component parties of the ruling coalition. 'Business politics' or patronage is, indeed, one of the pillars of the political system.

The opaqueness of the Malaysian system (1) contributes to the perpetuation of the Malay myth refashioned into contemporary ethno-nationalism (2) and the current political and economic situation that has challenged the ruling party's hegemony (3) constitutes favourable ground for the development of connivance militancy. Pekida's NGOs have blossomed in answer to UMNO's need for support, offering great business opportunities. In developing connivance with UMNO, Pekida's gangs have been able to enjoy the flexibility of the legal framework regulating the (often loose) registration of NGOs, and the general leniency of State institutions, when creating and running their ethno-nationalist umbrellas.

Pekida: Opportunist Militant Group!

(Re)-Constructing Pekida's History

Pekida is a registered Muslim organisation. The first mention of the name 'Pekida' was found in the *Asian Almanac* in 1978. The short article advertises the creation of a new religious organisation and explains its origins. The original organisation Tentera Sabillullah (Holy Army), a religious criminal organisation, was dissolved in 1978. The members re-formed as two separate organisations: Pertubuhan Angkatan Sabillullah (Association of Holy Forces (PAS)) and Pekida. A decade later, the government authorities accused

PAS of being a terrorist organisation linked to the Parti Islam SeMalaysia (Islamist Party (PAS)) and dissolved the organisation. According to Pekida's internal history, that remains quite blurred for most members; the many activities of Pekida, in politics and in business, developed with the support of high-profile politicians and businessmen, out of sight of the authorities, the media and academia until recently.

A Snake with a Thousand Heads

Pekida is often referred to as 'Tiga Line' (Three Lines) as a symbol of the colours of its official flag: red, yellow and green. The three colours of the organisation embody its allegiances: to the Malay community (red as blood), to the Sultan (yellow for Royals) and to Islam (green). Pekida is often said to be divided into two lines: the official line 'White', which represents the registered organisation – the NGO called Pekida – and the underground line 'Red' that represents the gangsterised network behind the NGO. A large number of the Reds are in fact also members of the White line. It is important to mention that not all the members of the White line are active in the Red line; one may be an NGO activist, but not a gangster. In other words, not all members of Pekida are involved in criminal activities but may enjoy the business opportunities offered by a highly connected network. Anyway, denial of the underground branches by the official leaders, and more recently UMNO politicians, is a rule (Jamilah Kamarudin, 2011; Teoh, 2014).

Pekida's nebula cannot be reduced to a set of colours: it is a well-developed – and nurtured – system. Pekida's gangsterised network is a polymorphic entity: a snake with a thousand heads that do not always talk to each other nor look in the same direction. Pekida's gangs share the same roots, the hierarchy, the codes of honour, similar induction rites but bear differences in ethnic composition (exclusive or inclusive), nature of business (legal or illegal: drugs, clubs, rackets), level of political involvement and degree of violence. Leadership rivalries have sealed these differences and led to a political split. Since the death of PLB (his name must not be pronounced in public) in 2006, Pekida's network has been in crisis. PLB did not name a successor and all the *paduka* (top leaders) still claim to be his natural heir. Since then, numerous offshoots of Pekida have been created by PLB's first line of acolytes. Today, the most famous gang networks include 77 ('double 7') and 36. Each network is composed of several sub-groups, which may answer to different names. Names and logos, if any, often represent numbers and animals – tiger, dragon, eagle, etc. – as inspired by the names

of the *congxi gelap* (Chinese secret societies). Gangs and their sub-groups are spread all around the country: there is no geographic logic – a member originally from Perak may belong to a gang that has its leadership in Kuala Lumpur. The name Pekida has thus become a generic term that embraces a very large national network. Estimations of membership are impossible because Pekida is a shadowy network; nevertheless, field research showed that members can be found all over West Malaysia, in every layer of society (rural to urban elite), and every institution (state, political, social and economic).

From Exclusive Ethnic Politics to Inclusive Pragmatic Business

According to the narrative of most Pekida members, the organisation was created following the May 1969 riots to protect the Malay community and Islam. The myth of the genesis of Pekida is largely cultivated by leaders to recruit youngsters, and used to justify political actions and/or mobilisation that may lead to violence. But when it comes to pure business (no politics), the ethno-nationalist rhetoric used by Pekida's NGOs reaches its limits, to the benefit of a more pragmatic strategy. As a leader of a Subang area group would say: 'We are not racist, I don't care about *ketuanan Melayu*. Our motto is: make money and don't get caught! But of course if needed I'll do what it takes to protect my community (the Malays).' Pekida NGOs' ethnic exclusivity shatters when it comes to business. A network like 77 which is seen as one of the most powerful in the country, whose leaders are based in Kuala Lumpur's outskirts, is multi-ethnic and multi-religious. And members are encouraged to mix in order to favour business. Most groups, even the most exclusive ones, are obliged to work with Chinese and Indian gangs outside and inside the network.

The sub-groups' philosophy, political obedience and strategy are more or less flexible according to each leader and his personal ambitions. The level of political involvement, as well as the type of business operated, and the degree of cultural and religious mix may differ from one group to another.

Orang Di Dalam: The Insiders

Why did you join Pekida? is one of the first questions I asked each of my sources. The most common answers were: 'I wanna be a gangster', 'I want to protect my race and/or religion', 'I want to make money and develop a network', 'I want to become a UMNO politician'. The membership is not a charge that you may inherit from your father, but some families may count more than one member. An individual becomes a 'brother' once he

has been through the induction rites. From an oath to a group fight, the induction ritual is a passage from the status of outsider to insider 'brother'. Some rituals are tainted by mystical practices that are also found in silat and Sufi tradition. These practices are only cultivated and encouraged in some groups, but may take a very mystical dimension: invisibility charms, invulnerability, astrology, etc.

The gang's hierarchy and structure remain quite identical from one group to another. The evolution of a brother to the top of the pyramid depends on his capacity to mobilise people around him: the more members he recruits 'under him', the higher he goes. Business activities and political connections do count. Since the leadership crisis after the death of PLB, no national leader has been able to emerge. The Pekida gangs' network has numerous top leaders, called *paduka*. The first circle of PLB's acolytes was identified during the research, but most names are aliases. Most of the top leaders have a criminal record, mostly for murder and/or rackets.

Pekida's membership is seen as a duty, and sometimes a burden. There is an obligation to answer the call of the leader once one has taken the oath. Members may be co-opted from every layer of society, at any age (above 17). The organisation cultivates a strong sense of family and brotherhood among members. Each member is able to climb the pyramidal hierarchy (see Fig. 5.1) according to the number of recruits he has below him (he has thus created his own sub-groups) or according to its actions. According to Azmi,⁹ a member from the KL area: 'You join Pekida; you don't leave or you die.' Sleeping members do exist, more specifically when they are public figures. Some famous individuals are alleged or proved to be Pekida members; they do not take part in any of its political activities, but rather use the networks to multiply business opportunities and for private protection: sons of politicians in power, hip hop and pop singers, politicians, businessmen, civil servants or army officers. So, the social profile of members ranges from rural lower income to urban high elite and the network, while remaining mostly Malay, is after all relatively inclusive – Pekida may be one example of the cherished concept of Najib's 1Malaysia. Women do take part in some of Pekida's NGOs, but remain a minority and are rarely involved in political actions.

⁹ Not his real name.

Fig. 5.1. Gang Groups “Tiga Line” Hierarchy



Gang Brand: Pekida's Sub-Culture

Pekida's brothers do cultivate a gang culture that is sometimes initiated and encouraged by their leaders. Being a gang member is a source of pride. Despite secrecy being required, members do show off their membership, and cultivate the image of being an insider (*orang didalam*). Some leaders have understood this tendency of the youngsters to bear the colours of their groups and have put a great deal of attention into designing aesthetic logos that will be put on T-shirts, keychains, stickers, hats, etc. and sold to members.

Most Pekida gang members do believe that their political activities, or connection, put them in a grey area, and above the law. Thus they are not afraid of police authorities. 'As long as you are not seen committing a crime there is no problem in showing where you are coming from.' Recognition of brothers, ranks and sub-groups is essential for some, and this idea of belonging to the same family but different branches motivates the development of internal codes: clothes, car tuning, hairstyle, etc. The sense of belonging to an exclusive club is made even stronger by the use of the internal language called *buah*; it has 120 signs and is learned by most brothers. Some groups refuse to use it, but for most it is a way to communicate with brothers,

beyond the cultural, linguistic or ethnic differences.¹⁰

Gangsters and Masters: The Rules of the Game

'Do you fight?

- Yes

Why?

- I want to defend my race and my religion.

When do you fight?

- I fight when I'm asked and paid.

By who?

- I know UMNO politicians.

When was the last big fight?

- We did it during Hindraf rallies. To kick Indians' butt.

Do you have weapons, or do you fight with your own hands?

- Oh, Indians are crazy! We have parang, and I have a gun too but in Malaysia it is very hard to keep. We fight with fist too.

But, Azmi, I know your grandfather was Indian. So how does that make you feel?

- I don't care, I'm a Malay first!

(Interview with Azmi, 21, sub-group leader in Cheras, January 2009)

The strength of Pekida resides in the secrecy. Pekida's potential for mobilisation and violence is intangible, and should as seen as potential 'muscle' for political parties in exchange for freedom for illegal entrepreneurship. In exchange for this support the organisation may exercise its business activities without any legal consequences. Thus, NGOs are only used to offer political support and gather militants. Gangs and sub-groups have developed their relationship to the ruling party and created martial arts, religious or Malay culture NGOs among which are Pekida (the most famous), BATAS, Amal etc. Interestingly, some members of these NGOs may not be part of the gang but co-opted directly from the NGO attracted by its 'code', its visibility or its official rhetoric. Some boys join these organisations to be part of a network they know as sitting on the edge of legality but might never get involved in criminal activities and mostly remain active militants within the NGOs. Nevertheless, the gangsterised nature of the network behind the NGO is clear to most, if not all, members. One of the bases for recruitment is martial art (silat) groups. Numerous silat organisations are

¹⁰ <http://www.youtube.com/watch?v=59EJN7XvdIk>.

indeed Pekida's NGO network and it is very natural that their members eventually turn to political militancy.

Today, ethno-nationalist organisations are among the most vocal in the public sphere, pushing the entire political continuum to the far right. The rise of Pekida reveals the shortcomings of the Malaysian system of governance and the ambiguities in its legal system, while emphasising divisiveness in the concept of a coherent Malaysian nation and identity. It seems that the government majority has been hijacked by a 'right-wing lobby' and is struggling to restore credibility and trust within the non-Malay constituencies; this hijacking may indeed be part of UMNO's political strategy to maintain its influence to secure Malay votes and muscle if needed.

The rumours and legends built around Pekida are its biggest strength, playing on the fears of Malaysian society. Violent political actions allegedly committed by Pekida are serving the interests of the government in that they legitimate the sustainability of the ruling party's authoritarian and discriminative laws. In fact the Minister of Interior pointed to contemporary violent political events that CMG are responsible for. The violent events are instrumentalised to revive the remembrance of the violence of May 1969, and the potential of racial riots. According to this idea, a strong government and strong laws are needed to prevent violence, and protect 'racial harmony', and UMNO is the sole protector of this harmony. In an interview, Mahathir Mohamad expressed his view on Pekida and Malay NGOS in general.¹¹ To him Abdullah, in need of support, had no choice but to use these types of groups. According to him, they are the symptoms of a weak power. Nevertheless, the former Prime Minister explained that this support is important to the party and an old practice. In his own words, Mahathir explained:

Their formation [the Malay NGOS] is due to their lack of faith in the Malay party of the government to look after their interests (...) [Pekida] is a shadowy organisation, we're not so sure about what they are doing. A government, you don't know what they could do, they might undermine your support. So since you don't know what they do, you support them. (...) It's good to have them on your side. These are organisations whose strength and influence are not very clear, but it seems you should not be against them because you would lose votes. There is no reason why the government should not be with them.

¹¹ Interview with the author in Putrajaya, 30 April 2012.

Pekida is a nebulous and politically dual entity which could potentially serve the interests of any political party; although several members do acknowledge their allegiance to opposition parties, it has not been measured. As a consequence, and following the 2008 general elections, some gangs and sub-groups chose to turn their back on UMNO to give their support to the opposition parties. The leader (*ayah*) of a sub-group based in Perak explained 'I used to be an UMNO member. I was locally in charge with running projects for the community, but I never saw the money. The money coming from the top will never come to me. UMNO is too corrupted. Now I'm a PAS member.'

Another Way of Looking at 'Civil Society'

The political role of NGOs, despite their claim of being apolitical, is proven (e.g., Weiss, 2006; Lee, 2010). Usually the NGO scene is seen in a dual dimension: Muslim opposing non-Muslim NGOs or pro-opposition opposing pro-government. Interestingly, most NGOs are understood as occupying the political scene in opposition to the ruling party in general, and particularly to UMNO, since 1957. Apart from its own party branches, the mentioning of pro-government NGOs is rare in the analysis of Malaysian politics. There is another division within these pro-opposition organisations: between Islamists on one hand, and secular or non-religious organisations on the other hand. Thus when we look at connivance militancy (as in pro-government NGOs) it is a large area of the public sphere that has been totally ignored.

The independence of NGOs in the public sphere should be questioned; we argue that a large number of NGOs are embodying the interests of political parties in different aspects, such as diffusing or supporting the party's ideas, supporting and/or getting involved in its public actions, initiating political action such as demonstrations or violence serving the party's interests. Clearly, the notion of independence usually associated with NGOs is a sham.

The notion of 'civil society' is often used as a barometer to measure the degree of democratisation of a country. A country where a vibrant civil society has developed is often classified as 'democratic'. Nevertheless, the true political independence of these NGOs is rarely challenged, nor is the legal frame under which they have emerged.

Gangster-Mind or Master-Mind?

Pekida should be seen as a macro image reflecting today's society: it is a

product of the disrupted structure of Malaysian society, and is rooted in the same myths. Pekida is indeed a product of the frustrations and anxiety of the Malaysian society as a whole. Pekida members have claimed responsibility for several outbursts of violence that were seen as ethnic or religious clashes.

The connivance between gangs and political party that we call 'opportunistic connivance militancy' is not ephemeral, but one aspect of a system that has been in place since independence that questions the very nature of political militancy.



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Chapter 6

Second-class Bumiputera?

The Taming of the Dayak and Kadazandusun of East Malaysia

James Chin

This paper traces the political marginalisation of the main Bumiputera (indigenous) political grouping in the East Malaysian state of Sarawak and Sabah. Often ignored by scholars working on Malaysia, their political plight and marginalisation by the Muslim powerbrokers in both states in the past two decades is symbolic of the making of a 'Malay Muslim' state, rather than the promise of multi-ethnic and multi-religious Malaysian federation. In theory, the Bumiputera are favoured in all political, economic and social spheres under the infamous New Economic Policy (NEP). They are supposed to get easy access to government jobs, scholarships and places in public universities, special licences and easy credit. In reality, it would appear that these benefits are only available to Muslim Bumiputera (MB) while the majority Bumiputera, being non-Malay and non-Muslims, are marginalised or get very little benefit from the NEP and other affirmative action policies.

Since the early 1990s, politics in Sarawak and Sabah can best be described as an unequal contest between the three main groups: the Muslim Bumiputera (MB), the Non-Muslim Bumiputera (NMB) and the Chinese. The largest NMB political grouping in Sarawak is the Dayak and in Sabah the Kadazandusun.

Sarawak: Divide and Rule by Melanau Elite

Politically, the Dayak (a collective term to describe all non-Muslim native groupings) should be the most powerful group or, at least, the second most powerful, in Sarawak politics. Numbering more than forty per cent

of the population,¹ they should at the very least be able to command a key position in the state political structure. In fact, the first two chief ministers of Sarawak, Stephen Kalong Ningkan and Tawi Sli, were both from the Iban-Dayak community. In the 1960s right up the mid-1970s it was widely understood that any group wanting power in Sarawak had to have the support of the Dayak community. This is no longer the case. What happened?

In simple terms, the Dayak community was deliberately split into many factions and political groupings. This made it impossible for them to unite under a single political party. In the 1960s and 1970s Dayak support was mainly found in two parties: Sarawak National Party (SNAP) and Sarawak United Peoples Party (SUPP). A smaller group led by Temenggong Jugah was found in Parti Pesaka. In 1973 the Melanau-Muslim-led Parti Bumiputera engineered a merger of Pesaka and Bumiputera, creating a new party, Parti Bersatu Bumiputera (PBB). By the late 1970s SUPP had retreated into a mainly Chinese party and most of the Dayak support consolidated into SNAP.

Rather than using the opportunity to push for Dayak interests, an internal split in SNAP saw the birth of Parti Bansa Dayak Sarawak (PBDS) in 1983. The split in SNAP was caused by the election of James Wong Kim Mim, a wealthy ethnic Chinese, as party president. SNAP Dayak leaders, led by Daniel Tajem, Edmund Langgu, Leo Moggie rejected Wong's leadership. Their logic was simple: SNAP's president must be Dayak, more precisely an Iban.² PBDS had support from both the federal BN, led by the United Malays National Organisation (UMNO), and the state BN, led by Taib Mahmud from PBB. Taib had every reason to support the split in SNAP; it was a threat his rule. In 1970 Taib's uncle, Rahman Yakub, out-manoeuvred a potential SNAP-SUPP coalition government and instead created a Bumiputera-SUPP state government, leaving SNAP as the main opposition party. The Melanau-Muslims are a minority in Sarawak, numbering about 5 per cent of the state's population. Their genius in maintaining political power since 1970 is based on the premise that they can control and constantly out-manoeuvre politically the Dayak and the Chinese.³

¹ The latest population figure of Sarawak: 30 per cent Iban, 8.3 per cent Bidayuh, 23 per cent Malay, 5.6 per cent Melanau, 5.8 per cent Other Bumiputera, 26.7 per cent Chinese and 0.4 per cent Others. Thus the total Dayak (Non-Muslim Bumiputera) population is about 44.21 per cent and the Muslim Bumiputera (MB) 28.6 per cent.

² The Iban constitute the largest segment of the Dayak community.

³ For a descriptive account of how the Melanau control Sarawak politics, see Mohd

Thus when the Dayak leaders formed PBDS, it was accepted into the state BN as a 'BN Plus' government, despite fierce opposition from SNAP. At the federal level, Leo Moggie retained his position as a Federal minister, signalling UMNO's acceptance of PBDS as the 'voice' of the Dayak and UMNO's acceptance of the divide-and-rule strategy against the Dayak.

This unstable situation lasted for about four years when suddenly in 1987, PBDS saw an opportunity for Dayak political ascendancy by getting rid of Taib. In early 1987 Rahman Yakub, Taib's uncle who served as Sarawak's chief minister from 1970 to 1981 before handpicking Taib to be his successor, decided that he wanted his old job back. The rift between uncle and nephew came about when Taib began to build his own business empire and rewarded his cronies. This infuriated Rahman, who thought that Taib would not hurt his business interests and would retain his men in the new Taib administration. This was a reasonable assumption given that he had paid for Taib's education from a young age, had given him important positions in PBB and ultimately chosen him as his successor as Chief Minister (Leigh, 1991).

Rahman established a new political party, Parti Persatuan Rakyat Malaysia Sarawak (PERMAS) and, together with PBDS, attempted to force Taib's resignation by getting a majority of the Council Negri (Sarawak State Assembly) members to sign a motion of no-confidence. To everyone's surprise, Taib dissolved the Council Negri and called for a snap election. PBDS fought a very effective campaign using Dayak nationalism (dubbed Dayakism) and won 15 Dayak-majority seats. Unfortunately, the Muslims and Chinese, fearing the consequences of Dayakism, backed Taib and Sarawak BN. The Sarawak BN under Taib narrowly beat the PERMAS-PBDS alliance 28–20 (Chin, 1997: 217).

From then onwards, PBDS was in a peculiar position; it remained a BN party at the Federal level while at the state level it was an opposition party. Through a series of defections, PBDS became politically weaker and weaker, so that by the early 1990s it was effectively a toothless tiger. In 1994 it was readmitted into the Sarawak BN on Taib's terms. Effectively this meant that it had to stop all rhetoric concerning Dayakism and play a minor role in state politics (Chin, 1996). The Melanau-Muslims and Chinese were on top, while the Dayaks came in third. Dayak support was further dispersed among the entire Sarawak BN parties (PBB, SUPP, SNAP and PBDS), effectively turning Dayak numerical majority into political minorities. From 1970 until 2011

the first Deputy Chief Minister's post was always held by a Chinese with only the second Deputy Chief Minister's post given to a Dayak. All the key Cabinet positions such as Finance, Resource Management and Infrastructure Development were always held by a Melanau or Malay or a Chinese, with Dayak ministers given relatively minor portfolios.

The Dayak were further split in 2002 when William Mawan Ikom, then SNAP's vice-president, quit the party with eight other senior leaders. With the financial support of a millionaire Chinese businessmen and SNAP's treasurer, Tiong King Sing, Mawan staged an extraordinary general meeting (EGM) on 11 August 2002 that saw Mawan 'elected' as party president. The other faction, led by James Wong, refused to acknowledge the EGM, giving the Registrar of Societies (RoS) the excuse to deregister the party on 5 November 2002. Three days later, the same RoS announced the registration of Sarawak Progressive Democratic Party (SPDP) with Mawan as its leader and its leadership council consisting of former SNAP members. The SPDP was immediately accepted into the Sarawak BN. Under normal circumstances it is very difficult to register a political party in Malaysia;⁴ the fact that it took three days and instant admission to the Sarawak BN can only mean that Taib Mahmud must have approved the plan beforehand. With SPDP in government, SNAP was effectively thrown out of the Sarawak BN and became an opposition party (Chan, 2002).

At the same time, PBDS was also split. In 2001 Leo Moggie, the founding president, quietly told party members that he was contemplating retirement at the next parliamentary elections, due in 2004. Two factions immediately emerged to take over: one led by Dr James Jemut Masing who had the support of Taib Mahmud, and the other led by Daniel Tajem, the incumbent deputy president who had the support of Moggie. Moggie and Tajem had founded the party together and were also ringleaders in the 1987 putsch against Taib Mahmud described earlier. Taib obviously had not forgotten about Tajem's betrayal and would not have liked the scenario of Tajem replacing Moggie. He was also annoyed that Tajem wanted the presidency, given that one of the unwritten conditions for PBDS's re-entry into Sarawak BN back in 1994 was Tajem's political retirement. Under the deal, Tajem was removed from Sarawak by being appointed Malaysian High

⁴ For example, it took ten years and a court challenge for Parti Sosialis Malaysia (PSM, Socialist Party of Malaysia) to be registered as a political party. The RoS is directly accountable to the Home Minister, a post always held by UMNO. Hence BN-friendly parties can be registered in no time, while opposition parties are often given the runaround.

Commissioner to New Zealand, where he served two terms (Chin, 2004).

Like the SNAP crisis, with no compromises possible between the factions, in late July 2003 Masing organised a triennial delegates conference (TDC) which saw him 'elected' as president of the PBDS. Meanwhile in Tajem's organised TDC, Tajem was the sole candidate for the president's post. By the end of 2003, the PBDS had two of everything, from two party 'presidents' to two 'Supreme Councils'. On 5 December PBDS was deregistered by the RoS. In the meantime, a group of Masing supporters managed to register Parti Rakyat Sarawak (PRS). With PBDS deregistered officially, Masing was able to 'join' PRS and become its president, and PRS was accepted into the Sarawak BN and the Federal BN.

More Divide and Rule

By now, you would have thought that Dayak politicians would have learnt their lessons on keeping their parties intact. But this was not the case. In 2006 it was the turn of PRS when it nearly came apart when Sng Chee Hua, one of Masing's key financial supporters who helped him to register PRS, decided to challenge him. Sng was also PRS's founding deputy president. Masing sacked Sng and his supporters (Sulok, 2006). Masing then convened a triennial delegates conference (TDC) in Sibu in 2006 which saw him 're-elected' as party president. Sng's faction then complained to the RoS, hoping that the party would be deregistered or force Masing to readmit them (Thien, 2006). However, to the surprise of many, in April 2008 the RoS sided with Masing (*New Straits Times*, 4 April 2008). Masing may have been the winner, but he owes his position entirely to the Chief Minister. He will almost certainly face another challenge to his leadership once Taib Mahmud is no longer Chief Minister and Sarawak BN chairman.

Things were also brewing in SPDP. Five SPDP MPs and State Assemblymen, styled 'Group of Five',⁵ openly challenged Mawan's position as SPDP's president. They refused to attend any meetings convened by Mawan and openly called on him to resign as party president. They were unhappy that Mawan did not consult them on senior party appointments and alleged that he was 'controlled' by Tiong (Kiew, 2011; Tawie, 2011b).

Mawan then sacked the five who were against him and in the 2013

⁵ Tasik Biru assemblyman Datuk Peter Nansian Ngusie, Marudi assemblyman Sylvester Entrie Muran, Batu Danau assemblyman Paulus Palu Ngumbang, Bekenu assemblyman Rosey Yunus and Member of Parliament for Mas Gading Datuk Dr Tiki Lafe.

general elections, Tiki Lafe was replaced by a Mawan loyalist. Tiki stood as a 'BN-friendly' independent candidate, but lost to the official SPDP candidate.

Sabah: The Rise of PBS and Kadazandusun Nationalism

Unlike the Dayak in Sarawak, the majority Kadazandusun in Sabah are relatively united politically under Parti Bersatu Sabah (PBS), which has been able to appeal to the Kadazandusun community for two main reasons. First, Joseph Pairin Kitingan, the Huguang Siou (traditional paramount leader of the Kadazandusun), founded PBS; hence it had traditional political legitimacy. Secondly, PBS was founded as the political vehicle specifically to challenge the political marginalisation of the Kadazandusun community. In 1985 Pairin was sacked as a state minister for complaining that the Kadazandusun were being discriminated against by Muslims and that Sabah was being 'colonised' by Peninsular Malays. He claimed that the Federal government was not respecting the spirit of the 'Twenty Points', the constitutional guarantees Sabah and Sarawak had demanded prior to the formation of the Federation of Malaysia in 1963.

The main features of the safeguards were (Govt of Malaysia, 1962):

- (1) Islam's status as a national religion was not applicable to Sarawak and Sabah;
- (2) Immigration control was vested in the state governments of Sabah and Sarawak;
- (3) Borneanisation of the civil service and English as the official language would apply to both states;
- (4) No amendment or modification of any specific safeguards granted under the Twenty Points can be made by the federal government without the agreement of the Sabah and Sarawak state governments;
- (5) There would be no right to secede from the Federation.

Pairin and other Kadazandusun leaders claim that the Federal government, with the collaboration of the Muslim-led state government, has not adhered to these guarantees, especially in the area of Islam and Borneanisation of the civil service.

In the 1985 and 1986 state elections, Pairin and his newly formed party PBS were able to win in the Kadazandusun and Chinese constituencies. Combined, they had a majority and allowed PBS to win outright. To ensure political stability, PBS applied and was accepted into the BN. In 1990, to the surprise of Kuala Lumpur, Pairin and PBS pulled out of the BN and joined the opposition, thinking that the opposition under Tengku Razaleigh had a

real chance of defeating the BN (Khong, 1991). Mahathir famously said this action was a 'stab in the back' and never forgave Pairin. Almost immediately, UMNO and other peninsula-based BN parties such as MCA and Gerakan moved into Sabah (Chin, 1999). Four years later in the 1994 state election, PBS won narrowly but, within days of the result, defections engineered by Anwar Ibrahim saw PBS losing its majority (Chin, 1994). The PBS government was replaced by an UMNO-led government. In the subsequent state elections in 1999, despite winning almost all the Kadazandusun seats, PBS was unable to form the state government (Chin, 1999). PBS was to stay in the opposition until January 2002 when it was readmitted into the BN. A year later in 2003, Mahathir retired.

From Kadazandusun Electoral Majority to Project 'M'

PBS's strong Sabah nationalism, anti-Federal rhetoric and state rights have been ringing alarm bells in Kuala Lumpur since the early 1980s (Kahin, 1992). Mahathir was never comfortable with a non-Muslim Chief Minister in Kota Kinabalu; Pairin is a practising Roman Catholic. He tolerated PBS in power as long as it was in the BN, but this did not stop him from working in the background to ensure that the NMB community's threat was removed in the long term.

To ensure that the Kadazandusun and the larger NMB community will never be in a position to capture power again, the Federal government decided to mount a covert policy to increase the number of Muslims in Sabah to make it a Muslim-majority state in electoral terms. This was done by issuing 'blue' identity cards to Muslim migrants from the southern Philippines and Indonesia. A blue identity card signifies Malaysian citizenship and allows the holder to vote. The only authority with the power to issue identity cards is the Federal government and it is clear that the Federal-controlled National Registration Department was involved in issuing thousands of Malaysian identity cards and creating 'instant' Malaysians. This project was allegedly dictated at the highest political level, with many calling it 'Project M' with the 'M' meaning Mahathir, the Prime Minister and Home Minister. Given that he was the minister in charge of the National Registration Department, it is almost certain that he would have been aware that thousands of 'instant Malaysians' were being created in Sabah (Frank, 2006). Although no precise figures are available, some figures are revealing. Between 1970 and 2000, the population of Malaysia increased from 10,439,430 to 22,202,614 (113 per cent); from 976,269 to 2,012,616 (106 per cent) in Sarawak; and from 636,431 to 2,449,389 (285 per cent) in Sabah (Fernandez, 2008). In 1960 the population of Sabah was: 32

per cent Kadazandusun, 23 per cent Chinese, 15.8 per cent Other Muslim, 13.1 per cent Bajau, 5.5 per cent Indonesians, 4.9 per cent Murut, 1.6 per cent Filipino and 0.4 per cent Malaysian Malay. By 2006 the population profile was: 17.76 per cent Kadazandusun, 14.62 per cent Other Bumiputera, 13.4 per cent Bajau, 11.48 per cent Malays, 9.6 per cent Chinese, 4.8 per cent Others, 3.3 per cent Murut and 25 per cent non-citizens. The biggest casualties were the Kadazandusun and Chinese communities – their percentage dropped to about half in a space of less than fifty years. This cannot be due to natural progression; the only viable explanation is large-scale immigration from outside Sabah. Official government statistics put Sabah's Muslim population at 63.7 per cent compared to 37 per cent at the time of independence in 1963 (Malaysia Statistics Dept., 2006).

The most damning and credible study of using 'instant Malaysians' to alter the voting profile of the state was undertaken by Kamal Sadiq in 2005. In his doctoral study, Kamal showed conclusively that 'instant Malaysians', whom he referred to as 'phantom voters', significantly changed the voting profile of the state. The advantage enjoyed by the Kadazandusun and Chinese communities in 1960s had disappeared by 1991 when the Muslim Bumiputera voters became the absolute majority. The 'new citizens' are expected to vote for their benefactors – without doubt meaning the political party representing the Muslims, UMNO and its associates (Kamal, 2003, 2005).

After heavy political pressure from Sabah, the new Prime Minister, Najib Tun Razak, reluctantly established Royal Commission of Inquiry (RCI) into 'Project M' in 2012. The RCI is due to report in 2014 and will provide clear evidence that many migrants were given ICs deliberately to change the political balance in favour of the Muslims in Sabah (Aidila, 2013).

Thus by the early 1990s the NMB had lost their electoral majority in Sabah. This is best summed up by a former Sabah chief minister, Harris Salleh, allegedly one of the key planners of 'Project M', who said that the Federal government had the power to do what it liked in the state. He was quoted as 'The federal government can register any of the refugees in three hours, three days, three months or three years. ... There is no law stating the time and if the federal government wanted to alter forever the voting patterns of Sabah then it can do so it as easily as signing the papers...' (Raffaele 1986: 425).

The moves to make Sabah a Muslim majority state include converting NMB into Islam. The thinking is that once a person converts to Islam, he or she is likely to support a Muslim party, i.e. UMNO, in elections (Table 6.1).

Table 6.1. Sabah: Political Affiliation and Ethnic Group Representation

	Political Party	Ethnic Group	Census Years		
			1960	1970	1991
Regional{	PBS	Kadazandusun	32.0	29.9	19.6
		Murut	4.9	4.8	2.9
National{	UMNO	Malay	0.4	2.8	6.2
		Bajau	13.1	11.8	11.7
		Other Muslims	15.8	13.5	13.6
		Indonesian	5.5	6.1	21.3
		Filipino	1.6	3.1	8.2
Regional{	Sabah-based Chinese parties, PBS	Chinese	23.0	21.4	11.5

Source: modified from Kamal Sadiq (2003: 90).

The process of becoming a ‘Malay’ is simple.⁶

Easy to Become a Malay, says MB:

KOTA KINABALU: Malacca Chief Minister Datuk Seri Hj Mohd Ali Rustam said a person who is a Muslim, converses in Malay and follows the Malay traditions is considered a Malay. ‘It is easy to become a Malay,’ he told a Press conference after Sabah Chief Minister Datuk Seri Musa Aman opened the Dunia Muslim Dunia Islam (DMDI) seminar, here, Saturday. Elaborating on why Musa had said that more than 50 per cent of the State’s nearly three million population are Malays, Mohd Ali, who is also DMDI president, said: ‘Even if that person is Chinese or Indian or Kadazan, if they are Muslim or have converted, converse in Malay and follow the Malay tradition, then they are Malays.’

‘The Kadazans if they are a Muslim, we considered them as Malays, and if they have not embraced Islam, they are Bumiputeras. It is easy to become a Malay.’

Present were Sabah Deputy Chief Minister Datuk Yahya Hussin, Tourism, Culture and Environment Minister Datuk Masidi Manjun and Sabah State Secretary Datuk K.Y. Mustafa. (*Daily Express* (Kota Kinabalu), 10 June 2007)

⁶ In Malaysia, a Malay is constitutionally defined as a Muslim. In other words, a Malay does not have freedom of religion in Malaysia. It is legally intricate/difficult/complexed for a Malay to leave Islam in Malaysia.

Consequences of Political Marginalisation

The Denial of Political Power

The NMB are denied key political positions with power. Officially, Alfred Jabu, an Iban, has been second Deputy Chief Minister in Sarawak for the past two decades. Yet most observers will tell you that he does not yield real power despite being the number three in Sarawak politics. His own constituency of Layar still does not enjoy paved roads nor regular electricity (*Free Malaysia Today*, 18 January 2011) despite the fact that he has been the State Assemblyman for the constituency for 36 years. In Sabah, although Pairin was made Deputy Chief Minister under the UMNO-led state government, he has been unable to pursue his Kadazandusun agenda. The frustration led to the first open criticism against the Huguang Siou in recent years, even calls for his resignation (*Free Malaysia Today*, 1 July 2011). In 2010 a popular musician, Atama, enraged Pairin and the PBS leadership when he wrote a skit ridiculing the Huguang Siou for betraying his community. A former state minister, Conrad Mojuntin, staged a 'fast to death' event to protest the marginalisation of the community widely seen as an indirect reprimand of the Kadazandusun leadership under Pairin (*Free Malaysia Today*, 29 June 2011). He is seen as not being able to promote Kadazandusun interests in the Sabah Cabinet because he is beholden to UMNO. Pairin knows that his powerful partner UMNO can rule Sabah comfortably without PBS. The same can be said for Sarawak – the Sarawak Dayak are spread thin across PBB, SUPP, SPDP and PRS. PBB alone holds 35 of 71 seats in the Council Negri and can easily rule Sarawak with SUPP or with the support only of one additional member.

The political marginalisation extends to the civil service where NMB civil servants are often overlooked in terms of new intake and promotions to key posts. Bernard Dompok, a Kadazandusun minister from Sabah, raised this issue in Parliament when he revealed that of the 18,858 applications from Ibans to join the Federal civil service, only 24 were accepted while only one out of the 617 Orang Asli (the NMB in Peninsular Malaysia) who had applied was accepted (Bernama, 11 December 2006). At the state level, most of the senior positions are held by Muslim Bumiputera. A former Sabah state secretary (the state's highest-ranking civil servant), Simon Sipuan, lamented that race and religion were now the major success factors in the recruitment and promotion process in the Sabah civil service (*Free Malaysia Today*, 9 May 2011).

Political Under-representation

Because the ruling party (UMNO) aims at Muslims being in control of both states, the number of NMB constituencies is reduced after every delineation exercise. In Sarawak, the Dayak community was severely clipped by PBB through constituency delineation and seat distribution within the Sarawak BN. From Table 6.2 it can be clearly seen that the number of Dayak seats has gone down by 18 per cent while the number of MB seats has increased dramatically. Among the three major communities, the clear loser is the Dayak community while the clear winner is the MB community. Even if all the NMB seats were won by a single party, they would not be in a position to form the state government.

Table 6.2. Sarawak: State Constituencies by Main Voting Groups

	1969	1987	1991	2008	percentage change, 1969–2008
Dayak/NMB	28	25	24	29	-18 per cent
MB	12	15	18	27	+13 per cent
Chinese	8	8	11	12	0 per cent
Mixed	–	–	3	3	+4 per cent
Total	48	48	56	71	

Key:

NMB: Non-Muslim Bumiputera

MB: Muslim Bumiputera

Mixed: Where no single ethnic group constitute more than 50 per cent of the voters.

Source: author's own calculations using data from SPR, newspaper reports and political parties.

In Sabah, the net effect of these 'instant' Malaysians has been a dramatic shift in electoral power among the three political groupings (see Table 6.3). In 1975 before 'Project M', MB accounted for 18 of 48 seats (37.5 per cent). In 2008 MB community accounted for 36 seats (60 per cent of state seats). This also means that if all the Muslim Bumiputera in Sabah supported one party, that party could win outright. In three decades, the Muslims have managed to become an absolute majority in terms of electoral politics.

Table 6.3. Sabah: State Constituencies by Main Voting Groups

	1976	per cent	2008	per cent	Change
NMB	22	45.8	13	21.6	-24.2
MB	18	37.5	36	60	+22.5
Chinese	8	16.6	6	10	-6.6
Mixed	–			0.83	+0.83
Total	48	100	60	100	

Key:

NMB: Non Muslim Bumiputera

MB: Muslim Bumiputera

Mixed: Where no single ethnic group constitute more than 50 per cent of the voters.

Source: Author's own calculations using data from SPR, newspaper reports and political parties.

In other words, the political marginalisation has led to electoral marginalisation. The Dayak in Sarawak and the Kadazandusun in Sabah can never win power on their own.

The electoral marginalisation is made worse in Sabah because it means the wholesale 'import' of Muslims from the southern Philippines and, to a lesser extent, Indonesia. 'Project M' has caused serious social problems in Sabah and many Sabahans resent the newcomers who are given instant Malaysian citizenship. Although there are no figures, the most often quoted figures on the number of these 'instant' Malaysians is between half a million to one million, or about one-third to half of Sabah's population (Chong 2009; *The Malaysian Insider*, 5 April 2011).⁷

Emergence of a Second Class of Bumiputera

The promise of the New Economic Policy (NEP) which is supposed to help the Bumiputera population in East Malaysia appears to only benefit MB rather than all Bumiputera. Leo Moggie, one of the founders of PBDS and the only Iban Federal minister for most of the 1980s, said:

The Dayaks, though Bumiputera by law, were not enjoying that status in the practical implementation of the New Economic Policy. The story is the same when you look at the intake into institutions of higher learning, recruitment and promotion in the civil service, participation in Government business and participation in the exploitation in natural resources. Whether by design or omission, the NEP has passed the Dayaks by (quoted in Leigh, 1991).

⁷ This author believes the figure to be around half a million.

Thus, many NMB often referred to themselves as 'second-class' Bumiputera when it comes to getting benefits under the NEP.

Political Marginalisation in Sarawak

In Sarawak, the political marginalisation is even more serious. The Dayak's lack of political power has meant that their traditional land – native customary rights land (NCR) – was taken away by the state for exploitation by associates of the powerful Chief Minister. An investigative website, *Sarawak Report* (www.sarawakreport.com),⁸ has systematically compiled a list of land grabs by the Chief Minister and his associates using information provided by a former staff of the Sarawak Land and Survey Department. The method used is simple; the Chief Minister is also the minister in charge of land issues and simply alienates or leases a piece of land, many of them under NCR claim, to companies where his family has an interest or close associates. The premium paid is usually just a fraction of the market value. Shortly afterwards, the land is sold to investors at its true value or a joint venture is established to develop the land. Any compensation paid to the Dayak is usually ridiculously low compared to the actual market value. According to *Sarawak Report*, land areas equal to the size of Singapore were handed over to family members and associates of the chief minister in the past two decades (<http://www.sarawakreport.org/tag/taib-land-grabs/>).⁹

Although the NCR issue is also serious in Sabah, it is not as serious as in Sarawak. There are cases of Sabah Bumiputera losing their NCR land but, compared to Sarawak, it is not done in a systematic way (Doolittle, 2007). Land is often the only family heirloom and NCR forms an integral part of their identity. By taking away their land, the state is effectively taking away their identity (Cramb, 2007). Once it is lost, it can never be recovered.

From Political Marginalisation to Religious Discrimination

The political marginalisation by the MB, with the support of UMNO in Kuala Lumpur, has led to religious discrimination. Prior to the formation of Malaysia there was little tension between religious faiths. After Malaysia, the NMB, especially the Christian community in both states, came under

⁸ *Sarawak Report* was founded by Clare Rewcastle Brown, a British investigative journalist. Her interest in Sarawak is due to the fact that she was born in Sarawak and she spent part of her childhood there.

⁹ Accessed on 20 July 2011. For a succinct account of Taib Mahmud's business empire, see Andrew Aeria (2002).

pressure from MB political leaders. Although under the ‘Twenty Points’ Islam’s position as religion of the federation was not supposed to be imposed in East Malaysia, Muslim leaders such as Tun Mustapha Harun (Sabah Chief Minister 1967–75) and Rahman Yakub (Sarawak Chief Minister 1970–81) ignored the guarantee and actively sought to convert the NMB into Muslims. During Tun Mustapha’s rule it was not uncommon to see ‘conversion ceremonies’ where thousands of NMB were converted in a single rally. He was also responsible for expelling foreign Christian missionaries from Sabah (Luping 1994: 536–70). Islam was also adopted as the official religion of Sabah in direct contravention of the ‘Twenty Points’. Likewise in Sarawak, Rahman Yakub converted entire Bidayuh (traditional) longhouses into Islam. Many of the NMB were promised material goods and money in exchange for entering Islam.

In recent times, the discrimination against Christian NMB includes banning the use of the word ‘Allah’ by Christians, restrictions in the building of churches and banning of Bibles and other Christian materials from Indonesia because they use the word ‘Allah’ to describe God (Hong, 2013). Many of these discriminatory approaches were taken by Federal authorities. After it became a huge political issue and caused the Sarawak BN to lose votes among the Christian voters, the Sarawak Chief Minister was forced to admit it was ‘silly’ for the Federal government to try to ban the usage of the word ‘Allah’ by Christians in East Malaysia. There are clear records to show that the NMB Christians had been using ‘Allah’ even before the Federation in 1963. In one of the most idiotic ‘compromises’, the Federal government allowed the word ‘Allah’ to be used by Christians in East Malaysia but banned its usage in Peninsular Malaysia (Chan, 2010). This led to the opposition leader in Sarawak asking: ‘Does it mean that these native Christians cannot bring their bibles into Semenanjung Malaysia (Peninsular Malaysia) when they come to Semenanjung Malaysia? Where is the checkpoint? ... Does it mean that these natives from Sarawak and Sabah cannot use the word ‘Allah’ should they worship in Peninsula Malaysia when they are on holidays or working?’ (Wong, 2011).

The political marginalisation has meant that most of the government economic opportunities under the New Economic Policy (NEP) are given to MB politicians and their cronies and Chinese partners. There are very few successful NMB businessmen. Most of the economy in Sabah and Sarawak is dominated by the Chinese community.¹⁰ Many of the large government-

¹⁰ In an interview with a Sarawak minister, the author was told that Chinese controlled

funded projects where Bumiputera shareholdings are required have Muslim Bumiputera partners since most of the key players are Muslims.

The most important long-term consequence of political marginalisation is the taming of Kadazandusun and Dayak leaders. By destroying their political power base and forcing Kadazandusun and Dayak leaders in the BN to be 'yes men' over an extended period, the young and potential Kadazandusun and Dayak leaders in BN become politically even tamer than their predecessors. Having seen that it is better for them to conform to the Chief Minister's wishes and get rewarded accordingly, many of the young Kadazandusun and Dayak leaders excelled at the game of seducing the state Muslim leaders and UMNO leaders. Those who take a strong stand and fight for NMB rights invariably are left aside and dropped as BN candidates in the next election. Hence the often-heard accusation by intellectuals in the Kadazandusun and Dayak communities that it is their own leaders who have 'sold them down the river' rather than a 'deliberate conspiracy' by Muslim and Chinese leaders.

Those Kadazandusun and Dayak leaders who decide that it is better to fight from the opposition are few. They have seen clear examples of why being in the opposition does not work. In Sabah, PBS was in 'cold storage' from 1990 to 2002. During this period Sabah suffered a 'political recession' when the Federal government cut off all development money to the PBS-led state government from 1990 to 1994. From 1994 onwards it was even worse when PBS was in the opposition and denied all access to government services and development funds for its constituencies. In Sarawak the same happened. When PBDS became the state opposition from 1987 to 1994, its assemblymen found it impossible to bring government aid and development funds to their constituencies. This is in stark contrast to BN assemblymen who are given slash funds called minor-rural project funds. The reality is that the Kadazandusun and Dayak seats are in the rural areas and require government development aid. In both cases, after a spell in the opposition, both PBS and PBDS were forced to go back into the BN on the unwritten condition that they do not push too hard for Kadazandusun and Dayak interests.

By the 2000s, after almost four decades of losing the grand political power game to the Muslim Bumiputera, the Kadazandusun and Dayaks are finally tamed by UMNO and the Federal government. In Sarawak UMNO is certain to move in after Taib Mahmud leaves the political scene in the

about 80 per cent of the Sarawak economy.

next few years. He has been Chief Minister and undisputed 'new Rajah' of Sarawak since 1981 (33 years) and there is little doubt that his successor will not have his political gravity to stop UMNO from entering Sarawak.

Conclusion and Prospects

In the past three decades there has been a clear and irrevocable trend towards total political control of the East Malaysian states of Sabah and Sarawak by the Muslim Bumiputera community. The push for total Muslim control comes from the Federal government, in particular UMNO, which is trying to cement the ideology of *ketuanan Melayu* (Malay supremacy) in East Malaysia.¹¹ UMNO has practised *ketuanan Melayu* since 1970 and aims at guiding this ideology in East Malaysia as well. UMNO is also trying to 'export' its brand of racial and religious politics to East Malaysia. Under this model, the simplest form is to look at politics as a contest for political power between Malay/Muslim vs non-Malay/Muslim. Given that the Malay community in both Sabah and Sarawak are a minority, the next best thing is support the local Muslim community.

The cost of pursuing this policy by UMNO and the Federal government is on-going heightened tensions among the many ethnic groups and religions in East Malaysia. It has created a huge divide between the Bumiputera community (NMB vs MB) and the Chinese community. Prior to the Federation of Malaysia in 1963 these tensions were lower, especially when it came to Islam. Conversion was seen as a personal issue and not a political issue. It was (and is) common to see families in Sarawak where one sibling is a Muslim and another Christian. There was never any real political tension over the different faiths.

Nowadays, any NMB wishing to convert to Islam is seen as a political act given that this is widely seen as '*masuk Melayu*' (becoming a Malay).

In the long term, it is almost certain that politics in Sabah and Sarawak will follow the West Malaysian model where race and religion are paramount to one's political identity.

¹¹ For a succinct account of *ketuanan Melayu* and the building of a Malay-dominated polity, see Wade (2009).



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Muslim Student Activism in Malaysia

A Case Study of GAMIS

Mohamed Nawab Mohamed Osman

Islamic student movements have always played an important role in the development of the Malaysian political system. Malaysian politicians with an Islamic orientation tend to hail from these student movements. While the activism of Islamic student movements in the 1960s, 1970s and 1980s has been well-documented, little is known about the Islamic student movement from the 1990s onwards.¹ This paper is an attempt to unveil the activism of Muslim students through a study of one of the most important Islamic student movements in Malaysia, Gerakan Mahasiswa Islam Malaysia (GAMIS, Malaysian Muslim Undergraduate Movement). The paper argues that the rise and decline of GAMIS have been largely affected by political developments within its parent organisation, the Pan-Malaysian Islamic Party (PAS). The first part of this paper provides the historical background to Muslim student activism as well as the early history of GAMIS. The second part examines the emergence of GAMIS as well as its political ascent and descent between 1990 and 2010. The final section examines the importance of GAMIS within PAS and the larger Malaysian political scene.

Understanding Muslim Student Activism in Malaysia

Malaysian students have been described as being apathetic hipster douche bags by some commentators, referring to the seemingly politically apathetic

¹ The academic works examining Muslim students' activism include Zainah (1997); Muhammad (1973); Mohd Suhaimi (1995).

attitudes of Malaysian students.² This assertion is due to the perception of tertiary students' low participation in student political groups as well as their rather mellow political stance.³ While this assertion is an exaggeration of the state of student activism, it captures the problem faced by student movements since 1971. Prior to 1971 student activism was dominated by secular and socialist-oriented student groups which controlled the University of Malaya Students Union (UMSU);⁴ UM was the only university at that time. While Muslim student activism in Malaysia can be traced back to 1954 when a student organisation, Kesatuan Penuntut Islam SeMalaya (Muslim Student Association of Malaysia, KEPAS), was established by the newly formed PAS Youth wing, it was not involved in student activities on campus.⁵ KEPAS comprised Muslim students from PAS-controlled religious schools.⁶ In 1961 another important student body, Persatuan Kebangsaan Pelajar-Pelajar Islam Persekutuan Tanah Melayu (PKPIPTM, National Association of Muslim Students) that subsequently became known as Persatuan Kebangsaan Pelajar-Pelajar Islam (PKPIM, National Association of Muslim Students), was formed, encompassing other Islamic student groups in the country (Muhd Idris, 1999). PKPIM became a platform for Muslim students with Islamic aspirations as well as an important body that could recruit future activists and leaders of PAS from amongst the Muslim undergraduates (Mohd Fadli, 2003: 3). For the first decade of its formation PKPIM did not involve itself in political activities, focusing instead on

² This phrase was coined by a Malaysian student blogger. See <http://thestraysworld.com/2010/12/31/malaysian-student-activism>. Accessed on 20 Jul 2011.

³ There were an estimated 153,000 students enrolled in 20 public universities and 168,000 students enrolled in 49 private universities in 2009. These universities are often in the urban centres of the country with the largest congregation in Kuala Lumpur, the capital city and the urban areas of Selangor. GAMIS, which is one of the largest student bodies in the country, has only 5000 members which reflect the low participation of students in student groups. See Malaysian Ministry of Higher Education (2010: 175–8).

⁴ For a broader view of the Malaysian student movement in the 1960s and 1970s, refer to Hassan and Siti Nor (1984).

⁵ The formation of KEPAS followed the appointment of the late Dr Abbas Alias as the president of PAS; he felt that there was a need for PAS to recruit students to the party.

⁶ There are about 100 of these schools, mainly found in the traditional heartlands in the northern states of Malaysia; students spend about 10–11 years in these schools before furthering their studies overseas, usually in Pakistan, Egypt or Jordan because the Malaysian government does not recognise this form of education. See Ahmad Fauzi (2010: 44–6).

religious development of undergraduates. The rather apolitical stance taken by PKPIM can be understood from several factors. Many PAS leaders felt that the socio-religious environment within Malaysian campuses was not sufficiently Islamic. Secular nationalist and socialist ideals tended to be dominant amongst Muslim undergraduates. As such, PAS leaders felt the need to strengthen the Islamic knowledge and a sense of camaraderie amongst its younger cadres rather than involving them in politics.

The Islamic resurgence of the 1970s started impacting Muslim student movements in Malaysia with the formation of the Gerakan Seksi Pembinaan Mental (SPEM Action Movement for Mind-Building). Officially launched in September 1970, the movement became a platform for PAS to indoctrinate young Muslims about the importance of forming Islamic political, social and economic systems. Jaiz Anwar, the head of PAS Youth, had been influenced by the ideas of the Muslim Brotherhood (MB) during his studies in Egypt.⁷ He came under the direct tutelage of Sheikh Taquiuddin Qandil, a former MB information chief who fled Egypt following the assassination of MB's founder Hassan Al-Banna and taught at the Mahmud College in Kedah (Mohamed Nawab, 2011). Jaiz also went to Iraq as one of a group of PAS youths selected to undergo undergraduate studies under the guardianship of MB leaders in Iraq.⁸ As such, it is not surprising that SPEM adopted the MB's creed as its own.⁹

SPEM was responsible for introducing PAS members studying in tertiary institutions to the ideas of MB and began introducing a more political Islam in the various campuses. The efforts of SPEM were complemented by the involvement of Malaysian Muslim students in various student organisations and networks sponsored by the MB and Jamaat-e-Islami (JI) in the UK and US (Zainah, 1997: 30).¹⁰

⁷ The Muslim Brotherhood is an Islamic political as well as religio-social movement set up in 1928 in Cairo, Egypt, by Hassan Al-Banna, a Muslim religious scholar and school teacher. The party seeks to implement Islamic laws and form Islamic states by working through the political process. The party has branches in most of the Middle East and Africa. For details of the brotherhood, see Mitchell (1993).

⁸ Other prominent PAS members who went to Iraq include the late Ustaz Hassan Shukri. Interview with Hassan Shukri, 12 August 2007.

⁹ The creed is as follows; 'Allah is our objective; the Koran is our law; the Prophet is our leader; jihad is our way; and death for the sake of Allah is the highest of our aspirations.' Details on the Muslim Brotherhood's creed and organisational structure can be found in Lia (1998: 93–129).

¹⁰ The Jamaat-e-Islami was formed in 1941 by Abul A'la Maududi, an Islamic scholar and journalist. Their key aim is to establish an Islamic state in Pakistan. The party

The year 1971 was significant for student activism. It marked the end of the independence of student movements and the beginning of the dominance of Islamic student groups on campus. Following the 1969 riots, the Malaysian government began introducing laws to limit the activities of students on campus.¹¹ This decision was mainly due to the involvement of student activists in the 1969 elections; they held rallies to criticise the government's policies in education and the economy. This was perceived as a threat by the Malaysian government which was worried that student groups would work with the opposition to undermine the government. In 1971 the government passed the Universities and Colleges Act (Akta Universiti dan Kolej Universiti, AUKU) which severely limited student activism in several ways, such as a ban on the involvement of students and academics in any political party or activities. Students were also banned from soliciting for funds outside the official university budget.¹² AUKU was enacted to curb student political activities and their independence. In 1971 PAS formed the Angkatan Belia Islam Malaysia (ABIM, Assembly of Malaysian Youth) as a platform for Muslim student leaders to continue with their activism (Mohd Anuar, 1993: 14). The formation of ABIM was partly a response to the political space created by the 1971 restoration of the Malaysian Parliament following the 1969 racial riots. At an official level, ABIM remained independent of PAS. In reality, PAS leaders were very involved in ABIM activities.¹³ For much of the 1970s PAS outsourced its *tarbiyyah* programme at the student level to ABIM, which was not only seen as an important ally of PAS but as an extension of the party. ABIM was highly successful due to the influx in the universities of rural Malay students with more conservative

has branches in most of the South Asian countries including India, Bangladesh and Sri Lanka.

¹¹ The riots between Malays and Chinese occurred following massive gains made by the opposition Democratic Action Party, a mainly Chinese party. It was believed that the riots were instigated by Malay extremist elements within the Malaysian government. Following the riots, a government report revealed that the key source of the riot was the unhappiness of the Malays about the perceived Chinese dominance in the economic sector. An affirmative economic plan was introduced to balance the economic inequality between the various races in Malaysia. For details of this policy and its negative impact, see Gomez and Jomo (1999).

¹² Details of this bill can be found on the Malaysian Ministry of Higher Education website. See <http://www.mohe.gov.my/sub1.php?navcode=NAV007&subcode=S UB003> (accessed on 15 June 2011).

¹³ Interview with Ustaz Nashruddin Tantawi, PAS Youth Chief, Rawang, 5 November 2010.

Islamic views. As part of the NEP, the Malaysian government started providing scholarships to Malay students from the rural areas to study in the public universities. These new students became important recruits for ABIM and PAS.¹⁴ In the 1970s and 1980s ABIM activists formed the bulk of the PAS Youth leadership (Mohd Fadli, 2003: 12). ABIM's role in the development of PAS continued for more than a decade. ABIM activists, many of whom furthered their studies in religion, became important leaders within PAS Youth.¹⁵ Nevertheless, despite their links to PAS, subsequent ABIM leaders tried to maintain their independence. ABIM was also involved in PKPIM on behalf of PAS. The symbiotic relationship between PAS and ABIM ended in 1982 when Anwar Ibrahim officially joined UMNO. PAS leaders saw Anwar's move as a betrayal. Both ABIM and PKPIM began to adopt a more conciliatory attitude towards the Malaysian government, leading to PAS's departure from student politics and, more importantly, the loss of its training wing. Within PAS, ABIM activists together with some younger *ulama* initiated the important coup against Dato Asri Muda's presidency of PAS by introducing the concept of *kepimpinan ulama* (leadership of the Muslim religious clerics) to the party. While the Muslim religious scholars have always been an integral part of the party, they had not occupied its top echelon. Inspired by the 1979 Iranian Revolution which saw Iranian clerics in the forefront of the party, PAS began institutionalising the concept of cleric leadership; this new concept led to the appointment of Ustaz Yusuf Rawa, a religious cleric, as PAS president.

The vacuum within the PAS student wing was utilised by the Islamic Representative Council (IRC) to enhance its influence within the party. The IRC was formed in the United Kingdom by Malaysian students influenced by the ideas of JI and MB (Ayah Hassan, 1989: 13). In particular, members were influenced by Javed Ansari, a member of JI, which was actively promoting its ideas amongst Malaysian students (Zainah, 1997: 27–30). IRC leaders saw in PAS a vehicle for the group to realise its version of an Islamic state. A PAS activist noted that IRC introduced the concept of *harakah Islamiah syumuliah* (HIS, inclusive Islamic model) where the movement was to infiltrate PAS and ABIM and utilised these movements as front organisations for its own activities.¹⁶ As a result of this new strategy, IRC leaders began making overtures to PAS leaders. PAS's internal training

¹⁴ Interview with Hassan Shukri.

¹⁵ These leaders include Ustaz Hadi Awang, Ustaz Nakhaie Ahmad and Ustaz Fadhil Noor.

¹⁶ Interview with a PAS activist.

committee headed by the current party president Ustaz Hadi Awang invited IRC to appoint two of its leaders to the committee. This resulted in IRC managing PAS's training programmes in universities throughout Malaysia. PAS's willingness to work with IRC stemmed from the party's disappointment with ABIM and the feeling amongst PAS leaders that the party needed fresh ideas and thinking. The IRC leaders utilised PAS to poach capable individuals from PAS to IRC, leading to a 'talent drain' in PAS.¹⁷ However, the IRC-PAS relationship lasted for about six years. Cracks began to appear when the IRC decided to break ranks with PAS after the movement failed to capture the leadership of PAS. For example, during PAS's 1987 general assembly, its president reminded members to remain loyal to PAS's ideas and *modus operandi*, and to decline 'extremist' trends as propagated by some 'new' PAS members, meaning those associated with IRC. In a spate of hostile publicity, PAS figures suspected of harbouring links with IRC were subsequently defeated in their quest to wrest control of PAS's Youth Council and *tarbiyyah* committee, bringing about the effective 'eclipse' of the IRC within PAS. In retaliation, the IRC group tried to capture control of the Islamic student movements at UM, UKM and UTM (Mohd Suhaimi, 1995: 54-5). They achieved limited success and only one of their leaders, Nazman Mustaffa, became chairman of the Persatuan Mahasiswa Islam Universiti Malaya (PMIUM, University of Malaya Muslim Students Association). A final break ensued in 1990 when, during a lecture conducted in UTM, Ustaz Harun Taib, a respected PAS leader, declared that PAS would seek to eradicate all IRC elements within the party.¹⁸ Nevertheless, some IRC activists such as Dr Dzulkefly Ahmad remained in PAS and became an integral part of PAS's moderate wing.

GAMIS: Formation, Organisation and Structure

GAMIS was formed at the initiative of Mohd Yusof Abdullah, president of PMIUM. It is an umbrella organisation comprising Islamic student movements throughout Malaysia. Its constituent members include the PMIUM, Maarof Club at the International Islamic University of Malaysia, the Rakan Masjid (Friends of the Mosque) at Universiti Teknologi Malaysia (UTM). Its constituent members have increased to include student groups in all of the Malaysian national and state universities. GAMIS is headed by a central committee comprising twelve members who are elected by ordinary

¹⁷ Interview with Hassan Shukri.

¹⁸ Interview with Ustaz Harun Taib,

GAMIS members.¹⁹ GAMIS's membership is estimated at 5,000. Members of the committee are often students from universities in the Federal Territory and Klang Valley areas; this is a practical consideration to ensure ease of meetings and programmes. There are also four sub-committees running programmes within GAMIS.²⁰ The state-level committees mirror the national committee. The president of GAMIS maintains a working relationship with the heads of these committees through weekly meetings held online as well as the annual meeting held in Kuala Lumpur when heads of GAMIS at the state level are involved.

Similar to other Islamic student movements, GAMIS stated that it sought to bring awareness about Islam as a complete way of life, which encompasses a socio-political system. The end result for GAMIS is bringing awareness about the need for an Islamic state in Malaysia. Once this objective was achieved, GAMIS sought to work towards the revival of an Islamic caliphate at the global level by first utilising democratic means to capture power at the national level. This caliphate need not take the same form as the historical caliphates in Islamic history, but could be manifested through more contemporary forms such as an international Islamic organisation along the lines of the Organisation of Islamic Countries (OIC) with some adjustment to ensure closer unity in the Islamic World. In essence, GAMIS sought the return of Islamic domination in the world. As such, GAMIS clearly espouses an Islamic ideology wherein Islam permeates all aspects of contemporary society.

In pursuing these objectives, GAMIS runs various activities such as organising talks, seminars, forums and workshops meant to expose students to various topics within the Islamic sciences.²¹ At the same time, the movement focuses many of its activities on internal building programmes aimed at introducing students to the ideas of GAMIS and its parent organisation, PAS. The most important activity organised by GAMIS's constituent student organisations is the *usrah* (study circles) held weekly

¹⁹ The committee positions include president, deputy president, three vice-presidents, two heads of the women's wing, two secretaries, two treasurers, and a public relations officer, Interview with Ahmad Zaki, president of Maarof Club of IIUM, PJ Hilton, Petaling Jaya, 28 December 2010.

²⁰ These are: internal development and national leadership, national politics, economics, and welfare. See <http://www.mygamis.net/2010/06/majlis-majlis.html> (accessed on 12 December 2010).

²¹ Interview with Mohd Shaheed, president of UKM Islamic Society, 20 November 2010, Megamall, Kuala Lumpur.

by GAMIS in the various campuses. Students are divided into groups of five to eight, often according to their faculty, and discuss various aspects of Islamic sciences as well as contemporary political or socio-economic developments.²² GAMIS also hold weekly talks and seminars, often in the evenings or on weekends. Once again, the topics chosen revolve around Islamic theology, Malaysian political developments and international developments. These above-mentioned programmes are often conducted by the constituted student organisations that fall within the ambit of GAMIS, while GAMIS itself tends to focus on political issues, engaging in political dialogue with the government, issuing press statements tackling issues related to national and international politics and holding demonstrations to oppose government policies that are deemed to be unjust or against Islamic teachings, or showing solidarity for Muslim causes at the international level.

GAMIS is also the coordinating body for the various student movements for campus elections. Unlike traditional Islamic movements that reject cooperation with non-Muslims, GAMIS maintains a close working relationship with non-Muslim student bodies. Often, these alliances reflect the alliance between PAS and other political parties in the Pakatan Rakyat (PR, People's Pact) coalition.²³ It is thus not surprising that GAMIS maintains a working relationship with Gabungan Mahasiswa Demokratik (DEMA, Malaysia's Youth and Student Democratic Movement), a mainly Chinese student association with links to the Democratic Action Party (DAP). Beyond organising joint activities, GAMIS has worked closely with DEMA by jointly contesting in campus elections. It is part of the Pro-Mahasiswa (Pro-Student) front, a coalition of anti-establishment student movements which comprises various component student groups from the various races in Malaysia. In the case of UM, the Pro-Mahasiswa group includes GAMIS, University of Malaya Association of Muslim Youth (UMANY) and individual Indian students who are opposed to the government.²⁴

²² Interview with Mohd Shazni Munir Mohd Ithnin, president of the Malaysian Student Solidarity Front, 28 December 2010, PJ Hilton, Petaling Jaya.

²³ The PR is an informal political alliance comprising PAS, DAP and PKR. The Sarawak National Party (SNAP) was part of the alliance briefly (April 2010–April 2011). The coalition is led by former Deputy Prime Minister Anwar Ibrahim and controls four state assemblies out of thirteen state assemblies under the Malaysian federal structure.

²⁴ Interview with Ahmad Shazuan.

GAMIS's Initial Emergence in 1989

The emergence of GAMIS as the unofficial student wing of PAS in 1989 cannot be removed from the realities of political developments in Malaysia. At first glance, the decision to form an anti-establishment student movement was rather surprising, especially in light of the Malaysian government's various crackdowns against PAS in 1987 and 1988. In 1987, during Operasi Lalang, several PAS leaders were detained for their alleged involvement in forming an underground organisation called *Tentera Allah*, which was said to be preparing to mount a violent campaign against the Malaysian government (CARPA, 1988: 37). PAS was once again put in the spotlight when party members were arrested in a security operation codenamed *Operasi Kenari*. In this operation 31 PAS members were arrested for allegedly gathering a stockpile of arms hidden at the *Muassasah Darul Ulum*, a centre for PAS's training activities in the state of Kedah (Al-Afghani, 1990). Despite this climate of political closure and increased state repression, several developments provided fertile ground for the formation of GAMIS. Firstly, there was instability in the elite alignment in Malaysia. In 1987, following a major clash between Dr Mahathir Mohamad and the then vice-president of UMNO, Tengku Razaleigh Hamzah, the party split into two after Tengku Razaleigh, who was left unsatisfied, challenged the results in court. UMNO was declared an illegal party by the Malaysian court due to irregularities during the its party elections in 1987.²⁵ This forced Dr Mahathir to re-register UMNO under the country's Societies' Act as UMNO Baru (New UMNO). On his part, Tengku Razaleigh formed *Semangat 46* (Spirit of 46) party in 1989 and decided to form alliances with the main opposition parties. This new configuration presented an important opportunity for PAS's student supporters. Secondly, the decision of Tengku Razaleigh to join PAS in forming the *Angkatan Perpaduan Ummah* (Assembly of Muslim Unity) together with BERJASA and HAMIM provided an important ally for the Islamic party.²⁶ Islamist-orientated student leaders

²⁵ In what has become known as the Malaysian constitutional crisis, UMNO was deregistered by the Malaysian High Court in 1988 following complaints of irregularities in the party's elections by disgruntled members of the party. The party was later re-registered as UMNO Baru (New UMNO).

²⁶ BERJASA and HAMIM were two breakaway parties from PAS. The Pan-Malaysian Islamic Front (Barisan Jemaah Islamiah Se-Malaysia, BERJASA) was formed by a former Chief Minister of Kelantan, Mohamad Nasir. BERJASA was formed by Nasir at the urging of UMNO after cracks began to appear between PAS and UMNO while PAS was a member of the National Front (BN) coalition. The party won several state

felt the need to galvanise the support of youths in preparing for the 1990 Malaysian general elections as they felt that the opposition was likely to pose a serious challenge to the government. Thirdly, a push factor in the loss of an important ally forced PAS to reconsider its stance towards student politics. Leaders within PAS Youth saw the need to establish a student alternative to PKPIM. Traditionally, PKPIM cadres formed the bulk of PAS' future leaders, but PKPIM became increasingly closer to UMNO due to its historical relationship with Anwar Ibrahim, who was to become a future Deputy Prime Minister of Malaysia and who was also a former PKPIM president (Mohd Suhaimi, 1995: 23). PAS leaders felt the need to establish an Islamic student movement securely within its sphere of influence that would adopt the party's ideology and caderisation process rather than being dependent on an external Islamic movement such as ABIM or IRC.

At the official level, GAMIS claims to be an independent student body which has no links to any political party, including PAS. However, this claim was quickly confuted when GAMIS activists campaigned for PAS and APU in the 1990 elections. GAMIS encourages Muslim students and young voters to support the opposition coalition that it sees securing the political position of Islam in Malaysia and establishing an Islamic state.²⁷ GAMIS released its manifesto, 'Selamatkan Malaysia dengan Mewujudkan Keadilan, Kebebasan dan Kebenaran' (Save Malaysia by Establishing Justice, Freedom and Truth). While it is difficult to assess the exact impact GAMIS had on the election results, its leaders maintain that the movement secured the votes of young voters, especially in the Malay heartland states of Kelantan, Terengganu and Kedah.²⁸ The fact that UMNO quickly formed the Badan Perunding Mahasiswa Negara (BPMN, Student Discussion Body) to support UMNO and the BN in response to the formation of GAMIS could be indicative that GAMIS was viewed as a threat to UMNO. PAS's success in the elections brought euphoria amongst GAMIS members. The strong Malaysian

seats in Kelantan during the 1978 elections. BERJASA then joined BN. In 1989, due to conflicts with UMNO, the party was dropped from the coalition and joined APU. HAMIM (Parti Hizbul Muslimin Malaysia) was formed in 1983 by Dato' Asri Muda, a former president of PAS after his removal as party chief. HAMIM became a component party of BN and subsequently left the coalition in 1989 to join APU, which became defunct in 1996 when S46 was disbanded and its leaders rejoined UMNO.

²⁷ Interview with Shazni Munir.

²⁸ APU won 15 parliamentary seats (8 from S46 and 7 from PAS). The coalition also won all the state seats in Kelantan (39), Terengganu (10) and Kedah (1). See von den Mehden (1991: 169).

economy and the lack of real issues affecting the Malay votes convinced GAMIS activists that more Malaysian Muslims are receptive to PAS's vision of forming an Islamic state.²⁹

Scaling Downwards to the Campuses: GAMIS in the 1990s

Following the relative success of its parent body, PAS, in the 1990 elections, GAMIS began shifting the focus of its opposition downward to seize political opportunities. As highlighted earlier, the success of PAS and APU in winning the northern state of Kelantan provided new-found confidence amongst Muslim student activists, many of whom felt that there was a growing awareness about the establishment of an Islamic state and implementation of Islamic laws. GAMIS and its constituent members began using Islamic slogans, symbols and ideals in campus elections for the 1990/91 term. Riding on the euphoria of the opposition's success in the 1990 elections, GAMIS – through its constituent student bodies – won control of the student councils of the main universities except UKM, where students remained supportive of pro-government candidates.³⁰ It seems that the results of the 1990 elections provided a political opportunity for GAMIS, which the movement utilised to its advantage. This excitement proved to be short-lived when GAMIS's constituent groups were decimated in all the major campuses in the elections for academic year 1991/92. For the next five years the Islamic student groups and the nationalist student groups (viewed as being pro-government) took turns in winning the student elections. Interestingly, GAMIS also failed to co-opt Islamic student groups allied to ABIM and JIM. These groups felt the need to maintain an independent stance from PAS as it has its own methodology to revive Islam in Malaysia. However, these groups generally supported GAMIS during campus elections. It was only problematic in IIUM where ABIM continued to dominate the student union and GAMIS was forced to challenge ABIM, resulting in divisions within the Islamic student movement.³¹

In general, GAMIS did not have much impact at the national level in the 1990s until the sacking of Anwar Ibrahim in 1998. Similar to PAS, GAMIS was more focused on advocating international Muslim issues. GAMIS protested the ethnic cleansing of Bosnian Muslims during the Balkan conflict and the mistreatment of Palestinians by Israel. While

²⁹ Interview with Ahmad Shazuan.

³⁰ Ibid.

³¹ Interview with Mohd Shaheed.

GAMIS campaigned for PAS during the 1995 elections, the impact of this campaign was less significant. While PAS continued to consolidate its control in Kelantan, the party did not make much breakthrough (with the exception of an extra state seat in Kedah). On the other hand, BN improved its performance in 1995 by capturing 65 per cent of the overall votes, a large 12 per cent increase from its share of the popular votes in 1990 when the coalition captured just 53 per cent of the popular votes. GAMIS was at the forefront in opposing the Malaysian government over the issue of the *fatwa* banning Muslim women from taking part in beauty pageants. The Mufti of Selangor, Ishak Baharom, had issued a *fatwa* (Islamic edict) banning Muslim women from taking part in beauty pageants in 1997.³² As a result of this *fatwa*, the Selangor Islamic Religious Department (Jabatan Agama Islam Selangor) arrested three Muslim women taking part in a beauty pageant in one of the country's leading hotels. In response to the issue, Dr Mahathir rebuked the action and postulated the view that such actions were likely to leave a negative impact on the ladies and their families.³³ Subsequently, the Mufti was sacked, leading to massive protests from Islamic groups in Malaysia. GAMIS led a campaign against this decision by forming the Undergraduates Action Committee Opposing the Insult of Religious Scholars (Jawatankuasa Bertindak Mahasiswa Menentang Penghinaan Institusi Ulama, JBMMPIU). GAMIS also sent a memorandum to Abdul Hamid Othman, the Religious Affairs Minister, demanding his resignation due to this issue. This issue marked GAMIS's activism in tackling national issues related to Islam. Nevertheless, it was the sacking of Anwar Ibrahim in 1998 that was to propel GAMIS into the limelight.

GAMIS in the Post-Reformasi Era (1998–Present)

The sacking of Malaysian Deputy Prime Minister Anwar Ibrahim on 2 September 1998 marked an important shift in Malaysian politics.³⁴ The campaign started by Anwar Ibrahim to galvanise the Malaysian people against the political system was one of the biggest political challenges to Dr Mahathir Mohamad, Malaysia's longest-serving Prime Minister, in his political career. Anwar successfully ran a campaign which emphasised the rule of law, democracy, economic justice and the elimination of corruption. This campaign was inspired by (and even borrowed the terminology of)

³² A detailed account of the issue is given in Ahmad Luthfie (1997).

³³ *Utusan Malaysia*, 19 July 1997.

³⁴ A more detailed account of this saga can be found in Wain (2010: 277–305).

Indonesian civil society activists in their successful campaign to oust former Indonesian President Suharto. To quell the unrest, the Malaysian authorities arrested Anwar and charged him with corruption and engaging in homosexual acts. He was found guilty by the Malaysian judiciary despite the lack of evidence in these cases and was jailed. This led to an intense period of unrest in the country.³⁵ The political developments in 1998–99 called for GAMIS to respond to the situation. These developments had resulted in fissures amongst the Malaysian elites and, due to the strong opposition against the government, GAMIS had ready allies who were willing to challenge the state. Anwar's allies within UMNO such as Dato' Kamaruddin Ja'afar, a member of UMNO Youth executive committee, left the party to join PAS, while others assisted in the formation of the National Justice Party (which was subsequently renamed People's Justice Party, PKR).³⁶ All the opposition parties including DAP, which had long been opposed to PAS's Islamist agenda, as well as a myriad civil society groups of varying ideological orientations, came together to oppose Anwar's arrest and call for the reformation of the Malaysian political system. However, the movement was also faced with a situation where the political system had become more closed and the state was intensifying repression against any political opposition. For instance, the Malaysian government used the dreaded Internal Security Act (ISA) to arrest key allies of Anwar Ibrahim such as Ahmad Zahid Hamidi, the current Home Minister, the then ABIM president Ahmad Azam Abdul Rahman and secretary general Shaharuddin Badaruddin.³⁷

GAMIS utilised the political opportunity presented by the crisis to start galvanising students against the Malaysian government. GAMIS leaders noted that there was a sudden switch to Islam during the Reformasi period. In part this was due to the active role taken by PAS and other Islamist groups such as JIM and ABIM in leading the campaign against the government as well as the Islamic idioms employed by Anwar Ibrahim himself during this period. Islamic student groups on the major

³⁵ A manifestation of this was the arrests of several members of the National Justice Party in 2001 under the Internal Security Act (ISA). See Stewart (2001).

³⁶ Kamaruddin Ja'afar, a long-time ally of Anwar, joined PAS and is now the secretary-general of the party.

³⁷ The Internal Security Act allowed the Malaysian government to detain without trial and criminal charges individuals deemed to be a threat to national security. It was often used to arrest terrorists and those who posed a threat to the Malaysian government.

campuses found a sudden escalation in membership. To capitalise on the anti-government and pro-Islamic sentiments during this period, GAMIS started anti-government campaigns by focusing on specific policies seen to be un-Islamic. One issue propounded by GAMIS was the mechanism of loans disbursed by the Perbadanan Tabung Pendidikan Tinggi Nasional (PTPTN), which began operating in 1997.³⁸ Under the act the Ministry of Higher Education disbursed loans to students in universities. Arguing that the loans practised an interest-based system which contravenes Islam's ban on interest (*riba*), GAMIS began leading various campaigns for the scheme to be changed. In 1999 GAMIS, together with several non-Muslim student groups, organised a demonstration during a visit by Deputy Prime Minister Abdullah Ahmad Badawi to UM and handed a memorandum to Abdullah expressing students' concern and alarm over certain issues facing the country, and called for the repeal of draconian laws such as the ISA. To further their opposition to the ISA, GAMIS initiated the formation of the Gerakan Mahasiswa Mansuhkan ISA (GMMI, Movement of Malaysian Students Seeking the Repeal of ISA). GMMI began increasing pressure on the government by organising protests and demonstrations against the ISA. In May 2001 they handed a memorandum to Inspector-General of Police Tan Sri Norian Mai protesting the detention of 10 'Reformasi' activists under the ISA. In July 2001 several members of GMMI and GAMIS, including Fuad Ikhwan, a GAMIS leader, were detained after holding demonstrations against the ISA at the National Mosque in Kuala Lumpur (Amin, 2011). Due to its increased contention against the government and the human rights issues GAMIS began to propound, the movement found common ground with non-Muslim student groups. The anti-government sentiments amongst students meant that GAMIS continued to dominate the student councils of the main universities in Malaysia during campus elections. GAMIS's escalation of their contention led to increased repression from the Malaysian government. Several of its leaders were arrested or suspended from university on a series of charges including illegal assembly.³⁹ The crackdown on GAMIS did not dampen its members' spirits. Instead, GAMIS organised even more campaigns against the government, criticising the corruption, its failure to support Muslims in Afghanistan and Iraq and the un-Islamic system that they continued to practise.

³⁸ Interview with Shazni Munir.

³⁹ 'Act against illegal NGOs, Govt Urged', *The Sun*, 8 July 2001 and 'Three UUM Pro-opposition Student Leaders Suspended', *New Straits Times*, 28 November 2001.

The momentum of contention began to decline in late 2003. Several national political developments led to the weakening of GAMIS. The fracture in the opposition alliance, the Barisan Alternatif (BA, Alternative Front), led to the weakening of support for GAMIS amongst non-Muslim students. This fracture occurred due to the differences between DAP and PAS over the issue of implementation of Islamic criminal laws in the two states governed by PAS. At the same time, the clean image of Abdullah Ahmad Badawi as a politician who was not corrupt and with strong religious credentials who assumed the Prime Minister position from Dr Mahathir negatively affected the image of GAMIS's parent organisation, PAS.⁴⁰ This led to reduced support for GAMIS amongst Malay students. The results of the 2004 elections which saw PAS's support reduced significantly also discouraged the members of GAMIS. The political constraints on GAMIS resulted in the massive losses the group suffered in the 2004 campus elections. Pro-government candidates calling themselves *Aspirasi Kerajaan* (Government Aspirations or Pro-Aspirasi) secured a thumping victory in most of the major universities. Islamic student groups allied to GAMIS secured control only in IIUM, Universiti Sains Malaysia (USM) and Universiti Teknologi Malaysia (UTM) (Chow, 2004). The larger number of Muslim students in IIUM secured the win for GAMIS, which was somehow able to convince several of the non-Muslim groups to continue with the existing alliance in USM and UTM.⁴¹ The alliance between GAMIS and Chinese students supportive of DAP was largely affected due to problems between PAS and DAP at the national level. GAMIS was very much in the doldrums between 2004 and 2008. In those years GAMIS focused on the defence of the position of Islam in the country. In particular, GAMIS was involved in the highly contested issue of a Muslim's right to convert out of Islam in 2006. The debate was triggered by a case of a Hindu woman, R. Subashini, who disputed the conversion of one of her sons to Islam by her husband.⁴² After converting himself and his elder son, her husband filed for

⁴⁰ Abdullah hails from a family of religious scholars and has a degree in Islamic studies.

⁴¹ Interview with Shazni Munir.

⁴² R. Subashini Saravanan had applied to the High Court to prevent her husband, Muhammad Shafi Saravanan Abdullah from dissolving their marriage in the Shariah Court and to annul the conversion of her elder son who, Shafi claimed, had converted to Islam along with him. The High Court made a decision to allow the case to be heard at the Shariah Court. A final decision was also made that her son's conversion to Islam was valid.

In other words, even though both spouses had earlier agreed to enter into a

divorce, leaving his wife worrying about custody of her children (Derichs, 2007).⁴³ In an effort to exert pressure on the judgment of the case, GAMIS joined a coalition of eighty Muslim non-governmental organisations called the Muslim Organisations in Defence of Islam (Pembela Islam) which demanded that Muslims must not be allowed to leave Islam.⁴⁴ GAMIS decided to join the coalition because of the feeling that there was a need for it to defend the supremacy of Islam in Malaysia.

Several political developments within Malaysia provided political opportunities for the surge in GAMIS from 2007. These largely coincided with PAS's attempt to reach out to the Chinese community through a campaign tentatively entitled Operasi Bersih (Clean-up Operation) and begin a process to restore relations with DAP. This campaign followed internal party elections in 2007 when the moderate faction of PAS tightened their grip on PAS's top positions. In support of the move by PAS, GAMIS once again initiated a working relationship with non-Muslim students (aligned to the DAP) by forming an informal pro-opposition student front called the Pro-Mahasiswa (Supporters of Students) in several universities, including UM. In 2008 the revived opposition coalition (renamed PR) comprising PAS, DAP and PKR caused a political tsunami in the Malaysian political landscape when it denied the Malaysian government a two-thirds majority in Parliament for the first time since 1969. PR also swept into power in five Malaysian states, an unprecedented development in Malaysian history. This development strengthened the position of GAMIS on Malaysian campuses. GAMIS also initiated the formation of Pro-Mahasiswa alliances in all the campuses in Malaysia. After the 2008 elections, GAMIS, together with DEMA, formed the Solidarity Mahasiswa Malaysia (SMM), a national umbrella body that oversees the activities of all the Pro-Mahasiswa groups on campuses (Intan, 2007). These new coordinated efforts by GAMIS proved important in seeing it become dominant in the student unions during the 2008/2009 and 2010/11 sessions on most campuses. This is also testimony to the fact that even at the student level, Muslim activists cannot garner enough support without the support of non-Muslim students.

marriage, basically a contract, under civil law, justice was overturned and they are now subject to new terms of reference as a result of one spouse's conversion to another religion, in this case Islam.

⁴³ In this case, the court ruled in favour of her husband and decided that he has the right to dissolve their marriage and convert his second son to Islam if he wished.

⁴⁴ Interview with Mohd Shaheed.

In recent times, newer Islamic student groups have also emerged in Malaysia to challenge GAMIS's position as the representative of students with Islamist sympathies. While student groups affiliated to ABIM and JIM have always been present at the campus level, these groups tend not to involve themselves directly in campus elections. With the exception of IIUM, where members of ABIM sometimes contest campus elections against GAMIS, members of other Islamic groups will support or contest under the banner of GAMIS. Since 2005 Hizbut Tahrir Malaysia, a local chapter of the transnational Islamic group Hizb-ut-Tahrir that sought to revive the traditional Islamic caliphate, has found a foothold on Malaysian campuses (Mohamed Nawab, 2010). In particular, HTM has been active in UM where several senior members are academic staff of the university. HTM has been discreet in its activities in Malaysian campuses;⁴⁵ it has yet to form a formal organisation and has been highly critical of GAMIS and other Islamic groups. HTM's strong opposition to the concept of democracy means that the party will never pose a direct threat to GAMIS in elections. Utilising various channels such as *halaqah* as well as new media tools such as Facebook, Twitter and blogs, HTM has urged undergraduates to reject democracy and has encouraged Muslim undergraduates not to vote. This has often led to the weakening of GAMIS and tipped the balance against Islamic student groups in favour of the pro-government groups. For GAMIS, HTM is an extremist group and there is little room for cooperation between HTM and GAMIS. Shazni Munir noted that GAMIS has tried engaging HTM in discussions, but has found little commonality between the two groups. He noted that HTM has been largely antagonistic towards both PAS and GAMIS.⁴⁶

Conclusion: Assessing the Activism of GAMIS

Historically, Muslim student activists have played an important role within the Malaysian government. Both government and opposition leaders have hailed from prominent Muslim student movements such as ABIM and PKPIM. Utilising their independent political clout, Muslim student movements have not only effected policy change but often define the political directions of both government and opposition parties. UMNO and PAS have both competed to co-opt these activists within their fold. Islamic

⁴⁵ Interview with Abu Ibrahim, HTM activists in Johor, Johor Bahru, 20 November 2010.

⁴⁶ Interview with Shazni Munir.

student movement activists such as Anwar Ibrahim have played a major role in Islamising the Malaysian government from within. Muslim student activists such as Ustaz Fadhil Noor and Mohamed Sabu also initiated changes within PAS leading to the introduction of *ulama* leadership within the party. By the time GAMIS was formed, Muslim student groups seem to have lost their relatively independent position. Two reasons can be cited to explain this development. Firstly, virtually all Islamic student groups in the various universities came under the umbrella of GAMIS, making it difficult for any independent posturing to occur within these groups. The past and present leaders closely vet the potential leaders of each and every Islamic student group to ensure that they share the vision of GAMIS and PAS. Secondly, the PAS leadership was less willing to allow GAMIS to maintain a more independent position due to negative experiences with both ABIM and IRC. As such, GAMIS is not independent from PAS, and its own activities and political directions are largely influenced by PAS and the opposition coalition PR. The current GAMIS leadership maintains that the movement is independent. They note that GAMIS maintains relations with UMNO leaders and has received donations from some of these leaders for GAMIS's activities.⁴⁷ At the same time, they claim that GAMIS has differed from the PR on several issues. Nevertheless, GAMIS leaders were hard pressed to cite issues where PAS and GAMIS held differing positions.

For PAS, GAMIS offers an important pool of potential future leaders. Due to GAMIS's strong affiliation to PAS, the PAS leadership – especially PAS Youth – has been able to recruit future leaders from GAMIS. At the same time, PAS can also utilise GAMIS to spread its ideology, beliefs and vision amongst Malaysian students. The political alliance between GAMIS and student groups affiliated to other opposition parties means that PAS's future leaders have had the opportunity to engage and work with future leaders of DAP and PKR. The moderate faction within PAS sees this as an important step to cement its relationship with these political parties.⁴⁸ Most importantly, PAS is able to exert pressure on the government through GAMIS, which has often been in the forefront to champion issues that could affect PAS's new moderate image. For instance, PAS took a backseat in dealing with issues such as the R. Subashini issue, fearing that its overt opposition to the right of Muslims to leave Islam would affect its vote base amongst its newfound non-Muslim supporters. Instead, GAMIS was in

⁴⁷ Interview with Ahmad Shazuan.

⁴⁸ Interview with a PAS activist, 15 November 2010, Kuala Lumpur.

the forefront, putting pressure on the government to secure the Muslim position. As such, GAMIS proved important for PAS, especially in the realm of leadership renewal.

GAMIS's lack of independence has meant that the movement's growth, success and failures have largely been shaped by PAS's political fortune. This can be seen from the movement's strategies since its formation. GAMIS's rise in the 1990s and 2008 was largely shaped by Malaysian political dynamics and developments affecting PAS. The loss of support for PAS in 2004 saw GAMIS having to scale down its own activities and focus on mundane issues which are of significant threat. GAMIS's relationship with other student groups such as DEMA is governed by the relationship between PAS and DAP at the national level which disadvantages GAMIS and its constituent student bodies. GAMIS's relationship with the leaders of UMNO is often shaped by the antagonism in national politics between PAS and UMNO, which often translates to offensive political posturing in campuses against pro-government student groups. As such, it is likely that the future direction of GAMIS will be largely shaped by its relationship with PAS.



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Chapter 8

The Politics of Reformasi

Independent Filmmakers Re-imagine Citizenship in *Malaysian Gods and Project 15Malaysia*

*Khoo Gaik Cheng*¹

Introduction

The 1998 Reformasi events in Malaysia which came in the wake of the arrest under the Internal Security Act (ISA) of then Deputy Prime Minister Anwar Ibrahim were historically significant. Reformasi bequeathed three important legacies: it showed that a cross-ethnic alliance was possible despite the divisive racial politics practised by the Barisan Nasional that designated that members of each ethnic group would only act in their communal interests. Secondly, Reformasi protestors demonstrated en masse in open defiance against state injunctures like the Police Act of 1967 that decreed that a gathering of more than three persons in public without a permit can be considered an illegal assembly. For the first time since the Baling protest in the early 1970s politically apathetic Malaysians overcame the fear of state reprisals in the form of the Internal Security Act or the government bogeyman ‘race riots’ to publicly stand up against the injustice towards Anwar Ibrahim. Third, Reformasi signalled the beginning of a strong presence of an alternative press/media, both online and in print as citizens started boycotting the mainstream news. Reformasi raised political consciousness (Suh, 2000), and gave birth to a young generation of critical-

¹ The author acknowledges support from the Australian National University and the Asia Research Institute (Singapore) where she was a visiting senior fellow in 2010 during her sabbatical leave from the ANU.

minded cultural activists who work across multiple platforms: theatre, visual arts, online and film,² and Reformasi-radicalised activists and intellectuals who joined the opposition Pakatan Rakyat (People's Alliance) in the lead-up to the 2008 general elections.³ Reformasi's legacy clearly emerged in the March 2008 general elections when the Opposition succeeded in winning over four states, heralding 'a political tsunami'. Its legacy continued in the lead-up to the 2013 general elections and the discourse of democratic struggle and anti-racism among ordinary Malaysians in the aftermath of the elections amidst allegations of voting fraud. For example, shouts of 'Reformasi' rang out at the 'Suara Rakyat, Suara Keramat' rally called by Opposition leader Anwar Ibrahim at the Kelana Jaya Stadium on 8 May 2013.

This paper begins with an introduction to independent filmmaking in Malaysia which has become more overtly political due to national events over the decade. I then discuss documentary filmmaker Amir Muhammad's commemoration of Reformasi and its linkage to the Hindraf (Hindu Rights Action Force) mass protest.⁴ I show that even before the outpouring of grassroots support for anti-racist and anti-racialised discourse that emerged in the post-2013 general elections, the cross-ethnic patriotic spirit of Reformasi was already thriving in Malaysia within the liberal arts community of theatre, social activists and independent filmmakers and musicians; they are a younger digitally-savvy generation compared to the 'arts workers' Mandal and Heryanto described during Reformasi (Mandal, 2004). I argue that these independent films and videos are what Engin Isin

² Mark Teh featured in the theatrical section of independent documentary filmmaker Fahmi Reza's film that focuses on the leftist cross-ethnic alliance PUTERA-AMCJA (Pusat Tenaga Rakyat, All Malaya Council of Joint Action) during the 1940s, *Sepuluh Tahun Sebelum Merdeka* (Ten Years Before Independence), 2007. Teh also produced Fahmi Reza's follow-up documentary *Revolusi '48*. Fahmi Fadzil, Teh's collaborator from their youth theatre group Aksyen, hosted and wrote for a short internet-based news show, PopTeeVee, with Hardesh Singh, a music composer for many independent films in Malaysia before becoming political secretary to MP Nurul Izzah Anwar.

³ Yeoh (2009) writes of one such member of the Reformasi Generation, Bukit Bendera Member of Parliament Liew Chin Tong.

⁴ Hindraf held a massive demonstration in late 2007. Organisers highlighted the continued marginalisation of ethnic Indian Tamil Hindus in Malaysia. It was controversial for attempting to sue the British government for importing cheap labour from India during the colonial era and for the dismal state of poverty their descendants continue to be mired in. Its strictly communal politics were not progressive, but proved popular.

and Greg Nielsen (2008) call ‘acts of citizenship’ which create solidarity with fellow citizens regardless of ethnicity. I then conclude by focusing on *15Malaysia*, a set of fifteen short films, as a further example of a creative act of citizenship conceptualised through the notions of love, aspiration and Reformasi.

Background

The current wave of independent filmmaking which began in 1999–2000 is largely fuelled by global advances in digital technology, the establishment of the Multimedia Super Corridor and MultiMedia University and the general push towards IT industries during former Prime Minister Mahathir Mohamad’s era in the 1990s.⁵ While this essay focuses on films made before 2010 and only on independent filmmakers closely associated with the core group that began in 2000, the concept of independently-produced films being acts of citizenship became even more widespread in the run up to the 2013 general elections as amateur and professional independent filmmakers made short films, music videos and voter education videos to be viralled online.⁶ These films could not have been made without the user-friendliness, convenience and low cost of digital technology. Very generally the label ‘independent’ connotes non-mainstream, non-commercial/profit-oriented, self-funded and most likely low budget – though this is not always true. It may also imply critical engagement from its audience whether by way of its social, political content or its unconventional – experimental, non-narrative – form (Khoo, 2008: 228). Independent films offer an alternative aesthetic

⁵ A government-designated zone designed to spur Malaysia into the information and knowledge age, the Multimedia Super Corridor (MSC), brainchild of then PM Mahathir Mohamad, stretches from the Petronas Twin Towers to the Kuala Lumpur International Airport and also includes the newly created towns of Putrajaya and Cyberjaya. The MSC aims to attract companies with attractive tax breaks and facilities such as high-speed internet and proximity to the Kuala Lumpur International Airport. The Multimedia University (est. 1996) was part of this initiative.

⁶ Radio station DurianFM together with Tindak Malaysia and Bersih produced a series of voter education ads uploaded on Youtube: <http://www.youtube.com/watch?v=4lPUHmpNHvo>. Several music videos also emerged: ‘Heads Held High’, https://www.youtube.com/watch?feature=player_embedded&v=MGXKE30rRIE. Short films supporting a change in government include ‘Go By Heart’, <https://www.facebook.com/photo.php?v=460181644067385&set=vb.132309263482799&type=2&theater>, and ‘Tali No. 6’ by Khir Rahman, https://www.youtube.com/watch?feature=player_embedded&v=KKc6vnMXcfl.”

or style, if not a different socio-political vision, as well as alternative forms of distribution, relying on a vast international network of film festivals for funding and exhibition in contrast to mainstream Malaysian film productions which are mostly made for local consumption.⁷ Independent filmmakers have had to contend with ethno-nationalist biases against their films, such as not qualifying for the twenty per cent tax rebate if screened at local cinemas if their films are not sixty or seventy per cent in Bahasa Malaysia (Tamil- and Chinese-language Malaysian films thus fall in the same tax category as foreign films).⁸ This policy was only revised in early 2011 when the Minister of Culture announced that the rebate would be given to all Malaysian productions (Frater, 2011). Because the state institutions and structures are ineffectual and mainly not interested to help market, distribute and promote their films overseas, filmmakers are forced to become independent.⁹ During Reformasi when the limitations of the government-controlled media were made manifest, activist groups, artist collectives, English-language theatre groups sprouted up to review the relationship between the self and the state and to create non-partisan dialogue spaces.¹⁰ Pro-Reformasi agitprop documentaries *A Warrior's Oath* and *The Cry of Reformation* were circulated as VCDs on the black market (Amir, 2003). But only nascent independent filmmaker James Lee made oblique references to Reformasi by daring to feature news footage of the street demonstrations in his first feature film *Snipers* (2001).

Malaysian independent filmmakers tend to focus on stories about individuals that have universal appeal. Such a universalism reflects a cosmopolitan attitude of openness towards other cultures while being critical of one's own culture, what Kwame A. Appiah glibly terms 'universality plus difference' (Appiah, 2006: 151). Cosmopolitanism is

⁷ The Malaysian film industry used to produce about twenty-five films a year, most shot on 35 mm, in Malay dialogue with Malay actors and stories about Malay society. But since 2012 film output has more than tripled and also encompasses local films made in languages other than Malay. Common genres include horror, comedies, romantic comedies and action and family drama. The films generally set out to entertain rather than to provoke critical thinking.

⁸ See Khoo (2007) for a more in-depth description and analysis of Malaysian independent filmmakers.

⁹ See interview with independent filmmaker Ho Yuhang on PopTeeVee (aired 1 April 2010).

¹⁰ This is writer Charlene Rajendra's observation in a forum after the screening of *Malaysian Gods* in Singapore, April 2009, <http://anutshellreview.blogspot.com/2009/04/siff09-in-conversation-with-amir.html>.

more liberal than pluralism because it deconstructs and transgresses the boundaries that pluralist communities put up to preserve their uniqueness (Hollinger, 1995: 85–6). ‘More oriented to the individual’ cosmopolitanism ‘supposes that individuals will be simultaneously affiliated with a number of groups, including civic and religious communities, as well as communities of descent’ (Hollinger, 2006: xix). This cosmopolitanism manifests in the ability to form what historian Sumit Mandal calls ‘transethnic solidarities’ on the part of Malaysian independent filmmakers, who collaborate on each other’s film projects, and who represent stories about characters of another ethnic background in a critically aware and non-racist stereotypical fashion (Mandal, 2004).¹¹ While Amir Muhammad made political documentaries, most independent Malaysian filmmakers did not tackle political issues openly or directly in their fictional features until Namewee debuted with *Nasi Lemak 2.0* (2011). However, due to the upheavals that led up to the political tsunami, and which continue as elements within UMNO (the United Malays National Organisation, the ruling party in power since Independence) to attempt to weaken the Opposition, more independent filmmakers seem to be consciously making films which address local socio-political issues (Khoo, 2011).

This shift from an apolitical universal outlook to local political action is unsurprising, given the critical-minded yet fairly minor and smallish in size nature of the creative arts and its overlap with civil society in Malaysia. As Mandal has pointed out, these arts workers mainly come from the urban middle class centred in Kuala Lumpur (Mandal, 2005: 30). I suggest that filmmakers assert and re-imagine citizenship through various such independent film projects. Considered as ‘acts of citizenship’, these film projects constitute, produce and renew ‘Malaysian’ subjects. ‘An act of citizenship in its full worldly reality,’ as Kieran Bonner interprets of Arendt, is defined as ‘more than voting for someone else to act and speak on one’s behalf. It requires the full experience of acting and speaking’ (Bonner, 2008: 141). In his article, Bonner cites as example Dublin’s vision document for the city which attempts to improve participation of local communities in local decision-making. In my case, particular independent Malaysian film/video projects try to give form to such participatory democratic and

¹¹ The indie filmmakers are Malaysians of various ethnic backgrounds – Malays, Chinese, Indians, indigenous – who distinguish themselves by not being part of the mainstream Malay cinema which, many find, has become bogged down with formulaic content, illogical plots and Hollywood imitations. Their films reflect the many languages spoken and cultures existing in Malaysia more so than mainstream Malay films.

localised acts by assuming an active role in the public realm. What is crucial in formulating a different notion of Malaysian identity (and what it means to be a Malaysian citizen) in these films is that 'such acts implicitly ask questions about a future responsibility towards others' (Isin and Nielsen, 2008: 4). In the case of *Malaysian Gods*, Tamil Malaysians constitute 'the Other' whose representations are usually relegated to the culturally and linguistically segregated cable television channels of Astro Vaanavil and Astro Vellithirai. Yet here, in a documentary produced and conceptualised by a Malay-Muslim Malaysian, is a documentary where the interviews are completely carried out in Tamil with a smattering of English and Malay (and with English subtitles). Moreover, for once marginalised Malaysians are given a platform to voice in Tamil their opinions about politics, their everyday lives, and to recount any memories of Reformasi and make a connection between it and the Hindraf demonstration. I will return to this idea of 'acts of citizenship asking questions about a future responsibility towards others' in my conclusion.

Although Reformasi died down with the opposition taking a beating at the 2004 general elections, the euphoria of being under a new prime minister, Abdullah Ahmad Badawi, who made initial gestures to clamp down on corruption, soon dissipated. A series of escalating events brought on by a heady mix of high profile court cases, corruption scandals and increasing syariahisation and Islamisation that were to isolate ethnic minorities dominated the media and came to a head in 2006/07: Article 11 Coalition roadshows meant to educate citizens on their constitutional right to religious freedom were disrupted by mob rule,¹² plans for an interfaith commission floundered in 2006,¹³ the Lina Joy Federal Court judgement on 30 May 2007 ruled that it was not up to the secular court to decide if a Muslim convert to Christianity can change her name to reflect her Christian identity on her driver's licence, the furore over Chinese Malaysian rapper Namee's song 'Negerakuku'¹⁴ released online in July 2007, the Lingam

¹² The Article 11 Coalition consisting of thirteen non-governmental organisations was formed after three cases where conversion to Islam by one party led to difficulties for non-converted family members, see Dass and William (2006).

¹³ For a full documentation of the initiative which also lays out the debates, see Hadi and Sieh (2007).

¹⁴ The rapper was accused of being offensive to Muslims and unpatriotic in his version of the national anthem, 'My Country'. His family in Malaysia received death threats (the rapper was at that time studying in a university in Taiwan) and there was even a call to revoke his citizenship.

video story about fixing judiciary appointments¹⁵ led to 2000 lawyers marching (March for Justice) to protest the erosion of judicial independence on 26 September 2007; 40,000 people came out on the streets for the Bersih ('clean') rally calling for clean and fair elections on 10 November 2007,¹⁶ followed soon after by the Hindraf rally on 25 Nov 2007. At the Hindraf rally, one protestor proclaimed to journalists that 'today the government, the UMNO government lost to ALL the Indians in Malaysia!!'¹⁷ Video clips of demonstrations captured by citizen bloggers, reports and discussions of these events were posted on the Internet; as at the time of Reformasi, cultural workers, bloggers and activists had found an alternative channel to express and disseminate their views. The disenchantment with the state culminated when Malaysian Indians boycotted the Malaysian Indian Congress (a vital component party of the Barisan Nasional or National Alliance) in the 2008 elections.

If 'Reformasi [had] blossomed as a cultural movement producing writings and art forms that variously criticized, challenged, and mocked Mahathir and his regime' a decade earlier (Khuo, 2002) the same spirit of defiance was to continue subsequently. In 2008 during the premiership of Abdullah Ahmad Badawi, a group of 120 volunteers called Malaysian Artistes For Unity (MAFU) headed by indie musician-composer Pete Teo produced a music video on the Internet called 'Here In My Home'¹⁸ to respond to divisive race politics. The whole project was made for free and people were invited to download, share it with friends and disseminate it as widely as possible. It quickly became one of the most viralled videos in the world within weeks of its release. Malaysian individuals and businesses wanted to get involved to advertise and promote the video and its message for free. The video featured singers, musicians (singing in English, Malay, Tamil and Mandarin), stage and film actors, among many others, and was directed by two indie directors, the late Yasmin Ahmad and Ho Yuhang. This anti-racist video provided a space for expressing alternative

¹⁵ A senior well-connected lawyer V.K. Lingam was videotaped (on a mobile phone camera) having a phone conversation purportedly discussing promotions and factionalism among senior judges with a powerful Malaysian judge.

¹⁶ <http://asocialistmalaysia.blogspot.com/2008/07/malaysia-bersih-protest-biggest.html> claims in its headline 'Malaysia: BERSIH Protest – Biggest Demonstration Since "Reformasi" Movement'.

¹⁷ <http://www.desivideonetwork.com/view/m5f46bm45/hindraf-the-truth-the-beginning-in-malaysia-must-watch/>.

¹⁸ The music video is available here: <http://www.youtube.com/watch?v=gNbAnX9SJrw>.

cosmopolitan longings against an exclusivist nationalist discourse of Malay dominance (*ketuanan Melayu*) perpetuated by racist politicians. 'Here In My Home' represents a positive form of agential multiculturalism (one peopled by the active citizenry) in contrast to the passive and superficial multicultural images made for easy consumption in the Malaysia Truly Asia commercials.¹⁹ Its emphasis on patriotic and platonic love for a diverse Malaysia illustrates an inclusive and activist act of redefining citizenship; lyrics like 'one love undivided' ironically preceded current PM Najib Razak's 1Malaysia project a year later.

'Here in My Home' is a good example of the possible collaboration among actors from theatre, the indie music scene, the independent film movement and the arts in Kuala Lumpur. But it is not the only one. Others include humorous internet videos by Youth For Change Malaysia to encourage young Malaysians to vote.²⁰ Such advertisements made solely for YouTube to appeal to the urban young and technologically-inclined middle-class demonstrate the dual effects of the digital revolution and, as I would like to believe, the cultural movement that came out of Reformasi insofar as they display the courage to disbelieve and to challenge state rhetoric, and to do so creatively.

Malaysian Gods

[Reformasi] is about whether the Malaysian people are ready for democracy or not – whether we have grown out of the 'divide-and-rule' of racial politics' (Sabri, 2000: 66).

When the law-trained writer Amir Muhammad turned to filmmaking, his documentaries were to constantly make a connection to Reformasi as a historical starting point: for rekindling cosmopolitan 'transethnic solidarities' (at the end of *Big Durian* 2003) and its legacy nine years later when Hindraf erupted on the streets of Kuala Lumpur in November 2007 (in *Malaysian Gods* 2009).

¹⁹ The commercial for Tourism Malaysia 2007 showcases Malaysia's ethnic and geographical diversity – through costume, dance and other traditional performances as well as its blend of beautiful natural landscape and modern skyscrapers – as packaged commodified images to be consumed by tourists. In directly addressing foreign tourists, it turns them into active agents and inadvertently casts Malaysian characters together with the national landscapes as passive individuals meant to entertain the tourists. The commercial is available here: <http://www.youtube.com/watch?v=bNCZmTzxqpo&NR=1>.

²⁰ http://www.youtube.com/watch?v=0_1msm4jEAY&NR=1.

Amir made two versions of *Malaysian Gods*. He kept only three sentences from the deleted version for the new *Malaysian Gods* (2009), still set against the backdrop of the 1998 Reformasi movement but mainly based on interviews in Tamil with Tamil-speaking Malaysians who work or patronise areas in Kuala Lumpur which were the site of anti-government Reformasi demonstrations. Its attempt to draw links, whether successful or not, between the current political awakening of Indian Malaysians with Reformasi, which had heralded the birth of political consciousness in Malaysia eleven years ago, will be the gist of my analysis.

While passed without cuts (its content is quite tame), *Malaysian Gods* (2009) is restricted by the National Censorship Board because it was perhaps too sensitive coming on the heels of the banning of *Hindraf* and the political detention of its leaders who were subsequently released on various conditions. This paradoxical decision to pass the film without cuts and yet withhold it from mainstream exhibition and distribution suggests inherent tensions within the film: its desire to widen political discourse by giving space to Tamil-speakers to air their views, but simultaneously not being more selective in its choice of interviewed subjects. This has to do with the weakness of the *vox populi* style in documentary filmmaking. However, in soliciting opinions from the 'person-on-the street', the filmmaker did not completely leave it to random chance. He aimed to include non-ethnic Tamils like Lily Tan, a Chinese woman interviewed in the film who spoke fluent Tamil. The one person he knew prior to the shooting whom he arranged to interview, R. Sasitharan, unsurprisingly had the most to say about *Hindraf*.

Issues that would clearly explain the surfacing of *Hindraf* are, however, only briefly broached by the good-humoured Sasitharan. Rather than capturing the frustrated anger and sense of injustice that had been building up over the years among displaced Tamil working class plantation workers who migrated to Kuala Lumpur to look for work and ended up living in urban squatter areas (Willford, 2012), the film – through Sasitharan's layperson's simple re-narrativising of two highly emotional and sensational cases of conversion, the Revathi Masoosai and Moorthy cases²¹ – conveys

²¹ Revathi Massosai, a practising Hindu, was forcibly separated from her Hindu husband and infant daughter and sent to a religious rehabilitation centre in 2007. M. Moorthy, a Malaysian army corporal famous for climbing Mt Everest, was raised a Hindu but who, upon his death, was given a Muslim burial against the wishes of his wife. This was done in accordance with a Syariah Court ruling that he had converted to Islam in 2005 without the knowledge of his family; see Suryanarayana (2006).

a universal sentiment: 'A mother should not be separated from her child. I felt sad when I saw her cry on video.' The effect of this is to appeal to the common humanity that everyone, despite their different religious backgrounds, would possess.

The film represents a small sample of Tamil and Tamil-speaking Malaysians as ordinary, rational, cool-headed, mostly conservative pragmatic and honest people (whether citizens or not) more concerned with day-to-day economic survival of work, study and play than with national politics. To be sure, these are positive representations which negate media ethnic stereotypes of Tamils as gangsters, criminals and alcoholic wife-beaters.²² But perhaps the apolitical interlocutors, particularly vendors and small business operators, are mere spectators and bystanders rather than participants of Hindraf. As long-time KL-based urbanites or moderately successful traders, they do not fit the profile of the average Hindraf supporter who, according to anthropologist Andrew Willford (2012), feels politically, socially and economically marginalised. In an expanded article that traces the sense of injustices among Malaysian Indians which manifested in the Hindraf rally, Bunnell, Nagarajah and Willford (2010: 1259) explain that these people had come from all over Peninsula Malaysia for various individual and collective reasons – ranging from plantation poverty and evictions, temple demolitions, 'body-snatching' by Muslim religious authorities, detention without trial under the Emergency Ordinance for alleged criminal offences, police violence and the death of youths in custody and the Kampung Medan ethnic violence, to lack of places in local public universities and discrimination in public sector employment and promotions – united only by a sense of having suffered injustice for being "Indian" in Malaysia and in seeking better lives for future generations'. Evidence of radicalised political consciousness seems to be missing among the working-class characters in the film.²³ This is troubling

Moorthy's case is one of several 'body-snatchings' by the Islamic authorities in such religious conversion cases.

²² The historical circumstances of most ethnic Tamil Hindu Malaysians working in the plantation sector and the eventual push out of the plantations to work as labourers living in slums in the city have seen further impoverishment of this ethnic community. Although Indian Malaysians 'form just seven per cent of the population, they account for 63 per cent of those arrested under the Emergency Ordinance for violent crimes and make up 41 per cent of beggars' (Pereira, 2001). The combination of urban poverty, lack of education, gangsterism and violence forms a common negative media representation of Malaysian Indians.

²³ Perhaps a presumption on my part, but I include under the 'working class' the

given that support for Hindraf came mostly from the Tamil working class. If Amir's main intention is to draw links between the Reformasi and Hindraf political awakening, it would have strengthened the film to include Tamils who were on the ground during the Hindraf demonstration. In retrospect, perhaps the socio-political climate of 2009 can be described as more conservative than the climate of 2013 when many more Malaysians are willing to publicly express dissenting views online and to participate in mass demonstrations.²⁴ It would also be interesting to chart and analyse what kinds of independent films and documentaries are produced in this current climate of radicalisation.

So what does the film achieve? As an exercise in participatory democracy, the film constitutes an act of citizenship and an 'earnest attempt' to offer a space for alienated Malaysians to develop more empathy with each other, and for the non-Tamil speaking viewer 'to hear and see how unfamiliar others think and feel' (Yin, 2009). There is a humanist charm about Sasitharan's simple folk wisdom: 'At the end of the day, we must see each other as human beings instead of segregating using religion. This is foolish. In the end, all blood is red. It might be typical Tamil movie dialogue but it's true.' This line about all blood being red reinforces the point of a previous scene of a blood donation drive that had gone unnarrated. Such attempts to forge ties by focusing on commonalities, on the human, speak of the cosmopolitan longings of a younger urban generation of Malaysians for whom racial/ethnic difference is not an obstacle or threat, but a strength to draw from.²⁵ Thus, *Malaysian Gods* challenges our racialised consciousness by representing cosmopolitan crossings: in the opening we hear the sound of a popular Malay ballad 'Isabella' being played on a traditional Chinese instrument, the *erhu*, and gradually realise that the musician is Indian.

kacang putih seller, the projectionist, the car window spray salesman, the balloon seller, the food vendors at the night market. While income is one marker of class, the other marker is education and English literacy. This is evident with some speakers who seemed as if they would be more comfortable speaking in English than Tamil and who sprinkled their dialogue with English words.

²⁴ See 'Malaysians Defy Police, Rally Against Election Loss', *Voice of America*, 8 May 2013, <http://www.voanews.com/content/malaysian-defy-police-rally-against-election-loss/1656956.html> (accessed 11 May 2013).

²⁵ However, Hollinger is careful to draw a distinction between universalism which many critics regard as too broad to be attentive to diversity, particularity and history, and cosmopolitanism which is more sensitive to the need for sustaining solidarities smaller than the species; see Hollinger (2006: xvii–xx).

I want to return to the idea of the film's purported failure in its structure to draw a clear trajectory between the Reformasi landscape and contemporary Tamilscape of downtown Kuala Lumpur (Yin, 2009). In one funny interview with a Tamil Muslim balloon seller who says his business was not affected by street demonstrations because he deals with children, the interviewer asks him to tell a ghost story instead. When asked why he did this, Amir explains, 'Because demonstrations that people no longer vividly remember are like "ghostly" flashbacks in a place. And we continue to be trapped by ghosts of all kinds!'²⁶ This 'ghostly' flashback haunted Amir himself and was the inspiration for the documentary when he was stuck in a traffic jam near Dataran Merdeka (which is the location of the opening scene): 'The whole place seemed to come alive, in my head, as a massive demonstration site. It was a false memory, since I was not actually there on 20 September 1998. So [the film] was my attempt to "place" myself there' (Siew, 2009). This film is Amir's 'act of solidarity' for not being there during Reformasi or Hindraf.

I want to pursue this idea of the spectral or ghostly haunting because Amir's documentaries are very much about the spectre of history and how historical legacies impact current Malaysian everyday life whether the viewers or the interviewed are aware of it or not. *Malaysian Gods* reprises this style where the stories/interviews with current-day ordinary people are in colour, and it is this contemporaneity and vivacity that is privileged. Yet, even if some of the conversations seem mundane and unrelated to the momentous events, even if the interviewed subjects may not be radicalised by the historical events, Amir uses the symbolic landmarks to emphasise the idea that these living interlocutors, ordinary people rather than political figures, are the ones haunted by the ghosts of history that still occupy these present-day spaces: whether it is the leftist contribution to Independence (in *The Last Communist*) or the calls to reform Malaysia's political and social landscape and the courage to struggle for change and justice (in *Malaysian Gods*). And it is ultimately up to them (and the film's viewers) to exorcise the ghosts of history by acknowledging the repressed alternative past and ultimately confirm their popular power and agency through solidarity.²⁷

²⁶ Email interview with author, 2010.

²⁷ The notion of the repressed giving rise to 'hauntings' is evident in the language of Andrew Willford (2012: 152) who writes about the frustrations displaced Tamil estate workers feel about land and temple demolitions in explaining the phenomenon of Hindraf: 'There is a haunting of justice in Malaysia because certain acts of the law are haunted by the force of the decisions that inaugurated them.'

By 'solidarity' I refer to David Hollinger's definition of solidarity as 'an experience of willed affiliation,' which is more performative than the word 'community,' includes agency and which implies 'a special claim that individuals have on each other's energies and compassion' (Hollinger, 2006: xi). Human solidarity entails a greater degree of conscious commitment than community, even if that solidarity is based on 'inherited expectations' such as ethnicity (Mandal, 2004). I use Hollinger's term 'solidarity' in place of 'community' or 'ethnicity' to suggest an alternative form of collectivity and alliance and to move beyond criticising Hindraf for deploying a race-based agenda and, in that way, perpetuating racialisation. I do this in the hope that Hindraf supporters, marginalised individuals and the film's viewers are able to find solidarity and work with progressive groups in civil society. As Mandal has shown, solidarity and cosmopolitanism can cohere to form 'transethnic solidarities' like the leftist alliance forged by PUTERA-AMCJA in the 1940s.²⁸ On the issue of race, PUTERA-AMCJA in the People's Constitution also proposed a 'Council of Races' be set up to block any discriminatory legislation based on ethnicity or religion. Sixty-two years later, Pakatan Rakyat's Common Policy Framework announced in late 2009 resonates with history. This policy framework which emphasises social justice and equality for all Malaysians regardless of race also includes a proposal to enact a Race Relations Act to safeguard unity and harmony of the people and to eliminate discrimination among the races.²⁹ In that sense, the pro-people, need-based democratic goals in the Opposition Pakatan Rakyat's Common Policy Framework could be regarded as a belated manifestation of 1940s Internationalist ideals via the 1998 Reformasi. These

²⁸ The coalition comprised of political and civic organisations within PUTERA (Pusat Tenaga Rakyat, or The People's Central Effort) and AMCJA (All Malaya Council of Joint Action) 'was the first national multi-racial and multi-party coalition to work together to produce a constitution for a self-governing united Malaya which included Singapore' (Zainon, 2007). Dissatisfied with the perceived lack of consultation with the people that characterised the Constitutional proposal for the Federation of Malaya, PUTERA-AMCJA developed the People's Constitution in 1947 which proposed the establishment of an elected legislature, equal citizenship rights for all, for the sultans to remain as constitutional monarchs, and for matters pertaining to Islam and Malay customs to be regulated through institutions formed solely by the Malays. But this proposal was rejected by the British.

²⁹ Pakatan Rakyat's Common Policy Framework is available here: <http://sembangsebangforum.blogspot.com/2010/01/policies-of-pakatan-rakyat.html>.

goals are again reiterated in the Pakatan's Manifesto produced before the 2013 elections.³⁰

Creative Acts of Citizenship: Love, Aspiration and Reformasi

By way of conclusion, I now want to turn to a discussion of *15Malaysia* as a creative act of citizenship. Events since the 2008 elections like the Perak constitutional crisis and the mysterious death of Opposition political aide Teoh Beng Hock while under custody of the Malaysian Anti-Corruption Commission (Tham and Loh, 2009) continue to impact society as do demolition of urban squatters' housing (an issue in *House/15Malaysia*), rising costs (*Duit Kecil/15Malaysia*), and racial and religious tensions continue to be stoked by various spectacular events such as the cow head incident and church arson over the Allah issue.³¹ These events affect independent filmmakers as individual members of society as well as encourage individuals to pick up the camera. For example, three law students made a short documentary on the Perak constitutional crisis for the FreedomFilmFest, *No Silver Lining: The Perak Crisis* (2009). Among the independents themselves, the late Yasmin Ahmad had posted on her blog on 16 July 2009: 'Someone please wake me from this nightmare and tell me that this did not happen in my country and that Teoh Beng Hock is safe at home with his family.' When a fan asked how this political case was possibly related to her blog, which mostly focused on filmmaking, she replied, 'errmmm... could it be it's cos I'm a Malaysian and I'm human?'³² Other usually reticent independent filmmakers like Tan Chui Mui³³ also expressed

³⁰ The Manifesto Rakyat (Citizens' Manifesto) can be found here: <http://www.pakatanrakyat.my/files/ENG-Manifesto-BOOK.pdf>.

³¹ The 'cow head' incident involved a group of fifty Muslims protesting the relocation of a Hindu temple to a Muslim-majority neighbourhood by trampling on a slaughtered cow head (regarded as a sacred animal by Hindus) in front of the central Selangor state government office in August 2009. On 31 December 2009 the Malaysian High Court overturned the ban on the Catholic *Herald* newspaper's right to use the word Allah to refer to the Christian God. Muslim groups and individual extremists protested against this as they fear it would confuse Muslims: several churches, a Sikh temple and mosque were vandalised or attacked by firebombs in January 2010.

³² See Yasmin Ahmad's blog, *The Storyteller*, Pt. 2, <http://yasminthefilmmaker.blogspot.com>.

³³ Tan (b. 1978) was born in Sungai Ular, a small fishing village in Kuantan, Malaysia. She graduated with a Bachelor of Multimedia (Hons) in Film and Animation in 2002 from the Multimedia University in Malaysia. Her first feature *Love Conquers*

concern about the political and socio-cultural landscape after the arson attacks on churches in response to the Allah ruling in January 2010. Tan, however, also felt that at least Malaysians were getting more mature in not falling for what some have considered as attempts to incite racial violence.³⁴

These sentiments are reflected in *15Malaysia* (2009), a viral project of fifteen short films by local independent filmmakers whose stories centre around the country's socio-political landscape. The website is at pains to point out that the project is non-partisan and that it stems from a shared experience.³⁵ What is interesting about the project is its diversity of issues and participants. The films present issues, sometimes in a subtle and oblique way, using public figures and locations whose symbolic and strategic importance Malaysians familiar with media headlines would recognise.

The main point I want to make is that the cosmopolitan motivation behind the project seems 'rooted' to the contextual cause of extending affiliation, compassion and empathy to ethnic Others within the nation.³⁶ It is an anti-racist patriotic project that reclaims the idea of the nation on behalf of its diverse populace (though, sadly, indigenous issues were again marginalised and unrepresented). Not only do these independent films reflect 'a future responsibility towards others' as acts of citizenship that represent one's 'constitutional right to voice' (FAQ *15Malaysia*) such as the right to affordable housing and healthcare, the freedom to associate and to conduct one's business without corruption, they also imply a future responsibility towards others which is reliant first on building self-knowledge, discipline and strong spiritual foundations (*The Tree*).

Ultimately, to cite lawyer and activist Haris Ibrahim in an interview about the role of civil society in uniting Malaysians across ethnic boundaries, 'Each one of us must have this love, love *untuk* [for] each other.'³⁷ Haris' invocation of 'love' resembles Hollinger's definition of

All (2006) won the Tiger Award at the 36th International Film Festival Rotterdam and the New Currents Awards and Fipresci Award at the 11th Pusan International Film Festival in 2006. She has made several short films including *A Tree in Tanjung Malim* (2005) which won the principal award at the 51st Oberhausen International Short Film Festival.

³⁴ Personal communication with author, 12 January 2010.

³⁵ <http://15malaysia.com/faq/>.

³⁶ For the idea of 'rooted cosmopolitanism', see Mignolo (2000). For a more detailed application of 'rooted cosmopolitanism' to the work of independent Malaysian filmmakers, see Khoo (2007).

³⁷ <http://popteevee.popfolio.net/default.aspx?e=1049>. The Fairly Current Show, Episode #92, aired 8 April 2010. Host Fahmi Fadzil interviews Haris Ibrahim on a report on PM Najib's first year in office.

'solidarity' as 'a special claim that individuals have on each other's energies and compassion' (Hollinger, 2006: xi). Legible Greek notions of love apply in this instance: affection or care (*storge*), friendship (*philia*), and the love of God or its secular counterpart – charitable, altruistic love expressed as a love for Others (*agape*). Based on compassion, respect for difference and shared common goals, this love inscribes and enacts a re-imagined community through digital independent films and music videos. Indeed patriotic love is a central motif that runs through 'Here In My Home', *15Malaysia* and *Malaysian Gods*.³⁸

Historian Farish Noor (2005: 131) claims that not only is love 'the foundational idea that underpins all ethics', it can be a force for political and social change that serves as a way to link human beings to one another in solidarity: 'provided we understand its true import and the responsibilities it entails'. Such a responsibility, he says, 'compels us to act for and defend the Other'. Likewise, philosopher James Martel (2001: 2) elaborates on the expansive magnanimity of love: 'Love transposes us from our ordinary lives. It gets us to think beyond ourselves; it causes us to sacrifice ourselves for others and generally to act as we would otherwise not act. ... The love of the polis, the requirement of ethics, philosophy itself (the love of knowledge), are all predicated on a relationship with love.'

According to Henri Bergson, love as a transformative emotion requires an 'affective stirring of the soul', one that is 'truly creative' in aspiring towards openness, stimulating action and motivating the new (White, 2008: 52). Exploring the question of whether an act of citizenship can be creative, Melanie White turns to Bergson's method of intuition, applying his theory of society to theories of citizenship. To summarise Bergson, society consists of static and dynamic tendencies: the former plays out as 'pressure' to conform to social obligations and old habits and the latter as 'aspiration' for change. White regards aspiration as 'a pure tendency towards movement and change' (Ibid.: 48). This aspiration towards openness represents a profound break with, rather than a logical extension of, old habits and a closed society (Ibid.: 52). Indeed, it is this aspirational dynamic that shapes the Pakatan Rakyat's 2013 campaign, encapsulated in its pithy slogan '*ubah*' (change/transformation).

³⁸ Another musical example is the hip hop self-parody, 'I Am a Macha', composed by the PopTeeVee team for 'That Effing Show', aired 24 February 2010, <http://popteevee.popfolio.net/default.aspx?e=1037>.

Conclusion

Malaysian society, caught in a racialised paradigm since the institution of race-based political parties and the combination of Umnoputraism (political cronyism) and Malay ethnofascism, came to the crossroads with two historical ruptures: Reformasi 1998 and, again, a decade later when the Opposition parties won more than one-third of Parliamentary seats. One could further theorise that the gains made by the Opposition Pakatan Rakyat in the 2013 elections demonstrate the continuation of the dismantling of race politics and a changing mindset among voters who rejected the Barisan Nasional.³⁹ Turning to the conclusion of *Malaysian Gods*, if 8 March 2008 general election was the day Malaysia woke up, the written text in the film states, 'this doesn't mean we should stop dreaming. And we have to keep moving.' The next shot is of the image of a muddy river flowing rapidly overlaid with the sound of a local punk band singing insistently, 'Because I love you, yes, I love you yes...' The juxtaposition of the gushing murky water and the song provokes the question of whether this film, like *The Big Durian*, is another of Amir's 'love letters to the nation' (Lim, 2005). Motivated by 'love', *Malaysian Gods* thus reflects aspiration with its connotations of movement and change. Amir's aspirational point that 'we have to keep moving' is echoed in producer Pete Teo's reminder that 15 short films alone are not enough to solve the country's problems and that Malaysia needs 'more people to step into the breach and keep the flames of reform burning'.⁴⁰ One means of encouraging broader participation in the project has been to invite other people to simply make a film about the country 'we all love' using any format and keeping it under five minutes. There are ten films uploaded to the 15Malaysia website.⁴¹

To conclude, the spirit of Reformasi (shaped by love, transformative emotion, aspiration) is alive not only among independent filmmakers but also with ordinary Malaysians producing online music videos and short films due to the political environment they live in: lack of government transparency and accountability, blatant racial politicking, corruption, hypocrisy and repression of dissenting voices. To counter communalism and ethnofascist nationalism, independent filmmakers produce critical works that display transethnic solidarities and anti-racist tendencies; these

³⁹ See 'Malaysians Defy Police, Rally Against Election Loss'.

⁴⁰ See 'The Interview' at Pete Teo's blog, Not Verbose <http://www.peteteo.com/weblog/?p=575> (accessed 11 May 2013).

⁴¹ <http://15malaysia.com/mymalaysia/> (accessed 10 May 2013).

acts of citizenship offer an alternative vision and performance of Malaysian nationhood. Founded on 'generous imaginings' (Scarry, 1996: 105), they write and invite a possible inclusive future for all Malaysians.



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Part Three

The Contested Rules of an Authoritarian Game

Chapter 9

Women, Family and Syariah in Malaysia

Maznah Mohamad

Two directions are discerned in the shaping of the new Islamic family. The first is Syariah law reforms and the second is Syariah court litigation involving family disputes. These two afford a window into the kinds of gender struggles, negotiations and reconstitutions which transpire for Muslims at the everyday level of their existence. They also actualise the nature of discipline, control and punishment to which women and families are being subjected. The language of legalism can be read as sets of codes, repeated and reiterated, as a didactic process where appropriate behaviour and attitudes can be moulded and sanctioned. Focusing on these two aspects, this article identifies the essence of the reforms and presents examples of how Syariah litigation is playing its role in reifying the Islamic family in modern Malaysia.

Background of Syariah Development

In Malaysia, the project to 'Islamise' government and society has taken on quite naturally within the realm of family because the first link of Islam with the modern state was through personal law, of which family law was central (Husin, 2007). Rules for regulating personal and family matters were codified from Quranic principles and religious sources. Ironically, the Syariah in Malaysia was first formalised into statutory law by colonial powers rather than by indigenous elites (Yegar, 1979). The use of Syariah to regulate or outline the family domain is a pattern common to all once-colonised societies, where colonial administration rationalised the idea of progress and modernisation through governance by the rule-of-law. Western laws were the guide, but their early application was done under the rubric of

protecting indigenous rights and institutions by selectively codifying existing customary practices and beliefs (Hooker, 1976; Oba, 2002). The body of Syariah family law was considered to be authentically divine, even though syncretic elements of religion, customary and Western laws were used in its eventual codification into formal statutes (Yegar, 1979: 119; Hooker, 2003: 81). Within a democratic, procedural setting the Syariah is said to owe its overall existence and jurisdiction to statutes, the Federal Constitution, the Acts of Parliament and the State Enactments (Faruqi, 2005). The reform of Islamic laws thus involved a systematic process of Syariah codification, which ultimately resulted in its own demystification (Siraj, 1994: 565).

The process of Syariah modernisation has continued to be fashioned along the lines above although formal colonial rule in Malaysia ended in 1957. In fact, the features of the above process are being sustained with even more vigour in the post-colonial setting. In terms of the Syariah's impact on gender relations, this has resulted in an unfavourable situation for women. Malaysia's first Islamic family law statute was enacted in the 1980s to delineate exclusive family legislation from other non-family matters contained under the existing body of Islamic laws (Ahmad, 1999). There were at least two stages in the formation of Malaysia's family Syariah. The first Islamic family law of Malaysia came into existence in 1984. At this initial stage the passage of this new law was framed within a progressive orientation, while the principle of the best interest of the community (*maslahah*) was used as a guide in the reform and modernisation strategy (Zainah, 2001: 227). The Islamic revivalist movement which began in the late 1970s also elevated family Syariah to reflect state commitment towards Islamic governance. The second stage of family law reformation occurred in the early 2000s when the 1984 law was repealed and its place was taken by a new family law which substantially reduced women's entitlements within the spheres of marriage, divorce, maintenance and the division of matrimonial property. The modern Syariah, through which the contemporary Islamic family is regulated, is still largely syncretic in nature, though persistently construed as 'divine law'. A rigorous systematisation, expansion and rationalisation exercise conducted by the state, combined with an aura of sacrality which surrounds the idea of Islamisation, has given Islamic law and the Syariah courts much power in regulating, defining as well as constructing what it deems to be the authentic Islamic family. This has had tremendous implications for the state of gender relations in Malaysia.

Syariah Law Reforms: Trends in the Modernisation of Laws for Muslims

Malaysian women activists who consistently monitor trends in Islamic laws have long asserted that these laws are becoming regressively discriminatory against women (Nik Noriani, 2008: 196; Zainah, 2008: 277). The basis for this claim is that the Syariah family law has undergone transformation in various phases, with each phase successively enhancing a masculine bias. It has moved from being 'women-friendly' in the 1970s to more ambivalent and questioning of women's legal gains in the 1980s and eventually an exclusive 'male-domain-of privilege' in the 2000s. Malaysian Syariah can be seen as undergoing at least three distinct periods of reform: under a decentralised Islamisation phase of the pre- and early 1980s, followed by a centralised Islamisation period of the mid-1980s, and finally under the current phase of hegemonic Islamisation in the 2000s.

These phases were marked by the passage of different statutes which 'housed' the various laws on Islamic marriage and family matters. Under the decentralised Islamisation period of the pre- and early 1980s, rules on Muslim marriage and divorce from the colonial time were contained in various laws which covered the swathe of Islamic religious and Malay customary matters (Ahmad, 1965). There was no singular statute exclusively covering matters of the 'Islamic family'. In the postcolonial period these various regulations for Muslims were subsequently rationalised to come under a general law for Muslims, such as the Administration of Muslim Law Enactment, 1959 (Penang) or the Administration of Muslim Law Enactment, 1978 (Johore). I call these various stipulations regulating the family of this period a form of an early, plural family Syariah. The nature of family Syariah then began to change around the 1980s, as it was only in the mid-1980s that the passage of the first body of Islamic family law came into being. The Islamic Family Law (Federal Territory) 1984 was a model of this new legislation, and was meant to be adopted in a uniform fashion by all the other states. This was a successful move as all other states then began enacting their own Syariah family laws. The Islamic Family (State of Penang) Enactment 1985 was one such emulation of the Federal Territory model. It was nevertheless a transitional period as the Syariah family law of this period was soon replaced by a new statute. Thus, the body of uniform laws as represented by the 1984 Federal Territory Family Law could only be considered an intermediary, progressive family Syariah. In the hegemonic period of the post-2000s, this first Islamic family law was repealed in total and replaced by a new law. In the state of Penang, the passage of the Islamic

Family Law (Penang) Enactment, 2004 replaced its earlier 1985 enactment. The new legislation typifies a modern, male-centric family Syariah. In the sections below I describe in greater detail how the three forms of family Syariah can be distinguished from one another.

An Early, Plural Family Syariah

In a decentralised period, Islamic laws were confined to ‘personal laws’ rather than the sum of all regulations which encompass a Muslim’s life. Colonial and early postcolonial governance codified Islamic rules into statutes although the area which they covered was minimal. This was before the onset of Islamic revival politics. Syariah courts were given more clout during this time, although Islamic administration continued to be decentralised at the state level. The various enactments for Muslims also remained within the purview of state rulers rather than the federal government. Islam was under the authority of each individual state and hence each of the 13 states in Malaysia enacted their own legislation to govern Muslims within their boundaries. Some laws could differ from one state to another.

Although there were rationalisation exercises to lead towards the upgrading of the Syariah these essentially involved the passage of one comprehensive law for Muslims to replace all the various separate enactments that existed during colonial times. The passage of the first ‘single omnibus statute’ was the Selangor 1952 Administration of Muslim Law (AML) (Horowitz, 1994a: 258). Instead of having a number of separate enactments, as in the Muhammadan Law and Malay Custom (Determination) Enactment 1930, the Muhammadan Marriage and Divorce Registration Enactment 1931, the Muhammadan (Offences) Enactment 1938 and the Council of Religion and Malay Customs Enactment 1949, the post-1950s saw the integration of these laws into one major statute for Muslims, named the Administration of Muslim Law Enactment 1952 (State of Selangor). Given that all laws for Muslims were still governed under the separate state governments, there was little power for the federal authority to intervene in Islamic matters. Malaysian Islam at this time was still decentralised in scope and feature.

In this decentralised phase the characteristic of Islamic laws was one of diversity and plurality and the central government had little authority over Islam within the various states. Matters of marriage, divorce, custody and maintenance were inserted under only a few sections within the general law meant for Muslims. Legislation such as the Administration of Muslim Family Law (Penang) Enactment 1959 had only 25 sections for marriage

and divorce matters out of a total of 172 sections. In these early years each state in Malaysia had its own set of Islamic family laws (contents of which could often differ from one state to the other), and their Syariah courts were administered independently of federal intervention.¹ The Syariah court which heard marriage cases was known as the Kadi court, and had the status of a lower court. Lawyers were not usually appointed to represent plaintiffs and defendants. The settlement of marital disputes could often be reduced to a slanging verbal match between husbands and wives in the presence of the *kadi* (Peletz, 2002: 128–92). Most of the judgments would be made by the *kadi*, or the Islamic court judge. The laws were probably less developed and therefore less rigid in terms of interpretation and enforcement. The *kadi* were at liberty to express their views judiciously without being necessarily bound by precedence, dogma and text. In 1965, for example, one could find judgments which were extremely sympathetic to women; a woman's character or act of disobedience (*nusyuz*) was seldom used to deny her her rights. For example, a case involving a woman who wanted to redeem her divorce by *tebus talak*² because of a sexually unsatisfying marriage was even granted to her; in current times it would be more difficult to be granted a judicial divorce based on such grounds.³

An Intermediary, Progressive Family Syariah

The years after independence (1957) till about the late 1980s were also a period of a fledgling movement for a rights-based Malay identity not solely tied to a cultural identity, but based on national citizenship. Statutory laws for Muslims were being upgraded within the legal system by accommodating the ethos of modernisation and progress. The reforms gave much concession to women's rights lobbyists such as women's wings of political parties like UMNO (United Malays National Organisation) and non-partisan women's organisations such as the NCWO (National Council

¹ Due to the nature of the federal system, and constitutional provisions, Islamic laws are still under the legal purview of each individual state within the country. While there was previously more variation in the Islamic laws of each state, especially during colonial times, the current policy of the central government is to compel all states to adopt a uniform set of Islamic laws.

² Under Islamic law, a woman is allowed to 'purchase' her divorce for an amount agreeable by the husband and/or the court. The term *tebus talak* in Malay literally means redeeming the *talak* (a man's prerogative) for use by the woman herself.

³ All translations from Malay into English are my own. See *Nerat bt Musa vs Ahmad b. Kanchil* (Kadi Court, Perlis), 1965. Reported in *Jurnal Hukum*, 1(1) (1983): 102.

of Women's Organisations). Later, newer more feminist-orientated Muslim groups such as Sisters in Islam also participated in the process of Syariah law reform (Ng, Mohamad and Tan, 2006: 84–105). At the same time, the Islamisation project directed by the central government was one which tried to fit in with the image of a progressive and moderate Islamic nation. But, as we shall see later, this process was far from stable, nor was it capable of being fully entrenched. The family Syariah of this period was only transitional in nature, and was eventually repealed and subsumed by a new statute in the early 2000s.

This gradual centralisation of Islam during the mid-1980s correlated with the rise of Islamic consciousness and politicisation. In the colonial period we saw the admixture and amalgamation of various *adat* (Malay customary practices) with Quranic dictates, fluidly interchanging and juxtapositioning the two or three traditions in the Malay world. *Harta sepencarian* (joint-matrimonial property), for example, was consistently proclaimed by *kadi* and *ulama* to be consonant with *hukum syarak*, even though this tradition was not present in other Muslim societies outside of the Malay world. By the 1980s, after laws for Muslims (a bulk of which dealt with family matters) were rationalised and unified to constitute a single body of 'personal laws', the focus of attention naturally revolved around the 'Muslim family'. This was to be associated with the project of building appropriate behavioural norms for the new Muslim community. Given that the Islamisation movement could not have succeeded without the initial transformation 'from within', regulating the family through more authentic Islamic laws became a popular concern, of government as well as civil society. For the new Islamic movements, such as ABIM (Angkatan Belia Islam Malaysia – Malaysian Youth Movement), law was seen as a strategic entry point for more Islamisation in society. Since personal law had always been associated with family laws, and also because Muslims' encounter with law had always involved family – at least at the point of marriage – family law became the most natural vehicle in the deliverance of the new Muslim family. However, there was also another group, with a special interest in family law for Muslims; these were women's groups. The social and economic progress that middle-class women achieved during this time raised their concerns about their cultural status. Influential groups like the women's wing of the ruling party UMNO were concerned with issues such as polygamy, divorce rights and maintenance. Yet another group were Muslim lawyers who were trained in Western law, such as Ahmad Ibrahim who founded the Islamic Law Faculty at the International Islamic University in Kuala Lumpur. With the growing appeal of Islam, they also looked

towards law reform as a way of showing their commitment to Islamisation.⁴ The result of all these multi-pronged pressures was the passage of a new enactment called the Islamic Family Law Enactment, promulgated in 1984 in the Federal Territory, denoting that Islamic matters from that instance onwards were set to be gradually charted by the central administration. The Federal Territory, a new administrative unit created by the federal authority, was like the 14th state of Malaysia – and would serve as the central government's 'model state' for Islamic law-making. But this was not a project without contenders. Kelantan was also another state which had already seen the passage of its own Islamic family law a year before the Federal Territory template came into being (Horowitz, 1994a: 273).

Even though there were differences between the two models of the Federal Territory and Kelantan, they still tried to incorporate the ethos of a modernising nation, and conformed to some prevailing standards of gender rights and justice. This new Islamic family law statute took out all the sections on family from the 'omnibus' legislation, the Administration of Muslim Law Enactment, and crafted a new law which expanded the scope of family regulation by increasing the number of provisions from 25 sections to 135 sections. With this, a new phase of Islamic law-making took place, from consolidation to differentiation. The clear trend was towards the greater codification, reification and essentialisation of what should constitute the Islamic family. In the 1984 legislation, modernists and progressive women seemed to have had an upper hand, ahead of the other groups in this project. Islamic family law at that time was generous towards granting women some reasonable rights in matters of marriage and divorce, and was even considered to be one of the most progressive in the Muslim world (Zainah, 2008).

One pro-women clause to restrict polygamy was found in Section 23 of the Selangor Islamic Family Law of 1984 in which it was ruled that no polygamous marriage should affect the living standards of current marriages and households – 'that the proposed marriage will not directly or otherwise lower the standard of living that his ... wives and dependants have enjoyed ... if the proposed marriage is not performed'. This appeared to be a very progressive protective clause for women as it had the potential of making it almost impossible for any man to establish a new family, as it is unlikely

⁴ A person like Professor Ahmad Ibrahim, a former Singaporean, was one such person who was responsible among others for enacting and reforming many of the postcolonial laws for Muslims in Malaysia.

that any new marriage would not lower or compromise the standard of living of a man's existing spouse(s) and family. Only extremely wealthy men would be able to meet this condition. But even so, some wealthy men found themselves at a disadvantage when applying for court permission to practise polygamy. Another clause in the legislation made it mandatory for a man to prove that his polygamous marriage would not only be *necessary*, but must also be shown to be *just*. 'Necessary' here must mean something that could not be obtained out of a current marriage, such as infertility of existing wife, and 'just' means that all wives must be treated fairly and equally. That being so, the court would be legally bound to reject any application for polygamy, even if made by a wealthy man, if it was not 'satisfied that the proposed marriage was necessary as well as fair at the same time' (Section 17(3)(i) of the Kedah Islamic Family Law, 1984). It is specifically stated that equal treatment must be accorded to all wives (Section 17(3)(ii) (b) Kedah Islamic Family Law, 1984). All of the above stipulations were contained in the Islamic family laws of almost all Malaysian states (with the exception of Kelantan) in the 1980s and made it impossible for polygamy applications to be granted freely by the courts.

An example of how the above restrictions were translated into everyday reality is illustrated in the case of Ruzaini bin Hassan's application to marry a second wife, which was heard in the mid-1980s.⁵ His application was rejected by the Negeri Sembilan Syariah High Court, with a detailed written judgment. There was much emphasis on the financial affordability of the applicant, inviting the ire of the judge when it was tallied that even with the addition of his current wife's monthly savings, the balance of what was left was a mere pittance: 'Do you think that with only RM391.90 (US\$118) left you can afford to maintain another wife?', asked the judge. Ruzaini did not answer the judge's question, and his application was subsequently rejected, based on Sections 23(3) and 23(4)(a–e) of the Muslim Family Law (Negeri Sembilan) Enactment, 1985. Section 23(4)(e) was the most crucial condition which Ruzaini could not fulfil as the judge had opined that, with polygamy, Ruzaini would especially be breaching a clause which stipulates that if the proposed marriage would directly or indirectly lower the living standard of existing wife or wives and dependants, then it could not be approved. Various other cases demonstrated that this was an era which embodied

⁵ Ruzaini bin Hassan's application for polygamy (Syariah High Court of Negeri Sembilan, 2001), as in "Dalam Perkara Permohonan Poligami Ruzaini bin Hassan" (In the Matter of Ruzaini bin Hassan's Application for Polygamy), reported in *Jurnal Hukum*, 15(1) (2002): 95.

a norm of 'female progressivism' with many high-profile applications by men to contract polygamy rejected by the court, such as in the 1990 case of *Aishah bte Abdul Rauf vs Wan Mohd. Yusof bin Wan Othman* (Horowitz, 1994b: 546), and the 1991 case of *Rajamah bt Mohamad vs Abdul Wahab bin Long* (Nik Noriani, 1998: 36). In *Zainab binti Mahmood vs Abd. Latif bin Jusoh*, the husband's pronouncement of *talak* outside the court was rejected by the Selangor Syariah Appeals Committee (Horowitz, 1994b; 545–6). In the case of *Fakhariah bte Lokman vs Johari bin Zakaria*, the court allowed for the wife's application to seek divorce by stipulation, or conditions agreed to in the marriage contract (*cerai taklik*) on grounds that the husband had failed to provide maintenance. The husband's defence that his wife had committed *nusyuz* (act of disobedience) was rejected by the court, as it was not considered material to the divorce application initiated by the wife (Horowitz, 1994b: 553–4).

A Modern, Male-centric Family Syariah

Finally, under what I would call a hegemonic Islamisation period after the 2000s, the family law statutes of the 1980s were repealed in all states and replaced by a new family law statute which enhanced men's entitlements and curtailed women's rights (Zainah, 2008: 277–8). For example, polygamous marriages, even if not obtained through court permission, would still be legally registered and recognised, the punishment being only a small fine or a light jail sentence. Even divorces pronounced out of court would be considered valid under the new law so long as a fine is paid or a jail sentence is served. Divorce 'outside-of-court' could thus now be granted to men without them settling all marital claims brought by their wife. Another amendment which roused the anger of women publicly was the clause which allowed for polygamy to take place without the man having to prove in court that the marriage was both necessary *and* just, as was the case under the old law. Under the new law, it was no longer required of a polygamous man to maintain the same material standard of living for all his wives and families. Another ground for concern was the insertion of a new clause allowing men to apply for a judicial (*fasakh*) divorce, which was previously the exclusive right of women. This was considered unfair, and even odd, as men already have the unilateral right to pronounce divorce without even having to go to court. The only logic would be that having a 'no-fault' or a divorce granted by judicial decree on the man's part could exempt him from paying the wife *mut'ah* (divorce compensation) and other post-divorce maintenance claims. Thus gains which Muslim women had made in the 1980s began to slip away as this new family statute took effect.

Constructing the appropriate Muslim family has become an extensive aspect of Syariah law-making during the post 2000s. Instead of just amending the 1984 Islamic family law, the legislature completely replaced the old statutory law with a new one. There were major changes as to how the regulation of the new Muslim family was to be exercised. In this new legislation, such as the Islamic Family Law (State of Selangor) 2003, more lenient conditions for polygamy were provided. As discussed in the previous section, the 1984 Islamic Family Law only allowed courts to approve polygamy if it fulfilled the conditions of necessity and fairness, equal treatment and the maintenance of similar living standards for existing wives and families. Through the new family Syariah, polygamy could even be granted to men with very little financial means. Polygamous marriage can now be approved as long as the marriage can fulfil the condition of either being 'necessary' or 'just', and not necessarily the two conditions being simultaneously fulfilled. Thus, under this new family Syariah a man can apply for polygamy due to the infertility of his current wife (hence considered a *necessity*, if the intention is to have progeny), but not necessarily be obliged to prove that this new marriage would be *just* (to the current wife). Another change in legal wording was to substitute the phrase 'equal treatment' with 'fair treatment' of all wives. Yet another significant change in the new enactment was the deletion of the clause on not lowering the living standards of existing households as a condition for court approval of a new marriage. As for matrimonial property division, a new section was inserted to make polygamy affordable for men with inadequate means. For example, Section 23(10) of the Islamic Family Law (State of Penang) Enactment 2004 grants the court the power to 'require a man to pay maintenance to his existing wife or wives' or 'order the division between the parties of the marriage of any assets acquired by them during the marriage by their joint efforts or the sale of any such assets and the division of the proceeds of the sale'. This clause can be interpreted to mean that even an impoverished man can be given permission to practise polygamy as it is up to the court to decide if matrimonial assets should be sold and disposed of in order to make it affordable for the man to maintain his multiple households. Matrimonial property is also interpreted as property registered under the name of a current wife, making her pay the literal price of her husband's new marriage.

To sum up, a more bilateral Malay sense of family ties has now been transformed to a more male-centred family unit with the passage of the new Family Syariah. First, the unilateral right of men to pronounce divorce (*talak*) upon women, anywhere, anytime and under any circumstances

has been retained. Second, men continue to be entitled to polygamy, with minimal conditions attached to the legal application for it. Third, the new law entitles men to a share of women's matrimonial assets in order to support their polygamous marriage. Fourth, this new law has made it more difficult for women to obtain divorce by judicial decree as their applications often require that they go through the burdensome motion of ineffective counselling and reconciliation exercises, besides maintaining that they have been obedient wives (Nik Noriani, 2003: 36–7). These trends feed into the project of group identity-making and group self-policing by centralising the focus on maleness, not necessarily as vanguard and chivalrous protector of the group, but as the new most favoured beneficiary of the cause. It would seem that Syariah is now being used extensively to *confer* special privileges to Muslim men rather than used as an honour code or covenant wherein men *earn* their authority through the exercise of duty and responsibility. I have presented some evidence that the condition of gender equality as interpreted by Islamic legal authorities was much better in the earlier rather than in the current phase of Islamic law reformation (Maznah, 2011).

Syariah Court Litigations: The Translation of Gender Inequality into Everyday Reality

The new family Syariah reflects that masculinity has become a quality in which rights are conferred rather than earned. At the same time, the rights of the ideal Islamic wife and mother are constructed around conditional clauses of loyalty, obedience, purity and subservience. While Islamic malehood is associated with entitlements, Islamic femalehood is associated with good behaviour. While malehood is gained by legal conferment, femalehood is gained by moral submission. Judgments made in the Syariah court have been shown to reinforce this asymmetrical binary. Islamic judges are careful not to be seen as taking away men's rights which are 'divinely' theirs and, in tandem with this, careful not to be liberal about giving women 'rights' which may undermine their good behaviour. Hence, under new circumstances and the modernisation of the Syariah, it is not gender reciprocity which is being emphasised as the foundation of marital relationship, which had long been the basis of Muslim marriage (Ali 2008; Tucker 2008: 38–83), but it is the specific ordering of sexual relations, or the entrenchment of a hierarchy of male–female positioning, which is being outlined by the new Islamic family discourse.

In the discussion below several litigations involving rights and contestations to marriage depict how Syariah laws as well Syariah authority

are being translated into everyday experience in Malaysia. In the process, a new masculinity and new family norms are being reinvented and reproduced in fashioning a new Muslimness.

For example, the power of the *taklik* (the stipulation which allows for automatic divorce) is emerging as one of the more disturbing aspects of divorce in modern Malaysia, even though one may assume that women can also gain from inserting this clause in their marriage contract. In effect, this law is so loose that it contradicts another law which makes it an offence to pronounce the *talak* outside of court. But the drawing out of conditions for divorce is not just confined to written agreements made during marriage, but could also be orally said without any witnesses save for the other spouse. In the case of *Hasnah vs Yusoff* (Jeli Syariah Lower Court, March 2008),⁶ it does not take an onerous situation for a divorce to take effect. Merely going against a husband's command over something seemingly benign (e.g., going over to somebody's house) can be used as a stipulation for the divorce. The recognition of this form of loose *taklik* will inevitably open the floodgates of many other possibly absurd scenarios of divorce. The prerogative to utter this oral *taklik* is strictly the preserve of males and it has the potential for disciplining women by having the threat of divorce hanging over their heads.

However, the original intention of *taklik* stipulation was not to be a benefit for males but to provide a leeway for women to obtain a divorce if the circumstances of the marriage have changed to the detriment of the wife; for example, desertion or the non-payment of maintenance can be used as grounds for the divorce if this was inserted as a *taklik* clause in the marriage. Nevertheless, it appears than any application for divorce based on *taklik* brought by women seems more burdensome and takes longer to be granted. In the case of *Halijah binti Abu Talib vs Mohd Nadzir bin Salleh* (Federal Territory Syariah Lower Court, 1995),⁷ besides the pledge of an oath, Halijah (wife of Mohd Nadzir) and the plaintiff had to bring in five witnesses to provide evidence of the defendant's disappearance, neglect and abusive behaviour. This application took three years to settle. In this case, the discourse of Muslim male masculinity, one which puts an obligation on them to provide for the family, had been plainly breached and subverted. But Halijah still had to prove that she had been a loyal wife, and that the mistreatment had little to do with her being *nusyuz* (disobedient). The judge's fear of abrogating male entitlement (despite the defendant's

⁶ From case file of the Lower Syariah Court in Jeli, Kelantan.

⁷ From case file of Federal Territory Syariah Court.

abandonment of his family for three years) was only matched by his repeated insistence on evidence of the wife's good behaviour before the eventual judgment was made, and the *taklik* divorce granted to Halijah.

In granting male rights to polygamy, even the welfare of a supposedly mentally unstable prospective bride was not taken into consideration when a 46-year-old man, Mat bin Harun, applied to the court take a 25-year-old woman as his second wife (*Mat bin Harun vs Halimaton Shakidah binti Zakaria* (Jeli Lower Syariah Court, 2008)).⁸ According to statements given in court, Halimaton Shakidah, the prospective bride, was mentally unstable and of unsound mind (*tidak siuman dan fikiran tidak waras*) and therefore not expected to say anything in court, save for the presumption that it was a marriage which was going to benefit her. The oral reference to the ability of Mat to care and provide for her was sufficient grounds for the application to be approved. The calculation of Mat's affordability was not objectively worked out. He claimed to be giving an allowance of US\$132 per month to his first wife and seven children. However, this was meagre to say the least, as it was way below the official poverty line established by the Malaysian state, which is RM572 (US\$173) per month for a family of five (UNDP Malaysia 2008: 33). Had a means test been applied, Mat would have probably been disqualified from entering into a second marriage. But in this case, the Syariah court had worked to realise the entitlement of males, and only secondarily would other welfare issues be taken into consideration. The right to polygamy is a potent symbol of male Muslim masculinity as it relates to his virility to redouble the procreation of the Muslim *ummah*. Here, the dissonance between male (lack of) economic power with his actual ability to maintain a family, let alone several families and households, is being papered over by the emphasis on his entitlement and his success in disciplining women.⁹

In reproducing and entrenching gender inequality, the Syariah can even worsen the already existing gender asymmetry by conferring even more privilege to the males while reducing the rights of women, as in the case of *Siti Fatimah binti Derahman vs Ali bin Seman* (Jeli Syariah Lower Court, 2007).¹⁰ After her divorce, Siti Fatimah had applied for maintenance allowance, which had not been paid to her while she was married to Ali for

⁸ From case file of the Lower Syariah Court in Jeli, Kelantan.

⁹ For a fuller discussion of the disciplinary control brought on by the dynamics of court litigation see Maznah (2011).

¹⁰ From case file of the Lower Syariah Court in Jeli, Kelantan.

seven years. In this case, Ali, the male defendant, was freed of any regulatory or disciplinary punishment by the court. Even though his defence for avoiding maintenance payment to his ex-wife was weak, the court's order of a settlement payment over 40 months was not only painless for Ali, but further prolonged Siti's deprivation. After the judgment was handed down she was forced to wait for more than three years before all her arrears could be fully recovered, all in all depriving her of her religious right to maintenance, as a lawfully-wedded wife, for more than 10 years. This is an example of how the Syariah accommodates gender dissonance by doing a double-take – reproduce the cultural discourse about male entitlement, hence superiority, while at the same time allow for pragmatic adjustments (as in reducing the quantum of awards, and creating easy payment schemes) to lessen the financial burden of males.¹¹

The above cases of male negligence and failure to live up to their end of the bargain as responsible male heads of households have become a mounting issue for the state. Currently, the Malaysian state is coming into the picture to pick up the slack of errant malehood. The Syariah Judicial Department recently revealed that since 2000, a total of 12,300 husbands had failed to pay their maintenance obligations to their families despite court orders to do so (*Malaysian Insider*, 2010). In January 2010 the Islamic Department under the Prime Minister's Office announced that it was setting up a special RM15-million (US\$4.5-million) fund to advance payment for up to six months to Muslim women who have failed to receive maintenance support from their husbands (*The Star*, 2010).

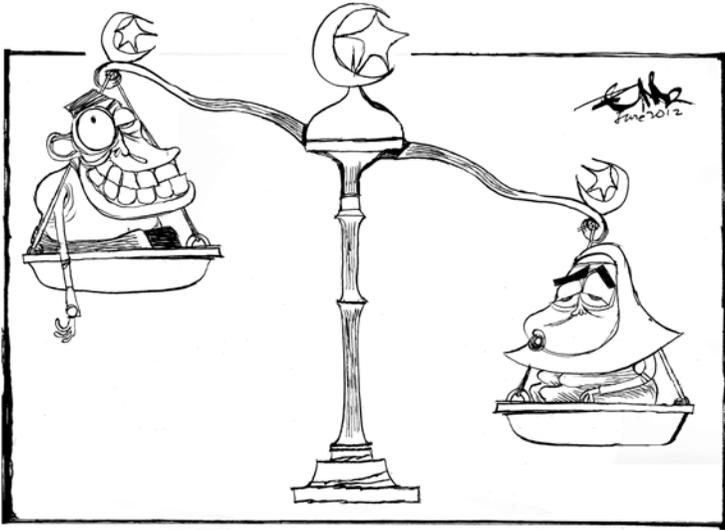
Conclusion

What are the values most stressed in all of the above Syariah reforms and litigation involving gender relations? In most marital disputes involving divorce, a wife's obedience (the concept of not committing *nusyuz*) would be considered an obligatory precondition for the award of compensation. Male entitlements, in the form of the unequivocal right to pronounce divorce (*talaq*), to enter into polygamy, to favourable property division, and the right to discipline a wife through beating have all found their legitimate way into the new enactment. The lack of punitive discipline for men, with the state bearing the costs of male impudence and negligence, as in not punishing men for failing to provide maintenance, has also become one outcome of the new family Syariah. Nevertheless, the lack of judicial

¹¹ A fuller discussion of how court judgements can do this see Maznah (2011: 62–5).

professionalism and inability of Syariah judges to be judicious, rather than dogmatic, in their judgements could also contribute to this state of affairs. A disjuncture between the masculinity protection logic, promoted as an ideal by the Syariah, and the actual condition of male inability to live up to this ideal, has concomitantly led to the valorisation of the 'victimhood' syndrome for women. With this, the state has had to bear the cost for its redress – by extending public subsidies to single mothers deprived of maintenance instead of punishing male offenders for their breach of responsibility.

Syariah reforms and litigation described above both have social as well as biological reproductive dimensions as the creation of an idealised Muslim family seems to be at their heart. The home and family is where a 'whole world view, ethical and aesthetic can become naturalised and reproduced' (Yuval-Davis, 1997: 43). Butler's idea of the 'performativity' of actions (such as that of the Syariah) leads to the normalisation of new values, behaviour and attitudes. The modern Syariah has been employed to ensure the invention of the authentic Islamic family by fixing and naturalising it as a sacred, immutable space of Muslimness. As we trace the evolution of Syariah family law in Malaysia, it is shown to have the capacity to shape appropriate actions and behaviour – sanctioned, repeated and reiterated until they become culture that is essentialised and divinely ordained. The Islamic canon (*hukum syarak*) as understood by traditional religious authority has evolved from a fluid and living system of rules, whose translation is subject to the community and contextually-bound discretion of the local *ulama* and *kadi*, into a legal system which is ordered, procedural and differentiated. Nevertheless, we are unsure if this is merely a surface transformation as the Syariah itself embodies dynamic elements of change; if so, it would surely contain the potential to reverse the current trend of gender inequality in society.



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Chapter 10

The Illusion of Rights

Barriers to Justice for Non-citizens in Malaysia

Alice M. Nah

In Malaysia, an impressive array of laws can be applied for the protection of the rights of non-citizens. However, in practice, non-citizens – in particular, foreign workers and foreign domestic workers – face numerous challenges in obtaining redress for grievances through formal adjudication mechanisms. An illusion of rights exists, as government officials emphasise the existence of these laws as evidence that non-citizens have rights when social and legal institutions and practices fail to protect them. In this paper I review the obstacles that non-citizens face in gaining redress for grievances. I argue that the majority of non-citizens in Malaysia do not have effective access to justice for three main reasons. Firstly, Malaysia's formal adjudication mechanisms only recognise and protect the rights of those with legal immigration status in Malaysia. Secondly, the legal immigration status of non-citizens – especially foreign workers and foreign domestic workers – is precarious. Thirdly, government officials have been reluctant to allow non-citizens the right to reside and work in Malaysia until they have exhausted local judicial remedies, thus making it difficult for them to sustain themselves while seeking redress.

Introduction¹

The modern articulation of the rights of all has its roots in the formation of the United Nations in 1945 and in the adoption of the Universal Declaration of Human Rights in 1948. According to this framework, all non-citizens – including those with irregular legal status – have certain rights. They have the right to be free from arbitrary killing, torture, inhumane treatment, arbitrary arrest and detention, slavery and forced labour (Office of the UN High Commissioner for Human Rights, 2006). They also have the right to marry, to protection as minors, to equality, non-discrimination, freedom of religion and belief, freedom of political opinion and the protection of their labour rights. However, in reality, many non-citizens do not enjoy these rights.

In addition to the challenges faced by citizens in obtaining redress for grievances, non-citizens are systematically disadvantaged because of the limits placed on their residency and right to work, which have bearing on their capacity to pursue claims through formal adjudication mechanisms. This disadvantage is particularly marked in states with immigration regimes designed to keep non-citizens temporary and which do not facilitate their right to reside and work while they pursue redress for grievances. Migrant workers on employer-sponsored immigration passes are at a particular disadvantage in seeking redress for labour violations as their immigration status is dependent on their employer – the actor that is the likely cause of their grievance.

In this paper I argue that the majority of non-citizens in Malaysia do not have effective access to justice for three reasons. Firstly, Malaysia's formal adjudication mechanisms only recognise and protect the rights of those with legal immigration status in Malaysia; secondly, the legal immigration status of most non-citizens is precarious; thirdly, government officials have been reluctant to allow non-citizens the right to reside and work in Malaysia until they have exhausted local judicial remedies. As Chan (2007) argues, access to justice is not a fundamental right in Malaysia and this has particularly harsh consequences for non-citizens.

¹ An earlier version of this paper was published as Nah (2013) and is based on a chapter submitted for a doctoral thesis to the National University of Singapore in 2011. The issues raised in this paper were identified through discussions with members of the Migration Working Group, a network of non-governmental organisations (NGOs) and individuals working to protect the rights of non-citizens. More detailed information was obtained through interviews conducted with migrant workers, case managers for NGOs, and lawyers between 2008 and 2011 and through a survey of existing literature.

In the next section of this paper I provide an introduction to Malaysia and the significance of non-citizens in Malaysian society. I then outline the status and rights of non-citizens in domestic legislation and review the grievances they have experienced, paying particular attention to migrant workers, who constitute the largest category of non-citizens. This is followed with a review of the challenges non-citizens face in having their rights protected and their access to legal aid. I then focus on the significance of legal immigration status in access to justice for non-citizens in Malaysia.

Non-citizens in Malaysia

Malaysia hosts the largest number of non-citizens in Southeast Asia. It is a destination for work, tourism, education and asylum as well as a place of transit to other regions in the world. Millions of non-citizens travel in and through Malaysia every year. In 2010 alone, it received 24,577,000 tourists (See, 2011). It also hosts around 3–4 million migrant workers, over 100,000 asylum seekers and refugees, an estimated 88,000 foreign spouses, 86,000 international students and over 370,000 permanent residents. It is amongst the top 15 per cent of countries with the highest numbers of international migrants in the world (Ratha and Xu, 2008).

Contemporary policies concerning international labour migration in Malaysia can be traced back to the 1970s when demand for labour grew significantly as a result of government efforts to restructure the economy by promoting export-oriented industrialisation and agricultural expansion. The government welcomed foreign direct investment, creating export-processing free zones and providing financial incentives, tax exemptions and infrastructure facilities (Lim, 1988). It permitted companies to hire expatriates to fill key managerial and technical positions. In the 1980s, recognising the need to boost the supply of cheap labour, it began authorising the large-scale recruitment of workers from surrounding countries (Jones, 2000; Jomo, 1988). In October 1991 the government introduced the Comprehensive Policy on the Recruitment of Foreign Workers as a temporary measure to overcome labour shortages.

Malaysia currently pursues a policy of temporary labour migration for most migrant workers; only some 'skilled' foreigners qualify for permanent residency.² Malaysia is heavily dependent on foreign labour. Migrant

² In 2009 the Malaysian government started to introduce a number of initiatives to attract talented workers to Malaysia. These included giving permanent resident status to foreign applicants who qualified as a 'high net worth individual', an 'expert',

workers, both documented and with irregular status, constitute up to one-third of Malaysia's work force (Robertson, 2008). In spite of its long history of managing migrant workers, Malaysia has had an enigmatic and contradictory approach to non-citizens. Its management of labour migration has been referred to as a 'stop-go approach' (Scalabrini Migration Center, 2011) with 'schizophrenic policy moves' (Gurowitz, 2000: 867).

Malaysian's immigration regime distinguishes between 'skilled workers' (called 'expatriates') and 'unskilled/ semi-skilled' workers referred to as 'foreign workers' and 'foreign domestic workers'. The government regulates their recruitment, entry, placement and exit through a system of employer-sponsored, time-limited immigration passes. All three categories of migrant workers cannot change employers without the permission of the Immigration Department.³

Each type of migrant worker is allowed different rights and privileges.⁴ While expatriates are allowed to get married in Malaysia as well as to bring their families with them, foreign workers and foreign domestic workers are not. Furthermore, unlike expatriates, foreign workers and foreign domestic workers are subject to medical screening for communicable and chronic diseases – and for women, pregnancy – before and after their arrival. Those who fail these medical tests are liable for deportation.

Employers are required to pay a yearly levy for each foreign worker and foreign domestic worker hired, ranging between RM360 and RM1800 (90–449 Euros) depending on their sector.⁵ Employers are responsible for providing housing and medical treatment for their workers, for renewing their immigration passes on a yearly basis, as well as arranging for their repatriation at the end of their contracts. If their worker absconds, they are responsible for reporting this to the Immigration Department, which then cancels their immigration pass.

In 2008 there were around 42,000 expatriate workers, constituting 0.4

or a 'professional' (Immigration Department Malaysia 2010).

³ More recently, however, in April 2011, the government introduced the ten-year Residence Pass for skilled non-citizens with 3 years of work experience in Malaysia, permitting them to reside and work in Malaysia with the freedom to change their employers. Details of the programme are available on the website of TalentCorp Malaysia (2011).

⁴ For further elaboration, see Nah (2012).

⁵ These levies are also charged for expatriates holding a Visit Pass for Temporary Employment (Pas Lawatan Kerja Sementara, PLKS). The levies are a significant source of revenue for the government. In 2007, it collected RM2.13 billion (531.85 million Euros) in foreign levies (Dewan Rakyat, 2008).

per cent of the total workforce (Khamis, 2008). In 2010 there were 1.9 million authorised foreign workers employed in manufacturing (39 per cent), construction (19 per cent), plantations (14 per cent), domestic work (12 per cent), services (10 per cent) and agriculture (6 per cent) (Asrul Hadi, 2010). Most of these workers originated from Indonesia (50.9 per cent), Bangladesh (17.4 per cent), Nepal (9.7 per cent), Myanmar (7.8 per cent), and India (6.3 per cent).

Concomitant with the growth of authorised migrant workers has been the rise in numbers of migrants with irregular status, estimated at 2 million in 2011 (Palani, 2011; Allard, 2011). Over the years, the government has taken an increasingly punitive approach to reducing irregular migration, conducting large-scale national crackdowns – often preceded by time-limited amnesty exercises – aimed at arresting, detaining, punishing and deporting migrants (Nah, 2011). From 2005–2008, the Immigration Department arrested 216,373 persons (Lee, 2009). The crackdowns have resulted in severe overcrowding in detention facilities and deaths during mass deportation. Just before the national crackdown in 2002, the Immigration Act 1959/63 was amended to include whipping as a form of punishment for illegal entry. Between 2002 and 2008, 34,923 men were whipped for immigration offences (Dewan Rakyat, 2009). The European Parliament has denounced this brutal punishment as a ‘practice that amounts to torture and is clearly illegal under international law’ (European Parliament, 2010).

The Status and Rights of Non-citizens in Malaysian Law

The Malaysian legal system is a framework of laws and institutions based on the English judicial system. An impressive array of laws can be applied for the protection of the rights of non-citizens. Provisions in the Federal Constitution related to fundamental liberties – including the right to life and liberty, the right to freedom from slavery and forced labour, the right to protection against retrospective criminal laws and repeated trials, and the right to equality before the law and to equal protection of the law – apply to all persons, not just to citizens (Federal Constitution, Articles 5–13). However, in relation to the right to liberty, the Constitution differentiates between citizens and non-citizens, allowing the latter to be detained for a longer period of time if they are arrested under immigration law. While citizens have to be brought before a magistrate ‘without reasonable delay, and in any case within twenty-four hours’, non-citizens have to be brought ‘within fourteen days’ (Article 5(4)). Malaysian legislation protecting labour

rights applies to non-citizens.⁶ The Employment Act 1955 (Act 265) sets out the minimum benefits due to an employee, including provisions for contract of service, payment of wages, maternity protection, rest days, hours of work, holidays, termination, lay-offs, and retirement benefits.⁷ However, the Act does not extend the same level of protection to domestic workers (referred to in the Act as ‘domestic servants’). Specifically, it allows their contracts to be terminated with a shorter period of notice and does not protect some of their rights, such as those related to maternity benefits, rest days, hours of work and holidays. Employers are not allowed to discriminate against a foreign employee in relation to a local employee and *vice versa* in relation to the terms and conditions of employment (Article 60L(1)). However, employers are prohibited from terminating the contract of a local employee for the purpose of hiring a foreign employee (Article 60M). Also, when reducing their workforce in response to redundancy, employers must first terminate the services of all foreign employees before those of local employees (Article 60N).

The Trade Unions Act 1959 (Act 262) protects the rights of migrant workers to join a trade union and to participate in its activities.⁸ The Industrial Relations Act 1967 (Act 177) covers all workmen employed under a contract of employment in any industry, including non-citizen professionals.⁹ In terms of social security schemes, foreign workers are covered under the Workmen’s Compensation Act 1952 and in its subsidiary legislation, the Workmen’s Compensation (Foreign Workers Compensation Scheme) (Insurance) Order 1998, which requires employers to insure their

⁶ Other statutes regulating labour and employment are the Occupational Health and Safety Act 1994, Factories and Machinery Act 1967, Employees Provident Fund Act 1991, Pensions Act 1980, Statutory and Local Authorities Pensions Act 1980, Children and Young Persons (Employment) Act 1966, Employment (Restriction) Act 1968, Employment (Information) Act 1953, Sabah Labour Ordinance 1949, Sarawak Labour Ordinance 1952, Wages Councils Act 1947, Human Resource Development Act 1992 and Workers’ Minimum Standards of Housing and Amenities Act 1990 (Sharifah Suhana and George, 2002).

⁷ The Act defines an ‘employee’ as any person with a contract of service with monthly wages of less than RM1500 (375 Euros) a month, or any person engaged in manual labour or domestic work regardless of what they are paid (see the First Schedule for the full definition).

⁸ The right to participate in trade union activities is further protected by the Employment Act and the Industrial Relations Act.

⁹ This was deliberated in *Dr A Dutt vs Assunta Hospital* [1981] 1 MLJ 304.

foreign workers under the Foreign Workers Compensation Insurance Scheme.¹⁰

The Immigration Act 1959/63 (Act 155) is the key statute relating to immigration control. The Act states that no person other than a citizen shall enter Malaysia without a valid entry permit (Section 6(1)). Those who contravene this are guilty of an offence punishable by a fine not exceeding RM10,000 (2497 Euros) and/or imprisonment of up to five years, and 'shall also be liable to whipping of not more than six strokes' (Section 6(3)). The Immigration Act places the burden of proof on each individual to show that he/she entered Malaysia without contravening the requirements for legal entry (Section 6(4)). Any police officer, immigration officer or customs officer 'may arrest without warrant any person who he (sic) reasonably believes has committed an offence against this Act' (Act 51(3)).

The holder of a cancelled or expired permit/pass has no right to remain in Malaysia; he/she is liable for removal and is prohibited from entering Malaysia again (Section 9(4)). Anyone who remains in Malaysia is guilty of an offence, punishable by a fine of not less than RM10,000 and/or imprisonment of up to five years Section (15(1,4)). The Act also states that it is an offence to employ a person other than a citizen or an entry permit holder (i.e. a permanent resident) without a valid pass (Section 55B(1)).¹¹ This is punishable by a fine of at least RM10,000 but not more than RM50,000 (12,536 Euros) and/or to imprisonment of up to twelve months for each employee.

In terms of mechanisms of redress, non-citizens are allowed to pursue redress through the civil courts. However, as Chan (2007) notes, access to justice is not a fundamental right enshrined in the Constitution of Malaysia. The judiciary recognises *ouster* clauses, which limit the appeal options of individuals with respect to administrative decisions. In relation to immigration decisions specifically, the Immigration Act 1959/63 states: 'There shall be no judicial review in any court of any act done or any decision made by the Minister or the Director General ... under this Act except in regard to any question relating to compliance with any procedural

¹⁰ Malaysian workers have not been covered under this Act since 1 July 1992. Expatriates – as non-manual workers earning more than a monthly wage of RM500 (125 Euros) – and foreign domestic workers are also not covered by this Act (Section 2(a,c)).

¹¹ The Employment (Restriction) Act 1968 clearly prohibits the employment of a 'person not being a citizen' without a valid employment permit (Section 5).

requirement of this Act or the regulations governing that act or decision' (Section 59A(1)).¹²

The Federal Court has also expressed that access to justice is not a fundamental right, but a common law right that can be modified by written law. In *Danaharta Urus Sdn Bhd vs Kekatong Sdn Bhd* [2004] 2 MLJ 257, the court stated that 'access to justice shall be available only to the extent that the courts are empowered to administer justice' (p. 257) and affirming the powers of Parliament to 'enact a federal law pursuant to the authority conferred by article 121(1) [of the Federal Constitution] to remove or restrict the jurisdiction and power of the court'. These decisions highlight the limited willingness of the judiciary to check the powers of the executive and legislature.

Non-citizens can also seek remedies through two formal alternative dispute resolution (ADR) processes, one managed by the Department of Labour and the other by the Department of Industrial Relations, both under the Ministry of Human Resources. The former inquires into and decide on disputes between employees and employers with respect to wages and other provisions due to employees under the Employment Act, while the latter provides services for resolving trade disputes and processing representations for reinstatement under the Industrial Relations Act. Where conciliation proceedings are unsuccessful, cases in the former are referred to the Labour Court (with subsequent appeals made to the High Court) while cases in the latter are referred to the Minister for Human Resources, who may close the case or refer it to the Industrial Court for adjudication.

Types of Grievances Experienced by Non-citizens

Non-citizens have faced a number of types of grievances for which they have sought remedies.¹³ In relation to employment, non-citizens have experienced problems with unpaid wages, unlawful deduction of wages and delays in payment. They have also faced problems with dismissal, including dismissal without just cause and wrongful dismissal. In relation to conditions of work, complaints have included having long hours of work, the refusal of employers to provide leave and holidays and the refusal of employers to

¹² The Act also excludes a person's right to be heard before the Minister of Home Affairs or the Director General of Immigration when an order is made against him/her (Section 59).

¹³ For further information on these types of grievances, see Amnesty International (2010a, 2010b); Health Equity Initiatives (2010); International Federation for Human Rights and SUARAM (2008); MSF (2007); Tenaganita (2003).

provide safety equipment. In some cases, migrant workers have not been adequately compensated for accidents in the workplace. Foreign workers and foreign domestic workers have also experienced problems with their housing and living conditions, such as overcrowding, insufficient food and water and inadequate amenities.

Problems with agents are another area of concern. Migrant workers have complained about contract substitution, false promises of high income, deception about work conditions, and the use of violence and threats to silence dissent. Migrant workers have also faced problems related to their immigration status – such as delays in the renewal of immigration passes, the confiscation of passports and forced deportation. Some have been the victims of acts of violence, such as robbery, rape and assault. There are also cases where migrant workers were whipped for immigration offences they did not commit.¹⁴

Challenges in Access to Justice for Non-Citizens

The first challenge that non-citizens face in obtaining redress is the lack of awareness of their rights and remedies in the Malaysian legal system, including the difference between justiciable and non-justiciable issues and the specific mechanism of adjudication to use in order to pursue redress. As Renuka Balasubramaniam, a lawyer who has provided *pro bono* legal aid to foreign workers and refugees states,

Respective Acts specify the remedies that the courts can provide. Often, claimants don't know what they can and cannot complain about and what remedy to seek. ... Making the wrong claim through the wrong court can permanently defeat the claim if the error is not highlighted at an early stage. If officers in the respective departments do not assist pro-actively, or cannot assist due to language difficulties, claimants may have no redress.¹⁵

In some cases, depending on the facts and grievances raised, there may be more than one possible course of action. For example, a matter concerning the terms of employment covered by a collective agreement can be brought before the Department of Labour as well as the Department of Industrial Relations. However, the Employment Act clearly prohibits the

¹⁴ See, for example, the case of Manggal Bahadur Gurung, a Nepalese migrant worker wrongly imprisoned for 51 days and whipped with one stroke in 2006 for not possessing a work permit. The High Court set aside his conviction, and the Malaysian government later offered him a compensation of RM8340 (2091 Euros).

¹⁵ Renuka Balasubramaniam, personal communication, 21 April 2010.

former from hearing matters already considered by the latter. Complainants need to be clear about the consequences when deciding which avenue to use.

Another challenge that non-citizens face is gathering documentary evidence to support their claims. Often, they are not given copies of the contracts they sign, or their wage slips showing proof of wage deductions. They also need to provide addresses for court documents to be served when they lodge complaints, which can be particularly difficult if they have been evicted from their housing or are living in temporary accommodation.

The Federal Constitution states that '(w)here a person is arrested he shall be informed as soon as may be of the grounds of his arrest and shall be allowed to consult and be defended by a legal practitioner of his choice' (Article 5(3)). Section 28A of the Criminal Procedure Code states that when a person is arrested, the police shall allow him/her to communicate with a legal practitioner of his/her choice. However, in practice, when non-citizens are arrested – in particular, foreign workers and those suspected of having irregular status – they are not allowed to contact anyone during the remand period (up to 14 days for non-citizens), which hampers their ability to seek legal assistance.

Some non-citizens who are arrested are not told when they will be brought to court to be charged. When they are charged, some do not understand the charges read to them because they do not understand Malay. Some have pleaded guilty under pressure, either accidentally or because they have been held in remand for months and see no other option for getting released.

In order to access the judicial system and ADR processes, non-citizens need to comply with their respective rules of procedure. However, they are not easy to understand, and they – as do other persons – often need help and guidance from lawyers in order to file a case, draw up a statement of claim or defence, file affidavits, understand legal terminology and argue the case (Sharifah Suhana and George, 2002). If the person is unable to afford a lawyer or to obtain the services of one on a *pro bono* basis, he/she is not assigned a legal practitioner by the government.¹⁶ Contingency fee arrangements (or, 'no win, no fee'), where lawyers receive a percentage of the amount successfully recovered or awarded but do not charge legal fees, are prohibited in Malaysia (Section 112, Legal Profession Act 1976). Furthermore, plaintiffs seeking civil action run the risk of legal costs being awarded against them. The high cost of legal advice makes legal aid crucial.

¹⁶ Around 500,000 persons every year (an estimated 94 per cent of those held under remand) appear in court without representation (Ramachandran and Vijandren, 2008).

Legal Aid for Non-Citizens

Non-citizens are able to seek assistance from their embassies, although their requests are met with different levels of responsiveness. The embassies of the Philippines, Indonesia, Cambodia and Nepal, amongst others, have dedicated labour attachés mandated to look after the welfare of their nationals. The Indonesian embassy established a taskforce in 2006 to assist Indonesian foreign workers with their grievances. In its first year it assisted 763 workers, but numbers rose to 900–1000 cases a year (Kurniawati, 2009; Malay Mail Online, 2009).

Aside from their embassies, non-citizens are able to receive legal aid on a *pro bono* basis from a few Malaysian civil society organisations – such as Tenaganita, Women’s Aid Organisation and the Penang Office for Human Development – as well as the Legal Aid Centres of the Malaysian Bar and trade unions such as the Malaysian Trades Union Congress and affiliates of Building and Wood Workers’ International. These organisations give counsel to migrants on their options, trying to mediate and negotiate settlements with employers. For many migrant workers – especially those with irregular status – this is the only stage at which some form of success is possible.

If this is unsuccessful, these organisations assist documented workers in accessing ADR processes, in making police reports in order to trigger criminal investigations, or in taking civil action through the judicial system. However, such pursuits are often long and costly, sometimes lasting for years. There are often delays in cases brought through the civil courts and the Industrial Court due to postponements by employers and the backlog of cases because of the limited resources of the courts.¹⁷ Cases can drag on for months, even years.

When non-citizens pursue these courses of action there may be negative consequences that they must be prepared to bear. As Joachim Xavier, a case manager of a faith-based group who has assisted numerous foreign workers in obtaining redress for grievances, explains: ‘Sometimes the workers don’t want to pursue the case; they feel it is not worth the trouble. They make a complaint, and then they realize the possible repercussions, such as deportation. So, they just decide to continue working under the exploitative conditions.’¹⁸

¹⁷ In 2008 there were around 900,000 unresolved cases in the subordinate courts and 91,000 in the High Courts (*New Straits Times*, 2009).

¹⁸ Joachim Xavier; interview by author, 4 March 2010.

The Significance of Legal Immigration Status for Non-citizens

The legal status of a non-citizen has a direct impact on his/her access to justice. Labour officers have asserted in public forums that migrant workers with irregular status are not eligible for protection under the law, as their contracts are deemed 'void' (see, for example, Khamis, 2008) – even though this is contrary to international customary law (*jus cogens*).¹⁹ Labour officers have insisted that foreign workers produce proof of their legal status, or present their passports, before acting on their complaints. Also, as Joachim Xavier notes, cases involving the labour rights of irregular foreign workers are very challenging to argue. 'Often, the cases get turn down [by the Department of Labour] because they don't have a written contract. It is hard to prove a verbal contract.'²⁰

Migrants with irregular status are vulnerable to arrest, detention, punishment for immigration offences and deportation. There have been a number of cases where Immigration officers have arrested claimants when they made their appearance at the Industrial Court or at subordinate courts.²¹ There have also been a number of times when claimants have been deported against their will before the conclusion of their court cases.

Documented migrant workers who decide to take legal action against their employers have had their contract of service terminated and their immigration pass cancelled, rendering them with irregular status (Robertson, 2008; Tenaganita, 2003). They lose not only their current and future income, but also the housing and food provided by their employers. As stated earlier, pursuing a case through official adjudication mechanisms can take months, if not years, and most are unable to sustain themselves for long periods without an income.²²

In order to avoid arrest for immigration offences, claimants can obtain a special pass from the Immigration Department, which confers on them the right to reside but not to work in Malaysia. These passes are typically issued for one month for a fee of RM100 (25 Euros) and are renewable. However,

¹⁹ Nevertheless, there have been occasions when Labour officers have urged employers to pay their undocumented workers (Joachim Xavier; interview by author, 4 March 2010).

²⁰ Ibid.

²¹ Sithamparam (2010) reports that this occurred in *Sathiyamoorthy s/o Karunthappan vs TG Medical Sdn Bhd* [2009] 1 ILR 453.

²² Tenaganita reports that it takes a minimum of six months and up to two years or more for cases at the Labour Court (Amnesty International, 2010b).

the special passes are issued and renewed at the discretion of Immigration officers. In practice, Immigration officers have refused to issue these passes even when proof is provided that applicants have claims pending in the civil courts or in ADR processes. A conundrum emerges when the Department of Labour refuses to file a case without proof that a foreign worker has legal status (e.g. has a special pass) and the Immigration Department requires proof that a case is filed before they issue a special pass.

In many cases, the passes are renewed only twice, allowing the holder to stay in Malaysia for a total of three months, a time too short to obtain remedies for grievances.²³ Also, the monthly fee for the special pass is expensive for someone without an income.²⁴ As the special pass does not confer the right to work, holders of the pass are unable to earn an income while in Malaysia and to provide for themselves in terms of food, shelter and basic necessities. Immigration officers have expressed concern that giving non-citizens the right to work on a special pass will lead to an abuse of the system.

Conclusion

An illusion of rights exists when rights are codified in legislation but individuals are not able to gain redress for rights violations through social and legal institutions and practices. In Malaysia, an array of laws covers the rights of non-citizens. Indeed, when presenting about the situation of migrant workers in Malaysia, government officials often list the labour laws that apply to them as evidence that they have rights (see, for example, Ministry of Human Resources Malaysia, 2008; Khamis, 2008). However, in practice, migrant workers face great difficulties in bringing their cases through formal adjudication mechanisms.

Of the many obstacles non-citizens face in gaining redress, the most significant are the refusal of adjudicators to hear cases of those with irregular status, the ease by which documented migrant workers can lose their legal status, and the reluctance of immigration officers to grant non-citizens the right to reside and work in Malaysia while their cases are being adjudicated.

²³ In some cases, however, such as in *Sampath Kumar Vellingiri & 78 ors vs Chin Well Fasteners Co. Sdn Bhd* [2003] 1 LNS 260, special passes were renewed for 2–3 years while foreign workers pursued their case in court (Joachim Xavier; interview by author, 5 March 2010).

²⁴ In some cases, however, the Immigration Department has waived these costs with the appeal of an NGO.

Unable or unwilling to bear the heavy cost of obtaining justice, many give up pursuing redress. The illusion of rights obfuscates the need for legal reform to ensure that the rights of non-citizens are properly protected.



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Environmental Justice in Malaysia

Obstacles and Possibilities

Azmi Sharom

This paper will explore how, despite international calls advocating citizen empowerment in environmental issues, Malaysia still lags behind through both poor legislative provision of public participation and judicial conservatism. It will point out that changes needed are relatively simple, requiring little effort for any government with the requisite will and dedication towards democratic spaces.

Since achieving independence in 1957 Malaysia has developed at a tremendous pace. Sham Sani (1998) asserts that from the 1960s onwards, the government's five-year plans,¹ which focus on economic growth, have shifted the economy from one concerned mainly with the providing of raw materials (tin and rubber) for developed industrialised nations to one which is more diverse. In the 1970s and 1980s a major push towards the expansion of modern sector activities, particularly manufacturing, resulted in rapid economic growth. Manufacturing, construction and service industries quickly replaced the agricultural sector, with their share in the nation's GDP rising as the agricultural share dropped. Societal structure also changed, with 60 per cent of citizens living in urban centres. Approximately 10 per cent work in the agricultural sector; the rest of the workforce is distributed

¹ Since the formation of Malaysia there have been nine five-year Malaysia Plans; 1966–70, 1971–75, 1976–80, 1981–85, 1986–90, 1991–95, 1996–2000, 2001–05, 2006–11.

fairly evenly between the service and industrial sectors.²

This rapid development has had an effect on the environment, and arguably the greatest concern is deforestation, from both logging activities and land clearance for developmental purposes. The clearing of forested lands not only leads to the loss of biological diversity but also other problems such as landslides, loss of water catchment areas, siltation and flooding. Another key environmental problem is the pollution of inland waterways, with over 50 per cent of Malaysian rivers considered as polluted (Sahabat Alam Malaysia, 1996).

In the light of these pressing environmental concerns, good environmental governance becomes all the more important. A guide to what constitutes good environmental governance can be found in Malaysia's international obligations and promises. In 1992 Malaysia signed the Rio Declaration,³ which established or confirmed many environmental principles. As a signatory, Malaysia had a moral obligation to – at the very least – attempt to apply those principles. Now, twenty years have passed and for one environmental governance principle in particular the country has made almost no progress whatsoever.

The principle in question is Principle 10, which is basically about citizen participation in environmental decision making. Principle 10 reads:

Environmental issues are best handled with participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.

To summarise, Principle 10 states that environmental decision making is best done by implementing these four elements:

- Citizen participation
- Access to information
- The State facilitating participation in awareness raising
- Access to judicial and administrative remedies

² World Bank, <http://data.worldbank.org/country/malaysia> (accessed 25 March 2011).

³ 31 ILM (1992): 874.

This principle, therefore, promotes the democratisation of environmental decision making via the empowerment of citizens. In this way, power to decide on matters that have a profound effect on people's lives is distributed, not focused in a government agency or official. This chapter will examine the Malaysian situation with regard to said power distribution by using the four elements above as discussion points. There will also be an examination of a case study to illustrate the practice – or non-practice – of Principle 10 in the country.

Citizen Participation

Malaysia's environmental policy, the National Policy on the Environment, issued by the Ministry of Science, Technology and the Environment in 2002, is a paternalistic document with a very 'top down' approach to environmental protection (Azmi, 2002: 880). There is no mention of public participation being part of the general *modus operandi* of environmental governance. Thus public participation as a part of decision making is lacking as an overall ideal in Malaysian environmental governance.

This is not to say that there are no opportunities for public participation. There are two avenues for public participation which are legislated for; they can be found in the Town and Country Planning Act (TCPA)⁴ and the Environmental Impact Assessment (EIA) procedure as established by section 34A of the Environmental Quality Act 1974 (EQA).⁵

Part III of the TCPA allows for public participation by way of making comments on the draft structure plans and draft local plans. Structure plans are large plans covering a local planning authority's area of control, whereas local plans cover a smaller area (which could fall within the structure plan) and are usually more detailed. This process, although welcome, is far from perfect. Complaints have included the lack of time allowed to properly examine the draft structure plan. Once notice is given that there is a draft structure plan, interested parties are only allowed thirty days to prepare their comments to be presented in a meeting with the local authorities. The lack of useful information prior to any meetings between residents and the local authority is also a cause of dissatisfaction.⁶ For example, the plans are made available for public perusal, but making copies is not allowed.

⁴ Laws of Malaysia, Act 172.

⁵ Laws of Malaysia, Act 127.

⁶ This information was obtained through a series of interviews with resident groups. See Harding and Azmi (2007).

In other words, any examination of such plans can only take place at the local authority offices. As such plans are usually lengthy and very detailed in nature, this makes the forming of proper constructive criticism difficult.

Another route for public participation available through the TCPA (Section 21(6)) is the right of 'neighbours' to give their opinion on any development work near their homes. The definition of 'neighbour' is fairly narrow, however, and one has to practically live next door to the proposed project to have a say. Even more limiting is that one has to be the owner of the property, so this excludes tenants from the equation (TCPA (Section 21(8)), let alone interest groups.

The EIA process also allows for participation. What has to be noted here is that there are two types of EIA, preliminary and detailed.⁷ The preliminary EIA is by far the most common, with the need for a detailed EIA only occurring a few times a year.

If a project is listed in the EQA subsidiary legislation,⁸ then it requires an EIA report. The first report is the preliminary EIA, which is assessed by the state branch of the Department of the Environment (DOE) and is either approved, rejected or approved with conditions. In such preliminary EIAs, feedback from residents in the area is a requirement of the DOE's EIA guidelines. This can take the form of a questionnaire or a 'town hall' meeting, or any other method deemed suitable by the EIA consultant who writes the report. The openness of choice with regard to how such feedback is to be obtained is a source of criticism. Without any firm guidelines the methodology can leave much to be desired and can lead to misleading results (see the Broga incinerator case study below).

The public does not have a right to comment on the preliminary EIA report; this right only exists if a detailed EIA report is required. These are cases for extremely large or potentially seriously damaging projects, such as the building of a dam. Detailed EIA reports are scrutinised by an ad hoc board that sits in the Federal DOE headquarters. In these cases the general public is given the opportunity to scrutinise and comment on the EIA report. Please note that it is not the project *per se* that is being commented upon, but the EIA report. Considering that this is usually a very technical document which is expensive (one has to buy the report, it is not given out for free, and the price can be as high as RM1000 – a lot of money for poorer

⁷ Environmental Impact Assessment Guidelines, Department of the Environment.

⁸ Environmental Quality (Prescribed Activities) (Environmental Impact Assessment) Order 1987, PUA 362/87.

communities),⁹ it is obvious that for many such a prospect is daunting without expert assistance.

However, the most crucial criticism of the available methods for public participation is the extent to which it is actually meaningful. The avenues open to the public exist in limited circumstances; however, just how much the public's input is actually taken into consideration by the decision-making authorities is totally within the latter's discretion.

It is not being suggested that the final decision making be taken out of the hands of the authorities; this would, in effect, make governance near impossible. Decisions have to be made, and they have to be made by those with the authority to do so. However, the public's right to be heard appears to be little more than that, a right to be heard. It would surely make more sense if, in the final decision-making process, a transparent system was put into place so that the views put forward by the public are openly discussed and the reasons why they were not taken into consideration explained. In this way a semblance of meaningful public participation would be achieved.

Although some local authorities have claimed that they do give reasons for their decisions, this happens on an ad hoc basis. There are no formalised legally binding obligations for them to do so.

Recent political developments have, however, made a difference. In the 2008 general election the state of Selangor was won by the Pakatan coalition. They had made promises for greater democratic practices in their election manifesto and to a large extent have been attempting to abide by those promises. One of the actions taken was to amend the state forestry law¹⁰ in March 2011. The law now states that if the Selangor government wishes to remove the protected status of a forest it must first have a public consultation.

This is the first new legislative provision for citizen participation in environmental decision making since the creation of the EIA process in 1986. It suggests that the stagnation in good environmental governance in Malaysia can only be improved with the requisite progressive political change, for without the new state government it is highly unlikely that such an addition to the law would have been made.

⁹ For an excellent critique of the EIA process and freedom of information in Malaysia see chapter 5 in Article 19 and Centre for Independent Journalism (2007).

¹⁰ National Forestry Act 1985 (State of Selangor) Enactment.

Access to Information and Awareness Raising

The first thing to be noted is that there is no freedom of information law in Malaysia. This by itself would not prove to be a big problem, but the laws that do exist are actually an anathema to access to information. The most obvious of these is the Official Secrets Act 1972,¹¹ a draconian law which allows any official document to be declared an official secret, regardless of its substance.

Once a document is declared a secret then possession of it and its dissemination becomes an offence punishable by a jail term. Conversely, however, there is no punishment for government officers who do not release information which is not classified as an official secret.¹²

Added to this is a culture of secrecy amongst government agencies that is not conducive to obtaining information. For example, local authority council meetings may be open to the public (with an option of closing them), but local authority *committee* meetings work with a presumption of secrecy.¹³ Many decisions are made in secret with residents in an area discovering them only by chance, through the media or when they notice work starting in their area.¹⁴

Progress has been made in this area and once more it is in Selangor. The state government has introduced a Freedom of Information law and currently the citizens of Selangor have greater access to information than those living in other parts of the country. The system introduced by the law establishes a mechanism where information can be demanded by the public and, short of matters regarding national security, the presumption is that the requested information will be made available. It is still premature to emphatically state that this law is effective as it was only introduced in 2011; however, there is room for optimism that it will provide a useful tool in paving the way to greater openness.¹⁵

With regard to the state's responsibility to facilitate participation in awareness rising, the question is: what is meant by 'awareness raising'? If we take it to mean the awareness that one has certain rights then it is clear that this is not something which is undertaken by the state with any real

¹¹ Laws of Malaysia, Act 88.

¹² *Ibid.*: 38.

¹³ Section 23, Local Government Act, Laws of Malaysia Act 171.

¹⁴ *Ibid.*: 35.

¹⁵ Freedom of Information (State of Selangor) Enactment 2010 came into force in April 2011.

enthusiasm. The right to comment on structure and local plans as found in the Town and Country Planning Act sections 9 and 13, for example, is advertised in newspapers. These are small advertisements which can quite easily be missed. It is doubtlessly easier for the authorities than the old practice of informing residents by mail, but its efficacy leaves much to be desired.

Access to Judicial and Administrative Remedies

The main problem here is the issue of *locus standi* (the right to bring a case to court). *Government of Malaysia vs Lim Kit Siang, United Engineers (M) Berhad vs Lim Kit Siang* [1988]¹⁶ and *Abdul Razak Ahmad vs Kerajaan Negeri Johor* [1995]¹⁷ have effectively limited the possibility of public interest litigation. To prove that one has standing to bring a case to court the plaintiff must show a very clear relationship with the defendants or some special damage affecting him. This requirement makes public interest litigation very difficult; a concerned NGO, for example, will not have the requisite standing.

In the *Lim Kit Siang* case, Mr Lim, as the leader of the opposition, brought a case to court challenging the legality of the proposed North–South highway. His grounds for *locus standi* were that he was a rate-payer, a road-user and the leader of the opposition. It was held that unless a more direct relationship could be proven, for example through being a shareholder in the defendant company, then he had no standing.

Things took a turn for the ridiculous in the case of *Ketua Pengarah Jabatan Alam Sekitar & Anor vs Kajing Tubek & Ors*.¹⁸ In this case a group of indigenous villagers in the state of Sarawak were claiming that their right to make comments on an EIA report about a dam that was going to cover their ancestral home with water was unlawfully taken away from them. On the issue of standing, it was held that this group had shown no special interest above and beyond their fellow villagers and therefore they had no standing. Furthermore, although their rights were taken away from them (here being a broad interpretation of the ‘right to life’ including a right to culture and its resultant lifestyle), such rights were taken away ‘lawfully’ and therefore this was insufficient grounds for standing.

Now the issue of standing becomes the first line of defence for the defendant in an environmental case. With judicial precedence being archaic

¹⁶ 2 MLJ 12.

¹⁷ 2 AMR 1174.

¹⁸ [1997] 3 MLJ 23.

and retrospective, any judicial avenue is truly at the mercy of the judge, as will be illustrated in the case study below.

Case Study: The Broga Incinerator

This is a case study which goes some way to reflect the problems faced by citizens in taking environmental action. It is the result of an interview conducted on 13 May 2007 with Alice Lee whose home town is Broga, a small village in the state of Selangor. Alice was central in the residents' opposition to the plan to build an incinerator in their area.¹⁹

The local authority did not tell the residents about the plan to build the incinerator in Broga. Instead, they learnt about it through the Chinese language newspapers in November 2002. The story was that an incinerator which was originally to be constructed in Puchong was to be built in Broga after the residents of Puchong objected (a fact that was not covered by the media when it happened).

Initially the reaction was one more of distaste rather than outright concern over the issues of dioxin emissions and the associated health risks. The villagers of Broga were small-scale farmers and their thoughts were more along the lines of not wanting garbage being brought to their village. Furthermore, if the people of Puchong had objected to it, then it couldn't be a good thing.

The nearby middle-class residential area of Taman Tasek Semenyih had begun a signature campaign to oppose the incinerator. It was through this signature campaign that Alice got involved in direct action; she and a neighbour went door to door to collect signatures. They also investigated incinerators on the internet and when they learnt of the criticisms against them, made flyers with simply written information, which they distributed via the local newspaper delivery man, slipping a leaflet in each paper.

Alice then went to a local NGO called Suara Rakyat Malaysia (SUARAM, Voice of the Malaysian People) to get advice, and was told that pressure should be applied to ensure that the Department of the Environment would require the project proponents to conduct an EIA. A press conference was held in the local town hall and a meeting with the DOE was arranged with the help of the Malaysian Human Rights Commission (SUHAKAM). Following this, the EIA process was started and valuable time was gained.

The EIA report was passed, but with conditions. The villagers'

¹⁹ For further reading see Access Initiative Malaysia (2011).

understanding of the report was that the project was going to be built in a water catchment and that dioxins are a potential danger to health (this was of particular concern to the Broga villagers as they plant fruit trees). The conditions were not revealed to the residents, but apparently they were connected, not with the issue of the water catchment area and the danger of the dioxins, but with the positioning of the plant being on too steep a slope. New plans were drawn and a second EIA was commissioned.

However, before the second EIA was approved land-clearing activities began and the residents informed the police and Forestry Department to get the work stopped. This was a temporary respite as the second EIA was approved and land acquisition notices were sent to the villagers.

Feeling they had no other option (requests to meet the Chief Minister and the Minister in charge of local authorities failed), they took the case to court with Alice as the plaintiff. They were advised to bring the case to court early before work started because if they obtained an injunction after work had begun they might be liable to pay very high costs for the interruption to the construction work.

The suit sought to obtain an order from the court compelling the defendants (the DOE, the Land Office and the Chief Minister of Selangor) to answer questions such as the cost of the project, its financing and the reasoning behind the approval of such a project in a water catchment area.

As expected, the first line of defence was that Alice had no *locus standi*, not being an actual land owner in Broga. Fortunately the judge was unwilling to allow this to stop the hearing and, instead, required Alice to offer some evidence of her relationship with the area (which was basically her family ties to the land there). Before the case could reach a conclusion, however, the defendants declared that the project was cancelled.

Conclusion

It is not a completely bleak picture in Malaysia. Efforts have been taken to improve citizen knowledge as well as making certain information more accessible. For example, the Department of Environment regularly updates information about the air quality of the country on its website. In this way citizens have access to vital knowledge that they can use according to their needs. There is still a long way to go, however.

For citizen participation to be meaningful in Malaysia, it is submitted that the following actions should be taken. First and foremost, a duty to give reasons must be incorporated into the legislative avenues for public participation. The EIA process and the TCPA must make it compulsory for

reasons to be given and made readily available to citizens once a decision has been taken. Only in such a transparent system can poor decision making be checked and authorities will not have a free hand to simply ignore the voice of the people.

This transparency has to be extended to local government. These are the bodies with the most influence on the day-to-day environmental concerns of the people. And yet they are appointed bodies because local elections ceased in the late 1960s. Without the threat of the ballot box, it is unlikely that local government will be sensitive to the needs and demands of the people whom they are supposed to serve.

There is a culture of secrecy in Malaysia which can only be broken with a freedom of information law. A review of the Official Secrets Act has to be undertaken and the vast discretionary and unchecked powers it gives to the government curbed. Added to this, a law that enshrines the right of citizens to obtain as much information as possible (within the normal standards²⁰ of national safety) would go some way in ensuring that the necessary information can be obtained. It is hoped that the Freedom of Information Bill of Selangor is passed and other states also create their own laws.

Finally, there has to be judicial courage in breaking away from the current stand on *locus standi*. It would be most welcome if the words of dissenting judge Abdoolcader in the *Lim Kit Siang* case was heeded and used as a starting point for the country's legal system to rejoin the 21st century: 'The principle that transcends every other consideration must *ex necessitate* be that of not closing the door to the ventilation of a genuine public grievance, and more particularly so where the disbursement of public funds is in issue, subject always of course to a judicial discretion to preclude the phantom busybody or ghostly inter-meddler.'²¹

What role can Principle 10 play in this journey towards meaningful citizen participation? The most obvious is that the Rio Declaration and all its principles are soft law and therefore not legally binding, unlike the Aarhus Convention 1998²² which, although applicable only in Europe, can be seen

²⁰ Note that I mention 'normal standards', not 'Malaysian standards', of what constitutes national safety. The latter has been interpreted to mean that anything the government says is a matter of national safety is a matter of national safety.

²¹ *Government of Malaysia vs Lim Kit Siang, United Engineers (M) Berhad vs Lim Kit Siang* [1988] 2 MLJ: 25.

²² Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters. United Nations Economic Commission for Europe website <http://www.unece.org/env/pp/documents/cep43e.pdf> (accessed

as a model for an effective international law for environmental justice.²³

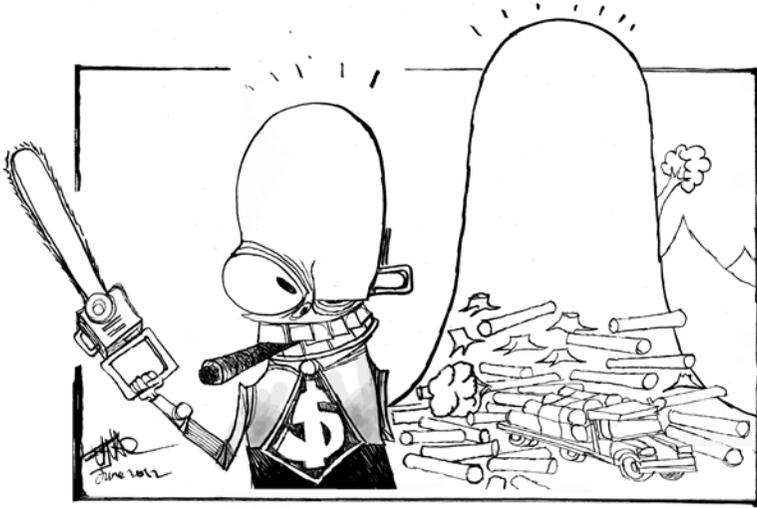
This being the case, what then can be done? There are, after all, no signs that the ASEAN region is heading towards an Aarhus Convention. However, soft law has a role to play, and that is norm creation (Birnie and Boyle, 1992: 26). Such norms need not be limited to the international stage; they can also be used as a focal point to create norms which in turn can be hardened into laws at the national level.

What must be remembered is that Principle 10 is a principle, it is an ideal and it is one that the Malaysian government has seen fit to put its name to. It is useful because it is the moral obligation of the government to try to live up to the aspirations of the said principle. As a rallying cry for local environmental activists, it is as good a place as any to start when calling for environmental justice.

However, the most important lesson that can be learnt from recent developments in Malaysia is that for the call for environmental justice to be heeded, and for any form of democratisation to take place in the governance of the nation, including environmental matters, there is a need to force the hands of politicians. The reason why the state of Selangor has passed such a progressive law freeing up state government information and including the public in certain forestry decision making is because it is currently in the control of the Pakatan Rakyat (People's Coalition) which won the state away from Barisan Nasional (National Front) in the 8 March 2008 general elections, and such a law was part of their manifesto. Thus, ultimately, it is submitted that the democratisation of official decision making in Malaysia needs the development of democracy in general in order for it to occur.

21 May 2007).

²³ Or in the words of Kofi Annan; 'Although regional in scope, the significance of the Aarhus Convention is global. It is by far the most impressive elaboration of principle 10 of the Rio Declaration on the environment held by public authorities. As such it is the most ambitious venture in the area of environmental democracy so far undertaken under the auspices of the United Nations.' United Nations Economic Commission for Europe website <http://www.unece.org/env/pp/> (accessed 21 May 2007).



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Malaysian Literature

An Exercise in Creative Limitations

Andrew Ng Hock Soon

Let me begin with an analogy about a Malaysian film, simply because as a medium for aesthetic and creative expression, films bear many similar problems and circumscriptions encountered by the literary scene here. This analogy will also help explain the significance of my title. Malaysia saw the return of horror films in 2004, with the release of Shuhaimi Baba's *Pontianak Harum Sundal Malam* (*Pontianak of the Tuber Rose* or *Pontianak HSM*), after thirty years' hiatus due to State prohibition on the production of any local filmic material that depicts the supernatural (although this condition is not imposed on fiction). The *pontianak* is a creature much feared throughout Southeast Asia;¹ in Malaysia's popular culture it has been staple throughout its film history. Beginning in 1957, when Malaya gained independence from the British, and for the next seventeen years (the last *pontianak* film was made in 1974), *pontianak* films consistently graced local cinemas. However, the country's increasing Islamisation during the 1970s finally buried this creature because it obviously belonged to a belief system that was alien to, and contradicted, Islam and hence must be marginalised or repressed. Along with it went black magic, witchcraft and a host of supernatural beings that reflected the country's animistic traditions.²

¹ It is known as *kuntilanak* in Indonesia, *nangnak* in Thailand and *tiyanak* in the Philippines.

² *Pontianak* is usually translated as vampire, although this is erroneous and largely the result of Western horror's influence on the local film industry. Altogether there are around eleven *pontianak* films made in Malaysia, which suggests the enduring popularity of this creature in the cultural imagination. In fact, the now lost *Pontianak* (1957) was the country's first film.

But with Malaysia's endeavour to project itself as a moderate, modern Islamic nation in the 1980s, and perhaps due to the popularity of Japanese and Korean horror (respectively, J and K horror) during this period, as well as the increasing influence of independent film-making in Malaysia, the government finally lifted its ban in 2004. It allowed Shuhaimi Baba's work to be produced and screened, but not without imposing a list of criteria which the film must first satisfy. These included the disallowance of any scenes: (a) with graphic horror or the dead rising from the grave (common in *pontianak* films); (b) deemed too frightening; (c) depicting possession by an evil spirit; and, more importantly, (d) the film must conclude with a moral imperative, preferably one carrying Islamic overtones (e.g., goodwill triumphs, returning to Islam is the victim's only salvation). As many of these prohibitions are against features characteristic of horror films, the director's task is certainly a daunting one. *Pontianak HMS* went on to become an overwhelming success both locally and internationally,³ a testimony to Shuhaimi's directorial accomplishment. Even more remarkable is the way in which she successfully circumvented compliance with State directives without making it obvious in the film. For example, there are no overt references to Islam throughout the film, although a 'moral' element is evident. Yet, this moral is not defined against the *pontianak*, but by her, because the narrative clearly establishes the creature as sufferer and not perpetrator of evil. Possession scenes are framed in a dream-like sequence, which renders it difficult to ascertain if possession is actually occurring, or if the possessed victim is merely in a state of confusion. And, perhaps a lesson derived from J and K horror, much of the horror in *Pontianak HMS* is apprehended suggestively, ambiguously and/or vaguely, rather than directly. In this way, while conforming to government regulations, the element of horror in the film actually becomes even more heightened, and thus more discomfiting.

Pontianak HMS is illustrative of what I mean by 'creative limitations' in my subtitle, a phrase that should be appreciated for its paradoxical meanings. Because of the country's complex social structure – one that is crisscrossed and defined by race, religion and political affiliations – the government is motivated to constantly introduce measures that apparently safeguard national security and reinforce the supremacy of the Malay

³ It won several local and international awards in categories including best editing, best director and best musical score. For details, see http://www.pesonapictures.com.my/2010_ppsbwebsite_products.html ("phsm" (accessed on 7 September 2011)).

majority and its religion, Islam.⁴ One primary target of these measures is the arts, whose propensity to be metaphorical, contradictory and subversive has been viewed as necessitating strict State monitoring and control. As noted, the ban on horror is an obvious example, since the film industry in Malaysia is parked under the Ministry of Culture, Arts and Tourism; licences to make films for national screening must be obtained from it. The insidiously and vaguely phrased Sedition Act (1948) poses a further problem for local creative talents, who must tread very carefully when producing and performing a work of art so that it does not inadvertently express something 'sensitive' and therefore forbidden. Punishment for transgression ranges from censorship and/or banning of one's work, a fine, or confinement for an indefinite period of time in a detention camp under the Internal Security Act (1960), one of the country's most controversial laws. Yet, as my discussion of *Pontianak HMS* attempts to demonstrate, it is these limitations imposed by the State that have made the art scene a surprisingly vibrant one, because artists must find alternative ways to express controversial, sensitive matters, while appearing to obey the law. Having to work within an environment heavily circumscribed by a repressive ideology does not necessarily mean that creativity is diminished. In fact, I would argue that creativity can actually be *enhanced* by such a condition.

This vibrancy, I must qualify, is not always apparent, largely because local talents are few, and those who dare worry ideological boundaries even fewer. While the supernatural is no longer a taboo issue in popular culture (although it must be carefully approached), there are still many things which cannot be discussed or written about in this country. The rest of this essay briefly looks at some of them in Malaysian literature. Here, I consider works written in English or Malay since there is a serious dearth in literature written in Chinese and Tamil by Malaysians.⁵ Whenever necessary I will mention works that have been singled out for controversy either because they have allegedly 'transgressed' the law or because they remain tacitly encouraged by the State even in light of possible sedition, or because they boldly expose complications that could undermine certain stakeholders of the nation. I will also note works which, through subtle and clever manipulation of the country's ideological mechanisms, have escaped censorship and helped break new creative ground in the nation's literary

⁴ In Malaysia, a signifier of Malayness is that one is Muslim; as such, by law a Malay is *ipso facto* a Muslim, and conversion is both disallowed and a punishable offence.

⁵ Again, the country's political situation of the 1970s was the main reason for this. For a detailed discussion, see Tham (2001).

scene. Broadly, the issues that must be approached with great care by the arts can be divided into two main categories: (1) issues that contravene the Sedition Act, and (2) issues that question or undermine Islam and/or the Malay way of life. The lines that separate these two categories, however, are porous, fundamentally because the relationship between race and religion in Malaysia is a deeply symbiotic, and therefore contentious, one. To allegedly insult Islam, for example, can be construed as insulting the Malay race; this, according to the Sedition Act, is akin to ‘promot[ing] feelings of ill will and hostility between different races or classes of the population of Malaysia’ (section 3[1e]), which legally then becomes a punishable offence. Clearly, the differences between the two categories are often by degree rather than by kind.

Interpretation Problems: The Sedition Act (1948)

When the Sedition Act was introduced in 1948 it was meant as a preventive measure against racial unrest and to ensure the supremacy of Imperial authority. Revised in 1969 after the country’s only widespread racial riot, this act has since been used by the government, sometimes indiscriminately, to legitimise the apprehension and incarceration of various individuals deemed as national threats, and the repression, censorship and banning of materials perceived as endangering peace and unity. The problem with the act, however, is that many of its terms remain highly ambiguous and open-ended, making interpretation a matter of will-to power. Some of the seditious ‘tendencies’ as outlined in the act include:

(Section 3:1c) to bring into hatred or contempt or to excite disaffection against the administration of justice in Malaysia or in any State.

(Section 3:1e) to promote feelings of ill will and hostility between different races or classes of the population of Malaysia.

(Section 3:1f) to question any matter, right, status, position, privilege, sovereignty or prerogative established or protected by the provisions of Part III of the Federal Constitution or Article 152, 153 or 181 of the Federal Constitution.⁶

Article 152 refers to the status of the national language (Bahasa Malaysia). In 1967 Malay was constitutionally recognised as the national language,

⁶ Six tendencies are outlined altogether. The 1948 Sedition Act of Malaysia can be viewed at <http://www.agc.gov.my/Akta/Vol.%201/Act%2015.pdf> (accessed on 12 September 2011).

a move which subsequently saw the minoritisation of other languages (English, Chinese and Tamil) and the designation of creative works written in them as inferior. Article 153 relates to the accordance of privileges to the Malays, who consider themselves Bumiputeras, a term which literally means 'sons of the soil'. These privileges cover political, social and economic ones; examples include subsidised housing, quota systems that guarantee education and occupational opportunities, and government contracts offered to firms owned by Bumiputera entrepreneurs. Finally, Article 181 pertains to the sovereignty of the Malay rulers. If the tendencies established by the Sedition Act are to be articulated at all, this must be done constructively and with the aim to correct (Section 3:2b) 'errors or defects in any Government or constitution as by law established', or (Section 3: 2c[ii]) 'to point out, with a view to their removal, any matters producing or having a tendency to produce feelings of ill will and enmity between different races or classes of the population of the Federation.' But because the act is sometimes dependent on capricious interpretations by the State, anxiety over being labelled seditious often overrules any goodwill towards encouraging national improvements.

The fact that Section 3:1e can contradict Section 3:1f, and often has, remains an insoluble problem, despite their apparent paradox. For it is often the case that the very subscription to the latter precisely causes the former, especially during periods of potentially major political shifts (such as election time) in the country. Cross-cultural relations are an area that has caused significant consternation for Malaysian writers, especially non Malay-Muslim ones, making it difficult to cross religio-racial lines in their work for fear of offending others. As a result, writers prefer to limit their creative oeuvre to expressing issues specific to their religion and ethnic communities to avoid accidentally causing 'ill will and hostility between [the] different races', which can result in a writer becoming liable to sedition. The reality of this unspoken apprehension, especially in the 1980s,⁷ was so entrenched

⁷ Space prevents me from discussing the situation in Malaysia during the 1980s in any detail. Suffice to say that this period saw an increasing Islamisation of everyday life across the social fabric of the nation due to the profound threat the Islamist opposition party, Pan-Malayan Islamic Party (PAS), posed to the ruling National Front (Barisan Nasional (BN)). To counter PAS's ascendancy, Prime Minister Mahathir Mohamad tacitly politicised Islam and instilled its values and principles in every facet of Malaysian life. This, understandably, caused considerable consternation amongst the other religio-ethnic groups. Mahathir, however, was able to prevent racial discord by promoting an Islam that was moderate and modern, and cultivated the 'Look East' policy, which purportedly encouraged Malaysians to turn

that writers strategically avoided confronting various cross-cultural issues until recently. For example, when questioned in 1987 as to why he only set his stories and characters within his own ethnic and religious community, K.S. Maniam, one of Malaysia's most prolific writers in the English language, justified his stance this way: '[My] stories, novel and play portray the Indian community in Malaysia. Being of Malaysian Indian origin myself, it seems only natural that I write about my own community. It is commonly accepted that a writer writes about what he knows best. That material would stem from his immediate family background, society outside his family and his educational background' (Maniam, 2001: 263).⁸

This is a perfectly legitimate reason, and one to which many creative writers would attest, but in the context of Malaysia, it must also be read as a pretext – one which Malaysians would recognise – to avoid the danger of transgressing certain ideological boundaries. In the Anglophone literature of Malaysia, only Lloyd Fernando (1926–2008) has written novels that depict the country's multiracial and multi-religious feature, and whose main characters are often representatives of the major ethnic groups. Using the omnipotent narrator, Fernando's narratives are searing criticisms of the country's increasing racism, religious bigotry and political corruption. While his first work, *Scorpion Orchid* (1976), concludes on a note that intimates a redemptive future for the country, his second book, *Green is the Colour* (1993), is stark in its omission of such a possibility. That these novels were separated by almost two decades was reflective of the constricting environment during that period for artistic expression, ameliorated some what only in the early 1990s when Malaysia's economy was at its strongest, which in turn helped to create a more relaxed socio-cultural atmosphere. More recent is Chuah Guat Eng's *Days of Change* (2010), perhaps the country's first novel deploying a first-person narrator whose race is distinct from the writer's.

Fernando's novels have entered the literary canon of the country not only for their visionary themes, but also for their inimitable experimental style and, in the case of *Green is the Colour*, its confrontation with the

to Japan as its economic and social role model. It was during this difficult period that the Sedition Act was most heavily imposed. For details, see Jomo and Abdullah (1988); Hamayotsu (2002).

⁸ Among Maniam's works are the novels *The Return* (1981) and *In a Far Country* (1993), the short story collection *Haunting the Tiger and Other Stories* (1996), and the plays *The Cord* (1983) and *The Sandpit* (1990) (collected in *Sensuous Horizons* [1994]).

country's only, if violent, extensive racial riot that occurred in 1969.⁹ Until the early 1990s the riot was a topic altogether banned from discussion and/or publication, but since Fernando's novel – which depicts the situation in a highly stipulative manner, possibly to avoid censure¹⁰ – it has been featured either as a subtext or a direct theme in much contemporary Anglophone Malaysian fiction. Another important contribution to the nation's literary scene by Fernando is his resistance against racial stereotyping that, regrettably, has nevertheless come to characterise much of contemporary Malaysian literature. Local writers may shy away from depicting members belonging to other ethnicities and religions in their work, but when they do – which is rare enough – they tend to perpetuate prejudices with racial profiling that merely serve to reinforce broad generalisations. Chuah's novel, for example, often resorts to stereotypes for her characters, although it is careful to avoid overstating the unsavoury features that are allegedly specific to the different ethnic groups. An even worse scenario that plagues much of Malaysian literature is the stereotyping by writers of *their own ethnic communities*. The narratives of K.S. Maniam and Shirley Lim are peopled with characters who reinforce certain traits commonly – but problematically – associated with particular racial groups, such as the drunken, wife-beating Indian man, the arrogant and abusive upper-class Indian, the demure and/or conniving Chinese wife and her unscrupulous businessman-husband.¹¹ In the only collection of short stories by Karim Raslan (*Heroes and Other Stories*, 1996), the middle-class Malays (parodically termed *bumigeois* by the poet Salleh ben Joned) are consistently lampooned for their adultery, greed, bigotry, cowardice and nosiness – almost as though these stories are aimed at demonstrating that *only* such individuals comprise this group. Even the novels of younger authors like Rani Manicka (*The Rice Mother*, 2002) and Preeta Samarasan

⁹ The racial riot (mainly between the Malay and Chinese communities) culminated on 13 May 1969. Its aftermath saw, officially, 196 dead and 409 injured (the majority of whom were Chinese). For a detailed discussion of this tense socio-political climate that subsequently brought about important changes in national policy that are still in effect today, see Comber (1983).

¹⁰ See Ng (2011) for a discussion of Fernando's experimental style.

¹¹ Shirley Lim Geok-lin is a Malaysian-born author now based at the University of California, Santa Barbara, USA where she is Professor in English, and continues to maintain strong ties with her country. A prolific writer, she is known for her poems, fiction, scholarly essays and an award-winning memoir. Her fiction includes *Life's Mysteries: The Best of Shirley Lim* (1995), *Joss and Gold* (2001) and *Sister Swing* (2007)

(*Evening is the Whole Day*, 2008), despite their modern and global outlook, remain entrenched in this unfortunate practice.

Because these writers are foregrounding faults specific to their religio-ethnic communities, the fear of being delegitimised by the Sedition Act is circumvented. Yet, there have been occasions when particular works have deliberately represented racial and religious others in offensive ways, but which remain in circulation because of their apparent historical importance. For example, many pre-independence Malay novels and short stories have become classics in Malay literature today despite their obvious denigration of other races (especially the Chinese). For example, the principal antagonist in the short story 'Anak Dibuat Denak' ('Son Turned Decoy')¹² by the late Ishak Haji Muhammad (familiarily known as Pak Sako, 1909–91), who was made the country's Literary Exponent in 1976 by the Prime Minister, is a Chinese businessman named Tong Sam Pah (Malay for garbage bin) who conspires with a corrupt member of royalty to rob the sons of the soil of their land. Indeed, nefarious Chinese characters identifiable by insalubrious names such as Tai Ku Ching (cat shit) and Poh Ki Mak (mother's private parts) are a trademark of fiction from this period but, notwithstanding their insulting tone that would otherwise mark them out as seditious, these works are still published today. More worryingly, some of them are compulsory reading for students who study Malay literature in school.

One literary work that has recently attracted much controversy is the novel *Interlok* (Interlock) by the current National Laureate, Abdullah Hussain. Although published in 1971, it was its inclusion in the Malaysian secondary school Malay Literature syllabus in 2010 that resulted in contention, with members from the Malaysian Indian Congress (MIC), a member of the ruling coalition, Barisan Nasional¹³ (National Front), demanding its removal, allegedly for two reasons: (a) because the novel deploys terms like 'pariah' and 'blackie' to connote the Indian characters; (b) because it depicts the caste system which, according to MIC, is no longer practised amongst Malaysian-Indians, and whose inclusion would thus be unfair and offensive to this ethnic group. MIC's entreaty ultimately failed to dislodge the text from the school syllabus but – unlike the pre-independence fiction discussed above – *Interlok* does not set out to denigrate the nation's Indian minority, but is actually steeped in historical accuracy. Moreover, the

¹² Collected in *Cerpen-cerpen Pak Sako* (The Short Stories of Pak Sako) (1991).

¹³ The other two major parties in the coalition are UMNO (United Malays National Organisation) and MCA (Malaysian Chinese Association).

claim that the caste system is no longer practised in Malaysia is certainly a debatable one. It may be true that this system is no longer *overtly* adhered to by Malaysian Indians; however, it is still maintained by being covertly and strategically redesignated as 'class'.¹⁴

However, my fundamental point in this matter concerning the nation's literature remains: although the works mentioned above have clearly 'promote[d] feelings of ill will and hostility between different races or classes of the population of Malaysia', the State refuses to censor or ban them. Instead, they are defended by the State as superlative literature, and their publication and inclusion in school syllabuses justified as documents of historical significance. Whether such sentiments are meant for the right reasons or otherwise, the worrying fact is that these texts, if carelessly handled, can reinforce racial stereotyping and worsen ethnic relations in Malaysia. In fact, from the discussion proffered, it seems that Malay writers can exercise certain liberties disallowed to a Chinese or Indian writer. To my knowledge, no creative writer in Malaysia has ever been convicted of sedition; yet, I do not see this as an encouraging sign, for it suggests an entrenched racism and unstated anxiety that regulate the country's literary scene. Because so much can be interpreted as seditious, writers not only tend to stay within their religio-ethnic community in their writings, but avoid altogether issues deemed 'sensitive' and potentially provocative by the State.

Literature, Islam and the Malay Way of Life

The surest way for a local writer to avoid censure is to stay clear of religious and racial themes. Yet this is not easy because race and religion intersect every aspect of daily life in Malaysia, and are fundamental markers of identity. An alternative approach that many non-Malay writers employ is to downplay their Malay characters in their work, which correspondingly results in spare treatment of Islam. A distinct example is *Flowers in the Sky* (1981) by the late Lee Kok Liang (1927–92). While an Indian doctor who professes Christianity and a Buddhist monk are its main characters, and while one of its subplots involves an elaborate incident related to the Hindu faith, Malay characters (actually, there is only one) merely appear as cameo, and Islam is not mentioned at all. For non-Malay writers, this is perhaps the safest and surest way to avoid unwittingly offending ethnic others. The tacit assumption in such an approach is that ideological borders that surround, especially, the Malay-Muslim symbiosis are to be avoided altogether, for the

¹⁴ For a useful discussion, see Ramasamy (1984).

last three decades have shown that the Sedition Act is most often evoked against those who question or challenge them, and who are from a different religio-racial background.

For Malay writers, however, discussing Islam is decidedly inevitable and therefore a major concern around which they must tread warily. Another corresponding concern is the care Malay writers must exercise when portraying their community and its way of life (*adat*). Initially different from, and even contending with, Islam, since the 1980s *adat* has been gradually merged with, and subsumed under, the direction of the religion to the extent that they have now become inextricably linked. According to this system, Malay-Muslim men are governed by reason (*akal*), while women are motivated by desire (*nafsu*), especially erotic ones. By logical implication, this system directly plots women as inferior to men. Due to their carnal propensities, women must relinquish their morality to the stewardship of the menfolk. They must be especially watchful in guarding their chastity and are 'required to be bashful and modest' at all times (Ong, 1995: 166). Correspondingly, the assertion of masculine prerogative for the Malay-Muslim man relies 'to an important degree, though not entirely, on [his] economic power and moral authority over women in his household' (Ibid.: 165–6). Upholding the precepts of this system ensures communal well-being, while undermining it will result in chaos. Because *adat* is heavily premised on a binary logic that is gendered, matters involving gender roles and sexuality are especially targeted for policing and regulation. And under Islam, *adat's* precepts become part of the Syariah law's regulation which, as Maznah Mohamad's essay has shown, merely serves to entrench even further the gender a symmetry already operating within a highly patriarchal order that characterises Islam in Malaysia.

Writers who focus on the Malay community in their works must be extremely vigilant when representing *adat*. Attacking it is possible only if the character implicated is distinctly villainous, and whose end must either come in the guise of a punishment (including death) or rehabilitation back to the hegemonic order. A male character driven by lust must be held up as an object of ridicule and criticism by the text, while a female character who exemplifies reason and pragmatism is only praise worthy insofar that she also submits herself to Islam, and permits guidance from her moral betters, who are often men. In this way, the configuration of her rationality will never pose a challenge to the hegemonic order, but will instead be asserted to serve and reinforce it.

To a significant extent, the constraints placed on Malay-Muslim writers are considerably greater than those experienced by their non-Malay

counterparts. Issues and themes anathema to Islam in Malaysia such as sexual relations, gender-crossing, polygamy, the supernatural (black magic, ghosts, possession), and religious conversion (unless it involves conversion *into* Islam, or a criticism against apostasy), to name a few, must be handled with discretion and care and, more importantly, must subscribe to the teachings and guidance of Islam. A literary work that fails in this respect, whether purposefully or otherwise, can potentially be censored or banned, and its writer subjected to penalty. Writers must also be wary when raising theological or doctrinal matters in their fiction, for any perceived contravention of the State's religious authority's interpretation of the Koran and the Hadith can be construed as blasphemy. If a non-Malay writer is implicated, she would need to contend with the civil court for violating the Sedition Act; if the writer involved is a Malay-Muslim, on the other hand, she would need to face the Syariah court, which governs matter directly pertaining to the faith (via Syariah laws).¹⁵ Moreover, that a Malay writer can default on both civil and Syariah laws is certainly also a real possibility (for example, a writer in Selangor who uncritically discusses non-Malay conversion into a questionable form of Islam can violate both the Sedition Law and several sections in part 3 of the Syariah Criminal Enactment/Enactment 9 of the Syariah laws in Selangor).¹⁶

Again to my knowledge, there has never been a writer who was tried and punished by the Syariah court for contempt against Islam. This is unsurprising as local writers are extremely circumspect in their representation of the religion. The same cannot be said, however, about the respect accorded to the Malay way of life. Two Malay writers, the bilingual poet Salleh ben Joned, and the novelist Shahnon Ahmad have, at various points in the nation's literary history, stirred disquiet amongst Malay (and possibly even non-Malay) readership through deliberate use of vulgarity in their work, with the principal aim of unnerving their readers. Since modesty and good manners are values associated with *adat*, these writers' exploits are nothing short of offensive. Salleh, for example, frequently used words like 'fuck' and 'bastard' in his debut collection of poems (*Sajak-sajak Salleh*, 1987), and Shahnon Ahmad, respected as a literary giant in Malaysia, shocked the nation when he published, in 1999, a political novel entitled

¹⁵ Punishment according to Syariah laws is decidedly limited: it includes fines, jail terms of no more than three years, and/or six strokes of the cane.

¹⁶ Each state in Malaysia has its own version of the Syariah laws, which has resulted in many inconsistencies and problems. For details of the different Syariah laws operating in Malaysia, see <http://www.esyariah.gov.my/>.

Shit. Controversy inevitably ensued in both instances and, although Salleh and Shahnon Ahmad were not indicted in any way, their literary careers have nevertheless suffered serious drawbacks. Salleh's work has more or less become neglected,¹⁷ while Shahnon Ahmad's popularity has since been significantly dampened.

Due to the anxieties surrounding the authorship of Malay literature, it is perhaps unsurprising that the most popular genre in contemporary Malay fiction is romance, although one bereft of any overt sexual representations and over-determined by Islamic precepts. Its tried and tested formula, and the ease into which religious polemics can be slipped, make this genre especially favoured by younger Malay writers who are still not ready to tackle headier themes like politics and nationalism.¹⁸ Another popular genre in Malay fiction is the detective novel. Here, the rational capacity of the Malay-Muslim male can be capitalised on (a female detective or principal enforcer of law is unheard of), whilst allowing potentially sensitive issues such as high-level corruption and the abuse of political power to be raised. Religious fiction is also another favoured genre, especially amongst the more established writers. Several works belonging to this genre have received popular and critical acclaim for their treatment of highly explosive issues such as apostasy in Faisal Tehrani's (the pen name of Mohd Faizal Musa) *Tuhan Manusia* (2007, God of Men), and female leadership in Islam in Fatimah Busu's *Salam Maria* (2004, Hail Maria), whose title itself is already potentially controversial. In this story, a woman opposes hypocritical religious leaders and overcomes various adversaries to become the spiritual leader to a group of marginalised women (due to age or disability, for example) in an ersatz haven deep in a jungle. Trenchant in its criticism against a religion and a government that operate on double standards when it comes to gender, *Salam Maria* is also a profoundly philosophical work that meditates on matters pertaining to religion, ethics, community and identity.

There are also writers who have learned to negotiate with the limitations imposed on them through the use of irony in their work. Irony's ability to singularly contain opposing meanings is a useful literary device to simultaneously affect subversion of, and conformity to, the status quo.

¹⁷ There has recently been a revival in interest in this poet's work. *Sajak-Sajak Salleh* was reprinted in 2008, while a new collection of his poems, *Adam's Dream*, was published in 2007, both by a local press.

¹⁸ Examples include *Sambutlah Cintaku* (Celebrate My Love) by Bikash Nur Idris, *Sinar Kasihmu* (The Light of Your Love) by Mohd Hizam Haji Ali and *Kuntum Kasih Berserakan* (Love Bud Scatters) by Mohd Kassim Mahmud.

This is especially important when a writer wants to expose the fault-lines of certain ideological constructs, but in a way that seemingly maintains adherence to them. Unsurprising is the fact that many of these writers also deploy comedy as the main mode of story-telling. By inviting laughter, the writer strategically coerces the reader to agree with her viewpoint; this laughter will implicate the reader in the situation as well. In this way, not only does the story succeed in making its critical point, it pares potentially offensive representations down by ridiculing or distorting them. My point on creative limitations at the start of this essay is especially pertinent to this group of writers and their works. Che Husna Azhari's 'Mariah' (a short story written in English),¹⁹ Karim Raslan's 'Neighbours' (short story),²⁰ and Huzir Sulaiman's *Atomic Jaya* (play) are noteworthy cases.²¹ 'Mariah' presents the contentious issue of polygamy in a light-hearted, non-judgmental manner. While the story evidently satirises and criticises the imam (religious leader) who, despite being married to a good and loyal woman, decides to take another wife, its ending seems to reinforce the right of Malay-Muslim men to practise polygamy. Yet, its ironic tone renders such a conclusion suspect: the imam has clearly undermined his masculinity by submitting to *nafsu*; his wife, on the other hand, is the embodiment of *akal*: after careful deliberation and much prayer, she decides to grant her husband's request and thus gains, in the eye of the villagers, greater nobility and stature. An even more important, if curious and therefore ironic, feature of the story is its title, which is the name of the third party in question: a village beauty who is also excessively sensual and desirable. By drawing attention to this woman, the story is suggestively instigating that the 'protagonist' in this comedy of manners is, in the end, neither the imam nor his wife at all.

Central to Karim Raslan's 'Neighbours' is the juxtaposition between the morals of a Muslim man and his Muslim neighbour, an upper middle-class woman. The text strategically channels the reader's identification to the man, who is portrayed as pious, neighbourly and personable, while establishing the woman's undesirable qualities that are, arguably, also the product of her class: that she lacks common sense and propriety, and is nosy and materialistic. Only at the end of the story does the reader learn that the man is actually homosexual, but its moral tenor remains focused on the woman. In this way the story ventures into otherwise forbidden territory

¹⁹ Collected in *Melor in Perspectives* (1993).

²⁰ Collected in *Heroes and Other Stories* (1996).

²¹ Collected in *Eight Plays* (2002).

in Malaysian literature, but displaces it as a thematic concern through persistent emphasis on the woman's moral defect. Not only is homosexuality a non-issue in this story, it is also the catalyst that finally brings the woman to her senses and helps her to see the error of her ways. Karim's ironic shift is deft, but unlike Che Husna Azhari's irony in 'Mariah', it seems almost pointless. Although it reinforces the tale's criticism against *bumigeois* pretensions, at the same time it also mutes an issue of even greater concern. Admittedly, Raslan's inclusion of a homosexual as a major, redemptive character is a bold step not only because it is unprecedented in Malaysian literature, but also because the homosexual act is a crime punishable by both civil and Syariah laws in Malaysia. Yet, it begs the question of why a homosexual man is featured at all, for a character who is criminal, poor, uneducated, or even non-Malay, could have served the story equally well (or better).²²

A stark contrast to Che Husna Azhari and Karim Raslan's light-hearted comedies of manners is Huzir Sulaiman's biting and highly entertaining satire, *Atomic Jaya*. A play that lampoons many issues deemed sensitive in Malaysia, *Atomic Jaya* adroitly drives home its trenchant criticisms against racism, political corruption,²³ misplaced and misdirected national goals²⁴ and high-level irregularities through the use of slapstick techniques, a surreal – almost non-existent – backdrop and a clownish cast in order to appear nonsensical. This clever strategy directly obfuscates the play's attack against the ideological status quo; offensive and seditious materials are cleverly disguised in comic garb so that the laughing audience becomes implicated by, and therefore complicit to, the play's message. In my view, however, the play's fundamental strength is its ability to balance comedy and terror: while clearly hilarious throughout, the play is also reminding the viewers that the nation is possibly heading towards an impending apocalypse if pressing matters are not addressed in a spirit of unity and peaceful resolve. *Atomic Jaya* remains one of Malaysia's most critically and commercially successful literary works to date and, despite its recentness, has become a canon work in the country's literature.

²² For a detailed analysis of both stories, see Ng (2011).

²³ Especially the development of the Malaysia's Multimedia Super Corridor (MSC), which was launched in August 1996. See Bunnell (2004) for an insightful discussion on Malaysia's MSC project.

²⁴ Such as the drive towards scientific developments at the expense of cultures, traditions and the arts.

Conclusion: The Future of Malaysian Literature

An eminent scholar on Malaysian literature once complained, with regard to the output of local creative works written in English, that when compared to 'the postcolonial writings of other newly emergent nations such as India, South Africa, West Indies or even neighbouring Singapore, the quantum of [Anglophone] writing [in Malaysia] seems puny, if not downright negligible' (Mohammad, 2003: 184). But if the output of Anglophone Malaysian literature is puny, the publication of works in Chinese and Tamil is even more lamentable. And while Malay literature may have, on one hand, gained much ground due to government support and incentives, on the other hand it has also lost much. Malay literature may be in abundance, but the scope of its consideration is significantly narrow, and its quality often uncertain. The tense socio-political climate of the 1970s and early 1980s not only stymied creativity and polarised art, it also resulted in many local talents, such as Shirley Lim and the poet Ee Tiang Hong, leaving the country to find greener pastures where they can freely practise their craft and be appreciated for it. The situation improved slightly in the latter half of the 1980s; as the country enjoyed economic growth there was also greater relaxation in the cultural sphere, thereby encouraging a revivalism in the country's art and literary scenes. This situation continues, thankfully, to this day and some of the country's best works were produced at the turn of the century. While Malay remains the official medium for literary expression of national worth, writing in English has become equally, if not more, enticing to a new generation of local talents who desire the promise of wider readership and market. To date, several works by Malaysians have been published by major international presses: Tash Aw's *Harmony Silk Factory* (2005), Tan Twan Eng's *The Gift of Rain* (2007) and Chiew-Siah Tei's *Little Hut of Leaping Fishes* (2008), are some notable examples. There is also a small, but growing, number of local Chinese language writers whose works, especially short stories, have been well received both locally and overseas (especially in mainland China and Taiwan). The most notable of them is perhaps Huang Jinshu (Ng Kim Chew).²⁵

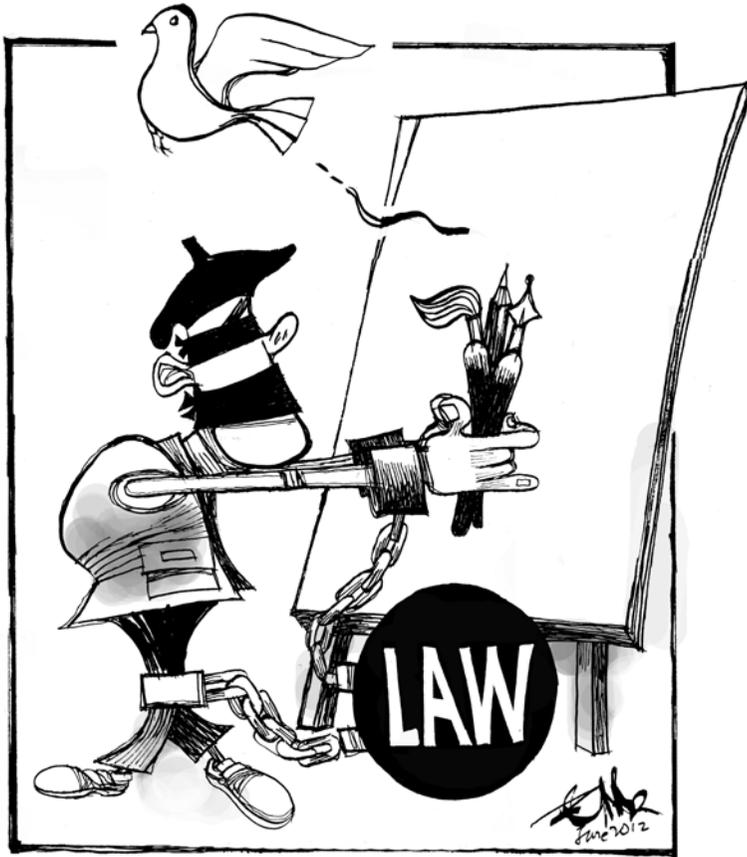
Finally, through advocacy work and human rights activities, the homosexual community of Malaysia is slowly finding a voice; local gay writing remains scarce, but its publication and circulation are no longer an anomaly, although admittedly still limited. In the last few years advocacy

²⁵ For a critical discussion on Malaysian literature written in Chinese (known as 'Mahua' literature), see Chong (2009).

groups such as Pink Triangle, artists and both gay and gay-friendly individuals have organised an event called 'Seksualiti Merdeka' (Sexual Freedom) in celebration of sexual diversity;²⁶ its main aims include educating the Malaysian public about homosexuality and homosexuality-related issues (including homophobia), and celebrating the dignity and contributions of this distinct group within the Malaysian social fabric. During this event, creative writings by gay Malaysians are openly sold. A pioneering work is *Body2Body* (2009), an anthology of gay short stories edited by Jerome Kugan and Pang Khee Teik.

Globalisation, it seems, has undone many of the government's measures in the 1970s and 1980s to straitjacket the arts into conformity to a certain ideological mould. This fact is in itself profoundly ironic because a very feature in society that the State has tried so hard to repress has nevertheless, seemingly without even trying, flourished and slowly developed amidst that repression. Things are evidently looking positive for the country's literature despite the lack of incentives to nurture and encourage talents and the obstacles posed by the country's laws. Many local writers have gained international reputations solely on their talents alone and passion for the art, and with support from family and friends. Tellingly, however, many of them are also no longer based in Malaysia. They remain in diaspora but continue to look homeward in their fiction. Yet, that there are such writers at all is the remarkable point that I wish to emphasise here. With all the coercive tactics the government has instituted in the last three decades, one would think that literature in Malaysia can be nothing more than propaganda and/or decidedly narrow in scope (a condition that has unfortunately become increasingly evident in Singaporean literature). But not even in Malay literature is this the case, as my essay has attempted to demonstrate. Admittedly, good Malaysian literature is rare, but good literature there is, nevertheless. Art naturally abhors censorship, and astute talents will always find ways to circumvent it. As such, limitations on creativity only serve to encourage creative negotiations with limits, thereby enhancing art all the more.

²⁶ Seksualiti Merdeka 2011, scheduled for November, was banned by the government. Activists and advocacy groups condemned the State's decision and lobbied for the recanting of the ban, but to no avail. The ban remained in 2012.



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Chronology of Significant Literary Works Published in Malaysia, 1970 to the Present

Note: This chronology reflects only the most significant publications by authors who write in either Malay or English. It is not meant to be representative, and certainly does not capture the breadth and scope of these writers' oeuvres. Regrettably, I have not included authors who write in Chinese or Tamil because I am unfamiliar with them. 1970 was a watershed year for Malaysian literature because of the formation of GAPENA (Gabungan Penulis Nasional, Federation of National Writers), whose main aim is to re-orientate and establish what would be considered 'Malaysian' literature (which soon became synonymous with literature written in Malay only). Several works deemed canon in the nation's literary heritage that were published before 1970 are included in the list. Many of the Malay writers listed below were national laureates at one point or another.

1971

- Interlok* (Interlock), by Abdullah Hussein (Kuala Lumpur: DBP).
- Salina*, by A. Samad Said (Kuala Lumpur: DBP).
- Sandera*, by Arena Wati (Muhammad Dahlan Abdul Baing) (Kuala Lumpur: DBP).

1972

- No Harvest but the Thorn (Ranjau Sepanjang Jalan [1966])*, by Shahnon Ahmad, translation by Adibah Amin (Kuala Lumpur: OUP).

1976

- Juara* (Champion), by S. Othman Kelantan (Kuala Lumpur: DBP).
- Muzika Uda dan Dara* (The Music of Uda and Dara), by Usman Awang (Kuala Lumpur: DBP).
- Myths for a Wilderness*, by Ee Tiang Hong (Singapore: Heinemann).

Scorpion Orchid, by Lloyd Fernando (Kuala Lumpur: Heinemann).

1977

Sampah (Trash), by Shahnnon Ahmad (Kuala Lumpur: DBP).

1978

Bones and Feathers, by Cecil Rajendra (Kuala Lumpur: Heinemann).

Time and Its People, by Haji Muhammad Salleh (Kuala Lumpur: Heinemann).

1979

Rope of Ash (Rentong[1965]), by Shahnnon Ahmad, translation by Harry Aveling (Kuala Lumpur: OUP).

Hari-hari Terakhir Seorang Seniman (Last Days of an Artist), by Anuar Ridhwan (Kuala Lumpur: DBP).

Bukan Lalang Ditiup Angin (It is not Weeds that are Blown by the Wind), by Noordin Hassan (Kuala Lumpur: DBP).

1980

Crossing the Peninsular and Other Poems, by Shirley Lim (Kuala Lumpur: Heinemann).

Langit Petang (Evening Skies), by A. Samad Said (Kuala Lumpur: DBP).

1981

Degup Jantung (Heartbeat), by Usman Awang (Kuala Lumpur: Pustaka Melayu Baru Press).

Flowers in the Sky, by Lee Kok Liang (Singapore: Federal Publications).

The Return, by K.S. Maniam (Kuala Lumpur: Heinemann; reissued in 1993 by London: Skoob Books).

1982

Salam Benua (Greetings to the Continent), by Usman Awang (Kuala Lumpur: DBP).

1983

Saudagar Besar dari Kuala Lumpur (The Big-Time Merchant From Kuala Lumpur), by Keris Mas (Kamaluddin Muhamad) (Kuala Lumpur: DBP).

Rimba Harapan (The Jungle of Hope), by Keris Mas (Kuala Lumpur: DBP).

1987

Drama-drama Pilihan Sasterawan Negara Usman Awang (Selected Plays by Usman Awang, National Laureate), by Usman Awang (Kuala Lumpur, DBP); translated into English by DBP in 1995).

Sajak-sajak Salleh: Poems Sacred and Profane, by Salleh ben Joned (Kuala Lumpur: Teks Publishing).

1988

Malaysia dalam Puisi (Malaysia in Poetry), by A. Samad Said (Kuala Lumpur: DBP).

1989

Remembering Grandma and Other Rumours, by Wong Phui Nam (Singapore: Dept. of English and Literature, NUS).

1990

Wajah Seorang Wanita (The Face of a Woman), by S. Othman Kelantan (Kuala Lumpur: DBP).

1991

Cerpen-cerpen Pak Sako (The Short Stories of Pak Sako), by Pak Sako (Ishak Haji Muhammad) (Kuala Lumpur: DBP).

Mutes in the Sun and Other Stories, by Lee Kok Liang (Singapore: Federal Publications, originally published in 1964).

Ustaz, by S. Othman Kelantan (Bangi: Citra Publishing).

1992

Anak Tanjung (Child of the Cape), by Noordin Hassan (Kuala Lumpur: DBP).

Death is a Ceremony and Other Stories, by Lee Kok Liang (Singapore: Federal Publications).

Hujan Pagi (Morning Rain), by A. Samad Said (Kuala Lumpur: DBP).

Matinya Seorang Pahlawan: Jebat (Death of a Warrior: Jebat), by Usman Awang (Kuala Lumpur: DBP; published simultaneously in English with translation by Rahmah Bujang).

1993

Green Is the Colour, by Lloyd Fernando (Singapore: Landmark Books).

In a Far Country, by K.S. Maniam (London: Skoob Books).

Melor in Perspective, by Che Husna Azhari (Kuala Lumpur: Furada Publishing House).

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Monsoon History: Selected Poems, by Shirley Lim (London: Skoob Books).

Sensuous Horizons: The Stories and the Plays, by K.S. Maniam (London: Skoob Books).

*We Could **** You, Mr. Birch*, by Kee Thuan Chye (Singapore: Times Books).

1995

Life's Mysteries: The Best of Shirley Lim, by Shirley Lim (Singapore: Times Books).

1996

Haunting the Tiger and Other Stories, by K.S. Maniam (London: Skoob Books).

Saya ... dari Hujung Kota (I ... from the Edge of Town), by Noordin Hassan (Kuala Lumpur: DBP).

1999

Shit@Pukimak, by Shahnnon Ahmad (Kuala Lumpur: Pustaka Reka).

Sukma Angin (Soul of the Wind), by Arena Wati (Kuala Lumpur: DBP).

2000

Against the Wilderness, by Wong Phui Nam (Kuala Lumpur: Blackwater Books).

Putera Gunung Tahan (Prince of Gunung Tahan), by Pak Sako (Ishak Haji Muhammad) (Kuala Lumpur: Utusan). This work was originally published in 1937.

Rowing Down Two Rivers, by Muhammad Haji Salleh (Bangi: UKM Press).

2002

Eight Plays, by Huzir Sulaiman (Kuala Lumpur: Silverfish Books).

2004

Salam Maria (Hail Maria), by Fatimah Busu (Kuala Lumpur: Absolute Press).

2005

The Harmony Silk Factory, by Tash Aw (London: Penguin).

2006

Tulang-tulang Berserakan: Novel dan Cerpen-cerpen (Scattered Bones: A Novel and Short Stories), by Usman Awang (Kuala Lumpur: UA Enterprise); translated into Russian by A. Rozhanskaya as *Tam Gdeih Nastigla Pulya. Povest' iRasskazi* (Moscow: Vostochnaya Literatura, 1981).

2007

Adam's Dream, by Salleh ben Joned (Kuala Lumpur: Silverfish Books).

2009

Body2Body: A Malaysian Queer Anthology, edited by Jerome Kugan and Pang Khee Teik (Kuala Lumpur: Matahari Press).

Part Four

The Eye of the Malaysian Tiger

Malaysia's Political Economy

Ownership and Control of the Corporate Sector

Edmund Terence Gomez

Introduction

This essay provides an assessment of the constantly evolving nature of ownership and control of corporate Malaysia. Important factors which have contributed to the regular evolution of ownership and control patterns include the impact of policies such as affirmative action, privatisation, heavy industrialisation and the promotion of Malay capital. Another crucial factor that has had an impact on ownership and control patterns is the politics of the state, specifically during the premiership of Mahathir Mohamad. This assessment of changing ownership and control patterns will be undertaken through an analysis of the top 100 companies quoted on the Bursa Malaysia during key periods in Malaysian history, that is in 1969, before implementation of affirmative action through the New Economic Policy (NEP); in 1997 and 2000, before and following a currency crisis that had a monumental impact on the largest publicly-listed enterprises, as well as on the political system; and in 2009, following the departure of Abdullah Ahmad Badawi as Prime Minister. Abdullah had played a significantly role since 2003, when he ascended to premiership, to re-orientate public policy by focusing attention on the promotion of small- and medium-scale enterprises (SMEs). The development of the corporate sector will also be analysed through the use of the concepts of interlocking stock ownership and interlocking directorships.

An analysis of the development of large enterprises in Malaysia, through privatisation, industrialisation and the promotion of Malay-owned conglomerates, would reveal the fierce contestations within the United Malays National Organisation (UMNO), the hegemonic institution within

the state, to these policies, as well as the reasons for the symbioses between these very different policies. One feature of Malaysia's political economy under Mahathir was the growing concentration of power in the office of the executive, which came to be known as 'Mahathirism' (Khoo, 1995). Mahathir was willing to experiment with different economic models as he saw value in neoliberalism, the developmental state and affirmative action, which he adopted and adapted to pursue his vision of development for Malaysia. The conduct of the business of firms, specifically of big business, provides insights into the outcome of the government's mix of policies from these different development models.

The following questions will be dealt with: who owned and controlled the top 100 publicly-listed companies during these key periods? What is the extent of interlocking stock ownership and directorships among the top 100 firms, and to what extent do these ties contribute to control over corporate activities? Is there much competition within the economy or are oligopolistic ownership patterns emerging in key economic sectors? How effective have been the government's endeavours to promote Malay capital? These questions are raised to address one key issue: have major public policies contributed to the development of a dynamic entrepreneurial community in Malaysia.

The State and Corporate Development: 1957–2009

In the immediate post-colonial period until 1970, since domestic enterprises were predominantly Chinese-owned, there was little government support for these firms. When the affirmative action-based New Economic Policy (NEP) was introduced in 1970, the state's primary emphasis was on employing public enterprises, later called government-linked companies (GLCs), to venture into various sectors of the economy on behalf of the Malay Bumiputera ('sons of the soil'). The primary focus of the NEP was to ensure more equitable distribution of corporate equity between the predominantly Bumiputera and the predominantly Chinese non-Bumiputera. The NEP stipulated that 30 per cent equity of all quoted firms be transferred to Bumiputeras, to ensure greater Malay corporate ownership of all sectors of the economy.

In 1969, before the NEP was introduced, Bumiputera ownership and control over the economy was a meagre 1.5 per cent (see Table 13.1). By 1990, when the 20-year NEP came to an end, corporate wealth attributable to Bumiputera individuals and trust agencies had risen to 19.2 per cent. During the subsequent ten years, Bumiputera equity ownership rose to

20.6 per cent in 1995, before falling marginally to 19.1 per cent in 1999, remaining around this figure until the present period.

Table 13.1. Ownership of Share Capital (at par value) of Limited Companies, 1969–2006 (in percentages)

	1969	1970	1975	1980	1985	1990	1995	1999	2004	2006
Bumiputera										
Individuals and Trust Agencies	1.5	2.4	9.2	12.5	19.1	19.2	20.6	19.1	18.9	19.4
Chinese	22.8	27.2	n.a	n.a	33.4	45.5	40.9	37.9	39.0	42.4
Indians	0.9	1.1	n.a	n.a	1.2	1.0	1.5	1.5	1.2	1.1
Others	–	–	–	–	–	–	–	0.9	0.4	0.4
Nominee Companies	2.1	6.0	n.a	n.a	1.3	8.5	8.3	7.9	8.0	6.6
Locally-Controlled Firms	10.1	–	–	–	7.2	0.3	1.0	–	–	–
Foreigners	62.1	63.4	53.3	42.9	26.0	25.4	27.7	32.7	32.5	30.1

n.a.: Not available

Sources: *Seventh Malaysia Plan; Eighth Malaysia Plan; Mid-Term Review of the Ninth Malaysia Plan.*

Implementation of affirmative action persists, ostensibly because of the need to continue to address the issue of wealth disparities. According to the government figures in 2006, which have been questioned, the Chinese hold twice the volume of equity owned by Bumiputeras, though there was no review why this was the case even though this policy has now been instituted over nearly four decades.

The most significant change in corporate ownership patterns since 1970 has been the appreciable decline in foreign ownership of Malaysian corporate equity – from 63.4 per cent in 1970 to 25.4 per cent in 1990, though it increased to 27.7 per cent in 1995, before increasing a further five percentage points, to 32.7 per cent, in 1999. By 2006 it had fallen marginally to 30.1 per cent.

In his pioneering study of ownership and control of major firms in pre-Independence Malaya, Puthuchery (1960) showed the overwhelming dominance that foreign, especially British, enterprises had over the Malayan economy in the early 1950s. From 1957, when Independence was attained, until the watershed events of May 1969, Lim (1981) noted that ownership

and control of the corporate sector, particularly of the largest publicly-listed firms, remained in the hands of foreign enterprises. Chinese capital had had a ubiquitous presence in the economy in the pre- and post-Independence periods, but in terms of ownership and control of influential firms operating in the national economy, their strength paled in comparison to foreign capital (see Appendix 13.1).

Lim's (1981) analysis of the top 100 quoted firms in the 1970s made a number of other important points. First, there was significant interlocking stock ownership among a number of prominent corporate groupings, indicating concentration of control over the economy; this control was primarily in the hands of a few large firms. Lim's 1981 study revealed that of the 100,000 shareholders in Malaysia's 62 large corporations, 797 of them – or a mere 0.8 per cent – owned 69 per cent of the RM1.4 billion worth of equity. Within this group of 797 shareholders, the top one per cent owned 29 per cent of this RM1.4 billion equity, while the top 50 per cent owned 97 per cent and the bottom 20 per cent only 0.4 per cent (Lim, 1981: 114).

Second, Lim (1981: 52–70) noted extensive interlocking directorships, identifying three important types of directorates: owner directors, executive-professional directors and functional directors. Owner directors were equity owners who served as directors. Executive-professional directors were high-ranking employees who did not own a substantial stake in the firm. Functional directors were those usually appointed to perform 'extra-economic functions'; these directors were usually former senior bureaucrats who could perform 'advisory and brokerage functions' (Lim, 1981: 69). Lim suggests that directorate interlocks were used 'to strengthen control over corporations in which one has ownership interests' (Lim, 1981: 115). Third, although the government had attempted to develop domestic Bumiputera capital, more than a decade after Independence no ethnic Malay had emerged with a significant presence in the corporate sector.

There was an important reason for limited Malay involvement in the corporate sector. During the colonial period, Malay involvement in the emerging capitalist economy was not encouraged by the British, who preferred that the Malays remain in food production, primarily of fish and rice. When Malay peasants tried to venture into modern commercial sectors of the economy, like rubber production, the British blocked their efforts by imposing restrictive cultivation conditions on land. These early discriminatory policies in favour of British plantation interests severely limited the potential development of indigenous capital and shackled Malays to low-income economic activities. Since the British had hindered the development of Malay capital in the colonial period, this reason was

used to justify the post-1969 policies that discriminated positively in favour of Bumiputeras.

The continued dominance of foreign capital over the economy after Independence was mainly due to political factors. The leaders of UMNO, the dominant party in the ruling tripartite coalition, the Alliance, did not want to limit the influence of foreign firms mainly because they felt that only these firms could stem the rise of Chinese capital. Chinese capitalists had managed to secure a strong presence in the post-colonial government through the Malayan Chinese Association (MCA). These capitalists had hoped that effective political representation in government would enable them to protect their economic interests. The MCA, along with UMNO, had formed the Alliance to help them gain control of the government; this coalition would later include the Malayan Indian Congress (MIC), another ethnically-based party led primarily by professionals.

Despite steady, relatively high economic growth with low inflation for over a decade following Independence, income inequality increased and one-half of the population lived in poverty in 1970. Bumiputeras remained disproportionately poor, living largely outside modern urban and corporate sectors. With relatively few entrepreneurs, they were concentrated in low-productivity peasant agriculture and the public sector. Instead of fostering social stability, economic development seemed to be exacerbating social inequalities and frustrating Malay aspirations. These social factors, along with the inequities in corporate equity distribution among ethnic groups, contributed to race riots in May 1969. The resulting policy of affirmative action, a social and economic response to this crisis, subsequently informed all public policies involving investment in the Malaysian economy, including foreign direct investment (FDI).

In 1975 the government adopted the Industrial Coordination Act which required companies to ensure at least 30 per cent Bumiputera participation in their ventures. The Act was denounced by foreign and particularly domestic Chinese businesses who perceived it as an attempt to advance Malay interests in the manufacturing sector. Although protests led to several amendments to the Act's requirements, other policies and regulations advanced affirmative action goals. Among the measures used to ensure foreign firms followed NEP guidelines on Bumiputera equity participation and employment were an Investment Incentives Act, the Capital Issues Committee's (CIC) regulatory approval of public listing, and a Foreign Investment Committee (FIC) that was established to oversee FDI.

Bumiputera participation in manufacturing projects grew between 1975 and 1985, with equity participation always above 40 per cent, but

this proportion subsequently declined after the government introduced liberalisation and deregulation initiatives to address the mid-1980s recession. To encourage FDI, an accommodative Promotion of Investments Act was adopted in 1986, providing tax holidays and pioneer status for investments in export-oriented manufacturing and agriculture as well as tourism. Among deregulation measures used to attract FDI was a relaxation of restrictions on foreign equity in manufacturing. The 30 per cent ceiling on foreign shareholdings would only apply to firms exporting under 20 per cent of production, while foreigners could own up to 80 per cent of stock for operations with a comparable percentage of exports.

FDI was also central to another element of Malaysia's industrialisation strategy that focused on heavy industries. From 1981 to 2003 state-led development encouraged the formation of heavy industry conglomerates involving multi-national companies (MNCs) and GLCs. The policy was implemented through state-owned Heavy Industries Corporation of Malaysia (HICOM), which collaborated with foreign, mainly Japanese, companies in industries ranging from steel and cement production to the manufacture of a national car, the Proton Saga. The promotion of heavy industries through GLC-MNC joint ventures was largely unsuccessful, with only the national car industry still under domestic control. A restrictive vendor system appended to the GLC-MNC strategy to help develop new Bumiputera-owned SMEs in the industrial sector also proved unsuccessful (Leutert and Sudhoff, 1999).

An important moment for the development of Bumiputera capital occurred when Mahathir was appointed Prime Minister in 1981. From the outset of his premiership, Mahathir voiced his intention to create an ensemble of dynamic, entrepreneurial Malay capitalists. Mahathir's argument for the need to hasten the development of Malay capital was that in 1981, after ten years of the NEP, although the government had managed to increase the amount of corporate holdings held in the name Bumiputeras to 12.5 per cent, little progress had been made in developing Malay businessmen in control of large firms. In fact, as Appendix 13.1 indicates, among the top 100 corporations in the 1970s, not one firm was owned by the Malaysian government or Bumiputera individuals. It was this situation that Mahathir sought to rectify.

To aid his vision of creating huge companies with international reputations led by Malay capitalists, Mahathir appointed his close ally, prominent businessman Daim Zainuddin, as Finance Minister in 1984. Both men appeared captivated with developing the stock market, making it one avenue to help create domestic capitalists. Within just over a decade of

Mahathir's tenure as Prime Minister, Malaysia's stock market capitalisation relative to GDP had emerged as the highest in Southeast Asia. Between 1989 and 1993, for example, equity market capitalisation as a percentage of GDP increased from 105 per cent to 342 per cent. By 1997 the KLSE had emerged as the 15th largest in the world in terms of market capitalisation.

By the mid-1990s a number of huge quoted companies, controlled primarily by well-connected Malays, had emerged in the corporate sector. The Prime Minister's high degree of autonomy had allowed him to selectively distribute government-created rents to this select group of businessmen to help them swiftly develop their corporate interests. Mahathir justified this patronage, via policies like the NEP and privatisation, by arguing that the best way to create Malay capitalists was to distribute rents to those most capable of generating wealth.¹

Fifteen years into Mahathir's tenure as Prime Minister, before the onset of the 1997 currency crisis, a number of well-connected capitalists had secured extensive ownership of firms involved in most key sectors of the economy (Gomez and Jomo, 1999). Some of these men, supposedly representative of the dynamic, entrepreneurial class that Mahathir was trying to create, had managed to develop huge well-diversified firms, or conglomerates, within a short time. These well-connected businessmen developed their corporate assets through the use of one or more quoted firms.

By the mid-1990s most of the largest firms controlled by Bumiputeras were linked to one of the then three most powerful politicians – Prime Minister Mahathir, Deputy Prime Minister and Finance Minister Anwar Ibrahim and Economic Advisor Daim Zainuddin. The Bumiputeras in control of major firms included Halim Saad, Tajudin Ramli, Wan Azmi Wan Hamzah, Rashid Hussain, Shamsuddin Abdul Kadir, Azman Hashim, Ahmad Sebi Abu Bakar, Ishak Ismail, Mirzan Mahathir, Mokhzani Mahathir, Amin Shah Omar Shah and the late Yahya Ahmad. A few Bumiputeras, such as Tunku Abdullah and Azman Hashim, had emerged as businessmen of some repute prior to Mahathir's ascendancy to the premiership. A number of non-Malay businessmen who were also well-connected quickly developed huge enterprises with state patronage. These businessmen included Vincent Tan Chee Yioun, T.K. Lim, Ting Pik Khiing, Lee Kim Yew, Tong Kooi Ong and T. Ananda Krishnan. All these men had been privy to state patronage in some form, specifically the award of privatised contracts.²

¹ For an extensive critique of the implementation of privatisation, see Jomo 1995.

² For an in-depth study of the rise of these well-connected Bumiputera and non-

Among Malay-owned firms, very few appeared to follow Mahathir's directive to develop technological expertise. One that did build on its founder's experience in the telecommunications industry was Sapura Holdings. This enterprise, led by Shamsuddin Kadir, who had long been in the employ of the government utility Telecoms, rapidly emerged with a reputation for producing telecommunication units based on new technology developed through research.³ Sapura would, however, divest its interests in this sector, probably due to the rise in the use of mobile phones, a highly competitive sector developed by a group of other well-connected people that included Tajudin Ramli, Vincent Tan and Ananda Krishnan.⁴

Among non-Malay firms there were two examples of those that had productively developed rents secured from the state. The first was YTL Corp, which had no experience in power generation when it secured a lucrative independent power producer (IPP) licence, but learnt the technology by working with a German company, Siemens, before going on to develop a reputation of its own in this sector, even expanding its operations abroad (Gomez, 1999: 163–70). The second were the firms owned by Ananda Krishnan who had secured a number of rents from the state, in the telecommunications and power supply sectors as well approval to launch a TV satellite. All these enterprises were developed in collaboration with foreign firms and by employing professionals with expertise in these sectors (Gomez and Jomo, 1999: 159–65). By the end of the 1990s, Ananda would emerge among Malaysia's wealthiest businesspeople, second only to octogenarian Robert Kuok who could be said to represent 'old capital'.

Mahathir had come to realise the importance of Chinese – and foreign – capital for sustaining growth and promoting industrialisation following a severe recession in the mid-1980s. He subsequently liberalised the economy and included Chinese capital in his development plans, albeit on his terms. In the early 1990s Mahathir also saw the opening up of China's economy as potentially lucrative for Malaysian capital, and this led to his call for greater business cooperation between Chinese and Malays. Mahathir urged Bumiputera businesses to work with the Chinese to enter the market in China, partly also as a means to promote the development of Malay capital.

During the 1990s the government had also found it necessary to

Bumiputera businessmen, see Gomez and Jomo, 1999; Gomez, 2002; and Searle, 1999.

³ See Gomez and Jomo, 1999: 72–5; Salazar, 2007: 170–1.

⁴ See Salazar (2007) for an in-depth study of the development of the telecommunications sector under Mahathir.

accommodate Chinese capital for political reasons. As UMNO factionalism became serious and as intra-ethnic divisions among Malays escalated – evidenced in the 1995 and 1999 general elections (Welsh, 2004: 130–56) – the BN found it imperative to court non-Bumiputera support. One avenue to secure Chinese support was to award rents to non-Malays, though the recipients were usually required to apportion some of these concessions to well-connected Bumiputeras. Inevitably, Mahathir's objective of creating a class of Bumiputera capitalists seemed to determine how Chinese businesses sought to cultivate Malay leaders. Eventually, even Chinese businesses that had operated independently of the state began to recognise the necessity for working with well-connected Malays. Medium-scale Chinese firms also began incorporating influential Malays as directors. This meant a growing number of Chinese companies began to depend less on institutions such as the MCA and the Chinese Chamber of Commerce to secure access to state rents.

It was following the 1997 Asian currency crisis that Mahathir's plans to develop Malaysian entrepreneurs quickly unravelled. The crisis adversely affected companies owned by many of the well-connected who now held corporate stock worth far less than their acquired value, leaving them severely over-leveraged. In spite of Mahathir's scrutiny of these preferentially-selected and treated firms, there was little or no disciplining of them, probably because in some cases the ostensible owners did his bidding. The government bailed out several of these companies, sometimes at exorbitant prices, and took over major privatisation projects.

Another factor contributed to the fall of well-connected firms following the currency crisis. Since the rise of these businessmen was linked to the patronage of influential politicians, their fortunes depended on whether their patrons remained in power. After a serious political fall-out between Mahathir and his deputy, Anwar, the latter was removed from office in September 1998, allowing the Prime Minister to further concentrate power in his office. Most businessmen associated with Anwar subsequently had to struggle to protect their corporate interests; many of them are no longer prominent business figures. Similarly, when Daim fell out of favour with Mahathir in 2001, the corporate assets owned by his business allies and proxies were taken over by the GLCs.⁵ It is Malay capitalists who have remained relatively independent of ties with influential politicians who appear to have fared better in the crisis.

⁵ For details on the takeover of assets controlled by Anwar allies and Daim protégés, see Gomez, 2006.

Before he retired, Mahathir provided a candid assessment of his failed policy endeavours, as well as of the lessons he had learnt. NEP patronage, he admitted, had led to a ‘crutch mentality’ and he felt that the only way to promote Bumiputera entrepreneurship was to expose these businesses to competition.⁶ The Chinese, he added, had managed to increase their ownership of corporate equity because they had been forced to compete especially hard during the implementation of affirmative action.⁷ What Mahathir did not mention was that the Chinese, for all their ostensible entrepreneurship, had not managed to develop brand names or move up the technological ladder. This stalled technological ascendancy on the part of non-Bumiputera firms was mainly because they had received inadequate support from his government.

By 2001 no Bumiputera had ownership of a top ten-quoted firm (see Appendix 13.2). Well-connected Malays, such as Halim Saad and Tajudin Ramli, whose companies had secured a high ranking on the Bursa Malaysia before the currency crisis were no longer listed. Another significant point about the top ten enterprises in 2001 was that the government had majority ownership of six of them due to the partial nature of some privatisations. These firms included the former public utilities Telekom Malaysia and Tenaga Nasional, the leading bank, Malayan Banking, Petronas’ gas producer, Petronas Gas, the national shipping line MISC and the well-diversified Sime Darby.⁸ The government had a stake in Commerce Asset-Holding, which owns the second largest bank, Bumiputra Commerce Bank, a merger between state-owned Bank Bumiputra and Bank of Commerce, owned by UMNO. Two well-connected groups, Renong and New Straits Times Press (NSTP), similarly own a huge interest in Commerce Asset-Holding. In July 2001 the government announced a takeover of Renong.

The other three firms in the top ten – Resorts World, Genting and YTL Corporation – are Chinese-owned. Genting and Resorts World, involved in the casino and leisure industries, are part of the same group owned by Lim Goh Tong. The YTL group, involved in the construction, property development and power industries, is owned by Yeoh Tiong Lay and his

⁶ See Mahathir’s speech entitled ‘The New Malay Dilemma’, delivered at the Harvard Club of Malaysia dinner on 27 July 2002.

⁷ Ibid.

⁸ The main government enterprises that own a stake in Telekom Malaysia and Tenaga Nasional include Khazanah Nasional and the Minister of Finance Inc., while the controlling shareholder of Malayan Banking and Sime Darby is the national trust agency PNB. MISC is majority-owned by Petronas, which also owns Petronas Gas.

family.⁹ The other conspicuous point about this top ten was that none of them was owned by a foreign enterprise.

The top 20 firms in Appendix 13.2 reflect a number of important features. First, the considerable decline in foreign ownership of corporate Malaysia between 1970 and 2000; only one of the top 20 firms was owned by a foreign enterprise. Second, in spite of active privatisation since the mid-1980s, the government still had majority ownership of half of the top 20 firms. Of these ten companies, two were formerly part of the Renong group, a major recipient of privatised rents, while Proton was re-nationalised. Third, eight of the top 20 firms were Chinese-owned, indicating that members of this community had managed to maintain a strong presence in the economy in spite of the NEP. Fourth, just prior to Mahathir's departure from office, only one major company was owned by a (well-connected) Bumiputera family.

By 2001 there were no Malay-owned quoted firms in the industrial sector. No Bumiputera company listed in the Bursa Malaysia top 50 in 2001 had shown the capacity to venture successfully into manufacturing, in spite of substantial state support. Most Malays were involved in finance, telecommunications construction and property development. Shamsuddin Kadir was the only Bumiputera actively involved in manufacturing, though none of his companies appear in the Bursa Malaysia top 50. It appeared that foreign firms had emerged as beneficiaries of Malaysia's costly industrialisation drive. Kedah Cement, also part of the DRB-Hicom group, was taken over by a foreign firm. HICOM was de-listed in August 2001, following a restructuring of the DRB-Hicom group.

A number of other interesting points should be noted about the top firms in 2001. The level of concentration of political power would suggest concomitant concentration of corporate equity in the hands of an elite group. In mid-2001 there was evidence not of wealth concentration but of wide dispersal of ownership of the top 50 quoted companies. No group of companies under the control of one family or individual dominated the top 20 listed corporations. One reason for this limited wealth concentration was that some of the dominant listed groups that had emerged by the mid-1990s, such as the Renong/UEM, HICOM Holdings, MAS-Celcom and Rashid Hussain groups, had been badly affected by the currency crisis.

While the studies by Lim (1981), Tan (1982) Sieh-Lee (1982) and Mehmet (1986) had revealed that interlocking ownership and directorships

⁹ For case studies on the development of the Genting and YTL groups, see Gomez, 1999.

were important in ownership and control patterns of the corporate sector during the 1970s and 1980s, this was not the case by the end of the century. An analysis of interlocking stock ownership patterns revealed no links between the top 100 firms that suggested monopolisation of economic sectors. A number of these quoted firms did, however, come under the umbrella of one holding company or were controlled by one businessman.¹⁰ This form of grouping, involving the use of a holding company – and, in some cases, cross-holdings and pyramiding – reflects the most important form of corporate control. This corporate grouping pattern also indicates the conglomerate-style growth adopted by a number of Malaysian business people.

One important feature of corporate Malaysia in 2001 was the prominence of family firms (see Appendix 3). Families were reputed to control about 40 per cent of publicly-listed firms, with the top ten families owning a quarter of market capitalisation. As noted, among the top 10 Bursa Malaysia firms three are family-controlled (Genting/Resorts World and YTL Corp), though other major family firms include Perlis Plantations (Kuok family), KLK (Lee family) and Tan Chong (Tan family).¹¹ The founders of most of these family firms retain control of these companies. Among the quoted firms still led by their founders are Public Bank (Teh Hong Piow), Lion Group (William Cheng), Berjaya Group (Vincent Tan), IOI (Lee Shin Cheng), AMMB Holdings (Azman Hashim), Tanjong/Maxis (Ananda Krishnan), Jaya Tiasa (Tiong Hiew King), MUI (Khoo Kay Peng) and Country Heights (Lee Kim Yew).

A review of the activities of the top companies in 2001 draws attention to a key point: none of Malaysia's leading domestic firms is involved in new technologies or in chemicals, pharmaceuticals, electronics and computers, a

¹⁰ The holding company structure exists whenever one parent or holding company controls the composition of the board of directors, or controls more than half the voting power, or holds more than half of the issued share capital of another subsidiary company. This definition is extended to include a company which is a subsidiary of a subsidiary. The holding company uses the system of pyramiding, which allows the owner to maintain control over corporations with a relatively small investment. See Sieh-Lee (1982: 45) and Lim (1981: 6) for a more in-depth discussion of the merits and de-merits of the holding company structure.

¹¹ There remains little research on the volume and contribution of family firms to the Malaysian economy, an important issue as research on family firms worldwide indicates that almost 70 per cent fail to survive into the second generation. Of those that do, almost 50 per cent do not make the transition from the second to the third generation.

common feature of industrialised countries. This is a point of much concern given Chandler's contention that an economy's growth is dependent not merely on its natural resources, labour and managerial skills, available capital and size of internal markets, but more on how its technologies are organised and developed (Chandler, 1997: 63).¹²

On his appointment as Prime Minister in November 2003, Abdullah Ahmad Badawi's primary declared intent, apart from eliminating poverty, was to reform the economy. Abdullah's new vision for the economy was most coherently expressed in the 9th Malaysia Plan (9MP), his first blueprint for moulding a new Malaysia, characterised by a 'developed and united nation ... confident in its own capabilities' (Malaysia, 1991). The 9MP revealed two crucial points about his economic orientation. The first was that Abdullah remained convinced by two ideas that have long characterised policy planning by the UMNO-led government: that sustained economic growth is fundamental to resolving social inequities; and that through its policies, the government could achieve different goals, with few trade-offs. For example, the government continued to believe that it could simultaneously promote domestic capital and Bumiputera enterprises without jeopardising either endeavour.

The second issue about Abdullah's economic views was that while his predecessor, Mahathir, was obviously fixated with the idea that the solution to sustained economic growth was liberalisation of the private sector and the promotion of privatisation, the new Prime Minister's major policy recommendations appeared to be of a somewhat different bent, although he later conformed to this view. While Mahathir stressed the promotion of Bumiputera capital and Malaysian conglomerates, Abdullah voiced little interest in big business though he persisted with the Bumiputera Commercial and Industrial Community (BCIC) policy. He would continue to champion Bumiputera capital in its original form, through affirmative action, but with one substantial change: there would now be a new emphasis on SMEs, a sector largely ignored by Mahathir.

Abdullah would insist that the creation of dynamic Bumiputera entrepreneurs would aid his endeavour to restructure society and eradicate poverty. He would encourage competitive advantage in the economy by focusing on Islamic-type products, for example, by developing a niche

¹² There is, however, evidence of emerging new firms involved in new technologies, though these enterprises remain small- or medium-sized firms, in terms of market capitalization. See, for example, Jomo, Felker and Rasiah, 1999.

market in halal food, enterprises inevitably dominated by Bumiputeras. Companies in this sector, the new Prime Minister felt, would be able to create export capacity if nurtured well. Abdullah would strive to employ the GLCs productively, as well as policies introduced by Mahathir, such as the Vendor Development Programme, to support his initiatives to develop Bumiputera SMEs.

From the mid-1980s until 2003, there had been rather benign neglect of the agriculture sector and rural industries by the government, in favour of policies and efforts to rapidly industrialise Malaysia. When Abdullah replaced Mahathir as Prime Minister, his support of SMEs included a very overt championing of Malaysian-type textile goods, such as batik and songket, presumably to support potentially lucrative cottage industries dominated by poor rural Bumiputeras. Abdullah also expounded the importance of commercialising agriculture, given growing local and foreign demand for foodstuff. The new government recognised that support for the agriculture sector would inexorably help increase income in rural areas where poverty remained a serious issue. A crucial dimension in this attempt to actively support agriculture was the government's intent to promote Malaysia as a hub for halal food products.¹³

The government has created an ample number of public institutions to tie MNCs to SMEs, one response to Abdullah's admission of the need to design an efficient government delivery system to address the declining quality of the bureaucracy.¹⁴ One-stop agencies and professionally-run GLCs have been established to address the government's institutional capacity to enforce policies. However, another crucial issue appears to be stymieing efforts to improve the public delivery system. These institutional reforms have been undertaken in a context where implementation of affirmative action remains a core consideration, a factor that is hindering entrepreneurial domestic firms from emerging. The issue of property rights, involving ownership and control of an enterprise, is fundamental as this has been an encumbrance to both MNCs and SMEs which wish to embed their operations in the economy.

The government has not, however, been able to foster entrepreneurial SMEs in spite of its copious attention to this matter. The reason SMEs have not been able to develop in a manner that equips them with export

¹³ See speech by Nor Mohamed Yakcop, Second Finance Minister, entitled 'Financial Sector and Corporate Malaysia: Addressing the Global Competitive Challenges,' 25 November 2006.

¹⁴ See the 9th Malaysia Plan.

capacity is not due to their inadequate access to loans or the institutional and infrastructure support provided by the government. And, the number of local firms that are dynamic, in terms of creating new technology, is limited, due to weaknesses within public policy which Abdullah had not adequately addressed. This reflected a fundamental problem with Abdullah's economic orientation, one similar to his predecessor, that is the government could attain assorted goals through different policies. For example, Abdullah's government was misplaced in assuming that it could simultaneously promote Bumiputera capital and SMEs without jeopardising either endeavour.

Abdullah probably had recognised the need to liberalise equity ownership patterns to forge productive MNC-SME links and nurture entrepreneurial domestic firms. He appeared, however, to lack the political will to do so given UMNO's limited support for such liberalisation. One outcome of this is that there is little evidence that his administration helped advance the rise of a large pool of independent Bumiputera businesses, in spite of his active endorsement of the BCIC policy. In this regard, Abdullah's attempt to promote Bumiputera SMEs appears to have been as unsuccessful as Mahathir's focus on nurturing internationally recognised Malay conglomerates.

In the first half of 2009, as Malaysia slipped into a deep recession and FDI plummeted, the new government under Najib Razak announced in quick succession plans to liberalise equity ownership regulation in key economic sectors and appreciably reduce the activities of regulatory bodies such as the FIC and the CIC. In April 2009 the 30 per cent Bumiputera equity requirement was removed in 27 sub-sectors within services, including health, tourism, computer services and transport. Liberalised ownership regulations were then announced for the financial sector, raising limits on foreign equity from 49 per cent to 70 per cent. However, the foreign equity limit for commercial banks was retained at 30 per cent. In June 2009 the government changed the requirement that companies seeking a public listing offer 30 per cent of their equity to Bumiputeras, cutting the quota to 12.5 per cent, which could be further reduced if companies issued more shares. To encourage foreign firms to list on Bursa Malaysia, the local stock exchange, the Bumiputera equity quota regulation would not apply. These reforms reduced economic distortions that had discouraged some FDI, but Malaysia retained restrictions limiting foreign ownership to a minority interest in strategic industries such as telecommunications and energy.

Najib conceded that the deregulation was imperative to halt the economy spiralling into a serious recession (*The Star*, 30 June 2009). In

the first quarter of 2009 the economy had shrunk to minus 6.25 per cent, and contracted a further 3.9 per cent in the second quarter, meaning the economy registered a GDP growth rate of minus 5.1 per cent in the first half of 2009. These pressures created scepticism among some investors about the announced liberalisations. Domestic non-Bumiputera businesspeople remembered that the government suspended the NEP quota system during the mid-1980s, when the Malaysian economy was similarly mired in a deep recession. As the economy recovered, the affirmative action policy was reasserted and continued beyond its original 20-year period.

Interlocking Directorships

An analysis of interlocking stock ownership patterns at the turn of the millennium indicates no links between the top 100 firms that suggest monopolisation of economic sectors, as Appendix 13.2 indicates. Interlocking directorship is a concept of as little importance as interlocking stock ownership. Appendix 13.3 provides a list of interlocking directorships among the top 100 listed companies.

Using the interlocking directorate typologies proposed by Lim (1981), that is owner directors, executive directors and functional directors, an analysis of the list in Appendix 13.3 suggests that none of these interlocking ties contributed to wealth concentration or reduction of competition. There is evidence of interlocking directorship involving the presence of one individual in a number of quoted companies. The men holding directorships in a number of unrelated companies are, however, primarily prominent former bureaucrats. Mohammed Hanif Omar, the former Inspector-General of Police, for example, is a director of companies in Lim Goh Tong's gaming group, Genting, and Azman Hashim's financial group, AMMB Holdings; he also holds directorships in a number of quoted companies outside the top 100 list. Alwi Jantan, another prominent ex-senior bureaucrat – he was Director of Public Service in the Public Services Department – sits on the boards of foreign-owned Guinness Anchor and Resorts World, of the Genting group. Mohd Ghazali Seth, a director of Chinese-owned Magnum and the foreign-owned firms Carlsberg and Nestle, was chief of the armed forces, as was Mohd Ghazali Che Mat who serves as a director of the politically well-connected Malakoff and the government-controlled Kumpulan Guthrie. Yahya Ismail, who holds directorships in the Chinese firms YTL Corp and Southern Bank, foreign-controlled Shell and the politically well-connected UEM, served in a number of key government posts, including as Director General of the Livestock Authority and

Chairman of the Totalisator Board. Wan Abdul Rahman Wan Yaacob, a director of a number of unrelated companies, Powertek, IJM, MMC and Lingkaran Trans Kota, served as Director-General of the Public Works Department. Thong Yaw Hong, a director of Chinese-owned Public Bank, Berjaya Land and KLK, and the government-owned MMC, retired as Secretary-General of the Ministry of Finance. Nasruddin Mohamed, who served as Secretary-General of the same ministry, is a director of three unrelated Chinese-owned firms, William Cheng's Amsteel Corp, Lee Shin Cheng's IOI Properties and Quek Leng Chan's Hong Leong Industries.

These former senior bureaucrats probably serve as functional directors, that is to facilitate dealings with the government, specifically to help these firms bypass bureaucratic red tape. Although many of these influential ex-bureaucrats sit on the boards of Chinese, Bumiputera and GLCs, there is little evidence of business cooperation among these companies. This indicates the limited importance of these interlocking directorships in terms of facilitating inter-ethnic business deals or public-private cooperation, part of Mahathir's much-touted Malaysia Inc. policy. Similarly, even though some of these ex-bureaucrats are directors of firms owned by different Bumiputeras, there is limited evidence of intra-ethnic cooperation between the owners of these enterprises.

The interlocking directorate ties of most importance involve owner directors. Owners hold directorships in a number of firms under the control of a holding company. This common tie can be used to facilitate transactions that benefit owner directors and not minority interests. One example of an owner director listed in Appendix 3 is T.K. Lim, a director of Kamunting Corp and its associated company, Bandar Raya Developments. Lim also sits on the board of Land & General, controlled by Wan Azmi, in which he also had an interest. Amin Shah Omar Shah is a director of Kedah Cement and PSC Industries, two firms he has an interest in. Quek Leng Chan and Vincent Tan, through holding firms, own controlling interests in all companies listed under their names.

Examples of executive directors would include Mohd Hassan Marican who was a director of a number of GLCs, including Petronas Gas and MISC; Chua Hua Eng, a director of foreign-owned Malayan Cement and Carlsberg Brewery as well as Chinese-owned Lingui Developments; and James Lin Cheng Poh who serves on the board of two firms in the Hong Leong group, Hong Leong Bank and Hong Leong Credit. Executive directors play a prominent role in quoted firms owned by the government. Interestingly, this study of the top 100 firms indicates that publicly-listed companies owned by the government appear to be relatively well-managed, in spite

of possible intervention by influential politicians in their management. Ultimately, however, control of these quoted firms owned by the government lies with senior politicians who have the power to dictate certain corporate transactions, for example, the bailout or takeover of well-connected ailing firms. In 1998 one of the best-managed quoted companies controlled by the government, MISC, was used to buy over assets of an ailing quoted company owned by Mirzan Mahathir, eldest son of the former Prime Minister.

Conclusion: Policies, Politics and Publicly-listed firms

A key point of this review of corporate Malaysia's history is that no firm in the top 20 in 1957, or in 1970, had managed to retain its position in 2009, raising questions about the sustainability of big business and drawing attention to three crucial issues: first, the impact of state intervention and policies on local enterprise. Second, the strategies adopted by businesses, which have been heavily conditioned by state policies, though the pattern of growth and form of management of an enterprise do matter in determining its longevity and sustainability. Third, the state's conduct of power in its different manifestations and its effect on economic and enterprise development. The state has operated at multiple levels in the economy – through GLCs, UMNO, a hegemonic executive and influential politicians – each attempting to promote the interests of particular companies. These different manifestations of the state have, in most instances, undermined the neutrality of policy implementation and influenced patterns of enterprise development, frequently to the detriment of private firms.

From a policy perspective, the state's desire to be developmentalist as well as apply neoliberal policies has had serious repercussions on the economy, while its attempt to create Bumiputera-controlled entrepreneurial firms with a strong presence in the industrial sector has failed. A number of reasons account for these failures. First, selective patronage was not exercised in a transparent manner, with the primary criteria being the need to 'pick winners' with entrepreneurial capacity and experience in a particular sector. The state provided a variety of reasons for not exercising transparency during the disbursement of rents, including the need to expedite industrialisation, advance domestic capital and ensure ethnic co-existence through fairly equitable distribution of the wealth generated. However, the state's stress on targeting firms for selective patronage along ethnic lines tempered its choice of the 'winners', while the other criterion was the need to channel these rents to businesspeople aligned to government leaders, suggesting an abuse of the NEP. Meanwhile, the emphasis on

according preferential treatment to one community, at least during the early years when the state began its pursuit of heavy industrialisation, had undermined the development of domestic firms in this sector.

Targeting Malays to promote Bumiputera capital has in large measure been unsuccessful. The decline of a number of large Malay firms in the post-currency crisis period suggests that selective intervention to promote Bumiputera capital has failed, though not because of inadequate state support. The issue of property rights is also important, because of the emergence of a strong state. The politics of the state, specifically that involving UMNO, has overwhelmed and undermined the independent functioning of the corporate sector.

The leading Bumiputera firms are the GLCs, in spite of privatisation and the NEP, an indication of the parlous state of privately-owned Malay capital. It is doubtful that the GLCs possess entrepreneurial capacity, a sentiment expressed only because of their size and presence in the economy, with little analysis of their pattern of growth. Growth through acquisition, mergers and takeovers is hardly entrepreneurial. GLCs can, however, be placed under the control of competent managers, leading to their rise as professionally-managed firms with expertise in particular sectors. Although government leaders had long felt that GLCs could have entrepreneurial capacity, these firms have not shown the ability to deal with the MNCs with whom joint ventures in heavy industries were created. One lesson from the involvement of these GLCs in joint ventures was that they appeared concerned only with advancing industrialisation, not developing entrepreneurial capacity, which is not surprising.

Another factor contributing to the limited number of large industrial firms includes the pattern of growth of these enterprises, involving conglomerate-style acquisitions and an over-dependence on loans to expand in size. The emergence of this diversified pattern of growth through loans can be attributed to state policies, specifically those dealing with the control and use of the financial sector to promote corporate expansion. This growth pattern became a popular corporate strategy among large firms mainly due to the desire of businesspeople to venture into any field that promised quick profits or had a strong potential for consumer demand. One major problem with firms adopting this pattern of growth was the considerable over-diversification of their corporate base. The core businesses of a number of people who had adopted this style of growth were severely impaired by the currency crisis, due also to their dependence on short-term loans and foreign portfolio investments to fund their diversification drive. This suggests the business style of many of these large-scale firms and the manner

of their growth – whether a vertical, horizontal or diversified pattern was employed – appear to be factors determining their capacity to deal with economic crises.

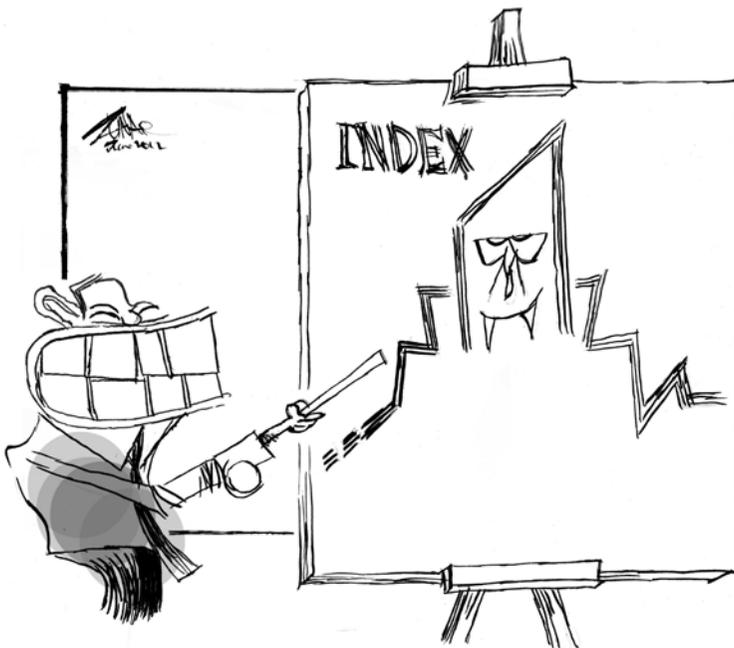
Important lessons emerge from an assessment of firms that have managed to sustain their presence among the 100 firms over a number of decades. One issue is that some large companies have attempted to master expertise in technology, though still remain quite diversified, a pattern of enterprise development common among many large firms which did not survive the 1997 currency crisis. The operations of firms in the Hong Leong group best reflect this – each sector the conglomerate is involved in is under a holding company that is independently and professionally run. Professional managers in charge of these different holding companies report to the chairman, Quek. Another businessman exercising this pattern of corporate holding and management is Ananda Krishnan, who runs a well-diversified enterprise. This form of management is also prevalent in YTL Corp. The organisational capabilities and administrative coordination, involving decentralisation of decision-making to a professional management, demonstrated by these Malaysian firms explain their capacity to run and develop a diversified enterprise, where a number of others have failed to do so.

Other reasons can be identified for the rise of a mere handful of large entrepreneurial firms. In his study of the decline of big British firms between 1880 and 1940 in a number of capital-intensive industries, Chandler (1990) attributed it to a failure to invest sufficiently in production, distribution and organisation. This trend of limited investments in these key areas would similarly account for the demise of some Malayan enterprises that had emerged during the colonial period, though more research is required in this area.

One major reason why large industrial firms failed to evolve was that, during policy planning, UMNO's primary concern had been to ensure that the Chinese did not enhance their ownership and control of the corporate sector. The government need not have feared Chinese dominance over the economy. Studies now well reveal that common ethnic identity has not served to unify members of this community, nor was it the crucial factor that contributed to the sustained presence of Chinese-owned capital (Jesudason, 1989; Searle, 1999; Gomez, 1999, 2004). Common Malay identity did not similarly serve to unify their businesses, including those owned by people who shared the same political patron. Studies have shown that in spite of the long promotion of affirmative action that discriminates against Chinese enterprises, this has generated intense intra-ethnic business

competition, not cooperation (Sloane 1999). The diversity of their business styles, in terms of size, type of ownership and management and areas of business, explains why Chinese firms seldom cooperate with each other. The Chinese who have made the foray into joint ownership have ended up at loggerheads, an issue not uncommon in most partnerships. Most Chinese owners of companies are reluctant to merge with other firms, for to do so would mean sharing control of the enlarged enterprise, when the desire is to go it alone.

These outcomes suggest the need for policies based on merit, with a review of preferential support for Bumiputeras in business. This history shows that domestic firms had garnered manufacturing experience before the end of colonial rule, though this entrepreneurial capacity appears to have stalled. While the government has failed to nurture this entrepreneurial capacity, its policies have severely undermined these enterprises. Even though non-Malay companies retain a prominent presence in the economy, most of them have not managed to develop the capacity to move up the technological ladder. Inadequate state support of entrepreneurial industry will only serve to further constrain the rise of a domestic capital that could help reduce Malaysia's dependence on foreign companies to industrialise the economy.



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Appendix 1

Alphabetical Listing of the Top 100 Companies in Malaysia, 1971

1. Aokam Tin Bhd. (Foreign)
2. Asia Motor Co. (KL) Sdn. Bhd. (Phang family)
3. Associated Pan Malaysia Cement Sdn. Bhd. (Foreign)
4. Austral Amalgamated Tin Bhd. (Foreign, Lee Loy Seng family, OCBC)
5. Ayer Hitam Tin Dredging Ltd. (Foreign)
6. B.P. Malaysia Sdn. Bhd. (Foreign)
7. Bank Bumiputra (Government)
8. Batu Kawan Bhd. (Lee Loy Seng family)
9. Benta Plantations Bhd. (Foreign)
10. Berjantai Tin Dredging Bhd. (Foreign)
11. Borneo Co. (M'sia) Sdn. Bhd. (Foreign)
12. Boustead Trading Sdn. Bhd. (Foreign)
13. Bovis South East Asia Bhd. (Foreign)
14. Caltex Oil Malaysia Ltd. (Foreign)
15. Central Sugars Bhd. (Foreign)

16. Champion Motor (M) Bhd. (Foreign)
17. Chartered Bank (Foreign)
18. Chemical Company of Malaysia Bhd. (Foreign)
19. Chung Khiaw Bank Ltd. (UOB-Singapore)
20. Cold Storage Holdings Ltd. (Foreign)
21. Consolidated Plantations (Foreign)
22. Cycle & Carriage Ltd. (Chua family)
23. Cycle & Carriage (M) Sdn. Bhd. (Chua family)
24. Dunlop Estates Bhd. (Foreign)
25. Dunlop Malaysian Ind. Sdn. Bhd. (Foreign)
26. East Asiatic Co. Ltd. (no information available)
27. Syarikat Eastern Smelting Bhd. (OCBC group-Singapore)
28. Empat Nombor Ekor Bhd. (Lim Chooi Seng and family)
29. Esso Standard Malaya Bhd. (Foreign)
30. Federal Flour Mills Bhd. (Kuok family)
31. Firestone Malaya Sdn. Bhd. (Foreign)
32. Folex Industries Bhd. (Chan and Tan families)
33. Fraser & Neave Ltd. (OCBC group-Singapore)
34. Golden Hope Plantations Ltd. (Foreign)
35. Guinness Malaysia Bhd. (Foreign)
36. Gula Perak Bhd. (Government)
37. Guthrie Ropel Bhd. (Foreign)
38. Guthrie Waugh Malaysia Sdn. Bhd. (Foreign)
39. Harrisons & Crosfield (M'sia) Sdn. Bhd. (Foreign)
40. Haw Par Brothers International Ltd. (Foreign)
41. Highlands and Lowlands Para Rubber Co. Ltd. (Foreign)
42. Highlands Malaya Plantations Ltd. (Foreign)
43. Hock Heng Co. Sdn. Bhd. (Ng Quee Lam family)
44. Hongkong & Shanghai Bank (no information available)
45. Hume Industries (Far East) Ltd. (Kwek (Quek) family and OCBC group-Singapore)
46. Inchcape Bhd. (Foreign)
47. Joo Seng Rubber Co. Sdn. Bhd. (Low Beow Seng and Khor Siew Tong families)
48. Kempas (M) Bhd. (OCBC group-Singapore)
49. Kepong Plantations Bhd. (Lee Loy Seng family)
50. Kulim Group Estate Ltd. (Government)
51. Lee Rubber (Selangor) Sdn. Bhd. (Lee Kong Chian family)
52. Lee Rubber Co. (Pte.) Ltd. (Lee Kong Chian family)
53. Lever Brothers (M'sia) Sdn. Bhd. (Foreign)
54. London Asiatic Rubber and Produce Co. Ltd. (Foreign)
55. Malayan Banking (Government)
56. Malayan Breweries Ltd. (OCBC group-Singapore)
57. Malayan Cement Bhd. (Foreign)
58. Malayan Containers Bhd. (Foreign)
59. Malayan Flour Mills Bhd. (Jerry Sung family)
60. Malayan Sugar Manufacturing Co. Sdn. Bhd. (Kuok family)

61. Malayan Tin Dredging (Foreign)
62. Malayan Tobacco Co. Bhd. (Foreign)
63. Malayan Weaving Mills Sdn. Bhd. (Foreign)
64. Malayawata Steel Bhd. (Foreign)
65. Manilal & Sons (M) Sdn. Bhd. (Patel family)
66. Metal Box Company of Malaysia Ltd. (Foreign)
67. Mobil Oil Malaysia Sdn. Bhd. (Foreign)
68. North Borneo Timber Products Bhd. (no information available)
69. Oversea-Chinese Banking Corporation (OCBC) (Lee family and numerous others – Singapore-based)
70. Pan Malaysia Cement Works Bhd. (Nominee shareholder)
71. Perak River Hydro Electric Power Co. Ltd. (no complete information available)
72. Pataling Rubber Estate Ltd. (Foreign)
73. Petaling Tin Bhd. (OCBC group-Singapore)
74. Rothmans of Pall Mall (M'sia) Bhd. (Foreign)
75. Selangor Dredging Bhd. (Teh Kien Toh family)
76. Shell Malaysia Trading Sdn. Bhd. (Foreign)
77. Shell Refining Co. (F. of M.) Bhd. (Foreign)
78. Short Deposits Malaysia Bhd. (Foreign)
79. Sime Darby Holdings Ltd. (OCBC group-Singapore)
80. Sime Darby Malaysia Bhd. (OCBC group-Singapore)
81. Société Des Matières Premières Tropicales (no information available)
82. Southern Kinta Consolidated Ltd. (Foreign)
83. Southern Malayan Tin Dredging Ltd. (Foreign)
84. Straits Steamship Co. Ltd. (Foreign)
85. Straits Trading Co. Ltd. (OCBC group-Singapore)
86. Taiping Textiles Bhd. (Foreign)
87. Tan Chong & Sons Motor Sdn. Bhd. (Tan family)
88. Tan Chong Motor Holdings Bhd. (Tan family)
89. Tasek Cement Bhd. (Tan Lark Sye family and Kwek Hong P'ng family)
90. Textile Corporation of Malaya Bhd. (Foreign)
91. Tractors Malaysia Bhd. (OCBC group-Singapore)
92. Tronoh Mines Ltd. (Foreign)
93. United Engineers Ltd. (OCBC group-Singapore)
94. United Engineers (M'sia) Sdn. Bhd. (OCBC group-Singapore)
95. United Malayan Banking Corporation (Chang Min Thein)
96. United Motor Works (M'sia) Holdings Bhd. (Chia Cheng Guan family)
97. United Motor Works (M) Sdn. Bhd. (Chia Cheng Guan family)
98. United Plantations Bhd. (Foreign)
99. Wearne Brothers Ltd. (OCBC group-Singapore)
100. Wearne Brothers Malaysia Sdn. Bhd. (OCBC group-Singapore)

Source: Lim (1981: 126–8, 141–60)

Appendix 2

Ownership of the 50 Largest Companies in Malaysia, 1997 and 2001

Name of Corporation (1997) (Owner)	Name of Corporation (2001) (Owner)
1. Telekom (Government)	1. Telekom (Government)
2. Tenaga Nasional(Government)	2. Malayan Banking (Government)
3. Malayan Banking (Government)	3. Tenaga Nasional (Government)
4. Petronas Gas (Government)	4. Petronas Gas (Government)
5. Genting (Lim Goh Tong)	5. Resorts World (Lim Goh Tong)
6. Resorts World (Lim Goh Tong)	6. Malaysia International Shipping Corp (MISC) (Government)
7. Sime Darby (Government)	7. Sime Darby (Government)
8. United Engineers (Malaysia) (UEM) (Halim Saad)	8. Commerce Asset-Holding (Government)
9. Malaysia International Shipping Corp (MISC) (Government)	9. Genting (Lim Goh Tong)
10. Renong (Halim Saad)	10. YTL Corp (Yeoh family)
11. Rothmans of Pall Mall (Foreign)	11. Public Bank (Teh Hong Piow)
12. Development & Commercial (D&C) Bank (Rashid Hussain)	12. Rothmans of Pall Mall (Foreign)
13. Malaysian Airlines (Tajudin Ramli)	13. YTL Power International (Yeoh family)
14. AMMB Holdings (Azman Hashim)	14. RHB Capital (Rashid Hussain)
15. Public Bank (Teh Hong Piow)	15. United Engineers (Malaysia) (UEM) (Halim Saad – now government-owned)
16. YTL Corp (Yeoh family)	16. Renong (Halim Saad – now government-owned)
17. TR Industries (TRI) (Tajudin Ramli)	17. Berjaya Sports Toto (Vincent Tan)
18. Magnum Corp (T.K. Lim)	18. Magnum Corp (T.K. Lim – now controlled by Daim's allies)
19. Perusahaan Otomobil Nasional (Proton) (Yahya Ahmad)	19. Perusahaan Otomobil Nasional (Proton) (Government)
20. Nestle (Foreign)	20. Kuala Lumpur-Kepong (KLK) (Lee Loy Seng family)
21. Edaran Otomobil Nasional (EON) (Yahya Ahmad)	21. Malaysian Pacific Industries (Quek Leng Chan)
22. Heavy Industries Corp of Malaysia (HICOM) (Yahya Ahmad)	22. Nestle (Foreign)
23. Golden Hope Plantations (Government)	23. AMMB Holdings (Azman Hashim)
24. Hong Leong Credit (Quek Leng Chan)	24. Malayan Cement (Foreign)
25. Kuala Lumpur-Kepong (KLK) (Lee Loy Seng family)	25. Golden Hope Plantations (Government)
26. Guthrie (Government)	26. Tanjong (T. Ananda Krishnan)
27. Faber (Halim Saad, through Renong)	27. Edaran Otomobil Nasional (EON) (Government)
28. Hong Leong Bank (Quek Leng Chan)	28. Hong Leong Bank(Quek Leng Chan)
29. Berjaya Toto (Vincent Tan)	

- | | |
|--|---|
| 30. Commerce-Asset Holdings (Halim Saad, through Renong) | 29. Sarawak Enterprise Corporation (Sarawak state government) |
| 31. Hume Industries (Quek Leng Chan) | 30. Malaysian Airline System (MAS) (Tajudin Ramli – now government) |
| 32. Multi-Purpose Holdings (MPHB) (T.K. Lim) | 31. Malaysian Resources Corporation (MRCB) (Government) |
| 33. Tanjong (T. Anada Krishnan) | 32. Oriental Holdings (Loh family) |
| 34. Malayan United Industries (MUI) (Khoo Kay Peng) | 33. Southern Bank (Tan Teong Hean) |
| 35. Rashid Hussain (RHB) (Rashid Hussain) | 34. HICOM Holdings (De-listed) |
| 36. Affin Holdings (Government) | 35. Malakoff (Government, through MRCB) |
| 37. Leader Universal (H'ng family) | 36. Gumuda (Lin Yun Ling) |
| 38. Highlands & Lowlands (Government) | 37. Unisem (Foreign) |
| 39. Land & Gebneral (L&G) (Wan Azmi Wan Hamzah) | 38. Hong Leong Credit (Quek Leng Chan) |
| 40. OYL (Quek Leng Chan) | 39. TA Enterprise (Tiah Thee Kian) |
| 41. Amcorp (William Cheng) | 40. Sime UEP Properties (Government, through Sime Darby) |
| 42. Amsteel (William Cheng) | 41. Jaya Tiasa Holdings (Tiong Hiew King) |
| 43. Perlis Plantations (Robert Kuok) | 42. Kumpulan Guthrie (Government) |
| 44. Lingui Developments (Yaw Chee Ming) | 43. Lingui Developments (Yaw Chee Ming) |
| 45. Malaysian Helicopter Services (MHS) (Tajudin Ramli) | 44. Petronas Dagangan (Government) |
| 46. Jaya Tiasa Holdings (Tiong Hiew King) | 45. UMW Holdings (Government) |
| 47. Petronas Dagangan (Government) | 46. New Straits Times Press (NSTP) (Government, through MRCB) |
| 48. Shell (Foreign) | 47. Affin Holdings (Government) |
| 49. Sri Hartamas (Loy Hean Heong) | 48. Arab-Malaysian Finance (Azman Hashim) |
| 50. IOI Corp (Lee Shin Cheng) | 49. Malayan United Industries (Khoo Kay Peng) |
| | 50. IOI Corporation (Lee Shin Cheng) |

Source: Gomez (2006)

Appendix 3

Interlocking directorates in the top 100 KLSE companies, 2000

Name	Companies
Nuraizah bt Abu Hamid	Tenaga Nasional Telekom Malaysia
Md Yusof bin Hussin	UMW Holdings Malayan Banking
Mohd Hilmey bin Mohd Taib	Malayan Banking Kuala Lumpur Kepong (KLK)
Lau Yin Pin @ Lau Yen Beng	YTL Power International Tenaga Nasional
Kamariah bte Hussain	Edaran Otomobil Nasional (EON) Tenaga Nasional
Mohd Hassan bin Marican	Petronas Gas Petronas Dagangan Malaysia International Shipping Corporation (MISC)
Lim Goh Tong	Resorts World Genting
Lim Kok Thay	Resorts World Genting
Mohammed Hanif bin Omar	Resorts World Genting AMMB Holdings Arab-Malaysian Finance
Alwi Jantan	Guinness Anchor Resorts World
Siew Nim Chee	Malaysian Oxygen Resorts World
Mohd Ali bin Hj Yasin	MISC Petronas Dagangan
Wan Ali Tuanku Yubi	Sarawak Enterprise Corporation Malaysian Airline System (MAS) Cahaya Mata Sarawak (CMS) MISC
Nik Mohamed bin Nik Yaacob	Sime Darby Sime UEP Properties
Mohd Desa bin Pachi	Commerce Asset-Holding Malaysia Mining Corporation (MMC)

Nik Hashim bin Nik Yusoff	Utama Banking Group Malayan United Industries (MUI) Genting
Yeoh Tiong Lay	YTL Corporation YTL Power International
Francis Yeoh Sock Ping	YTL Corporation YTL Power International
Yeoh Seok Kian	YTL Corporation YTL Power International
Yeoh Seok Hong	YTL Corporation YTL Power International
Yeoh Seok Kah	YTL Corporation YTL Power International
Yeoh Soo Keng	YTL Corporation YTL Power International
Yeoh Soo Min	YTL Corporation YTL Power International
Michael Yeoh Sock Siong	YTL Corporation YTL Power International
Haron bin Mohd Taib	YTL Corporation YTL Power International
Yahya bin Ismail	YTL Corporation YTL Power International Shell Refining Company Southern Bank United Engineers (M) (UEM)
Raja Tun Mohar bin Raja Badiozaman	YTL Corporation YTL Power International
Thong Yaw Hong	Public Bank Berjaya Land Kuala Lumpur Kepong (KLK) MMC Public Finance Batu Kawan
Teh Hong Piow	Public Finance Public Bank
Tay Ah Lek	Public Finance Public Bank
Tengku Abdul Rahman ibni Sultan Hj Ahmad	Public Finance Public Bank

Yeoh Chin Kee	Public Finance Public Bank
Oh Chong Peng	Rothmans of Pall Mall (M) RHB Capital Star Publications (M) Rashid Hussain Powertek
Abdul Rashid Hussain	Rashid Hussain RHB Capital
Seah Fook Chin	Rashid Hussain RHB Capital
Chong Kin Leong	Rashid Hussain RHB Capital
Clifford Francis Herbert	RHB Capital MAS
Halim Saad	UEM Renong
Syed Md Amin Syed Jan Aljeffri	KUB Malaysia UEM
Mohd Zakhir Siddiqy Sidek	Renong UEM
Chan Chin Cheung	Renong Multi-Purpose Holdings
Vincent Tan Chee Yioun	Berjaya Land Berjaya Group Berjaya Capital Berjaya Sports Toto Digi Swisscom
Tan Kok Ping	Berjaya Sports Toto Berjaya Group
Ng Foo Leong	Berjaya Land Berjaya Sports Toto
Robin Tan Yeong Ching	Berjaya Sports Toto Berjaya Group Digi Swisscom
Robert Yong Kuen Loke	Berjaya Capital Berjaya Land Berjaya Sports Toto Berjaya Group

Chan Kien Sing	Berjaya Capital Berjaya Land Berjaya Sports Toto Berjaya Group Digi Swisscom
Freddie Pang Hock Cheng	Berjaya Capital Berjaya Sports Toto
Md Khir Johari	MUI Magnum Corporation
Lim Sze Guan @ Lim Kim Wah	Magnum Corporation Bandar Raya Developments
Mohd Ghazali Seth	Magnum Corporation Nestle (M) Carlsberg Brewery Malaysia
Pee Ban Hock	Magnum Corporation Multi-Purpose Holdings
Lim Chiew	Magnum Corporation Bandar Raya Developments
Mohd Saleh bin Sulong	HICOM Holdings Perusahaan Otomobil Nasional (Proton) Kedah Cement Holdings Edaran Otomobil Nasional (EON)
Tik bin Mustaffa	Proton HICOM Holdings
Maznah Abdul Jalil	EON HICOM Holdings Kedah Cement Holdings Proton
Mohd Nadzmi bin Mohd Salleh	Proton RJ Reynolds
Lee Oi Hian	Kuala Lumpur Kepong (KLK) Batu Kawan
Yeoh Chin Hin	Batu Kawan KLK
Charles Letts	Batu Kawan KLK
Tengku Robert Hamzah	Batu Kawan KLK
RM Alias	Batu Kawan KLK
Lee Hau Hian	Batu Kawan KLK

Lee Soon Hian	Batu Kawan KLK
Yeoh Eng Khoon	Batu Kawan KLK
Quek Leng Chan	Hong Leong Bank Hong Leong Credit Hong Leong Industries Malaysian Pacific Industries (MPI) OYL Industries
David Edward Comley	MPI Hong Leong Industries
Kwek Leng San	MPI Hong Leong Industries
Mohd Shamsuddin bin Hj Mohd Yaacob	MPI Malaysian Oxygen
Tan Keok Yin	MPI Hong Leong Bank
Azman Hashim	AMMB Holdings Arab-Malaysian Finance
Azlan Hashim	Arab-Malaysian Finance AMMB Holdings
Mohd Tahir Hj Abdul Rahim	Arab-Malaysian Finance AMMB Holdings
Mohd Rashdan Hj Baba	Arab-Malaysian Finance AMMB Holdings Unisem
Cheah Tek Kuang	Arab-Malaysian Finance AMMB Holdings
Azlan Mohd Zainol	AMMB Holdings Arab-Malaysian Finance
Chan Hua Eng	Malayan Cement Lingui Developments Carlsberg Brewery Malaysia
Zain Azahari bin Zainal Abidin	Golden Hope Plantations MMC
Mohammad bin Abdullah	Golden Hope Plantations Malaysian National Reinsurance
Leong Wai Hoong	Tanjong Public Limited Company RJ Reynolds

Faisal bin Siraj	Kedah Cement Holdings HICOM Holdings EON
James Lim Cheng Poh	Hong Leong Bank Hong Leong Credit
Seow Lun Hoo	Hong Leong Bank Hong Leong Credit Malaysian Resources Corporation (MRCB)
Kwek Leng Seng	Hong Leong Bank Hong Leong Credit
Yong Ming Sang	MUI Star Publications MAS
Khalid bin Hj Ahmad	Rashid Hussain New Straits Times Press (NSTP) MRCB Malakoff
Mohd Noor bin Mutalib	MRCB NSTP Malakoff
Ahmad Nazri bin Abdullah	MRCB NSTP
Abdul Kadir bin Jasin	MRCB NSTP
Ahmad Jauhari bin Yahya	Malakoff MRCB
Mohd Osman bin Samsudin Cassim	Southern Bank Berjaya Land
Mohd Ghazali Hj Che Mat	Malakoff Kumpulan Guthrie NSTP
Lin Yun Ling	Gamuda Lingkar Trans Kota Holdings
Ng Kee Leen	Gamuda Lingkar Trans Kota Holdings
Saw Wah Theng	Gamuda Lingkar Trans Kota Holdings
Tong Keng Tatt	TA Enterprise Pan Malaysia Cement Works
Mustafa bin Mohd Ali	Sime UEP Properties Batu Kawan

Syed Fakhri Barakbah	Sime Darby Sime UEP Properties
Abdul Khalid Ibrahim	Highlands & Lowlands Kumpulan Guthrie
Wong Chong Wah	Highlands & Lowlands Kumpulan Guthrie
Ghazali bin Awang	Highlands & Lowlands Kumpulan Guthrie
Geh Cheng Hooi	Star Publications Tan Chong Motor Holdings Lingui Developments Hap Seng Consolidated
Jamiah bt Abdul Hamid	UMW Holdings MMC
Azzat bin Kamaludin	NSTP Affin Holdings
Ang Guan Seng	MUI Perlis Plantations
Lodin bin Wok Kamaruddin	Affin Holdings Ramatex
Tsuneo Horita	AMMB Holdings Arab-Malaysian Finance
Lee Shin Cheng	IOI Properties IOI Corporation
Lee Cheng Leang	IOI Properties IOI Corporation
Lee Yeow Chor	IOI Properties IOI Corporation
Yeo How	IOI Properties IOI Corporation
John Madsen R	Hap Seng Consolidated Carlsberg Brewery Malaysia
Anuar bin Mohd Hassan	Malaysian National Reinsurance Malaysian Oxygen
Tajudin bin Ramli	MAS Technology Resources Industries (TRI)
Abdul Rahman Hj Ismail	HICOM Holdings TRI BIMB Holdings
Jeffrey Alan Hedberg	Digi Swisscom TRI

Abdul Rahim bin Hj Din	Berjaya Group Digi Swisscom
Wan Abdul Rahman bin Wan Yaacob	Powertek IJM Corporation MMC Lingkar Trans Kota Holdings
Khor Chin Poey	Perlis Plantations PPB Oil Palms
Liang Kim Bang	Perlis Plantations PPB Oil Palms CMS
Ahmad bin Abdullah	Phileo Allied Tan Chong Motor Holdings
Mohd Noor Yusof	Commerce Asset-Holding KuB Malaysia
Anuar bin Hamdan	Multi-Purpose Holdings Kamunting Corporation Bandar Raya Developments
Abdul Khalid bin Sahan	MMC PSC Industries
Amin Shah bin Omar Shah	Kedah Cement Holdings PSC Industries
Saw Huat Lye	Shell Refining Company Guinness Anchor
Jaffar bin Ahmad Indot	Guinness Anchor Shell Refining Company
Siti Ramelah binti Yahya	Kumpulan Guthrie Highlands & Lowlands
Danny Tan Chee Sing	Berjaya Capital Berjaya Land Berjaya Group
Mohammed Adnan bin Shuiab	Multi-Purpose Holdings Berjaya Land
Mansor bin Salleh @ Md Salleh	Ban Hin Lee Bank Berjaya Capital
Abdul Manap bin Ibrahim	WTK Holdings Amsteel Corporation
Omar Yoke Lin Ong	OYL Industries Malaysian Oxygen
Tik bin Mustaffa	Proton HICOM Holdings Kedah Cement Holdings

Nasruddin bin Mohamed	Amsteel Corporation IOI Properties Hong Leong Industries
Wan Azmi bin Wan Hamzah	Amway (Malaysia) Holdings Land & General
Lim Ah Tam @ Lim Bok Yeng	Kamunting Corporation Bandar Raya Developments
Lim Thian Kiat	Kamunting Corporation Bandar Raya Developments Land & General
Abdul Rahman bin Sulaiman	Pan Malaysian Cement Works MRCB

Responsible Resource Management of the Oil and Gas Sector in Malaysia

Issues, Challenges and Opportunities

Tricia Yeoh

About 40 per cent of Malaysia's revenue comes from its oil and gas sector, run by national oil company PETRONAS, wholly owned by the Malaysian government. National development is therefore dependent on this revenue. Although Malaysia has not suffered from the 'resource curse' in its worst form, it is important to examine whether natural resource revenue has been responsibly used for social good. This paper provides a brief background to the oil and gas sector in Malaysia, examines resource management through the expenditure, savings and subsidy mix employed by the government, industry sustainability for future generations, and transparency and public reporting of the industry. The government, private sector and civil society must ultimately work towards good governance in managing the oil and gas industry.

Introduction

In the 1980s and 1990s Malaysia was often touted as one of Southeast Asia's fastest growing economies. Indeed, between 1988 and 1998 real gross domestic product (GDP) grew at 7.4 per cent on average, ranking it the 6th highest economic growth in the world of that period, with neighbouring Singapore at 3rd position (*The Economist*, 2010). Absolute poverty fell from 49.3 per cent to 3.8 per cent between 1970 and 2009 (Malaysian

Government, 2010),¹ and the Gini coefficient² fell from 0.513 to 0.441 between 1970 and 2009. Malaysia also scores relatively well in the United Nations' Human Development Index, ranked 57th in the category of 'High Human Development' (UNDP, 2010). This compares with countries such as France in 14th place and Malaysia's neighbour Singapore at 27th place, both countries classified as 'very high human development'. Malaysia attracted large inflows of foreign direct investment (FDI) in the 1980s and 1990s, growing at an average of 38.7 per cent between 1986 and 1996 (Karimi and Yusop, 2009).

However, in the past decade there have been increasing signs of a lacklustre economy. Growth rates prior to the 1998 Asian economic crisis were never regained; GDP grew at an average of 5.5 per cent from 1998–2008. The United Nations World Investment Report 2010 shockingly revealed that FDI into Malaysia plummeted by 81 per cent from US\$7.32 billion in 2008 to US\$1.38 billion in 2009 (UNCTAD, 2010). Although it is possible to relate this to the global economic slowdown, neighbouring Indonesia did not suffer as badly.³ Malaysia experienced the biggest decline in FDI in Southeast Asia; it was the only country to register a net negative FDI flow. Recent growth rates of less than 5 per cent per annum have not met the expectations of the government's 10th Malaysia Plan, in which the government has said that Malaysia would require at least 6 per cent per annum growth rate to increase the gross national income per capita to RM38,850 in 2015.

Malaysia is blessed with abundant resources, including tin, oil palm, forests and oil and gas, revenue from which has contributed significantly to national development. Oil and gas revenue is especially prominent, contributing about 40 per cent to national wealth. It has been argued that Malaysia is one of the few countries to have escaped the 'resource curse' or 'paradox of plenty', where countries take their natural resources for granted, leading to wastage and corruption instead of translating wealth

¹ Malaysia uses five-year development plans to set out the country's objectives, policies and plans; they cover all major industries and policy areas. The plans are subsumed within a broader ten-year industry master plan. The New Economic Policy was articulated within the Second Malaysia Plan in 1971.

² The Gini coefficient is a measure of income inequality in a given society and takes a value between 0 and 1. The closer to 0, the more equally spread out a nation's income is; the closer to 1, the more unequal is income distribution.

³ In 2009 Malaysia's GDP contracted by 1.7 per cent whilst Indonesia's grew by 4.5 per cent.

into better development. US\$1 billion, for example, reportedly disappeared from Angola's oil and gas accounts annually due to corruption (McMillan, 2005). The paradox is that natural resources ought to bring greater growth and development, but the reverse is true in many cases. Per capita incomes in resource-poor countries grew two to three times faster than resource-export driven countries between 1960 and 1990 (Auty, 2001). It is interesting to explore what growth rates Malaysia would have achieved if it was not endowed with natural resources. Have its resources been optimised for maximum returns?

It is clear that the oil and gas sector contributes significantly to national wealth. The proportion of national revenue contribution coming from the oil and gas sector has increased through the years, making up 19.8 per cent of total government revenue in 1980, rising to 39.5 per cent in 2009. However, it fell to 32.3 per cent in 2012 (Economic Reports, 1980–2012). National revenue – and hence national development – is highly dependent upon the stability of the oil and gas sector.

Given this, several themes need exploring. First, the role and contribution of the oil and gas sector to national growth, specifically whether revenue is used for public interest and social good. Second, whether such natural resources can be continually relied upon for the future economic growth of the country, to ensure the welfare of future generations. And, third, whether there have been satisfactory levels of revenue transparency and accountable reporting in the oil and gas sector. This paper seeks to ultimately examine overall good governance in the management of the oil and gas sector in Malaysia.

Malaysia's petroleum industry began in the early 1970s, following the oil crisis of 1973 when crude oil world prices tripled. Arab members of the Organisation of Petroleum Exporting Countries (OPEC) imposed a six-month embargo on oil supplies, causing price increases. Countries began to be aware of the need to control their own national resources. The Petroleum Development Act (PDA) was passed in 1974 and Perbadanan Petroleum Nasional (Petroleum Nasional Berhad, National Oil Corporation, PETRONAS) was formed. PETRONAS is wholly owned by the Malaysian government, but is incorporated as a private company.

PETRONAS began with downstream activities of a urea (an organic compound) plant constructed in Sarawak in 1976, then venturing into exploration and production in 1978, and refining and distribution when it built the Kerteh and Malacca refineries in 1983 (Fong, 2010). PETRONAS also bought tankers through its subsidiary, Malaysia International Shipping Company (MISC) and built the Peninsular Gas Utilisation Pipeline (PGU)

in 1985 at a cost of RM720 million, in efforts to be involved in the liquid natural gas (LNG) industry (*ibid.*).

PETRONAS is now ranked as one of the FORTUNE Global 500's largest companies in the world. FORTUNE also ranks PETRONAS as the 13th most profitable company in the world and most profitable in Asia with some publicly listed companies (see Fig. 14.1).⁴ It operates in more than 30 countries, including Sudan, South Africa, China, Myanmar, Iran, Chad, and Gabon, in a mix of upstream (exploration and production) and downstream activities (see Fig. 14.2). International operations contribute almost half of total revenue – 41.1 per cent in 2011, a slight drop from 45.3 per cent in 2010 (PETRONAS, 2011). It posted a revenue of RM241.2 billion for the 2011 financial year. PETRONAS has more than 100 subsidiaries and owns a fleet of more than 100 tankers and ships through MISC (Fong, 2010).

Fig. 14.1. Map of PETRONAS's international presence



Source: PETRONAS 2010 Annual Report

⁴ PETRONAS's publicly listed companies are PETRONAS Dagangan Berhad, PETRONAS Gas Berhad, PETRONAS Chemicals Berhad, Malaysia International Shipping Corporation (MISC) Berhad, Malaysian Marine and Heavy Engineering (a subsidiary of MISC) and KLCC Property Holdings Berhad.

Fig. 14.2. Map of PETRONAS's producing fields and development projects in Malaysia.



Source: PETRONAS 2010 Annual Report

Responsible Resource Management: How Natural Resources Should be Managed Responsibly

Responsible resource management involves oversight and governance over the entire value chain, from the organisation of extractive production, revenue generation and management, and finally expenditure processes and development outcomes. Natural resources ought to be responsibly managed for the public good. When managed well with sufficient transparency standards, government accountability, citizen engagement and responsible corporate practices, natural resource revenue can drive national growth and development.

Standards to ensure responsible management of natural resources are set out in a 'Natural Resource Charter' (2010), with 12 very useful precepts; although situations differ from country to country, they are useful for Malaysia. The 12 precepts prescribe how natural resources should be transparently managed to have positive economic, social and environmental impacts.⁵

⁵ The 12 precepts are as follows:

1. The development of a country's natural resources should be designed to secure the *greatest social and economic benefit* for its people. This requires a *comprehensive approach* in which every stage of the decision chain is understood and addressed.
2. Successful natural resource management requires *government accountability to an informed public*.
3. Fiscal policies and contractual terms should ensure that the country gets full benefit from the resource subject to attracting the investment necessary to realise that benefit. The long-term nature of resource extraction requires policies

One important lesson for resource-rich countries is the Netherlands experience in 1959, when the discovery of large natural gas fields led to decline in the rest of its economy. The term ‘Dutch disease’ today refers to a mechanism in which increase in natural resource revenue causes appreciation in the country’s exchange rate, resulting in its exports becoming more expensive and the non-oil sectors becoming uncompetitive. Malaysia, however, did not fall victim to this as it pursued an aggressive industrialisation and manufacturing policy, the sector growing from RM36.5 billion in 1987 to RM491.9 billion in 2008, with the export value of electrical and electronics appliances growing from RM1.1 billion in 1987 to RM227.3 billion in 2008 and the services sector from RM36.7 billion in 1987 to RM334.6 billion in 2008 (Fong, 2010). That said, it is still necessary to examine other crucial aspects of responsible resource management.

and contracts that are robust to changing and uncertain circumstances.

4. Competition in the award of contracts and development rights can be an effective mechanism to secure value and integrity.
5. Resource projects can have significant positive or negative local *economic, environmental and social effects* which should be identified, explored, accounted for, mitigated or compensated for at all stages of the project cycle. The decision to extract should be considered carefully.
6. Nationally owned resource companies should operate transparently with the objective of being commercially viable in a competitive environment.
7. Resource revenue should be used primarily to promote *sustained, inclusive economic development* through enabling and maintaining *high levels of investment* in the country.
8. Effective utilisation of resource revenue requires that *domestic expenditure and investment be built up gradually* and be *smoothed* to take account of revenue volatility.
9. Government should use resource wealth as an opportunity to increase *the efficiency and equity of public spending* and enable the private sector to respond to structural changes in the economy.
10. Government should *facilitate private sector investments* at the national and local levels for the purposes of diversification, as well as for exploring the opportunities for domestic value added.
11. The *home governments* of extractive companies and *international capital centers* should require and enforce best practice.
12. *All extraction companies* should follow *best practice* in contracting, operations and payments.

Governing Frameworks: How the Oil and Gas Sector is Run in Malaysia

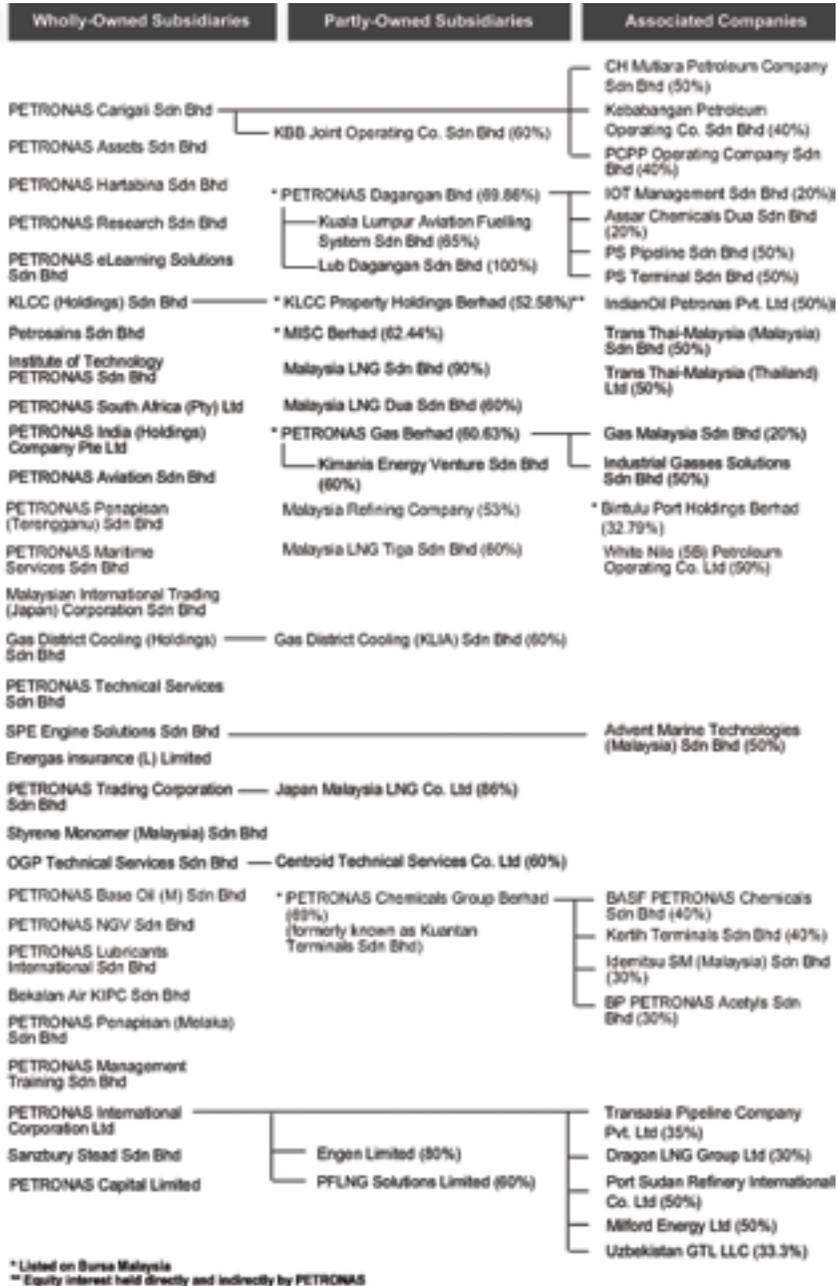
PETRONAS has, without a doubt, contributed to national development in the country, with exclusive rights as the national oil company to ownership, exploration and production of oil and gas in Malaysia. It is important to study the frameworks that govern the administration of oil and gas in Malaysia. One pressing issue is the management of resources between the Federal and state governments. Oil and gas resources are concentrated in Sabah and Sarawak in East Malaysia, and Terengganu and Kelantan on Peninsular Malaysia's east coast (see Fig. 14.3). Prior to the enactment of the PDA, several mining enactments empowered individual states to govern oil exploration and production (Yusof, 2009). However, with the PDA enactment, oil rights were centralised to the Federal government. Hence, although a federation by name, states' rights over oil were thereby circumscribed (*ibid.*). The Federal Constitution of Malaysia provides similarly centralised articles of law that govern resource ownership, exploitation and powers to enter into contracts.⁶

The PDA states that the Prime Minister has ultimate oversight over PETRONAS. Specifically, Section 3(2) of the PDA reads: 'The Corporation shall be subject to the control and direction of the Prime Minister who may from time to time issue such direction as he may deem fit' (Petroleum Development Act, 1974). The Prime Minister's sole discretionary power over the management of PETRONAS is far-reaching as the Prime Minister also appoints all members of the National Petroleum Advisory Council, whose role is to 'advise the Prime Minister on national policy and matters pertaining to petroleum industries, energy sources and their utilisation'. The Prime Minister is able to delegate powers 'to any person', whilst other parts of the Act require his explicit approval. As an off-budget agency, PETRONAS's accounts need not be disclosed to Parliament, and for this reason PETRONAS has been subject to criticism.

It has been a long-standing dispute of the Kelantan state government, under the Pan-Malaysian Islamic Party (PAS), that the Federal government owes oil royalty to them; this is currently not paid as it is argued that oil

⁶ The Ninth Schedule of the Federal Constitution of Malaysia sets this out within List I – Federal List, giving the Federal government power over the 'development of mineral resources, mines, mining, minerals and mineral ores, oils and oilfields; purchase, sale, import and export of minerals and mineral ores; petroleum products; regulation of labour and safety in mines and oilfields'.

Fig. 14.3. PETRONAS Group of Companies, 2011.



Source: PETRONAS website

is drilled outside state boundaries.⁷ The other three oil-producing states currently receive an annual 5 per cent royalty from the Federal government, although the state governments have demanded higher royalty percentages.⁸ This is of great concern since the four states (Kelantan, Terengganu, Sabah and Sarawak) have the highest poverty rates in Malaysia – a resource curse of sorts. For example, in 2004 the poverty rate was 3.6 per cent in Peninsular Malaysia, 23 per cent in Sabah, 15.4 per cent in Terengganu, 10.6 per cent in Kelantan and 7.5 per cent in Sarawak (Malaysian Government, 2006).

Section 4 of the PDA does not mention quantitative percentages owing to the states,⁹ but 12 states signed an agreement with PETRONAS relinquishing their rights and accepting the 5 per cent profits from petroleum production, with the exception of Sabah, which wanted the agreement amended. Such federal–states disputes have a long history, especially in the East Malaysian states. In Sarawak, the British granted concessions to Shell for ‘as long as the sun, the moon and the stars are in the sky’. It is clear that oil revenue from the individual states is too lucrative for the Federal government to give up. Other energy policy documents include the National Petroleum Policy 1975, the National Depletion Policy 1980, the Gas Supply Regulation 1997, and other electricity enactments.

Petroleum Revenue and Expenditure

How Oil and Gas Revenue Fuels Malaysia’s National Coffers

Oil prices were relatively stable from 1974 to 2000 (US\$20–30 per barrel), and revenue management from this extractive industry was not closely scrutinised until 1997 when questions were raised about PETRONAS’s money used in the construction of several mega-projects.¹⁰ World crude oil

⁷ The Kelantan state government filed a suit against PETRONAS for breaching the Petroleum Development Act (PDA) 1974 by failing to pay the state oil royalties amounting to RM800 million per annum from the Kelantan-Thailand offshore area since 2005. As of October 2012, the Federal Court allowed the Kelantan government leave to appeal the court ruling that the suit should be disposed of.

⁸ The opposition coalition, Pakatan Rakyat, has called for the review and increase of oil royalty to all four oil-producing states of up to 15 per cent of oil royalties from the current 5 per cent.

⁹ ‘The Corporation shall make to the government of the Federation and the Government of any relevant State such cash payment as may be agreed between the parties concerned.’ (PDA, 1974).

¹⁰ These mega-projects, pursued by then Prime Minister Mahathir Mohamad, are explored in detail in the next section.

prices then shot up to US\$140 per barrel in 2007, contributing to windfall profits to both PETRONAS and the Federal government. Revenue from oil and gas contributed RM400 million to the Federal government in 1975, rising to RM6.3 billion in 1985 and increased rapidly to RM54 billion in 2010. As a proportion of total government revenue, it rose from 7.8 per cent in 1975 to 39.5 per cent in 2009. Since its inception, PETRONAS has contributed RM471 billion to the government, and has borne a cumulative subsidy of RM97 billion under the national gas utilisation plan (see Table 14.1).

PETRONAS posted a pre-tax profit of RM90.5 billion in 2011, an increase of 34.5 per cent from the previous year. The Federal government receives revenue from oil and gas via three sources: direct tax (petroleum income tax), indirect tax (export duties on petroleum and petroleum-related products) and non-tax revenue (dividends from PETRONAS to the Federal government and petroleum royalties). Petroleum income tax accounted for more than a quarter of total direct tax collected in 2012, an estimated RM31.96 billion out of a total of RM116.83 billion (Economic Report, 2012/2013). In 2012 the Federal government collected an estimated RM35.67 billion from its total indirect taxes, comprising excise duties, import duties, sales tax, service tax and others from all sources. The oil and gas sector contributed RM2.4 billion, or about 100 per cent, of the total export duties collected.

For non-tax revenue, dividends from PETRONAS to the Federal government amounted to RM30 billion in 2011, and a decision was made to reduce this to RM28 billion in 2012. It has also been announced that a further reduction will be made – to RM27 billion – in 2013, based on the reasoning that PETRONAS needs to hold onto cash to help reverse a production slump and to retain the company's profits to invest in exploration after Malaysia's oil and gas production fell in the last three consecutive years. This follows on from concerns that the RM30 billion dividends had not changed despite a fall in profits in 2010. In 2012, dividends made up 41 per cent of total oil and gas revenue collected. Petroleum royalties amounted to RM5.6 billion in 2012. Non-tax revenue from the oil and gas sector amounted to RM35.93 billion, 65.6 per cent of the Federal government's total non-tax revenue of RM54.75 billion in 2012.

It is clear that government revenue is substantially supplied by the oil and gas sector; in 2012, RM67.96 billion – 32.8 per cent of the total revenue of RM207.25 billion. Total oil and gas revenue collected in 2012 therefore financed almost one-third of the Federal government's expenditure, which amounted to RM252.4 billion.

Table 14.1. Federal Government Revenue from Oil and Gas, 1975–2007 (RM million)

Type of Oil & Gas Revenue by Year	1975	1980	1985	1990	1995	2000	2001
Petroleum Income Tax	322	1,736	3,130	2,644	2,185	6,010	9,859
Petroleum Export Duties	0	677	1,639	1,910	751	996	831
PETRONAS Dividend	0	0	930	2,300	3,100	4,100	5,910
Petroleum Royalty & Gas	78	345	619	627	710	1,763	2,000
Total Revenue from Oil & Gas	400	2,758	6,318	7,481	6,746	12,869	18,600
<i>% share of Total Government Revenue</i>	<i>7.8</i>	<i>19.8</i>	<i>29.9</i>	<i>25.3</i>	<i>13.3</i>	<i>20.8</i>	<i>23.4</i>
WTI US\$ per barrel (Dec)	11.16	37.00	27.23	27.34	19.04	28.46	19.33
Total Government Revenue	5,117	13,926	21,115	29,521	50,594	61,864	79,567
Type of Oil & Gas Revenue by Year	2002	2003	2004	2005	2006	2007	2008
Petroleum Income Tax	7,636	8,466	11,479	14,566	20,674	22,600	24,191
Petroleum Export Duties	768	1,106	1,539	2,029	2,325	2,450	2,703
PETRONAS Dividend	5,390	5,100	9,100	11,000	18,000	24,000	30,000
Petroleum Royalty & Gas	1,600	2,142	2,497	3,293	4,240	4,230	5,908
Total Revenue from Oil & Gas	15,394	16,814	24,615	30,888	45,239	53,280	62,802
<i>% share of Total Government Revenue</i>	<i>18.4</i>	<i>18.2</i>	<i>24.8</i>	<i>29.1</i>	<i>36.6</i>	<i>37.8</i>	<i>39.3</i>
WTI US\$ per barrel (Dec)	29.42	32.15	43.33	59.43	62.03	91.73	33.87
Total Government Revenue	83,516	92,608	99,397	106,304	123,546	141,073	159,793
Type of Oil & Gas Revenue by Year	2009	2010	2011	2012			
Petroleum Income Tax	27,231	18,713	27,748	31,962			
Petroleum Export Duties	1,104	1,745	1,997	2,393			
PETRONAS Dividend	30,000	30,000	30,000	28,000			
Petroleum Royalty & Gas	4,800	4,900	5,100	5,600			
Total Revenue from Oil & Gas	63,135	55,358	64,845	67,955			
<i>% share of Total Government Revenue</i>	<i>39.80</i>	<i>34.67</i>	<i>34.97</i>	<i>32.79</i>			
WTI US\$ per barrel (Dec)	74.30	89.04	98.57	88.25			
Total Government Revenue	158,639	159,653	185,419	207,246			

Source: Ministry of Finance, Economic Report (various years)

Charts 14.1 and 14.2 compare the percentage of oil and gas revenue collected by the Federal government in 1985 (the first year PETRONAS gave dividends to the government) and 2012. Dividends to the government as a percentage of total oil and gas revenue have increased significantly from 15 per cent to 41 per cent over 27 years. In 2010 the dividends were more than 50 per cent of total revenue. These dividends constituted 74 per cent of PETRONAS’S profits in 2010, compared with 57 per cent in 2006.

Chart 14.1. Oil & gas revenue collected by Malaysian Federal government, 1985.

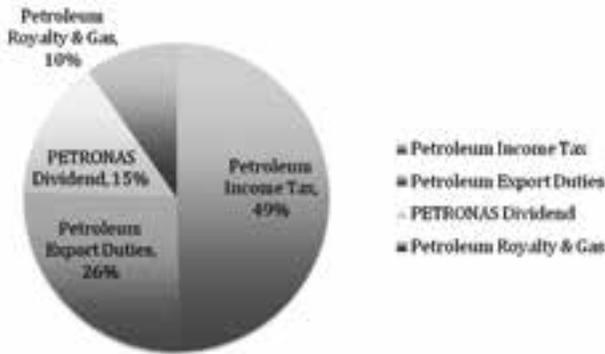


Chart 14.2. Oil & gas revenue collected by Malaysian Federal government, 2012.

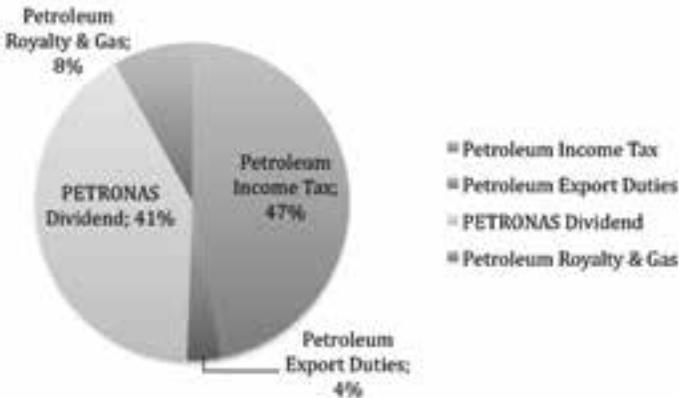
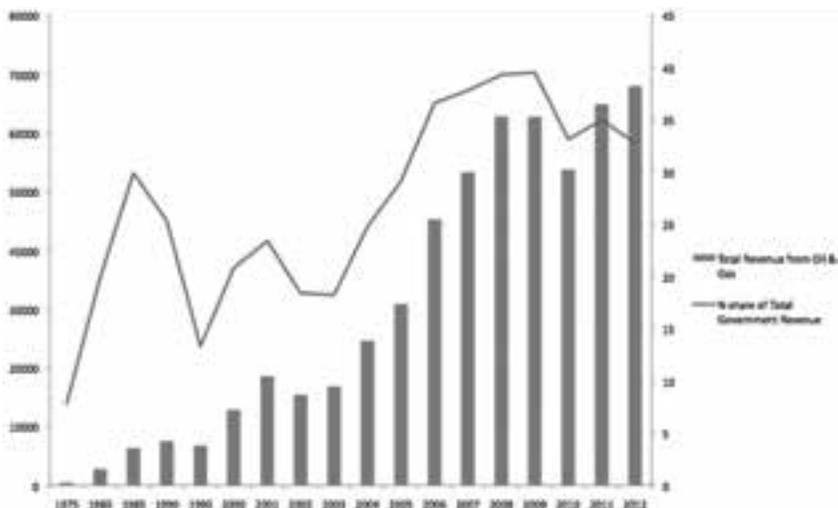


Chart 14.3 shows the increase in oil and gas revenue from 1975 to 2012; it dipped in 2010 due to lower sales prices, although higher volumes were generated. It reached a peak in 2009, when oil and gas revenue contributed about 40 per cent to total government revenue, ultimately incorporated into the Federal government’s consolidated fund. Although as a percentage share of total revenue this is falling, in volume the total revenue from oil

and gas is increasing steadily. The government therefore has discretion on how it decides to utilise these resources in their appropriate proportions, in the areas of expenditure (both operating and developmental), savings or subsidies.

Chart 14.3. Oil and gas revenue as a percentage share of total government revenue (1975–2012).



How Oil and Gas Money is Spent in Malaysia

It is significant to note that PETRONAS's formation took place just after the New Economic Policy (NEP) was announced. The NEP, which was formulated following violent clashes two years earlier between ethnic Malays and Chinese, had a two-pronged objective: to eradicate poverty irrespective of race and to eliminate the association between job function and race. There were negative sentiments amongst Malays about their socio-economic disposition despite forming the country's majority. In 1970 only 2.4 per cent of the economy was held by the Bumiputera (Malays and other indigenous peoples); the remainder was held by Chinese and foreigners. The NEP's over-arching theme was therefore to uplift the socio-economic standing of the Malays by increasing their ownership and control of national wealth.

PETRONAS was instructed to prepare a blueprint for Bumiputera participation in the petroleum industry in 1985, in the form of licensing and registration, procurement, vendors, dealership, etc. Today, its licensing

and registration application guidelines stipulate that only companies with 51 per cent Bumiputera equity ownership, board of directors, management and employees qualify (PETRONAS, 2010). Bumiputera dealers operate the majority of PETRONAS petrol stations in Malaysia and, according to Yusof (2009), more than half of upstream and downstream contracts from 2000 until May 2006 were awarded to Bumiputeras.

In evaluating how oil and gas funds have been used, it is important to examine national expenditure; in 2010 26 per cent of the total expenditure was for developmental purposes, with the remaining 74 per cent for operating expenditure. The proportion of developmental expenditure has been decreasing over the years, leading to questions about the optimal allocation of resources. In 2011 development expenditure fell by RM5 billion (9 per cent), from RM54 billion in 2010 to RM49.2 billion in 2011, although this rose slightly to RM49.8 billion in 2012. Operating expenditure increased from RM162.8 billion in 2011 to RM202.6 in 2012, a rise of 24 per cent. For funds to reach the most appropriate targets in serving public interests, development expenditure ought to make up the higher proportion. Table 14.2 shows the progressive increases in operating expenditure as a proportion of total expenditure in recent years.

Table 14.2. Federal Government Operating and Development Expenditure, 2003–2012 (RM billion)

	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
Operating Expenditure	71.7	80.0	89.1	101.2	113.0	128.8	157.1	152.2	162.8	202.6
	68.5%	73.4%	76.4%	75.6%	72.9%	76.7%	75.3%	73.8%	76.8%	80.3%
Development Expenditure	33.0	29.0	27.6	32.8	42.0	39.2	49.5	54.0	49.2	49.8
	31.5%	26.6%	23.6%	24.4%	27.1%	23.3%	24.7%	26.2%	23.2%	19.7%
Total Expenditure	104.7	109.0	116.7	134.0	155.0	168.0	204.7	206.2	212.0	252.4

Be that as it may, social and economic services together make up almost 90 per cent of total developmental expenditure. Malaysia spends 9.8 per cent of its GDP on health, and 7.9 per cent on education, which is even higher than resource-rich Norway (health spending of 8.9 per cent of GDP, education spending of 7.2 per cent).

PETRONAS has prided itself on corporate social responsibility initiatives in education and human capital development. It has set up institutions of higher learning: Universiti Teknologi PETRONAS (UTP), PETRONAS Management Training Centre, Institut Teknologi PETRONAS and Akademi Laut Malaysia (PETRONAS, 2009). PETRONAS also financed Petrosains,

a science learning centre, the Malaysian Philharmonic Orchestra (MPO) performance hall, and the arts and culture PETRONAS Gallery.

PETRONAS, however, has not been without its controversies. It has been argued that its funds have not been put to their best use, in some cases bailing out companies or funding mega-projects at the demand of the government. In 1984 Bank Bumiputera (Bumiputra Malaysia Finance, BMF) accumulated a large amount of bad loans, almost going under. PETRONAS bailed out Bank Bumiputera by pumping in more than RM2 billion; it paid Permodalan Nasional Berhad (PNB), the major shareholder of BMF) RM1 billion and took over BMF-related loans at a write-down value of RM1.25 billion (Gomez & Jomo, 1999).¹¹ In 1991 PETRONAS was again asked to bail out the same bank with RM1 billion (Fong, 2010).

Deliberately tabled and passed by Parliament at the time this took place was the Petroleum Development Act (Amendment) Act 1985, which gave new powers to PETRONAS in section 3A, that is the 'power to take over or acquire ... the whole or any part of any commercial undertaking, business or enterprise'. Section 4(1) then added declarations to the effect that every act or transaction by PETRONAS before the Act would be lawful, rendering any retrospective action legal. The Act empowered PETRONAS to legally take over or buy up companies.¹²

Since then, PETRONAS's profits have been used to finance economically unsustainable ventures or bail out politically-connected corporations. In 1998 it acquired the debt-laden shipping company Konsortium Perkapalan Berhad (KPB Limited) through its shipping carrier Malaysia International Shipping Corporation Berhad. PETRONAS acquired equity in Proton, the national car company that eventually was debt-ridden due to slow car sales; and assisted other companies such as Malaysia Airlines (MAS).

Former Prime Minister Mahathir Mohamad executed numerous mega-projects as part of his vision to put Malaysia on the world map. The iconic PETRONAS Twin Towers is essentially owned by PETRONAS.¹³

¹¹ Bank Bumiputera was eventually acquired from PETRONAS for RM1.15 billion by the Ministry of Finance Incorporated in 1991 (Gomez and Jomo, 1999).

¹² Cheah Kaw Chiew, a Bank Bumiputera account owner who challenged the legality of PETRONAS buying these debts, claiming this was *ultra vires* the PDA 1974, failed as the case against PETRONAS was eventually dismissed on the grounds that its actions were no longer *ultra vires* or illegal following the Act (*Petroleum Nasional Bhd. (PETRONAS) & Anor. vs Cheah Kam Chiew*).

¹³ PETRONAS is the majority shareholder, holding 52 per cent of KLCC Property Holdings Berhad shares, 31.7 per cent through KLCC (Holdings) Sdn Bhd in which PETRONAS has 100 per cent direct interest, and 20.9 per cent through Cartaban

It is estimated that the government pumped RM2 billion into the project (Tyndall, 2002).¹⁴ The Kuala Lumpur International Airport (KLIA) was another massive project, built at an estimated cost of RM9 billion (*ibid.*). As part of Mahathir's Multimedia Super Corridor (MSC) plan to transform the Klang Valley into a Malaysian Silicon Valley, RM2 billion was spent on Cyberjaya (*ibid.*). The Formula 1 Sepang Circuit was another project, estimated at US\$120 million (F1-Malaysia, 2011).

Putrajaya, the new government administration area, which took almost ten years to complete, had a final estimated construction cost of RM11.83 billion, as stated in a Parliamentary reply (Fauwaz et al., 2008).¹⁵ Altogether, PETRONAS controls 84.41 per cent of Putrajaya Holdings Sdn Bhd.¹⁶ These landmark projects would not have been possible without revenue from natural resources.

The heady days of mega-projects in Malaysia peaked in the 1990s, but following the 1998 Asian financial crisis, national planning policy was given a reality check. Public sentiment was negative towards projects that did not show returns on massive investments. Prior to the crisis, Microsoft announced it would make MSC its regional headquarters, but this fell through. Originally planned as a hustling and bustling information technology hub, today Cyberjaya's township of commercial blocks, two universities and some residential buildings is a far cry from what was expected of it.

Such projects waned under the leadership of Abdullah Badawi, but this changed when Prime Minister Najib Razak took over. He announced a slew of similarly large-scale infrastructure projects in the 2011 Budget, chief of which is a RM5-billion 100-storey tower, Warisan Merdeka (Heritage of Independence), to be built in the heart of Kuala Lumpur.¹⁷ There have,

Nominees (Tempatan Sdn Bhd) which holds the shares on behalf of PETRONAS (KLCC Property Holdings Berhad, 2010).

¹⁴ Estimates for the PETRONAS Twin Towers have been cited as up to RM6 billion (Fong, 2010: 63).

¹⁵ Estimates for the contributions of PETRONAS to Putrajaya have been cited as up to RM22 billion (Fong, 2010: 63).

¹⁶ Currently, PETRONAS (via KLCC (Holdings) Sdn Bhd) is the majority shareholder of Putrajaya Holdings Sdn Bhd, with 64.41 per cent. It is also interesting to note that CIMB Group Nominees (Tempatan) Sdn Bhd holds 20 per cent shares in Putrajaya Holdings Sdn Bhd on behalf of Kumpulan Wang Amanah Negara (KWAN), the oil and gas sector fund set up for long-term revenue sustainability.

¹⁷ The tower is a project by Permodalan Nasional Berhad (PNB), an institution aimed at promoting Bumiputera ownership of shares through trusts and property investment.

however, been criticisms that the RM5 billion could be put to better use and is not an efficient allocation of resources.¹⁸ The second major project to be implemented is the Mass Rapid Transit (MRT) estimated to cost RM36.6 billion, which has since been awarded to the MMC-Gamuda joint venture. It is unclear if an open tender was conducted.

One could argue that large projects in both waves have their positive economic spill-over effects. Whilst KLIA, Putrajaya and KLCC are being utilised, results could be attained by smaller-scale investments. For example, the newly-formed Land Public Transport Commission could have tackled the convoluted bus and taxi systems before commissioning a multi-billion dollar MRT project.¹⁹ As a national oil company, PETRONAS ought to focus upon developing and specialising in the oil and gas sector as this is its primary focus. Most recently, PETRONAS financed and built a private healthcare facility, Prince Court Medical Centre, in Kuala Lumpur, with costs estimated at RM544 million. The first question this raises is why PETRONAS is diversifying its business interests whilst the local petroleum sector has not been sufficiently developed. PETRONAS should prioritise its commitments in its primary concerns and reasons for which it was formed. Second, one has to question whether new business investments are adding value to the core petroleum business or instead burdening PETRONAS with costs.²⁰ In this instance, PETRONAS should not be trying to run a hospital when they need to invest in supplying energy to the country.

Some resource-rich countries have sovereign wealth funds (SWF) that seek to protect their economies from the volatility of their revenue base. Due to poor governance structures, revenue from the oil and gas sector is

¹⁸ Four days after the announcement of the mega-tower, a Facebook group protesting the tower had as many as 17,000 supporters. In January 2011 this group had 286,636 supporters. (<http://www.facebook.com/NoMegaTower>).

¹⁹ Malaysia has a bad history of bailing out failed rail systems; the government spent RM3.3 billion to bail out Star Light Rail Transit (LRT) line, RM4.5 billion for the Putra LRT line (LRT lines were then operated by separate companies), RM882 million for the Kuala Lumpur Monorail system, and some RM200 million for privatised bus service operators. It is feared that the current MRT project will go along a similar route with lower than forecast passenger traffic and massive cost overruns. With this in mind, a greater priority should be to fix existing connectivity and financial sustainability problems experienced by bus, taxi and rail systems.

²⁰ Having said this, several international oil companies have begun to diversify into other areas. Shell, for example, has spun off a company to run a power and electricity business. This, however, makes intuitive sense as they have expertise in the energy sector and it is therefore a natural extension of the core business.

often spent freely, especially when windfall profits are obtained with high oil prices or when there is great political incentive. These SWFs, savings or investment funds exist to compensate for revenue shortfalls, save for future generations, or invest in physical or human capital for future economic growth. SWFs are most often funded with proceeds from the extractive industries and, although there are varying formulae for their success, they are best used when spent broadly for future and long-term, as opposed to short-term, benefits.²¹ Benefits from a depleting resource should be spread across current and future generations (Sachs, 2007).

The closest Malaysia has to this is the Kumpulan Wang Amanah Negara (National Trust Fund) formed under the National Trust Fund Act 1988. According to the Act, money is to be appropriated from the consolidated fund and contributions 'may be made by Petroleum Nasional Berhad to the Fund' (National Trust Fund Act, 1988). Provisions for application of the fund are extremely loose; money can be applied for 'any of the purposes of the Development Fund' and 'the granting of loans or advances on concessionary terms to the Federal Government or ... any State in Malaysia', subject to the Minister of Finance's approval (*ibid.*). Investments are also allowed for.

The National Trust Fund Panel trustees are appointed by the Minister of Finance, and members include an officer from the Prime Minister's Department. Although the fund's annual audited accounts and report are supposed to be tabled before Parliament, the 2005 report was the last one tabled. In a Parliamentary answer in 2008, the government stated that RM3.8 billion remains in the fund. It is necessary to examine the workings of this fund in detail, especially as its objective was to ensure sustainability of resources for future generations.²² In the Resource Governance Index 2013 (Revenue Watch Institute, 2013), Malaysia scored 46 out of 100 in the governance of its natural resource fund, ranked 12th of 23 countries.

The Norwegian Petroleum Fund is probably the best example of a successful SWF. It was set up in 1990 to smoothen oil price fluctuations and stabilise the Norway's currency, with the purpose of catering to long-term needs of future generations. The fund contained US\$400 billion at the end of 2001, equivalent to 45 per cent of its GDP. The fund's operations are strictly

²¹ The Santiago principles set out 24 generally accepted principles and practices (GAPP) of sovereign wealth funds (SWFs) that can be considered international best practices (International Working Group of Sovereign Wealth Funds).

²² Bank Negara Malaysia (Malaysian Central Bank) is responsible for the day-to-day administration and management of the affairs of the fund.

controlled and monitored by the Parliament, to which it reports three times a year. The level of transparency, accountability and responsibility of Norway's fund sets a high standard indeed. On the other hand, Nigeria is an example of a country whose Excess Crude Account (ECA) 'will soon be empty of the sizeable windfall profits collected during the recent period of high oil prices' (Gillies, 2010), mainly because the fund was not protected from the short-term political pressures to spend. One of the standards of a watertight fund is that the rules establishing the fund must bind the hands of the current leader. Key for the success of a national SWF is that there must be extremely well-defined and tightly binding rules regarding inflows and outflows, together with strict transparency measures, which Nigeria's does not have; however, the government's policymakers are considering reforms. These are two contrasting examples which Malaysia should look to. To go in Norway's direction, Malaysia must resist the use of windfall profits from petroleum money by present politicians intending to stay in power.

Apart from savings, the government has spent substantial amounts of national revenue on subsidies. The chief executive officer of PEMANDU (Performance Management and Delivery Unit) announced that Malaysia has a rising debt, which currently stands at RM362 billion, with a deficit that rose from RM5 billion in 1998 to RM47 billion in 2009. He also stated that if government debt continues at the rate of 12 per cent per annum, Malaysia could possibly go bankrupt by 2019 with a debt of RM1158 billion. This, he argues, is a result of the large subsidies given by the government (Jala, 2010). In 2009 RM74 billion (15 per cent of the national budget) was spent on subsidies;²³ 47.8 per cent of this was for fuel subsidy. The government has subsequently used this argument to gradually remove subsidies from petrol prices. The increase in world crude oil price, for example, was not accompanied by an increase in retail petrol prices; hence the differential between subsidised (downstream) and non-subsidised (upstream) sectors.

In reality, a more substantial amount of subsidies was given to industrial users, with the independent power producers (IPPs) accounting for more than half (58.7 per cent or RM8.1 billion) of the total gas subsidy (RM13.8 billion) for the power sector (Yusof, 2009).²⁴ IPPs consume about 60 per cent of the natural gas in Malaysia. It is reported that only RM11 billion

²³ Subsidies were spent for social reasons (RM42.4 billion), fuel and energy (RM23.5 billion), infrastructure (RM4.8 billion), and food (RM3.4 billion).

²⁴ Independent power producers that benefit from government subsidies include Genting Sanyen Power, YTL Power, Malakoff Berhad and Tanjong Plc/ Powertek Berhad (*The Edge*, 2005).

worth of petrol subsidies is allocated to relieve consumers' burden, compared to a hefty RM19 billion worth of gas subsidies given to IPPs each year, which constitutes 9 per cent of total revenue (Pakatan Rakyat, 2010). As much as RM39 billion is paid in subsidies and compensations annually to all corporations (IPPs, Tenaga Nasional Berhad (the national power corporation), highway concessionaires and others) by the federal government. Cumulative subsidies borne by PETRONAS since the gas price for the power sector was fixed in 1997 and the non-power sector in 2002 (up to 2010) amount to RM126.6 billion (Yow, 2010). The government is currently revising rates under its gas subsidy rationalisation plan, although critics have noted that the revisions will burden consumers – especially in the low income bracket – whilst industry players will be less severely affected.²⁵

Steps Needed to Ensure the Petroleum Industry is Better Managed

Monitoring Transparency Levels

Revenue transparency is essential in responsible resource management to ensure public accountability by both government and the corporations involved in the extractive industry. In a Revenue Watch Index (2010), Malaysia was categorised as having 'partial revenue transparency,' scoring 48.4 out of the full 100. In this category, countries are said to provide their citizens with information about the extractive sector yet show important transparency gaps in one or more specific categories of the index.²⁶ This score was below the Asia-Pacific regional average of 50.1, and below neighbouring Indonesia's score of 50. Malaysia's less-than-average performance was due to an absence of legislation providing for disclosure of information in the oil and gas sector. Hence relatively little information on contracts,²⁷ agreements and negotiated terms for exploration and production

²⁵ Under the gas subsidy rationalisation plan, gas prices are to be raised by RM4.65 per mmbtu for the power sector and RM2.52 per mmbtu for the non-power sector.

²⁶ The Revenue Watch Index evaluates the availability of information covering these key areas of natural resource management: access to resources, generation of revenue, institutional setting, state-owned companies, natural resource funds, sub-national transfers, and the extractive industry transparency initiative (EITI) if so applicable.

²⁷ At the beginning of 2010 PETRONAS had some 74 production sharing contracts (PSCs) with international oil companies including ExxonMobil, Shell, ConocoPhillips.

is publicly disclosed. In a more recent updated Resource Governance Index 2013, PETRONAS scored 61 out of 100 in the national oil company category, ranked 32nd of the 58 countries surveyed, putting it in the category of 'weak' governance of natural resource management, particularly in the areas of 'institutional and legal setting' and 'safeguards and quality controls'. Malaysia performed relatively poorly on the governance of its natural resource fund (scoring 46 out of 100) and of subnational transfers (scoring 22 out of 100, and ranking 26th of 30 countries in this count).

Other weaknesses are evident in the areas where the legislative branch of Parliament does not have the authority to ratify contracts, as well as little to no operational information on quasi-fiscal activities, transfers to state governments, or the public disclosure of joint-ventures.

The Promoting Revenue Transparency 2011 report on oil and gas reports released jointly by Transparency International and Revenue Watch Institute put further spotlight on PETRONAS. Although it performed well in country-level disclosure on domestic operations as a national oil company (NOC), scoring 85 per cent, it only scored 30 per cent in the section on reporting on anti-corruption programmes, falling below the international average of 43 per cent, and 38 per cent in organisational disclosure, again below the 65 per cent average worldwide. PETRONAS performed the worst among all international oil companies studied, scoring zero in the category on country-level disclosure of international operations. In addition, PETRONAS's corporate disclosure in host countries is dismal, with no information provided in, for example, Indonesia. The best performing countries regarding international operations were Statoil, Nexen Inc., Talisman and Woodside.

Related to revenue transparency is budget transparency, where in an Open Budget Survey 2010, Malaysia ranked in the category of 'minimal', with a score of 39 out of a full 100, indicating that the government provides the public with minimal information on the budget and main financial activities, making it extremely difficult for citizens to hold the government accountable for its management of public funds (Open Budget Survey, 2010).

PETRONAS as a corporate entity has an internal audit department which adopts international auditing standards (PETRONAS Annual Report, 2010). However, greater transparency is needed for citizens to hold the government accountable for its performance in managing public resources. The Extractive Industry Transparency Initiative (EITI) was initiated to set a global standard for transparency in oil, gas and mining. It operates as a coalition of governments, companies and civil society in the countries that

'sign up' to it with rules that allow for disclosure of oil and gas payments and revenue. About 50 of the world's largest extractive industry countries support and participate in the EITI process, including Timor Leste and Indonesia in Asia, as compliant and candidate countries respectively. Malaysia has not shown any visible effort towards the EITI initiative. Another movement, Publish What You Pay (PWYP), is a global civil society effort aimed at promoting revenue transparency which local civil society organisations ought to consider participating in.

PETRONAS operates in countries which have less than impressive human rights or democratic records, spurring criticism that Malaysia is supportive of such regimes, including Sudan and Myanmar. Although some information about overseas exploration is available, the depth and breadth of this is limited; for example, country-by-country reporting of payments made to these governments is not published. Based on information obtained from its website, PETRONAS has oil and gas producing activities in 12 countries outside of Malaysia,²⁸ but little other information is made available.

Global trends indicate that international reporting standards of international oil companies will eventually have to be adhered to. For instance, a new law (Section 1504 of the Dodd-Frank Act) passed by the United States Congress requires all US and foreign companies registered with the United States Securities and Exchange Commission (SEC) to publicly report how much they pay foreign governments for access to their oil, gas and minerals. Following suit, the European Commission in October 2011 adopted legislative proposals that build on this precedent by requiring publicly traded companies to disclose similar payments to governments. Published information by foreign oil companies extracting oil and gas from Malaysia will be useful for local examination of the amount of funds made available to the government. It is hoped that regional authorities and blocs such as ASEAN will follow suit, thereby requiring national oil companies in Malaysia, China, Cambodia and others to do likewise in the future.

Former PETRONAS CEO Hassan Merican once stated that although PETRONAS was not a publicly listed company, it behaved like one in making its annual reports and all accounts available online from the year 2002 (*The Star*, 2008). This is a positive step, although only annual reports from 2008 are available on its website. Despite this information being available, there is still a large bulk of information that is not contained

²⁸ PETRONAS operates in Chad, Egypt, Indonesia, Iran, Mauritania, Myanmar, Pakistan, Sudan, Thailand, Turkmenistan, Uzbekistan and Vietnam.

within annual reports, such as detailed breakdowns of foreign operations. It is clear that much more needs to be done to improve PETRONAS's standing on transparency and public reporting for the present and future benefit of Malaysians.

Ensuring Long-Term Sustainability of Energy Supplies

One important area of responsible resource management lies in resource sustainability for the future. PETRONAS's reserves replacement ratio²⁹ has been relatively stable at 1.8 times in 2007 and 2009, although this declined to 1.1 times in 2010. The group's total reserves increased by 1.9 per cent year on year at 27.12 billion barrels of oil equivalent (boe) with a contribution of 24.2 per cent from international reserves.³⁰ In Malaysia, however, total average production decreased by 1.7 per cent to 1.63 million boe per day, reflecting the expected depletion of mature fields. As such, Malaysia is expected to swing from a net oil exporter to a net importer of petrol, given current rates of production and growth. However, Malaysia's reserves-to-production ratio stands at 19.8 years (Oxford Business Group, 2010).

The National Depletion Policy 1980 was aimed at capping total production per day to safeguard reserves, with an upper limit of crude oil at 650,000 barrels per day and of gas production at 2,000 million standard cubic feet per day in Peninsular Malaysia. It has been reported that PETRONAS retains 30 per cent of its revenue for its own investments, although this is not highlighted in its annual reports. PETRONAS reports that it will consider deepwater areas as good prospects for new oil and gas discoveries since existing oilfields are depleting (PETRONAS Sustainability Report, 2009).³¹ It is also involved in renewable energy research.³²

²⁹ The reserves replacement ratio is the ratio of new reserves discovered to volume of production, an indication of a company's track record in maintaining a stable reserve of oil and gas.

³⁰ Out of which 5.8 billion boe is from crude oil and condensates, with 14.76 billion boe from natural gas.

³¹ Deepwater prospects are part of PETRONAS's enhanced oil recovery (EOR) solution; two such pilot projects have been implemented in Malaysia: Dulang Water-Alternating-Gas and Angsi Chemical projects offshore Terengganu. EOR potential is also being explored in Sudan.

³² PETRONAS established an energy loss management (ELM) framework in 2006 with the objective of improving energy efficiency and reducing greenhouse gas emissions. PETRONAS reports in their 2009 Sustainability Report that they have successfully reduced energy costs at domestic downstream plants by 6.8 per cent, saved 4.2 million mmBTU of energy at domestic downstream plants between 2008 and 2009,

In efforts to transform Malaysia from its middle-income to a high-income economy, the current Prime Minister launched an Economic Transformation Programme (ETP) in which the oil and gas industry features top of the list of sectors expected to generate national growth with RM20.1 billion in investments.³³ PETRONAS's policy directions are shifting following the change of its CEO to Shamsul Azhar Abbas in February 2010.³⁴ Analysts, opposition members and employees have said they believe former chief Hassan Merican usually 'resisted pressure to divert PETRONAS money to other projects, and that many more diversions would have occurred had he not opposed them' and that 'over the years, (he) successfully objected to government personnel and investment proposals for the company' (Chew and Barta, 2010).³⁵

Domestic capital expenditure (capex) increased from 51.5 per cent to 53 per cent of total capex from 2007 to 2008. This was reduced to 31 per cent of total capex in 2010, but recent press announcements indicate that PETRONAS will focus on domestic capital expenditure (capex) and slow down on foreign capex spending. Under the ETP, 'enhanced oil recovery' and 'marginal field development' are key thrusts and recently 25 marginal fields in Malaysia have been identified, with expected 1.7 billion barrels of oil equivalent for a total investment of RM70–75 billion. PETRONAS is expected to award multi-billion ringgit contracts for the development of these marginal oil fields with significant tax incentives for the industry. Local players which have been contractors will now become concession

reduced external lighting at the PETRONAS Twin Towers by 50 per cent and saved 56,142 MT of fuel at MISC.

³³ ExxonMobil and PETRONAS Carigali Sdn Bhd are to jointly invest more than RM10 billion in new oil and gas assets to ensure reliable and sustainable energy supplies, Shell Malaysia is to invest RM5.1 billion in three projects and Dialog Group Bhd. is to lead a consortium to develop a RM5-billion independent deepwater petroleum terminal (Raj et al., 2011).

³⁴ Shamsul Azhar Abbas was formerly CEO of MISC Berhad, and is still the chairman of its board of directors. MISC Berhad was embroiled in controversy in 1999 when Prime Minister Mahathir Mohamad was accused of forcing Konsortium Perkapalan Berhad (controlled by his son Mirzan Mahathir) to sell its assets to MISC in an alleged bailout. Shamsul has been branded as a successful Malay corporate figure; in 2005 he won an award for the 'Most Competitive Bumiputra CEO in Malaysia' in the government-linked company (GLC) category. He has served in PETRONAS in various capacities since 1974, holding key positions including Vice President of Oil Business and of Petrochemicals.

³⁵ It was also reported that no real reason was given to end former chief executive Hassan Merican's tenure in PETRONAS.

holders (Gabriel, 2011). However, analysts have cautioned that local oil service companies may not have the capacity or capability to undertake oil exploration and warn that this multibillion-ringgit bid in contracts could become 'just another means of dispensing patronage' (Gunasegaram, 2011). Open competitive bidding should be employed to mitigate for the likelihood of this taking place. PETRONAS also reportedly sells below-market oil to six 'option-holders', who in turn sell to the world market, making tremendous profits as a result (Kitingan, 2008). No PETRONAS documents mention these 'option-holders'.

PETRONAS Needs To Do Much More

PETRONAS has contributed significantly to the country's national development. However, there are many weaknesses along the value chain of responsible resource management. First, much more could have been done to truly develop a thriving domestic economy. Fong (2010) has argued that PETRONAS has failed to nurture a vibrant oil and gas sub-sector. There are 60 companies on the Kuala Lumpur Stock Exchange related to the oil and gas industry, equivalent to the Singapore Stock Exchange – but Singapore is not an oil-producing country. The great wealth of Malaysia's oil and gas sector has not significantly supported the small and medium enterprises (SME) sector, and because of licensing and registration requirements, this excludes many local companies from participating. The bidding process has also been said to be non-transparent.

As such, recommendations are key in the area of transparency and accountability. PETRONAS's production sharing contracts (PSC) and investment agreements details should be made available for public scrutiny. Malaysia should also consider implementing the EITI, which Indonesia and Timor Leste have taken the lead on in Asia. Comprehensive, periodic and timely reporting from PETRONAS should be conducted, with full accounts available online. Information about oil and gas revenue transfers to oil-producing states should also be published in detail. Finally, efforts should be made to ensure PETRONAS's operational and financial status is reported regularly to Parliament, which should exercise its oversight powers to provide more effective checks on executive powers, for example approving contracts and forming parliamentary committees to examine oil and gas revenue. That said, a series of efforts recently undertaken by PETRONAS reflects some seriousness in dealing with good governance; for instance, a PETRONAS Code of Conduct and Business Ethics launched in 2012 expressly prohibits the giving and accepting of bribes by PETRONAS

employees; the signing of the corporate integrity pledge; establishing the corporate governance & international compliance unit and a chief integrity officer therein in 2012 – these are positive steps.

PETRONAS's recent shift of policy in investing domestically with a reduction in foreign capital expenditure must be closely monitored. Whilst it is important to invest in local talent, it is equally imperative that strict quality guidelines for licensed and contracted companies are maintained. PETRONAS cannot compromise this for the sake of nurturing local and politically well-connected companies.

In early 2011 PETRONAS launched risk service contracts (RSCs), a deviation from its production sharing contract (PSC) model, to also stimulate the development of marginal oil and gas fields and increase the recovery of hydrocarbon resources through innovative solutions. The Malaysian government will allow for better tax incentives under this model, although some analysts have pointed out that the RSC is in contravention of the Petroleum Development Act 1974 (Azam, 2011). The first RSC signed was with a consortium led by UK-based Petrofac; one of the local recipients, Kencana Petroleum Sdn Bhd, was awarded a US\$800-million contract to develop a marginal oil field. The executive director and group chief executive officer of this company is Mokhzani Mahathir, a son of Malaysia's former Prime Minister who has extensive business interests. PETRONAS's procurement guidelines already restrict selection to predominantly Bumiputera companies, but in reality not all Bumiputera companies are evaluated on level ground.³⁶

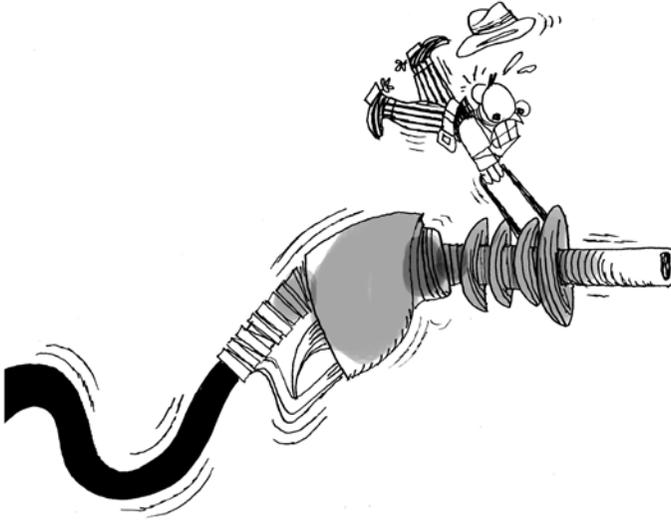
Malaysia has not experienced the 'resource curse' in the way many countries have, but much more could have been done given the abundance of its natural resources. Malaysia slipped two places to 26th position in the World Economic Forum (WEF) Global Competitiveness Index 2010, performing poorly in the areas of quality of institutions, security, low secondary and tertiary education enrolment rates, and technological adoption for productivity. Although it went up by two positions in the World Bank's Doing Business Index, Malaysia is still suffering from twelve consecutive years of budget deficits, failure to meet economic growth targets, and an increase in national debt to GDP proportions (35.1 per cent in 1998, 53.5 per cent in 2009). Brain drain is also a problem, with as many as 1.5 million Malaysians living abroad.

³⁶ Two other RSCs have since been signed, in August 2011 with Australia-based Roc Oil consortium and local players Dialog D&P Sdn Bhd and PCSB, and in July 2012 with Thailand-based Coastal Energy and local player Petra Energy.

Most recently, US\$285.24 billion in illicit funds was reported to have flowed out of the country in the period 2001–10 (Global Financial Integrity, 2012). In 2010 Malaysia was the world's number two in terms of illegal capital outflow, after China, with an increase of 111 per cent compared with 2009,³⁷ with speculation that funds are illegally channelled out due to uncertainty in the country based on 'political instability, rising income inequality, pervasive corruption, discrimination in labour markets and unrecorded capital'. The report specifically noted that there have been media reports that large state-owned enterprises such as national oil company PETRONAS 'could be driving illicit flows'. Illegal capital flight from Malaysia has far surpassed legitimate capital inflows in recent years. Malaysia is suffering from restrictive institutions, sluggish SME, ICT and innovation industries, with capital and human resource issues as the most grievous problems. Oil and gas revenue has not been sufficiently targeted to meaningfully mould a new generation for the future of the country.

Malaysia has grown increasingly dependent upon oil and gas revenue as a source of national funds, and must realise this is no longer sustainable. With Malaysia soon becoming an oil-importing country, the government – together with civil society and oil corporations – must work to ensure natural resources that have blessed the nation will continue supporting future generations. With poor monitoring of the natural resource fund, non-detailed accounts of oil and gas revenue from international operations, unclear information as to federal payments to state governments and a law that requires PETRONAS to report only to the Prime Minister, there is concern that such revenue is open to abuse and misuse through bailouts or dabbling in non-oil related industries, which have already occurred. Centralisation of decision-making continues to rear its ugly head, with the Prime Minister's Department (that houses PEMANDU) allocated a budget of RM10.8 billion, 21 per cent of the entire 2011 development expenditure for the country. The Malaysian public as the most important stakeholder must be empowered to closely examine national budget documents, most crucially those related to oil and gas, given their hefty contributions to the government. Responsible resource management is the only way to ensure a sustainable and promising long-term future for Malaysians.

³⁷ Other Asian countries with high illegal capital flight are Philippines (US\$109 billion), Indonesia (US\$104 billion), India (US\$104 billion). China tops the list with US\$2.8 trillion, between 2000 and 2009.



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FELDA and the Manipulation of Land Policy in Malaysia

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The Federal Land Development Authority (FELDA) is aimed at eradicating poverty in rural Malaysia and creating a new elite who are able to efficiently cultivate on their own. It is considered a model by other countries and has truly contributed to the rise in both productivity and rural standards of living. FELDA is now mature enough to encounter its first internal contradictions, mainly related to the settlers themselves. This study aims to identify the main challenges that a successful economic model must overcome in order to keep its original promises. Hence the authority's reluctance to award ownership to the mostly Malay farmers is the first step toward internal contestation. It seems that efficiency has been favoured over the settlers' autonomy, which has now become a mere illusion. Current financial issues, but also political infiltration and bargaining, reinforced by the more powerful third generation of settlers, are deeply challenging FELDA in its own system and offering settlers the key to improvement.

Introduction

'UMNO is Kuala Lumpur, FELDA the rest'. This is what I was told by the former head of SUHAKAM (National Commission for Human Rights) International Issues and Cooperation Division. In order to gain a deeper and more objective view of Malaysian politics, I did an internship, during my one-year stay in Malaysia, at the National Commission for Human Rights, and more specifically among the team of the International Issues and Cooperation Division in February 2010.

The stated sentence was released just after a public inquiry heard by SUHAKAM's commissioners on 24 February 2010, involving the governmental FELDA's dominantly-Malay elderly settlers. The case attracted

a record number of press representatives, yet the next day not a single article tackling the controversial issue was released in the printed national newspapers. Was the settler's memorandum of protest not worth enough to let the public be informed? Not really. The reason behind this is much more likely to lie in the following idea: FELDA is supposed to be a source of national pride, a success story which has inspired many other developing countries such as Kenya. As a government, can you let the image of your biggest multifunctional agency be tarnished by its own employees? Does it hide an ugly truth, a vast historically-grounded 'conspiracy'? Be that as it may, it is worth seizing the opportunity offered by this so-called 'national inquiry' to put the whole functioning of rural Malaysia, through FELDA's powerful and omnipresent framework, into the spotlight, while questioning the scope of its aims and underlining the current challenge it has to cope with – political infiltration. Is FELDA a two-sided agency?

The FELDA model is unprecedented and, while reflecting the economic and social ambitions of the time, lives up to its original promises to a certain extent. FELDA has always been perceived as a promising and efficient rural development tool, which I will explain in the first section. The second section aims to demonstrate that the quest for efficiency has resulted in the settlers' hopes for real ownership becoming an illusion. Yet, I will eventually underline in the third section how an economically successful model is deemed to evolve due to its own internal subversion, the current political infiltration.

FELDA: A Promising and Efficient Rural Development Tool

It all began in July 1956 when the first five-year economic Malayan Plan was adopted upon the recommendation of a government working committee. The post-WWII and Korean War period witnessed a rise in redefined priorities. Alleviating poverty as a means to reduce racial hatred and disparities – the communities having suffered from colonial stereotypes and used against each other during the Japanese occupation – was at the very core of these priorities (McAndrews, 1997). Combining social development with economically efficient production, thus enabling the still British-protected but nearly independent country to find a secure place on the international stage, was the primary and honourable objective which led to the creation of FELDA. According to its corporate profile, the agency was formed under the Land Ordinance Act 1956, incorporated on 6 September

1995, and became a public company on 3 October 2003.¹

The emphasis on rural development was strongly supported by politicians to such an extent that, right from the beginning, the 1959 Alliance extended FELDA's functions² from a simple financing institution, which could not compete with the states' responsibility to implement land development projects, to a very centralised agency which is more and more rightly perceived as an executive tool for the government's development policies and other political concerns, as explained later. In what way did FELDA help the government fight poverty, for which, I should note here, there have never been any precise figures? Indeed, one is entitled to claim that the fight against poverty has been highly conditioned by the public authority's intervention and allocations, especially in the rural sector, as analysed here. Yet, precise statistics are hard to identify, all the more so as the Department of Statistics³ is placed under the Prime Minister's Department. We should also add that it was established to collect, interpret and disseminate data in order to formulate policies for national development planning.⁴ Thus, even though its critical role has grown over years and if any official figures had been released on rural poverty (following ethnic lines), one would have been entitled to question their objectivity.

The following sections will firstly elaborate on the glorified schemes. Two words could well sum up the core of the concrete and contextual aims: diversification and re-settlement.

A Needed Diversification

Malaysia's agriculture was primarily based on rubber in the 1950s, mainly in response to the Korean War rubber boom and as a continuation of British policy. But technological advances led to increased production and use of the cheaper synthetic rubber, which highly undermined the national economy. The need to diversify and find alternative crops was then obvious. Applied to the agricultural field, diversification has been defined as: 'a shift of resources from one crop (or livestock) to a larger mix of crops and livestock, keeping in view the varying nature of risks and expected returns from each crop/livestock activity, and adjusting it in such a way that it leads to optimum portfolio of income' (Joshi et al., 2004: 2458). It is also firmly

¹ www.felda.net.my (accessed on 15 March 2012).

² Ibid.

³ Created in 1949 under the Statistics Ordinance and formerly called Bureau of Statistics.

⁴ Provided for in the Statistics Act 1965 (revised in 1989).

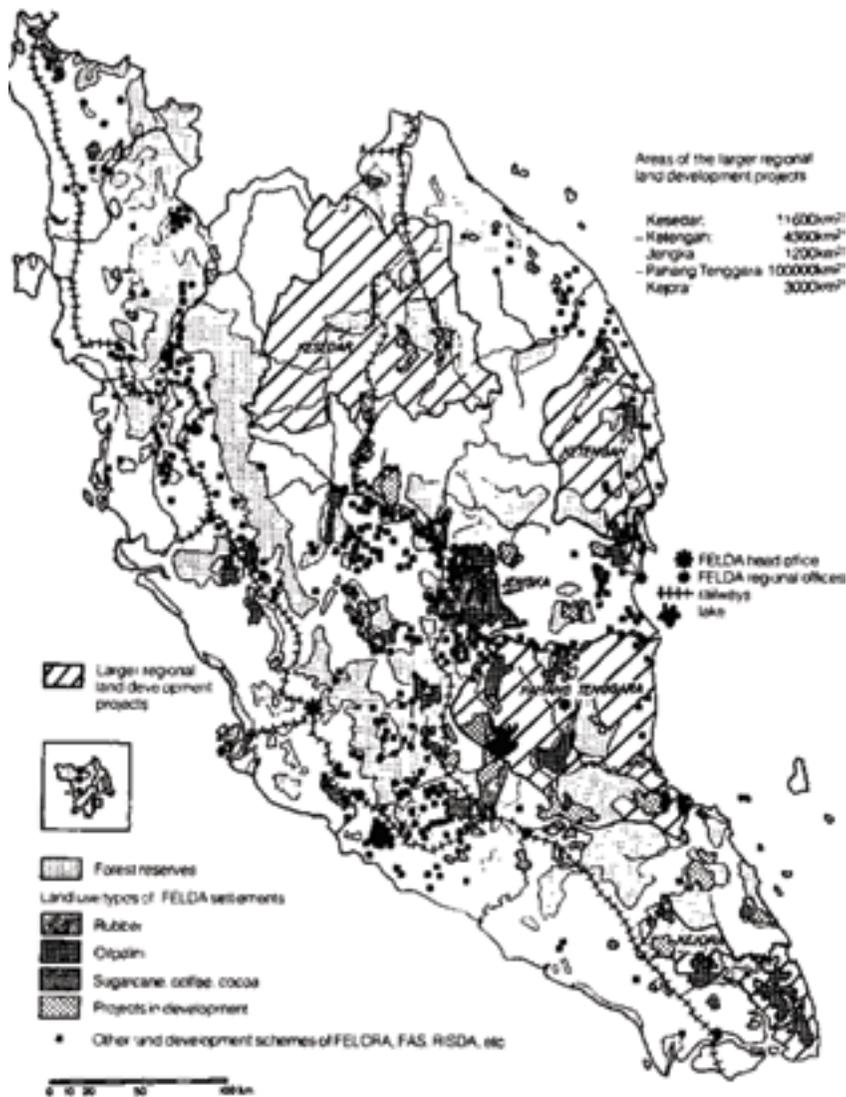
stated that it is necessary in such a context to 'suitably integrate production and marketing of high value commodities through appropriate institutions'. In an OECD glossary, we are given the contextual reasons that lead to favouring diversification, such as 'to take advantage of complementarities in production and technologies, to exploit economies of scope, to reduce exposure to risk, to stabilise earnings and overcome critical business conditions' (Khemani and Shapiro, 1993).

Already introduced in 1917, palm oil transformed the landscape in the following decades: large tracts of land were opened up (for rubber, sugar, palm oil) and rapidly expanded mainly thanks to FELDA schemes (Graham and Floering, 1984). The oil palm areas under the agency expanded from 55,000 hectares in 1960 to 1 million hectares in 1980, before doubling in the 1990s (Ibid.). One can assume that the current economic wealth and stability of the country can be dated back to these efforts to analyse and reshape the priorities. But such attention towards palm oil is also explained by the private sector's long experience in rubber. Hence the capital invested had already been recovered and returns on investment already received. The private sector was therefore very stable and competitive within the rubber market (Arif and Tengku Mohd Ariff, 2001). To illustrate this, by the 1980s FELDA owned 4 rubber factories compared to 29 palm oil mills, the acreage of oil palm only representing one-third of the country's, and FELDA produced a quarter of Malaysia's palm oil (Graham and Floering, 1984). With such a diversification programme used to fulfil FELDA's ambitions, around 80,000 jobs had been created by the very prosperous 1980s and the pro-active Mahathir's years, in the land schemes (*rancangan*), in the processing factories and by the private contractors (McAndrews, 1997).

Government-sponsored Resettlement

Resettlement schemes as a means for development are perceived as one of the main strategies within what scholars may call pro-poor land reform (Borras and McKinley, 2006). That is why it is not simply a change, but a real reform, as the transfer has not been from elite to elite (between big private farms or companies, thus 'within class') but from these elites to the poor landless Malays, who constitute the vast majority of the farmers. As the Federated Malay States and their Advisers were fearful of the Malay peasantry disappearing under British rule, the Malay Reservations Act of 1913 barred the sale of certain land to non-Malays. Officially, the native Malays had to cultivate and provide rice for the growing population in the rubber plantations, where most Tamils were working before diversification because of the cheap labour force they provided. Further acts passed in 1917

Fig. 15.1. Regional land development projects in West Malaysia.



Source: Uhlig, 1988

and 1918 ensured that the Malays would not set up rubber smallholdings, confining them to the cultivation of food crops (Hagan and Wells, 2005).

Resettlement started in order to fuel the export-oriented economy in the long term. The idea behind this was that the efforts to modernise the

traditional economy could not bring enough improvements to the rural population's way of life. Instead, it was seen to be necessary to prevent large-scale migration to poorly equipped urban centres (Massard, 1984). The underlying idea was to create a very efficient and proactive group of farmers who were not merely oriented towards subsistence but towards fast and beneficial progress; hence the development of an agro-industry economic model. Creating such a 'new rural elite',⁵ in contrast to the private concessions, and a way to compete with the achievement-oriented urban 'white collars', and achieving social benefits is not an easy task, but it is worth trying when government strategies are taken into account. It had been found that poor farmers were denied access to profitable lands and thus capital.⁶

This was further justified and pushed through the 1970 New Economic Policy, adopted after the 1969 racial riot and aimed at ensuring ethnic equity in terms of economic development. The quest for a true Malaysian unity in pluralism has since become an overriding objective. In practice, it has put agricultural issues and poverty eradication at the top of the agenda, in order to progressively redistribute national wealth and eradicate any race identification. This racial segmentation is very historically grounded, all the more so as the British 'rule and divide' policy led to a geographic segregation of the various ethnic groups. Reversing this process was the key to Malaysian nation-building policies. Historians have indeed demonstrated that the colonial society did contribute to the racial segmentation through the division of labour. As clearly stated by Harper (2001: 26), it created 'discrete ethnic entities in counterpoise with each other, each with their own economic specialisation: Malays in the padi fields, Chinese in the mines and shops; Indians on the plantations. It is argued that it was a consistent and intentional consequence of colonial policy.'

As Zulkifli, Johari and Ruzman (2010) showed in their study among the settlers in Lurah Bilut (Bentong, Pahang), the original pilot project, to ensure efficiency very strict requirements were applied when selecting the settlers. The candidates were first required to be married, above 21 and below 45, Malaysian citizens and with previous working experience relevant to agriculture. In line with the poverty eradication goal previously mentioned, candidates were expected not to own any land. As found in the case study,

⁵ See <http://www.felda.net.my>. Again, this reflects the will to improve the smallholders' power throughout the country.

⁶ Ibid.

616 settlers were chosen after three phases of the selection process: 63.96 per cent were Malay, 27.44 per cent Chinese⁷ and 7.63 per cent Indian.⁸ More than 32 per cent were from Pahang, which was coherent with FELDA's goal to offer opportunities to Pahang-born Malaysians. Yet, it has to be acknowledged that the selection system was slightly modified in 1974 when non-agricultural skills were also taken into account, in order to be in line with new parallel activities in the urban centres, such as in the medical and recreational fields. The major striking feature of such a selection process was naturally the ethnic bias underlying it, for Malays are largely favoured, as proven by the statistics above. But 30 per cent of the recruitment can benefit non-Malays when schemes are outside the Malay reservation areas. In 1980 the World Bank expressed its concern about the racial composition in FELDA's schemes, suggesting that the Indians previously working in the rubber plantations and seeking conversion could well do the job (World Bank, 1980: 70–1).

Positive Externalities for Rural Life

In that context, the idea was to resettle the landless peasants (more precisely, Malays) in these newly opened lands, while offering them and their families an 'urban village' way of life. This was very different from the one they knew in their kampong. The higher income and the facilities and amenities managed by FELDA were meant to make the settlers' adaptation to a new way of life easier (Graham and Floering (1984). A virtuous circle emerges from the large re-settlements, since around 400 families constitute economic groupings. Such scale justify costly investments, from which the settlers can greatly benefit, such as water distribution facilities or transportation infrastructure. A UNICEF survey estimates that education has been the central positive externality of such a development programme (Leong and Tan, 1997). Primary and secondary schooling up to Fifth Form level is entirely financed by the public authorities but in some cases, settlers themselves finance the construction of the school, supported by a partial grant from FELDA. Thus, improved incomes are particularly noticeable, despite ineluctable market fluctuations. The net average monthly income of FELDA settlers is reported to be very much higher than the normal rural

⁷ The Chinese have indeed migrated to the main urban centres and settled as small entrepreneurs.

⁸ *Pembangunan Tanah Usaha dan Pencapaiannya*, Kuala Lumpur: FELDA, p. 297. Lurah Bilut FELDA Museum, (t.t.) T.T.P., h. 1.

standards, amounting to \$736 per month on average for settlers in oil palm schemes. Flexibility and mobility have enabled a fructuous diversification of the sources generating income, so that the settlers can earn money from part-time activities inside or outside the scheme itself. For instance, one-third of settlers have been able to derive income from diversified sources such as small-scale business, fisheries or investments (Lim and Dorall, 1989). More importantly, a general improvement in their standard of living has mainly come from state subsidies and consequently massive amounts of public funds. FELDA has actually always been supported by the government, hence receiving sufficient resources to implement its development programmes in a sustainable way. In a comparative study of the Southeast Asian agricultural systems (Ibid.: 83), it has been stated that 'by December 1988, FELDA had developed 800,857 hectares of land and resettled over 100,000 settlers in more than 400 schemes' and that 1360 km of access road and 2723 km of village roads were built during the FELDA's earliest years. It is all to the good for FELDA's national image, as relative poverty has been alleviated, thus demonstrating how successful the programme has been in restructuring the rural economy and in attempting to create a new elite provided with the necessary facilities.

Quest for Efficiency and the Illusion of Ownership

As a consequence of these strategies to alleviate poverty, the cooperative system appears to be based on a collective and quite constraining system, all this reinforcing its perceived legitimacy among the society and being part of the strategy to achieve the initial goals stated above.⁹ It was justified by the fact that the targeted farmers were not sufficiently aware of the modern techniques and lacked the knowledge to be able to conduct progressive policies by themselves. Eventually, it turned out that the original promise to grant settlers full ownership, in preference to a privatised plantation system, has been progressively abandoned for reasons of efficiency.

Not only is a group approach consisting of socio-economic units of 15–20 farmers favoured (Graham and Floering, 1984), FELDA most importantly plays a kind of 'big brother' role. It monitors a 'three-stage development' programme, which has supplanted the older and very fragile shared ownership and profits concept. Thus three periods were intended to structure the FELDA development programme: firstly, the farmers are

⁹ Besides, it further enhances the shift in the rural structures: the rule now is defined by permanent cultivation and permanent housing.

brought to the schemes when the crops are still immature; secondly, they operate in small units while FELDA is supervising everything from the quality to the commercialisation of the products;¹⁰ thirdly, the farmers are supposed to be autonomous enough that FELDA is just in charge of the facilities.

The question which rapidly arose concerned the six years before the crop is mature enough to be harvested. The settlers were still brought in, but were trained by FELDA staff to gain extensive knowledge on both maintenance and harvesting techniques, a strategy modernising the local peasantry. Hence a Social Development Division was created in 1967 to help shape a programme of community development. In that same period, the settlers were encouraged to concentrate on so-called short-term crops to earn their living and augment the subsistence payment. This is when the Malay traditional working methods were vastly altered, especially regarding the social control exerted by the group on the individual worker, contrary to traditional consensus.

Firstly, a 'block structure' is established and is at the very heart of tough working conditions while creating a 'social and working unity' (Alladin, 1979: 73). Massard's survey at Bukit Kuantan land scheme explains that the supervisory staff is made up of 18 members (a director, 3 assistants, 6 technicians and 8 other employees), all living in much better conditions than the settlers (Massard, 1983). The consequence of such a collectivist system is that the earnings from the total production are divided between the members of the economic grouping. So, if one of them is not efficient enough, the others bear the burden. Without speaking of its political nature, which is irrelevant here, the term collectivism is understood in the sense that individual claims are superseded. It is best defined as 'the theory and practice that makes some sort of group rather than the individual the fundamental unit of political, social, and economic concern' (Grabill and Gronbacher, n.d.). The FELDA system appears to be rigid because of dissuasive means used to ensure every single farmer works efficiently. Fines are collectively agreed upon within the group and applied whenever the harvest is not fruitful or the patch mismanaged.

Secondly, the role of women within the community has been altered by such a system, deepening the economic and social gap within the schemes. In the same survey, it was shown that women are excluded from

¹⁰ FELDA buys the products at the farm level before selling them to manufacturers, local or foreign.

the majority of the productive activities in the land schemes; they either cultivate a tiny patch of land around the house or coordinate religious activities (via an elected chief only). They do not elect either the members of the JKKR (*jawatan kuasa kemajuan rancangan*, council for the operation and management of the project) or the local representatives for, e.g., the library, the grocery, the bureau for religious affairs. Together, these elements not only place economic dependence on the men, but a new form of society is created.

The second step comes with the first harvest and the farmers being able to be self-reliant and manage a smaller block by themselves (McAndrews, 1997). Parallel to this, the reward process is well-established. Naturally, it all depends on the size of the crop and the quality of the product. The latter is under the control of FELDA, so that the settlers generally get a fair market price, far better than what they were used to (Arif and Tengku Mohd Ariff, 2001).

Whether the third step has been abandoned – or whether it has always been an illusion to motivate achievement-oriented farmers – the ‘FELDA family’ has never reached the transitional and much-awaited point where the settlers would be given a land title, with FELDA turning into no more than a peripheral institution. As shown in Table 15.1, around 50,000 settlers have been awarded individual titles, but the system has come to a point where FELDA supervises and monitors the whole scheme while taking as many responsibilities for the planning as during its early stages.

Table 15.1. Distribution of land titles in FELDA schemes by state up to 2000

States	Number of settlers	Hectares
Pahang	22,124	100,564
Johor	6,931	31,505
Negeri Sembilan	9,573	43,514
Terengganu	2,114	9,609
Perak	2,990	13,591
Kedah	1,879	8,541
Selangor	1,883	8,559
Melaka	1,332	6,055
Total	48,826	221,938

Source: Arif and Tengku Mohd Ariff (2001)

Studies now concentrate on the contracts settled between the agency, the government and the farmers as the starting point of the illusion evoked before. A historical shift in the perception of housing land can clearly explain this. Until the end of the nineteenth century, rights over land were conditioned by its use and the Sultan was the only owner at the end of the process. Two obligations radically changed the practice: firstly, one had to register an ownership title and secondly, an *ad valorem* tax had to be paid, rendering the land a hoarded and negotiable product. Hence, farmers nowadays do not feel excessively prejudiced when FELDA is the ultimate manager of the schemes provided that they can still benefit from their right of use according to Malay tradition (Massard, 1984: 38). The reality, though, is that contract farming and specific agreements have rendered their autonomy very limited (not to speak about their dream of real ownership), thus constraining their freedom to do what they want with their land. In that respect, the study of the contractual relationship between farmers and the agency is quite illustrative (Lim and Dorall, 1989; Minot, 1986). What they call contract farming is very complicated when applied to the FELDA schemes and may explain how the system has not achieved its ultimate objective. It is defined as 'agricultural production within the context of a commercial agreement between the grower and the buyer which affects important production decisions' (Minot, 1986: 1). Legally speaking, the provisions of the Act of Parliament No. 13 of 1960 Land (Group Settlement Areas) Act (GSA) as amended enable FELDA to turn state lands into development areas. The Act is therefore the larger framework that sets up the schemes and gives FELDA the final say in the main prohibited issues (change of crop, sale of land, sub-division and expansion). Titles are effectively issued in the name of the farmers, but registered names are limited to two for each plot of land. FELDA can relinquish its authority over a scheme only when the area is expressively 'de-gazetted', which rarely occurs. Another parameter which illustrates the very limited autonomy of the settlers – turned into tenants – is the multiplication of pre-entry agreements which condition the development and settlement stages. For instance, the Block System Oil Palm Agreement requires that 'the Settlers shall diligently and to its ability cultivate the Scheme Area in accordance with the rules and directives which may be issued by the FELDA' (Lim and Dorall, 1989: 107). After three years, the settler can sign a Supplementary Agreement (Appendix A) which makes him 'resident owner-designate' of agricultural land, but the title is only owned through a 'cooperative society'. It not only spells out contributions to various collective funds but also still makes the settler dependent on the scheme manager's instructions (Lim

and Dorall, 1989). As a consequence, it is clear that, despite an apparent transition in the settler's status, the omnipresence of FELDA has not changed.

Challenging Contestation: Loyalty and Allegiance at Stake

FELDA's symbolic power has grown over the years. More settlers have been attracted by the opportunities and have been accepted, provided that they prove to have skills in farmwork.¹¹ The corporate profile provided by FELDA's official website states: 'We employ a dedicated workforce of almost 19,000 employees, complemented by a labour force of 46,795 workers at some 300 estates, 70 palm oil mills, seven refineries, four kernel crushing plants, 13 rubber factories, manufacturing plants and several logistic and bulking installations spread throughout Malaysia and several locations overseas.'¹² In that context it is worth analysing here, after having focused on the initial aims, the new challenges and whether they can bring some dynamic shifts within the governmental agency and also within the society. The whole Malay tradition being at stake, it appears that a deepening gap between the managerial views of the settlers and FELDA has emerged since the 1980s. But the settlers' deep hope to be granted ownership one day, combined with their own pessimism about their capacity to efficiently exploit their land by themselves, has long been the deeply rooted cause of their silence and so-called satisfaction about the projects. My point is that the new challenges which are heavily grasped by the media render the agency even more dynamic, probably more in a positive rather than a negative way, leading to open (nearly transparent) public debate. One is entitled to wonder whether the agency will be able to smartly overcome its most subversive challenge – political infiltration.

A Third Generation To Woo

The embracing power – but also the new challenges – is therefore mainly due to the fact that the agency has to cope with the next generations of farmers, whose hopes lie in Kuala Lumpur and not in the countryside. In that sense, FELDA Plantations, which was incorporated in 1992 (rendering the ownership issue more complex), has faced some reluctance from the second and third generations to stay in their parents' schemes, mainly for

¹¹ <http://www.felda.net.my>.

¹² See http://www.felda.net.my/felda/english/settler_statistik.asp (accessed on 13 March 2012).

education and career reasons (Graham and Floering, 1984). Consequently, a modernising system has been introduced: many appealing projects have flourished, offering even better living conditions to the settlers' children with advantageous rents. Last year, RM30 million was allocated to the township of Bandar Pusat Jengka that is bordered by many FELDA schemes. Prime Minister Najib Razak stated: 'The housing project will be part of a nationwide initiative to build houses in 11 FELDA regions after we have successfully implemented 11 similar projects in FELDA schemes' (Propertyguru, 2011). The agency is now pushing for more industrial projects in larger urban villages to provide increasingly diverse job opportunities linked to the plantations as a way to progressively climb up the modernising ladder and to overcome this new issue: a third generation of farmers strongly attracted by the cities.

The issues raised by the third generation of settlers have not yet been solved. Controversies and hindrances regarding land inheritance have yearly been the cause of social problems within the FELDA schemes about which the agency is greatly concerned. In a study by Zulkifli, Johari and Ruzman (2010), it has been demonstrated that the inheritance process is quite inefficient in certain cases, FELDA being subject to the 1960 GSA. FELDA ownership has indeed been framed in order to ensure national productivity. The authors claim that, despite the total lack of attention given by scholars, the best solution to conflicts would not be the registration of all beneficiaries enabled by a revision of the Act. It appears that only in-depth knowledge and information about owners and beneficiaries (third generation nowadays), as well as a more religious approach eventually, can lead to improvements. The results of their study in the Lurah Bilut scheme: it appears that, more than the lack of information on the FELDA inheritance mechanisms (for instance, which estates are subject or not to the 1960 Land Act), it is merely the level of education which influences delays, failures in transferring and conflicts. Thus, this contributes to the difficulties not only to learn about the proper procedures but mainly to come to an agreement with the FELDA distribution. Moreover, as more and more first-generation settlers are dying, FELDA will have to overcome an emerging problem – a higher number of ownership application transfers are currently on the agenda while administrative officials are few.

Allegations of Financial Mismanagement

FELDA's running costs are very high and an influential criticism was made by the World Bank: apart from its lauded success, the funds invested in land development by FELDA and the supporting government are far more

important than the returns gained and the number of the beneficiaries (World Bank, 1980).

The bureaucratic management is very centralised within FELDA and this raises concerns, mainly regarding failures in the (re)payment process. Firstly, dependency on the agency has become quite clear. In the early years, the 1960 Group Settlement Area Act transformed the farmers into tenants. FELDA was in charge of land clearing and planting but under this Act, the costs were to be reimbursed by the settlers over a 15-year-‘pay back’ period at a high interest rate (6.25 per cent per annum) (Kuppusamy, 2010). The study done by Zulkifli, Johari and Ruzman in Lurah Bilut explains that ‘each participant was provided RM53,000 (1985) for forest clearance expenses which they were required to pay back within 15 years, a major portion of the government’s funds to set up FELDA plantations [being] loaned from the World Bank and the Federal Government’ (Zulkifli et al., 2010: 2). Hence the original aim of reducing poverty was supplanted by a *de facto* debt for farmers in most rubber plantations (the oil palm farmers have all repaid their loans).¹³ Indeed, farmers are still suffering from this policy, although some have benefited from profitable and compensative ‘returns on investment’ due to the higher income (Graham and Floering (1984). Furthermore, FELDA explicitly aimed at creating a ‘disciplined workers community’,¹⁴ a mission that had been achieved until recently when some of them began malfunctioning.

The 1960 GSA has been at the heart of the controversy, and was actually the underlying issue at SUHAKAM: FELDA has been allowed to collect money from the majority of the workers under this Act (precisely RM40 each month during 15 years, amounting to RM17,000 for one family). This money was supposed to be withdrawn by the settlers for replanting, but they all have been denied their own loan. Why? Because they would have been unable to manage it well, according to FELDA (Shazwan, 2010). Whether this justification is valuable or even legal is beside the point and the case has not yet been judged. The settlers had never dared raising such concerns earlier for three reasons, which are inter-connected: they were afraid not to be part of the scheme anymore while being harassed by the FELDA staff; in the beginning they all were very confident in FELDA management;

¹³ Amazingly enough, history proves that in a nearly similar system, called the indenture agreement (Hagan and Wells, 2005), until 1912 Indians in rubber plantations were given a cash advance as a charge he had to repay within a certain period. If he succeeded in repaying he could leave the plantations, if not he had to remain.

¹⁴ <http://www.felda.net.my>.

when they realised the failure they were not organised and unified enough throughout the country.¹⁵

Political Infiltration and Bargaining

As a consequence and as emphasised by the current controversy, FELDA is increasingly far from immune from political infiltration and bargaining, all the more so as Prime Minister Najib Razak named the polemical former minister Isa Samad as chairman. The latter had been found guilty of vote buying in internal UMNO elections (Koswanage, 2012). FELDA has always been a secure political tool for UMNO. Traditionally, the rural farmers are Malays, as explained earlier. The political system is ethnically based; Barisan Nasional encompasses ethnic parties with the Malay-based UMNO at its head. Thus, with a population overwhelmingly Malay who undoubtedly vote for UMNO, mainly to secure the privileges and preserve the Malay culture, the FELDA schemes are the keystone for maintaining the same political system Malaysia has known since independence.¹⁶ Yet, the descendants are more politically minded, in line with what Larry Diamond, founding co-editor of *Journal of Democracy*, argues in a recent article (Diamond, 2012). According to him, Southeast Asia, including China, will become democratic within a generation. He regards economic development, a more educated society and higher incomes as key indicators for further democratisation. UMNO is facing greater challenges to its rule, and the media (especially the Internet) are playing a role in this. The opposition tends to reach the settlers efficiently by engaging in mainstream social issues (even PAS uses border-secular concerns such as justice and good governance) and by being in line with a generation increasingly receptive to non-racial and non-urban-centred politics.¹⁷

Peasants, as workers but also as potential voters, and can manage to play the game to their advantage. Illustrative of the 'corporate vs peasants' vicious circle is the recent public debate opened by the announcement of Felda Global Ventures Holdings Bhd (FGVH) listing on Bursa Malaysia. FELDA has indeed rapidly turned into a highly integrated conglomerate. The success and trust among the society and the business companies have

¹⁵ From SUHAKAM's member beliefs and workers' testimony during the memorandum.

¹⁶ Supporting this statement, some human rights advocates and ethnic movements made the point that 99 per cent of the Indian workers were denied access to FELDA opportunities so that the majority of the settlers are Malays. See Uthayakumar (2010).

¹⁷ See also Hilley (2001).

enabled FELDA to expand through strategic alliances (selling latex, for instance, to the Malaysian Rubber Development Corporation) and ensure new downstream portfolios as diverse as engineering transport, refining and security (Arif and Tengku Mohd Ariff, 2001).¹⁸ Thus, the farmers' investment cooperative (KPF) holds a stake of 51 per cent in FELDA Holdings, and FELDA owns the rest via Felda Global Ventures. The current listing story can be summed up as follows. The FGVH listing includes 350,000 ha of FELDA Plantations' land. Originally set for mid-2012 and aimed at giving FELDA financial firepower when Indonesia's market share of palm oil is increasing, the RM6-billion listing of FGVH was done through an initial public offering (IPO). The objective is simple on paper: attracting investors seeking exposure to volatile prices and deepening the on-going privatisation of state assets. In that plan, it has been decided that KPF will sell 51 per cent share to FGVH, FELDA's commercial arm, which is entirely owned by the government, for dividends. It is therefore aimed at generating higher funding (Bernama, 2012). To answer widespread dissatisfaction, especially from the latest generation questioning the economic returns, chairman Isa Samad created a special purpose vehicle (SPV) to take a majority stake in FGVH after a group of settlers won a temporary court order on 21 February 2012 in Pahang (Prime Minister Razak Najib's home state), blocking the transfer of shares from their cooperative to FGVH (ibid.). The *New Straits Times* insisted again that FELDA Holding's revenues will be undermined and therefore the dividends won't be guaranteed (officially, a RM20,000-'windfall' is promised to each settler).

At the time when this article was written, Malaysia already saw the opposition make historic inroads in Parliament. The 'listing affair' has become an unprecedented political game between UMNO – in particular between Ahmad Maslan, deputy minister in charge of FELDA affairs – and the opposition. PKR, for instance, has rapidly challenged Isa and Maslan to a public debate on the listing, stating that this will reduce the farmers' stake in cash flow (Aidila, 2012). The opposition party will present arguments on why it is not to the benefit of the settlers and staff. The issue has become so sensitive that the Prime Minister himself will have to become involved, wishing the listing to happen but needing the settlers to be satisfied, hence the announcement of the IPO delay.

A very positive step towards transparency and social concerns has been

¹⁸ FELDA also has new and profitable partnerships; for instance, FELDA Holdings runs an oleochemicals plant with Procter & Gamble in Malaysia.

taken, in the sense that pluralism seems to have infiltrated the FELDA landscape. In that respect, gaining votes among the Malay settlers consists of admitting the previously UMNO-influenced agency's failures and presenting some alternatives that could improve the overall system. This is mainly for the benefit of the communities who are now able to choose between political parties. The schemes are indeed described as an UMNO bastion, but some recent incidents (such as the arrest of Mazlan Aliman, a PAS central committee member and president of ANAK¹⁹ who illegally entered a settlement in Pahang) highlight the fact that this government institution is becoming a battleground between UMNO, the founding father of the schemes and provider of amenities, and the opposition parties (Pakatan Rakyat, PAS and PKR) (Mohd Kamal, 2010). The latter claim that the settlers live in a golden bureaucratic prison, while asking where the RM15.3 billion earned in 2008 effectively went. They assume that, if the votes empower the opposition, what they call a 'new deal' will be proposed, with new schemes and a focus on the second and third generations' well-being (Kuppusamy, 2010). Yet the analysis above shows PR representatives may not be optimistic enough: FELDA mission's is not totally being hijacked by politicians; rather, if done respectfully, this can help challenge and improve some mechanisms which have been taken for granted. FELDA will need to be reasonable enough to foster its incontestable economic advances and contribution to the national wealth, while taking into account its workers' grievances.

Conclusion

FELDA has been consistent and coherent in its development and has therefore easily gained the image of a model for Third World countries. It seems that a sound – even aggressive – national reform in agriculture to achieve social and economic development as has been done in Malaysia can be used as a model to follow, despite the current challenges which leverage peer pressure and are likely to lead to further improvements. It appears that the federal land reform undertaken by the Malaysian government has multiple and interlinked dimensions which make it a 'comprehensive and integrative management system' (Kamini, 2009) as the government claims FELDA to be. To go a little further, it seems that the national success is such that FELDA is gaining beneficial international recognition: it has indeed expanded through strategic joint-ventures in Canada, the US, Dubai, China

¹⁹ Organisation aimed at protecting and representing the rights of children in the FELDA schemes.

and Australia (Sta Maria, 2010), as well as through trade offices like the recent one (Felda Iffco France SAS) established in Paris, thus further placing the Malaysian economy on the international stage. Political infiltration and the contestation driven by transparent motives will remain the strongest challenge FELDA has to overcome. Opposition parties have started to seize the settlers' expectations, especially those of the third generation, who openly question UMNO's monopoly and play the various parties off against each other in order to have their concerns heard. The recent acquittal of Anwar in the sodomy trial (2012), and the public debate over justice and good governance it generates shows that new generations, including farmers, seem ready to challenge the deeply-rooted system. Public policies, especially those of UMNO, will have to find the right balance between control over rural development and new generations' hopes for a secure future.



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Sophie Lemière obtained her PhD from Sciences-Po, France, and has specialised in Malaysian politics since 2006. Her first research on the apostasy controversies and Islamic civil society has been awarded the second prize for International Young Scholar from the ISIM, Leiden in 2007. Her PhD research on gangs and politics in Malaysia is grounded in five years of extensive field research and will soon be published. Research Associate at RSIS-NTU in 2011 then at ARI in 2012, Sophie has an international profile and has been visiting fellow at the University of Sydney, Cornell, UC Berkeley and Columbia. Sophie has published in peer-reviewed journals as well as non-academic media as she strongly believes in the need for researcher to reach wider audience than the one usually attracted by academic work. Sophie is now pursuing her work on connivance militancy in Malaysia, in a comparative perspective with Tunisia at the European University Institute (EUI), Florence, Italy.

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At the time of writing this introduction the Black 505 movement has not ceased its efforts to denounce the alleged electoral fraud and demand for the resignation of the top officials of the election Commission (EC). Tents are being planted in Padang Merbok, in Kuala Lumpur, by a group of approximately 200 students, as a symbol of resistance. The government has not yet shown any sign of moving towards the demands of the people and there has not been any further investigation regarding the alleged fraud that was denied by the EC.

The time for illusion has gone, eliminated by political awareness and the strengthening of the public sphere: the media, the NGOs and individual citizens’ actions. It seems that Malaysians want to re-orient the flow of history that has been going in favour of the ruling party since the country’s independence; but today the wave of people marching in the streets of Kuala Lumpur showed that Malaysians are fully aware of the meaning of democracy. Malaysia is marching towards a change that has yet to be determined.

This project is the fruit of a three-year collaboration between academics who have chosen Malaysia as their speciality. The richness of our team mirrors the diversity of the Malaysian people. The quality and credibility of this intellectual initiative resides in its inter-disciplinarity: urban studies, political economy, international relation, political sociology and anthropology, film studies, literature, law, strategic studies, etc. Fifteen researchers from Australia, Malaysia, Singapore, France and the United Kingdom whose interest in Malaysia goes beyond passion – but always with reason – have come together to take readers on an intellectual quest to identify the contemporary nature of Malaysia in order to presage where the country and its people may be heading.



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