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# Rule of Law for Human Rights in the Asean Region: A Base-line Study



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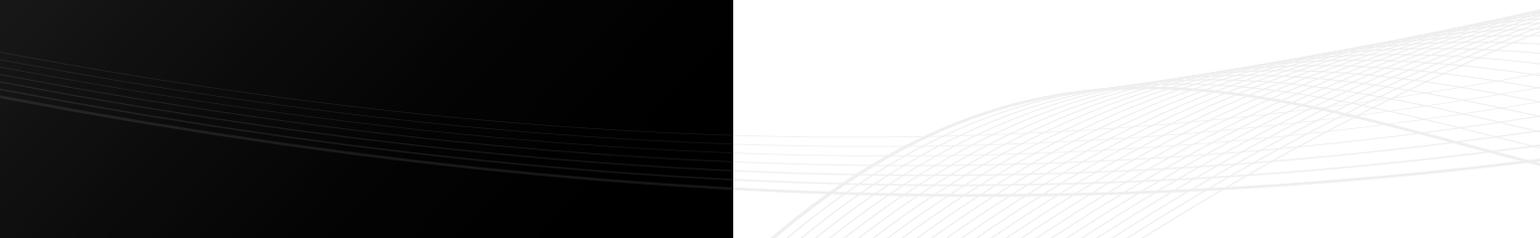


# Malaysia



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## Snapshot Box

|                              |   |
|------------------------------|---|
| Formal Name                  | Malaysia [Article 1(1) Federal Constitution]  |
| Capital City                 | Kuala Lumpur  |
| Independence                 | 31 August 1957  |
| Historical background        | From the 19th century, the Malay Peninsula consisted of nine sultanates (Perlis, Kedah, Perak, Selangor, Negeri Sembilan, Pahang, Johor, Terengganu, and Kelantan) and two British Straits Settlements (Penang and Melaka). Apart from Penang and Melaka which were under direct British rule the other nine states either had British Residences or Advisors to their Sultans. Theoretically the states were sovereign but in reality the British Residences and Advisors had tremendous influence in all matters of governance except religion and Malay customs. An attempt in 1946 by the British to unify the different states under one British led system, the Malayan Union, was short lived. Eventually after mass civil disobedience and negotiations between the political leaders of Malaya and the British, independence was obtained in 1957. In 1963, the British controlled states of Singapore, Sabah and Sarawak were freed of British rule and merged with Malaya to create Malaysia. In 1965, Singapore was expelled from Malaysia. |
| Size                         | 329847 sq km <sup>ii</sup>  |
| Land Boundaries              | Malaysia consists of two parts, the Peninsular and Sabah and Sarawak on the island of Borneo. The Peninsular borders Thailand in the North and is connected to Singapore by a bridge and a causeway in the South. Sabah and Sarawak both have land borders with Brunei and Indonesia.   |
| Population                   | 27.5 million <sup>iii</sup>   |
| Demography                   | 60% of citizens live in urban centres. Approximately 10% work in the agricultural sector; the rest of the workforce is distributed fairly evenly between the service and the industrial sectors <sup>iv</sup>   |
| Ethnic Groups                | Malay, Chinese, Indian, indigenous communities  |
| Languages                    | Malay, Chinese (Mandarin and dialects), Tamil, Malayalam, indigenous languages, English is widely spoken  |
| Religion                     | Islam, Buddhism, Christianity, Taoism, Hinduism, indigenous religions   |
| Education and literacy       | Primary and Secondary school is provided with a minimal fee with primary schooling being compulsory. There are 20 public universities, 27 polytechnics and 59 Community Colleges with subsidised fees. There are 465 private higher education institutions which include universities, university colleges and colleges. <sup>v</sup> The adult literacy rate is 92%. <sup>vi</sup>   |
| Welfare                      | Malaysia is not a welfare state although government health services are provided. Average life expectancy is 74 years and poverty is at 15.5% <sup>vii</sup>  |
| Gross Domestic Product (GDP) | US\$ 191.6 billion <sup>viii</sup>  |

Malaysia practices a Federal system where there is a central government and thirteen state governments. The state governments each have their own State Legislative Assemblies and Cabinet headed by a Chief Minister. The law making powers of the Federal Parliament and the State Legislative Assemblies are spelt out in Schedule 9 of the Federal Constitution. Below is a description of the Federal government.

- Executive Branch: The executive consists of the Prime Minister and his cabinet of ministers. The Prime Minister is selected by the King amongst all the elected parliamentarians and his choice is made based on the person whom he thinks will have the confidence of the house. In the past this has meant the leader of the party with the majority of MPs. The country practices a Constitutional Monarchy where the royal households play a symbolic role in governance as part of the executive branch of government. Every five years a Yang di-Pertuan Agong (King) is selected by the Council of Rulers (the nine Sultans and the Governors of the other four states).
- Legislative Branch: Malaysia has a Westminster-type legislature. The Parliament consists of a lower house of elected members (the Dewan Rakyat) and an upper house of appointed members (the Dewan Negara). The King has the final, albeit merely symbolic, power of assent on any bill which has gone through the process of being passed by both houses.
- Judicial Branch: The judiciary is broadly divided into two, the subordinate courts and the superior courts. The subordinate courts are (in order of ascending hierarchy) the Pengerusi (Village Head) Courts, The Juvenile Courts, the Magistrates Court and the Sessions Court. The superior courts are the High Courts, the Court of Appeal and the Federal Court (which is the highest and final appeal court of the land). The Court of Appeal and the Federal Court were recent additions made by the Constitution Amendment Act 1994.<sup>ix</sup> Previously, above the High Court, there was only the Supreme Court with no intervening appeal court. In theory this amendment has left the highest court in the land to deal only with matters of great importance. Article 128 and 130 of the Constitution states the jurisdiction of the Federal Court as being to determine appeals from lower courts on points of law; Constitutional matters, particularly disputes of jurisdiction between State and Federal powers; and as an advisory body to the King upon request.

Another point of detail should be made here and that is the fact that there are two High Courts in Malaysia. According to Article 121 of the Federal Constitution, there are two High Courts of co-ordinate jurisdiction and status. One is the High Court of Malaya and the other is the High Court of Sabah and Sarawak. This distinction has no serious legal implications as both High Courts are of the same status. It simply means that cases coming from Sabah and Sarawak have to climb the court hierarchy through their own High Courts. This is due to historical reasons and the Borneo states' desire for a certain degree of autonomy.

Currently there are two competing political coalitions. The ruling coalition is known as the Barisan Nasional (National Front) (BN) and its main component parties are the United Malay National Organisation (UMNO), Malaysian Chinese Association (MCA), Malaysian Indian Congress (MIC), Malaysian Peoples' Movement Party (Gerakan), United Traditional Bumiputera Party (PBB), Sarawak United People's Party (SUPP) and United Pasokmomogun Kadazandusun Murut Organisation (UPKO). The opposition coalition is known as the Pakatan Rakyat (People's Coalition)(PR) and consists of the People's Justice Party (Keadilan), Democratic Action Party (DAP) and Pan Malaysian Islamic Party (PAS).

Human Rights Issues

Speech, assembly, association, religion, death in custody

Membership in International Organisations and Human Rights Treaties ratified

UN member since 1957, party to Convention on the Rights of the Child 1989, Convention on the Rights of Persons with Disabilities 2007 and Convention on the Elimination of all forms of Discrimination Against Women 1979

## Overview

### 1. Key Rule of Law Structures

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Malaysia has a system of government and law that under the Federal Constitution provides a formal structure for upholding and development of the rule of law. Part II of the Constitution is entitled Fundamental liberties and it guarantees the following:

- Liberty of the person
- Slavery and forced labour prohibited
- Protection against retrospective criminal laws and repeated trials
- Equality under the law
- Prohibition of banishment and freedom of movement
- Freedom of speech, assembly and association
- Freedom of religion
- Rights in respect of education
- Rights to property

In a formal sense the Constitution provides a basic framework for protection of basic civic and political rights. Apart from civil liberties, it also includes several provisions associated with fundamental features of the rule of law. Malaysia also has a Criminal Procedure Code (CCP) which along with the Constitution creates a legal structure through which the rights of the accused can be protected. As will be seen, however, other aspects of the Malaysian legislative scheme for the administration of justice appear to undercut some of the rule of law guarantees established in the Constitution and CCP.

The Constitution also clearly defines the role of the executive, the legislature and the judiciary, thus providing for the separation of powers necessary for the exercise of judicial independence. The legislature is elected at least once every five years and elections are held to elect both the Federal House of Representatives and the various state legislatures. The party with the majority of the house will then select the executive. Generally the elections have been fair with no overt interference with the process.<sup>x</sup>

### 2. Foundation and Evolution of Rule of Law

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Recognition of the central importance of the rule of law for Malaysia may be found in foundational principles that define the contours of good governance. The idea of the rule of law forms an element of the *Rukunegara*, or National Principles, which were instituted by Royal Proclamation in 1970 as a set of principles to guide the governance of the nation and to promote unity in the light of race riots that occurred in the preceding year. The *Rukunegara* states:

WHEREAS OUR COUNTRY, MALAYSIA nurtures the ambitions of:

Achieving a more perfect unity amongst the whole of her society;

Preserving a democratic way of life;

Creating a just society where the prosperity of the country can be enjoyed together in a fair and equitable manner;

Guaranteeing a liberal approach towards her rich and varied cultural traditions; and

Building a progressive society that will make use of science and modern technology.

NOW, THEREFORE WE, the people of Malaysia, pledge to concentrate the whole of our energy and efforts to achieve these ambitions based on the following principles:

BELIEF IN GOD

LOYALTY TO KING AND COUNTRY

THE SUPREMACY OF THE CONSTITUTION

THE RULE OF LAW

COURTESY AND MORALITY

The rule of law and the principle of constitutional government thus constitute 2 of 5 basic principles of good governance expressed in an official document. All of the documents referenced above, however, provide virtually no guidance as to what understanding of the concept of the rule of law should prevail in Malaysia. For example, to a large extent the Constitution falls short in determining exactly what the rule of law means in the country. The original draft<sup>xi</sup> of the Constitution had Article 3 which is noted "The Rule of Law". It read:

- 3 (1) This Constitution shall be the supreme law of the Federation, and any provision of the Constitution of any State or of any law which is repugnant to any provision of this Constitution shall, to the extent of the repugnancy, be void.
- (2) Where any public authority within the Federation or within any state performs any executive act which is inconsistent with any provision of this Constitution or of any law, such act shall be void.

This is followed by Draft Article 4 which is noted "Enforcement of the Rule of Law" and it read:

- 4 (1) Without prejudice to any other remedy provided by law –
  - a. Where any person alleges that any provision of any written law is void, he may apply to the Supreme Court for an order so declaring and, if the Supreme Court is satisfied that the provision is void, the Supreme Court may issue an order so declaring and in the case of a provision of a written law which is not severable from other provisions of such written law, issue an order declaring that such other provisions are void.
  - b. Where any person affected by any act or decision of a public authority alleges that it is void because –
    - i. The provision of the law under which the public authority acted or purported to act was void, or
    - ii. The act or decision itself was void, or
    - iii. Where the public authority was exercising a judicial or quasi-judicial function that the public authority was acting without jurisdiction or in excess thereof or that the procedure by which

the act or decision was done or taken was contrary to the principles of natural justice, he may apply to the Supreme Court and, if the Court is satisfied that the allegation is correct, the Court may issue such order as it may consider appropriate in the circumstances of the case

This emphatic statement that the country will respect the rule of law as well as a clear explanation as to how it is to be enforced was not accepted<sup>xii</sup> in the final draft of the Constitution. What was adopted instead is Article 4 which simply states that the Constitution is the supreme law of the land and any laws made in contravention of it, to the extent of the contravention is void.

Thus the concept of the rule of law as stated in the Rukunegara exists in a philosophical vacuum, lacking any constitutional guidance on how it is to be understood or enforced. The lack of conceptual substance fails to clarify how the rule of law as the guarantee of the rights of citizens in the administration of justice relates to political interests of the state that may be seen as coming into conflict with the constitutional rights of individuals. This vacuum has led to a somewhat simplistic understanding of the rule of law that identifies it with such interests rather than distinguishing and balancing them. As Sim KY states:

"The perception of the majority of Malaysians with regards to the Rule of Law is probably one which identifies law with order. Simply put, the Rule of Law is the establishment and maintenance of public order, security, peace and stability. The alternative is anarchy strife and war."<sup>xiii</sup>

Rais Yatim (currently a Minister in the government) states:

"The Rule of Law in the Rukunegara did not necessarily mean the same as the rule of law conceived by Dicey or the various International Commission of Jurists congresses. It was not particularly concerned with the checks and balances necessary in the popular notion under a modern and democratic system. It was proclaimed to mean no more than that the rules and regulations made by the government must be followed".<sup>xiv</sup>

It could be concluded that the understanding of the concept of the rule of law in Malaysia by the public and the government is more akin to “rule by law” as opposed to “rule of law”. This can be observed in the country’s actual application, or non-application, of the principles of the rule of law in its governance. Whereas the ASEAN Charter understands the principle of the rule of law to be connected to the basic requirements of good governance and human rights, the Malaysian constitutional framework fails to make such a connection clear, thus allowing for interpretations of the rule of law that strip of substantive content. Indeed, if the statement of Rais Yatim quoted above accurately reflects the prevalent view by Malaysian governmental and judicial officials, the rule of law may be recognised only as a formal concept without the critical association with “checks and balances necessary .... under a modern democratic system.” One must therefore look to implementation and practices associated with key rule of law issues to gain a better picture of the actual understanding and state of the rule of law as an active principle in the administration of justice in Malaysian institutions.

### **3. Human Rights Treaties and Commission**

Malaysia has a Human Rights Commission (known as SUHAKAM and one of four National Human Rights Institutions in ASEAN) and is party to three human rights international treaties. The three treaties are: the Convention on the Rights of the Child 1989, the Convention on the Rights of Persons with Disabilities 2007 and the Convention on the Elimination of all forms of Discrimination against Women 1979. Malaysia has thus not a party to the International Covenant on Civil and Political Rights or the Convention against Torture, both of which provide for important elements of the rule of law.

With regard to the first two treaties, the following laws were passed in order to aid the country’s compliance with their international obligations: the Child Act 2001<sup>xv</sup> and the Person’s With Disabilities Act 2008.<sup>xvi</sup> With regard to CEDAW an amendment was made to the Federal Constitution in 2001<sup>xvii</sup> adding the word “gender” to Article 8 (2) and providing for a basic framework of equality under the law. Article 8 (2) now reads:

Except as expressly authorised by this constitution, there shall be no discrimination against citizens on the ground only of religion, race, descent, place of birth or gender in any law or in the appointment to any office or employment under a public authority or in the administration of any law relating to the acquisition, holding or disposition of property or the establishing or carrying on of any trade, business, profession, vocation or employment.

The establishment of the Human Rights Commission, SUHAKAM, was an important step but has limited impact upon the implementation of the rule of law as its powers are limited. According to section 4 of the Human Rights Commission of Malaysia Act 1999 (HRCMA)<sup>xviii</sup> the function and powers of the Commission are:

- To promote human rights awareness and education
- To advise and assist the government in formulating laws and administrative procedures
- To make recommendations to the government regarding human rights treaty compliance
- To inquire into complaints regarding human rights infringements

In order to achieve these objectives SUHAKAM has the power to

- Conduct workshops and seminars
- Give advice to the government and relevant authorities
- Conduct studies to verify human rights infringements
- Visit detention centres and make recommendations
- Issue public statements on human rights

While SUHAKAM has conducted such activities and made recommendations to the government it is not clear that its actions have had a significant impact upon concerns about the rule of law and the protection of citizens from actions that, according to the Commission appear to infringe basic rights associated with the rule of law. For example, although SUHAKAM publishes an annual report and there have been numerous calls for these reports to be discussed in parliament, at the time of writing, there has been no such discussion, let alone implementation of their recommendations. It has thus been suggested that the government chooses to largely ignore the work

of SUHAKAM as it relates to rule of law protections and closer empirical study is required to accurately assess the effectiveness of the Commission and the nature of its relations with key governmental institutions responsible for maintaining Constitutional guarantees of rights and the rule of law.

## Administration of Justice Grid

| Indicator   | Figure   |
|---|--|
| No. of judges in country  | Federal Court: 7<br>Court of Appeal: 22<br>High Court: 37<br>Sessions Court: 143<br>Magistrates: 196   |
| No. of lawyers in country   | 13000  |
| Annual bar intake? Costs / fees   | Fees: approximately US\$300  |
| Standard length of time for training/qualification  | 5  |
| Availability of post-qualification training   | Not required until 2012  |
| Average length of time from arrest to trial (criminal)  | NA   |
| Average length of trials (from opening to judgment)   | NA   |
| Accessibility of individual rulings to public   | Accessible   |
| Appeals structure   | Federal Court<br>Court of Appeal<br>High Court<br>Sessions Court<br>Magistrates Court  |
| Cases before national human rights commission or other independent commissions (if applicable)        | 2000: 150<br>2001: 300<br>2002: 200<br>2003: 250<br>2004: 600<br>2005: 1350<br>2006: 1200<br>2007: 1150<br>2008: 1150<br>2009: 962<br><br>- In 2009 SUHAKAM found that 535 of complaints fell outside its jurisdiction<br>- From the 427 remaining SUHAKAM has completed investigating 180 cases, the rest are still under investigation or pending response |
| Complaints filed against police, judiciary or other state institutions (per year)? How many resolved? | NA   |

## **A. Country's practice in applying four principles for rule of law for human rights**

### **1. The Government and its officials and agents are accountable under the law**

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In principle no one in the country is above the law. Even royalty is subject to the law for Article 182 of the Federal Constitution establishes a Special Court which can try the King or the rulers of the states in their personal capacities with the consent of the Attorney General (Article 183). The issue here is not of there being laws which give government or government agents' immunity from the law, the issue is of how existing laws are enforced. (see discussion below on impartiality in enforcement).

### **2. Laws and procedure for arrest detention and punishment are publicly available, lawful and not arbitrary; and preserve the fundamental rights to physical integrity, liberty and security of persons and fairness in law**

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- a. Are the criminal laws and procedures, including administrative rules that provide for preventive detention or otherwise have penal effect, published and widely accessible in a form that is up to date and available in all official languages?

All laws in Malaysia are publicly available (in English and Malay) and enacted following clearly defined legislative procedures. The usual procedure for arrests and the protection of the accused can be found in the Federal Constitution and the Criminal Procedure Code (CPC).<sup>xix</sup>

- b. Are these laws accessible, understandable, non-retroactive, applied in a consistent and predictable way to everyone equally, including the government authorities, and consistent with the other applicable law.

The accessibility of laws is generally good with copies available in libraries and book shops. Whether they are understandable is a matter of perspective as all statutes are not written in a manner which the lay man can easily grasp. There are efforts however by bodies such as the

Bar Council to produce easily understood publications regarding citizens' rights.

Retrospective criminal laws, a fundamental principle of legality at the core of the rule of law, are not allowed according to the Constitution:

Article 7(1) No person shall be punished for an act or omission which was not punishable by law when it was done or made, and no person shall suffer greater punishment for an offence than was prescribed by law at the time it was committed.

- c. Do these authorise administrative/preventive detention without charge or trial during or outside a genuine state of emergency?

The Internal Security Act 1960 (ISA)<sup>xx</sup> allows for detention without trial. The period of detention is potentially indefinite. Although initially designed to deal with the communist insurrection, the broad circumstances which authorizing such detentions is so wide that it can be used in many other circumstances. Critics of the ISA have repeatedly argued that it is used against critics of the government. The Act provides for two types of detention. Section 73 gives power to the police to detain a person without trial for up to sixty days.<sup>xxi</sup> Section 8 gives the Minister of Home Affairs the discretion to make a detention order of up to two years.<sup>xxii</sup> This detention can be renewed by the minister ad infinitum. In addition to raising rule of law issues because of the authorisation to incarcerate citizens indefinitely without trial, further serious concerns arise because the ISA provides that the Minister's decision cannot be challenged in Court.<sup>xxiii</sup>

- d. Do these laws protect accused persons from arbitrary or extra-legal treatment or punishment, including inhumane treatment, torture, arbitrary arrest, detention without charge or trial and extra judicial killing by the State? Is the right to habeas corpus limited in any circumstances?

The ISA (see above) allows for arbitrary detention without trial. With regard to treatment while in custody, NGOs have raised concerns that the number of deaths in custody is very high. Malaysia, as noted above, is not a party to the Convention against Torture.

*Habeas Corpus* is guaranteed in the Federal Constitution:

Article 5(2) Where complaint is made to a High Court or any judge thereof that a person is being unlawfully detained the court shall inquire into the complaint and, unless satisfied that the detention is lawful, shall order him to be produced before the court and release him

This right is however limited by the broad discretionary powers given to the government in laws such as the ISA, particularly section 8B(1) (see note 23).

Torture is not specifically prohibited under the Penal Code. However, confession or statement made under duress is inadmissible (see note 34). SUHAKAM does not make any specific mention of torture, however they have received many complaints about police brutality (8 in 2006, 20 in 2007 and 19 in 2008).<sup>xiv</sup> Their recommendations have been for video recordings to be made of interrogations and for the police to refrain from causing harms to those in detention. However, these recommendations, even if implemented, have not had a significant effect on police practice as complaints are still made and attempts by SUHAKAM to create a Memorandum of Understanding between themselves and the police force to expedite investigations were rejected by the police.<sup>xv</sup>

- e. Do these laws provide for the presumption of innocence?

Malaysia follows the common law principle of innocence until proven guilty. The CPC reflects this with the prosecution needing to prove a *prima facie* case before a trial can continue.

There are a number of laws in Malaysia, such as the Misuse of Drugs Act, that provide for rebuttable presumptions of guilt. There are concerns that the reversal of the burden of proof do not sit well with the presumption of innocence.

- f. Do all accused persons have prompt and regular access to legal counsel of their choosing and the right to be represented by such counsel at each significant stage of the proceedings, with the court assigning competent representation for accused persons who cannot afford to pay? Are accused persons informed, if they do not have legal assistance, of these rights?

Art 5(3) and (4) of the Federal Constitution read respectively;

Where 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.

Where a person is arrested and not released he shall without unreasonable delay, and in any case within twenty four hours (excluding the time of any necessary journey) be produced before a magistrate and shall not be further detained in custody without the magistrates authority

This is further confirmed in section 28 (A) of the CPC. The right to communicate is not merely to one's lawyer but also to a friend or relative in order to inform them of one's whereabouts. It ought to be noted however that complaints have been received of family members not being informed of the detention of the accused.<sup>xvi</sup> This right can be withheld by an officer of at least the rank of Deputy Superintendent of Police (DSP) in writing, if it is believed that such communication can lead to the alerting of accomplices, the destruction or concealment of evidence and the endangering of third parties.

According to section 28 of the CPC a person must be brought before a magistrate within 24 hours and the magistrate can then authorise further detention for up to 14 days depending on the offence committed.

Further, not every violation of the right leads to a complaint being brought before the courts. Even so, there may be other mechanisms for accountability. For example, SUKAMAM launched a Public Inquiry into an incident where some lawyers at a legal aid centre were arrested,

and found that this arrest and detention constituted a denial of legal representation and contravention of Article 5(3) of the Constitution and s 28A of the CPC.<sup>xxvii</sup>

SUKAHAM recognised that the provision of the right could be temporarily denied pursuant to s28A(8) of the CPC, but urged the police to use the exemption only in exceptional and genuine cases.<sup>xxviii</sup>

There is a system of legal aid in criminal cases for accused persons with no ability to afford a lawyer.

- g. Do these laws guarantee accused persons the right to be informed of the precise charges against them in a timely manner, adequate time to prepare their defence and communicate with their legal counsel?

Article 5(3) of the Constitution (see above) provides for the right of an arrested person to be informed of the grounds of his arrest. However, the interpretation of “grounds” has been fairly narrow, and it needs merely consist of general information and not the evidential details more relevant to allegations of fact.<sup>xxix</sup>

- h. Do these laws guarantee accused persons to be tried without undue delay, tried in their presence, and to defend themselves in person and examine or have their counsel examine, the witness and evidence against them?

Under the preventive detention laws, the detainee is given the opportunity to make representations against the order to the Advisory Board as provided in Article 151 of the Constitution. However, SUKAHAM stated that the best avenue to uphold justice and the rule of law remained the judicial system and thus persons under detention should be allowed to seek a fair public trial.<sup>xxx</sup>

- i. Do these laws prohibit the use of coerced confessions as a form of evidence and do they guarantee the accused person’s right to remain silent?

There are no specific laws regarding the proper treatment of detainees, however any statements made by a suspect is inadmissible by itself. In this way, confessions, whether

obtained by force or otherwise are insufficient without a proper investigation. This does not however mean that the use of force does not occur; for example for the purpose of extracting information. Many cases have gone to court where evidence was held to be inadmissible due to the involuntary nature of their obtainment.<sup>xxxi</sup>

There is no specific right to silence although under the CPC a person may refuse to answer if the answer might incriminate him. That refusal, however, may be held against him. During a trial the accused has the right to silence unless the prosecutor has proven a *prima facie* case in which case he is obliged to offer evidence to counter the charge, failing which the prosecution’s case would be deemed proven “beyond reasonable doubt”.

- j. Do these laws prohibit persons from being tried or punished again for an offence for which they already been finally convicted or acquitted?

According to the Federal Constitution

Article 7(2) A person who has been acquitted or convicted of an offence shall not be tried again for the same offence except where the conviction or acquittal has been quashed and a retrial ordered by a court superior to that by which he has acquitted or convicted

- k. Do these laws provide for the right to seek a timely and effective remedy before a competent court for violations of fundamental rights?

A person may appeal to the courts for violations of his Constitutional rights if such a breach was conducted by a government agency. The lack of governmental statistics on, for example, complaints against police or judicial officials, make it difficult to assess the extent to which such violations are alleged to occur.

- l. Additional points to be considered

The indicator questions have focussed on criminal justice matters, it should however be noted that there are other laws in Malaysia that have been criticised as not meeting the standards of “procedural fairness” and prohibiting arbitrariness in the administration of justice as required to fulfil the rule of law criteria. For example:

1. The Societies Act 1966 (SocA)<sup>xxxii</sup>  
Article 10(1)(c) of the Constitution provides that subject to clauses (2), (3) and (4), all citizens have the right to form associations. However, this Act makes it difficult for groups to organise themselves into lawful organisations. Registration of a society is compulsory<sup>xxxiii</sup> but the registration process is highly discretionary and experience has shown that depending on the group applying it could be very slow or very quick. Furthermore the Minister has broad powers in deciding if a society is to be declared unlawful.<sup>xxxiv</sup> This situation has given rise to allegations of arbitrary and politically motivated application of the law that, if accurate, would conflict with the equal and impartial application of the laws required by the rule of law.
2. The Printing Presses and Publication Act 1984 (PPPA)<sup>xxxv</sup>  
This Act requires a license for any publication<sup>xxxvi</sup> and at the core of the law the government can withdraw or refuse to renew, their licence to print on any ground whatsoever.<sup>xxxvii</sup> Furthermore conditions can be imposed on the licences before they are granted. Even if a license is given, they would normally be with conditions, for example an opposition party newspaper is only available for sale to its party members. The way in which this law has been implemented has given rise to allegations of unequal, discriminatory, and arbitrary application.
3. Official Secrets Act 1972 (OSA)<sup>xxxviii</sup>  
The OSA gives very wide powers to the Federal Minister, the state Chief Minister or any person appointed by them,<sup>xxxix</sup> to declare any document of a “public body” as an official secret. Apart from the wide statutory definition of “public body”, the minister can also appoint any person, tribunal, body, institution or authority to be in the “public service”, thus making documents produced by them potentially official secrets. The use of this power cannot be questioned in court. The mere possession of an official secret is an offence and *mens rea* is not a relevant factor. This Act and the broad unquestionable discretionary powers it provides the government inhibits the transparency necessary for achieving good governance and the rule of law. The ability of the government to

deny access to statistics, records, and documents necessary to assess the performance of institutions involved in the administration of justice and responsible for the implementation of the rule of law presents an obstacle to accurate assessment.

### 3. The process by which the laws are enacted and enforced is accessible, fair, efficient, and equally applied

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- a. Are the thresholds for legal standing before courts clearly specified, not discriminatory and not unduly restrictive?

*Locus standi* in Malaysia is a problematic area. Judicial interpretation as to who has *locus standi* is unfortunately narrow. In the case of *Government of Malaysia v Lim Kit Siang, United Engineers (M) Berhad v Lim Kit Siang* [1988]<sup>xl</sup> Mr Lim had applied for an injunction restraining the company UEM from signing a contract with the government of Malaysia for the construction of a highway linking the north and the south of the country. His application was based on the grounds that the tender awarded by the government to UEM was invalid. On the ground of standing, Mr Lim argued that as a taxpayer, a road user and the leader of the opposition was enough to give him *locus standi*. Unfortunately, the Supreme Court held by a majority of three to two, that Mr Lim did not have standing because his rights as a private citizen were not affected over and above that of an ordinary road user.

In *Abdul Razak Ahmad v Kerajaan Negeri Johor* [1995]<sup>xli</sup> a plaintiff attempting to challenge the legality of the planning permission given by the State Government of Johor to build a “floating city” was not allowed on the grounds that he had no legal interest in the project, he was not an adjoining neighbour nor had he suffered any special damage. The judge also said “[t]o give locus standi to a rate payer like the plaintiff would open the floodgate [sic] and this would in turn stifle development in the country”.<sup>xlii</sup> The plaintiff was then described as “a troubleshooter [sic], a maverick of a sort out to stir trouble”.<sup>xliii</sup> Mr Abdul Razak stands in good company for in the *Lim Kit Siang* case, Salleh Abas Lord President, as he then was, asked “...[i]s he (Mr Lim) motivated by public-spirited-ness or an expectation of political gain and popularity”.<sup>xliv</sup> It seems a common theme that anyone bringing a public interest case in Malaysia is deemed to be up to no good.

On the other hand, there are some cases which have adopted a broader view of standing. For example, in *Lim Cho Hock*<sup>xlv</sup> v *Government of the State of Perak*, the court commended the litigant for bringing the case “with commendable zest and perhaps even out of a keen sense of indignation” and held that he had standing as a ratepayer to bring an application for a declaration. In *Mohamed Bin Ismail v Tan Sri Haji Othman Saat & Ors*,<sup>xlvi</sup> the court gave a wider interpretation to “sufficient interest” in Order 53 of the Rules of Court and held that the applicant had standing as an aggrieved person.

The issue of standing, whether it is to be interpreted broadly or narrowly, depends on the discretion of the judge. According to Gopal Sri Ram in the Bakun Dam case, this would mean taking into consideration the situation of the country, including its culture, economic situation and its political climate. If this is the case then it would appear that the climate in Malaysia is not favourable at all to public interest litigation cases (including human rights cases) for without a liberal view of standing it is incredibly difficult to bring such cases to court. Or, in the words of Tan Sri Abdoolcader SCJ (one of the dissenting judges in the Lim Kit Siang case);

“To deny *locus standi* in the instant proceedings would in my view be a retrograde step in the present stage of development of administrative law and a retreat into antiquity. The merits of the complaint are an entirely different matter, and we are not concerned with the personalities in the picture or whether it is a highway project or a construction of a causeway to the moon that is involved. 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.”<sup>xlvii</sup>

The issue of standing thus raises issues concerning access to justice and equal, fair, and impartial treatment under the law. Detailed analysis of the exercise of discretion in an adequate sample of representative cases would be required to provide an accurate general assessment.

- b. All persons are equal before the law and are entitled without any discrimination to the equal protection of the law?

According to the Federal Constitution:

Art 8(1) All persons are equal before the law and entitled to the equal protection of the law.

This provision is true of criminal laws, however the constitution does provide for unequal treatment in civil matters, namely with regard to preferential treatment of Malays and natives of Sabah and Sarawak.

- c. Are the laws effectively, fairly and equally enforced? Are persons seeking access to justice provided proper assistance?

Regarding the equality of enforcement, this is dealt with below. Access is problematic in the sense that the legal aid system in the country is not fully developed. Although there is legal aid provided for those accused of a crime (if they pass the means test), for civil matters there is a dependence on the voluntary Bar Council Legal Aid Bureau which is unable to cope with the demands made of it.

The right of an accused person to consult a lawyer of his or her choice under Art 5(3) of the Constitution is not unfettered in practice. While the right accrues at the point of arrest, it has been held that this right may not be exercised immediately after arrest where it would impede police investigations.<sup>xlviii</sup> Further, in *Public Prosecutor v Mah Chuen Lim & ors*,<sup>xlix</sup> it was held the right was only to be given to an accused person “with all convenient speed”.<sup>l</sup> The court declined to define “convenient speed”, but held that it would depend on the circumstances of each particular case. There is thus a risk that protracted periods may constitute “convenient speed”.

More recently, however, a broader view of the right to counsel has been upheld in a seminal case which has been described by one scholar as a “bright light in a darkened tunnel”.<sup>li</sup> In *Mohamad Ezam bin Mohd Noor v Ketua Polis Negara & ors*,<sup>lii</sup> Siti Norma Yaakob FCJ held that allowing access to legal counsel only after the expiry of detention constituted a clear violation of Art 5(3); and further, that the Internal Security Act (ISA) was subject to the

rights enshrined therein. In order to ensure that the right to counsel is not rendered “illusory or ineffective”, the learned judge further held that the police must act “promptly and professionally” and prioritize their investigations relating to the conduct of ISA detainees.

- d. Do the laws provide for adequate, effective and prompt reparation to victims of crime or human rights violations for harm suffered? Do these victims have access to relevant information and reparation mechanism?

In the event of human rights violations in Malaysia, any action taken would have to be based on the Constitution. The constitutional framework has significant shortcomings in providing remedies for such violations, as discussed below (under the heading “Impartiality of Legal Institutions”).

- e. Do the laws provide for and do prosecutors, judges and judicial officers take measures to minimise the inconvenience to witnesses and victims (and their representatives), protect against unlawful interference with their privacy as appropriate and ensure their safety from intimidation and retaliation, as well as that of their families and witnesses, before, during and after judicial, administrative, or other proceedings that affect their interest?

Generally this is not a problem in Malaysia, however there have been recent developments that suggest the police may be involved in action to intimidate those who testify against them.

- f. Additional points to be considered

There are several factors that raise concerns as implementation of the rule of law in Malaysia.

1. The Constitution

As noted above the Constitution lacks clear provisions on the rule of law and the relation of fundamental rights associated with the rule of law to other interests and principles established in the Constitution.

For example, by virtue of Article 149 of the constitution, Parliament may make legislation against subversion, organised violence, and acts and crimes prejudicial to public order even if they are contrary to the fundamental liberties guaranteed in Part II. Article 149 provides a broad spectrum of activities that could be considered as subversive, violent and contrary to public order and they include;

- To cause fear of violence
- To excite disaffection to the King or the government
- To promote ill will amongst races
- To procure the unlawful alteration of anything established by law
- To act in a way that is prejudicial to the maintenance or the functioning of any supply or service to the public or any class of the public
- To act in a way that is prejudicial to public order or the security of the Federation

The broad manner in which these grounds are articulated and the lack of express provisions concerning the fundamental legal rights and their status vis-à-vis legislative acts promulgated under Article 149 suggests that the Parliament could be understood to have the authority to enact legislation abrogating or denying fundamental rights and the rule of law under a wide variety of circumstances. The protection of constitutional rights and the operation of the rule of law could thus been seen as placed within the realm of party politics.

Another Constitutional provision that can impact the operation of the rule of law is the emergency powers provision. According to Article 150 the Executive can declare an emergency, during which period any ordinances can be made that may be in contradiction with the Constitution. While most states have provisions that allow for the imposition of martial law or other extraordinary measures concerns have been raised in Malaysia about the potentially arbitrary use of emergency powers arising from the fact that emergencies in Malaysia require a declaration for them to stop being in force. Such emergencies never expire and do not require renewal. As such, several emergencies declared in Malaysia continue in operation indefinitely even if the threat they were meant to combat have long ceased to be.<sup>liii</sup>

Rule of law concerns arise from this situation because the emergency power provisions are broad and open ended and they give a great deal of power to the legislature. By their very nature emergency powers may impede the operation of the rule of law. Critics have argued that if the emergency that gave rise to such provisions has passed then there can be no justification for using such provisions to deny rule of law guarantees to citizens. The issue thus arises as to what extent the judiciary provides a balance of powers that effectively limits the arbitrary exercise of legislative action to restrict the implementation of the rule of law and the fundamental rights associated with it. Critics have also argued that the judiciary has declined to play such a role, pointing to the case of *Stephen Kalong Ningkan v Government of Malaysia* [1968]<sup>lv</sup> where Barakbah (Lord President) representing the majority held:

“In an act of the nature of a Proclamation of Emergency, issued in accordance with the Constitution, in my opinion it is incumbent on the Court to assume that the Government is acting in the best interest of the State and to permit no evidence to be adduced otherwise. In short, the circumstances which bring about a Proclamation of Emergency are non justiciable...In my opinion the Yang di-Pertuan Agong (King) is the sole judge and once His Majesty is satisfied that a state of emergency exists it is not for the Court to inquire as to whether or not he should have been satisfied”.

## 2. Impartiality of legal institutions

One persistent concern with regard to the Malaysian system of justice and the rule of law is the impartiality of its legal systems. The perception exists among some commentators that the justice system is not impartial and the use of law differs depending on the perpetrator.

One such concern arises from questions as to the loss of independence on the part of the Attorney General. This is related to the broad discretion the AG enjoys in deciding whether to prosecute a case or not. This discretion can be found in Art 145(3) of the Federal Constitution which reads: “The Attorney General shall have power, exercisable at his discretion, to institute, conduct or discontinue any proceedings for an offence...” This discretionary power has generally been unquestioned by the courts. In the case of *Johnson Tan Han Seng v Public*

*Prosecutor* [1977]<sup>lv</sup> it was argued that this discretionary power was in contradiction with the principles of equality enshrined in Art 8 of the Constitution. It was held that this discretion is absolute and the provision was clear thus Art 8 must be read in line with Art 145(3).

As noted above, the Constitution provides for equal protection and equal treatment under the law. Critics have advanced examples that they allege indicate areas where there are systematic inequalities in application. For example, in regard to the Malaysian Anti Corruption Commission (MACC) formed by the Malaysian Anti-Corruption Commission Act 2009<sup>lvi</sup> concerns have been raised as their neutrality in regard to investigations being done on the governments of opposition held states as opposed to investigative action on complaints against the ruling government or members of the ruling government.<sup>lvii</sup>

One example referred to by such critics is the death of Teoh Beng Hock. Teoh Beng Hock was a political aide to a state legislative assembly person. His employer was part of the Selangor state government which was in the hands of the opposition coalition Pakatan Rakyat (PR) (The People’s Coalition). On 15 July as part of a MACC operation specifically aimed at the PR state government, Teoh was taken in to the MACC offices not as a suspect but merely for questioning. Despite not being a suspect he was held in custody overnight and on 16 July his body was found outside the MACC building. He had apparently fallen out of the building and died as a result. An inquest was held and a verdict delivered on 5 January 2010. Although the judge was convinced that the cause of death was not suicide neither was he willing to state that the cause of death was homicide, despite findings by a pathologist appointed by the Selangor state government that there were pre fall injuries and that the injuries sustained in the fall was not consistent with someone who was conscious at the time of the fall. An open verdict was announced. This case raises potential issues of the rule of law extending beyond the issue of equal application of the laws.

Similar claims of unequal enforcement and application of the law have been levied against the police in regard to unequal treatment of demonstrators, depending on their political affiliations and

#### 4. Justice is administered by competent, impartial and independent judiciary and judicial institutions

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- a. Are prosecutors, judges and judicial officers appointed, re-appointed, promoted, assigned, disciplined and dismissed in a manner that fosters both independence and accountability?

An independent and impartial judiciary is universally held to be a fundamental requirement of the rule of law, good governance, and respect for human rights. The independence of the Malaysian judiciary has been called into question by many expert commentators on the basis of a series of cases that occurred in 1988 resulting in the sacking and replacement of judges on the Supreme Court. These cases have been widely criticised as politicised, based on inadequate evidence, application of an erroneous legal standard and an inappropriate burden of proof. These cases have been seen by critics as entrenching the power of the Executive over the Judiciary,

The enactment of the Judicial Appointments Commission Act 2009<sup>lviii</sup> which provides that the Prime Minister must now act upon the advice of a committee in the selection of judges has addressed some of the issues about judicial independence but critics maintain that serious concerns remain, particularly in cases that involve members of the political opposition or of the ruling party.

- b. Do prosecutors, judges and judicial officers receive adequate training, resources, and compensation commensurate with their institutional responsibilities? What percentage of the state's budget is allocated for the judiciary and other principal justice institutions, such as the courts?

It is submitted that in terms of legal knowledge and capacity, there is a sufficient training. All judicial and Attorney General Chamber's personnel have to obtain a law degree. Continuing education is also practiced both in the judiciary and the Attorney General's Chambers. Remuneration is high comparative to the civil service wage scheme. However, it is submitted that the independence of the judiciary and the Attorney General are of more pressing concern.

- c. Are judicial proceedings conducted in an impartial manner and free of improper influence by public officials or private corporations?

Since the 1988 judicial crisis the independence of the judiciary has come under serious criticism. In his chapter "The 1988 Judiciary Crisis and its Aftermath",<sup>lix</sup> Visu Sinnadurai, listed several developments that cast doubt over the independence of the judiciary in the years following the sacking of the Lord President. There were incidents where judges were shown to have close relations with litigants. The judge that took over from the sacked Lord President, Hamid Omar was the subject of a report by the International Bar Association:

"...Lord President Tun Hamid recently acknowledged that on 24 March 1994 he had a private meeting with the chief executive of a company engaged in litigation pending before the Supreme Court, following which, on 24 April, he presided over an interlocutory appeal, ruling in favour of the company. Tun Hamid has stated that he did not discuss the case at his meeting with the chief executive... It is ironic – or perhaps poetic justice – that the judge who upheld wholly specious allegations of misconduct against his predecessor should now have admitted to much more questionable behaviour...it is plain that the acknowledged conduct of the Lord President can only reinforce distrust in the impartiality of the Malaysian judiciary."<sup>lx</sup>

In 1994 Hamid Omar's predecessor Eusoff Chin was caught on camera on a holiday with a lawyer, V.K. Lingam, who had a case before him.<sup>lvi</sup> Later allegations arose that the holiday was paid for by the lawyer. This question of the independence of the judiciary created widespread public criticism with the release of what has come to be known as the Lingam Tapes. These tapes show V.K. Lingam on video brokering the promotion of a judge. Federal ministers were implicated in the tapes. A Royal Commission was established to verify the genuineness of the recording as well as to judge whether any wrong doing had occurred. They held that the tape was indeed authentic and that a serious wrong had been committed. At the time of writing there has been no action taken by the Attorney General's Chambers.<sup>lvii</sup>

Other incidents include lawyers selecting judges to hear their trial which led a judge to declare; "...the conduct of the judge and the lawyer in this case give the impression to right-thinking people that litigants can choose the Judge before whom they wish to appear for their case to be adjudicated upon...";<sup>lviii</sup> and a judge, Justice Muhammad Kamil Awang, declaring in court in June 2001 that he was instructed to decide in a particular way for cases involving election irregularities.

In short, concerns over judicial independence and impartiality have been a principal feature of criticism of the operation of the rule of law from a variety of sources. These concerns continue to day, particularly in regard to cases involving the political figures.

## Endnotes

- i. Associate Professor, University of Malaya, Kuala Lumpur.
- ii. Source BBC [http://news.bbc.co.uk/2/hi/asia-pacific/country\\_profiles/1304569.stm](http://news.bbc.co.uk/2/hi/asia-pacific/country_profiles/1304569.stm) (accessed 25 March 2011).
- iii. Source BBC [http://news.bbc.co.uk/2/hi/asia-pacific/country\\_profiles/1304569.stm](http://news.bbc.co.uk/2/hi/asia-pacific/country_profiles/1304569.stm) (accessed 25 March 2011).
- iv. Source World Bank <http://data.worldbank.org/country/malaysia> (accessed 25 March 2011).
- v. Source Ministry of Higher Education <http://www.portal.mohe.gov.my/portal/page/portal/ExtPortal/> (accessed 25 March 2011).
- vi. Source World Bank <http://data.worldbank.org/country/malaysia> (accessed 25 March 2011).
- vii. Source World Bank <http://data.worldbank.org/country/malaysia> (accessed 25 March 2011).
- viii. Source World Bank <http://data.worldbank.org/country/malaysia> (accessed 25 March 2011).
- ix. Laws of Malaysia Act A885.
- x. In general Malaysia has experienced free elections. There have been 12 general elections since independence. However the problems with regard to elections are numerous. One major complaint is the lack of access to the media by opposition parties. Due to laws such as the Printing Presses and Publications Act and other laws that control the electronic media, the mainstream media is not generally open to any party apart from the ruling party. Add to this the fact that the mainstream newspapers are owned or controlled by the ruling political parties (The Malaysian Chinese Association (MCA) party owns The Star, a major English language daily. The United Malays National Organisation (UMNO) party through its nominee business group Media Prima has interest in the New Straits Times which has under its banner four national English and Malay language dailies. Media Prima also has interest in four terrestrial television channels), the imbalance is quite severe. The issue of fraud is also often raised, in particular with regard to the non transparent use of postal votes during an election.
- xi. Report of the Federation of Malaya Constitutional Commission, Government Printers, Kuala Lumpur, 1957, pp 123 – 124.
- xii. For a full exploration of why this provision was not accepted, see Khoo BT, “Rule of Law in the Merdeka Constitution” 27 *Journal of Malaysian and Comparative Law* (2000), pp 59 – 101.
- xiii. “The Rule of Law” paper presented at Conference on Reflections on the Malaysian Constitution: 30 Years After Merdeka (15-16 Aug 1987: Kuala Lumpur).
- xiv. *Freedom Under Executive Power in Malaysia: A Study of Executive Supremacy*, Kuala Lumpur, Endowment Publications, 1995, p. 27
- xv. Laws of Malaysia Act 611.
- xvi. Laws of Malaysia Act 685.
- xvii. Amending Act A1130.
- xviii. Laws of Malaysia, Act 597.
- xix. Laws of Malaysia Act 593.
- xx. Laws of Malaysia, Act 82.
- xxi. ISA S73(1) Any police officer may without warrant arrest and detain pending enquiries any person in respect of when he has reason to believe – a) that there are grounds which would justify his detention under section 8 and b) that he has acted or is about to act or is likely to act in any manner prejudicial to the security of Malaysia or any part thereof or of the maintenance of essential services therein or to the economic life thereof. ISA S73(3) Any person arrested under this section may be detained for a period not exceeding sixty days without an order of detention having been made in respect of him under section 8.
- xxii. ISA S8 If the minister is satisfied that the detention of any person is necessary with a view to preventing him from acting in any

- manner prejudicial to the security of Malaysia... or to the maintenance of essential services therein or the economic life thereof, he may make an order directing that that person be detained for any period not exceeding two years.
- xxiii. ISA S8B(1) There shall be no judicial review in any court and no court shall have or exercise any jurisdiction in respect of any act done or decision made by the Yang di-Pertuan Agong or the minister in the exercise of their discretionary power in accordance with this Act save in regard to any question on compliance with any procedural requirement.
  - xxiv. SUHAKAM Annual Report 2006, 2007 and 2008.
  - xxv. SUHAKAM Annual Report 2009, p. 30.
  - xxvi. SUHAKAM 2008 Annual Report, p. 31.
  - xxvii. SUKHAM 2010 Annual Report, p. 39.
  - xxviii. SUKHAM 2010 Annual Report, p. 40.
  - xxix. Mohamad Ezam bin Mohd Noor v. Ketua Polis Negara & ors [2002] 4 MJJ 449.
  - xxx. SUKHAM 2010 Annual Report, p. 42.
  - xxxi. See Majid KM Criminal Procedure in Malaysia (3rd edition), University of Malaya Press, Kuala Lumpur, 1999, pp. 128 – 139.
  - xxxii. Laws of Malaysia, Act 335.
  - xxxiii. SocA S6(1) Every local society ...shall, in the manner prescribed make application to the Registrar for registration under this Act. SocA S6(2) Until a local society is registered under this Act, no person shall, without a written permission of the registrar, organize or take part in any activity of or on behalf of the society.
  - xxxiv. SocA S5(1) It shall be lawful for the minister in his absolute discretion by order to declare unlawful any society or branch or class or description of any societies which in his opinion, is or is being used for purposes prejudicial to or incompatible with the interest of the security of Malaysia or any part thereof, public order or morality.
  - xxxv. Laws of Malaysia, Act 301 . PPPA S5(1) No person shall print, import, publish , sell, circulate or distribute, any newspaper printed in Malaysia or Singapore unless there has been granted by the Minister in respect of such newspaper a permit.
  - xxxvi. PPPA S6(1)(a) The Minister may in his absolute discretion grant – to any person a permit to print and publish a newspaper in Malaysia.
  - xxxvii. PPPA S6 (2) The Minister may at any time revoke or suspend a permit for any period he considers desirable.
  - xxxviii. Laws of Malaysia, Act 88.
  - xxxix. OSA S16A A certificate by a Minister or a public officer charged with any responsibility in respect of any Ministry, department or any public service or the Menteri Besar or the Chief Minister of a State or by the principal officer in charge of the administrative affairs of a State certifying to an official document, information or material that it is an official secret shall be conclusive evidence that the document, information or material is an official secret and shall not be questioned in any court on any ground whatsoever.
  - xl. 2 MJJ 12.
  - xli. 2 AMR 1174.
  - xl.ii. Emphasis added. A wonderful exposé of the judge's value system.
  - xl.iii. [1995] 2 AMR, p. 1186.
  - xl.iv. See note xl.iii, p. 25.
  - xl.v. Lim Cho Hock v Government of the State of Perak, Menteri Besar, State of Perak and President, Municipality of Ipoh [1980] 2 MJJ 148.
  - xl.vi. [1982] 2 MJJ 133.

- xlvi. See note xliii, p. 25.
- xlvi. Ooi Ah Phua v Officer-in-Charge Criminal Investigation, Kedah/Perlis [1975] 2 MLJ 198. The onus of proving that the right to counsel would be an impediment to investigations rest with the police: Hashim Bin Saud v Yahaya Bin Hashim & anor [1977] 2 MLJ 116.
- xlix. [1975] 1 MLJ 95
  - i. Pursuant to s 30 of the Interpretation and General Clauses Ordinance 1948.
  - ii. Chan, Gary K Y (2007) "The Right of Access to Justice: Judicial Discourse in Singapore and Malaysia," *Asian Journal of Comparative Law*: Vol. 2: Iss. 1, Article 2.
  - iii. [2002] 4 MLJ 449
  - iiii. See Das CV, "Emergency Powers and the Rule of Law" [1984] 1 CLJ 61.
  - lv. 1 MLJ 119, p. 122.
  - lvi. 2 MLJ 66.
  - lvii. Laws of Malaysia, Act 694.
  - lviii. Loh D, "The Problem with the MACC", *The Nut Graph*, <http://www.thenutgraph.com/problem-with-macc/> accessed 19 January 2011.
  - lix. Laws of Malaysia, Act 695.
  - lx. In *Constitutional Landmarks in Malaysia: The First Fifty Years 1957 – 2007*, eds. Harding A and Lee H.P, Lexis nexis, 207, at pp 187 – 194.
  - lxi. Quoted in Wu M.A, "The Malaysian Judiciary: Erosion of Confidence", (1999) 12 *Australian Journal of Asian Law* 124.
  - lxii. *Aliran Monthly*, Volume 25, 2005, Issue 1.
  - lxiii. See Special Report: The Lingam Tape, *Malaysiakini*, <http://www.malaysiakini.com/news/72772> accessed 19 January 2011.
  - lxiiii. *Ayer Molek Rubber Co Bhd & Ors v Insas Bhd & Megapolitan Nominees Sdn Bhd* [1995] 2 MLJ 734 CA, per NH Chan JCA, p. 743.

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