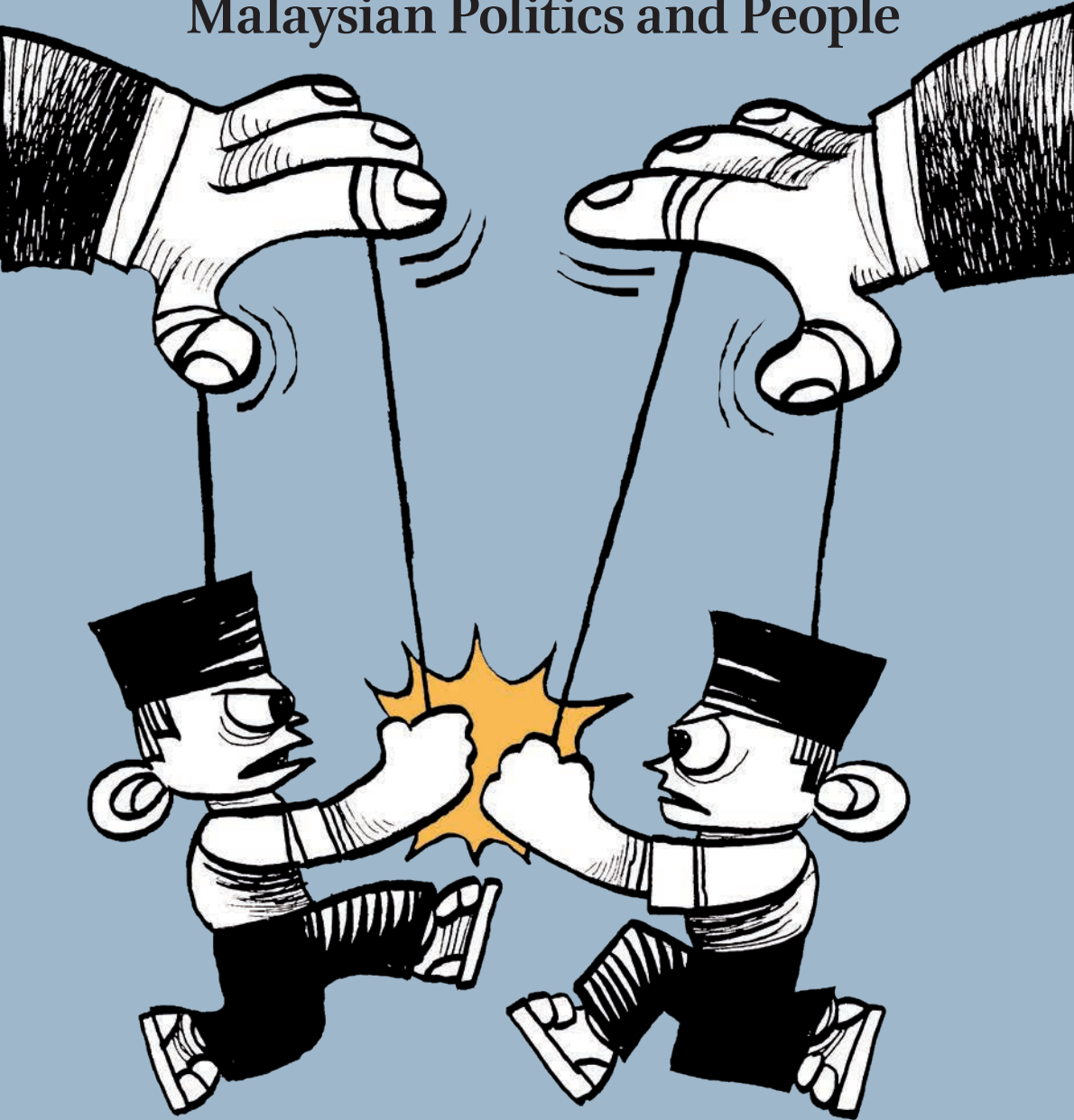


Edited by Sophie Lemière

# Illusions of Democracy

Malaysian Politics and People



Amsterdam  
University  
Press

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AMSTERDAM UNIVERSITY PRESS

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*Malaysian Politics and People*

*Edited by  
Sophie Lemière*

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# Contents

<i>Foreword by Joseph Chinyong Liow</i>	vii
<i>Acknowledgments</i>	ix
<i>Introduction by Sophie Lemière</i>	xi

## **PART ONE: THE (MIS-)RULES OF ETHNO-POLITICS**

CHAPTER 1	<b><i>Demi Agama, Bangsa dan Negara: Silat Martial Arts and the ‘Third Line’ in Defence of Religion, Race, and the Malaysian State</i></b>	3
	<i>Lawrence Ross</i>	
CHAPTER 2	<b>The Real World? Fabricating Legitimacy in a Semi-Authoritarian State</b>	21
	<i>Sophie Lemière</i>	
CHAPTER 3	<b>Malaysia’s Constitutional Identity: A Chimera?</b>	43
	<i>Mohd Nazim Ganti Shaari</i>	
CHAPTER 4	<b>Rebooting the Emergency: Najib’s Law ‘Reform’ and the Normalisation of Crisis</b>	59
	<i>Amanda Whiting</i>	
CHAPTER 5	<b>Federalism in <i>Serambi Mekah</i>: Management of Islamic Education in Kelantan</b>	85
	<i>Azmil Tayyeb</i>	

## **PART TWO: THE LOCAL SCENE AND THE INTERNATIONAL GAME**

CHAPTER 6	<b>Malaysian Politics and the South China Sea Dilemma</b>	103
	<i>Alessandro Uras</i>	
CHAPTER 7	<b>The Construction of Malaysia’s Foreign Policy since 1957: An Emerging Middle Power’s Choice to Follow, Challenge or Compromise with the Global Order</b>	117
	<i>Delphine Allès and Louise Perrodin</i>	

CHAPTER 8	<b><i>Ummah Revisited: Anti-Shia Hatred in Malaysia since the Outbreak of the Syrian Civil War</i></b> <i>Dominik M. Müller</i>	137
CHAPTER 9	<b>The Violent Trajectory of Islamisation in Malaysia</b> <i>Aida Arosoaie and Mohamed Nawab Osman</i>	161
<b>PART THREE: THE VOICES OF THE ‘OTHERS’</b>		
CHAPTER 10	<b>Life in Limbo: Refugees in Malaysia</b> <i>Gerhard Hoffstaedter and Louise Perrodin</i>	183
CHAPTER 11	<b>‘Malay Muslim First’: The Politics of Bumiputeraism in East Malaysia</b> <i>James Chin</i>	201
CHAPTER 12	<b>Troubling Malaysia’s Islamic State Identity: The ‘Young’ Struggle of LGBTQ’s Narratives and the Art of Mis-Representation</b> <i>Angela M. Kuga Thas</i>	221
<b>PART FOUR: THE (MIS-)MANAGEMENT OF RESOURCES</b>		
CHAPTER 13	<b>Economics, Politics and the Law in Malaysia: A Case Study of the IMDB Scandal</b> <i>Kerstin Steiner</i>	245
CHAPTER 14	<b>Collecting, Resisting, and Paying Corporatised Zakat in Contemporary Malaysia</b> <i>Patricia Sloane-White</i>	271
CHAPTER 15	<b>Malaysia’s Green Movement: Old Continuities and New Possibilities</b> <i>Aznil Tayeb and Yew Wei Lit</i>	287
CHAPTER 16	<b>Responsible Resource Management of the Oil and Gas Sector in Malaysia: Issues, Challenges and Opportunities</b> <i>Tricia Yeoh</i>	305
	<i>Afterword</i>	333
	<i>List of Contributors</i>	343
	<i>Index</i>	349

# Foreword

Contemporary Malaysia is a society in ferment. For years, the country has been led by the Barisan Nasional, a political coalition anchored by the United Malays National Organisation (UMNO). Once believed to be unassailable, in the March 2008 general election the Malaysian opposition managed to deny Barisan its hitherto customary two-thirds parliamentary majority while also prying several state governments from its control. The momentum of the opposition's electoral success carried over into the 2013 election, when they inflicted a major blow on the incumbent coalition by winning the majority vote, even if the latter still managed to retain power by way of the first-past-the-post parliamentary process.

As the country stands at the cusp of another impending general election (due by mid-2018), a major financial scandal involving IMDB, a state-owned strategic investment company, threatens to further undermine the credibility and legitimacy of the prime minister and president of UMNO, Najib Tun Razak. At the same time, civil society has become increasingly active – and agitated – as they engage the state on a raft of issues ranging from defence of the sacrosanct principle of Malay-Muslim dominance, implementation of Islamic strictures, freedom of worship for followers of minority religions, corruption and nepotism, indigenous rights of residents of East Malaysia as encapsulated in the '20 point' and '18 point' agreement documents signed between the state governments of Sabah and Sarawak and the Malaysian federal government, the gathering pace of environmental degradation, and the list goes on. While many of these issues are hardly new, the way they have unfolded in the post-Mahathir era has hastened academic and public discourse concerning them. More importantly, these issues have given rise to new research agendas in Malaysian studies. Indeed, the breadth of this new research agenda is reflected in the work of a new generation of scholars and 'Malaysianists', and finds expression in recent published scholarship covering the nexus between Islamic finance and politics, Islamist pop culture, the reframing of identity and nationalism among East Malaysians, environmental politics, the increasing prominence of *ulama* in everyday politics, and (un)civil activism.

In compiling a sample of this new scholarship in this present volume, Sophie Lemièrè, herself among the new generation of scholars to watch, has

done us a great service. Provocatively titled *Illusions of Democracy*, the essays cast light on the ambiguity and contestations that have in recent years come to define politics in Malaysia, especially in relation to issues that hitherto have not been subject to much scholarly attention or analytical scrutiny. In so doing, the volume constitutes an important collection of essays that makes a timely and original contribution to our understanding of the enigma of Malaysian politics. At this particularly crucial juncture of the country's history, the trenchant analysis provided in these essays deserves our closest attention.

**Joseph Chinyong Liow**

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I am very grateful to my mentor and friend Olivier Roy, Professor at the European University, Brigid Laffan, director of the Robert Schuman Centre for Advanced Studies and Karin Tilmans, director of the Max Weber Program at the EUI who have provided me with the financial means and the dynamic intellectual environment I needed to pursue my research in general and this project in particular.

Finally, I would like to dedicate this modest contribution to Malaysian studies to Joel S. Kahn and Cheah Boon Kheng, whose work has inspired, and will continue to inspire, generations of young students, and scholars.

# Introduction

## Illusions of Malaysia: Failed Democracy or Successful Authoritarianism?

### Spring is coming?

Since 2011, Spring is without fail associated with revolution, people power and democracy. In Malaysia, Spring has no meaning, neither climatically nor politically. Abdullah Badawi was a hope for change, as was Najib Razak with his calls for transformation and reform. Yet, despite their pledges for further democratisation, liberalisation and transformation, *Reformasi*, yet alone *Revolusi*, is yet to come.

When reading the website of the Prime Minister's Office, especially the page describing the Government Transformation Programme (GTP),<sup>1</sup> two things are immediately noticeable: the word *rakyat* appears as often as acronyms (the Malaysian government loves acronyms). After reading the summary we learn that Malaysia is, more than anything, a 'rakyat-crazy'. The semantic trick used here is to symbolically echo another word that is more often used by the opposition than by the government: Democracy. Demo-crazy is simply defined by the power of the people (*demos* – people, *kratos* – power): in Malaysia, elections have been organised since before independence and institutions were created to represent the people's will. Elections are one of the first parameters to determine the level of freedom existing in a country. International organisations and institutions, that

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<sup>1</sup> [http://gtp.pemandu.gov.my/gtp/About\\_GTP-@-GTP\\_Overview.aspx](http://gtp.pemandu.gov.my/gtp/About_GTP-@-GTP_Overview.aspx). Accessed on 21 May 2017.

have de facto a quasi-monopoly in determining which country is – and which country is not – a democracy, look essentially at three elements: elections, civil society and institutions. Malaysia has them all. Yet, Malaysia is rarely called a democracy, but an illiberal democracy, young democracy or competitive or electoral authoritarian state. Most observers, analysts or researchers are puzzled by the nature of this political hybrid. Over the last few months and with the increase in political and financial scandals, Malaysia's system of governance has appeared more than ever as a non-democracy.

Malaysia is a country where a clown is a threat; a threat to a political farce. A country in which freedom of expression is constrained by the manipulation and abuse of the law by the ruler<sup>2</sup> cannot be called a democracy.<sup>3</sup> Some would argue that Malaysia's march towards democracy is reversing, others that the process of development of democracy is inhibited.<sup>4</sup> But was Malaysia ever marching towards democracy? If so, when did the march stop: 1969 after the general election and the ethnic violence leading to the state of emergency? In 1987, with the constitutional crisis? In 1998, following the failed attempt of *Reformasi* and the sacking of Anwar Ibrahim? Has Malaysia only recently become an authoritarian State, or was it always one?

State regimes evolve. The turn made by Turkey had not been predicted by most scholars, even if the re-examination of contemporary political history certainly leads to a reconstruction of the narrative, and hindsight exposes the signs that were not seen. As shown by Dan Slater, Thomas Pepinsky, Marina Ottaway and Norani Othman, the Malaysian authoritarian system did not fail in spite of the emergence of contentious politics, civil society and a new middle class, nor because of the Asian crisis; as it did in Indonesia, for example. The democratic institutions exist, the first elections occurred before independence in 1957, but the authoritarian system persists. As such, Malaysia qualifies as a semi-authoritarian regime. As Marina Ottaway writes:

<sup>2</sup> <http://www.themalaymailonline.com/what-you-think/article/freedom-of-speech-and-expression-must-be-resolutely-protected-george-varugh>

<sup>3</sup> <https://www.hrw.org/report/2016/10/12/deepening-culture-fear/criminalization-peaceful-expression-malaysia>. And see also <https://freedomhouse.org/report/freedom-press/2015/malaysia>. Accessed on 10 July 2017.

<sup>4</sup> Read the very interesting contribution of Mavis Puthuchearry in Puthuchearry and Norani (2005).

They (semi-authoritarian regimes) are ambiguous systems that combine rhetorical acceptance of liberal democracy, the existence of some formal democratic institutions, and respect for a limited sphere of civil and political liberties with essentially illiberal or even authoritarian traits. This ambiguous character, furthermore, is deliberate. Semi-authoritarian systems are not imperfect democracies struggling toward improvement and consolidation but regimes determined to maintain the appearance of democracy without exposing themselves to the political risks that free competition entails. Semi-authoritarian regimes are political hybrids. They allow little real competition for power, thus reducing government accountability. However, they leave enough political space for political parties and organisations of civil society to form, and the press to function to some extent, and for some political debate to take place (Ottaway 2003: 3).

According to a recent interview given to British newspaper *The Guardian*, former PM Mahathir Mohamad accepts the idea that the country undertook an authoritarian turn under his rule,<sup>5</sup> but explains that the extent to which Najib has intensified this turn has been unpredictable. In fact, the switch Mahathir himself has made, from a member of the ruling party to de facto leader of the opposition he had repressed under his rule, is as ‘mind-boggling’ as the amount of money Najib is said to have embezzled. Malaysia is therefore at a cross-roads. The country has become a world attraction since the revelations of the 1MDB case surfaced. The public space for expression is shrinking and pressure on political opposition has become stronger with the emergence of international investigations against the Prime Minister or, shall we say, ‘a key Malaysian leader’? Eyes are on the Malaysian Tiger whose image as a booming economy and young democracy is suffering a severe blow.

When we were compiling the first volume published in 2014, *Misplaced Democracy: Malaysian Politics and People*, we were writing in the aftermath of the 13th general election, at a time when we argued that Malaysia was moving towards a change that was yet to be determined. Three years later, this has been confirmed, but the changes that have occurred are by no means linear: the opposition has become emboldened and new forms of resistance have opened up in the arts and activism, but they have also become more fractious. The government has been plagued by financial crises

<sup>5</sup> <https://www.theguardian.com/world/2017/jul/06/father-of-modern-malaysia-backs-jailed-former-pm-in-attempt-to-oust-incumbent>. Accessed on 10 July 2017.

and scandals but has been able to maintain its hold on power and draw PAS outside of the opposition coalition.

With the 14th general election scheduled to be held before 24 June 2018, we have an important opportunity to reflect upon the changes and developments of the last three years and to begin to understand where the country is heading during a period of political turmoil. The horizon is once again open. Could Malaysia fall deeper into authoritarian tendencies, as many worry with the passage of the National Security Council Bill 2015 and the detention of opposition figures and restrictions on their travel? Will the Prime Minister be willing to relinquish power in the event of an opposition electoral victory? Or will change emerge more incrementally? Could an opposition party take power with a radically reformist agenda to democratise Malaysian society or will the elitist tendencies in Malaysian politics continue? Finally, what other forces – be they in the field of foreign policy, the economy, minority & LGBT rights, the environment, education or migration – will shape the future of Malaysia's politics and its people?

This volume is a collective effort and brings together 18 international scholars from Malaysia and abroad to explore and analyse the realities of political and social life in an authoritarian state with democratic illusions, and thus the nature, origins and possible directions of the country, its society, its leaders, and its institutions. Our aim is to give our readers a fresh perspective on contemporary topics based on deep academic and field research. Yet, this book is also intended to bring answers or nurture current debates on Malaysian politics and people to a wide audience beyond research fields and geographic boundaries.

## **Part One: The (Mis)-Rules of Ethno-Politics**

The first part of our volume attacks the topic directly by looking at the rule and misrule of ethno-politics and how the reproduction of ethnic discourse and the institutionalisation of ethnicity and religion under immutable categories have resulted in the sclerosis of the political development in service of the interests of the ruling elite. In our first piece, Lawrence Ross argues that if violence by Malaysia's majority Malays against minority ethnic communities is carried out, as is threatened from time to time, then *silat* martial arts fighters would very likely form the vanguard of the forces executing this violence. For the greater part of the Malay-speaking world, the term '*silat*' encompasses a broad number of hand- and weapon-fighting styles based on stylised movements that hold deep symbolism for

Malay identity. Several of these groups have openly displayed their political allegiance and, through their speeches and actions, have declared themselves ready for para-military activities within the country.

Sophie Lemièrè's unique analysis also brings into the picture the political role of *silat* groups but from the fresh perspective of state–society relations, through the original concept of complicit militancy. Sophie looks at the production, perpetuation and exercise of UMNO's rule in particular and authoritarian and semi-authoritarian systems more generally. She believes the answer lies in the definition of complex mechanisms of legitimation and perpetuation of semi-authoritarian power. She explores the fabrication of reality within the Malaysian semi-authoritarian system through the orchestration of illusions, and the manipulations of collective emotions. Sophie contributes to the rare literature highlighting the paradox existing between the common features of democracy; civil society and elections as tools of (semi-)authoritarian power to create an illusion of democracy to the people and the international observers.

Mohd Nazim Ganti Shaari's thought-provoking chapter sets the scene by going back to the roots of Malaysia's governing institutions. In Malaysia, much has been written about the 'traditional elements' that are inherent in the constitution, particularly Malay special privileges, Islam, the role of the Malay Rulers and the Malay language. However, there is one aspect of constitutional identity that looks at the indigenous or autochthonous features of the constitution. When this element is examined with reference to Malaysia's constitutional identity, the common and conventional view provides that the elements constituting the constitutional identity of Malaysia are Islam, the Malay Rulers and Malay elements. Nazim brings new and controversial elements of understanding of the Malaysian power by switching the order of importance of these elements, introducing the idea it is first the Malay Rulers, then Islam and Malay elements that form the constitutional identity of Malaysia.

Amanda Whiting demonstrates precisely how the current government has failed to reform the country's institutions and how the long-standing tolerance and encouragement, by government, of ethno-nationalist politicians and political operatives pervert the law and the institutions of the state for their own ends by invoking a crisis mentality. Her chapter shows that legislative changes have fallen well short of the reforms that have long been demanded by opposition political parties, the Malaysian Bar and civil and political rights campaigners, all of whom have been deeply concerned

about the declining health of Malaysian democracy and the erosion of constitutional governance and the rule of law.

Finally, the sketches of the contour of the Malaysian regime and institutions conclude with Azmil Tayeb's piece. In this captivating chapter the management of Islamic education in Malaysia is used as the focal point to analyse the currently overbearing presence of the federal government. Federalism, as a governing concept, makes pragmatic sense in a country such as Malaysia where there have been in existence historically autonomous kingdoms and colonies with their own local bases of power and unique traditions. Nevertheless, the type of federalism practised in Malaysia is not evenly balanced and is heavily skewed towards the domineering federal government in Putrajaya and Kuala Lumpur.

## **Part Two: The Local Scene and the International Game**

This second part is a genuine reflection on the place of Malaysia in the international system. The decreasing internal legitimacy of Malaysian ruling coalition Barisan Nasional has tempted governments to make greater use of diplomatic tools in the service of Malaysian internal policies since the 1990s. As such, the coherence of the Middle Way sought by Malaysia on the international scene has been hindered by contradictory foreign policy moves designed to serve domestic purposes. Also, the evolution of the international context and the emergence of a new designated global threat, 'ISIS', have definitely impacted local society and the dynamics of power.

Alessandro Uras's piece intensively focuses on Malaysia's ambition in the South China Sea. Since the second half of the 1990s the government has tried to develop a political strategy capable of protecting both its strategic interests in the South China Sea and its economic ties with the People's Republic of China. The desire to balance the strategic and the economic realms has prevented the country developing a strong political agenda on the issue, resulting in a progressive loss of incisiveness and influence vis-à-vis Philippines and Vietnam. Alessandro's analysis identifies the main challenges behind the political impasse in Malaysia's South China Sea strategy, considering the historical and legal background of the maritime claims and the development of a multilateral diplomatic framework in the region.

Delphine Allès and Louise Perrodin examine Malaysia's foreign policy since 1957 in an updated and developed version of the chapter featured in our first volume. During the sixty years since independence, Malaysian

foreign policy has fluctuated from alignment to antagonism with the global order, towards a more established middle-power diplomacy. Delphine and Louise precisely show that only the combination of successive decision-makers' idiosyncrasies, domestic constraints and the international context can shed light on the country's apparently wavering diplomatic postures. While foreign policy objectives and methods have fluctuated over time, the search for autonomy has been a recurrent theme in Malaysian foreign policy discourses.

The two following chapters take the concept of *umamah*, the community of Muslims, beyond Malaysia's frontiers and show how this dialogue from local to global is articulated and impacted by the current climate of 'terror' and the politics in the Middle East. Over the past two decades, and dramatically escalating particularly since the outbreak of the Syrian civil war in 2011, Malaysia has been witnessing a growing trend of sectarian hatred and conspiracy theory style suspicion against Shia Muslims. Although 'real' Shias (as opposed to the omnipresent imagined ones) only represent a very small and largely invisible minority, the conviction that their existence gravely endangers the beliefs and unity of Malaysian Muslims, who must be protected from the domestic and global 'Shia threat' by all available means has gained popularity. Dominik Muller brilliantly explains how this discourse of fear and enmity, and the circulation of justifying narratives that go along with it, are constantly reproduced and further intensified by a broad coalition of ideologically like-minded political leaders, the religious bureaucracy, and various Muslim social actors across party-political, educational and other divides.

The normalised conception of Islam as the righteous governing structure, has marked a historical milestone that has shifted cultural meanings and re-defined social structures within the Malaysian state. Moreover, the co-optation of the Islamist opposition and the race between UMNO and PAS over the appropriate implementation of Islamic tenets have normalised a discourse of political contestation vis-à-vis the righteousness of Islamic governance. This, in turn, has shaped the psyche of a new generation. The new generation of *jihadi* recruits for ISIS,<sup>6</sup> unlike the

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<sup>6</sup> The Islamic State of Iraq and al-Sham (ISIS) is a terrorist group that originated in the organization of Abu Musab al-Zarkawi, an Al-Qaeda member who set up the Iraqi branch of Al-Qaeda (AQI) in 2004. From its early days, the group was infamous for its extreme brutality, often admonished against by Al-Qaeda Central. Throughout the years the group morphed into various forms until, in 2013, withdrew its



older generations, are attracted to the apparent righteousness of the outfit, embodied by the establishment of the Caliphate and the implementation of Shari'a according to the Qur'an and the Hadith. Aida Arosoaie and Mohamed Nawab's captivating chapter doesn't seek to engage in a theological discussion regarding the Caliphate, *Shari'a*, *hudud*, *ummah* or *jihad*, but explores the sociological conundrum posed by the new generation of jihadi recruits in Malaysia. Their chapter highlights the rhetorical consistencies between the main points of contestation between PAS and UMNO, and between the most prevalent concepts in ISIS's discourse.

### **Part Three: The Voice of the Others**

In this part our aim is to bring the 'margins' back to the centre of our attention, highlighting the forgotten people and causes of Malaysian society as crucial elements of analysis for the understanding of the core of the system. The relationship between the state and ethnic, religious or sexual minorities is symptomatic of its malfunctions. The ones who are not seen but do count actively in building Malaysia's society, the ones who – because of their tendency to transcend categories – pose a true political, and sometimes social, challenge to the country. Gerhard Hoffstaedter and Louise Perrodin's timely piece looks at the two largest refugee communities in the country: the Chin and Rohingya. The government has not ratified the 1951 Convention relating to the Status of Refugees and Malaysian law does not mention any form of right to asylum, so refugees in Malaysia are considered as illegal immigrants. Therefore refugees settling in Malaysia find themselves in limbo. Louise and Gerhard explore how the Malaysian authorities and the state use the informality of both refugee groups to their advantage and argue that refugee informality facilitates a differentiated tolerance from both the government and Malaysian society based on religion and ethnicity.

James Chin looks at the marginalisation of the indigenous peoples of

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allegiance from AQ and became known as ISIS. On 29 June 2014 the group self-declared the establishment of the historical Islamic Caliphate in seized swathes of Syria and Iraq, rebranding itself as the Islamic State. Although the majority of the group's leadership previously served under the Saddam Hussein's Ba'ath Party, known for its outright secular, anti-religion outlook, ISIS strategically legitimated itself through religion (Stern and Berger, 2015). The group emerged as a paragon of social media propaganda when it managed to attract over 30,000 foreign fighters from more than 100 countries, of which around 6000 are from Europe and North America (TSG, 2015).

Sabah and Sarawak from a political perspective. Over time, this process has led to serious consequences for the indigenous peoples, including a loss of political power, economic marginalisation despite the New Economic Policy (NEP), creating political divisions among indigenes' political groupings, under-representation in the electoral system and, in the recent decade, using Islam to marginalise the indigenous churches. To James, the prospects are not good, and in the long run the indigenous peoples of Sabah and Sarawak will likely be further marginalised unless they convert to Islam.

Finally, Angela M. Kuga Thas looks at the crucial question of LGBTQ and brings into the academic light a topic too often forgotten in Malaysian studies. To Angela, Malaysia's self-identification as an Islamic State is largely entrenched in the ethno-religious politics of the United Malays National Organisation (UMNO) against the growing amplification of LGBTQ narratives between 2008 and 2015, and the State's many responses. Adopting a case study approach, she discusses the growth of interest in sexuality rights and identity politics of the LGBTQ in the country, and the attacks on the Coalition of Malaysian NGOs in the UPR Process (COMANGO). While the LGBTQ who live visibly on the streets face increasing stigmatisation, discrimination and violence, in Malaysia it is the allies who are COMANGO members who are openly attacked and steps taken to deliberately undermine their credibility and legal standing, in particular in the eyes of Malaysian Muslims. The analysis is juxtaposed against the relatively recently developed identity politics of the Malaysian sexual minority community, the notion of citizenry and sexual citizenship.

#### **Part Four: The (Mis-)Management of Resources**

In Malaysia the political, business and civil spheres overlap; the complicity existing between those spheres is a pre-condition to the understanding of the Illusions of Democracy. Since this final section tackles the sensitive issues of corruption, politics and society, we particularly wanted to offer a comprehensive analysis of the current allegations of mismanagement of funds in the state investment fund 1Malaysia Development Berhad (1MDB) that surfaced in 2015. Kerstin Steiner methodically looks at the scandal that triggered a national and international 'crisis of confidence', undermining trust in the current political regime to allow an impartial and transparent investigation into this matter. Criticisms, including from the former Prime Minister Mahathir Mohamad, have added to the chorus of mounting pressure on the Prime Minister, Najib Razak, amid reports of a

paper trail tracing millions of dollars into his personal bank account. While the de facto national investigation has come to a standstill, the international investigations into the 1MDB scandal are in full swing. Kerstin analyses the national dimensions of the scandal, in particular how the government-critical media unearthed and reported on the scandal, followed by how national agencies reacted and started to investigate those allegations and how politicians, parties and society reacted to the scandal.

Patricia Sloane-White digs into another lone child of Malaysian studies: the tax system and, more specifically, the collection of *zakat* in Malaysia. At present, many state and federal religious authorities and *sharia* scholars increasingly argue that *zakat* must be paid into official government agencies where, they insist, strict practices and experts are in place to properly manage and distribute it in accordance with Quranic (and prudent fiscal) principles. Using ethnographic data collected in the period between 2010 and 2014, Patricia discusses the *zakat* practices of some Malaysian Muslims living in and around Kuala Lumpur and the neighbouring state of Selangor whose *zakat* such agencies seek to capture.

Yew Wei Lit and Azmil Tayeb's contemporary research offers a view of a critical component of civil society, the green movement in Malaysia, which remains a relatively under-explored topic. As such, the recent grassroots movement against the Lynas rare earth factory surfaced on a scale that caught many observers by surprise. To make sense of such dynamic growth of the green civil society sector, Wei Lit and Azmil review Malaysia's contemporary history of environmental movements, beginning from the early 1970s, in order to demonstrate that the movement has been building on advances and tactical innovations carried out by earlier generations. A deeper understanding of the movement thus enables us to assess the extent to which Malaysia's green movement holds promise as a democratising force.

Tricia Yeoh's analysis of the resources management in the oil and gas chapter crucially concludes our reflections on the Illusions of Democracy by showing how elite interests have led to the erosion of natural resources and greater economic inequalities. This revenue fell drastically in 2015, caused mainly by the fall in oil prices. Malaysia has not suffered from the 'resource curse' in its worst form even in the past. However, given fluctuating oil prices and the unstable implications this has for the country's finances, it is more imperative than ever to examine whether natural resource revenue was in the past responsibly used for social good. Given the current situation, it is also equally important to look into how the national government should

view natural resource revenues, moving away from dependence on these as lucrative sources in the long run. Tricia explains how the government, private sector and civil society must ultimately work towards good governance in managing the oil and gas industry.

\* \* \*

Finally, the extraordinary participation of the political cartoonist Zunar in our discussion and reflection is, to us, a way to actively include artistic activism at the heart of intellectual and academic debate. Zunar's work, which offers a passionate yet sharp account of the current situation, is a perfect symbiosis between a reasoned analysis of contemporary Malaysian politics and the more intimate voice of perceived reality. It is all the more precious as an expression of an authentic Malaysian voice which will continue to be heard throughout time and across frontiers.

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# PART ONE

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## The (Mis-)Rules of Ethno-Politics



# ***Demi Agama, Bangsa dan Negara: Silat Martial Arts and the ‘Third Line’ in Defence of Religion, Race, and the Malaysian State***

*Lawrence N. Ross*<sup>1</sup>

## **Introduction: A Third Line of Defence**

In June 2011, roughly two weeks before a mass rally by Malaysian opposition parties and NGOs on the streets of Kuala Lumpur, organised by a group called Bersih, calling for ‘clean and fair elections’, Omardin Mauju – the *mahaguru* (grandmaster) of the country’s largest *silat* martial arts organisation – publicly announced that his 50,000 fighters were ready to wage war on behalf of the federal government against those ‘traitors’ he said were ‘spreading chaos’ (Utusan Online 2011). His words echoed those of Prime Minister, Najib Tun Razak, who in addressing a national *silat* gathering eight months earlier, called them a ‘third line of defence’ (after the military and police) whom he confidently believed ‘would be ready to fight against those who wish to challenge our country’s peace, security and sovereignty’ (Zulkifli, 2010). A week later, Ali Rustam, president of the national federation of *silat* groups (PESAKA), and Chief Minister

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of Malacca, amplified the threat. Speaking to *silat* teachers at the Sultan Sulaiman Club in Kampung Baru, Kuala Lumpur – a site of deep historical significance to Malay ethnic nationalists – he warned that if the rally were not cancelled, it could descend into ‘extreme chaos on the order of May 13, 1969’ (Faizatul et al., 2011), a widely understood reference to an infamous episode of racial rioting in the capital and elsewhere in Malaysia.

What is intriguing about the above statements is not their martial tone – something that is, understandably, intrinsic to *silat* – but how they reveal the prominence and influence this martial art occupies in national discourses. Such provocations also illustrate important, yet under-explored, aspects of *silat*: how it has been an important component of Malay political struggles, furthered ideologies within a Malaysian Malay worldview, and employed violence, or the threat of violence, in the pursuit of certain objectives.

The objective of this chapter is to draw attention to *silat*’s active – even assertive – role within the dynamic Malay body politic. It attempts to do so through a look at the sometimes-menacing recent history of *silat*, and examining, chronologically, the involvement of ideological groups that have coalesced around *silat* during the latter-twentieth-century. It is hoped that, by understanding the contexts that have given rise to martial *silat*, people might become more aware of its potential influence upon Malaysian politics and society in the present and future.

The title of this chapter draws from a commonly heard oath among *pesilat* (*silat* practitioners), ‘*demi agama, bangsa, dan negara*’ (for the sake of religion, race, and nation): a trinity of ideals that succinctly encapsulates the Malay ethno-religious nationalism which has been such a palpable feature of post-colonial Malaysian society. Understanding the politics of *silat* goes beyond a familiarity with people and events; it requires delving into a rich semiotic trove of associated notions, symbols, language, and discourses intertwined with Malay ‘struggles’ (*perjuangan*) – something this chapter only begins to touch upon, but which merits further attention.

## ***Silat* and the Struggle over Malay Identity**

When *pesilat* take public positions such as the ones expressed above, their words and actions are intertwined with ethno-political ideas of ‘Malayness’ (i.e., the living and expressing of a Malay identity), and strongly charged themes of power and authority that link present and past and find resonance within a large constituency of Malay-Malaysian society.

When *silat* is used to project strength, it takes on a larger, communal role, standing for power accrued by Malays. That power owes its existence



to the fact that Malaysia today inherits its standing as a principal arbiter of Malay political and cultural authority from a chronological succession of indigenous kingdoms situated on and around the Malayan Peninsula over the past millennium. Historically, those kingdoms and, in turn, 'Malay culture' (in a broadly conceived sense) benefited from their physical position at the meeting point and melting pot of ethnic diversity, in a land 'between the winds', where local people have been in continuous contact with traders and immigrants from within Southeast Asia and points further afield: southern China, the Indian subcontinent, and Arabian, Persian, Ottoman West Asia and, later, Europe.

The contemporary notion of a greater Malay race (*bangsa Melayu*) roughly took root around the seventeenth and eighteenth centuries, transcending a geographically broad and sundry patchwork of Southeast Asian ethnicities, and uniting them through shared cultural, linguistic, and spiritual characteristics.<sup>2</sup> It superseded, but did not erase, connections people felt to their locales (being Minang, Kedahan, or Jawi, for example), providing them with something loftier and more comforting amid an encroaching world, particularly through European colonialism and modernity. Being Malay offered a newfound strength in numbers, a means for segregation from other groups, and an idealism to underpin their 'struggles' that appealed to a former greatness.<sup>3</sup>

The pan-Malay identity developed as a modern, discursive construction, yet, somewhat paradoxically, in the psyche of many of those who identify as Malay, having a timelessness that might be indexical to any one of a multitude of periods, people, and places. Moreover, there developed another perplexity of Malayness: from a rich and diverse environment that engendered Malay society and culture, the definition of 'Malay' became increasingly circumscribed, largely through post-independence political actions. Although only a small number of the prominent actors involved were *pesilat*, *silat* as a whole experienced the same churning sea of contradictions of time, place, and identity as did the rest of the 'Malay world',

<sup>2</sup> These are rough dates for a very non-uniform process. See Milner's (2004) summary of various viewpoints on the development of Malay ethnicity.

<sup>3</sup> The phenomenon of broadly constructed and rather ambiguous ethnic categories affected all inhabitants of British Malaya including Cantonese, Hokkien, Teochew, and Hakka populations who became 'Chinese'; Tamil, Malayali, and others who became 'Indian'; and smaller indigenous minority groups who became 'Aboriginal People' (Orang Asli). See Andaya (2008: 3–13) on the formation and politicisation of ethnic categories in the same region.

and reflected the same illusions and crystallised notions of a unified race.

The normative ethnic divisions that have defined Malaysian society for over the past half-century still form the basis of political constituencies, communal movements, and economic enterprises at all levels of the nation today. Although communally speaking, political participation is broad, it is not necessarily balanced. It is broad because since independence in 1957, the country has seen continuous rule by a well-entrenched coalition, Barisan Nasional (BN) 'National Front,' of Malay, Chinese, and Indian parties dominated by the principal Malay partner, the United Malays National Organisation (UMNO). But Malays, by virtue of their popular majority and leading position within the post-colonial government, have dominated social and economic policies in this plural society. (This, it is often argued, has been to the disadvantage of their non-Malay compatriots.) Regardless of how one views this race-based system, the enmity that economic and political apportionment has fostered cannot be discounted; and wherever there is enmity lies potential for violence.

Ethnic and political rivalry is strongest between Malays, who comprise roughly sixty per cent of the population, and the Chinese – Malaysia's second largest ethnic minority – who comprise roughly twenty-five per cent. Distrust runs deep, and in more than a few cases the rivalry has erupted in outright physical conflict. To make matters more complex, ethnicity has long been coupled with religion to make the Malay struggle an Islamic one, and this has given space for a wide variety of self-styled 'defenders' of *bangsa Melayu* to operate (such as those discussed by Lemière in this volume). Of the various ethno-nationalist groups, however, only *silat* groups are trained as a vanguard of combat-ready fighters. They are, in effect, a latent militia whose members, by their own admission, stand prepared today to 'go down to the [battle]field' (*turun padang*), whenever necessary, and defend their communal interests. As recent history shows (and which is outlined below), theirs is no idle threat: *silat* violence has been a recurring phenomenon in post-colonial Malaysia. However, despite the focus on *silat*'s relationship to violence here, it is not the intention to broadly paint *pesilat* as militia members or thugs.<sup>4</sup> That characterisation might be acceptable in regard to

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<sup>4</sup> There were prominent *silat* voices speaking out against this behaviour. The acting president of Pertubuhan Silat Seni Gayong Malaysia (PSSGM) was quoted as saying in 2009, during a by-election campaign in Kuala Terengganu, 'Our organisation teaches exponents to be loyal, respect leaders and love the Malay culture. Anything we do is to uphold these beliefs' ... 'Our organisation does not teach people to be samseng [gangsters] or hitmen. We urge silat exponents and our members to not get

a segment of *silat* practitioners, but generally speaking, one must recognise their multidimensionality and, importantly, their custodianship of traditions and practices deeply embedded with Malay ethos.

### ***Silat* Martial Arts**

The term *silat* (also *pencak* or *pencak silat*) encompasses myriad forms of stylised self-defence disciplines found across the greater Malay-speaking world, including in parts of Malaysia, Indonesia, Singapore, Brunei, and Thailand. Collectively, these disciplines draw from Malay traditions, Islam, and shamanistic practices to convey a deeply symbolic portrait of Malay warriors embodied within stylised movements, gestures, languages, and ideological stances.<sup>5</sup>

*Silat* groups are organised of combatants – the aforementioned *pesilat* – who are initiated into one or more *perguruan* ('schools' – *perguruan*, from *guru*, 'teacher') of which there are countless styles. Each *perguruan* is centred around a teacher (*guru silat*) who professes a particular lineage, and is often a traditional healer and/or master of occult practices (see Farrer, 2009: 175–97). *Guru silat* have been warriors (*pendekar*) in royal courts, and have led popular uprisings in the past, such as Tok Janggut's 1915 anti-colonial rebellion in Pasir Putih, Kelantan (Razha, 1990: 85–7).

The concept of *perguruan* has changed significantly with the migration of *silat* from the privileged knowledge of royal courts to the general public (although certain areas of knowledge are still kept privileged by *guru silat*). *Perguruan* have also gained a larger national presence within Malaysia. Prior to independence, *perguruan silat* were typically village-based, but in the post-independence era some *silat* groups developed into national (and later international) organisations, and came to exert influence on national affairs.

Malays value *silat* for several reasons: its aesthetic qualities, the competitive arena it provides, and its ability to project power and dominance. In contrast with the *silat* of the past, which was an esoteric domain of legendary master teachers and royal courts, today's *silat* is more accessible, and a highly visible marker of post-independence Malay identity.

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involved in anything like this in the coming (...) by-election' (Star Online, 2009).

<sup>5</sup> A good deal of the descriptions of *silat* in this article come from the author's personal observations as a music researcher, casual participant, and parent of two *silat* 'tiger cubs'. For more focused studies of *silat* and related martial arts, see informative works by Farrer (2009), Sheikh Shamsuddin (2005), and an edited volume by Pätzold and Mason (2016).

It maintains a relevance and vibrancy hardly matched by any other form of Malay expressive arts, and its presence in a range of styles and contexts makes it a common thread that unifies various domains of Malay culture.

*Silat's* numerous manifestations give differing emphases to aesthetic or martial elements. Graceful vestiges of *silat* appear in the movements of traditional Malay dances, in trancing rituals (such as *main puteri* of the east coast Malay Peninsula), and in storied battles from Malay classical literature, to name but several examples. But the slower, more stylised, refined, and deliberate forms of *silat* traditionally performed as mock battles for wedding feasts (referred to as *silat pulut* ('sticky rice *silat*') by many practitioners, after a traditional food served at wedding feasts ('*kenduri kahwin*')) have become a dying tradition of late, displaced by recent trends toward faster, more aggressive forms that stress fighting and athleticism.<sup>6</sup> This latter style is typified by the organised competitive *silat* that is widespread and popular among Malay youth today.

Competitive *silat* is easily accessible through extracurricular school programmes and informal training circles that abound throughout Malaysia. It offers a variety of categories ranging from 'art-dance' *silat* (*silat seni tari*) and 'sports' *silat* (*silat olahraga*), to synchronised group pieces (*seni jurus silat*) and traditional *silat* (*silat seni asli*). It has a wide reach, spanning local, national, and regional levels, and is inclusive, being open to males and females alike. Competitive *silat's* growth has paralleled that of pan-national *silat* organisations. Those organisations, several of which are discussed below, have been principal movers in expanding *silat's* participant base over recent decades. They have helped formulate standard practices and training routines, and created benchmarks for adjudicating competitions. *Silat* organisations have also contributed to the training of Malaysia's police and military forces, a modern development, but one that indirectly invokes *silat's* roots in earlier polities, when *silat* fighters were the vanguard of pre-colonial Malay sultanates.

The training of defence forces and the changes introduced by nationally organised and competitive *silat*, as a whole, reflect the ascendancy of a manifestly more martial and aggressive form. (As if to reinforce this observation, many young, tough *silat* fighters today work as bodyguards for

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<sup>6</sup> The author's ongoing research on *silat* musical accompaniment (*gendang silat*) in the northern states (Kedah, Perlis, Penang, Perak) shows a corresponding transformation to have occurred over recent decades, where a faster, more aggressive sonic aesthetic has become the norm, at the expense of a more refined artistic character.

rich businessmen and politicians.) The vignettes that appear at the outset of this chapter are but culminations of a decades-long hardening of ethnic and political boundaries, and symptoms of a quietly growing martialist zeitgeist within Malaysian society.

Post-independence *silat* has not only provided a prominent discursive space through which Malays might articulate and serve various ethnic, religious, and political allegiances, but its more extreme manifestations have also served as a medium to express an antagonistic ethnic chauvinism. It is not accidental that many, if not most, of the noteworthy episodes of inter-ethnic violence in recent Malaysian history have involved *silat* organisations. With this concern in mind, the following examines several historical junctures at which this occurred, tracing the chronological progression of *silat* into an increasingly organised and martial force since the postwar era.

## ***Silat* and Twentieth-century Ethnic Conflict**

### ***The Post-WWII Interregnum (1945–46)***

In the political vacuum of the 1945–46 ‘Interregnum’ (the postwar period following the Japanese occupation, before British rule was re-established on the Peninsula) a militia of *silat* warriors formed in the southern state of Johor under the leadership of the ‘charismatic’ Kiyai Salleh. Benefiting from an environment of Islamic religious fervour and anti-Chinese rhetoric, this group, calling itself *Tentera Sabilillah* (‘Army in the Cause of God’) or *Selendang Merah* (‘Red Bands’ or ‘Red Sashes’) – names that would be adopted by other Malay militias and *silat* groups in later decades – fought the primarily ethnic Chinese Malayan People’s Anti-Japanese Army (MPAJA) and Malayan Communist Party (MCP) (Cheah, 2012: 204–22). Their movement was involved in widespread slaughter, and spread beyond Johor to sow seeds of future Malay-Chinese ethnic conflicts (Horowitz, 2001: 100–1).

### **13 May 1969**

The most infamous of those conflicts was the rioting that erupted on 13 May 1969 in the wake of opposition gains in federal and state elections.<sup>7</sup> The date stands as a seminal moment for politics and race relations in

<sup>7</sup> For various perspectives on the 1969 riots, see Abdul Razak (1969), Kua (2007), Mahathir (1970), Razha (1990), and Slimming (1969).

Malaysian history, and was pivotal for *silat* because it heralded a resurgence of martially-inclined groups, which saw their increased participation in electoral politics and the Malay-dominated armed forces.<sup>8</sup> The riots took place primarily in mixed Malay and Chinese urban areas of the largest cities, including Kuala Lumpur and Penang. *Silat* fighters were said to have provided the vanguard of anti-Chinese hostilities.<sup>9</sup> Malaysian anthropologist Razha Rashid writes:

Almost spontaneously, an army of silat exponents from a variety of silat groups united under one banner to form a special force that spearheaded the formation of a massive [impromptu] phantom army known as the selendang merah.

... it was almost like a ritualistic preparation for war; here and there in the rice-fields at night could be seen pockets of lights framing different gelanggang,<sup>10</sup> throwing shadows of young boys, men, and women in an eerie silat shadow-play (Razha, 1990: 88).

The violence was relatively short-lived, but narratives of the period have been exploited for political gain over the half century of uninterrupted rule since that time. The governing BN coalition and its supporters have kept May 13 mostly off-limits for public discussion, labelling it 'sensitive', and as with the aforementioned Ali Rustam, they continue to invoke the spectre of a return to riots and violence as a means of intimidating the electorate against any opposition. At the same time, the 'preparation for war' that Razha observed during that period was evolving into a new, permanent mobilisation.

### ***Post-1969: The Expansion of National Silat Bodies***

In the post-May 13 political environment of the 1970s, a new phenomenon of pan-national *silat* organisations with large memberships blossomed alongside a plethora of local *perguruan* in more traditional models (those like Tentera Sabilillah, for example, who were guided by various religious

<sup>8</sup> According to Cheah, there were also signs that 'other racial groups had begun to put emphasis on the martial arts too', citing the growing popularity of karate, judo, and kung tow (Cheah, 2003: xx).

<sup>9</sup> In addition to Razha's observations, this has also been stated by a leader of a prominent national *silat* organisation (name withheld), and it has become widely circulated as folklore among the nation's *pesilat*.

<sup>10</sup> In martial arts, a temporary or permanent site (sheltered or unsheltered) for training and fights.

and mystic beliefs).<sup>11</sup> The BN government came to terms with these groups either by co-opting those that served their interests, or by banning and vilifying as threats to public order those that were less pliant. In this manner, lines were drawn between friendly and non-friendly *silat* groups. The former gained access to political patronage networks, received sponsorship for competitions and training facilities, and other largesse. Conversely, the latter were blacklisted, and came under various forms of pressure from the government.

### ***Nasrul Haq***

During the 1970s, a major challenge to the government came internally from a *silat* group known as Nasrul Haq, which grew to become a nascent *silat* militia under the direction of one rising politician: the charismatic Minister for Youth, Culture, and Sports, Abdul Samad bin Idris, who was ‘the focus of a powerful cultic following’ (Nagata, 1980: 433). At its peak, the organisation that Judith Nagata describes as an ‘interesting blend of ethnic chauvinism ... [and] Islamic revival’, whose stated objectives were to protect their ‘holy religion’, ‘race’, and ‘country’ (*agama, bangsa, dan negara*) by shedding blood, if necessary, was purported to have amassed as many as 300,000 members of ‘largely (...) rural and working-class urban youth’ (Ibid.: 433–4).

By 1978, however, Nasrul Haq’s practices were under scrutiny from a special government committee set up to look into the group. They questioned whether Nasrul Haq was even qualified to be called a *silat* organisation: It is not a self-defence art. There are no artistic values such as those found in other forms of *silat*. What exists are only certain ways to move the torso, hands, feet, head, and eyes, with the recitation of particular texts to achieve the extraordinary<sup>12</sup> (Asyraf, 1978; author’s translation). To check this growing movement, the state religious establishment issued a fatwa (Islamic religious decree) against Nasrul Haq predicated on religious grounds that it was ‘deviationist’, ‘occultist’, and misusing religion. However, religious fundamentalism was not the government’s foremost concern. Indeed, one of the criticisms directed against Nasrul Haq was that they were ‘ignorant about religion’ (*jahil dalam soal agama*); that they misused Quranic verses; and they referred to their leaders by the grandiose Arabic

<sup>11</sup> Iik (2008: 77) describes similar developments in *silat* in Brunei from the late 1960s.

<sup>12</sup> The Malay text reads, ‘Ia bukanlah merupakan seni mempertahankan diri. Tidak ada nilai-nilai seni seperti silat-silat yang lain. Apa yang ada hanya gerak-gerak tubuh, tangan, kaki, kepala dan mata menurut cara-cara tertentu dengan bacaan-bacaan tertentu untuk melahirkan perkara-perkara luar biasa.’

title, *khalifah* ('caliph') (Ibid).<sup>13</sup> Ultimately, it appears that Nasrul Haq's 'embodiment of the political ambitions' of Abdul Samad (Mohamed, 1981: 1045) became problematic for the ruling coalition (more so than the group's religious ethno-nationalism, which certainly agreed with UMNO's mission) because they banned the movement altogether amid the run-up to the 1978 national elections, effectively ending his political rise (E-Fatwa.gov.my 2012 [1978]).

### ***From Court to Kampong: The Mainstreaming and Codification of Silat***

In the years following May 13, several other *perguruan silat* rose to national (and even international) prominence. The three largest *pertubuhan silat* (*silat* organisations) were Pertubuhan Silat Seni Gayong Malaysia (PSSGM), Pertubuhan Seni Silat Cekak Malaysia (PSSCM), and Pertubuhan Seni Silat Lincah Malaysia (PSSLM), referred to henceforth as 'Gayong', 'Cekak', and 'Lincah'. Unlike Nasrul Haq, they did not harbour explicit political aspirations, and thus were not seen to challenge state authority. Their rise, in fact, should be viewed in the context of their symbiotic support of the BN government and concordant promotion of *agama, bangsa, negara* ideology.

The websites of these three organisations recount mythologies and lineages that appeal to nostalgia for a splendid pre-colonial past. Gayong and Cekak narratives both highlight their founding as the culmination of a transition of *silat* traditions from court to kampong. Cekak claims a pedigree in the early-nineteenth-century Kedah court of Sultan Ahmad Tajuddin II, whose reign remains a traumatic memory of defeat and occupation at the hands of the Siamese, and the subsequent dismembering of the kingdom from its previous, perhaps overly-imagined, glory. In 1925 the last Cekak court warrior taught a commoner, thereby bringing an end to its exclusivity within the palace, but preserving the tradition among Malays (Persatuan Seni Silat Cekak Malaysia, n.d.). Gayong claims its founder to be Daeng Kuning, a nineteenth-century Bugis (Sulawesian) *silat* warrior-prince who travelled to Malaya and married a princess of Pattani (Silat Gayong, n.d.b.). Its royal lineage continued until the Japanese occupation, when it entered the public domain through Daeng's great-grandson, Meor Abdul Rahman,

<sup>13</sup> They also were criticised for using the (ostensibly un-Islamic) Hindu title *mahaguru* ('great teacher'). However, the title *khalifah* generated no controversy when *silat* organisations bestowed it upon Prime Minister Najib Razak in February 2012 (Malaysiakini, 2012).



who successfully trained kampong folk in Singapore to defend themselves using his special style of *silat*.

Lincah's founding story differs from the court-to-kampong portrayals of its counterparts, perhaps because of its relatively recently establishment in the 1950s when the mystique of monarchy had greatly diminished.<sup>14</sup> The founder, Omardin Mauju (mentioned in the opening of this chapter, now deceased), constructed a narrative of authenticity for Lincah that associated him with Indic, Arabic, and local strains of Malay history and traditions. He performed an 'installation' ceremony for himself on Besar Island in Malacca – a sacred site for Malay pre-colonial mythology; he conferred himself with the Sanskrit title *Mahaguru* (great teacher); he made a minor pilgrimage (*umrah*) to Mecca to confirm his esoteric *silat* knowledge; and the 'Sajak Lincah' organisational *sy'air* poem contains repeated allusions to the righteous Malaccan warrior of Malay folklore, Hang Jebat.<sup>15</sup>

As with 'Sajak Lincah', Gayong and Cekak have organisational poems whose *sy'air* (in the case of 'Lagu Gayong,' a mix of *sy'air* and *pantun*)<sup>16</sup> feature a relentless flow of markers of Malay identity from beginning to end: fertile rice fields in the mythical birthplace of the Malays in Palembang, Sumatra; service and devotion to the rulers; spiritual purity; heeding the admonishments of the forbears; the *keris* dagger and the warrior's act of drawing it out from its sheath; Malacca and the acquisition of the Javanese *keris* known as Taming Sari; and legendary Malaccan warrior Hang Tuah's oath that 'Malays will not disappear from the face of the earth' (*tidak Melayu hilang di dunia*, *Silat Gayong*, n.d.a). For Cekak, there are themes of preservation of Malay heritage, service and cooperation, respect for teachers and knowledge, and an invocation of the struggle to defend 'religion, race, and nation' (*Persatuan Seni Silat Cekak Malaysia*, n.d.a). These poems are set to music and video (found on their respective websites, and played occasionally during *silat* functions) with production values that borrow

<sup>14</sup> In Malaysia, as well as much of Asia, monarchies in the early- to middle-twentieth century were transformed into constitutional entities: they were abolished in Indonesia, left to decay and then abolished in India, seen with contempt in Siam (Handley, 2008), and so on.

<sup>15</sup> Hang Jebat is storied to have run amok against an unjust king, famously uttering, '*Raja adil raja disembah, raja zalim raja disanggah*' (the just king is to be worshipped, the tyrannical king, to be fought against) (*Pertubuhan Seni Silat Lincah Malaysia*, n.d.)

<sup>16</sup> *Sy'air* are four-line poems for which each line has the same end rhyme. *Pantun* is a poetic form with lines in even numbers (e.g., two, four, six, etc.) and an alternating *ab* end-rhyme.

heavily from the insipid sing-a-long indoctrination songs played throughout the day on state-run television, in which lyrics flash by to accompaniment resembling an up-tempo patriotic march ('Lagu Cekak') or a minor-key Malaysian film song from the 1970s ('Lagu Gayong').

Gayong, Cekak, and Lincah came together in 1983 under the aegis of a national *silat* council – something first mooted during the Nasrul Haq period. This umbrella organisation became known shortly thereafter by the acronym, PESAKA, the National Federation of Malaysian Silat. PESAKA sets standards governing *silat* and *gendang silat* competitions from local to national levels, affecting movement, form, musical accompaniment, and attire, and became a channel through which the federal government could exercise control over *silat* by certifying teachers and integrating *silat* and *gendang silat* into the national educational system.

### ***Oppositional Silat in the 1980s and Post-Reformasi Era***

During the 1980s the government employed tactics similar to those used with Nasrul Haq against small and marginal, occult-based *silat* groups. Ostensibly millenarianist or jihadist in their worldviews, those groups became collateral damage in a growing battle between the Malay nationalists of UMNO and internationalist religious scholars of the opposition Pan-Malaysian Islamic Party (PAS): erstwhile allies in ethno-nationalism, who became locked in a relentless struggle to show who could be more Islamic than the other – a conflict that Farish Noor describes as 'fighting Islam with Islam' (Farish, 2003: 205). The BN/UMNO government asserted control over religious discourses and activities using legal means and the media and, for a time, PAS and these other groups were regularly depicted as a violent and potentially destabilising fringe, and saw a number of their leaders arrested (Ibid.: 217–18).<sup>17</sup>

The 1990s ended with a popular anti-government *reformasi* ('reformation') movement lasting several years, and a large-scale exodus of UMNO members to PAS. Amid this unprecedented challenge to its decades-long de facto rule, a siege mentality took root in UMNO. Marginal *silat* groups came once again under scrutiny. One curious incident in July 2000 involved members of a small, obscure occult silat group calling itself Al-

<sup>17</sup> Regarding the use of state machinery against ostensibly deviationist groups, see for example, the 1987 Selangor government *fatwa* (religious ruling) on 'mystic teachings and knowledge' (Ajaran dan Ilmu Kebatinan, 2012 [1987]).

Ma'unah, who raided weapons from a remote army camp in Grik, Perak.<sup>18</sup> In response, the government cracked down on radical deviationist groups.<sup>19</sup> Then Prime Minister Mahathir Mohamad, speaking specifically in regard to *silat* groups, made clear his government's policy: '*silat* groups that only wish to learn self-defence; this is not wrong, but if they have other aims, that is indeed wrong and we will act against them.' He added portentously, 'but we have to know their deepest intentions.'<sup>20</sup> Although, given the peculiar circumstances of Al-Ma'unah, there may have been suspicions that the government had fabricated the incident, the long-term strategy of linking *silat* and deviationist occultists to the professed religious fundamentalists of PAS may have sown apprehension among moderate Malays and non-Muslim Malaysians, and contributed to the defeat PAS suffered in the 2004 federal election when its share of parliamentary seats fell from twenty-seven to seven.

### A PAS *Gelanggang*

PAS' fortunes returned in the 2008 general election in which they and other opposition groups made strong inroads against UMNO. During those heady times, I participated in a weekly *silat* training session hosted by a PAS branch in a small Kedah town, Tikam Batu. Sessions were held in a large *dewan serbaguna* (multi-purpose hall), and were well attended, though exclusively by Malays, notwithstanding myself. The *silat* students ranged from young boys and girls to adult men, and were led by roughly a dozen teachers from a Gayong discipline.

In contrast with some of the earlier examples, the *silat* in this case was decidedly non-threatening. The rationale for PAS' sponsorship may be understood as part of a broader strategy to make the Malay public comfortable with them through their involvement with non-controversial and non-overtly political activities.<sup>21</sup> As a successful grassroots political organisation, PAS brought a business-like air to this *gelanggang* (training centre). Registration, dues collection, and a continual regimen of testing

<sup>18</sup> Zulkifli Jalil, 'Kumpulan Al-Ma'unah kejam - Kesan-kesan kezaliman yang dilakukan ke atas tebusan amat menyayat hati' (Utusan Online, 8 July 2000).

<sup>19</sup> '125 Deviationist Groups Active in Malaysia' (Utusan Online, 19 July 2000).

<sup>20</sup> 'Teks penuh wawancara khas dengan PM mengenai isu al Ma'unah' (Utusan Online, 20 July 2000).

<sup>21</sup> During the same time, I had heard of *silat* being taught on a regular basis at other PAS branch offices in Kedah, but none were said to be as large as the Tikam Batu *gelanggang*.

to obtain certificates and coloured belts (similar to the way other martial arts such as taekwondo and karate operate in Malaysia and elsewhere) were the order of the day. They also organised non-*silat* activities such as group outings to raise money. What distinguished this *gelanggang* was that each session included a religious lecture (*ceramah*) given by one of the *silat* teachers. When the PAS *gelanggang* first began operation, the lectures were held at the end of each weekly *silat* session, but people skipped them to go home (the training usually ended at 11 p.m.). Seeing this, the organisers moved the *ceramah* to the beginning of the evening activities, forcing every attendee to endure more than an hour of uninspired, boilerplate religious sermonising before beginning the actual *silat* training.

### ***Silat* in the Bersih Era**

The 2008 national election briefly produced a spirit of multi-racial, inter-ethnic cooperation, and a plausible alternative for ethnic-based politics. Non-race-based opposition parties saw their standing elevated significantly, whereas the triumvirate of Malay, Chinese, and Indian ethnic-based parties that had governed the country since independence seemed destined to become an anachronism in the new order. However, the optimism of inter-ethnic cooperation was soon met by a correspondingly larger voice for sectarian Malay groups in the state-sanctioned media, exemplified by some strikingly provocative statements and symbolic acts carried out by several prominent *silat* institutions including PESAKA, Cekak, Lincah, and Gayong (including the events mentioned at the outset of this paper).

The government reacted to the 2011 Bersih protests as it did to other challenges to its hegemony: through arrests, religious edicts, threats, and intimidation, either directly or through its surrogates. The *mahaguru* Omardin, then aged seventy, offered to personally lead the fight from his wheelchair (Boo, 2011b), tacitly acknowledging that, in no uncertain terms, the largest national *silat* organisation was a de-facto government militia. Elsewhere in the country, small protests by coalitions of *silat* organisations and sectarian Malay groups targeted Bersih with police reports and physical threats. The potential for fair-election campaigners to be set upon by *pesilat* in a decidedly non-defensive manner no longer seemed rhetorical.

In the days preceding the event, on the advice of Malaysia's king, Bersih organisers decided to move their rally to a stadium. This change of plans did not actually transpire, but the discussions provided Omardin with space to pull back on his threat. Prime Minister Najib pressed onward, however, expressing his confidence to an audience of *pesilat* Lincah that

they would rise up against the ‘evil enemy no matter from within or outside the country’ because of their ‘loyalty and unity’ toward the country (Boo, 2011a). Ultimately, the Bersih rally did take place on the streets of the capital and was, most fortunately, free of violence, but the threats and aggressive behaviour did not cease there. A similar run of events took place around a subsequent rally in May 2012, and those were also relatively peaceful – similar threats notwithstanding. As recent as October 2015, Ali Rustam said that ‘PESAKA has no plans to wage war but is ready for it if ever challenged’, and Prime Minister Najib then reiterated *silat*’s position as the third line of defence and declared it ‘a national heritage ... and an *official* defence mechanism’ (Malysiakini 2015, author’s emphasis).

### Closing Thoughts

*Silat* as a vehicle for expressing Malay-ness has mirrored transformations to Malay society in the decades since the appearance of Tentera Sabilillah, projecting a variety of ethnic, religious, and nationalist identifications and their associated political implications. Given the growing challenge to the BN government by an ethnically plural opposition over the past decade or more, it is important to pay particular attention to the political involvement of *silat* organisations going forward, especially during election periods when they tend to become more vocal and forcefully demonstrative. History shows that *silat* movements in Malaysia have the capacity – and sometimes the willingness – to disturb social stability. The greatest danger is that the past may be prologue. It is not inconceivable that an uncharted set of circumstances (larger gains by the opposition, or even an outright change of government) could trigger a reactionary, anti-democratic backlash from the entrenched, yet precarious, political elite. If the latter were to receive the full support of militant and chauvanistic *silat* groups, and should politics by other means fail, a menace of potentially lethal consequences could be unleashed upon civil society.



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## Chapter 2

# The Real World? Fabricating Legitimacy in a Semi-Authoritarian State

*Sophie Lemière*

‘Truthfulness has never been counted among the political virtues, and lies have always been regarded as justifiable tools in political dealings’

Hannah Arendt (1972: 4)

### **Introduction: The Fabrication of Reality**

Since 1992 the Real World has been featuring a small group of young adults temporarily living together in one residence in a new city while being filmed non-stop. The magic of the show resides in the fact that, despite knowing that most of the ups and downs of the stories are already pre-written, we buy it. Reality TV is a ‘claim to the real within a fully managed artificiality’ (Corner 2002), a claim we embrace joyfully. So, what lies behind the magic?

Entertainment is an ellipse in time; a moment of surrender. The joy of entertainment comes with the acceptance of the illusory principles and their flaws, a pre-condition without which the magic would not work. An infantile credulity or a ‘wish to believe’ always supersedes the doubts for the sake of producing more excitement, of looking actively for a rush of adrenaline.

Most of us have our own favourite show, and become the ashamed or proud fan of the local or original versions of American Idol, America’s Next Top Model, Top Chef, etc. Each one of these shows taps into a vast emotional repertoire. This alternative reality is appealing because it plays on the fears and dreams existing within the individual or collective imaginary: heights, fire, dangerous animals, fame, wealth, glory, etc. The orchestration of fears and dreams in aesthetic performance constitutes all the more the

ingredients of a 'credible' illusion of reality. The question is: could the magic happen in politics?

In the social sciences, the role of emotion in politics is not a new axis but is only starting to be taken up as a possibility in the study of political phenomena (Braud 1996); the notion of 'illusion' and the performance and fabrication of legitimacy have yet to be explored. This chapter looks at the longevity of UMNO's rule and offers an explanation for the stability of Malaysian political power by exploring the imagination and fabrication of power and politics.

### **Semi-authoritarianism and Regime Longevity: Research Outline**

This chapter develops the idea of the political fabrication of reality through the orchestration of the collective imaginary. An analysis of the Syrian state and propaganda prior to 2011 in a comparative perspective will show how, despite popular contentions leading to civil conflict and international war, the regime has been able to maintain itself through a fabrication of legitimacy and a construction of power. If we look at the nature of the regime on a spectrum from fully democratic to authoritarian, Syria is an extreme case, but it is an interesting point of reference to better understand semi-authoritarian regimes, more specifically Malaysia. Despite its democratic features, Malaysia is a semi-authoritarian regime (Ottaway 2003). This paradox is at the heart of this chapter, which is based on intense ethnographic research conducted since 2006 on the relationship between political parties and civil society with a large focus on umbrella civil society organisations (CSOs) acting for the interests of political parties or complicit militants.<sup>1</sup> In three parts, it presents the preliminary findings of on-going research on the mechanisms of political power and the deep structures of Malaysian politics:

- (1) As in *wayang* theatre, an image often used to describe Southeast Asian politics, the research brings us behind the scenes and beyond the mere reflection created by the leather puppets. This chapter argues that Malaysia is a successful semi-authoritarian state. According to Marina Ottaway (2003), semi-authoritarian democracies are 'ambiguous systems' that combine (i) rhetorical acceptance of liberal democracy, (ii) formal democratic institutions, (iii) 'a limited sphere of civil and

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<sup>1</sup> See Lemièrè (2013, 2014).

political liberties with essentially illiberal or even authoritarian traits'. She highlights the fact that, far from being a transitional process, this regime is the successful outcome of a deliberated strategy 'to maintain the appearance of democracy without exposing themselves to the political risks that free competition entails'.

- (2) The power of the state to maintain itself resides in the mechanism of the fabrication of its legitimacy through complex systems of illusion involving society's imaginary and coercion. This second part introduces the mechanism of legitimation and perpetuation of semi-authoritarian power and its key components: the social imaginary, discourse and the demonstration of force.
- (3) The fabrication of legitimacy has its stage of play. The fact that the mechanism of legitimation and perpetuation of semi-authoritarian power is solidly entrenched in society's mind and structures is understood. It is argued that civil society plays a central role in the legitimisation and the sustainability of semi-authoritarianism. The last part of this chapter anchors this system to the Malaysian context: it explains how it has taken root in the local civil society and identifies its key actors.

## **Legitimacy and Beliefs: The Roots of Illusion**

### ***Popularity, Acceptance and Legitimacy***

Within modern political thought it is understood that the acceptance of power resides in its perceived legitimacy. A modern state maintains itself, it is assumed, when its institutions and rulers (the elected executive and legislative powers) are accepted both locally and internationally. Legitimacy in this sense may be understood as 'a moral right to rule'; it 'serve(s) as a synonym for popularity'; or it may refer to 'a belief in the general appropriateness of a regime, practice, or leader' (Wedeen 2015: xi–xii). Yet, is legitimacy a condition for the stability of power?

According to Wedeen (2015), 'legitimacy' is a concept that often lacks pertinence because of its vagueness. Taking the example of pre-revolutionary Syria, Wedeen shows that a regime may subsist without producing any legitimacy (Ibid.: xi–xii) despite the efforts put into mass propaganda. According to her, the Syrian population did not believe, and still does not, in the propaganda and the fabricated legitimacy. Nevertheless, people displayed a high reverence to the Syrian state, the ruling party and its leader Bashar al-

Assad. In that case, the legitimation resides in a faked or limited acceptance of power for fear of repression. In the absence of legitimacy, the Syrian state managed to retain power through a state of compliance. The Syrian state created a politics of 'public dissimulation' where people would act 'as if' the government was legitimate. The regime created a highly ritualised system ensuring people's compliance that: (1) defined acceptable speech and behaviour, (2) generalised a specific type of national membership, (3) induced complicity by creating practices in which citizens are themselves 'accomplices', upholding the norms constitutive of Assad's domination; (4) isolated individuals from one another, filling public space with exhausting propaganda (Ibid.: 6). Despite its ubiquity, Assad's cult of personality and the spectacle fabricated by the Syrian leadership did not produce legitimacy but, at the same time, this did not jeopardise the stability of power – and after more than 5 years of conflict, the power is still in place. Both elements (the personality cult and the political spectacle) are projections of a system of enforced compliance based on fear of repression.

### ***From Authoritarianism to Semi-authoritarianism***

To Marina Ottaway, two factors combine to allow authoritarian regimes to stay in power: (1) the deliberate manipulation of formal democratic institutions, and (2) the citizens' acceptance of the regime (Ottaway 2003: 17). The elements that must be evaluated when looking at a regime are: its legitimacy, acceptance/compliance, popularity and coercion. The organisation of elections is one of the main tools to build legitimacy, let alone democracy (Puthuchery and Norani 2005, Case 2015). Nevertheless, elections can be manipulated, and therefore legitimacy can be fabricated. Popularity, if reflected in the total number of votes, can also be manipulated; similarly, elected leaders are not always those who command a majority of the popular vote.<sup>2</sup> The follow-up question would then be: in the case of a fabricated legitimacy, where is the source of the belief in the appropriateness of the regime, its practice and its leaders?

State legitimacy is a two-way process, both top-down and bottom-up.

<sup>2</sup> In the 2016 US election Hillary Clinton gained a larger number of votes than Donald Trump but, thanks to the Electoral College system, Trump was elected President. The same is true of Malaysia; in 2013, the opposition won the higher number of votes, but did not obtain the majority of the parliamentary seats (Weiss 2014a); as a consequence, UMNO leader Najib Razak was appointed Prime Minister and not Anwar Ibrahim, the then opposition leader. (For more details on the Malaysian electoral system refer to Weiss, 2014a).

Leaders must show that their rule is legitimate and must maintain this legitimacy; and the people must show they recognise this legitimacy by publicly accepting the rule. Acceptance of rule is an important bottom-up process. If then legitimacy can be manipulated, through elections for example, can acceptance be feigned? When looking at the Syrian case, Wedeen shows that the feigning of acceptance is the other side of the fabrication of legitimacy; the leaders have no popularity or legitimacy, thus the people fake their acceptance of the rule. The acceptance of a political power based on illegitimate practices (violence, electoral manipulation and other authoritarian practices) does not make it popular or legitimate since it is the result of a high level of enforced compliance or coercion. The compliance with phony rituals or miraculous political victories<sup>3</sup> is not synonymous with people's credulity, but with people's fear of repression. An authoritarian power is a regime which, despite having no legitimacy in the eyes of its people and a low level of popularity (as in pre-2011 Syria), has a high level of acceptance and thus may sustain itself in power for decades.

In Malaysia, the United Malays National Organisation (UMNO) has been ruling the country since independence in 1957. The party has always faced opposition but, despite historical losses in parliamentary elections in 2008 and 2013 (Chin and Wong 2009; Weiss 2014), it has retained its grip on power. The power of the leading party not only resides in electoral manipulation but also in expressions of popular support. The party has, for example, continued to enjoy grassroots support in Bumiputera-majority constituencies. The benefits offered to the Bumiputera community (though more particularly the Malay community (Gomez & Saravanamuttu 2013)) through continuous policies of affirmative action since the 1970s and the special status enjoyed by the majority Bumiputera, have fuelled support for the party (see Chapter 11). Nevertheless, in spite of these benefits, the majority Bumiputera have continued to suffer from high levels of inequality and relative poverty, and also from the effects of elite corruption which is no secret to Bumiputera voters, in spite of the firm hold UMNO maintains

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<sup>3</sup> In 1999, Ben Ali was elected Tunisia's President with 99 per cent of the vote and in 2004 with 95 per cent and 2009 (two years before the revolution) with 85 per cent. Another interesting example is the stability of the Algerian political elite; in 2009 Algerian president Bouteflika was elected with 90 per cent of the vote and 82 per cent in 2014 despite his severe health problems and his absence from the political scene. For an analysis on the Algerian stagnation of the political elite see [http://www.lemonde.fr/idees/article/2017/05/06/en-algerie-des-elections-sans-signification\\_5123458\\_3232.html](http://www.lemonde.fr/idees/article/2017/05/06/en-algerie-des-elections-sans-signification_5123458_3232.html). Accessed on 7 July 2017.

on the national media (Chapter 13, Thomas and Nain 2004; Nain 2013). Nevertheless, excepting the 1999 general election – which saw a strong swing towards PAS – grassroots Bumiputera support for UMNO and BN has been stable. Is it possible to explain this support through both the fabrication of legitimacy and the acceptance, or compliance, of semi-authoritarian rule?

### **Modelling the Mechanism of Legitimation and Sustainability of Authoritarian Power**

Whether authentic or fake, the acceptance of power comes with fear. According to Durkheim (1900: 13), religious, moral and legal practices and beliefs are respected because of the ‘veneration they inspire’, the felt obligation to respect them for fear of coercion and sanction. In the Syrian case, the compliance is due to a high, or even very high, level of coercion. In any authoritarian state a high level of coercion and enforced compliance is expected, but in the case of a semi-authoritarian state like Malaysia, where legitimacy is questionable but where the rulers persist in maintaining the image of healthy democratic institutions, the mechanism of acceptance and compliance is considerably more subtle.

The mechanism of legitimation and sustainability of authoritarian power (MLSAP)<sup>4</sup> is a model explaining how semi-authoritarian states can maintain their rule through a dynamic manipulation of the social imaginary, discourse and the demonstration of force. Each of these components will be defined in detail throughout this chapter and exemplified by the Malaysian case. The social or collective imaginary refers to the myth and utopia of a society. The myths are the narrative on which a nation is built, and the process through which the community is imagined, to quote Anderson (2006). The utopias are the projection of the future, the ideal becoming of a group, a society or a nation. The social imaginary is part of the collective imaginary, but echoes the political and social existence of the group. Discourse in its broad definition encompasses all forms of rhetoric and communication of ideas and ideals including political speeches, ideologies and rumours. This study gives an important place to rumours and controversies, prevalent in the case of Malaysia. Finally, the

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<sup>4</sup> The MLSAP modelled for my PhD research on complicit militants and their relationships to political power, and inspired by the theories of Paul Ricoeur and Teun A. van Dijk’s sociology of the Imaginary (Ricoeur: 1974, 1984) (van Dijk 1998), and Philippe Aldrin’s sociology of the rumours (Aldrin 2003).

demonstration of force is the physical expression of this system: it involves political demonstrations as well as expressions of physical coercion by both state and non-state actors.

The MLSAP is solidly entrenched in the mind and institutions, both civil and political, of semi-authoritarian societies. It is central to the fabrication of legitimacy and the stability of power in such societies. The legitimacy of the Malaysian government and state's institutions resides in the organisation of elections and the existence of a vibrant civil society. These are generally seen as two signs of a functioning democracy, yet the fact that both may also serve the purpose of an authoritarian power is ignored. As highlighted by Ottaway, 'semi-authoritarian regimes are beehives of civil society activity .... Nevertheless, incumbent governments and parties are in no danger of losing their hold on power, not because they are popular but because they know how to play the democracy game and still remain in control' (Ottaway 2003: 6). While used by the semi-authoritarian state as legitimisation of their rule, electoral manipulations are common, in particular through vote-buying, phantom voters, and gerrymandering. Thus, when state legitimacy is being challenged or fading, a well-routinised system of coercion can balance the flaws of the illusion of democratic rule. This system of coercion sources its efficiency in the social imaginary, echoed by discourse and illustrated by the demonstration of force. The MLSAP is therefore not only a top-down project of state-legitimation, it is also a dynamic process taking place in the public sphere through civil society actors.

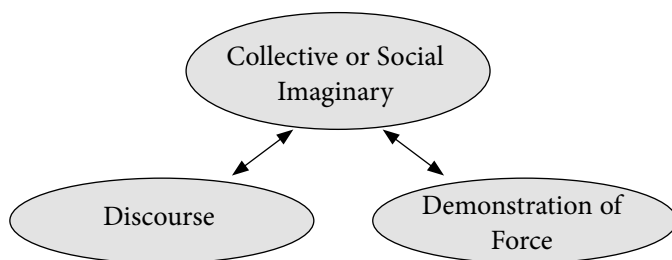


Fig. 1. Process of Legitimation and Sustainability of Authoritarian Power (Lemière 2013)

### The Mechanics of Reality

As John Searle explains, 'Humans use Language to create a reality which exists only by human agreement, recognition, or acceptance. ... Someone can be made the leader just by being treated as the leader, or recognised as the leader, or otherwise represented as the leader' (Franken et al.

2010: 34–5). To Searle, human civilisation, society, and social reality are constructions based on language, social (re)cognition and acceptance. The MLSAP explains how these elements may serve the ambition of a (semi-) authoritarian system through the acceptance of rule. This second chapter aims at defining elements of the MLSAP further by exploring the notions of belief, discourse, and the collective and/or social imaginary.

### ***The Malaysian Collective Imaginary: Believe it, or not***

As Freud argued, superstition, whether a reflection of one's subconscious or the expression of the mystery of the universe (1900), may influence the behaviour of an individual who believes the superstitious act would lead to a favourable or unfavourable outcome: avoiding black cats, wearing lucky charms, etc. Superstitions, like politics, are entrenched in people's beliefs: their fears and hopes. The question of belief is central to the social sciences and specifically to the study of politics, yet the interpretation and understanding of belief poses such a challenge that it has been buried under general allusions, without a proper and deep analysis of its mechanism. While political science and political philosophy modestly touch on it, anthropologists mostly look at the products and effects of belief without looking at the mental mechanism; sociologists have explored the notion more in depth but often look at beliefs as opinions, or in opposition to veracity or rationality;<sup>5</sup> while psychoanalysis, constantly hesitating between philosophy and medicine, failed to look at belief in terms other than as the symptoms of neurosis or debility.

Such intellectual wanderings come from the fact that superstitions, and beliefs in general, are tied to emotions. Emotions, as mentioned previously, are often wrongly painted in contradiction to rationality, when indeed there is an important relationship between the two. Rather than a blindfolded analysis of 'rationality' leaving aside 'emotionality',<sup>6</sup> here the Weberian inspired theory of 'ordinary rationality' or the *rationalité ordinaire* of Raymond Boudon (2012) is followed. To summarise, four principles describe this theory: (1) ideas are the sources of human actions (not interests); (2) reasons of beliefs are reasons existing consciously or not

<sup>5</sup> See the limitations of the four main theories explaining the question of belief (dualist, naturalist, constructivist and utilitarian) summarised in Boudon (2012: 21–38).

<sup>6</sup> See John Elster's (2000) review of the book *Analytic Narratives* by Robert H. Bates, Avner Greif, Margaret Levi, Jean-Laurent Rosenthal and Barry Weingast and his severe criticism of rational choice theory applied to social sciences.



(then meta-consciously or subconsciously) in the mind of the believer and are not the influence of irrational forces of social or psychological origin; (3) the rationalisation of ideas plays a great role in collective life (Ibid.: 41).<sup>7</sup>

The notion of rationalisation describes the process by which moral, political, social, economic, organisational, religious, or legal changes form a two-step process: first, new ideas are put onto the market, then these ideas are selected rationally by opinion (Ibid.: 40). This process of rationalisation may be largely inhibited in authoritarian and semi-authoritarian contexts. As such, in an analysis of the dynamics guiding human actions and collective life, the principles of rationalisation must be treated with much caution. In such a context, it is important to emphasise the reasons for belief and the infringement of the rationalisation process by authoritarian rule through coercion or manipulation. Belief is, in this sense, a site of contestation.

According to Fabrice Clément, and his work on credulity and beliefs (Clément 2006), the concept of belief – simply defined as ‘representations considered as true’ – has many faces that render its exploration extremely arduous. To Clément, **personal beliefs** are mental states that may be consciously mobilised and that are accepted/agreed consciously by the subject (the individual). The conceptual difficulties are even greater when in the understanding of **collective beliefs**. Clément describes different types of collective beliefs that rely on different cognitive processes (Clément 2010: 84).<sup>8</sup> **Social schemes** are implicit representations related to culture assimilated in the course of socialisation; **representational beliefs** are semi-understood arguments admitted by the individual only because they are transmitted by trusted sources; **deliberative beliefs** emerge following a group consensus; **endorsed beliefs** are related to the social status of the individual.

In this analysis, the focus is on two main types of belief, myths and utopia, which may be a mix of social schemes, representational, deliberative and endorsed beliefs. A detailed analysis of Malaysian, and more specifically Malay, political discourse would be useful to grasp the complexity of its sources and evolution and should be developed further in a later work. For now, the argument is simplified in order to optimise the understanding of a complex mechanism without losing its subtleties. Myths being the source of civilisations, their narratives are set in the past, but they have meaning – ‘make sense’ – in the present. Myths are pedagogical explanations of a

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<sup>7</sup> Summarised and translated by the author.

<sup>8</sup> ‘représentations tenues pour vraies’ translated by the author.

present condition. In its contemporary definition, the myth can refer to a collection of stories often believed or promoted as 'History' used for political purposes. In Malaysia, the Malay nationalist myths have been fabricated since the colonial era (Milner 2002) and have been nourished by political rhetoric until today. The political construction of national/political narratives is analysed by Hannah Arendt:

This is one of the lessons that can be taken from the totalitarian experiments and the totalitarian ruler's frightening confidence in the power of lying – in their ability, for instance, to rewrite history again and again to adapt the past to the 'political line' of the present moment or to eliminate data that did not fit their ideology (Arendt, 1972: 7).

The founding or origin myth of the Malay community is a prism through which the contemporary context is perceived; it is the driving force behind the social and political interaction between Malays, and the construction and disruption of Malaysian society and politics. As outlined elsewhere (Lemièrè 2013: 97), the three main myths of the Malay social imaginary – indigeneity, sovereignty and resistance – justify the special position of the Malays and maintain a narrative of Malay culture and society as being under threat from outsiders, against whom they must fight to defend their rights.

The veneration and the belief in obligation or loyalty (Durkheim 1900: 13) lie in the social imaginary: society's fear and utopia. Within Malaysia it is the political construction of Malay politics, defined both through a legacy of British colonialism<sup>9</sup> and nationalist awakening (Reid 2010: 93), which has structured the myths and utopias of the Malay polity, their striving for sovereign independence and sense of weakness and of 'anxiety about the future prospects of their own *bangsa*'. As such, the Malay utopias are the direct projections of these fears: (1) retaining the land *tanah Melayu*, (2) remaining a united people, (3) protecting its core identity. The next section will show how through the cultivation of these beliefs several authoritarian laws and pro-Malay policies are justified.

### ***Rumours & Discourse: Echoes of the Social Imaginary***

Discourse is the way in which myths and utopias are articulated to a certain group. According to the linguist Teun A. van Dijk, discourse structures and social structures are related through the mental representations of

<sup>9</sup> The 1901 census finally sealed the concept of a 'Malay race' by offering a tripartite division between Chinese, Malay and Indian (Reid 2010: 101).

individuals (as language users and as social members) (van Dijk 2009: 64). In a country like Malaysia, where the legitimacy of the government is built upon a complex mechanism of illusion, the political repertoire used by politicians to convey their message in a credible manner resides in the power of the images and emotions it triggers. The content itself does not matter much. The American President Donald Trump perfectly illustrates this strategy: empty discourse, firm tone, confidence, optimism, hyper-emphasising adjectives.<sup>10</sup> The objective of political discourse is to influence the audience without having to use any structure of argumented discourse (Woerther 2005). The force of persuasion resides in the perfect manipulation and knowledge of the emotional and cultural repertoire encapsulated in the social imaginary. Looking at Aristotle's classic register of persuasion (Ibid.), *ethos*, *pathos* and *logos*, it can be said that the discourse used in the mechanism of legitimation and sustainability of (semi-) authoritarian power play relies greatly on the emotional repertoire (*pathos*); the blatant lack of logic of the argumentation (*logos*) of most political discourses is balanced by an out-doing of orchestrated credibility (*ethos*) through marketed propaganda and demonstrations of force.

The Malay myths rehearsed constantly in every nationalist political discourse present the community as victims, not actors, in their History, as highlighted by the concept of 'siege mentality' also denounced by UMNO leaders, including Minister of Sports and Youth Khairy Jamaluddin.<sup>11</sup> The images of the Malay heroes and Rajas (Peletz 1992; Shaharuddin 2014; Amoroso 2014; Milner 2016) are combined with the one of an imagined community under threat for which every violence towards others and to itself is justified. In this passive image of the Malay community, the government is depicted as the patron, the good father, and sole protector of the community. This political culture is derived from both the vestige of feudal perception of power, and the inheritance and reproduction of an 'underdeveloped Malay elite' ... 'alienated from its cultural tradition and heritage' (Shaharuddin 2014; see also Alatas 1977: 49; Peletz 1992; Milner 2016).

The demonstration of force lies in the imaginary of the possibilities of violence as much as the effective show of violence. The possibilities of

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<sup>10</sup> See [http://www.slate.com/articles/news\\_and\\_politics/politics/2016/11/how\\_donald\\_trump\\_uses\\_language\\_and\\_why\\_we\\_cant\\_stop\\_listening.html](http://www.slate.com/articles/news_and_politics/politics/2016/11/how_donald_trump_uses_language_and_why_we_cant_stop_listening.html); Accessed on 12 July 2017.

<sup>11</sup> See <http://www.thestar.com.my/news/nation/2009/10/14/get-rid-of-siege-mentality-khairy-urges-malays/>. Accessed on 12 July 2017.

violence are spread through rumours. ‘Fake news or rumours’, as defined by Marc Bloch,<sup>12</sup> are ‘due to a collective imagination and/or emotional stage and intellectual representations that will create the ground and material for the formation of legends’<sup>13</sup> (Bloch, 2006: 308). Rumours are also an inexact perception or a misinterpreted event (Ibid.). Finally, they are the mirror where collective conscience looks at its own features (Ibid.: 313). In other words, rumours are inexact information fuelled/filled by emotions and the collective imaginary.

Rumours – because of their immediacy and short life (though they may be recurrent) – are better served by the instantaneity of social media (Facebook, Twitter, WhatsApp) or text messages: terrorist attacks in Kota Kinabalu (Sabah),<sup>14</sup> massive conversions of Muslims,<sup>15</sup> ethnic violence during electoral campaigns. These rumours are often spread anonymously. If legal provisions do exist to punish the authors,<sup>16</sup> they are rarely used, and these rumours also directly serve the ruling elite interests in blocking expressions of political discontent. For example, on the eve of Bersih 4 rally, messages of possible attacks in central Kuala Lumpur were spread anonymously, mostly by text message, and advised people to stay home.<sup>17</sup>

Rumours are a mechanism of discourse that echoes and reinforces the group’s social imaginary; they are flexible and can be adjusted according to the source and its destination audience. This type of discourse is thus extremely valuable and strategic to reactivate the fears emerging from the Malay myth. The use of fake news and fear by governments is observed in other political contexts such as contemporary Russia<sup>18</sup> and are not just

<sup>12</sup> Translated by the author.

<sup>13</sup> In this analysis, Bloch’s definition of legends could be used to also define our understanding of myth.

<sup>14</sup> <http://www.asiaone.com/malaysia/rumours-terrorist-attack-fuelling-fear-malaysia>. Accessed on 8 July 2017.

<sup>15</sup> <http://cathnews.acu.edu.au/611/38.php>, and also <http://www.asianews.it/news-en/Church-besieged-after-false-rumours-about-Muslim-baptisms-7671.html> Accessed on 8 July 2017.

<sup>16</sup> Rumours are an offence under the Penal Code and Communications and Multimedia Act 1998 <https://www.mcmc.gov.my/media/press-clippings/mcmc-summons-15-people-over-spreading-of-rumours>. Other measures were taken in 2005 without impacting the phenomenon see <http://news.bbc.co.uk/2/hi/technology/4153060.stm>. Accessed on 8 July 2017.

<sup>17</sup> Fieldwork notes, informal discussions with random individuals in Kuala Lumpur and Petaling Jaya, Selangor state.

<sup>18</sup> <https://www.nytimes.com/2016/08/29/world/europe/russia-sweden-disinformation.html>. Accessed on 8 July 2017.

the privilege of authoritarian countries, but also authoritarian practices or leaders as shown today by the use of social media by Donald Trump.<sup>19</sup> As such, rumours are easily spread by individuals or anonymous entities and are largely used by individuals, but also by organisations, for political interests. In 2007, the recurrence of a text message spreading the rumour of ethnic clashes in southern Johor led to declarations of the then Prime Minister Abdullah Badawi regarding the risk of destabilisation of the country over a 'racial split'. The event may appear as almost anecdotal, but is the perfect illustration of the efficiency of the system. Rumours are launched, fears arise, authors of the rumours – when/if found – are arrested and convicted under draconian legal provisions and the government justifies the maintenance of these authoritarian laws to prevent racial hatred.<sup>20</sup>

This section showed that discourse, and more specifically rumours, remains the virtual arm of the MLSAP; the following section will show that the demonstration of force, in civil society, is indeed its physical expression.

### **A Staged Play: Civil Society and Coercion in a Semi-Authoritarian Power**

The association of civil society and authoritarian politics seems counter-intuitive and few scholars risk challenging the concept. Civil society is often, wrongly, seen as a sign of democratisation while in fact it may actively participate in the legitimisation of all forms of authoritarianism (Lorch and Bunk 2017; Giersdorf and Croissant 2011; Froissart 2014; Lewis 2002, 2013). The Syrian example shows the presence of little or no legitimacy, a high acceptance of power (faked) and high compliance due to high levels of coercion. So, people may not believe in the system but still comply with it. When looking at belief and regime legitimacy three possible behaviours can be observed: the believer with a high level of credulity, the fake believer who does not believe in the system but pretends they do, they accept and comply; the non-believer who does not accept and does not comply. The level of physical risk for repression increases as much as the level of belief decreases. What are the means of coercion for non-believers and how in general does the demonstration of forces influence the level of acceptance of the Malaysian power?

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<sup>19</sup> <https://www.theatlantic.com/politics/archive/2016/09/donald-trump-and-the-politics-of-fear/498116/>. Accessed on 8 July 2017.

<sup>20</sup> <http://international.ucla.edu/apc/article/77411>. Accessed on 8 July 2017.

### ***Civil Society and the Legitimation of (Semi-)Authoritarian Power***

The existence of civil society in Malaysia dates back to the pre-independence period; from the 1970s it took an ethnic turn where CSOs became an arena of expression for ethnic and religious differences and resentment (Lee 2011). It did not come with an expected democratisation, even if some CSOs have been actively promoting multi-culturalism and justice beyond ethnic or religious lines. The relative liberalisation that occurred in Malaysia with the resignation of Mahathir Mohamad led to the opening of a new sphere of expression and allowed the development of a more vibrant civil society. The concept had already been pushed in the Mahathir era, and even more so with the co-optation of Islamic movement leader Anwar Ibrahim who promoted an Islamic vision of civil society. Civil society is seen as an almost unquestionable factor in the promotion of justice, the counter-balance of authoritarian practices and the best advocate for democratisation of a country. This argument is based on another general yet inexact assumption according to which CSOs are neutral. CSOs may collude with political parties or even be the direct creation of political parties, including the ruling party. They are complicit militants.

For Lorch and Bunk (2017) there are five patterns mentioned in the literature on civil society and authoritarianism according to which authoritarian governments may use civil society to legitimise their power: (1) civil society as a face of democracy; (2) making civil society play by the rules; (3) civil society as mechanisms of limited participation and feedback; (4) using civil society as a strategy to increase output legitimacy; (5) civil society and regime discourse. The existing literature emphasises the concept of authoritarianism, but such analysis fits easily into a semi-authoritarian context. As this section will show, the patterns articulating the relationship between CSOs and the state in authoritarian contexts are similar to those found in Malaysia. The entire analysis of the mechanism of legitimation and sustainability of authoritarian power is a perfect illustration of all five patterns that will shortly be explored. Then, for reasons of space, the focus will mainly be on the pattern related to the question of the façade of democracy, and the legitimacy of power (patterns 1, 3 and 4). This question should be studied at length in a later publication.

Civil society may exist in a very constrained environment. The legislation under which CSOs are regulated allows the government to keep a tight control on their activities. Also, the fact that CSOs do comply with the legal rules is a double-edged sword as it is also a legitimation of the

state institutions. The registration of CSOs and the possible control on membership conditions and agenda allow the state to control the nature of civil society and reduce the number of organisations that may contradict its agenda. At the same time, CSOs are a medium of communication between government and citizens; in that way the government may obtain direct feedback on the impact of its policies. The regime uses CSOs to nurture the national narrative and other myths serving its interests to ensure its stability and the reproduction of its elite. The Malaysian case offers a clear example of how CSOs reproduce this discourse.

### ***Coercion and Fear: Understanding the Nature of Complicit Militancy***

Complicit militants are products of Malaysian history and society and are rooted in its system of rule. Gayer and Jaffrelot (2008) argue that militia participate in the construction of the state in the long term. In that sense, connivance militants seemed to be serving the same interests. The intertwining of the political sphere, the business sphere and the public sphere has created fertile ground for the development of a grey zone of politics where criminality, religion and politics meet (Lemière 2013).

The development of civil society and the idea that it conveys regarding the legitimacy of power has created a clear path to the creation of CSOs and their political manipulation. CSOs are protean in disguise: they may serve as an umbrella for complicit militants while they are often seen as part of the social movement or spontaneous civil society initiative. Complicit militants are the entrepreneur of politics, sub-contracted by formal political actors (i.e. a government, a political party or a politician) to act legally or illegally to serve political interests. These actions may range from advocacy, to demonstration, to violence directed at groups or individuals. Complicit militants play a role in every moment of the political life of a country and even more so during its peaks: demonstrations and elections. And all the more demonstrations of political power (Ibid.).

In Malaysia there are two types of complicit militants: ‘*de facto*’ and ‘opportunist’. The *de facto* complicit militants are organisations created directly by political parties to act as their public arm. Such organisations like Perkasa (Pertubuhan Pribumi Perkasa), created in 2008 under the patronage of Mahathir, are very active in creating the illusion of a large font of support for the government agenda to the extent that they are sometimes mistaken for a social movement (Govindasamy 2015). Officially, Perkasa is a pro-Malay organisation aiming at the promotion of Malay interests, most of

which are in alignment with UMNO's objectives.<sup>21</sup> At the same time, Perkasa has, on occasion, displayed opposition to government policies, for example their reaction to the revision of the Bumiputera quotas discussed by Najib.<sup>22</sup> Perkasa, self-proclaimed voice of the Malays, has given the government the possibility to both reverse its reform process, and at the same time send the illusory message that the government bows before the people's will. Since 2008 the number of religious controversies has increased tremendously, always brought to the fore by this type of organisation (Lemière 2014b). The emergence of a stronger, in appearance at least, but certainly louder ethno-nationalist front came in response to the results of the March 2013 general election that saw the UMNO-led coalition almost lose its majority in parliament (Weiss 2014a) and the need to counter-balance the opposition's voice. The financial link between UMNO and Perkasa was unveiled recently by the *Sarawak Report* (2017). This strategy echoes the astroturfing online aimed at creating the impression of a popular opinion or support in the context of political or commercial campaigns (Atkins and Capoceli 2018). More recently, UMNO has promoted the action and support mobilisation through a new entity sometimes called the Red Shirts to counter the influence of Bersih 5. The Red Shirts are a hybrid organisation between *de facto* and opportunist militants, like Pekida, and count several members of those organisations in their ranks.

Opportunist complicit militants are also part of this front, but their membership is strongly linked to the underworld. Several gangs 77 (read double 7), 36, ACT, etc. have created their own cultural-Malay NGOs as part of their business. Political action and mobilisation sell well to politicians or parties in need of support. The NGO Pekida has often been accused of being an umbrella for a gang.<sup>23</sup> Its leader has always denied this accusation, claiming this bad reputation is due to rogue branches of the organisation. In fact, Pekida is mostly composed of rogue branches. Even if many of its members do take part in religious and welfare activities, the organisation

<sup>21</sup> Perkasa 'completes' UMNO according to UMNO lawmakers. <http://merdeka.org/media/200-050410.html>. Accessed on 12 July 2017.

<sup>22</sup> See <http://www.malaysia-today.net/perkasa-demands-60pc-bumi-equity-public-university-quotas/>, or <http://content.time.com/time/magazine/article/0,9171,2013695-3,00.html> and also <http://www.asiaone.com/malaysia/najib-under-pressure-ditch-reforms>. All sources accessed on 12 July 2017.

<sup>23</sup> Pertubuhan Kebajikan Islam dan Dakwah Malaysia (Association of Islamic Welfare and Dakwah of Malaysia). For more information on the internal organisation and structure see Lemière (2014).



is mostly a means to networking. The former Pekida patron was Abdullah Badawi, followed by Najib Razak. Both Prime Ministers have appeared at Pekida's large events before elections asking for political support in exchange for their generosity (Lemière 2014). Pekida has remained an underground organisation in the sense that members rarely comment on political events openly in the press. This anonymity has led several Pekida members to also join Perkasa or the Red Shirts to be and feel more visible.<sup>24</sup> Complicit militants are actors of civil society used in both strategy of discourse and demonstration of force. They are (1) auxiliaries of political power; (2) helping UMNO and, by extension, the state to sustain its regime and legitimise its use of authoritarian laws and policies. Thus the MLSAP is the explanation of a long-term political strategy being used internally by the state to justify its authoritarian rule in which complicit militants occupy a key role.

## Conclusion

This chapter has sought to highlight the paradox of democracy and bring a new perspective to the understanding of semi-authoritarian power. It has shown how symbols of democracy such as civil society and liberalisation may serve the interests of authoritarian powers through the creation of an illusion of democratic legitimacy for the people, if not also for international observers.

Legitimacy is not a pre-requisite for longevity of power. As the overturning of UMNO's majority of the popular vote in 2013 shows, Malaysian society has shown a greater political awareness of authoritarian practices. Yet UMNO's political machinery and firm grip on Malaysian institutions and the electoral system have allowed its rule to be perpetuated. Despite the emancipation of large numbers of citizens from the party's discourse, and the apprehension of new political concepts, leading to the invalidation of feudal and authoritarian practices, UMNO's MLSAP has successfully ensured that active political contention remains marginal. The ruling party is thus able to maintain a status quo in which the ethno-nationalist ideology matches the social imaginary of the largest constituency,

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<sup>24</sup> Regular interviews 2014–2016. Pekida sub-branch members in Perak explained they were asked by their leader to join Perkasa; others explained they decided on their own to be more active in politics, not only 'business'. About Perkasa Perak also see [http://ww1.utusan.com.my/utusan/Dalam\\_Negeri/20140209/dn\\_21/Perkasa-Perak-sasar-48000-ahli-tahun-ini](http://ww1.utusan.com.my/utusan/Dalam_Negeri/20140209/dn_21/Perkasa-Perak-sasar-48000-ahli-tahun-ini). Accessed 12 July 2017.

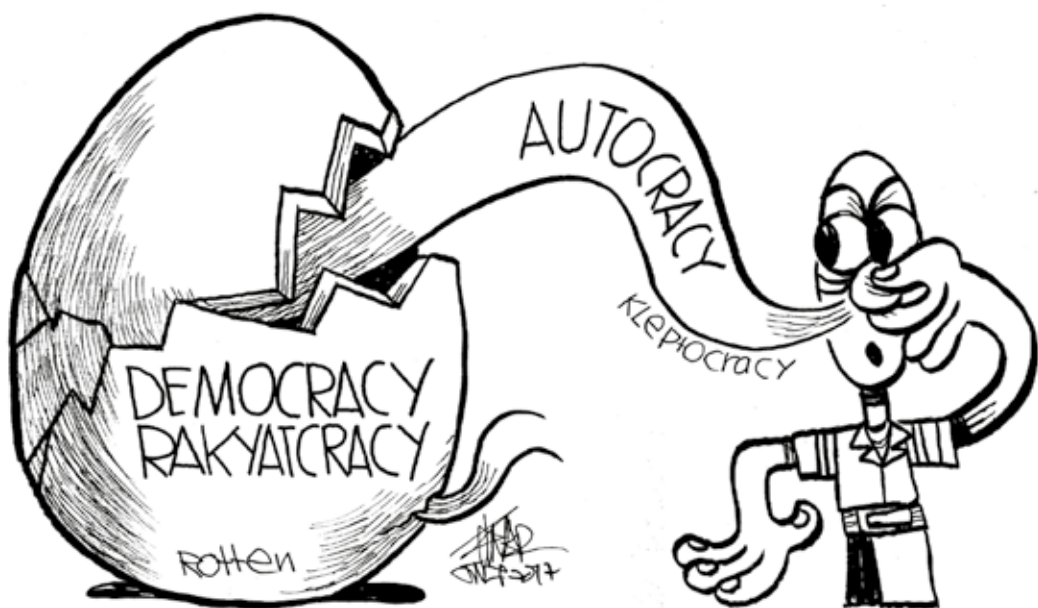
and UMNO has never faced a solid and united opposition. The narrative nurturing the social imaginary of Malays and non-Malays must therefore be de-constructed if transition is to happen: any changes in the nature of the myth, or the utopia, may jeopardise the entire MLSAP.

Today, the recurrent use of complicit militants, outlined above, is the best illustration of a government's increasingly desperate turn towards shows of force and the manipulation of the collective imagination and discourse. Increasingly their lack of meaningful legitimacy is exposed as the current power structure is suffocated by the diminished financial resources caused by its leader's financial mismanagement. This growing disorder could be the sign of a dilapidating political strategy, the limits of the attempts to produce legitimacy, the perpetuation of authoritarian power, and certainly the erosion of an illusion.

As such a crisis unfolds, the mechanisms of the MLSAP become clearer to the Malaysian people as a gulf grows between the beliefs of the powerful in their own legitimacy and the ability of the people to perceive the mechanics of power. The gap between non-believers, believers and activist citizens starts to shrink, and ideas for change may break through the virtual wall of ethnic and religious divisions. Divisions based on the state's institutionalised segregationist aim are not immutable categories; once they are challenged they appear as fragile as the authoritarian system that defined them in the first place.

The question now is whether or not, as the MLSAP struggles on, a fundamental political change will be produced. As the political scene and its play of violence, protests, rumours, activists, CSOs and political parties experience the political scene decomposing and re-composing in turn, opportunities and openings could emerge for a political challenge which breaks the long-standing power of UMNO and its MLSAP and heralds in a new political regime beyond the illusions of the present. The rulers have found allies to secure their influence in the Muslim hearts of the land, and Najib has not yet been able to negotiate a way out. Without a safe path to extirpate himself from legal repercussions of the end of its rule, the leader has no other alternative but to hold onto power. The pressure on public space is a sign of an attempt to normalise the government's violence hidden behind the false aim of internal security. Could it be the first step towards the resurgence of full authoritarian rule?

Stability, or political change: whether or not this happens rests on *kairos* (opportunity) more than anything else.



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# Malaysia's Constitutional Identity: A Chimera?

*Mohd Nazim bin Ganti Shaari*

## Questioning the Traditional Features of the Federal Constitution of Malaysia

In Malaysia, much has been written about the 'traditional elements' that are inherent in the constitution such as the features of Malay privileges, Islam, the Malay Rulers and the Malay language, and these have been argued to 'constitute a character by which the Federation can be recognised' (Ibid.), and that these features bestow upon the constitution a 'Malay' character which is 'fundamental to the smooth working of the Malaysian Constitution' (Ibid.). The autochthonous character of the Malaysian Constitution was further elaborated by Aziz Bari, who preferred the term 'indigenous' in referring to the elements of sultanates, Islam, Malay language and the special position of the Malays (Abdul Aziz, 2003: 43). This was followed much later by Faiza Tamby Chik. By referring to similar characteristics, he argued that such features form the 'basic structure' of the constitution since they were part of the 'terms of reference' of the Constitutional Commission that was responsible for the drafting of the Federal Constitution for the Federation of Malaya of 1957.<sup>1</sup> The main problem with this analysis is that it places too much emphasis on the past, without giving due recognition to transformations and changes which do inevitably take place in any society, and it also ignores the constitutive influence that law has on social reality, regarding the elite social groups' control on institutions that make law.

There is a danger in making a generalisation that such features are monolithic and deeply entrenched as the 'constitutional identity' of

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<sup>1</sup> 'Malay and Islam in the Malaysian Constitution', 2009 1 MLJ cxxix.

Malaysia. Reading all the ‘traditional features’ as a whole, they reflect a strain of thought indistinguishable from Malay feudalism. While the relevant provisions on their own could be said to refer to just the historical position of the Malays Rulers, Islam and the Malays in this country, they could also be seen as symbols of the hegemony of the traditional elites.

More pertinently, there is a difference between how the members of the upper class, for example the traditional elites of the aristocracy, view the conceptual significance and scope of ‘Islam, Malay Rulers and Malay’ on one hand and the subalterns on the other. A look at the creation of the 1948 Federation of Malaya Agreement and the 1957 Constitution would reveal that the main local players/actors were the Malay Rulers, the traditional aristocracy and those related to them. In the negotiations leading up to the creation of the 1948 Federation of Malaya Agreement for instance, only UMNO was invited to take part in the deliberations; the alternative discussions and deliberations of the leftist groups such as AMCJA and PUTERA, which culminated in a draft constitution, were ignored and dismissed (Cheah, 2009; see also Yeo, 1973). Taking into account the poor literacy rate and the similarly poor standards of education of the locals at that time, it is reasonable to suggest that Malay feudalism strongly dictated the constitutional terms of the nation.

This chapter examines the question of whether the Malay Rulers, Islam and Malay elements form the constitutional identity of Malaysia in the background of ‘constitutional identity’. First it defines the intention of the framers of the constitution, then analyses the meaning(s) and articulations of culture, tradition and law, and finally emphasises its unique features – the special position of the Malays.

### **The Intention of the Framers of the Constitution (The Reid Commission)**

In Gary Jeffrey Jacobsohn’s *Constitutional Identity*, he states that the underlying factor in this discourse, which is also ever present whenever constitutions are studied, is the idea of ‘disharmony’ (Jacobsohn, 2010): that there will be a certain amount of opposite claims, contradictions and sometimes inconsistencies present in a constitution. Here, the example that was referred to was India, in which there was a paradox between the Indian constitutional objectives of a ‘casteless and classless society’ and its social reality where the social stigma and discriminations arising from the traditional aspects of the caste system are still present. Likewise, in the Malaysian Constitution, one cannot avoid the tension between the



conflicting demands of a modern democratic state and the traditional.

Naturally, an argument would be made in favour of 'originalism' in which the Court should follow the wishes of the original drafters of the Constitution. Unlike the Indian Constitution which was derived from its 'Constituent Assembly', the Reid Commission was not a locally Malayan constitutional project. However, the locals have participated in the subsequent 'reviewing, amending and accepting the Constitution', thus giving the Constitution a local flavour (Groves, 1962). But difficulties are aplenty when the principle of 'originalism' is sought to be used with reference to the Reid Commission's report.<sup>2</sup>

In attempting to discern the intention of the framers of the constitution, there seem to be a multitude of reference materials that at times could be contradictory. In the context of the 'special position of the Malays', the speech of Lord Reid in the House of Lords when the Federation of Malaya Independence Bill 1957 was tabled for its second reading certainly proves this point.<sup>3</sup>

Having painstakingly consulted all the relevant parties and finally drafted the Constitution, even Lord Reid himself did not feel that the recommendations made by the constitutional commission chaired by him should be enshrined into permanency. This is in line with the principle that a constitution should be flexible in order to reflect the wishes of the people. Thus the discourse of constitutional narrative, at least where the 'special position of the Malays' is concerned, has not always been a 'discourse of continuity' (Evans, 2009) that flows from the legacy left by the British colonial power. It could also be a 'discourse in discontinuity', in which the legacy that was left by the colonial power is abandoned and a new course is charted by the Malaysian themselves. Here, the constitution has been moulded, shaped and determined by the people themselves. While this in itself is not a revolutionary concept, the concern is whether such a move takes into account the class, ethnic and social tensions that exist in Malaysian society.

<sup>2</sup> Report of the Federation of Malaya Constitutional Commission.

<sup>3</sup> 'Of course, there have been a good many changes, but we all recognized that on political questions we should not have the last word. The greater part of the changes have been in the direction of giving more freedom to the Executive and to the Parliament of Malaya, and correspondingly less extensive guarantees of individual rights than we had recommended. But of course, holding the balance is a balance of political judgment, and it is a matter where, as we recognized, those who have the responsibility of governing the country ought to have a very large say in determining the final shape of the Constitution.'

Taking the Reid Commission report as a reference, many commentators have argued that the original understanding of the constitution is that it is a secular state, as opposed to an Islamic state. This position that takes its cue from 'originalism' is certainly tainted with assumptions. Firstly, it ignores the fact that the original text had more than just one author. Ascribing one single and standard view to a text that has multiple authors conveniently ignores the fact that different authors may have different intentions. Secondly, the semantics and semiotics of a language might differ based on cultural differences and also on time and place. The interpretation of the text might differ from one person to another. For instance, different people might interpret the concepts of 'Islamic state' and 'official religion' differently.

### **Meaning(s) and Articulation(s) of Law, Culture, Traditions**

The danger in reading too much tradition/culture into law is that one tends to give undue prominence to traditions while neglecting the fact that traditions can, and often do, change. Another danger to this approach is that it assumes that law merely reflects culture, and this assumption ignores the fact that social reality is often the product resulting from the control exercised by the dominant social groups on various institutions of the society (Mautner, 2011). When the cultural significance of these 'traditional features' is examined, the conventional conclusion would be that such features are the essence of the 'Malay' culture, which many have claimed to be indigenous and have also assumed to be transcendental over the centuries. Be that as it is, any matter claiming to be a cultural feature of the community must be examined to explore its hidden assumptions and undercurrents of power and class struggles. Surely more studies than just the convenient facts that such provisions exist in the Constitution and that historical records would vouch for their historical continuity are needed in order to enshrine them as 'constitutional identity'. Not much has been written on the level of Clifford Geertz's 'thick descriptions' concerning these features (Geertz, 1973: Ch. 1).

With reference to Malay loyalty towards the Malay Rulers, three different types of identities that are in continuous tension with each other have been categorised: loyalty/obedience to the Malay Ruler/Sultan (*kerajaan*), Islam (*ummah*) and to the Malay group as a whole (*bangsa*) (Milner, 1995: 6). From the classical texts<sup>4</sup> and some research materials (Milner, 2006; Muzaffar, 1979; Shaharuddin, 1984) loyalty to the Malay Rulers in ancient

<sup>4</sup> E.g., *Sejarah Melayu* (Malay Annals).

times required 'unquestioning loyalty' from the Malays. Examples can be seen in the writings of Munsyi Abdullah regarding the feudal mindset of the masses (Abdullah, 1967). This mindset of 'unquestioning loyalty' is strange when it is examined in the context of Islam, which stipulates that sovereignty does not lie in human beings,<sup>5</sup> as neither the Ruler nor the people are supreme in Islam. The authority of the Malay Rulers as the 'protector' of the Malays has been said to have lessened ever since the fight against the Malayan Union and upon independence in 1957 with the system of 'constitutional monarchy' sealed into the Constitution (Muzaffar, 1979). It also marked the transition of political power from the Malay Rulers to the Malay politicians (Ibid.). Upon the independence of the country from British rule and embarking upon the system of constitutional monarchy, the apex position of the Malay Rulers in the 'protector-protected' relationship was substituted with another group: the 'administrators'<sup>6</sup> from the Malay political party of UMNO in which, it has been argued, the Malay Rulers are seen as the 'symbolic' protectors while the 'administrators' are the 'substantive' protectors (Muzaffar, 1979: 66).<sup>7</sup> Loyalty/obedience to the sultan needs to be closely examined in a post-colonial society in order to distance itself from the feudal past and this needs to be done critically so as to prevent politicians from utilising it for their own personal benefit. This is because one needs to acknowledge the historical fact that power has always been shared between the Palace and the ruling nobles (Suwannathat-Pian, 2011). Furthermore, while the system of 'constitutional monarchy' itself is not incompatible with democracy, it is arguable that loyalty to the Ruler in such a system does not mean loyalty to the Ruler in His personal capacity; rather, it is loyalty to the institution of the monarchy (Muzaffar, 1979: 72).

The significance of Islam in the Malaysian Constitution is certainly an unresolved issue in which the debate as to whether Malaysia is a secular or an Islamic state still continues until today. The major part of this debate revolves around the irony that the historical constitutional documents clearly state that Malaysia was meant to be a secular state.<sup>8</sup> Another irony

<sup>5</sup> Al Quran, Surah An Nur, Verse 42: 'And to Allah belongs the sovereignty of the Heavens and the earth.'

<sup>6</sup> Members of the aristocracy who rose to become administrators in the British colonial government in Malaya. See Muzaffar (1979).

<sup>7</sup> Recently, the Malay Rulers have fought back against the idea that they are merely symbols in Malaysia. Some sultans have taken a delightfully more active role in governance. See Milner (2012: 191).

<sup>8</sup> E.g. Memorandum of the Alliance: 'The religion of Malaysia shall be Islam. The

is that while an Islamic state demands the supremacy of Islamic law, the Islamic law that is contained in the Malaysian statutory provisions is not purely Islamic, but has been modified to suit local customs. It has been argued that even during the colonial days, the version of Islam that was practised and professed in Malaysia was a version that has been modified by local Malay customs (Peletz, 2002). It can be clearly seen that the version of Islam in Malaysia has gone through several transformations. From a society that was steeped in the Hindu-Buddhist culture, the people's embrace of Islam or conversion to Islam was not without the baggage of their Hindu-Buddhist cultural traditions (Azmi and Shamsul, 2004).

With regard to the concept of '*bangsa Melayu*', historical records cannot confirm the existence of a 'Malay nation' in the past during which the Malays were aggregated according to their loyalty to their different Malay sultans. In fact just before the protest against the Malayan Union, the Malays were structured and organised along their *negeri* affiliations instead of under a pan-Malayan Malay unity. It was their opposition to the Malayan Union that compelled the Malays to form UMNO, a political party with the slogan of '*Hidup Melayu*' ('long live the Malays'). While the Malays are the majority in Malaysia and while UMNO has been in power ever since independence, one should never assume that the Malay unity in Malaysia is monolithic. This was amply demonstrated by the results of the 2008 general election, which saw UMNO losing its two-thirds majority in Parliament with the rise of Malay politicians in other political parties such as PAS and PKR. A look at UMNO's political campaign strategy throughout the decades would show that it perennially revolves around the 'Malay, Malay Rulers and Islam' issues, giving rise to the image that it is the protector of the Malay *bangsa*. However, it is pertinent to note that it was under UMNO stewardship, specifically under the leadership of Dr Mahathir Mohamad, that amendments to the Constitution were passed to take away the Malay Rulers' discretion in granting their royal assent to bills in Legislative

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observance of this principle shall not impose any disability on non-Muslim nationals professing and practising their own religion, and shall not imply that the State is not a secular State'; paragraph 57 of the White Paper: 'There has been included in the Federal Constitution a declaration that Islam is the religion of the Federation. This will in no way affect the present position of the Federation as a secular State, and every person will have the right to profess and practice his own religion and the right to propagate his religion, though this last right is subject to any restrictions imposed by State law relating to the propagation of any religious doctrine or belief among persons professing the Muslim religion.'

Assemblies together with their personal legal immunity. If the amendments were to be seen in the context of exercising the popular will of the people, it would still be paradoxical in the sense that such acts would be considered as acts of *lese majesty*. It is even ironic to note that the only Members of Parliament who spoke against the amendment in 1983 and reminded the Prime Minister of the *lese majesty* nature of the amendment bill were ethnic Chinese opposition members from DAP.<sup>9</sup> Furthermore, it has been pointed out that the possible reason for the 1983 constitutional amendment was the apprehension that the government might face difficulties in its exercise of law-making powers due to the strong personality of either of the sultans in line to become the next Yang Di-Pertuan Agong (see Lee, 1995), rather than a normal exercise of acceding to the wishes of the people.

There is a concern that some people, possibly members of the traditional elites and the 'administrators', would want to perpetuate and entrench the feudal mindset of 'protector-protected/leader-led' of the Malays, which is also synonymous with the mentality of 'unquestioning loyalty'. One should not ignore the reality that the meanings ascribed to concepts in society are often the result of influence of the elites in exercising their control over social institutions. Similarly, the structural imbalances in the society have been and are continually caused by the minority elites within the society. While it is true to a certain extent that the British colonial policies caused the marginalisation of the Malays, to put the blame entirely on the colonial power is truly misplaced and too convenient (see Syed Hussein, 1977). Deconstructing class relations under post-colonial theory has shown the connivance of the elites of the society in striving to maintain their grip on the monopoly of resources and opportunities at the expense of the subalterns.

### **A Unique Feature: The 'Special Position of the Malays'**

The most controversial 'traditional feature' is with regard to the 'special position of the Malays'. On one side, it has been argued that Malaysia is historically a Malay country and, as such, the special policies which accord preferential treatment to the Malays, i.e. allocation of business permits, licences, scholarships and university placements, are the rights of the Malays. However, when the provision regarding 'special position of the Malays'

<sup>9</sup> Lim Kit Siang, Constitutional Amendment Bill, 1983, Hansard, Dewan Rakyat, 2 August 1983, page 8757, <http://www.parlimen.gov.my/files/hindex/pdf/DR-02081983.pdf>

is traced in the historical constitutional documents, the alternative view that it is not an absolute privilege gains credibility. Below is an example to show how reference to the past constitutional documents would prove that the objective of providing this constitutional provision was not to provide supremacy to the Malays.

### ***Federation of Malaya Agreement 1948***

In the Report of the Working Committee on the Constitutional Proposals for the Federation of Malaya Agreement 1948, Chapter II outlines the scope of the authority of the Working Committee and paragraph 17 in this chapter states what are arguably the terms of reference for the Working Committee. Paragraph 17(e) is a very wide paragraph which could probably refer to both Malay and non-Malay communities,<sup>10</sup> particularly when further reference is made to paragraph 17(d).<sup>11</sup>

Only in paragraph 106 is the phrase ‘special position of the Malays’ mentioned. It states that regarding the special responsibilities of the High Commissioner, one of them would be the safeguarding of ‘the special position of the Malays and of the legitimate interests of minorities’. Here, the previously ambiguous scope and meaning of the earlier paragraph 17(e) is finally made clear: that the intention of the British was to safeguard both the ‘special position of the Malays’ together with the ‘legitimate interests of minorities’. This matter was soon enumerated in Article 19(1)(d) in the form of ‘special position of the Malays and of the legitimate interests of other communities’.

Nothing was mentioned further regarding the scope of this provision in the said 1948 Federation of Malaya Agreement. In the Proposals of Their Highnesses The Rulers and The United Malays National Organisation in Appendix A to the Working Committee’s Report, the only mention of this matter is in the chapter regarding self-government.<sup>12</sup>

Similarly, no explanation was given on the scope of such ‘special position’. However, the Working Committee’s proposal for a model of a State

<sup>10</sup> Paragraph 17(e): ‘as these States are Malay States ruled by Your Highnesses, the subjects of Your Highnesses have no alternative allegiance or other country which they regard as their homeland, and they occupy a special position and possess rights which must be safeguarded’.

<sup>11</sup> ‘A common form of citizenship should be introduced which would enable political rights to be extended to all those who regard Malaya as their real home and as the object of their loyalty’.

<sup>12</sup> Ibid.

Constitution for the Malay States included a proposal that could shed light on the scope of the 'special position of the Malays'.<sup>13</sup>

### ***Report of Federation of Malaya Constitutional Commission 1957 (Reid Commission Report 1957)***

Thus it was the Working Committee Report of the above that gave us for the very first time the expression 'the special position of the Malays'. Instead of standing on its own, it is accompanied with the phrase 'and the legitimate interests of the other communities'. This 'safeguarding of the special position of the Malays and the legitimate interests of other communities' phrase was reiterated in the Constitutional Commission that formulated the Federation of Malaya Constitution of 1957.<sup>14</sup>

The representatives from the Alliance Party together with the Malay Rulers shared the same view regarding this provision.<sup>15</sup> Clearly, all the local representatives in the said constitutional negotiations expressed their reservation about the suitability of conferring a constitutionally entrenched 'special position' to the Malays.

Next, the Reid Commission's observation that 'the special position of the Malays had always been recognized'<sup>16</sup> as a result of the treaties signed with the Malay States is peculiar since it gives rise to an inference that the special

<sup>13</sup> In paragraph 143, the Working Committee recommended the State government 'take special steps to provide for and encourage the education and training of Malays so that they may take their full part in the Government service and in the general life of the country'. This recommendation is further contained in Article 13 of the Draft State Agreement that states: 'His Highness desires and His Majesty agrees that it shall be a particular charge upon the Government of the State of ... to provide for and encourage the education and training of the Malay inhabitants of the State of ... so as to fit them to take a full share in the economic progress, social welfare and government of the State and of the Federation of Malaya.'

<sup>14</sup> The Reid Commission 'found it difficult, therefore, to reconcile the terms of reference if the protection of the special position of the Malays signified the granting of the special privileges, permanently, to one community only, and not to the others', at para 163, Report of the Federation of Malaya Constitutional Commission, 1957.

<sup>15</sup> The Alliance Party: 'All nationals should be accorded with equal rights, privileges and opportunities and there must not be discrimination on grounds of race and creed', para 163, *ibid*. The Malay Rulers: 'to eliminate communalism as a force in the political and economic life of the country', para 163, *ibid*

<sup>16</sup> 'When we came to determine what is the special position of the Malays, we found that as a result of the original treaties with the Malay States, reaffirmed from time to time, the special position of the Malays has always been recognized', Paragraph 164, Report of the Federation of Malaya Constitutional Commission, 1957.

position of the Malays had always been contained in the past treaties entered into between the British and the Malay Rulers. The early treaties that were made for the cession of territories did not contain any provisions regarding 'special position of the Malays'.<sup>17</sup> Similar treatment was given in the later treaties which were often made for the consent of the Malay Ruler to act on the advice of the British Resident/Advisor. The Pangkor Treaty of 1874,<sup>18</sup> the Federation Treaty of 1895 regarding the agreement of the Malay Rulers from Selangor, Perak, Pahang and Negeri Sembilan to form a federation known as the 'Federated Malay States' and the Agreement between His Britannic Majesty's Government and the State of Kedah, 1923<sup>19</sup> similarly did not contain any provisions regarding the 'special position of the Malays'.

It could probably be argued that although there was no legal provision contained in the treaties regarding the special position of the Malays, the British had always made it their official policy to safeguard 'the special position of the Malays'.<sup>20</sup> However, a closer look at the colonial policies in British Malaya would dispel the myth of the supposed benign protection accorded by the British colonial power to the Malays.<sup>21</sup> In deconstructing the power relations in the context of British colonialism, it is inevitable that a scholar would have to face the truth that the real beneficiaries had been the traditional elites at the expense of the masses.

While the Reid Commission included the 'special position of the Malays' provision in the constitution, it also came with recommendation

<sup>17</sup> For example in the Treaty with the King of Quedah, 1791, the Sir Stamford Raffles' Agreement, 1819 and the Treaty between Great Britain and Johore, 1824.

<sup>18</sup> The treaty sealed the succession of Raja Abdullah as the Sultan of Perak together with the appointment of the first British Resident where the 'Sultan receives and provides a suitable residence for a British Officer to be called Resident, who shall be accredited to his Court, and whose advice must be asked and acted upon on all questions other than those touching Malay Religion and Custom'.

<sup>19</sup> 'The Sultan of Kedah and his successors will receive and provide a suitable residence for a British Adviser to advise on all matters connected with the Government of the State other than matters relating to Malay Custom or Mohammedan Religion and will accept such advice', Article 5 .

<sup>20</sup> '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', CO 825/35/4 No.52, Stockwell, *Malaya*, Part 1, p.24.

<sup>21</sup> 'In the Federated Malay States, the administration was British conceived, British operated and provided a framework for economic exploitation controlled by non-Malays...the economic development of West Malaya passed the Malays by; indeed, British policy aimed at conserving traditional Malay society in the face of changes which were going on around it' (Stockwell, 1979).



for a review.<sup>22</sup> This recommendation for a review after 15 years came from the Alliance Party rather than the Reid Commission 'as a result of a late compromise between UMNO and MCA'.<sup>23</sup> After the publication of the Report of the Federation of Malaya Constitutional Commission 1957, the different communities had a mixed reaction to it, and all the political parties in the Alliance Party were criticised by their respective communal base. For instance, the Malay newspaper *Utusan Melayu* questioned the 15-year time limit review of the special position of the Malays, while the Chinese newspaper *Kwong Wah Jit Poh* criticised what they saw as the creation of different grades of citizenship by virtue of the provision of the 'special position of the Malays'.<sup>24</sup> Interestingly enough, the responses from UMNO were very illuminating on the psyche of UMNO. Firstly, the Alliance Party, with UMNO's lead, had offered a 15-year time limit review on the provision regarding 'special position of the Malays'. Next, in the midst of criticisms from some sections in the Malay community, Tun Razak had to admit that they were under attack from both the Malay 'radicals' in UMNO and the Malay opposition parties 'who had their own agenda'.<sup>25</sup> It had been argued that due to the pressure from the UMNO 'radicals' together with 'the vocal minority from the Malay opposition parties', UMNO had caused the change in the provision for 'special position of the Malays' from the transitory position to permanency with no requirement for a time limit for its review (Fernando, 2002: 167).

Next, after passing the Working Party stage (22 February–27 April 1957) and the London Conference (13–21 May 1957), the British government published a white paper entitled 'Federation of Malaya Constitutional Proposals 1957' as the final review paper on the Reid Commission's draft constitution. Paragraph 54 states that the British government agreed with the recommendation, including the provision regarding 'special position of the Malays' in the constitution and that 'the Yang di-Pertuan Agong will be required to safeguard also the legitimate interests of other communities'. Again, in its final review, the provision regarding 'special position of the Malays' could not be divorced from 'the legitimate interests of other communities'.

Although the earlier proposal by the Alliance Party and the subsequent recommendation by the Reid Commission regarding the 15-year time

<sup>22</sup> Paragraph 167, Report of the Federation of Malaya Constitutional Commission, 1957.

<sup>23</sup> B/X/5/III/43 Jennings Papers, quoted in Fernando (2002).

<sup>24</sup> *Ibid.*: 147.

<sup>25</sup> Quoted in *Ibid.*: 153.

limit was finally excised from the constitution,<sup>26</sup> the rationale, spirit and importance of conducting reviews on the 'special position of the Malays' still lingered and was affirmed by all the parties involved in the final negotiations during the London Conference such as the Alliance Party and the Malay Rulers.

## Conclusion

It must be reiterated that a constitution that does not take into account the history of its own people would have problems of legitimacy. However, the inclusion of history, culture and/or traditions in the constitution must also be subjected to a certain amount of limitations. Mere reliance on the textual provisions of the constitution does not settle the debate regarding the elements constituting the constitutional identity of Malaysia since the constitutional provisions themselves are ambiguous regarding the scope and context of such features. The Constitution does not say that Malaysia is an Islamic state, nor does the Constitution provide absolute powers to the Malay Rulers. Similarly, the Constitution does not bestow supremacy to the Malays. Next, the current controversies surrounding these features are due to the unfortunate trend of placing a premium on the form of the features rather than on their substance. The nobility of the Malay sultans, in line with Islam, requires the Malay Rulers to be responsible, just and fair, and it is this facet of the Malay Rulers which must be given prominence. History has shown how Sultan Alauddin Ria'yat Shah bravely tackled the problems of crime personally by apprehending the criminals during his nightly rounds patrolling the city (Leyden, 2001). Similarly, the problems regarding the identity of Malaysia as an Islamic state is due to the dualism that exists in its legal system; there are two legal systems that operate together at the same time, the civil and *syariah* laws. This dualism is suspect since the quality of the *syariah* law operating side-by-side with the civil law could not be said to be purely Islamic. The focus on the forms and rituals of religion such as the mere collection of the buildings of Islamic schools, banks, universities and the mere emphasis on the ritual aspect of prayers and recitation of the Holy Quran without seriously looking at the substance and quality of an Islamic way of life would make a country 'Islamic' only in name, but not in

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<sup>26</sup> Paragraph 55: 'it was not considered necessary to include such a provision in the constitution. It was considered preferable that, in the interest of the country as a whole as well as of the Malays themselves, the Yang di-Pertuan Agong should cause a review of the revised proposals to be made from time to time.'

substance. A study has been made on an 'Islamicity index' regarding how 'Islamic' any country appears to be, taking into account its legal, social, economic and political systems (Rehman and Askari, 2010), and it is ironic that while Malaysia was ranked the highest among the Islamic countries in the world, its ranking was at 38<sup>th</sup>, far behind some 'Godless nations' such as the USA (ranked 25<sup>th</sup>), the UK (8<sup>th</sup>), France (18<sup>th</sup>) and Australia (9<sup>th</sup>).

Finally, with regard to the 'special position of the Malays', such provisions would only remain a mere psychological symbol of their indigeneity if they are not accompanied with a genuine just and fair effort to help the truly marginalised. In an amendment to Article 153 to enlarge the powers of the Yang di-Pertuan Agong, a white paper ('Towards National Harmony') was published by the government in 1971 to inform the citizens about the rationale of such an amendment.

It can be clearly seen that even in the aftermath of the May 13 tragedy, the government's concern regarding the Malays was based on the economic necessity of affirmative action as opposed to a 'Malay supremacy' rationale. Paragraph 16 disproves the conventional presumption of 'privilege'. It is obvious that paragraph 16 implicitly warns about the danger of the possible misuses and abuses of the affirmative action policies by the elites within the recipient community.<sup>27</sup> Furthermore, paragraph 18 strongly refutes the assertion that any Malay-centric reservation is valid due to the special position of the Malays under Article 153 of the Federal Constitution.<sup>28</sup>

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<sup>27</sup> The White Paper stipulates that awarding scholarships to all Malay students regardless of their family's financial background 'would be inequitable since scholarships to qualified Malays are awarded on the basis of competition amongst themselves and on a means test'.

<sup>28</sup> 'The intention of the amendment is to reserve places in those selected courses of study where the number of Malays are disproportionately small.'



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## Chapter 4

# Rebooting the Emergency: Najib's Law 'Reform' and the Normalisation of Crisis

*Amanda Whiting*<sup>1</sup>

On the eve of the Malaysia Day national holiday in September 2011, Najib Abdul Razak, president of the ruling United Malays National Organisation (UMNO) and Prime Minister of Malaysia, announced the next phase of the Government Transformation Programme (GTP, Program Transformasi Kerajaan) designed to convert Malaysia into a 'more open and dynamic democracy ... at par with other democratic systems in the world'. To that end, he undertook to make the legal and policy changes necessary for Malaysia to become 'a functional and inclusive democracy where public peace and prosperity is preserved in accordance with the supremacy of the constitution, rule of law and respect for basic human rights and individual rights (Najib, 2011). Prime Minister Najib specifically promised to terminate the overlapping states of emergency that had been in place for nearly five decades, and to end detention without trial by repealing the Internal Security Act 1960 (ISA); he was notably less precise concerning what other laws might be removed or revised. Indeed, in the aftermath of the announcement, Najib conceded that he had only sketched the

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<sup>1</sup> This chapter draws upon, but substantially revises and updates, an article earlier published as 'Emerging from Emergency Rule? Malaysian Law Reform 2011–2013', *Australian Journal of Asian Law* 14(2) (2013): 1–55, and I thank the editors for permission to reproduce parts of it here. Initial research was funded through Australian Research Council Grant DP0986954 (2009–2012) 'Lawyers, Civil Society and the State in Post-colonial Malaysia', and additional assistance, which I gratefully acknowledge, has been provided by the Melbourne Law School through the Law Library's Academic Research Service.

'basic principle' and that 'we need to look at the details' (*Malaysiakini*, 27 September 2011). Hints of these new 'details' were drip-fed to a feverish mass media over the following weeks and months. Inevitably, expectations were raised and then shockingly dashed as it became apparent that the new laws, and the way they were interpreted and implemented, amounted not to a transformation from a species of semi-authoritarianism to 'a functional and inclusive democracy', but rather to fresh ways to achieve the same authoritarian ends.

This chapter will describe and critique some key features of the course of legal change in the five years between the launch of a purported law reform package in September 2011 and the end of 2016. In doing so, it is conceded that it is understandable for progressive Malaysians to express shock and dismay at the UMNO regime's apparent hypocrisy, and tempting to explain the resurgence of authoritarian law-making and law enforcement since the formal end of the emergency as UMNO's response to both its electoral misfortunes in the 2013 general election and the politically destabilising consequences of the massive 1MDB financial scandal enveloping Prime Minister Najib since mid-2015 (see Steiner's chapter in this volume). Yet those factors contribute only a partial explanation and, in any event, several of the objectionable legal changes were made prior to those events. They are important drivers, and are not discounted or dismissed. However, this account of the rapid revival of draconian law sources the explanation in two deeper currents in Malaysian law and society – the corrosive effects of a culture of legal exceptionalism, through which special laws for crisis situations have become a permanent feature of the legal system; and the deep-rooted and pernicious fantasies of political exceptionalism, nurtured and furthered by UMNO's increasingly paranoid style of ethno-religious nationalism. Through them, the rebranding and rebooting of authoritarian law in Malaysia can be understood as tragically predictable for two overlapping reasons: because it is consistent with the increasingly strident political trajectory along which the UMNO-led regime has been travelling for many years; and because Malaysian history, as well as the history of emergency rule in other nations, warns us to expect the leakage of emergency legality into the normal legal system.



## Paranoid Nationalism, Emergency Legality and the ‘Draconian’ Laws

### *Political exceptionalism*

It is notorious that Malaysian politics is overwhelmingly expressed through race-based political parties – other chapters treat this topic in more depth.

In essence, since its founding in 1946 UMNO has staked its political fortunes on its ability to defend and advance the interests of the Malay community. When the Federal Constitution was drafted in the mid-1950s, Malay special privileges received constitutional protection through recognition of the primacy of the Malay language (article 152), priority in relation to civil service employment, scholarships and business permits (article 153), and the ‘sovereignty, prerogatives, powers and jurisdiction’ of the hereditary Malay rulers (article 181) (see Nazim’s chapter). Following the Proclamation of Emergency in 1969, constitutional amendments introduced into the freedom of expression article (article 10) elevated these privileges into ‘sensitive issues’ by authorising legislation – which would otherwise be an impermissible violation of free speech rights – that prohibits even the ‘questioning’ of the Malay privileges. At the same time, the UMNO-led government introduced more vigorous affirmative action policies (the New Economic Policy, NEP) to benefit the majority Malay population.<sup>2</sup> Criticism of affirmative action policies, too, can fall foul of the ban on ‘sensitive issue’ discussion. Increasingly since the 1980s, and more insistently since PM Mahathir’s ‘Islamic State’ announcement in 2001 (Mahathir, 2001), UMNO has also grounded its claim to represent Malay ethnic interests in its capacity to promote and ‘defend’ Islamic institutions and values. This, in turn, has involved UMNO in what Kessler (2016: 152) terms an Islamic ‘policy auction’ with opposition party PAS (Parti Islam se-Malaysia) as both parties compete for the same Malay-Muslim votes. The associated ultra-nationalist political ideology of *ketuanan Melayu* (Malay supremacy), incubating since the 1980s and now in a florid state, interprets any challenge to entrenched UMNO political dominance or government policies as a criminally impermissible ‘questioning’ of Malay or Muslim constitutional privileges and

<sup>2</sup> The NEP (1970–90) was succeeded by the National Development Policy (1991–2000), the National Vision Policy (2001–10) and the New Economic Model (2010– ). There is a large literature on Malaysian development and affirmative action, to which the essays in Gomez and Saravanamuttu (2013) make an important recent contribution.

protections, liable to be denounced as seditious and treasonous attacks upon the Malay Rulers, the UMNO-led government and the religion of Islam (Puthuchear, 2008; Whiting, 2010; Kessler, 2016; Chin, 2016).

In such circumstances, the temptation to interpret a challenge to UMNO's political power as a national crisis, a threat to public order and national security has been irresistible for the governing party, as successive UMNO-led governments have yoked the emergency and anti-subversion powers of the Constitution (explained below) to legitimate laws and justify policies bolstering their own political position, while side-lining or silencing opposing views. At the same time, UMNO must be wary of alienating middle class and urban voters through blatant politicisation of the law, courts, police and mass media, hence the occasional promises (of which Najib's 2011 undertaking is the most recent) to review harsh laws and ameliorate unpopular policies (Wong, 2013).<sup>3</sup>

### ***Legal exceptionalism***

A state of emergency is a state of exception, where some normal laws – including those that protect peoples' property, rights and liberties and that limit and control the exercise of government power – are temporarily suspended or diminished so that the authorities may better – more efficiently, swiftly and comprehensively – protect the nation from a sudden catastrophe (from natural disaster to terrorism). Because the likelihood of such catastrophes is foreseeable, but the nature and extent of their threat and the scope of the emergency powers necessary to deal with them cannot be anticipated accurately, it is difficult to determine in advance what emergency powers governments should be permitted to exercise. Similarly, it is difficult to prescribe in advance adequate mechanisms to supervise governments exercising crisis powers and to prevent emergency rule sliding into authoritarianism or tyranny. There is a rich scholarly literature – increasing in volume and complexity since the 9/11 terrorist incidents – concerning emergency laws and regimes, and an associated debate about whether emergency rule is theoretically located within, or outside, the concept of the rule of law.<sup>4</sup> Suffice to note here that the scholarship offers

<sup>3</sup> In this context it is noteworthy that PM Mahathir Mohamad commenced his premiership in 1981 with a promise to ameliorate the harshness of the ISA, an undertaking senior barrister Tommy Thomas (2016: 3) later dismissed as 'gimmicky'.

<sup>4</sup> The starting point for much of this literature is the work of Nazi political and legal theorist Carl Schmitt. Important recent contributions include Jayasuriya, 2001; Nasser, 2003; Dyzenhaus, 2006; Scheuerman, 2006; Gross and Ní Aoláin, 2006;

ample historical and contemporary evidence (from, for example, the British Empire; Northern Ireland; Israel; the European Union; the United States; post-colonial Asian nations) about the tendency of power to corrupt in relation to both officials and institutions. Governments, once seized of expansive crisis powers, are reluctant to surrender them, and prone to use them against legitimate political opponents long after the threat of terrorism or insurgency has faded; and measures designed for temporary and extraordinary use have a tendency to percolate into the regular legal system, poisoning its norms, institutions and processes and distorting expectations of what the regular law should deliver and protect (White, 2015: 607; Gross and Ní Aoláin, 2006: 228, 230; Scheuerman, 2006: 69–70; Reynolds, 2010: 34). The UMNO-led government's deployment of exceptional laws during and after the official end of the formal emergency in 2011 exhibits all these tendencies.

### ***The exceptional powers regime in Malaysia***

Like many post-colonial constitutions, the Malaysian Federal Constitution makes express and detailed provision for the exercise of exceptional powers in times of crisis. Part IX of the Constitution divides them across two distinct articles. Article 150 deals with a state of emergency (who has authority to proclaim it, what may lawfully be done during it, and how it is brought to an end); and article 149 authorises legislation against 'subversion' and acts 'prejudicial to public order' regardless of the existence of a *state of emergency*. Thus, a state of emergency may only be proclaimed under and in accordance with the provisions of article 150, but both articles 149 and 150 authorise the government's deployment of exceptional powers in circumstances which it alone has the power to identify as exceptional.<sup>5</sup> Hence, when the term 'emergency legality' is used here it covers not only the laws and rules made, or purporting to be made, during a proclaimed emergency in accordance with the procedures stipulated by article 150, but more broadly those laws, policies and modes of thinking about law that are sourced in and take sustenance from the capacious constitutional recognition in both articles 149 and 150 of exceptional government powers in exceptional circumstances.

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Mehozay, 2012; White, 2015; and the contributors to Ramraj, 2008, Ramraj and Thiruvengadam, 2009 and Sarat, 2010.

<sup>5</sup> Amendments made in 1981 to article 150(8) stipulate that the courts have no power to review the executive's decision to issue an emergency proclamation. Prior to that the courts had, in any event, declined to review this constitutional questions.

Except for a brief period between 1960 and 1964, Malaya/Malaysia was in a permanent state of emergency for more than 60 years because of the successive and sometimes overlapping emergency proclamations: 1948–1960 (Communist insurgency), 1964 (Konfrontasi with Indonesia), 1966 (Sarawak constitutional crisis), 1969 (13 May 1969 election riots) and 1977 (Kelantan constitutional crisis).<sup>6</sup> In a prime illustration of the lessons from the exceptionalism literature about the way that regimes legally permitted to exercise emergency powers will constantly seek to enhance those powers even in the absence of objectively compelling circumstances, a series of amendments made to articles 149 and 150 has substantially enlarged the power of the executive, and concomitantly limited parliamentary and judicial oversight and control of executive action. At the same time, these constitutional amendments have expanded the Parliament's capacity to pass laws inconsistent with constitutional rights. As a result, under article 150 and while a proclamation of emergency is in force, the executive may make ordinances, and the Parliament may pass statutes, that are inconsistent with any other law and indeed the provisions of the constitution itself. The only exception to these astonishingly wide powers is that emergency laws may not touch the so-called 'sensitive issues'. Similarly, under article 149, Parliament may make laws to prevent or combat threats to public order that are inconsistent with constitutional civil and political liberties (but not freedom of religion). Parliament – meaning in effect the UMNO-BN majority in the legislature – does not need a proclaimed state of emergency to enact statutes that lessen or override constitutional rights and liberties and thereby stifle organised opposition and shield the regime from criticism; a recitation at the beginning of the statute stating that one of the vaguely worded article 149 factual preconditions to the exercise of this legislative power is in existence, or is 'threatened', is sufficient.

Some of the 'draconian' – i.e. disproportionately severe and arbitrary – laws limiting civil and political rights and curtailing due process that Malaysian human rights advocates and lawyers have long complained about were made by express authority of the constitution's emergency and anti-subversion provisions, for example the Internal Security Act 1960 (ISA), with its provisions for detention without trial and the mandatory death penalty for firearms offences, and the Essential (Security Cases) Regulations 1975 (ESCAR), which curtailed due process protections for the criminal

<sup>6</sup> For extensive analysis of these events, see Das, 1996; Vorah, Koh and Ling, 2004: 600–33; and Tan and Thio, 2010: 180–299.

accused. Other draconian laws were made (and made harsher) during the emergency period, but they are not expressly sourced in either article 149 or article 150. Rather, they came into being because the crisis mentality, the sense of Malaysian, but especially Malay, interests being under siege from internal enemies, that developed during these long years of UMNO's hegemony has gradually accustomed Malaysians to tolerate intolerant laws. A by no means comprehensive list of such laws, justified by the regime as necessary to maintain public order, but, as a matter of historical record, deployed to intimidate and damage legitimate critics or opponents of the government includes: the Printing Presses and Publications Act 1984, the University and University Colleges Act 1971, the Police Act 1967 (sections 27–27C), the Societies Act 1966, the Official Secrets Act 1972, and the Sedition Act 1948.<sup>7</sup>

Such a normalisation of crisis within the political and legal system has had an 'insidiously brutalising effect upon the administration of justice' (International Bar Association et al., 2000: 67). This chapter goes further to say that by permitting and entrenching emergency legality and hence a jurisprudence of legal exceptionalism, the Constitution contains within itself a source of permanent instability and self-contradiction. Hence, emergency is not an exception to doctrine of the rule of law established and secured by the Constitution; rather, the exception is foreseen and enabled by the very notion of 'rule of law' that the Malaysian Constitution enshrines (Nasser, 2003: 136–140; Njiar, 1994: 3–15; Jayasuriya, 2001). This has had a demonstrably pernicious effect upon Malaysian legal institutions and political imagination and practice, and explains why UMNO and, we must surmise, the electorate that (albeit narrowly) returned it to power in the May 2013 election, could unashamedly contemplate the strengthening of draconian laws following the official end to the emergency in 2011.

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<sup>7</sup> Domestic and international human rights monitoring bodies such as the Aliran (<http://aliran.com>), Suaram ([www.suaram.net](http://www.suaram.net)), National Human Rights Commission of Malaysia (SUHAKAM) ([www.suhakam.org.my](http://www.suhakam.org.my)), the Malaysian Bar ([www.malaysianbar.org.my](http://www.malaysianbar.org.my)), Human Rights Watch ([www.hrw.org](http://www.hrw.org)), Amnesty International ([www.amnesty.org](http://www.amnesty.org)) and Reporters Without Borders (<https://rsf.org>) have routinely condemned these laws and the arbitrary way they are enforced in their annual reports and in ad hoc statements, which can be found by navigating from the aforementioned Internet home pages. For further analysis of the political misuse of these laws see Whiting, 2013.

## **Legal Transformations – One Step Forward, Two Steps Backward**

### ***Unwinding the formal emergency***

The first step in the march towards a ‘more open and dynamic democracy’ occurred in October 2011 when the Parliament repealed the Restricted Residence Act 1933 and the Banishment Act 1959, both old laws originally enacted to deal with nationalist and communist agitators. The Banishment Act was in fact redundant, because its work of arresting, detaining and expelling non-residents – typically now undocumented migrant workers and asylum seekers – has been taken over by the Immigration Act.<sup>8</sup> Similarly, the Restricted Residency Act – which allowed the government to limit the movement of a suspected criminal without the bother of having to prove criminal conduct in the courts – was abolished not because it fundamentally deprived an accused person of the right to a fair trial, but because it was no longer sufficiently effective in achieving that arbitrary end. Home Minister Hishammuddin Hussein stated that the law was no longer useful in a ‘borderless world’ and his spokesperson reiterated the Minister’s assurance that redundant laws would be replaced in due course by more modern and effective ones (*Malaysiakini*, 5 October 2011, 6 October 2011a). At the time, Malaysians who welcomed the PM’s initiatives perhaps did not fully appreciate that these changes were not, in fact, progressive reforms emblematic of the government’s new-found commitment to constitutionalism and human rights. Rather, they were symptomatic of the ad-hoc nature of PM Najib’s human rights rhetoric, and of its failure to resonate more broadly within the Cabinet and UMNO. Such remarks were an early signal that ‘reform’ meant not deep and systematic democratisation, but shallow technocratic tweaking.

Next, in November 2011 the PM introduced a parliamentary motion to annul the Emergency Proclamations of 1966, 1969, and 1977.<sup>9</sup> Consequently, as a matter of law, Malaysia is now no longer in a state of emergency.

<sup>8</sup> It should be noted that the enforcement of the Immigration Act has been condemned by organisations concerned about the plight of migrant workers and refugees (for example, Amnesty International, 2010), and yet review of the Immigration Act is not within the remit of the transformation programme.

<sup>9</sup> The 1948 Proclamation had, of course, already been revoked in 1960. The PM seems to have accepted legal advice that the 1964 Konfrontasi Emergency Proclamation was impliedly revoked by the issue of the 1969 Proclamation (*Malaysiakini*, 24 November 2011).

Furthermore, according to the constitutional provision governing the fate of emergency laws at the termination of an emergency (article 150(7)), ordinances and regulations (made by the executive) and statutes (enacted by the Parliament) that were authorised solely by the provisions of article 150 ceased to be in force six months later, that is on 19 June 2012.<sup>10</sup> In this way security laws that had long been criticised by civil liberties and criminal lawyers, such as the Emergency (Public Order and Prevention of Crime) Ordinance 1969 and the Emergency (Essential Powers) Act 1979, were abolished. And yet, while emergency laws made under article 150 have lapsed, the amendments made by these lapsed laws to *other* laws have, apparently, survived because the lapsing of emergency laws does not have retrospective effect and occurs without prejudice to things already done. Crucially, Emergency (Essential Powers) Ordinance No. 45 of 1970 altered the text of the Sedition Act by inserting an additional offence in section 3(f) of the Act – questioning the ‘sensitive issues’, e.g. the special Malay privileges. With the annulment of the emergency, Ordinance No. 45 of 1970 is of no further effect; but the changes it wrought to the criminal law of sedition remain in force, and are still being enforced.

### ***Curtailing expressive freedoms in new and creative ways***

The bill for a new law recognising freedom of assembly was the first major new statute under PM Najib’s legal transformation agenda. As such, it was eagerly anticipated. The Police Act regime governing public meetings and assemblies had been characterised by police refusing or revoking a permit in an arbitrary manner, on flimsy or technical grounds, or for reasons that disclosed a deep-seated distrust of democratic dissent, or by excessive police force when dealing with protesters. One telling historical example will have to suffice. In April 1987, environmental activists were charged with illegal assembly for rallying to oppose the operation of a highly toxic processing plant near a village, whereas a few months later an UMNO Youth rally organised (by then-Youth Leader and now Prime Minister Najib Abdul Razak) with the express intention of intimidating Chinese politicians was granted a permit (*New Straits Times*, 16 April 1987, 18 October 1987). Yet when the Peaceful Assembly Bill was tabled in Parliament on 22 November 2011, hope for progressive legal change was replaced by bitter

<sup>10</sup> The motion to annul the emergencies was passed by the Dewan Rakyat on 20 November, and by the Dewan Negara on 20 December 2011; hence the six month expiry date was 19 June 2012.

disappointment, since it was apparent that the new law was in many ways worse than the old one. As the Bar Council president wrote in his invitation to Malaysian lawyers to join in a peaceful protest against the terms of the new law: 'We feel let down by how far short this Bill falls in relation to what the Malaysian people were promised in the Prime Minister's Malaysia Day 2011 message' (Malaysian Bar Council, 25 November 2011). In effect, the Peaceful Assembly Act 2012 (PAA) replaced the Police Act sections with a more detailed, but even more restrictive, set of provisions (Malaysian Bar Council, 24 November 2011; Whiting, 2011). It might more aptly be called the 'Prevention of Assembly Act'.

Despite these profound flaws, it appears since the PAA came into force in April 2012 that the authorities have grudgingly come to accept that Malaysians do have some kind of right to freedom of assembly. The police no longer routinely close down all public gatherings and the widespread police brutality is also no longer inevitable, although it still occurs (Malaysian Bar Council, 29 April, 1 May, 10 May 2012).<sup>11</sup> It seems police attitudes have shifted to the extent that in 2016 the Coalition for Clean and Fair Elections (Bersih) rally organisers praised the police for facilitating the gathering and protecting them from violent counter-demonstrations mounted by the 'Red Shirt' ethno-nationalist thugs publicly aligned with UMNO's youth wing (*Malaysiakini*, 19 November 2016; Lemièrè's chapter in this volume). These are positive outcomes.

Nevertheless, even when the police have not forcefully dispersed peaceful protest rallies, the UMNO regime has systematically used the notification and obligations provisions of the PAA to frustrate, harass and punish rally organisers and participants, demonstrating that the regime's emergency mind-set and anti-democratic habits persist, and that it views the new law as an instrument to discipline dissenters rather than to facilitate free assembly. For example, rally organisers have been prosecuted for failing to give advance notice to the police, while the Attorney-General's chambers vigorously defends the constitutionality of the notice provision, even after the Court of Appeal (temporarily) ruled it void;<sup>12</sup> and the

<sup>11</sup> For example, human rights group Suaram and Bersih (30 March 2015) jointly condemned police violence and 'gangster-like tactics' against peaceful gatherings protesting the jailing of Anwar Ibrahim and the introduction of the Goods and Services Tax in March 2015.

<sup>12</sup> For example in April 2014 the Court of Appeal ruled that the section 9(5) notice provision of the PAA was constitutionally invalid, and hence opposition Selangor state Assemblyperson Nik Nazmi Nik Ahmad could not be prosecuted. A differently constituted bench of the Court of Appeal later ruled the same provision



authorities attempted to use a provision of the PAA to claim exorbitant compensation from Bersih organisers for damage to police vehicles that was arguably precipitated by the police.<sup>13</sup> Furthermore, while police may have shown restraint *during* the November 2016 Bersih rally – convened to protest the authorities’ failure to conduct a meaningful investigation into the PM’s involvement in the 1MDB scandal – nevertheless the movement’s organisers and participants were systematically harassed before and after the gathering. In the weeks before the rally the police appeared unperturbed when the Red Shirts engaged in violent counter-demonstrations, lodged multiple and spurious police reports urging arrest of Bersih leaders for ‘tarnishing the country’s image in the eyes of the world’, and trivialised the death threats against Bersih organiser Maria Chin Abdullah (*Bernama*, 19 September 2016a, b), but moved decisively to arrest Maria Chin and co-organiser Mandeep Singh on the eve of the rally (Bersih, 18 November 2016).

The dire consequences for democracy of the Malaysian government’s strict control of print (and broadcast) media have been well documented (Mustafa, 2002, 2014; Abbott, 2011). Malaysia has consistently done poorly in international press freedom rankings, and recently been the subject of two scathing reports by Human Rights Watch.<sup>14</sup> Recurrent criticisms by free speech campaigners emphasise that the Printing Presses and Publications Act 1984 (PPPA) restricts, rather than enhances, the capacity of the press to report news independently and critically. Critics also deplore direct political interference in editorial decision-making and the indirect political influence that encourages self-censorship; police harassment of journalists; arbitrary and politically-motivated denial, suspension or cancellation of printing and publication licences; politically-driven prosecution of dissenting opinion as

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constitutionally valid, and subsequently criminal charges have been reinstated against Nik Nazmi. Media coverage includes *Malay Mail Online*, 31 March 2015 and *Malaysiakini*, 1 October 2015, 8 December 2016 and 11 January 2017. The relevant case law is *Nik Nazmi Nik Ahmad v PP* [2014] 4 CLJ 944 and *PP v Yuneswaran Ramraj* [2015] 9 CLJ 873.

<sup>13</sup> This litigation commenced in 2012. In January 2017 the Federal Court affirmed the decisions of the High Court and Court of Appeal (*Kerajaan Malaysia v Ambiga Sreenevasan & Ors* [2016] 8 CLJ 330) that the PAA does not give the government a right to sue for monetary damages. At the time of writing the Federal Court decision has not been published. A summary is available at *Malaysiakini*, 19 January 2017.

<sup>14</sup> Freedom House reports from 1979 can be found at [www.freedomhouse.org](http://www.freedomhouse.org); Reporters Without Borders annual indices are published at <http://en.rsf.org>. See also Human Rights Watch, 2015, 2016.

‘false news’; and irrational and politically motivated book bans (for specific examples, see Whiting, 2013: 23–6).

Progressives were thus dismayed when the PM’s transformation of the media was limited to repeal of the requirement for annual renewal of press licences, and the restoration of a right to apply to the courts for review of a government decision, leaving intact the other draconian aspects of the media regime. Veteran journalist Bob Teoh’s condemnation reiterated the views of many others when he wrote that the amendments ‘do not constitute anything close to a law reform ... [and] do not address the critical issues of press freedom at all. The oppressive instruments of censorship remain largely intact’ (Teoh, 3 May 2013). Indeed, since the purported democratisation of the media under the GTP, Malaysia has actually fallen even lower in international media freedom rankings.<sup>15</sup> In part, this further decline reflects government harassment of digital news media and social media users, for although the regime has so far resisted right-wing demands to create a licensing regime for the Internet it has nevertheless been able to wreak damage through other means. Specifically, the government has turned to the Communications and Multimedia Act 1998 (CMA), a piece of late twentieth-century legislation designed to assist economic growth by facilitating the free flow of ideas in cyberspace. Although the CMA makes an express undertaking not to censor the internet (section 3(2)), it nevertheless creates the crimes of providing content (section 211) or ‘improper use of a network facility’ (section 233) that, amongst other things, is ‘false’ or causes ‘offence’. Clearly much is left to the interpretation of the complainants and the prosecution here. Unsurprisingly, the authorities have used these provisions to intimidate dissenting voices in a variety of ways. Most spectacularly, in early 2016 the Malaysian Communications and Multimedia Commission blocked the independent news site *The Malaysian Insider* and detained its senior staff because the authorities objected to reporting of the 1MDB affair; soon thereafter the owner of the site shut it down completely, citing financial losses caused by the blackout (*Malaysiakini*, 25 February 2016). To little avail, the Malaysian Bar Council (1 March 2016) expressed itself ‘aghast’ at this ‘harassment and intimidation of the media, and targeting of contrary or dissenting voices in the public sphere.’

Freedom of expression is also, and perhaps most pointedly, policed through the Sedition Act 1948. Amnesty International estimates that 91

<sup>15</sup> For example, according to Reporters Without Borders, Malaysia ranked 122<sup>nd</sup> in 2012, but had fallen to 146<sup>th</sup> by 2016.

people were investigated, arrested or charged with sedition in 2015 alone (*Malay Mail Online*, 14 April 2016), which is astounding considering that in the same year the UMNO regime legislated to remove the offence of criticising the government from the Sedition Act. Part of the answer lies in the fact that the law has indeed been slightly liberalised by abolishing the crime of exercising free speech rights in the direction of the elected government and the administration of justice, but although the amendments have passed both houses of Parliament, received royal assent (28 May 2015) and been gazetted (4 June 2015), the government has delayed bringing the revised Act into force. No reasons have been offered, so we can only speculate that UMNO is reluctant, after all, to surrender one of its most powerful legal means to intimidate its critics, as the above statistic amply illustrates. At the same time, by delaying the implementation of the amendments, the government is depriving itself of the increased penalties in the Act and the additional sedition ground (section 3(1)(ea)) of promoting ‘ill will, hostility or hatred ... on the ground of religion’ – a ground which, given UMNO’s tacit encouragement of authoritarian Islamic pressure groups, is unlikely to be used to foster religious toleration (Whiting, 2015).

### ***Rebranding criminal and security laws***

Prime Minister Najib’s promise to repeal the ISA, and thus abolish detention without trial, was a centrepiece of his transformation programme, and he was widely praised for it (see, e.g. SUHAKAM, 16 September 2011). The rapid return of detention without trial (and lengthy pre-trial detention), and the political misuse of the new laws, are thus also powerful evidence of the persistence of legal exceptionalism in Malaysia, just as the language UMNO and its fringe dwellers used to justify new draconian laws reveals the ethos of political exceptionalism, UMNO’s tragic destiny to defend Malay hegemony against all-pervasive yet nebulous threats.

The ISA was enacted in 1960 under authority of article 149, precisely because the 1948 (Communist Insurgency) Emergency had been terminated. At the time, the Deputy Prime Minister insisted upon the need for harsh measures – such as detention without trial and special security areas where due legal process and civil and political rights were drastically weakened – on grounds of national security, even while he acknowledged that the terrorists had been soundly defeated (*Hansard*, 21 June 1960: cols 1185–92). His express undertaking that the ISA would never be used undemocratically, to harass government critics, was rejected as risible by opposition MPs, as an unenforceable promise with no legal weight. (*Hansard*, 21 June 1960: cols 1194–7; 1251–2). The Opposition’s fears were prescient. Over the

next five decades the ISA was frequently used by the UMNO-BN regime to punish criticism and dissent, sometimes by means of mass detentions, and key figures of the various opposition political parties have featured amongst the detainees (Means, 1991: 211–14; Lee, 2008; Saravanamuttu, 2008; Whiting, 2013: 15–16). Even PM Najib effectively conceded this when he acknowledged that the ISA had to be repealed because it no longer delivered political advantage to the ruling party: ‘if you put someone under ISA, it doesn’t kill them politically. Instead it enhances their political career’ (*Malaysiakini*, 9 July 2012). Equally troubling, and prime evidence of the seepage of emergency legality into the regular legal system, is the fact that the ISA and emergency ordinances and regulations were frequently deployed as a law enforcement tool for ordinary criminal matters when there was no suggestion of a threat to the peace and security of the nation (Whiting, 2013: 16).

The ISA was abolished with the coming into force of the new anti-subversion law, the Security Offences (Special Measures) Act 2012 (SOSMA) on 31 July 2012. SOSMA makes no provision for detention without trial – and in this respect it was welcomed by human rights advocates – but the long period of pre-trial investigative detention, and the delay in access to legal advice are significant departures from constitutional due process standards and leave detainees vulnerable to police coercion (Malaysian Bar Council, 10 April 2012). Furthermore, limitations on an accused’s access to information about the prosecution’s case means that an accused in a trial conducted under the SOSMA provisions will be hampered in mounting an adequate defence. As Malaysian critics have trenchantly noted, this ‘legal transformation’ swaps ‘detention without trial under the ISA with detention without a proper trial under SOSMA’ (*Malaysiakini*, 4 June 2012).<sup>16</sup>

Like the statute it replaces, SOSMA recites that the law is necessary because Malaysia faces action or threatened action by a ‘substantial body of persons’ to excite disaffection, to prejudice public order and the security of the Federation, and to procure change ‘otherwise than by lawful means’, thus engaging article 149, with its permission to derogate from civil and political liberties. Astute Malaysian commentators note the scant evidence that such a grave and widespread threat in fact exists (for example, *Malaysiakini*, 27 June 2012a; Thomas, 2012). SOSMA applies to ‘security offences’ such as waging war against the state and terrorism. Political dissent or industrial action that is not intended to cause serious harm or to endanger the public

<sup>16</sup> For a detailed analysis of the provisions, see Whiting, 2013: 16–18.

is specifically excluded (in section 130B (4)) and SOSMA clearly stipulates in section 4 that no one may be arrested or detained ‘solely for his political belief or political activity’.

That promise has not been kept. For example, in September–October 2015 an UMNO dissident (Khairuddin Abu Hassan) and his lawyer (Matthias Chang) were detained under SOSMA provisions because they had lodged complaints with international investigation agencies concerning the 1MDB financial scandal (*Malaysiakini*, 12 October 2015a). As former UMNO Prime Minister and newly emerging opposition figure Mahathir Mohamad asked rhetorically: ‘SOSMA is for terrorists. Do you think Matthias or Khairuddin are terrorists? They merely reported some misdeeds of the government to the foreign authorities’ (*Malaysiakini*, 12 October 2015b). In November 2016 on the eve of the Bersih protest rally calling for genuine investigation into the UMNO regime’s involvement in the 1MDB scandal, key protest organisers Maria Chin Abdullah and Mandeep Singh were detained under SOSMA provisions (*Malaysiakini*, 19 November 2016). Maria was held in a secret location, in solitary confinement, for 10 days on suspicion of obtaining foreign funding for Bersih – conduct which is not a criminal offence. Receiving foreign funds was apparently an aspect of the broader charge of engaging in actions ‘detrimental to parliamentary democracy’ by use of ‘violent or unconstitutional means’ – a new offence inserted into the Penal Code when it was ‘transformed’ and ‘reformed’ in 2012. The imprecise language clearly leaves open prosecution of legitimate political opponents of the government, all the more so considering that government officials and right-wing religious or ethno-nationalist pressure groups operating at UMNO’s fringes have often been quick to label any position that disconcerts them as ‘unconstitutional’ and a threat to Malay rights, Islam, or national security (see, for example, Malaysian Bar Council, 4 November 2013). The National Human Rights Commission, the Malaysian Bar Council and the G25 group of Malaysian progressives, amongst others, condemned the Bersih detentions as a blatant political abuse of SOSMA (SUHAKAM, 21 November 2016; Malaysian Bar Council, 22 November 2016; *Malaysiakini*, 22 November 2016).

From the middle of 2013, UMNO-linked media outlets carried stories of a spike in violent crime and statements from pro-government sources associating the rise in crime with the release of detainees due to the lapsing of emergency ordinances and regulations (for example, *Bernama*, 16 July 2013). Under ‘Ops Cantas’ police began detaining suspects under the little-known and little-used Prevention of Crime Act 1959 (POCA) (*Bernama*, 19, 21 August 2013). Although in June former Home Minister

Hishammuddin Hussein had denied either a significant rise in crime or a connection between violent crime and the release of former emergency detainees (*Malaysiakini*, 19 June 2013), by August his successor Ahmad Zahid Hamidi stated that there was indeed a crime wave and that the lapsing of emergency laws was to blame. Ominously he claimed: 'I am confident violent crimes can be curbed if new laws similar to the Emergency Ordinance are introduced' (*Malay Mail Online*, 5 July 2013). Despite PM Najib's assurances that the Bar Council and the Human Rights Commission would be consulted (*Bernama*, 17 July 2013), the Bill to reintroduce preventive detention through amendment of the POCA was not shown to them, or the Opposition parties (*Malaysiakini*, 25 September 2013).

POCA had previously allowed the police to detain alleged gangsters for up to 72 days, and then subject them to a form of internal banishment under the Restricted Residencies Act. The amendments to the Act, which came into force in April 2014, permit detention without trial for renewable 2-year periods (new section 19A). Detention decisions made by a new Prevention of Crime Board are only reviewable by the courts on narrow procedural grounds (section 15A); and courts may not be able to exercise even that cramped jurisdiction if government officials decline for 'public interest' reasons, under section 21A, to furnish information to the court. A detainee has limited access to legal representation (section 9(5)).

As justification for measures that so significantly depart from constitutional rights guarantees to liberty and a fair trial, the preamble to POCA was amended to recite the article 149 anti-subversion formula. By this means, suspected criminals have been substituted for the terrorists and subversives imagined by the framers of the Federal Constitution when they drafted article 149. Several days after the POCA amendments were passed, at an event in Melaka advertised as a 'Security Briefing with Community Leaders', Ahmad Zahid defended police shootings of suspects – effectively extra-judicial killings – and promoted both the 'Ops Cantas' crackdown and the return of preventive detention in blatantly racial terms:

The largest drug dealers are Chinese, the smaller ones are Indians and the users are Malays. In Internet gambling, the bosses are Chinese, operators are Indians and patrons are Malays. Therefore the victims are Malays. Most of them are our Malays. Most of them are our race.... I think the best way is that we no longer compromise with them [criminals].

Regarding the return of preventive detention in the POCA he boasted of his role in securing the passage of the amendments:

We investigate [criminal cases], we take it to the courts. If there is no evidence, if there is not enough evidence, at least there are [sic] still two years [detention]. That is my new law, there is no compromise. The Internal Security Act has been repealed, the Emergency Ordinance has been repealed, the Restricted Residence Act has been repealed, but they [Opposition] did not notice the PCA 1959, they did not notice it... I discussed [it] with the inspector-general of police [and] with the ministry's legal adviser, I said 'this can be used'.

Referring to recent police shootings, he said: 'There is no need to give them any more warning. If (we) get the evidence, (we) shoot first.' (All quotations are from *Malaysiakini*, 7 October 2013a, b.)<sup>17</sup>

Equally startling are Zahid's admissions of links between BN politicians and organised crime (see Lemièrè's chapter in this volume). He laughingly referred to the Malays caught in the 'Ops Cantas' dragnet as 'not real thugs... [but] our friends...[who] do what should be done.' He further identified them as 'Pekida members' and 'part of the Tiga Line group', among other named groups (*Malaysiakini*, 8 October 2013).<sup>18</sup> Pekida is a far-right pressure group sometimes linked in the mass media with acts of violence and intimidation carried out in the name of Malay 'rights' or the 'defence' of Islam (for example *Malaysiakini*, 9 August 2008; 9 June 2010; 16 March 2013). The group has pledged loyalty to PM Najib and UMNO in a ceremony in which Najib stated, 'Pekida must be ready to defend our administration. We cannot allow the Malays *diinjak-injakkan* (to be stepped upon) on our own land' (*Malaysiakini*, 5 December 2011).

Through this kind of political rhetoric we can glimpse UMNO's brand of political exceptionalism, its heroic special mission to defend the Malay nation against internal enemies, and how this blood and soil fantasy meshes with legal exceptionalism. As the former deputy Minister for Internal Security explained to incredulous Opposition MPs during the SOSMA amendment debate, the threat changes from time to time [*ancaman ini berubah daripada semasa ke semasa*] but the solution remains constant. Article 149 and the ISA had once been necessary to combat the communist threat but when the communists were defeated, the country was still not safe. In 1987 the non-Malays questioned the special position

<sup>17</sup> The speech was recorded and excerpts are available (with English subtitles) via news portal *Malaysiakini*'s digital TV site at <[www.kinitv.com](http://www.kinitv.com)>.

<sup>18</sup> The full recording of his speech, with the references to BN connections with the criminal underworld that were deleted from the initial posting, can be accessed via *Malaysiakini*'s digital TV station at: <[www.kinitv.com](http://www.kinitv.com)>.

of the Malay race, and then when they were dealt with (by the ISA mass arrests in ‘Operasi Lalang’), next came the threat to Malaysia from Jemaah Islamiah and other Islamist organisations. Now, he said, the new problem is gangsterism (*Hansard*, 21 October 2013: 50–2).<sup>19</sup> The pretext for preventive detention was always the same – a threat to the peace and security of the nation. This time, however, both the enemy and the nation were imagined differently. The peril arose not from leftist insurgents or Islamic terrorists, but from Indian and Chinese ‘gangsters’; and the polity that was imperilled was no longer the Federation of Malaysia, but *bangsa Melayu* (the Malay race). The article 150 emergency had been formally, legally brought to a close but in UMNO thinking the sense of crisis necessary to engage the legislative permission of article 149 is ever present.

In this way, barely a year after it was abolished in mid-2012, detention without trial returned to the Malaysian statute books. And yet, during 2015, and purportedly in response to the massacre of *Charlie Hebdo* journalists in Paris by Islamic terrorists (*The Malay Mail Online*, 10 January 2015), the UMNO government introduced still another security law, the Prevention of Terrorism Act 2015 (POTA). POTA was modelled on the amended POCA: it created a regime for detention without trial, drastically limited judicial oversight, denied basic due process protections for detainees, and did little to prevent political misuse. Malaysian human rights organisations lamented its excesses in the same terms that they had greeted the drastic changes to POCA. The title of the Malaysian Bar’s press statement encapsulates most of the commonly expressed objections: ‘Prevention of Terrorism Bill 2015 Violates Malaysia’s Domestic and International Commitments, is an Affront to the Rule of Law and is Abhorrent to Natural Justice.’ In the statement, the Malaysian Bar president trenchantly concluded that ‘many of the oft-touted goals of the Government Transformation Programme, of removing old and archaic laws, have been comprehensively reversed’ (Malaysian Bar Council, 5 April 2015).

Apparently the UMNO regime considered that the U-turn away from Najib’s former vision of a ‘more open and dynamic democracy’ was not comprehensive enough. In December 2015 it introduced into the Parliament a Bill for a National Security Council Act (NSCA), the provisions of which – according to Ambiga Sreenevasan, former Malaysian

<sup>19</sup> Noh bin Omar, MP for Tanjong Karang, former Minister for Agriculture and former Deputy Minister for Internal Security, debating PKR’s N. Surendran over the SOSMA amendments. The translation and paraphrase are the author’s.



Bar Chair and spokesperson for the coalition to oppose the Bill – posed an ‘unprecedented threat to what remains of parliamentary democracy in Malaysia’ (*Malaysian Insider*, 8 December 2015). The government justified the profoundly draconian measures in the Bill by asserting need to present a modern and agile response to ever-present security threats. Yet while these threats were claimed to be pervasive, the government struggled to identify them with clarity (*Hansard*, 3 December 2015: 99), and later contradicted itself by objecting to Australian and British government travel advisories concerning Malaysia on the basis that the terrorist threat was well under control (*Malaysiakini*, 13 April 2016).

Opponents of the powers that the government – specifically, the Prime Minister – would be able to exercise under the NSCA characterised the law variously as ‘odious’ (Ambiga Sreenevasan), ‘insidious’ (the Bar Council), ‘frightening’ (Human Rights Watch), ‘monstrous’ (constitutional law scholar and opposition party candidate Abdul Aziz Bari) and ‘entirely unnecessary and excessive’ (opposition MP N. Surendran).<sup>20</sup> University of Malaya legal academic Azmi Sharom wrote in his weekly newspaper column that ‘this law is too horrible to be discussed in a thousand words. It simply must be opposed’ (Azmi, 9 December 2015). Indeed, practically every one of the NSCA’s 44 provisions arguably violate the Federal Constitution and the principles of the Rule of Law and all the words allocated to this chapter would be insufficient for a full analysis. Suffice, therefore, to note that the NSCA, which came into force in August 2016, concentrates unprecedented power in the office of the Prime Minister. It is not fanciful to state that the NSCA could facilitate the establishment of a dictatorship. This could be done because all members of the Council are appointed by the PM and there is no parliamentary oversight or mechanism to insure probity and independence; the Council/PM may issue directives and control the conduct of any government entity, from Bank Negara to a state government; the meaning of ‘national security’ is at the whim of the authorities; the PM at his discretion may declare a ‘security area’, which could extend to the entire country, inside of which constitutional rights to liberty and due legal process, freedom of movement, speech, association and assembly and property rights could all be negated; the Council, controlled by the PM, can direct police and military operations, and the security forces could act with impunity.<sup>21</sup> In many

<sup>20</sup> Sources for these quotes, in order, are: *Malaysiakini*, 2 December 2015a; Malaysian Bar Council, 3 December 2015; *Guardian*, 4 December 2015; *Malaysian Insider*, 11 December 2015; *Malaysiakini* 2 December, 2015b.

<sup>21</sup> There is extensive coverage in online media. For a detailed explanation of the

respects the NSCA re-inscribes the security area provisions of the repealed ISA, but considerably enhances them.

There are many constitutional objections to the validity of the NSCA. I differ from the majority view, which focuses on the apparent declaration of an emergency without proper invocation of article 150 and propose, rather, that the NSCA is invalid principally because it authorises special powers against subversion and overrides rights of liberty, association, assembly, speech and property (i) without the mandatory article 149 recital, and (ii) in excess of the occasions when article 149 special powers may be invoked. The first flaw might be cured by amending the law to include the recital, but the second is – or should be – fatal.

### Concluding Observation

Despite PM Najib's expansive promises in his 2011 Malaysia Day speech, and the inflated rhetoric touting the success of the legal transformation during the UN Human Rights Council's Second Periodic Review of Malaysia's human rights achievements in October 2013 (Whiting, 2013: 1–2), the law reform achievements are, at best, minimal and disappointing; at worst, they limit the rights and freedoms of Malaysians even more than the pre-transformation laws they replace. By the beginning of 2014 all pretence had ceased and, at the time of writing, the fate of democracy and rule of law in Malaysia looks very bleak. Yet even if, by a miracle, further developments in a future 'transformation programme' authored by a purged and reformed UMNO, or a government of the present Opposition parties, were to bring Malaysian laws closer into alignment with domestic and international bills of rights, the potential for corrosion will remain until articles 149 and 150 are expunged from the Constitution, so that the pretext for emergency legality is banished. As Scheuerman (2006: 71) wrote of regimes of exception: 'Every attempt to provide a statutory or constitutional basis for their exercise necessarily works to *normalize* problematic forms of emergency power. Emergencies inevitably escape the confines of any legal norm and poison the legal system as a whole.' This generalisation is patently true of Malaysia. Even with the end of the formal emergency, the crisis mentality remains.

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most reprehensible aspects of the NSCA, see Ambiga Sreenevasan's Presentation 'Human Rights, Democracy and the National Security Council Act (2016)' at the Civil Society Conference on National Security, Renaissance Hotel, Kuala Lumpur, 18 August 2016, published by Media Rakyat, [https://www.youtube.com/watch?v=EWE\\_sZ1GjcQ](https://www.youtube.com/watch?v=EWE_sZ1GjcQ) on 25 August 2016.

The urgent question now is how to cleanse this from the minds of ethno-nationalist politicians who have made careers, and built a social and political edifice, upon the need to exercise vigilance against an internal enemy that is the creation of their own febrile imagination.



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# Politics, Economics and Corruption in Malaysia: A Case Study of the 1MDB Scandal

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In 2015, allegations of mismanagement of funds in the state investment fund 1Malaysia Development Berhad (1MDB) surfaced. The scandal has triggered a national and international 'crisis of confidence' undermining trust in the current political regime to allow an impartial and transparent investigation into this matter.

Criticisms, including from the former Prime Minister Mahathir Mohamad, have added to the chorus of mounting pressure on then Prime Minister, Najib Razak, amid reports of a paper trail tracing millions of dollars into his personal bank account.

This chapter analyses the relationship between politics, economics and law which, albeit to varying degrees, has been a cornerstone of Malaysia's government for decades, using the latest 1MDB scandal as a case study. The chapter will focus on the national dimensions of the scandal, in particular how the government-critical media unearthed and reported on the scandal; followed by how national agencies reacted and started to investigate those allegations and how politicians, parties and society reacted to the scandal. While de facto national investigations have come to a standstill, the international investigations into the 1MDB scandal are in full swing. However, it remains to be seen whether those investigations will have any impact in Malaysia.

## Politics, Economics and Corruption in Malaysia

The link between politics and economics – in particular, corruption – in Malaysia has been observed and commented on for decades,<sup>1</sup> but nothing appears to change to sever those linkages.<sup>2</sup> There is strong evidence that corruption has been, and will continue to be, a challenge in Malaysia. In 2013, Transparency International conducted a global study on corruption – Global Corruption Barometer 2013 – which showed that Malaysia indeed has a problem: based on public perception, political parties in Malaysia received a score of 3.8 out of 5, on a Likert scale, where 5 means extremely corrupt; the business/ private sector received a similar score of 3.2; the public sector, 3.3 (Transparency International, 2013: 36). In another survey conducted by KPMG, one of the four largest accounting firms in Malaysia,<sup>3</sup> 90 per cent of those surveyed considered fraud ‘an inevitable cost of doing business’, while 71 per cent echoed a similar sentiment about bribery and corruption (Wong, 2014). In the Ernst & Young Asia Pacific Fraud Survey Report Series 2013. Malaysia – with China – was perceived as one of the most corrupt countries (Ibid.; Ernst & Young, 2013: 16, 18). Malaysia had the highest number of respondents who agreed with the statement that shortcuts can be taken in order to meet targets in tough economic times (Ernst & Young, 2013: 5).

Although this problem is widely acknowledged, there appears to be little progress in the fight against corruption. Malaysia’s rank in Transparency International’s corruption index appears to have been more or less stable in recent years.<sup>4</sup> It seems as if the necessary political will is missing and enforcement agencies are not making significant improvements on this front. As will emerge in this chapter, those factors have been impeding

<sup>1</sup> Especially by Gomez (1994, 2007, 2012); Gomez and Jomo (1999).

<sup>2</sup> The links between politics and business are still strong, but there are some differences in the approaches taken by former Prime Minister Mahathir, who was in power at the time Gomez made those comments, and current Prime Minister Najib Razak. For a precise overview of the subtle differences, see Gomez (2016).

<sup>3</sup> KPMG was also one of the auditors of 1MDB who terminated their service in 2013 after ‘clash[ing] with the state investment’s board over documentation’ (Middleton, 2016).

<sup>4</sup> In 1995, Malaysia ranked 23<sup>rd</sup> of the least corrupt nations. Since 2009, it ranked in the mid-50s of all surveyed countries. Its worst score was in 2011 at 60<sup>th</sup> and improved to 50<sup>th</sup> in 2014. It has since dropped to 54<sup>th</sup> of the least corrupt nations out of 175 surveyed countries in 2016. For a visual overview of the rankings, see <http://www.tradingeconomics.com/malaysia/corruption-rank>, accessed 7 November 2016.

the investigation into what has been termed ‘the world’s biggest financial scandal’ (Ramesh, 2016).

### The Story of 1MDB

The predecessor of 1MDB, the Terengganu Investment Authority, was established in 2008 by the Terengganu government as a sovereign investment fund.

In 2008, the United Malays National Organisation (UMNO)<sup>5</sup> was re-elected into power, a position it has held since independence, and in 2009 Najib Razak became Prime Minister. The same year, Terengganu Investment Authority was nationalised ‘for its benefits to be felt across Malaysia’, focusing on strategic investment in energy, real estate, tourism and agribusiness. Renamed 1Malaysia Development Berhad (1MDB),<sup>6</sup> it is fully owned by the government and Najib Razak chaired the Board of Advisors.<sup>7</sup> This linkage between politics and economics has been observed numerous times. Gomez (2012: 251–3) points out that the largest firms in the 1990s controlled by Bumiputera<sup>8</sup> were all linked to some of the most influential politicians. There is a correlation between the rise and fall of well-connected businessmen and the rise and fall of their political patrons (Gomez, 2012). The story of 1MDB is thus a continuance of a well-known and often utilised theme in Malaysia.

<sup>5</sup> UMNO has been the dominant party in the ruling coalition – initially called Alliance and now Barisan Nasional (BN, National Front) – which has been in power since independence.

<sup>6</sup> Statement by then Prime Minister Najib Razak as cited in Sidhu (2009). This purpose had been queried from the beginning, with opposition parties pointing out that Khazanah Nasional Bhd already fulfilled a similar role (Wright and Hope, 2015).

<sup>7</sup> 1MDB used to have a three-tiered governance structure with a Board of Advisors, a Board of Directors and a senior management team. This corporate structure has been heavily criticised in the wake of the financial scandal (Malaysian Society for Transparency and Integrity (TI Malaysia), 2016). This type of weak corporate governance has been considered one of the reasons why Malaysia dropped in the Corporate Governance (CG) Watch 2016 ranking of 11 Asia-Pacific countries (*Malaysiakini*, 2016d). The Advisory Board has now been dissolved, yet the Ministry of Finance is still the sole shareholder of 1MDB. As Prime Minister and Minister of Finance, Najib thus could still have ‘sway’ over the company (Chong, 2016).

<sup>8</sup> Bumiputera (Malay, indigenous people; literally, ‘son of the soil’). This group has been granted special economic and educational quotas, for example, through the New Economic Policy (NEP) and similar ‘positive discrimination’ programmes intended to entrench Malay exceptionalism pursuant to Article 153 of the Constitution (Lindsey and Steiner, 2012).

In a few years 1MDB amassed an impressive portfolio of about sixteen power and desalination plants and high profile real estate developments in downtown Kuala Lumpur.<sup>9</sup> The initial commercial success, in particular from September 2009 to March 2010 when 1MDB allegedly made a profit of RM425 million, was met with suspicion given its inexperience and the lack of transparency in its financial dealings (Sipalan, 2010). Questions concerning 1MDB's finances had been raised prior to the breaking of the scandal in 2015. Police reports were lodged against 1MDB<sup>10</sup> and requests were made for the Public Accounts Committee (PAC)<sup>11</sup> to investigate, or even request foreign agencies to start investigations,<sup>12</sup> as early as 2014. Looking back, the headline '1MDB: Another financial scandal in the making' by *Malaysiakini*<sup>13</sup> (2010) in 2010 appears to be somehow prophetic.

### The Development of the 1MDB Scandal in Malaysia

In 2015, 1MDB and its financial dealings took centre stage in national and international news coverage with numerous allegations being made regarding the mismanagement of funds. The 'house of cards' came crumbling down when 1MDB was facing numerous financial problems. In early 2015 1MDB was close to missing a payment on a RM2 billion loan to Maybank and RHB Capital after several extensions (Ng and Hookway, 2015). Still, the funds to repay the loan were put together by tycoon T. Ananda Krishnan<sup>14</sup> and 1MDB eventually repaid that loan in April 2016 (*Malaysiakini*, 2016a).

<sup>9</sup> For example, the Tun Razak Exchange and Bandar Malaysia.

<sup>10</sup> Then Batu Kawan UMNO division vice-chairperson, Khairuddin Abu Hassan, lodged a police report against 1MDB in 2014 (Pua, 2014).

<sup>11</sup> PAC was asked to investigate 1MDB by former Prime Minister Mahathir in 2014. PAC commented that 'it cannot initiate an investigation simply from the feedback of one person' (Aw, 2014).

<sup>12</sup> Pandan Member of Parliament Rafizi Ramli, for instance, sought to engage foreign authorities in Hong Kong, Switzerland and Singapore (Anand, 2014).

<sup>13</sup> *Malaysiakini* is an online newsportal which has been critical of the Malaysian government. Its reporting on corruption has attracted significant attention, in particular when they published a fake report about charges against unnamed senior government officials (*Malaysiakini*, 2005a) which was three minutes later followed by a report acknowledging this as an April Fool's joke (*Malaysiakini*, 2005b). This incident resulted in an investigation into the newsportal (*The Age (Australia)*, 2005). Most recently it has been threatened by government supporters over receiving international financial support (Farik and Tarmizi, 2016).

<sup>14</sup> For a detailed study of T. Ananda Krishnan and his links to UMNO, see Gomez and Jomo (1999: 159–65).

### ***The Government Critical Media's Unearthing of the Scandal***

In February 2015, the negative attention continued when the *Sarawak Report* broke the details of a 'dodgy USD\$700,000 loan deal at the heart of 1MDB's mega debt crisis'. Not only the financial soundness but also the secrecy surrounding 1MDB's financial dealings were heavily criticised (*Sarawak Report*, 2015b). It was the same type of secrecy that led one of the Advisory Board members, Abdul Samad Alias, to resign in July 2015 after only six months on the board (*Malay Mail Online*, 2015a). 1MDB was, however, quick to point out that directors and shareholders 'are fully and actively engaged in the 1MDB rationalisation plan' (Tan Yi Liang, 2015).

The story continued with a 2009 joint venture with PetroSaudi for which a \$1 billion loan should have been declared to Bank Negara, Malaysia's central bank. This process was, however, not followed as it 'would cause unnecessary delays'; instead, allegedly the Ministry of Finance provided approval and it was signed off by Prime Minister/ Minister of Finance, Najib, according to leaked emails (*Sarawak Report*, 2015c). Bank Negara investigated these allegations against 1MDB and twice requested that criminal proceedings should be commenced against 1MDB, a request that was not followed up upon (*Malaysiakini*, 2016b). In the end, Bank Negara imposed a compound against 1MDB, stating that paying that fine would close its investigations into 1MDB (Bank Negara Malaysia, 2016).

In June 2015 the *Wall Street Journal* claimed that funds from 1MDB had been diverted into Najib's accounts in order to fund the 13<sup>th</sup> general election campaign (Wright, 2015a). Allegedly, this money was made available through the overpriced purchase of power assets from the Genting Group in 2012 (*Malay Mail Online*, 2015c). Apparently Genting had made the donation to a foundation controlled by Najib and the foundation then used the money in the election campaign (Wright, 2015a). Najib, however, claimed that the RM2.6 billion was a donation from Middle Eastern benefactors (*Malay Mail Online*, 2015b). There appears to have been uncertainty whether the money received was indeed an investment or a donation from these benefactors (*Sarawak Report*, 2016c). Also, several other explanations were given by other people as to the origin of this money and why it was received.<sup>15</sup>

In general, 1MDB rebutted these allegations in its official statements as a part of 'a broader orchestrated campaign against 1MDB' (1MDB, 2015d),

<sup>15</sup> For a snapshot of how this money was explained and who made those statements, see Lim Kit Siang (2016).

full of ‘malicious insinuations’ (1MDB, 2015a), and a sign of ‘poor’ (1MDB, 2015c) and ‘irresponsible’ (1MDB, 2015b) reporting. The story was a ‘weak story cobbled together by ... reporters’ (1MDB, 2015a) and was ‘baseless and unproven’ (1MDB, 2016b).

The government-critical media outlets experienced different forms of ‘repercussions’ for their reporting:<sup>16</sup> the *Sarawak Report* website was blocked by the Malaysian Communication and Multimedia Commission (*Sarawak Report*, 2016a); two Malaysian newspapers, *The Edge Weekly* and *The Edge Financial Daily*, were suspended by the Ministry of Home Affairs (Henry, 2015) but later had their suspension overturned by the High Court;<sup>17</sup> and an Australian ABC Four Corners team was temporarily detained when they tried to question Najib (*Malaysiakini*, 2016h). Malaysian authorities claimed that the team was detained due to acting aggressively and crossing a cordon – which was later disproved through video recordings (Hodge, 2016). In addition, *Malaysiakini* was raided for posting two videos ‘depicting former Batu Kawan UMNO vice-chief Khairuddin Abu Hassan’s press conference after he lodged a report at the Malaysian Anti-Corruption Commission (MACC) [...where he] criticised Attorney-General Mohamed Apandi Ali and demanded his resignation for refusing to prosecute the 1MDB case’ (Zikri Kamarulzaman, 2016c). Amnesty International (2016b) criticised this raid as an ‘unwarranted attack’ and ‘pure intimidation and harassment of journalists who have been targeted solely for peacefully doing their work, which is to report the news. It is no coincidence that this is news the Malaysian authorities would rather suppress.’

As an ‘official government’ response to the affair, the Special Affairs Department (JASA) of the Communications and Media Ministry put together ‘roadshows’ on 1MDB at universities in Malaysia and, later, overseas. The purpose of these roadshows was to have a ‘face-to-face’ dialogue to ‘provide more effective communication.’<sup>18</sup> In 2016 they featured Arul Kanda Kandasamy, then 1MDB’s president and chief executive, and

<sup>16</sup> Those actions had been criticised by numerous international organisations concerned with human rights including Human Rights Watch (2016); Amnesty International (2015); the International Press Institute with their reporting; see, for instance, Henry (2015).

<sup>17</sup> Initially the High Court had denied the request to temporarily lift the ban (Hidir, 2015), yet the newspapers succeeded in having the ban lifted in the end (Fadzil, 2015). The Home Ministry’s appeal (*Bernama*, 2015) was dismissed by the Court of Appeal, which also allowed *The Edge* to claim damages (Tan Choe Choe, 2016).

<sup>18</sup> See JASA’s information booklet ‘1MDB: Unanswered? Says Who?’, [http://www.jasa.gov.my/images/buku/2016/1MDB\\_English\\_Version.pdf](http://www.jasa.gov.my/images/buku/2016/1MDB_English_Version.pdf), accessed 6 February 2017.

one moderator from JASA at ‘closed door functions’ (Zikri Kamarulzaman, 2016b).<sup>19</sup> These roadshows were complemented by a publication ‘1MDB: Unanswered? Says Who?’ which responded to several allegations that had been made.<sup>20</sup>

It thus appears that the media reporting of the affair in Malaysia is dichotomic: the government-critical media has been – at least partially – instrumental in unearthing the affair and/or providing detailed accounts of allegations once they surfaced; the pro-government media has been trying to debunk those allegations.

### ***The Investigation by National Authorities***

While certain sections of the press were quick to investigate the financial dealings of 1MDB, the investigations by the authorities were less decisive, as for instance the aborted investigation by the Attorney General. In early 2016, the Attorney General, Apandi, cleared Najib of any form of wrongdoing in the RM2.6 billion funds received into Najib’s personal bank account, concluding that as the money had been returned, it was not utilised (*Channel NewsAsia*, 2016c). It is noteworthy that, in the course of the investigation, there had been a change of Attorney General in July 2015 (*Aljazeera America*, 2015). The *Sarawak Report* claimed that the previous Attorney General had been fired as he was in the process of preparing an arrest warrant for Najib and thus was replaced by a new one who did not go ahead with the investigation (*Sarawak Report*, 2015a). The replacement of the Attorney General also affected the above-mentioned investigations by Bank Negara which resulted in only taking administrative punitive actions for inaccurate disclosure (En Han Choong, 2016) after requests for criminal

<sup>19</sup> Several of those events have been criticised for not being accessible to the general public. One such event was organised at University Malaysia (UM). A member of UM Students’ Representative Council (MPPUM) stated that ‘oddly, out of nowhere MPPUM became the co-organiser’ and that ‘nowhere on the poster was it stated that this forum was exclusively organised for UM students’ and furthermore that ‘personnel on duty prohibited certain people from entering the hall’. The taking of pictures of ‘those who asked difficult and critical questions’ made them feel ‘very uneasy’ Lee (2016). According to other reports, a *Wall Street* journalist reporter, Rachel Pannett, was barred from an event at the University of New South Wales in Sydney (*Malaysiakini* 2016j) and staff from *The Australian* ‘ejected from the lecture shortly after it began’ (Butler and Loussikian 2016).

<sup>20</sup> See Jasa’s information booklet *1MDB: Unanswered? Says Who?*. The booklet is available at [http://www.jasa.gov.my/images/buku/2016/1MDB\\_English\\_Version.pdf](http://www.jasa.gov.my/images/buku/2016/1MDB_English_Version.pdf), accessed 6 February 2017.

investigations were ‘hampered’ by the newly appointed Attorney General (*Malaysiakini*, 2016c; Wright, 2015b).

The matter of the transfer of RM2.6 billion into Najib’s personal bank account was also investigated by the Malaysian Anti-Corruption Agency (MACC).<sup>21</sup> The MACC investigation was praised as being conducted with ‘tremendous courage’ (*Malaysiakini*, 2016c) as it was allegedly marred by ‘disruptive police interrogations, arrests and raids’ (Parameswaran, 2016), a claim that has been vigorously denied by the police (Supramaniam, 2015). The outcome of the investigation confirmed that the money had indeed been a donation from an unidentified Middle Eastern benefactor (*Channel NewsAsia*, 2016c).

It appears as if the central figures in these agencies paid the price for investigating 1MDB – the former Attorney General, Abdul Gani Patail, as well as MACC’s former chief, Abu Kassim, and former Bank Negara’s governor, Zeti Akhtar Aziz – all held positions in special task forces to investigate the 1MDB scandal and have been ‘sidelined’ (*Wall Street Journal Asia*, 2016; Naidu, 2016). While those actions against people who bring corruption to light caused concern internationally (Transparency International, 2016), the youth wing of UMNO accused them of ‘a plot to topple the government’ (Naidu, 2016) and a police report was filed against Zeti Akhtar Aziz and Abu Kassim (Goh, 2016). This report alleges that they provided ‘confidential information to foreign agencies without authorisation, including the US Federal Bureau of Investigation (FBI)’ (*Malaysiakini*, 2016g).

A national investigation that might have proven misconduct, the Auditor-General’s report into 1MDB, has been classified under the Official Secrets Act of 1972, Act 88, (OSA), making anyone who discloses details on the investigation liable to criminal prosecution.<sup>22</sup> *Sarawak Report* claims

<sup>21</sup> In 2008, MACC was established as a government agency within the Prime Minister’s Department with the task of investigating and prosecuting allegations of public and private corruption. There are numerous laws including the Malaysian Anti-Corruption Commission Act 2009, Act 694, and the Penal Code, Act 574, criminalising corruption. In general, the ‘public appears to be unconvinced with the efficacy and credibility’ of efforts to fight corruption. Recent incidents which contributed to the lack of trust include the deaths of the Democratic Action Party (DAP) political aide Teoh Beng Hock while in MACC custody in July 2009 and the death of immigration officer Ahmad Sarbaini Mohamad in July 2011; see Long Seh Lih (2016).

<sup>22</sup> While claims have been made that the Auditor-General’s report is no longer classified once PAC tabled its report, see Kumar (2016a), it appears that the report is



to have gained access to the document and listed the details of several questionable transfers of funds.<sup>23</sup> Earlier, the Parliament's Public Accounts Committee (PAC) member Tony Pua<sup>24</sup> had let it slip that, according to the Auditor-General's report, US\$7 billion went missing. This was also reported by the *Sarawak Report* (2016e).

Indeed, one of the few who had access to the Auditor-General's report is Parliament's Public Accounts Committee (PAC) (Beedi et al., 2015), a bi-partisan committee<sup>25</sup> which started its own investigation into 1MDB in May 2015 (*Free Malaysia Today*, 2015). Like other investigations, PAC's investigation faced obstacles. It was postponed when four of its members were appointed to the Cabinet (Hamzah, 2015) with no choice to refuse, and thus could not continue the investigation (Ramesh, 2016). Furthermore, it faced allegations that the PAC document had been edited by the chairman 'without the knowledge of other members' (Palansamy, 2016b). Still, it is probably one of the most critical public reports and investigations on the 1MDB affair inside Malaysia. The report singled out several 'weaknesses' in the 1MDB management, including missing board approvals for several transactions, failure to provide requested documents to two auditors, providing inaccurate information to board and auditors, a business model that was too dependent on loans, and investment decisions being made without due diligence (*Malay Mail Online*, 2016b). The Ministry of Finance said that it would fully implement the recommendations made in the PAC report, including the transfer of ownership of certain assets, the dissolution of the Board of Advisors under the chairmanship of the Prime Minister/Minister of Finance, and changes in the 1MDB Memorandum and Articles of Association which include the removal of article 117<sup>26</sup> and change references from Prime Minister to Minister of Finance (1MDB, 2016a). The report suggested that '1MDB's former director and chief executive officer

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still to be declassified (*Malaysiakini*, 2016f).

<sup>23</sup> For details of the leaked report, see *Sarawak Report* (2016d).

<sup>24</sup> Tony Pua is a member of the Democratic Action Party (DAP), an opposition party. He has been an outspoken critic of 1MDB and the government's handling of the affair; see, for instance, his media conference on 26 April 2016, available at <https://www.youtube.com/watch?v=ptwVPGIbDMk>, accessed 6 February 2017.

<sup>25</sup> PAC is a standing committee of the lower house of the Malaysian Parliament. Its members are appointed from various political parties including the opposition. The official website is available at <http://www.parlimen.gov.my/pac?lang=en>, accessed 6 February 2017.

<sup>26</sup> As chairman of the Advisory Board, Najib was required to approve major decisions, including financial transactions.

Shahrol Azral Ibrahim Halmi and others who were involved [should] ... be investigated by the authorities' (Ibid.). Tony Pua, a member of PAC, feared that 'Shahrol will be made a scapegoat to ease the pressure on Prime Minister Najib Abdul Razak, who has failed to take any concrete action at all against any party for the losses suffered in what the UK (newspaper) *Guardian* named as the "world's largest financial scandal"' (*Malaysiakini*, 2016i).

It is clear that domestic investigations by the Malaysian agencies, like Bank Negara, MACC and the Attorney General, have been, arguably, unsuccessful. More than two and a half decades ago Crouch (1992: 21) commented that 'democratic practices were only permitted as long as they did not actually undermine the power of the elite while they were quickly modified or abolished when elite interests were threatened'. In October 2015, in a 'rare intervention into the country's politics, the sultans of nine Malaysian states called for a swift and transparent investigation into the 1MDB scandal, which had created a "crisis of confidence" in the country and affected its image abroad' (Parameswaran, 2016). Yet any possible checks and balances have been truly disabled through a 'tightening of government control on [...] independent investigation' (Transparency International, 2016).

### ***The Political Reaction to the Investigations***

The handling of the possible political fallout within UMNO was equally 'ruthless and resilient' (Parameswaran, 2016). UMNO elections – originally scheduled for 2016 – were postponed until 2018 so that Najib cannot be voted out (Chew, 2016). Critics either left the party voluntarily or were expelled, for instance, former senator Mohamad Ezam Mohd Nor quit UMNO and his post in the Finance Ministry, citing the government's handling, in particular the decision to classify the Auditor-General's report on 1MDB under the OSA.<sup>27</sup> Later, a police report was filed against him for defaming the Prime Minister when he allegedly accused him of corruption (Melati Abd Jalil, 2016).

Another former UMNO member who had to leave the party in 2015 was Khairuddin Abu Hassan,<sup>28</sup> 'a vocal critic of 1MDB and a senior member

<sup>27</sup> As chairman of the Advisory Board, Najib was required to approve major decisions, including financial transactions.

<sup>28</sup> Khairuddin Abu Hassan is a former Batu Kawan UMNO division vice-chairman (*Straits Times* 2015). He was one of the founders of Parti Pribumi Bersatu Malaysia, but left the party in October 2016 to 'focus on his legal challenges against Prime Minister Datuk Seri Najib Razak and his administration' (*Malay Mail Online*, 2016e)

of Mr Najib's ruling United Malays National Organisation until he was sacked, ostensibly because he was bankrupt' (Harris and Peel, 2015). Yet his comments initiated the probe in Hong Kong.<sup>29</sup> Apparently he also submitted evidence to the Swiss Attorney General (*Straits Times*, 2015) and sparked the raid on *Malaysiakini* when the news outlet posted one of his videos on the 1MDB scandal.<sup>30</sup>

Dissidents also included Deputy Prime Minister Muhyiddin Yassin who was forced out of the party in 2015 over his criticism of the handling of the 1MDB affair (Parameswaran, 2016). Another expelled member is former Kedah's Menteri Besar (MB), Mukhriz Mahathir, a son of Malaysia's former Prime Minister Mahathir (Ngui, 2016). He stated in a video that Najib 'was angry that I chided him in my speech' about 1MDB and the RM2.6 billion that was allegedly transferred into Najib's account (*Malaysiakini*, 2016e). It has also been alleged that the removal of Mukhriz from his position as Kedah's MB in 2016 is a 'proxy attack on his father, former Prime Minister Dr Mahathir Mohamad, who is even more vocal in criticising Najib' (Ibid.).

Mahathir left UMNO in February 2016, citing that he cannot 'call it UMNO anymore, this is (current Prime Minister) Najib's party. I feel embarrassed that I am associated with a party that is seen as supporting corruption – it has caused me to feel ashamed' (*Channel NewsAsia*, 2016b).<sup>31</sup> Initially Mahathir rebutted suggestions of setting up another opposition party, instead saying that he would rejoin UMNO 'if it is revived' (Ibid.). He had made a similar move in 2008, when he left the party over disagreements with then Prime Minister and party leader Abdullah Ahmad Badawi, only to rejoin in 2009 when Najib took over as Prime Minister and party leader (Ibid.).<sup>32</sup> This time it appears to be different; in August 2016 a new party, Parti Pribumi Bersatu Malaysia (Bersatu, 'United'), was registered with former UMNO leaders at the helm – Mahathir as chairman, Muhyiddin as president and Mukhriz as vice president (Leong, 2016). It is too early to predict the political chances of this party. Najib commented on the opposition's attempt to 'demonise the government' as an 'act of political "psywar" (psychological warfare)' (Bernama, 2016b). Regarding Mahathir, Najib stated he was 'a 92-year-old man [who] is making a "U-turn" by

<sup>29</sup> See below p. 258f.

<sup>30</sup> See above, p. 250.

<sup>31</sup> For details on Mahathir's 'role as a key player in Malaysian and UMNO politics' and, in particular, his critique of UMNO's political leadership, see Chin (2015).

<sup>32</sup> For a detailed account of Mahathir's political activities after officially retiring in 2003, see Wain (2009).

‘reversing everything he said in the past to confuse the people’ (Ibid.).

Attempts so far to remove Najib from power, whether in UMNO or as Prime Minister, have been unsuccessful. In 2015 the opposition parties considered a vote of no-confidence, a plan which ‘evaporated’ (*The Economist*, 2016).

Several opposition members have been outspoken in their criticism of the handling of the 1MDB scandal; among them is Rafizi Ramli, PKR vice-president and an opposition Member of Parliament. It was alleged that Rafizi broke secrecy laws by exposing details of the Auditor-General’s report (Fernandez and Ngui, 2016) and also his alleged involvement in a ‘plot to forge’ 1MDB documents, a ‘conspiracy’ with other opposition members and the *Sarawak Report*, in order to discredit the government (Akil, 2016). Rafizi has rebutted these allegations, calling them an ‘evil conspiracy’ to discredit any critics (Ibid.). He was charged under the Official Secrets Act (OSA) and on 14 November 2016 was sentenced to 18 months in jail. A stay of execution was granted pending Rafizi’s appeal of the verdict (Ho Kit Yen, 2016).

Nowadays, even discussing the 1MDB in Parliament is difficult; for instance, the Speaker considered that discussing the latest lawsuit filed by the Department of Justice<sup>33</sup> as being ‘sub judice’, given that the case was ongoing in the US. However, MPs were free to discuss the content outside Parliament (Kumar, 2016b).

Transparency International (2016) aptly summarised the national political manoeuvring, saying that ‘Malaysia is moving rapidly towards autocracy and disregarding its international commitments to fight corruption’.

### ***The Social and Public-at-large Reaction to the Investigations***

Public sentiment seems – despite ongoing protests – to be more or less controlled by the governmental narrative. In March 2015, when the scandal started to unfold, a national poll by the Merdeka Centre (2015) showed that 69 per cent were at least not very much aware of the affair and 75 per cent acknowledged that they did not know very much or nothing at all about the affair. In mid-2016, when the coverage of the scandal appeared to be at its height, the electoral damage appeared to be contained – the ruling coalition increased its lead in the Sarawak state election and won the by-elections in Sungai Besar (Selangor) and Kuala Kangsar (northern Perak). There are still

<sup>33</sup> See below, p. 260.

ongoing public protests over the handling of the 1MDB affair, in particular demonstrations<sup>34</sup> organised by Bersih<sup>35</sup> (Teoh, 2016), which held their fifth rally on 19 November 2016 (*Channel NewsAsia*, 2016a). Bersih had already organised a 34-hour rally in 2015 calling for Najib to resign (Naidu, 2015). It was initially doubtful whether the 2016 rally would indeed take place given the obstacles,<sup>36</sup> yet it went ahead. It is noteworthy that there are not only protests against the government and the handling of the 1MDB affair, but also a show of force in support of the government, from the so-called 'Red Shirts' led by Jamal Yunos, who was until recently chief of UMNO's Sungai Besar division.<sup>37</sup> The 'Red Shirts' have been organising counter-demonstrations against the Bersih rally, with some of their activities heavily criticised. For instance, Josef Benedict, Amnesty International's Deputy Director for South East Asia and the Pacific, stated:

Everyone has a right to peaceful protest, but what the red-shirts are threatening is violence. They have a right to freedom of expression but they cannot use threat and violence to deny journalists that same right (Amnesty International, 2016a).

Thus it appears that society is as divided as the media. As in the case of the investigations in Malaysia, it remains to be seen whether the public criticism and protests will provide new impetus and refresh the momentum.

<sup>34</sup> In the 2013 Global Corruption Barometer 79 per cent of the Malaysian participants were willing to engage activities to fight corruption (Transparency International, 2013: 39).

<sup>35</sup> Bersih means 'clean' in Malay and stands for the Coalition for Clean and Fair Elections. Bersih started in 2005 as an opposition-backed electoral reform group consisting of numerous civil society bodies. In 2010, it was relaunched as a civil society movement unaffiliated to any political party. They have organised several demonstrations over the last years 'drawing tens of thousands to the streets of Kuala Lumpur each time'. The official website is <http://www.bersih.org>, accessed 14 February 2017

<sup>36</sup> Initially a police report had been lodged against the rally (*Malay Mail Online*, 2016c) and the police requested the rally be cancelled (*Malay Mail Online*, 2016a). In addition, the police raided the offices of Bersih a day before the rally, arresting several officials as well as seizing computers, mobile phones and documents (Amnesty International, 2016c).

<sup>37</sup> Jamal Yunos resigned from his position as Sungai Besar's UMNO chief and BN's chairman for the parliamentary constituency on 8 February 2017 following an initial arrest in connection with a theft from which he was released (*Channel NewsAsia* 2017).

Zaid Ibrahim<sup>38</sup> aptly summarised the fact that this scandal was not gaining significant traction in Malaysia, saying

I am taking this opportunity to urge Bersih to go ahead and do a big rally but not on 1MDB. The issue cannot and will not get enough traction in Malaysia even if the rest of the world thinks otherwise.

We have a high level [of] tolerance for corruption [...]

Corruption is no longer the shocking experience that one would have expected it to be in modern Malaysia. Unfortunately, today we are guided by a different moral compass (Zaid, 2016).

Still, the 1MDB scandal not only affects Malaysia, but has been attracting attention internationally, not only by the media outlets which have been reporting it. It has also caught the eye of international authorities which have started their own investigations into the financial dealings of 1MDB.

### **The Internationalisation of the 1MDB Scandal**

While Najib has managed to control most of the domestic fallout, the international investigations have been beyond his control (Parameswaran, 2016). Since the breaking of the scandal international investigations have commenced in Hong Kong,<sup>39</sup> the United Arab Emirates,<sup>40</sup> Luxembourg,<sup>41</sup>

<sup>38</sup> Zaid Ibrahim, a Malaysian lawyer, was a Minister in charge of legal affairs under Prime Minister Abdullah Ahmad Badawi. He resigned from the Cabinet in 2008. Afterwards he joined the opposition, first PKR, then formed his own party Kita and most recently expressed interest in joining the opposition party DAP (*Malaysia Today*, 2017). His website is available at <http://www.zaid.my>, accessed 14 February 2017.

<sup>39</sup> The Hong Kong police probed several bank deposits based on a report made by Khairuddin Abu Hassan who claimed he 'flew to Hong Kong to report the allegations because he had lost faith in investigations by authorities in Malaysia' (Harris and Peel, 2015).

<sup>40</sup> In August 2016, authorities in Abu Dhabi arrested Khadem Al Qubaisi, the former managing director of IPIC, in relation to alleged fraud linked to the 1MDB scandal (Hope, 2016). Mr Qubaisi is also under criminal investigation in Switzerland, and the US Department of Justice alleged he was involved in the misappropriation of 1MDB funds (Kerr and Peel, 2016).

<sup>41</sup> In March 2016, prosecutors in Luxembourg found 'concrete clues of embezzlement' (Bodoni and Adam, 2016). In August 2016 the headquarters of the private bank Edmond de Rothschild (BPERE) was raided, prompted by the bank's involvement in 1MDB, particularly regarding transactions for Khadem Al Qubaisi, who was detained in Abu Dhabi in the same month (*Sarawak Report*, 2016b).

and the Seychelles.<sup>42</sup>

In neighbouring Singapore, the investigation into 1MDB has been called ‘one of the largest money laundering cases ever.’<sup>43</sup> A joint statement by the Attorney-General’s Chambers (AGC), the Commercial Affairs Department (CAD) and the Monetary Authority of Singapore (MAS) confirmed investigations into ‘possible money laundering, securities fraud, cheating, and other offences committed in Singapore’ (Attorney-General’s Chambers et al., 2016).

In the investigation of financial institutions by MAS, the shutdown of a merchant bank stands out (Ramesh, 2016). This is the first time since 1984 that MAS has withdrawn approval for a merchant bank (Monetary Authority of Singapore (MAS), 2016). The bank in question, BSI Bank, is the Singapore branch of Swiss bank BSI, which was also investigated by the Swiss Financial Market Supervisory Authority (FINMA). Following its investigation, FINMA ordered ‘the disgorgement of profits amounting to CHF 95 million’ and ‘also launched enforcement proceedings against two of the bank’s former top managers’ (Financial Market Supervisory Authority (FINMA), 2016). The bank was effectively shut down after FINMA ordered it to be dissolved once it was taken over by EFG International (Hughes and Weiland, 2016).

In Singapore, the former BSI banker responsible for managing the relationship with 1MDB, Yak Yew Chee, pleaded guilty to two charges of forgery and two charges of failing to report suspicious transactions related to dealings with the fund (Watts and Venkat, 2016). Originally seven charges<sup>44</sup> had been filed against him, ‘most relating to accounts held by Jho Low, a Malaysian financier with close ties to 1MDB’ (Hughes and Weiland, 2016). Yak had left the bank in February 2016 and expressed concern in an email to regional CEO Hanspeter Brunner that ‘Senior management,

<sup>42</sup> In April 2016, the Seychelles Financial Intelligence Unit (FIU) confirmed that while it had been assisting in other international investigations, ‘no funds or assets linked to the 1MDB investigation have been found’ (*Seychelles Nation*, 2016). Yet also in April 2016, Petro Saudi International, which is registered in the Seychelles, ‘has been quietly shut down’ (Butler, 2016). Petro Saudi International and its dealings with 1MDB had been under scrutiny before, see for example Zikri Kamalrulzaman (2016a). The investigation by Singapore includes fund flows connected with Good Star Limited (Seychelles) and Aabar Investments PJS Limited (Seychelles) (*FinNews*, 2016).

<sup>43</sup> This comment was made by Singapore’s public prosecutor in an oral statement. In the written statement before the High Court, it was called ‘the most complex and largest money laundering case ever to have taken place in Singapore’. Statements as cited in Watts (2016).

<sup>44</sup> For details of the charges, see *The Edge Malaysia* (2016).

namely yourself, is trying to make me a scapegoat of sorts for things that senior management knew and should assume full accountability for, not that there was anything that was done illegally' (Tan et al., 2016). In November 2016, Yak was sentenced to 18 weeks' imprisonment, a fine of S\$24,000, and agreed to surrender S\$7.5 million in salary and bonuses (Watts and Venkat, 2016). Two more former BSI employees, wealth planner Yeo Jiawei and Yak's former subordinate Yvonne Seah, are still fighting their charges (Ibid.).

In the wake of the Singaporean investigation, MAS also ordered Swiss wealth manager Falcon Private Bank to cease operations (CNBC, 2016). CAD arrested Falcon's branch manager Jens Sturzenegger in October 2016 (*The Edge Malaysia*, 2016), while the Swiss Attorney-General opened a criminal probe into the dealings of Falcon with 1MDB (Letzing, 2016).

Singapore's MAS also imposed fines on other financial institutions with a S\$1 million penalty on DBS and S\$1.3 million on UBS (CNBC, 2016).

The investigations in the United States of America probably gained the most attention, with the US Attorney-General calling it 'the largest kleptocracy case' in US history (Ramesh, 2016), and the FBI's deputy director, Andrew McCabe, stating that 'the Malaysian people were defrauded on an enormous scale' (Ibid.).

In July 2016, the Department of Justice (DoJ) filed a civil lawsuit seizing US\$1 billion in assets, including paintings, real estate and, ironically, proceeds of the 2013 movie *The Wolf of Wall Street* which was produced by Red Granite Pictures whose founder is Riza Aziz, Najib's stepson (Rozanna and Sipalan, 2016). The 1MDB case is the biggest seizure of assets so far for the DoJ's Kleptocracy Asset Recovery Initiative and involves US\$3.5 billion in misappropriated funds, 'dwar[ing]' previous cases (Lynch, 2016).

The lawsuit named several 'relevant' individuals including Riza Aziz (Najib's stepson), Malaysian financier Low Taek Jho (Jho Low) and Abu Dhabi government officials, in particular the above mentioned Khadem al-Qubaisi and Mohamed Ahmed Badawy Al-Husseiny, and listed numerous offences in an international conspiracy to launder money misappropriated from 1MDB' (*Reuters*, 2016). The lawsuit also named 'Malaysian Official 1', a high-ranking Malaysian official in the government who received some of the misappropriated money (Ibid.). It was later confirmed that Najib is indeed 'Malaysian Official 1' (Shaffer, 2016). The allegations made by the DoJ contradict the claim that the RM2.6 billion in Najib's personal bank account was a donation from a Saudi benefactor (Ramesh, 2016) – a statement made by Najib and confirmed by Attorney General Apandi (*Channel NewsAsia*, 2016c), who 'expressed "strong concerns at the insinuations and allegations" of wrongdoing against Najib in the lawsuits' (Rozanna and Sipalan, 2016).



Despite those numerous international investigations, which seem to confirm the initial allegations made against 1MDB and its financial transactions, it is still unclear whether the international investigations will indeed have an impact on Malaysia's political landscape. So far the political elite has been rebutting allegations made during the course of the international investigations,<sup>45</sup> sometimes quite emphatically, with the probe in Hong Kong being called 'baseless and politically motivated lies' (Harris and Peel, 2015). Furthermore, Malaysian authorities claim that they 'fully cooperate with any lawful investigation of Malaysian companies or citizens in accordance with international protocols' (*Bernama*, 2016a; compare also Koswanage, 2016). This, however, has been disputed. In the case of Singapore's investigations, 'Malaysian authorities ... have declined to cooperate with Singapore's probe of 1MDB's finances, according to people familiar with the matter' (Watts and Venkat, 2016). The investigations in Switzerland which have been termed 'the diplomatic equivalent of a nuclear bomb' (*Sarawak Report*, 2016f) have been equally hampered. The Swiss Attorney General's Office (OAG) was 'not directly accus[ing] Malaysian authorities for dragging their feet, but [making it] clear that its initial request had not been answered' (*The Daily Mail* (Australia), 2016). Yet the OAG believed that the 'two requests for mutual legal assistance made to the authorities in Malaysia will be executed', as in Singapore where 'full satisfaction' was achieved in their cooperation (*Ibid.*). These obstacles are no surprise, given that the Swiss report 'has substantiated each of the major allegations published by *Sarawak Report* and other investigators into 1MDB over the past year' (*Sarawak Report*, 2016f) and has the potential to be extremely damaging and embarrassing to Malaysia and its own national investigations. It has been reported that a 'source familiar with the discussions told Reuters' that 'privately the Malaysians have demanded that the Swiss drop their investigation' (*Malay Mail Online/ Reuters*, 2016).

It thus remains to be seen whether Transparency International (2016) was right in its assessment that 'this ... case of grand corruption ... will go unpunished' and that 'international investigations may now be the only way able to shine a desperately needed light on what has really gone on in the case'.

## Conclusion

The 1MDB scandal is characterised by a glacier melt of national and

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<sup>45</sup> See, for instance, Vasagar (2016).

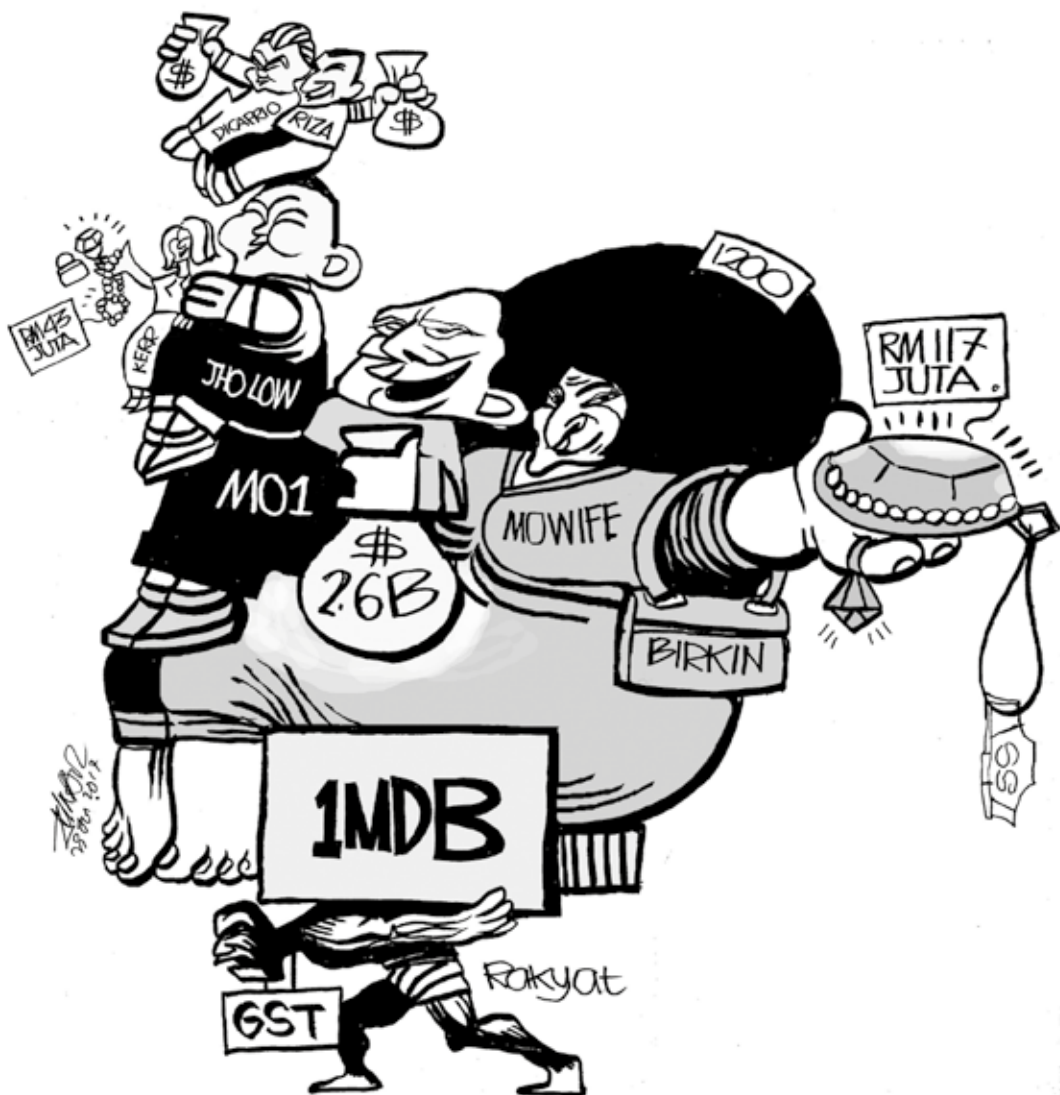
international trust in the Malaysian political elite to conduct an impartial investigation.

As such, the 1MDB scandal has been aptly characterised as an iceberg in the cartoon by Zunar. Like an iceberg, which has 80–90 per cent of its landmass under water, it is unclear how far-reaching the scandal is or will be. It appears that the national investigations have come to a standstill. The national institutions tasked with investigating those allegations have completed their investigations and, while some investigations have shown that 1MDB management indeed had several ‘weaknesses’,<sup>46</sup> it is clear that further investigations will not be conducted in Malaysia. The next general election must be held before or on 24 August 2018, and it has been speculated that an earlier election might be held in 2017. This rumour was fuelled by a statement by Najib in December 2016 when he addressed UMNO members at their annual general assembly, vowing to ‘fight until death’ in a ‘battle in the polls that will be held soon’ (*The Straits Times*, 2016).

The international investigations are well underway and may not have reached their peak. In the course of those investigations, it remains to be seen whether more evidence can be unearthed and whether allegations can be proven beyond a doubt – and if this will also finally be accepted in Malaysia. If this would be the case, the scandal, like icebergs, does have the potential to result in climate change, albeit a political one.



<sup>46</sup> See, for instance, the above-mentioned PAC report as reported in *Malay Mail Online* (2016b).



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# Federalism in *Serambi Mekah*: Management of Islamic Education in Kelantan

*Azmil Tayeb*

Federalism, as a governing concept, makes pragmatic sense in a country such as Malaysia where there have been in existence historically autonomous kingdoms and colonies with their own local bases of power and unique traditions. It is a system of governance that allows for particular expressions of local autonomy while still keeping the nation whole and cohesive, essentially balancing the dominating tendency of the federal government and the autonomous aspirations of its components on the periphery. Nevertheless, the type of federalism practised in Malaysia is not evenly balanced and is heavily skewed towards the domineering federal government in Putrajaya and Kuala Lumpur (Loh, 2010; Mohammad Agus, 2006; Shafruddin, 1987).

Francis Loh terms this imbalanced arrangement 'centralised federalism', a central–state relationship that is 'coercive, rather than co-operative' (Loh, 2010: 132). Loh offers three explanations why this is so: constitutional design that clearly favours the central over the state governments; the one-party political dominance that leads to the concentration of power in the executive branch; and the implementation of the New Economic Policy (NEP) in 1971 that spawned numerous statutory bodies and government-linked companies (GLCs), which resulted in the expansion of the public sector and tight control by the central authorities (Ibid., 132–4). At the crux of this highly centralised form of federalism lies the persistent drive to maintain the political status quo, that is the unbroken hegemony of National Coalition (Barisan Nasional, BN) rule since independence, in particular of the Malay political party, United Malays National Organisation (UMNO).

The management of Islamic education in Malaysia is used as the focal point to analyse the currently overbearing presence of the federal government. This chapter is organised as follows: first, background information on Islamic education in Malaysia, especially in regard to central–state relations. Then an explanation of why the federal government, via the Ministry of Education (MOE) and JAKIM, has managed to exert overwhelming influence over the character and management of Islamic education despite the states’ constitutionally empowered autonomy to administer Islamic education in their own respective areas. Two factors that contribute to this lopsided dynamic are offered. Lastly, Kelantan is used as the case study to serve as an empirical illustration of the federal government’s dominance in the field of Islamic education in a state that is long renowned for its strong local traditions of Islamic learning.

### **Background of Islamic Education in Malaysia**

Most Islamic schools in Malaysia are part of the national education system. Only a few dozen traditional *pondok* choose to remain independent of official control by offering exclusively religious education.<sup>1</sup> In recent years there has also been an explosive growth of private Islamic schools that use an integrated Islamic curriculum, which essentially fuses religious tenets with general subjects such as science and mathematics, as opposed to the bifurcated curriculum found in other Islamic schools. These integrated Islamic schools typically cater to middle- and upper-middle class Malay families, due to their focus on professional careers and expensive tuition fees (Azmil, 2016: 240–96). Three authorities manage and supervise the various types of Islamic schools in Malaysia: the Ministry of Education (Kementerian Pendidikan), the State Religious Council (Majlis Agama Islam Negeri, MAIN), and the Department of Islamic Development (Jabatan Kemajuan Islam, JAKIM). There is an occasional overlap of jurisdiction and responsibilities between these three authorities, even causing intra-institutional frictions at times, but the overall relationship is smooth, with a heavy tilt towards the Ministry of Education and JAKIM.

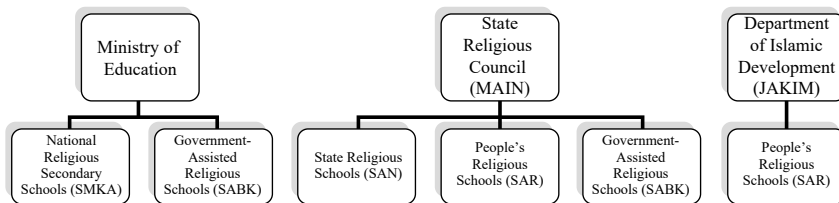
The constitution, which gives each state the full authority to manage Islamic affairs within its borders, produces a two-tiered administration for

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<sup>1</sup> The pedagogical method in traditional *pondok* education places heavy emphasis on rote memorisation and recitation of seminal texts, oral transmission of knowledge with a clear intellectual genealogy (teacher-focus), no regular exams, and no fixed curriculum or school terms.

Islamic education in Malaysia: national and state (Fig. 1). At the national level, the Islamic Education Division (Bahagian Pendidikan Islam, BPI) of the Ministry of Education is in charge of all national religious secondary schools (Sekolah Menengah Kebangsaan Agama, SMKA), the curriculum of the Islamic studies subject in all schools within the national educational system, and the certification of Islamic studies teachers. BPI also co-manages the Government-Assisted Religious Schools (Sekolah Agama Bantuan Kerajaan, SABK) with MAIN. The ministry and MAIN divide between them the management of the People's Religious Schools (Sekolah Agama Rakyat, SAR) and State Religious Schools (Sekolah Agama Negeri, SAN). The ministry supervises the implementation of the national curriculum in these schools, while the state Islamic council sets the curriculum for all Islamic subjects. Schools such as *pondok* which are not part of the national educational system fall under the aegis of MAIN. SAR also come under the purview of the Advisory Agency for the Streamlining of Islamic Education and Islamic Studies (Lembaga Penasihat Penyelarasan Pelajaran dan Pendidikan Agama Islam, LEPAI), a sub-division within JAKIM. Currently there are 1,804 Islamic schools in the Malaysian national education system (roughly one school for every 9,616 Muslims) (*Data Kafa, Sekolah Agama dan Masjid*, 2013: 30). Lastly, supervision for the integrated Islamic schools falls under the jurisdiction of the Private Education Division in the Ministry of Education while MAIN co-vets their curriculum.

**Fig. 1. Management of Islamic Schools in Malaysia**



## Historical and political background of management of Islamic education in Malaysia

The influence of the federal government is unmistakably apparent in the field of Islamic education, which technically falls under the autonomous purview of the state governments and the State Islamic Councils (Majlis Agama Islam Negeri, MAIN). Article 3 and the Ninth Schedule of the constitution bestow the states the authority to administer Islamic affairs and

customs within their own respective boundaries, of which Islamic education is a part. Before the late 1970s the federal government largely left the states alone with respect to Islamic education as it saw the matter as the states' prerogative. Moreover, the federal government at the time was irreligious in orientation and did not find much political utility in supporting Islamic education, as evidenced by their inaction on the 1956 report submitted by the Committee to Consider Financial Aid to Non-Government Islamic Religious Schools on the poor conditions of Islamic schools.<sup>2</sup>

The wave of Islamic resurgence that hit Malaysia in the late 1970s soon forced the federal government to pay closer attention to Islamic education as Islamic political activists, including the opposition Islamist party, Pan-Malaysian Islamic Party (Parti Islam Se-Malaysia, PAS), began to seriously question the federal government's legitimacy from an Islamic perspective (Nagata, 1984; Zainah, 1987; Muzaffar, 1987; Jomo and Ahmad Shabery, 1988; Kamarulnizam, 2003). In 1977 the federal government established the Advisory Agency for the Streamlining of Islamic Education and Islamic Studies (Lembaga Penasihat Penyelarasan Pelajaran dan Pendidikan Agama Islam, LEPAI), a sub-division of the Department of Islamic Development (Jabatan Kemajuan Islam, JAKIM), which aims to harmonise the varying standards and qualities of Islamic education and schools between all the states in Malaysia. In the same year, the Ministry of Education took over eleven People's Religious Schools (Sekolah Agama Rakyat, SAR) and converted them into National Islamic High Schools (Sekolah Menengah Kebangsaan Agama, SMKA) (Quick Facts 2013: Malaysian Educational Statistics). By the early 1980s, the federal government had also started to actively provide funding for the largely autonomous but poorly resourced SAR, which previously it had mainly ignored.<sup>3</sup> Thus, the late 1970s marked

<sup>2</sup> According to the report, by 1956 there were 368 non-government Islamic religious schools with 35,093 students and 1,174 teachers spread across eleven states in peninsular Malaysia. Most of these schools had poor infrastructure, unqualified teachers, and haphazardly designed curricula that mainly focused on religious subjects (Rosnani, 2004: 36–9). For example, the Pahang religious authority asked for a federal government takeover of People's Islamic Schools (Sekolah Agama Rakyat, SAR) under its management. It lamented that some SAR teachers did not receive salaries for three months and that most SAR teachers were not qualified which, in turn, resulted in poor instruction and a high rate of exam failure among the SAR students (*Kertas Meshuarat Jawatan Kuasa Ugama dan Kebajikan Masyarakat, Bil. 26/65*).

<sup>3</sup> In 1983, 680 SAR with 105,292 students received RM3,868,035 from the federal government. In 1984 the allocation increased to RM3,924,165 for 697 SAR with

the start of the deepening reach of the federal government into the arena of Islamic education, hitherto an autonomous jurisdiction of the states, as it strove to shape the religious discourse in Malaysia and burnish its Islamic legitimacy to rule.

### **Centralisation of Islamic Education in Malaysia**

Two factors contributed to the federal government's increasing control over Islamic education. First was the ideological make-up of the institutions overseeing Islamic education. Second was the federal government's control of resources that influenced the interaction between the centre and its periphery. Each of these factors is considered in turn.

The ideological make-up of institutions overseeing Islamic education in Malaysia is seamlessly coherent from the ministerial level in Putrajaya down to the local level. This ideological coherency minimises intra- and inter-institutional conflicts, which then lowers the transaction cost of governance. In other words, there is less resistance at the local level against the dominance of the federal government. As mentioned previously, the institutions that oversee Islamic education, particularly the Ministry of Education, underwent a major change in the late 1970s in response to the rising Islamic piety in society and the need for the federal government to co-opt the Islamic discourse to suit its own political ends. The discursive engagement between the UMNO-led federal government and its Islamist critics led to a pervasive atmosphere of deeply conservative Islamic values. Theologically speaking, there were no discernible differences between the federal government and its Islamic critics, in particular PAS, as they tried to 'out-Islamise' each other (Maznah, 2013: 106–9; Liow, 2009: 43–72; Liow, 2004; Kamarulnizam, 2003: 180–211; Farish, 2003: 205). These ideological values can be found across the vertical (federal–states) and horizontal (federal and states) axes of governance. In 1985 the federal government introduced the Policy on the Inculcation of Islamic Values in Administration (*Dasar Penerapan Nilai-Nilai Islam dalam Pentadbiran*) that aimed to make Malay civil servants better Muslims in the belief that a devout Muslim is also a productive and honest worker (*Garis Panduan bagi Mengadakan Ceramah Penerapan Nilai-Nilai Islam Dalam Perkhidmatan Awam: Pekeliling Am Bil. 2 Tahun 2001*, iii). Thus, the uniformity of institutional ideology seen within the agencies in charge of Islamic education such as

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105,950 students (Taklimat, Bahagian Pendidikan Islam kepada Y.B. Datuk Abdullah bin Hj. Ahmad Badawi, Menteri Pelajaran Malaysia, 23 Ogos 1984).

the Ministry of Education, its local offices, JAKIM, and MAIN, allow the formulation of more coherent Islamic educational policies and their effective implementation and enforcement at the local level.

The capacity to disburse resources to financially struggling Islamic schools is another vital reason why the federal government has been able to wield so much influence over Islamic education in Malaysia. The 2015 budgets for the Malaysian Ministry of Education and JAKIM were RM40,848,327,200 (USD9.85 billion) and RM783,256,900 (USD188.8 million), respectively (*Anggaran Perbelanjaan Persekutuan 2015*, 118, 636). Having financial prowess allows the federal government to absorb more resource-poor Islamic schools such as SAR under the management of the Ministry of Education and convert these schools into SABK. Even in Kelantan, known for its fierce pride in local traditions of Islamic learning, the Ministry of Education had managed to sign a memorandum of understanding (MoU) with the Kelantan Islamic Foundation (Yayasan Islam Kelantan, YIK) in 2008 to gain partial control over twenty hitherto autonomous yet financially struggling SAR (*Utusan Malaysia*, 13 August 2008). Dearth of resources, in short, creates a desperate sense of dependency among many Islamic schools and MAIN on the generosity and goodwill of the federal government which, of course, come with strings attached: a more intrusive role of the Ministry of Education and JAKIM in the Islamic affairs of the states.

The federal government's carrot approach is also matched by the proverbial big stick in cases where financial inducements are not enough to mollify the largely pro-opposition SAR. In the early 2000s the federal government charged some SAR with being hotbeds of Islamic radicalism and subversive activities, and thus suspended their funding. Prime Minister Mahathir Mohamad proclaimed, 'SAR teachers have deviated from the real purpose of education and taught students to hate the government and other Muslims' (*Malaysiakini*, 14 February 2003). In March 2003 the Education Minister Musa Mohamad announced in Parliament that government funding for SAR nationwide, which at the time numbered 268 schools with 74,453 students and 4,429 teachers, would be diverted to national Islamic schools due to their dismal academic performance and anti-government activities. This resulted in the transfer of almost 15,000 SAR students and 2,000 teachers to other schools (*Utusan Malaysia*, 24 November 2003). Thus, by exercising its financial might through a carrot-and-stick approach, the federal government has been able to tighten its rein over the previously autonomous but poor Islamic schools and run roughshod over the states' constitutionally bestowed rights to administer Islamic affairs in their own territories.



## Centralisation of Islamic Education in Kelantan

Islamic schools in Kelantan generally fall under two overlapping jurisdictions: the Ministry of Education (MOE) via the State Education Department (Jabatan Pelajaran Negeri, JPN) and YIK, which is an arm of the state government (but not part of the *Majlis Agama*). National religious high schools (*Sekolah Menengah Kebangsaan Agama*, SMKA) are under total control of the MOE, and while the MOE administers SABK, their curriculum comes from YIK; SAR and state religious schools (*Sekolah Agama Negeri*, SAN), on the other hand, operate under the authority of the state government via YIK. Finally, the previously mentioned LEPAI tries to coordinate and streamline SAR's and SAN's curriculum in Kelantan with other states in Malaysia.

**Fig. 2. Total number of Islamic schools, students and teachers in Kelantan, 2013<sup>4</sup>**

	Number of schools	Number of students	Number of teachers
Pondok	47	320	26
Sekolah Agama Rakyat	42	11,559	893
Sekolah Agama Bantuan Kerajaan	22	3,938	490
Sekolah Menengah Kebangsaan Agama	6	4,920	423
Total	117	20,737	1,832

The political dynamics in Kelantan since Malaya's independence in 1957 is a telling depiction of the federal government's increasing influence in the state's internal affairs, particularly seen through the lens of Islamic education. In the period 1959–78 when the state government in Kelantan was led by the opposition Islamist party PAS the UMNO-led federal government tried to use a proxy institution, the Islamic Council of Kelantan (*Majlis Agama Islam Kelantan*, MAIK), henceforth called *Majlis Agama*, to advance its political interests in Kelantan, especially in the state's Islamic affairs. This was done not so much out of respect for Kelantan's constitutional rights and the federal system in general, but mainly due to the importance of Islam in all aspects of life in Kelantan. *Majlis Agama*, in the words of Clive Kessler, was 'an explicit instrument of the old elite's bid,

<sup>4</sup> *Data Kafa, Sekolah Agama dan Masjid* (2013: 14-30); the number for SAR was obtained through a personal interview with Noor Aisyah Ibrahim, Assistant Director of LEPAI, JAKIM, 9 September 2014.

back in Kuala Lumpur and in UMNO garb, to reassert its control over the state' (Kessler, 1978: 293–7). The UMNO-led federal government, however, did try to financially starve the Islamic schools under Majlis Agama before 1978 with the hope that the ulama would become desperate enough to defect from PAS; this did not materialise. In 1976 financial woes finally forced Majlis Agama to cede control of Islamic schools under its purview to YIK, which was established by the PAS-controlled state government in 1974 (under the old name of Department of Islamic Schools or *Jabatan Sekolah-Sekolah Agama, JASA*).<sup>5</sup> Now the battleground for control of Islamic schools in the state had effectively shifted from Majlis Agama to YIK, which was packed with PAS partisans.

When UMNO managed to wrest control of the Kelantan state government in 1978, however, it started to funnel subsidies and allowances to Islamic schools and their teachers through YIK in a blatant attempt to gain their support. The financial remunerations were, of course, dependent on the level of support the UMNO state government received from each *pondok*; it goes without saying that the more fervent a *pondok* was in showing support for UMNO, the more money it received (Mohamad, 1985: 330–3). The abysmal result of this patronage strategy was clearly evident in the 1990 election when PAS re-took the reins of state government. This election also witnessed the ascendancy of the ulama leadership within the party, led by the newly elected Chief Minister, Tuan Guru Nik Aziz Nik Mat.<sup>6</sup> The failure of UMNO to employ YIK as a source of patronage to win the hearts and minds of PAS partisans among the rural religious functionaries could be attributed to the deep ideological commitment of these religious functionaries to PAS's political ideals and its promise of establishing a true Islamic state in Kelantan.

The socio-political landscape of Malaysia changed quite drastically after the late 1970s which, in turn, altered the way the federal government dealt

<sup>5</sup> The institution, originally named Foundation of Islamic Education of Kelantan (Yayasan Pelajaran Islam Negeri Kelantan, YPINK), was renamed Yayasan Islam Kelantan in 1983. The history of Yayasan Islam Kelantan can be found at: <http://www.yik.edu.my/v2/latarbelakang/sejarah-penubuhan-yik> (accessed on 11 July 2014).

<sup>6</sup> In 1991, as a retaliation against the victorious PAS in Kelantan's state election, the federal government redirected development allocations under the Sixth Malaysia Plan (1991–95) previously earmarked for the Kelantan state government to a newly created state-based federal agency, State Development Office. The federal government also slashed the development allocation for Kelantan during the mid-term review of the Sixth Malaysia Plan (Loh, 2010: 135).

with the PAS-controlled state government, especially in matters of Islamic education. No longer as a political strategy could the UMNO-led federal government let Islamic education in Kelantan wither through financial starvation like it had done in the past, lest UMNO would be seen as anti-Islam. Plus, many teachers appointed by the Ministry of Education were teaching in YIK's schools, and it would have seemed unwise to sacrifice these teachers at the altar of political retribution.<sup>7</sup> The PAS-led state government, however, did take a precautionary measure to guard against potential federal government backlash by allocating a sizeable RM16.2 million (USD4 million) to YIK in 1990, which was significantly increased to RM32.5 million (USD8 million) by 1999 and RM83 million (USD20.3 million) by 2013 (Riduan, 2013: 121; *Sinar Harian*, 6 March 2013). However, despite PAS's control of the Kelantan state government, the federal government kept channelling money and various resources to Islamic schools in the state, mainly through the Ministry of Education's State Education Department (Jabatan Pelajaran Negeri) and even YIK. According to the 2015 national statistics, Kelantan is also one of the poorest states in Malaysia; its gross domestic product (GDP) per capita of RM12,075, compared to the national average of RM37,104, necessitates a heavy reliance on resource allocation from the federal government (Malaysia @ a Glance: Kelantan, Department of Statistics Malaysia; *Malaysiakini*, 18 October 2016).

In November 2011 the federal government announced RM35.6 million (USD8.6 million) in financial assistance for religious schools (including 22 SAR) in Kelantan (*Utusan Malaysia*, 24 November 2011). The Ministry of Education (MOE) was well aware of the importance of funding SAR despite its tendency to sympathise with PAS. In an internal circular, the MOE stated two reasons for the continuation of funding: first, SAR command widespread bipartisan appeal in the Parliament and MOE would be subjected to intense questioning by Members of Parliament if SAR's funding was suspended; and second, it is more politically beneficial for the federal government to cultivate and strengthen its relationship with SAR, rather than severing the ties (MOE Internal Memo 2011). In short, it was clear that the federal government saw Islam as an integral component of its legitimacy, which thus leavened its approach in dealing with the politically recalcitrant Islamic schools in Kelantan, namely SAR. At the same time, despite its obvious disdain for the federal government, YIK still acquiesces

<sup>7</sup> When PAS took over the state government in 1990 there were 179 Ministry of Education teachers in 90 YIK schools across the state (Lotfi, 1991: 130).

to MOE's offers of financial assistance, as evidenced by its willingness to cede partial control of 20 SAR, which was quite intriguing in light of its previously mentioned healthy budget.<sup>8</sup>

When it comes to institutional ideological coherency, the MOE and Kelantan state education department share the objective of improving and developing Islamic education in Kelantan by drawing on the resources of the federal government. The institutional behaviour of the Kelantan State Education Department is the same as the federalised institutional identity – there is a low degree of institutional rivalry in the relationship between MOE and the Kelantan State Education Department (JPKN). As one of the officials at the JPKN sums it up, 'We are not at all political here. All we care about is the well-being of Islamic education in Kelantan, and the best way to help is through the federal government, which has all the resources at its disposal' (Interview with Amran Mamat, 30 July 2013).

Meanwhile, in YIK, where one expects a more prominent display of anti-federal defiance, the oppositional tendency seems to be more subdued amidst a decidedly robust Kelantanese identity. There has been occasional bickering between YIK and the federal government, but the relationship is generally cordial and cooperative.<sup>9</sup> One YIK official related to me that the interaction between YIK and MOE is mostly of equal partners, but MOE does sometimes act unilaterally, for example posting its own teachers to YIK's schools without consultation even though such appointments should be made jointly (Interview Che Zainah Abdul Lah, 30 July 2013). While there is a strong Kelantanese identity in both local and federal institutions and a widely shared belief in the utmost importance of protecting it, the boundary and relationship between the two levels are more permeable and negotiable, with the power balance tilting in favour of the federal government by virtue of its superior resources, as demonstrated by the assistance given by MOE to many Islamic schools in the state and YIK.

Oppositional sentiment is perceptibly more pronounced at the school

<sup>8</sup> YIK's burgeoning budget is also puzzling since it fails to pay overdue payroll deductions from its teachers to relevant agencies. This financial mismanagement prompted an UMNO state legislator to call for the ministry's takeover of the other Islamic schools managed by YIK. 'Kelantan akui tidak bayar caruman, potongan gaji guru YIK RM14.6 juta', *Malaysian Insider*, 2 November 2015 (accessed on 2 November 2015).

<sup>9</sup> One relatively recent spat was regarding federal subsidies for students in three Islamic schools in Kelantan. 'YIK nafi tidak beri kerjasama,' *Utusan Malaysia*, 2 February 2012.

level, however, as evidenced by the history of the SAR (renamed Sekolah Agama Bantuan Kerajaan, SABK, once they were absorbed under the partial authority of the MOE) jealously guarding their autonomy and being suspicious of the federal government. Even an official of the MOE's State Education Department admitted that it is extremely difficult to dispel SABK's distrust of the federal government despite the department's many efforts to provide financial, teachers' training, and other forms of assistance (Interview with Amran Mamat, 30 July 2013). One SABK principal, whose school is considered troublesome by the State Education Department due to its connection with PAS, related to me that while his school has been treated fairly by the department and was given the freedom to use its own pedagogical system, he was still wary of the real agenda of the federal government. According to him, when the federal government cracked down on SAR in the early 2000s, the MOE announced that SAR teachers would be unconditionally accepted as ministry employees, but they were told later that their absorption into the ministry was completely dependent on their support for the ruling coalition in the 2004 election.<sup>10</sup> Despite the suspiciousness and strong anti-federal sentiment in some Islamic schools, especially SAR, the schools' dire financial condition necessitates their acquiescence to the dictates of the federal government.

Near-total conformity to the conservative interpretation promoted by the state Islamic orthodoxy also contributed a great deal to the low degree of institutional complexity in the interactions between MOE, the State Education Department, and the schools. Theologically speaking, there is no fundamental difference between the version promoted by the ministry and the one espoused by the schools, or even those who are deemed to be pro-PAS. The differences come to a head only when political disagreements are seen and interpreted in a black-and-white religious context. For instance, the principal of the aforementioned school is a staunch PAS supporter, but he does not believe in 'outright political indoctrination' in the classrooms. He said that, 'Our [PAS version of the] truth (*kebenaran*) is of course more superior and the way we incorporate and demonstrate that truth in our classroom teaching is by making it self-evident to the students without resorting to political

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<sup>10</sup> The principal personally refused to be absorbed by MOE when his school came under the jurisdiction of MOE in 2008 even though the remunerative package was much more attractive. He, along with eleven other SAR principals (out of twenty), chose to remain with YIK, despite the lower pay and narrow career option. He calls this his own *jihad fisabilillah* (religious struggle). Interview with Tajudin Mahmood, Principal of SABK al-Fitrah, Tanah Merah, 31 July 2013.

indoctrination. It is much more effective this way because the students would feel genuinely in their hearts that we hold the ultimate truth (*kebenaran mutlak*)' (Interview with Tajudin Mahmood, 31 July 2013).

In the fierce competition to 'out-Islamise' each other in order to gain religious credibility to govern, both UMNO and PAS have propelled the Islamic public discourse into an increasingly conservative pitch. JAKIM has a close working relationship with state religious authorities, including Kelantan, which it meets regularly to streamline views on Islamic-related issues at the national and state levels (Persidangan Ketua Jabatan/Majlis Agama Islam Negeri Seluruh Malaysia (PKJ) Kali ke-97). In 2015 JAKIM provided RM63.17 million (USD15.42 million) in financial assistance to Majlis Agama in Kelantan despite the state government being controlled by the opposition party PAS (*Utusan Malaysia*, 12 May 2015). The federal government also provided YIK with RM85 million (USD19.9 million) for administrative expenses in 2015 (*Malaysian Insider*, 2 November 2015). JAKIM's sub-division LEPAI has also been trying to implement a standard curriculum for all SAR and SAN in Malaysia, which should come into effect soon.<sup>11</sup> In all, a high ideological congruity between the federal and state governments and the schools has led to a low degree of overall institutional complexity, which, in turn, has allowed the federal government to gradually increase its control over Islamic schools in Kelantan.

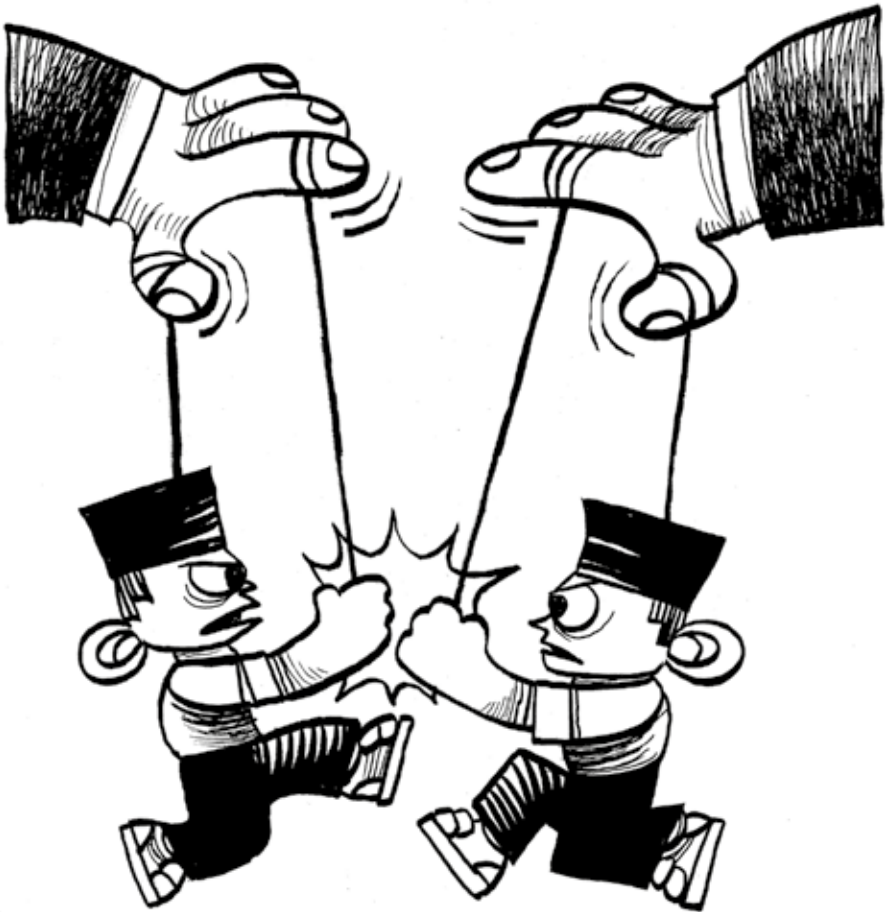
## Conclusion

The federal system as it is practised in Malaysia since independence has always tilted heavily toward the federal government. This power imbalance is palpably evident in the field of Islamic education, the focus of this chapter which argues that two factors contribute to this lopsided dynamic: institutional ideological coherency found across the vertical (central–states) and horizontal (central and states) axes of governance; and the sheer financial might of the federal government. The case of Islamic education in Kelantan serves to illustrate the near-hegemonic presence of the federal

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<sup>11</sup> Since Islamic affairs falls under state jurisdiction, the implementation of national curriculum for SAR and SAN by LEPAI has to be agreed upon unanimously by the sultans and traditional figureheads in all the states. Kelantan is the only state that has shown serious reservations in adopting this proposed national curriculum due to the claim that its curriculum is religiously superior. Nonetheless, LEPAI is confident that Kelantan will agree sooner or later. Interview with Azizan Muhammad, Chief Assistant Director, Islamic Education Branch of JAKIM, 21 March, 2014.

government, despite the state being long known for its autonomous streak and deep tradition of local Islamic learning. One way to temper the overwhelming influence of the federal government is to introduce ideological diversity within the institutions that oversee Islamic education and devolve more control over financial matters to the state level. Until these happen, the centralised federal system currently seen in the field of Islamic education in Malaysia will remain in practice indefinitely.



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# Malaysian Politics and the South China Sea Dilemma

*Alessandro Uras*

## **An Analysis of Malaysia's Claims in the South China Sea**

Malaysia claims eleven islands and features in the South China Sea, seven of which are in the southern part of the Spratly archipelago. In this specific area, the country also claims a 12-mile territorial boundary, an exclusive economic zone (EEZ) and a continental shelf.

The overlapping maritime claims have generated a particularly volatile situation and any escalation of the conflict in the South China Sea is likely to pose a threat to regional security. The Malaysian demands in the South China Sea coincide with those of the Philippines, Vietnam and Brunei, in addition to the ubiquitous China's nine-dash line.

The large number of claimants makes the maritime dispute one of the most complex and challenging regional conflicts in Asia. Malaysia occupies one island<sup>1</sup> and three rocks<sup>2</sup> in the Spratly archipelago where it has constructed small naval stations and basins, two low-tide elevations<sup>3</sup> and three totally submerged reefs that are on its continental shelf.

The only island controlled by Kuala Lumpur is Pulau Layang-Layang (Swallow Reef), which has been occupied by a small military contingent

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<sup>1</sup> Islands are defined as naturally formed areas of land surrounded by water which are above water at high water (United Nations, 1982, Part VIII, art. 121(1)).

<sup>2</sup> Rocks are islands which cannot sustain human habitation, or have no economic life of their own (Ibid. Part VIII, art. 121(3)).

<sup>3</sup> Low-tide elevations are naturally formed areas of land, surrounded by and above water at low tide, but submerged at high tide (Ibid. Part II, art. 13(1)).

since May 1983. The control of the island is disputed; it is also claimed by the People's Republic of China (PRC), Taiwan and Vietnam.

In the following years Malaysia established the naval station Lima on Pulau Layang-Layang and the station Uniform on Terumbu Ubi (Ardasier Reef) (Basiron, 2012: 74). With its fishing port and a 1.5-km airstrip, Pulau Layang-Layang (hereafter Swallow Reef) was the first artificially expanded island in the Spratly archipelago (Cronin and Dubel, 2013: 14).

The other features under Malaysian control are Terumbu Ubi (Ardasier Reef), Terumbu Laya (Dallas Reef), Terumbu Siput (Erica Reef), Terumbu Peninjao (Investigator Shoal) and Terumbu Mantanani (Mariveles Reef), which are all claimed by China, Taiwan and Vietnam. (Ardasier Reef is claimed also by the Philippines).

There are several other islands and rocks claimed by the federal government but they lie under another country's control: Terumbu Laksamana (Commodore Reef) is occupied by the Philippines, Amboyna Kecil (Amboyna Cay) and Terumbu Penahu (Barque Canada Reef) have been seized by the Vietnamese Navy and they also host military facilities. The last three submerged features are particularly important for the presence of oil and natural gas resources: James Shoal, a small underwater bank, and the Luconia Shoals, divided into North and South, which constitute one of the largest reef complexes in the South China Sea.

Regarding legal entitlement, control of the surrounding waters and exploitation of the resources under the seabed, the only features able to generate maritime zones are Swallow Reef, Amboyna Cay, Barque Canada Reef and Commodore Reef, and the rocks forming Erica Reef, Investigator Shoal and Mariveles Reef.

### ***Developing a national strategy: The nature of the Malaysian claims***

Malaysia's interest in the Spratlys emerged later than other countries', and it was bureaucratically materialised only in 1979 with the presentation of an official continental shelf claim and the subsequent publication of a map entitled 'Map Showing the Territorial Waters and Continental Shelf Boundaries',<sup>4</sup> which engendered the reaction of Malaysia's coastal

<sup>4</sup> Treaty between the Kingdom of Thailand and Malaysia relating to the Delimitation of the Territorial Seas of the two countries, Kuala Lumpur, 24 October 1979, <http://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/THA-MYS1979TS.PDF>

neighbours. The nature of the Malaysian claim in the South China Sea is unique, in its own terms.

Unlike the majority of the other claimants, such as the People's Republic of China, the Philippines and Vietnam, Kuala Lumpur's position is devoid of historical background and is not based on a presumed ancient control of the islands and the waters. Instead, Malaysia claims the control of the aforementioned islands because they stand within its presumed continental shelf and EEZ.

This specific body of regulations refers to Article 121(1) of the UNCLOS declaration, but is considered insufficient to consolidate the Malaysian position and its request for a larger continental shelf.

Malaysia upholds two legal principles for its claims: the continental shelf extension and the principle of discovery and occupation. Malaysia's continental shelf claim arises out of the Geneva Convention of 1958 pertaining to territorial waters and continental shelf boundaries,<sup>5</sup> which Malaysia signed in 1960.

Malaysia passed its own Continental Shelf Act in 1966 and 1969, defining it as 'the seabed and the subsoil of submarine areas adjacent to the coast of Malaysia' up to 200 metres deep or the limit of exploitability (Valencia et al., 1997: 37). Such strategic stance suffers from a lack of legal pith and it is not corroborated by the UNCLOS Declaration.

Even though Malaysia has repeatedly and publicly defended its claims, neither the Law of the Sea Convention nor the Country's own Continental Shelf Act of 1966 indicate that the continental shelf pertains to land or rocks that rise above the sea level (Ibid.: 38). Both documents address only submerged land and rocks, and Article 76 (1) of UNCLOS (United Nations, 1982, Part VI, art. 76 (1)) refers to 'the seabed and the subsoil of the submarine areas that extend ... [from a] natural prolongation of its land to the other edge of the continental margin' (Valencia et al., 1997).

Consequently, the principle based on the continental shelf expansion has been gradually abandoned due its weakness, and Malaysian officials started to focus only on the principle of discovery and occupation, which is now the pillar of their strategy. The core element of this posture is the 1979 map and its enforcement, through which Malaysia self-legitimises the occupation of three features between 1983 and 1986 (Cordner, 1994: 65).

<sup>5</sup> Convention on the Continental Shelf, Geneva, 29 April 1958, *United Nations Treaty Series*, vol. 499, p. 311, [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XXI-4&chapter=21&clang=\\_en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXI-4&chapter=21&clang=_en)

### ***Questioning the legal entitlement of Malaysian claims***

The Malaysian occupation was criticised and challenged by the other claimants, particularly China and the Philippines. From a legal standpoint, the occupation principle is even weaker than the previous one because of the recent timing of the occupation.

Effective occupation is generated by the control of free and newly discovered land. It is the effective control of a power (be it one or more states or an international organisation, such as the United Nations) over a territory to which that power does not have sovereignty title, and it is carried out without the volition of the sovereign of that territory (Benvenisti, 1993: 5).

The 1979 map and the resulting occupation of Swallow Reef are not valid parameters for supporting the country's claims. The main reason is the lack of legal consistency of the map, and the recent seizure of such features in the South China Sea is not compatible with the legal definition of occupation. Malaysia controls only some of the islets that it claims, therefore it is very difficult to prove that the land was free and discovered by the Malaysian forces. Amboyna Cay, which is claimed by Malaysia under the same circumstances, is controlled by Vietnam. In order to claim a land as *res nullius*, a nation must not just discover it but must exercise effective control over it (Hong, 2012: 20).

Malaysia's legal position appears as weak as any other's in the South China Sea and the lack of an alleged historical right over the islands is not such a liability as some observers might argue. Malaysian officials are well aware of the weakness in their claim of sovereignty, and such consciousness is probably the starting point of their diplomatic and political strategy in the South China Sea.

### **Solving the South China Sea Puzzle: Opportunities and Critical Issues for Malaysia**

In order to analyse the evolution of Malaysia's strategy on the South China Sea issue, some important strategic and political premises must be considered.

First of all, Malaysia has several interests and targets in the South China Sea, but it is militarily weaker than China, Vietnam and Indonesia. China's military build-up in the last two decades has guaranteed the country a clear advantage in respect to the other claimants. The Philippines and Vietnam, the two most fierce challengers of the Chinese predominance and the status quo in the South China Sea, have embarked on an important process of military modernisation, especially concerning the navy.

According to the Stockholm International Peace Research Institute (SIPRI) database, Vietnam has steadily spent more than 2 per cent of its gross domestic product (GDP) in the last three years (2.3 per cent of 2015 GDP).<sup>6</sup> SIPRI's estimate for the Philippines is 1.3 per cent of 2015 GDP, whereas Malaysia has slowly reduced its military expenditure (1.5 per cent of its 2015 GDP).<sup>7</sup> The 2015 figures for Malaysia might be underestimated because they do not include RM630 million from the state budget and RM230 million from the state oil company PETRONAS for military and police expenditure in the Eastern Sabah Security Zone.<sup>8</sup> Despite the considerable efforts of the three countries, China's military superiority is unquestioned and unmatched in case of armed confrontation. Malaysia, the Philippines and Vietnam share the same military expenditure trend, but they deeply differ in terms of political strategy towards Beijing and the issue in general.

### ***Facing a challenging regional environment: A 'low-risk and high-reward' strategy***

As mentioned earlier in the chapter, Manila and Hanoi are the two most aggressive actors in challenging Beijing's sovereignty claims over the contested waters.

Vietnam's strategy is based on assertiveness and on the constant military build-up, in recent years also backed by the United States. The Philippines' strategy is equally assertive and confident of the American presence in the region, but it also has a legal dimension based on the long-standing attempt to internationalise the issue. The country appealed to the Permanent Court of Arbitration in The Hague, which stated the legal inconsistency of the Chinese U-shaped line, and almost alienated its already complicated relationship with China.

Malaysia has a very different strategy, built on and supported by different prerogatives. According to its military status and political pragmatism, Malaysia reiterates its commitment to diplomatic negotiations, both bilateral and multilateral, as the fundamental channel to manage the

<sup>6</sup> The defence budget of Vietnam has been declared a state secret according to media sources. The figures for Vietnam for 2012–15 are also from media sources, whose reliability cannot be easily assessed. For more information see Stockholm International Peace Research Institute (2015).

<sup>7</sup> Ibid.

<sup>8</sup> The precise proportion of these sums allocated for the armed forces is still not known (Ibid.).

dispute. Concurrently, Malaysia renewed its defence ties with the United States, which are not particularly engaging compared to the Philippines and Vietnam, and expressed a more tolerant attitude towards China and its maritime posture.

Such behaviour does not imply a tacit acknowledgment of Chinese sovereignty over the waters, and Malaysia is steadfastly committed to safeguarding its maritime rights – the oil and gas fields near the contested area, which are considered essential for its own prosperity and security.

Malaysia's relationship with China has been characterised by cordiality and mutual respect, despite a minor escalation in the last three years, and the China Threat paradigm has been basically underplayed by the Malaysian leaders.

There are two main reasons behind this approach: first, geographic proximity. Malaysia has been less affected by China's increasing assertiveness than the Philippines and Vietnam, because its claims overlap the China's only in the southernmost portion of the contested waters (Parameswaran, 2015b: 5). Second, the strategic awareness of the Malaysian ruling élite, who acknowledged the country's weakness and have avoided any direct confrontation with Beijing. The Malaysian government, since the end of the Cold War, has implemented a strong China policy aimed at strengthening economic and political ties with the emerging power.

### ***The preservation of the Sino-Malaysian relationship as a strategic imperative***

Since the last two mandates of Mahathir Mohamad (1995–2003), Malaysian leaders have worked carefully to avoid the South China Sea issue becoming a source of tension in their bilateral relationship with the PRC.

In 1995 the two countries reached an agreement publicly rejecting 'any form of outside interference' in the dispute (Liow, 2000: 687). In 1999 they signed a joint statement in which they agreed 'to promote the settlement of disputes through bilateral and friendly consultations' (Ministry of Foreign Affairs, Malaysia, 1999). The bilateral negotiations are not the only diplomatic tool endorsed by Malaysia, which has also encouraged regional meetings and multilateral discussions, especially because of its ASEAN membership.

The rule of law has always been central for the Malaysian leadership and it is important for finding a common ground of understanding to debate the issue. In 2014, during the 28th Asia-Pacific Roundtable, Malaysian Prime Minister Najib Razak reaffirmed the hope that all claimants will 'hold



steadfast to the principles of non-use of force and the peaceful settlements of disputes' and that 'the rule of law must reign supreme' (theborneopost.com, 2014).

Finally, despite China's growing assertiveness in recent years, only the Philippines and Vietnam actively occupy two of the islands covered under Malaysia's claim, while the PRC does not have a physical presence within the same maritime area (Raine and Le Mièrè 2013: 121). Accordingly, China has been perceived more as an opportunity than a threat and Malaysia's best interests best fulfilled by reinforcing the economic ties while not allowing any political issue, such as the South China Sea, to overshadow bilateral relations (Parameswaran, 2015b).

The preservation of the Sino–Malaysian relationship does not alienate Kuala Lumpur's claim and its willingness to defend its national interests.

In May 2009 Malaysia and Vietnam filed a joint submission to the United Nations Commission on the Limits of the Continental Shelf (CLCS) to formally request an extension of their continental shelves in the South China Sea, according to Article 76 of UNCLOS (United Nations, 2009).

This application provoked a strong complaint from China, but Malaysian officials were particularly efficient in easing and downsizing the Chinese remonstrations by reassuring their openness to discuss any of the dispute's outcomes within the regional environment. Accordingly, Malaysia refused to join the Philippines in their 2013 application to the International Tribunal for the Law of the Sea and the resulting arbitration request brought at the Permanent Court of Arbitration, both aimed to refute the Chinese claims and the U-shaped line in the South China Sea.

Malaysia continues to advocate its regional principle of non-interference and recommends that negotiations should be limited to claimants, avoiding any dangerous actions that might lead to the internationalisation of the dispute.

The discussions regarding the South China Sea 'should be held within the framework provided by ASEAN' (Noor, 2016: 210). In such regard, Kuala Lumpur's preference for the ASEAN–China dialogue mechanism as the main platform to manage the South China Sea issue has been underlined by different scholars, similar to the exclusion of other regional platforms which include non-claimant countries such as the ASEAN Regional Forum (ARF) (Ibid.).

### ***The Malaysian way of hedging***

The Malaysian government has steadily built its own strategy, aimed at reaching a perfect balance between bilateralism, which is China's most

suitable ground, and a certain degree of regional multilateralism. The aforementioned preference for narrow discussion groups, such as the ASEAN–China meeting, might appear to be pro-Beijing and cause a misleading interpretation of the Malaysian regional position.

Actually, the Malaysian stance is far from being obliging towards Beijing; rather, it is a pragmatic requirement for the implementation of its national policy. Prime Minister Najib Razak continues his predecessors' tradition, following a dual purpose: preserving both the country's claim in the South China Sea and the essential bilateral ties with China. The idea of maximising benefits and concurrently avoiding confrontation is the core of Najib's hedging strategy.

Unlike the Philippines and Vietnam, who reacted aggressively to China's growing assertiveness and decided to rebalance China's supremacy by enhancing their military ties with the United States, Malaysia reiterated its faith in diplomacy and invested in the bilateral relationship with China, but it also kept a low profile in renewing its defence ties with the United States (Kuik, 2013).

The best definition of the Malaysian way of hedging is provided by Prof. Kuik Cheng-Chwee, who has extensively studied the regional strategic environment and the possible outcomes for Malaysian policies. He defines hedging as a strategic attitude aimed at maximising the weaker states' benefits in their relationship with superpowers and large powers.

This strategy has three main characteristics: 'an insistence on not taking sides between the contending powers, an active pursuit of contradictory and mutually counteracting measures vis-à-vis the powers, and using the opposite measures as a way to cultivate a contingency fallback position' (Kuik, 2008, 2016).

This strategy fits perfectly with Malaysia's requirements and it might allow the country to optimise its various interests. As Prof. Kuik points out, 'Malaysia does not hedge against any specific power, but against the general uncertainties embedded in big power actions' (Kuik, 2016).

Therefore, Malaysia's hedging strategy guarantees some reasonable benefits from the presence of both China and United States, but it also generates a few incongruences. The economic and political features of the bilateral relationship with China, which have already been described, remained stable even after the gradual hardening of the maritime issue between the two countries.

Since 2013 Malaysia has had to cope with Beijing's assertiveness in a more complex way and, during the last three years, has witnessed a growing number of Chinese vessels anchored in its waters. Consequently, Malaysia

has progressively hardened its stance and sovereignty claims on the South China Sea.

In March 2016 Malaysia's Defence Minister, Hishammuddin Hussein, declared that the country will not renounce the safeguard of its interests. 'If the reports we've received from various sources regarding the buildup and placement of military assets in the Spratlys are true – this forces us in a pushback against China' (reuters.com, 2016).

Despite the ongoing military build-up, the request for a major displacement of military assets in the contested waters and informal talks with the United States for a joint military exercise and also the basing of an American aircraft in the country, Hishammuddin's words should not be misinterpreted.

As pointed out also by Parameswaran, such pushback should be intended as an integral part of the country's recalibration process which might lead to increased activism on the issue (Parameswaran, 2015a, 2016). It also represents an interesting example of how Malaysian hedging strategy works.

When referring to the security escalation in the disputed waters, Malaysian officials did not directly denounce Beijing's actions; rather, they emphasised the importance of regional stability instead of taking more aggressive moves to challenge China (Parameswaran, 2016).

Despite the possible exacerbation of the issue, Malaysia maintained its usual positive attitude towards Beijing while, concurrently, starting informal talks with US officials. Such a hedging approach is able to guarantee a strategic equidistance, despite Malaysia's relationship with Beijing being deeper than Washington's, and a firmer control over the country's interests in the South China Sea.

### ***How a hedging approach works with small and assertive neighbours?***

Managing the dispute through a consolidated non-confrontational mechanism resulted in the stabilisation of an otherwise dangerous geopolitical triangle, and also rewarded Malaysia's pragmatism in dealing with the two superpowers. The advantageous implementation of this strategy has also been assisted by the current South China Sea scenario, which is far from a definitive solution, especially in the Spratly archipelago.

Considering the above circumstances, the hedging strategy might work for a small state, like Malaysia, which aims to avoid excessive affinity or distance in its relationship with a big power (Kuik, 2016: 173). Moving beyond this geopolitical triangulation, what are the possible outcomes with other small and weak states? As mentioned earlier, China is clearly

the largest and most dangerous regional actor, but it has not established any physical occupation over the islands claimed by Malaysia. In contrast, the Philippines and Vietnam which are Malaysia's fellow ASEAN partners, occupy two features.

How to deal with two countries that are basically Malaysia's peers but embrace a path marked by growing assertiveness, enhanced military ties with Washington and a straight balancing strategy?

The main, and maybe only, common point in the South China Sea policy of the three countries is the acknowledgment of China's military supremacy, which has been approached in a very different way by the latter contenders.

The Philippines and Vietnam decided to challenge such supremacy in a confrontational way. Vietnam's military build-up has been further reinforced by its reconciliation with the United States and the following ending of the arms embargo (Harris, 2016). The Philippines, especially during the late Aquino III years, decided to follow another pathway and successfully tried to internationalise the dispute by submitting an application to the Permanent Court of Arbitration to clarify the legal entitlements of ten disputed features in the South China Sea. Manila achieved international success but it almost ended its already unstable relationship with Beijing (Kraska, 2015; [theguardian.com](http://theguardian.com), 2016).

The hedging strategy might work in shaping smaller countries' relationship vis-à-vis the great powers, but it is quite ineffectual when addressed to other small countries. Herein lies the main dilemma of Malaysia's South China Sea policy. Malaysia's principle of not overplaying the South China Sea issue pays dividends in its relationship with China, but it has very little effectiveness in downsizing Philippines and Vietnam's assertiveness.

## Conclusions

Malaysia's claim in the South China Sea has survived the totalising presence of China and the growing militarisation of regional neighbours such as the Philippines and Vietnam.

The hedging approach has allowed the ruling élite to safeguard the country's prosperity and security in its relationship vis-à-vis China, but it is not a feasible option in dealing with Hanoi and Manila's quest for sovereignty.

The three countries are showing a very different approach towards China and the dispute itself, but the centrality of Beijing in their foreign policy is out of the question. China has been able to catalyse the concerns and the

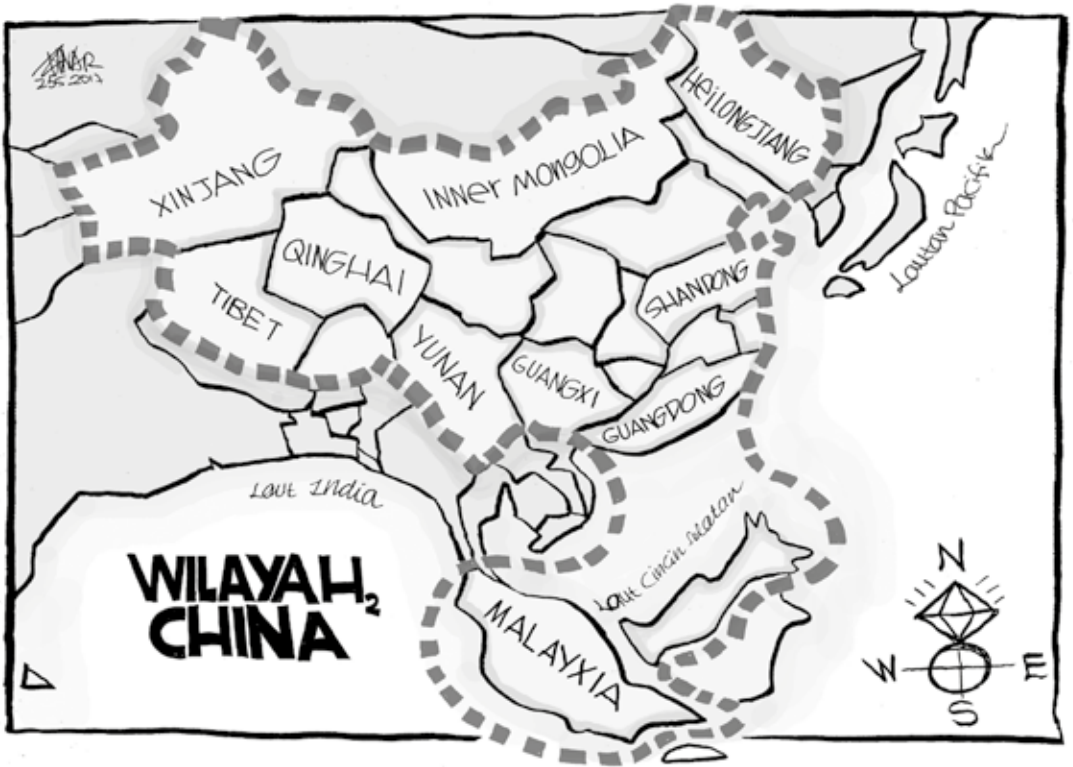
counter-measures of the other contenders, which has projected Beijing as the most influent claimant in the South China Sea.

Malaysia, the Philippines and Vietnam's efforts are all focused on hedging, containing and balancing China. The three countries have never critically debated their overlapping claims, probably because of their ASEAN background and the adherence to the principle of non-interference, which has caused different outcomes.

The Philippines' and Vietnam's aggressiveness and assertiveness have launched the two countries as the most internationally recognisable opponents for China, which has portrayed Malaysia as the weaker contender in such an environment.

Malaysia's claim might be completely overshadowed by the Filipino-Vietnamese assertiveness even though they share the same weak legal and historical background and the same focus on Beijing's behaviour. Despite the recent misunderstandings, the bilateral relationship between China and Malaysia is stronger than ever, mainly due to the pragmatic hedging cooperation. The main uncertainty identified in this chapter is the effective depth of the hedging strategy.

In this regard, to what extent such a hedging strategy represents the country's South China Sea policy might be questioned; or, maybe, it would be more correct to define it as the core of a perfectly working China Policy.



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# ***Ummah Revisited:* Anti-Shia Hatred in Malaysia since the Outbreak of the Syrian Civil War**

*Dominik M. Müller*

## **Introduction**

Malaysia is presently witnessing a growing phenomenon of publicly expressed hatred against Shia Muslims, who are portrayed as representing a 'dangerous' form of 'deviance' from 'true Islam' by a broad, ideologically like-minded coalition of state and non-state actors, with explicit support from the country's political leadership. The historical trajectory of this phenomenon can be traced back at least to the late 1990s, but has escalated to unprecedented levels following the outbreak of the Syrian civil war in 2011 and its sectarian framing along the Sunni/Shia divide. Since 2011 Muslim political actors from both government and opposition parties have exploited growing anti-Shia sentiments among the Malay population for well-calculated attacks on political opponents by accusing them of being 'secret Shias'. Simultaneously, actual members of Malaysia's small Shia communities are suffering from far-reaching discrimination in their everyday lives. This situation, and the state-Islamic bureaucracy's policies more generally, sharply contradict the government's self-portrayal and well-staged international perception of Malaysia as being a role model Muslim majority country spearheading a 'Global Movement of Moderates' (Gerakan Kesederhanaan Global).

This chapter will contextualise the escalation of anti-Shia enmities in Malaysia in four steps: First, a description of how an initial fascination with the Shia-led Islamic Revolution of Iran (1978/9) among Malaysian

religio-political activists has gradually been replaced by a more narrowly defined agenda of Sunni orthodoxy, as exemplified by the Islamic Party of Malaysia's (Parti Islam SeMalaysia, PAS) shifting attitude towards Shia Islam. The second step is a demonstration of how anti-Shia sentiments have been fostered by the state's Islamic bureaucracy and political leaders, and illustrate exemplary instances of institutionalised anti-Shia discrimination. Third, it details of how anti-Shia narratives are expressing and simultaneously further fuelling popular hatred, suspicion and disgust circulating on the Malaysian cyberspace, where 'concerned' citizens discuss and visualise conspiracy theories according to which Shias are, by definition, 'deviant' (or even 'infidel'), 'dangerous' and pursue 'evil plans' in coalition with 'Israel and the Jews'. Such ideas acquire discursive credibility through constant repetition, and by the state-authorities' like-minded anti-Shia policies which are accompanied by largely similar justifying narratives.

Finally, some concluding remarks shall be made on overlaps between the Malaysian Islamic bureaucracy's and popular anti-Shia discourse with the rhetoric of Islamist militias in Syria/Iraq, and how these overlaps undermine efforts of ideological counter-radicalisation vis-à-vis groups such as ISIS. The government's self-portrayal as a role model country for Islamic moderation, it will be argued, deserves to be problematised, as the state's religious institutions promote 'Islamically' justified intolerance and hostilities against Muslims for the 'crime' of disagreeing with the state's brand of Islam. On a more abstract level, the chapter demonstrates how, by imposing particular formalised schemes of Islam, the Islamic bureaucracy serves as a highly influential agency in the state's exercise of classificatory power, with far-reaching consequences for the everyday life of affected social actors and for the very meaning of Islam in state and society.

Malaysia's post-colonial political system explicitly rejects the idea of treating members of different ethnic or religious groups equally. In contrast, there is a democratically legitimated and deeply institutionalised privileging of the ethnic Malay<sup>1</sup> majority group vis-à-vis the rest of society who comprise around 40 per cent of the population. Malays are considered 'indigenous' and 'princes/sons of the soil' (Bumiputera) and are constitutionally defined as Muslims. Islam is the state's 'official religion', although other religions can be 'profess(ed) and practise(ed)' (Constitution,

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<sup>1</sup> The category 'Malay', as it is used in Malaysia today, is a historical construct from the colonial period that became discursively stabilised and viewed as 'natural' only quite recently (see Manickam, 2015). Its meaning differs to some extent from the term's usage in Brunei and Singapore.

Articles 3, 11), albeit not propagated to Muslims. Beyond direct legal provisions, the Islamic bureaucracy has more specifically defined Sunni Islam as the state's official brand which, like elsewhere in Southeast Asia, is shaped by the Shafi'i legal school (*madhab*). Ethnicity is widely imagined in static and biologised terms as a matter of 'race' and 'blood', a relic of colonial thinking that developed a life of its own after independence. So-called minorities not only include non-Malay ethnic groups (most notably so-called Malaysian 'Chinese' and 'Indians') who form almost half of the population, the majority of whom are non-Muslims, but also intra-Islamic minorities who differ from the state-supported brand of Sunni Islam, such as Shia Muslims. According to state-Islamic religious authorities, there are presently only 2,000–3,000 Shias with Malaysian citizenship, mainly consisting of the Ismaili Dawood Bohra community and other Ismailites who migrated from South Asia,<sup>2</sup> alongside more recently established smaller groups adhering to Twelver Shiism that include many ethnic Malays. In addition, there is a larger number of foreign nationals, especially from Iran, who study or work in Malaysia, the vast majority of whom are not involved in any organised religious activities. Nevertheless, or possibly even because of the lack of interaction with 'real' Shia Muslims (as opposed to imagined ones), and resembling what Appadurai (2006) calls a 'fear of small numbers', the Shia are widely conceived of as one of the biggest threats to Malaysia's 'Islamic *ummah*', which comprises around 60 per cent of the total population.<sup>3</sup>

### **From Avant-garde to Outcasts: The Rise and Fall of Sympathies for Shia-led Iran among Malaysia's Islamist Opposition**

Despite the nation's utopian appeal to a fiction of unity, in social reality the 'Islamic *ummah*' (community of Muslim believers) is inevitably heterogeneous, fragmented and contested. It is constituted by competing claims to hegemony and power in particular (trans-)local contexts, and by competing interpretative practices. In Malaysia, initial feelings of connectedness with the Islamic Republic of Iran, framed with reference to transnational ummatic brotherhood in the aftermath of Iran's Islamic

<sup>2</sup> See Malay Mail Online, 'Jakim: All branches of Shiah in Malaysia violate Islamic Law', 13 December 2013.

<sup>3</sup> Statistics pertaining to ethnic and religious populations in Malaysia must be viewed with caution as they are highly politicised.

Revolution (1978/9), gave way to an often highly emotional, albeit theologically and politically rationalised sectarian Sunni discourse. In this reconceptualised ‘Islamic community’, as it is projected in Malaysian hegemonic discourse today, Shia Muslims are, at best, viewed as ‘deviant’ Muslims, or even as ‘infidels’, i.e. external threats to the ‘purity’ of Islam and its ‘authentic’ Muslim in-group. Hatred, fear, and conspiracy theories about the evil and dangers of Shia Islam have become normalised in public speech and institutionalised as a state-sanctioned normativity – with policy makers, religious institutions, policing agencies, and the education system being involved in the underlying process of knowledge production. Whoever openly questions or problematises this ‘power-knowledge regime’ and its anti-Shia discourse faces the possibility of social and legal sanctions, as specified further below. This status quo, and the related restrictions on public speech, minimise any potential for dialogue, empathy, or searching for a deeper understanding of what has become a ‘radical Other’, namely adherents of Shia Islam.

Nowadays largely forgotten, the revolutionary establishment of the Islamic Republic of Iran in 1978/9 was an influential source of inspiration for Muslim political movements in Southeast Asia, including Malaysia and its Islamist opposition party PAS. Despite its ideological rootedness in a political and decidedly anti-secular conception of Sunni Islam, the party was never monolithic and has experienced numerous re-orientations since its formation in 1951 (Farish, 2004). Inspired by developments in the wider Muslim World, in the early 1980s a new generation took over the party’s leadership with the intention of ‘purifying’ its religio-political struggle from Malay ethno-nationalism and ending supposedly corrupting cooperation with the ethnic-defined government party UMNO (United Malays National Organisation) (Müller, 2014: 54). The PAS reformists’ vision was nothing short of the establishment of ‘a government of God’ (Farish, 2004: 331), as it had similarly been spectacularly declared by Khomeini in Iran three years earlier. Undeniably, the Egyptian Muslim Brotherhood, which adheres to Sunni Islam, was the leading source of inspiration (Mohamed Osman, 2016), as several PAS members had come in personal contact with the Brotherhood in Egypt and other countries during their studies abroad. But at that particular, to some extent pre-sectarian, moment in history, the Iranian Islamic Revolution also had a significant influence on PAS, and the wider Malaysian Islamist discourse, to the extent that is nowadays difficult to imagine even for many members of the PAS community.

The Young Turks reorganised PAS’s organisational structure and political culture by institutionalising the principle of ulama leadership (*kepimpinan*

*ulama*), according to which religious scholars (*ulama*) are superior to average PAS members and must have the final say on important decisions. A new consultative body, the Syura Council, was established as PAS's highest decision-making authority. Both the *ulama* leadership and Syura Council were partly inspired by post-revolutionary Iran's principle of the 'guardianship of Muslim jurists' (*velayat-e faqih*) (Ahmad Fauzi, 2009: 151; Müller, 2014: 54–6). PAS's new post of a spiritual leader (*mursyidul 'am*) resembled the idea behind the newly invented Iranian post of a Supreme Leader (*Rahbare Mo'azzame Enghelab-e Eslami*), while simultaneously mirroring the Brotherhood's post of Murshid 'Am, which was later – when the fascination for Iran had already vanished – named as the primary inspiration (Farish, 2004: 418). The first PAS president following the PAS-internal 'revolution' of 1982/3, Yusof Rawa, had previously served as the Malaysian ambassador in Iran and witnessed the rise of the revolutionary atmosphere with sympathy (Ibid.: 343; Müller, 2014: 55). Some other PAS activists, such as Mohamad Sabu – who three decades later (2011–15) was PAS deputy president – were equally fascinated and visited the Islamic Republic. Some attended educational programmes organised by the Iranian government (Mohamad Sabu, 2010). According to Nair (1997, referencing a press article from 1982), '(b)y 1982, government surveillance' of PAS 'was deemed necessary in the wake of evidence of Malaysians visiting Iran "to study its revolutionary style government"'

Knowledgeable observers agree that Iran's revolution had an 'impact in ideologically transforming PAS from a Malay nationalist party with Islamic aspirations to a national Islamist actor with important transnational dimensions' (Ahmad Fauzi, 2009: 151; Ahmad Fauzi, 2007). PAS re-invented 'its discourse with political vocabulary in line with contemporary trends in global Islamism', also by portraying itself in the Iranian revolutionary vocabulary as the voice of the *mustazaffin* (oppressed) against the *mustakbirin* (oppressors) – in the Malaysian context identified as the UMNO-led government (Ahmad Fauzi, 2007: 452; Farish, 2004: 388; Nair, 1997: 135–6). During Yusof Rawa's tenure as PAS president (1983–89), the legalistic vision of an 'Islamic State' acquired unprecedented priority, and some PAS members openly sympathised with the idea that Malaysia might, like Iran, need its own Islamic revolution to realise it.

Several Malaysians studied in Iran in the 1980s (Marcinkowski, 2010: 190; Ahmad Fauzi, 2009: 151; Drummond, 1983: 308), and some 'PAS-sponsored schools were known to send their graduates to Iranian universities for further studies' (Ahmad Fauzi, 2007: 452). Others did not attend educational institutions, but went to Iran with the intention of

better understanding the revolution's 'success', as Mohamad Sabu (2010) autobiographically recounts. The opposition activist Anwar Ibrahim, who was never a PAS member, also visited Iran in the early 1980s (Ibid.), before he joined UMNO. He even made the nowadays long-forgotten proposal of establishing an annual 'Iranian Liberation and Solidarity Day' in Malaysia (Farish, 2004: 334; Müller, 2014: 42). Mohamad Sabu (2010; Müller, 2014: 56), who was detained under the Internal Security Act (ISA) from 1984–86 and 1987–89 for, among other unproven charges, alleged aspirations to stage an Iranian-style revolution, recounts:

Khomeini's movement ... drew my attention as well as my friends' in PAS Youth in the early 1980s. ... we studied it, followed the events. ... A small number of PAS Youth members became ardent followers of Imam Khomeini's message. A few of them attended courses held in Iran. Amongst the success of such interaction was the setting up of Amal Unit (sic) which copied the success of the Jihad Sazendagi (JZ) movement in Iran.

Unit Amal, also Jabatan Amal, is nowadays a central element of PAS, although few young members are aware of its Iranian-inspired origins. Its responsibilities include social work and disaster aid, but also ensuring order and security at PAS events. Mohamad Asri Muda, who joined UMNO after his above-mentioned public embarrassment, claimed that Khomeini had appointed a PAS politician 'as his emissary in Southeast Asia' (Ahmad Fauzi, 2009: 251).

The initial admiration for Iran's Shia-led Islamic Revolution was short-lived. By the late 1980s, Yusof Rawa advised 'PAS members to limit their emulation of Iranians to their revolutionary spirit in fighting oppressive rule, minus their sectarian', i.e. Shia, 'beliefs' (Ibid.: 151; Müller, 2014: 57). This rejection of assumed Shia 'sectarianism', however, was intertwined with the rise of a Sunni-Malay sectarianism of its own kind, an ideological development that transcends the PAS/UMNO divide. The fascination with Iran's revolution gave way to a more exclusivist obsession with 'purifying' a monolithic, Sunni Islamic doctrine (*aqidah*).

Nevertheless, PAS regularly invited representatives from Iran and the Shia Lebanese Hezbollah to its Assemblies. But even this tradition of ritualised 'diplomacy' has seemingly ended following the Syrian war. One year before it began, in 2010, a Hezbollah representative was present, but in contrast to Sunni guests from Eritrea, the Maldives, the Philippines and Palestine, he did not give a public speech. A HAMAS delegate, in contrast, spoke twice (Author's observations, Pengkalan Chepa, Kelantan, June 2010). Afterwards, a PAS member told me that he perceived this as 'discrimination'. According to his narration, PAS president Abdul Hadi Awang finally

apologised to the Hezbollah member when he met him separately after the Assembly (Personal communication). Before 2011, PAS occasionally sent representatives to Iran to attend intra-Islamic ‘dialogue’ events, such as Abdul Hadi Awang and Syed Azman, and Nasrudin Hassan Tantawi, on two separate visits in 2010 (Ibid.: 105). Since then, such exchanges have become even rarer and are conducted in a very discrete manner. When it became public in 2016 that Abdul Hadi Awang had just visited another dialogue event in Teheran, it sparked much public criticism among Malay Muslims, and he finally published a lengthy explanation, emphasising that the event included highly respected international Sunni orthodox figures, and was not meant to support Iran or Shia ideologies.

### **Constructing a ‘Shia Threat’ to Counter It: The Case of Mohamad Sabu**

It is a common *modus operandi* in Malaysian party politics to attack political opponents on personal and discriminatory grounds. Despite their obvious political motivation, such attacks appear to be viewed as credible and legitimate by significant sections of the Malay public, especially when they resonate with widely normalised discriminatory discourses pertaining to ‘racial’ and religious identities and distinctions, which have been deeply integral to the country’s post-colonial institutionalised politics and social imaginaries throughout the last six decades. The UMNO government, which passionately upholds the two principles of Malay supremacy (*ketuanan Melayu*) and Islamic superiority, regularly exploits the identitarian enmities that inevitably arise from these structural inequalities as a political resource. With the – to some extent transnationally inspired – rising hatred against the Shia, the theme of Shiism became yet another potent resource for such political manoeuvring, and the related orchestration of religious controversy.

By the early 2010s Mohamad Sabu was the last prominent PAS leader who openly expressed admiration for the Iranian Revolution and Khomeini. Among PAS’ younger generation, a dramatic identitarian turn against Shia Islam has occurred. PAS Youth Chief Nik Mohamad Abduh (2008) warned his community already in the late 2000s that ‘the Shia are very dangerous’, they ‘damage the holy faith/doctrine’ (all translations by the author). He also proclaimed the existence of a ‘Shia threat in PAS’, and explained that ‘the Shia was/were born from feelings of love and spite, and they are scorching the holiness (of Islam), blind with love’, adding somewhat conciliatory, however, that they are ‘people of the Syahadah’ (Islamic declaration of faith) (Nik Mohamad Abduh, 2010: 68), i.e. Muslims (Müller, 2014: 58).

Before the Syrian war, Nik Mohamad Abduh (Ibid.) still gave credit to the Shia Hezbollah for ‘standing side-by-side with us against the machinery of the infidels on this earth’, especially referring to Hezbollah’s fight against Israel or, as he puts it, ‘the Jews who are carrying the flag of destruction on earth’ (translation). Following the outbreak of the Syrian war, however, the tone changed dramatically: He renamed Hezbollah (literally: party of Allah) as Hizb al-Taghut, a ‘party of idolatry/error’ that is ‘oppressing’ the right-guided Islamic *ummah* (Nik Mohamad Abduh, 2013, translation; he borrowed this from Yusuf Qaradawi; Müller, 2014: 58). Notably, the rhetoric of Shia Muslims, being Taghut-followers, is also central to the rhetoric of ISIS in Iraq/Syria and is constantly repeated in its Malay-speaking propaganda – although ISIS, unlike Nik Mohamad Abduh, concludes that this makes the Shia ‘infidel’ and legitimate targets for killing. Nik Mohamad Abduh, since 2015 a Member of Parliament, now declared that in the context of the Syrian war ‘it is clear to the Islamic ummah that SHIA (original emphasis) extremists are the ones behind Hezbollah and Iran’ (Ibid.). This statement sums up what quickly became the mainstream view among PAS members, and the wider Islamist-minded Malay community: ‘the Shia’ are the actual ‘perpetrators’ in the Syrian bloodshed, alongside Bashir al-Assad. Assad, an Alawite Muslim, is now widely proclaimed to be ‘a Shia’ in Malaysian Islamist discourse due to Iranian and Hezbollah’s support for his government.

In this context of intensifying public expressions of anti-Shia sentiments, former PAS Youth Chief and now Member of Parliament, Nasrudin Hassan Tantawi (2011), felt the need to clarify that ‘PAS does not accept Shia Islam’ and that PAS would ‘take action’ and ‘punish’ any party member practising Shia Islam (translation). Addressing the increasingly referred-to notion that PAS might be ‘infiltrated by the Shia’, Nasrudin stressed that ‘we all don’t want PAS to become Shia’, ‘if non-Muslims accept Islam, say the *Syhadah* and stop practicing sins, they can become PAS members; if a Shia Muslim wants to join PAS, he must leave Shiism first’ (ibid.; Müller 2014, p. 58).

Already in 2010, then PAS deputy president Mohamad Sabu (2010), who consistently stresses he is a Sunni Muslim opposing sectarianism, spoke of ‘propaganda of the Shii threat.’ This ‘propaganda’, however, soon turned again his person and other party members known as PAS’s ‘moderate’ faction. Shortly before the general election of 2013, printed and online brochures were distributed accusing several ‘moderate’ PAS leaders of being ‘secret Shias’ and ‘parasites’. (see Figure 1)





**Fig. 1:** Manipulated picture of former PAS Deputy President Mohamad ('Mat') Sabu depicting him as a Shia 'Ayatollah' (and ridiculing his second name), juxtaposed with the slogan: 'Welcome to the Shia Parliament', taken from the pro-UMNO webpage [DukeofUMNO.blogspot.com](http://DukeofUMNO.blogspot.com)

At the PAS General Assembly in 2015, Mohamad Sabu was not re-elected as deputy president. Similar to many 'moderates', he had suffered from a months-long campaign of fierce personal attacks coming from party-internal and -external opponents. Many, including Mohamad Sabu, finally left PAS, after decades of dedicated membership, to form a new party called Parti Amanah Negara (PAN). The 2015 Assembly also included a – for PAS standards – highly unusual open confrontation between Mohamad Sabu and Nasrudin, who disagreed over the party's (then ending) compromise-oriented cooperation with the secularist, ethnic Chinese-dominated Democratic Action Party (DAP). Another PAS veteran, Ahmad Awang, who was also publicly accused of being either Shia or too Shia-friendly (Facebook, 2015b), also joined PAN.

In 2012 Mohamad Sabu still mentioned Khomeini four times as a source of inspiration, alongside prominent Sunni revivalist thinkers, on his weblog (Müller, 2014: 105). By 2016 all Iran-related references were removed. This very likely had to do with accusations coming in from nobody lesser than the Home Minister and UMNO vice-president, Ahmad Zahid Hamidi, who publicly accused Mohamad Sabu of being a secret Shia. In December 2013 the Minister and several other UMNO members started the campaign. It began at an UMNO gathering, where the Minister told the delegates 'We know who is the Shia leader within PAS!' (translation), who cheerfully responded 'Who, Who?' He proceeded: 'We are surprised how PAS can have this person as the party's number two' (Astro Awani, 2013), and announced that a detailed press conference would soon be held. The Ministry's Secretary-General later told the press that his institution had gathered evidence proving Mohamad Sabu to be a Shia, including '10 proofs' that would be publicised. In a step-by-step strategy of repeatedly creating

headlines linking the signifiers ‘Mohamad Sabu’ with ‘the Shia’, the Ministry then announced it would ‘hand over all evidence ... to JAKIM (Jabatan Kemajuan Islam Malaysia, Department of Islamic Development Malaysia, the government’s leading Islamic institution) for further action, because we are responsible for security and hand over *aqidah*-related cases to religious authorities’ (Ibid.). The ‘proofs’ included allegations that Mohamad Sabu had attended a religious class headed by a Shia scholar in Perak in 2011, that he recited a Shia prayer at a PAS event in 2005, that he was seen using a Shia-style ‘prayer stone’ hidden under his prayer mat (*Rakyat Post*, 2013), and that he made statements about ‘feeling impressed’ by Khomeini and Iran. The Ministry also discredited ‘people close to’ Mohamad Sabu as ‘followers of Shia Islam’, although some would have ‘already repented’. Unspecified ‘friends’ were said to have travelled with Mohamad Sabu to Iran and attended ‘Shia gatherings’ (*Utusan*, 2013a). The Ministry claimed to have ‘20 witnesses’ (*Utusan*, 2013).

The Ministry challenged Mohamad Sabu to prove his innocence and falsify the ‘ten proofs’, ‘no matter whether in person at the Ministry, or through YouTube or in a newspaper’ (translation, *Sinar Harian*, 2013a). Joining the campaign, a central committee member of Selangor’s Fatwa Office, Mohd Mokhtar Shafii, stated that Mohamad Sabu’s alleged ‘acceptance’ of Shia teachings ‘contradicts the Islamic teachings that have been practised in this country for a long time’, adding that Shia teachings ‘insult the wives and companions of Prophet Muhammad’ (translation).

Mohamad Sabu himself announced that he would take legal action and asked for a public apology (*Rakyat Post*, 2013) and, after all, no court case has taken place. Nevertheless, the publicity caused by the campaign severely damaged Mohamad Sabu’s reputation and left many Malaysians with the impression that there must be some truth in the allegations.

Within PAS, the mood gradually turned against Mohamad Sabu. This trend was already observable before the Ministry’s campaign, as exemplified by Nik Mohamad Abduh’s above-cited statements that implicitly targeted ‘Iran-friendly’ PAS members like Mohamad Sabu, and worsened especially since 2012 when Mohamad Sabu visited Syria and appeared on television with the Syrian President Bashar al-Assad. Mohamad Sabu explained this as peace-seeking diplomacy, but his opponents were outraged about what they perceived as support for ‘the Shia Assad’, even more so as Mohamad Sabu reportedly criticised Saudi Arabia on Syrian television. As of 2016 the search for *ummatic* unity across the Sunni–Shia divide, passionately emphasised to me by a member PAS’ international bureau in 2010 (Müller, 2010: 784), appears to have lost much of its relevance or desirability in PAS discourse,

despite occasional statements by senior leaders such as PAS president Abdul Hadi Awang that seek to complicate the picture.

PAS' anti-Shia turn coincided with the rise of state-sponsored measures of defining and criminalising a standardised list of 'deviant teachings', as will be seen in the following section.

## **State-Sanctioned Truth Claims: The Stigmatisation of Shia Islam as 'Deviant'**

Much has been written about UMNO's strategies to co-opt Islamist ideas and actors since the 1980s, and how UMNO, under Mahathir Mohamad's presidency (1981–2003), started a state-led Islamisation programme vis-à-vis oppositional calls for 'more Islam'. As Liow (2009) argues, UMNO has been an active, often quite independently, operating force of political Islamisation, rather than just the passive – or merely reacting 'secular' – actor as it has often been portrayed.

The UMNO-led government initially viewed the Iranian Revolution as a security threat, resulting in ISA<sup>4</sup>-based arrests of persons accused of aspiring to an Iranian-style revolution in the 1980s. The state-based (read UMNO-sponsored) Islamic bureaucracy's early Shia-critical theological statements in the 1980s, which coexisted alongside a Fatwa Committee statement explicitly accepting Shia Islam as a legitimate school of Islamic thought were likely influenced by such political considerations. Notwithstanding the continuation of monitoring and restricting Shia influences, by the late 1980s international relations with Iran improved under Mahathir's 'Islamic foreign policy'. This dual approach – domestic condemnation and containment, while pursuing trade and occasionally staging Islamic 'brotherhood' on the symbolic level of international diplomacy – continues until today. The following sections will only focus on the domestic phenomenon of state-driven anti-Shia policies.

The bureaucracy's more systematic discrimination began in 1996, when an 'agreement' (*muzakarah*) of the Fatwa Committee of the National Council for Islamic Affairs classified all non-Sunni interpretations as deviating from Malaysia's Sunni state-brand of Islam. The Committee's decision was used to

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<sup>4</sup> The Internal Security Act 1960 allowed for detention without trial and was frequently used against a wide range of persons, including members of the political opposition, before it was repealed and replaced by the Security Offences (Special Measures) Act 2012. Critics argue that the new law essentially serves the same purpose as the ISA.

justify the banning Shia Islam as ‘deviant teaching’ (*ajaran sesat*) on various legal grounds in 11 of 14 Malaysian states (*negeri*) over the following years (Haji, 2014: 10). Due to Malaysia’s decentralised administration of Islam, including *negeri*-based Sharia legislation and Fatwa Councils (Majlis Fatwa Negeri), each state and State Islamic Council (Majlis Agama Islam) pursues its own approach.

On the national level, JAKIM is the most influential and agenda-setting institution in pushing forward anti-Shia policies and creating a conducive discursive climate. JAKIM is headed by Jamil Khir Baharom, who is simultaneously the Minister in the Prime Minister’s Office responsible for religious affairs. Regional state-based fatwas targeting Shia Islam and enjoying the force of law exist, for example, in Selangor, Negeri Sembilan, Pulau Pinang, Wilayah Persekutuan and Terengganu (Sharifah Nor Ainnul Khairiyah & Mohd Al Adib, 2014). Relevant laws include Sharia Criminal Law enactments, alongside codes with programmatic titles such as the ‘Enactment for Sharia offences pertaining to the violation of fatwas’ (Enakmen Kesalahan Jenayah Syariah Mengenai Pelanggaran Fatwa) (Utusan, 2013b)

The first arrests of Shias for propagating their interpretation of Islam, as opposed to the arrests for alleged revolutionary plans in the 1980s, took place in the 1990s. In 1997, ten Shias were imprisoned for one to two years under the ISA – according to the authorities for creating ‘religious disharmony’ and thus being ‘a national threat’, according to Amnesty International (1999) ‘on account of their peacefully held Shia beliefs’. Related to these arrests, in 1998/99 state Islamic authorities organised ‘Councils to Explain the Faith/Doctrine’ (Majlis Penjelasan Akidah) in Kuala Lumpur, Johor and Perak, and a ‘Course for Purifying the Faith/Doctrine for Shias’ (Kursus Pemurniaan Akidah kepada Kader Syiah) who were ISA detainees.

The authorities’ justifications for banning Shia Islam often combine theological, national and security-related considerations. In September 2012, for example, Pulau Pinang’s Fatwa Committee concluded that Shia Islam poses a ‘threat to unity of the *ummah*, the oneness of religion, national unity, and national security’ (Teganukita, 2013, translation).

Selangor is at the forefront of standardising and semantically developing the category of ‘deviant teachings’, and in the subsequent measures to counter them. In 2013, a press report spoke of ‘more than 70 deviant teachings’ that have been listed and banned in Selangor (*Kosmo*, 2013). Another source, citing the Selangor State Islamic Council’s (JAIS) Unit Aqidah speaks of ‘25 deviant teachings’ banned through fatwas, 23 of which are still under investigation (Sharifah Nor Ainnul Khairiyah & Mohd Al

Adib, 2014). Of these, 17 were no longer active. In one of several instances in recent years, in 2010 more than 100 Shias were arrested by religious enforcement officers in Gombak (Selangor) during Ashura celebrations (Müller, 2014: 32).

Similar raids took place in other states and heavily increased in frequency in the 2010s. In 2014, Perak's religious enforcement officers arrested 114 Shias, including families with small children, at a religious gathering (Suaram, 2014: 21). In Pahang, a religious enforcement section raided a private home where thirty-six members of a Dawoodi Bohra family were conducting prayers (*Sun Daily*, 2014). In 2016, a farmer in Johor was charged with possessing a Malay-language translation of a book containing speeches of Khomeini (*Sun Daily*, 2016). In Perlis, an initiative called Shia Foundation of Malaysia (Pertubuhan Syiah Malaysia) was banned (*Berita Harian*, 2013), followed by the State Mufti's announcement to now 'have a look at foreign students from Shia countries' to make sure they do not spread Shia thinking (Ibid). Kedah's Syariah Criminal Enactment has been revised to make it easier 'to take action against Syiah followers' (*Sun Daily*, 2015a). These examples show how, despite the federally fragmented Islamic administration, the trend of exclusionary and discriminatory policies against Shia Muslims has spread across most Malaysian states.

The national institution JAKIM and most Islamic State Councils (MAI) monitor suspected Shias 'in cooperation with security agencies' (*Malaysiakini*, 2013). JAKIM official Othman Mustapha (1956-) describes Malaysia's Shia community as 'small' but 'like cancer' (*macam barah*) (Ibid.). This resembles rhetorical de-humanisation strategies in other contexts, where constitutive Others have been equated with viruses, bacilli, dirty animals, and as ulcers from which the world must be 'cleansed'. JAKIM pursues a 'multi-agency approach' to counter Shia influences: religious enforcement agencies cooperate with universities, ministries, the Immigration Department, and the police (Ibid.). This results in events such as a conference entitled 'Confronting the Shia Virus', held at the Universiti Sains Malaysia in 2013. Speakers included high-ranking political and religious officials.

In Selangor, forcing Shia Muslims to change their beliefs is presented as a 'benevolent act'. Under a 'Programme for Social Development', Selangor's Islamic bureaucracy is using state-administered *zakat* (tithe) funds to fight 'deviant teachings' (Müller, 2017). It does so by re-defining the historical *zakat* recipient category of slaves (*riqab*) as 'persons living in sin', and by including 'deviant' Muslims in that category. 'People living in sin' can be detained in the *zakat*-funded Pusat Pemurnian Akidah Baitul

Iman (henceforth PPABI). Other such centres exist in Malaysia, but while these are offering voluntary programmes, Selangor's PPABI is a 'detention centre for offenders that have been sentenced by a Sharia Court for having committed faith/doctrine-related crimes' (JAKIM, cited in Müller, 2017: 94). It was opened in 2000 under the Syariah Criminal Offences (Selangor) Enactment 1995 'with the purpose of purifying the *akidah* among groups that deviate' to make them 'return to the true teachings of Islam' (Ibid.). States without such centres can send Syariah Court-convicted offenders to Selangor's PPABI (Ibid.). In one instance narrated by a trusted interlocutor, parents 'voluntarily' sent their underage daughter against her will to the PPABI, without a court order, because her parents worried that she might become an apostate.

The anti-Shia discourse is increasingly paranoid. A leading newspaper reported in 2013 that 'Shia followers plan to control (the state's) Islamic departments' (*Sinar Harian*, 2013b). They would enrol their children in academic Islamic Studies programmes with the target of placing them within the Islamic bureaucracy afterwards – according to the alleged plan, in ten years, they would ask for positions in the Islamic Departments. Then, they would secretly try to change religious policies. Such strategies, the public was told, had already been pursued in Lebanon and Iraq, where Shias now 'control the country' (translation).

Expressing similar fears, the UMNO's Youth Wing Assembly in Kedah in 2015 made 'the threat of Syiah teachings in the country' one of the event's themes. Kedah's UMNO Youth leader spoke of a 'team' under his auspices that had 'identified a number of mosques in Kedah being used ... to spread Syiah teachings', as well as 'infiltration into local universities and institutions of higher learning' (*Sun Daily*, 2015b). Discursively constructing and countering a perceived Shia threat, it seems, has become a productive site for the (re-)production of Malay religious and political identity in contemporary Malaysia.

Beyond de facto existing doctrinal differences, a list of frequently referred-to narratives has become part of a public knowledge production about Shia Islam and acquires its perceived truth value through constant repetition. In citation of a JAKIM leader speaking about Twelver Shias (*Malaysiakini*, 2013), these include, most obscurely, that Shias 'do not have Friday prayers', 'declare Prophet Muhammad's companions as infidels', 'allowed to pray three times only', 'reject the consensus of Islamic scholars' (*ijmak*), and 'uplift the status of Imam Ali to the same level as Prophet Muhammad'. Shias are furthermore regularly portrayed as 'extremists' and (potential) 'militants' (e.g. *Bernama*, 2016). In the most excessive line of this

argument, JAKIM has equated ISIS with the Shia by declaring that it is its 'responsibility' to face 'global challenges' in the struggle for 'safeguarding the holiness of Islam' which 'include the issue of the Shia and the militant group ISIS' (*Malaysian Insider*, 2015).

Since the Syrian war, numerous 'anti-Shia' Facebook groups have spread excessive hatred against Shia Islam, with titles such as 'Muslims Unite Against the Shia' (Muslim Bersatu Menolak Syiah), with a banner stating 'stay away from the Shia' ('Jauhi Syiah', and 21,000 'likes' in September 2016; see Figure 2).



**Fig. 2:** Banner of the Malaysian anti-Shia Facebook Group 'Muslim Bersatu Menolak Syiah', stating: 'Come on, let's stand together in rejecting the Shia' and below: 'Shia is not Muslim, a False Religion Created by the Jews' (taken from: <https://www.facebook.com/Muslim-Bersatu-Menolak-Syiah-925772810836467>)

One exemplary posting states that 'Shia is not Islam' (Syiah Bukan Islam) (Facebook 2016c, translation). The administrators of the 'Anti-Shia Movement of Malaysia' (Gerakan Anti Syia Malaysia, <https://ms-my.facebook.com/gasmpage/>) explained that 'the great Ulama in Sunni history have rejected the Shia, they ... better knew how dangerous and evil they are' (Facebook 'Muslim Bersatu Menolak Syiah', 2016a, translation). A graphic ascribes unreferenced quotes to important historical Sunni thinkers, saying e.g. that 'praying next to a Shia is similar with praying next to a Jew or Christian' (Bukhari), 'don't pray next to a Shia' (Shafi'i), and 'those who trust in them (Shia) are infidels' (Ghazali). Many comments make direct reference to Syria/Iraq and Iran, emphasising the 'evil' deeds of Shia Muslims in the conflict, Shia Islam's theological mistakenness, and some call for violent action. An affected Malaysian citizen who is closely engaged with the Malay Shia community has shown the author a collection of screenshots of personal death threats against him from such forums.



**Fig. 3:** Manipulated picture showing former Iranian president Mahmoud Ahmadinejad as an 'Israeli Jew', distributed by a Malaysian anti-Shia Facebook page (taken from <https://www.facebook.com/925772810836467/photos/a.925802157500199.1073741828.925772810836467/958612620885819/?type=3>)



**Fig. 4:** 'The Shia' visualised as the impersonated 'death' knocking at the doors of Malaysia and Indonesia, after having devastated Iraq and Syria (distributed by a Malaysian anti-Shia Facebook page, taken from <https://www.facebook.com/925772810836467/photos/a.925802157500199.1073741828.925772810836467/1004721049608309/?type=3&theater>)

Another prominent theme is linking 'the Shia' to 'the Jews' – consider, for instance, a picture of former Iranian President Mahmud Ahmadinejad photoshopped with an Israeli flag in the background and wearing a Jewish



cap (see Figures 3 and 4). The administrators of ‘Muslim Bersatu Menolak Syiah’ regularly write comments like: Shia Islam was ‘created by the Jews to destroy Islam from within’ (translation, 2015a); and ‘the Shia and Jewish Zionists are brothers, enemies of Islam’ (translation, Facebook, 2016b). A related narrative, also featured in the pro-government press (in an interview with a Saudi Arabian scholar in *Utusan*, 2014), proclaims that the Shia are ‘more dangerous than the Jews’.

Making the same conspiracy theoretical connection by hybridising one’s constitutive Others, the Facebook page Syria Care Malaysia (see Figure 5) posted a picture in 2016 showing an alleged ‘Iranian Embassy in Tel Aviv’, with a banner juxtaposing an Israeli and an Iranian flag – a hoax that *The Telegraph* (2016) had reported earlier. The administrators commented: ‘Where do the Shia say they are enemies with Israel? They are that close! Good friends.’ (translation) Readers added ‘The Shia and Israel are brothers’, ‘countries of the devil’, ‘they have the same mission, they want to remove Islamic governments from the earth’, ‘let’s not be tricked by the media: Iran supports Israel a lot’, and even: ‘Daesh (ISIS) understands that the Shia are the puppet masters behind the Assad regime’, ‘China, Russia, the Shia and their Allies fight our mujahidin there, ... Islam is their biggest enemy’ (all translations). Most often, not a single voice disagrees with statements even of the latter type.



**Fig. 5:** Decontextualized picture claiming to depict an ‘Israeli Embassy in Iran’, posted at the Malaysian Facebook page Syria care, ‘shared’ by more than 2800 people (taken from <https://www.facebook.com/syria.care/photos/a.242211945865651.59469.241317679288411/858616034225236/?type=3&theater>)

More generally speaking, such interrelated visual and textual constructions of ‘evidence’ for the alleged ‘evilness’ and ‘Jewish/Israeli’ character of Shia Islam in cyberspace seem to look credible to a significant (albeit hardly quantifiable) audience and thus contribute to sectarian modes of knowledge production that continue to gain ground in the middle of Malay society, including educated elites, especially since the outbreak of the Syrian war.

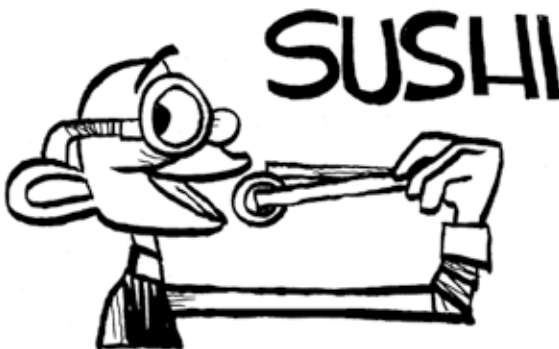
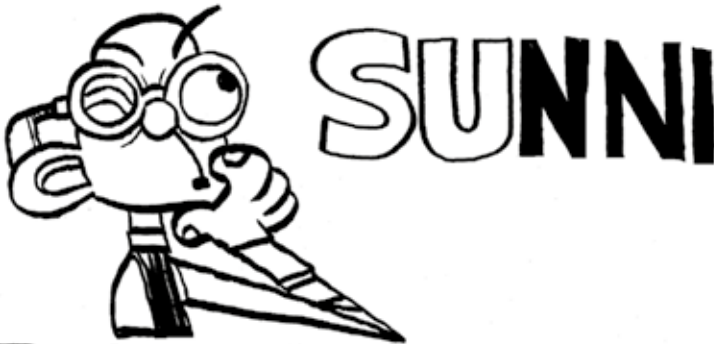
### ***Ummah Revisited: Concluding Remarks***

The growth of hatred against the Shia in Malaysia can be observed on multiple levels, including state policies and popular discourses. It is exploited, and further intensified, by political actors across party political divides; so far, no influential counter-movement in or beyond the state apparatus has materialised. The government’s self-portrayal as a globally leading force of ‘Islamic moderation’ pursuing a ‘middle path’ (*wasatiyyah*) appears questionable, to say at least, considering its sectarian approach to (not) accommodating intra-Islamic doctrinal diversity beyond very narrowly defined red lines of state-sanctioned religious truth claims.

The Malaysian state’s Islamic bureaucracy, for which standardising ‘true Islam’ and ‘heresy’ has become a central concern over the past three decades, serves as a crucial agent in the state’s exercise of classificatory power in the religious-political field, as it imposes its formalised schemes of Islam on the social and legal order with far-reaching effects. It claims for itself the exclusive right to define Islamic truth, and to draw a classificatory line where precisely impermissible deviations from this proclaimed truth start. But with its classification of Shia Islam as ‘deviant’, and the state-supported normalisation of related demonising narratives, the government faces a dilemma – overlaps with anti-Shia narratives of militant Sunni groups such as ISIS. These overlaps provide a substratum of ideas, symbols and identity markers through which the step towards radical actions becomes less distant, i.e. more easily thinkable and justifiable. Malay-speaking propaganda productions of ISIS make intense reference to this shared symbolic repertoire of anti-Shia hatred, and in this respect sound remarkably close to the Shia-phobic Malay-speaking online forums that have been mushrooming since 2011, as illustrated above. The state’s religious policies and discourses do not offer any consistent counter-narrative against such tendencies. Instead, its excessive rhetorical and systemic violence against Shia Muslims described in this chapter may, albeit unintentionally, even encourage ‘concerned’ individuals to turn to physical violence against the ‘Shia threat’, or to view such violence as justified. In the most extreme case this can, for

example, take the form of supporting or even joining Islamist militias in Syria/Iraq, for whom a globalised fight against alleged Shia ‘idolatry’ (*taghut*) is also a constitutive element of their identity. This overlapping consensus undermines parallel efforts of ideological counter-radicalisation. Instead of working towards doctrinal reconciliation among Muslims of diverse backgrounds and beliefs in the country, state-Islamic officials go as far as occasionally equating Shia Islam with ISIS, and miss yet another opportunity for working towards a Malaysian brand of Islam that is tolerant, inclusive, and worthy of claiming, as the Malaysian government does, to spearhead a ‘Global Movement of Moderates’.

When it comes to demonising the Shia, the failure of substantial moderation begins in the education system. The fact that not a single Malaysian university has a Chair for Iranian Studies, Shia Theology, or Persian Language classes, and that Shia Muslims cannot explain themselves in public, enables the most absurd claims about Shia Islam and Iran, as exemplified in this chapter, sound credible. Such narratives are discursively stabilised through constant repetition and the lack of information, or the access to personal experience, that contradicts or complicates the picture. Toleration, let alone respectful co-existence or the acknowledgement of the possibility that truth claims of others might at least theoretically be valid, or have a right to be uttered publicly, has become unacceptable in state-sponsored and mainstream Islamic discourse about Shia Islam – notwithstanding the fact that a marginal group of pluralistically-oriented Muslim rights activists (such as Sisters in Islam and the Islamic Renaissance Front) opposes the hegemonic discourse from an increasingly precarious position. Unless fundamental changes occur in the country’s education system, particularly religious education, and in the mindset of the state’s political and religious leadership, there are few realistic prospects for a more inclusive accommodation of intra-Islamic diversity in Malaysia, and the situation of state-sponsored intolerance, exclusion, discrimination against Muslim minority groups such as the Shia is there to stay. As no powerful political or societal support for such changes appears to be in sight, Malaysia may even witness a further deepening of anti-Shia hatred and Muslim sectarianism in the years to come, especially if parallel sectarian conflicts elsewhere in the Muslim world should further escalate.



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# The Violent Trajectory of Islamisation in Malaysia

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## Introduction

The co-optation of the *dakwah* movement and the subsequent Islamisation race between PAS and UMNO have relocated the discourse of Islam as the legitimate socio-political structure from the periphery to the centre. This has normalised the conception of Islam as the righteous governing structure, marking a historical milestone that would come to shift cultural meanings and re-define social structures within the Malaysian state. Moreover, the co-optation of the Islamist opposition and the race between UMNO and PAS over the appropriate implementation of Islamic tenets have normalised a discourse of political contestation vis-à-vis the righteousness of Islamic governance. This, in turn, came to shape the psyche of a new generation. The new generation of *jihadi* recruits for ISIS,<sup>1</sup>

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<sup>1</sup> The Islamic State of Iraq and al-Sham (ISIS) is a terrorist group that originated in the organisation of Abu Musab al-Zarkawi, an Al-Qaeda member who set up the Iraqi branch of Al-Qaeda (AQI) in 2004. From its early days, the group was infamous for its extreme brutality, often admonished against by Al-Qaeda Central. Throughout the years the group morphed into various forms until, in 2013, withdrew its allegiance from AQ and became known as ISIS. On 29 June 2014 the group self-declared the establishment of the historical Islamic Caliphate in seized swathes of Syria and Iraq, rebranding itself as the Islamic State. Although the majority of the group's leadership previously served under the Saddam Hussein's Ba'ath Party, known for its outright secular, anti-religion outlook, ISIS strategically legitimates itself through religion (Stern and Berger, 2015). The group emerged as a paragon of social media propaganda when it managed to attract over 30,000 foreign fighters from more than 100 countries, of whom around 6000 are from Europe and North America (Soufan Group 2015).

unlike the older generations, are attracted to the apparent righteousness of the outfit, embodied by the establishment of the Caliphate and the implementation of Shari'a according to the Qur'an and the Hadith. Also, they are inspired by the group's persistent rhetoric of waging *jihad* for the *ummah's* defence. The older generation of *jihadi* recruits were schooled in *pondok* schools and madrasahs, had fought in Afghanistan and were part of Jemaah Islamiyah (JI) or Kumpulan Mujahidin Malaysia (KMM), the latter being Southeast Asian *jihadi* units. The social networks of the older generations were clearly demarcated, both politically and religiously, and served as the main vehicle for recruitment and socialisation of *jihadi* ideas. On the contrary, this new generation of *jihadi* recruits have little or, most often, no religious training. Moreover, recruitment occurred via social media or the internet at large, allowing for the creation of a virtual space which encompassed an extra-territorial community. Malaysian nationals who joined ISIS in Syria were grouped under ISIS's Southeast Asian unit, Katibah Nusantara (also known in Arabic as Majmu'ah al Arkhabiliy). According to Sidney Jones, Katibah Nusantara was established to cater for the inability of Southeast Asian members to communicate in either English or Arabic. In a comprehensive report on ISIS foreign fighters, the Soufan Group estimated the number of Malaysian fighters as 100, out of whom five were returnees (Soufan Group 2015). The report highlighted that a majority of the Malaysian nationals who joined ISIS were families who 'largely had no prior association with extremist groups, appeared to be motivated by a desire to be good Muslims and had a romanticized notion of an Islamic caliphate' (USAID 2016). Moreover, the report outlined that most of these families considered the Caliphate a *sine qua non* for pious living, as well as a requirement for considerable rewards in the afterlife. Similarly, a report released by the United States Agency for International Development listed the re-establishment of the so-called Caliphate as the second most important reason Malaysians join ISIS; *jihad* was the first and the ISIS's success and legitimacy the third. While all three factors are very closely interconnected, the report presents *jihad* as the perceived individual responsibility of Sunni Muslims to assist their brethren in Syria in their struggle against the 'enemies of true Islam'; the Caliphate as the epitome of the righteousness stemming from a 'sharia-mindedness'; and ISIS's success and legitimacy as symbolic power resulting from their seizure of territory, the re-establishment of the historical Caliphate and the defiance of international powers (Ibid.).

Based on fieldwork and the existing literature, this chapter claims that the agency of Malaysian ISIS recruits was shaped significantly by the normalisation of a conservative Islamic registrar. As such, this chapter

highlights the rhetorical consistencies between PAS, UMNO and ISIS to suggest that new norms of conservative Islam enabled a natural ideological gravitation towards ISIS. The chapter gives a brief outline of the theoretical framework and the methodology employed. Further, the chapter outlines the discursive congruence between PAS, UMNO and ISIS vis-à-vis the notion of the Islamic State, on Shari'a and *hudud*, and on the conception of *jihad*.

## Research Background

This chapter argues that the normalisation of an Islamic conservative registrar marked a new cultural repertoire that, by virtue of its epistemic characteristics, enabled patterns of extremist action. An important premise of this chapter is that, in the case of Malaysia, religion is part of culture. This argument is based on Clifford Geertz's conceptualisation that religion is, indefinitely, culture. Despite the severe criticism levelled against him based on his loose correlation between symbols and concepts in the context of religion as culture (Frankenberry and Penner 1999), Geertz's conceptualisation remains useful insofar as it sheds light on how religious imaginaries, just like cultural schemas, inform and direct social action. Geertz defined culture as 'an historically transmitted pattern of meanings embodied in symbols, a system of inherited conceptions expressed in symbolic forms by means of which men communicate, perpetuate, and develop their knowledge about and attitudes towards life' (Geertz 1973: 89). Geertz locates religions under the large umbrella of symbols and conceptions as epistemic mechanisms: 'The importance of religion lies in its capacity to serve, for an individual or for a group, as a source of general, yet distinctive, conceptions of the world, the self, and the relations between them. From these cultural fluctuations flow, in turn, its social and psychological ones.' (Ibid.: 123). The assimilation of conservative manifestations of Islam in Malaysia as cultural norms can be easily observed in the increasingly conservative social practices that have permeated both public and private spheres. However, this lies beyond the scope of this chapter.

In essence, conservative Islamic discourses became cultural norms that facilitated the formation of violent Islamist extremist agency. A second important premise of this chapter is that human agency is characterised not by free will and rational choice. Rather, human agency is entrenched in the cultural and structural circumstances of an individual. In contrast to the Eurocentric conception of agency as free will-based and rational (Hegel 2008), social psychology and cultural sociology enunciate more nuanced

academic perspectives on the concept of agency. One such perspective is the discussion on the role of culture in the development of individual agency. Social psychologist Carl Ratner (2000) advocates for a greater focus on cultural dimension of agency, claiming that 'the latter always operated within and through a social structure because agency does not precede society'. As such, he highlights that the cultural dimension of agency is a function of the character and quality of the social relations in which the individual partakes and engages. Ratner mentions that the personal experiences which inform individual agency are idiosyncratic, yet they do not surpass the patterns of cultural normativity. In reality, seemingly contrasting personal experiences are 'minor variations within these patterns' and they are the result of the social practices and concepts which underlie an individual's social existence. As such, Ratner concludes that the socio-cultural foundation of agency undermines the claim of its alleged ontological creativity and autonomy, thus revealing that it is still social dynamics which underpin out-of-the-ordinary agency. Thus, agency is conceptualised as a social and historical project. In a similar vein, Michele Lamont (2002) conceptualises identity, a concept which informs agency, by explaining how meaning and social categories are created. She argues that group boundaries, or collective identities, are shaped and constructed by the cultural repertoires and the structural conditions in which people live. Lamont holds that actors make use of the cultural resources at their disposal, thus stressing how 'some patterns of self-identification and boundaries are more likely in one context than in another' (Ibid.: 173). Along these lines, Emirbayer and Mische (1998: 963) outline that 'human agency [is] a temporally embedded process of social engagement, informed by the past (in its habitual aspect), but also oriented towards the future (as a capacity to imagine alternative possibilities) and toward the present (as a capacity to contextualise past habits and future projects within the contingencies of the moment)'. As such, they redefine agency as the historical engagement of temporal-relational contexts of action which, by virtue of the interaction between habit, imagination and judgment, perpetuates or reconstructs those contexts of action in accordance to the problems posed by shifting historical circumstances. In our case, Malaysian ISIS recruits are social actors informed by historical discourses on the righteousness and legitimacy of Islamic governance – hence the habitual aspect – who are envisioning a utopic world under the Caliphate within an eschatological framework – hence the orientation towards the future – and who understand ISIS as the socio-political alternative for the realisation of their imaginaries – hence the capacity to contextualise past habits and future projects within the contingencies of the moment.

Most open-access information on Malaysian ISIS recruits is available through think-tank reports, often not fully reliable sources. As such, this chapter fills the gap in the literature as it bases its arguments on extensive fieldwork carried out in Malaysia. The inferences regarding Malaysian ISIS recruits the authors make in this chapter rely on data collected from interviews conducted in West Malaysia – Kuala Lumpur, Kuala Pilah, Ipoh, Kuala Terengganu and Kota Bharu – with ISIS members, sympathisers, government officials and civil society actors from October 2015 until November 2016.

### **The Islamisation Race between UMNO and PAS**

The Islamisation race between the two key Muslim political parties in Malaysia began in the early 1980s when a group of young ulama took over the leadership of PAS and transformed its political approach. Led by figures such as Yusuf Rawa, Nik Aziz Nik Mat, Fadzil Noor and Hadi Awang, the party distanced itself from the ultra-Malay nationalist agenda of its previous president Asri Muda. The party also adopted a clear Islamist agenda, institutionalised its new ideology amongst members through a kaderisation process borrowed from the study-cell model of the Egyptian Muslim Brotherhood. One of the key changes that occurred as a result of the leadership change is the shift in PAS's push for an Islamic state and implementation of Islamic law.

Challenged by PAS's new overtly Islamist strategy, the United Malays National Organisation (UMNO), then under Dr Mahathir Mohamad, sought to strengthen its political position by utilising Islam and co-opting Muslim figures into government. Mahathir's meteoric rise as leader of the ruling UMNO and Prime Minister of Malaysia was largely due to his Malay nationalist credentials. Fully aware of this fact, Mahathir sought to cultivate the increasingly influential Islamic revivalist base through his Islamisation programmes. The most important co-option in Malaysia was that of the then leader of the Angkatan Belia Islam Malaysia (ABIM, Assembly of Malaysian Muslim Youths), Anwar Ibrahim, by Dr Mahathir. ABIM was at this juncture viewed as the most important Islamic student movement that was not only clamouring for a more Islamic system to be implemented in Malaysia, but was also well-connected to the international network of Islamist parties and groups. Hence, the co-option of Anwar was viewed by many as a major coup against PAS by Dr Mahathir. Anwar brought with him many supporters from the ulama group and placed them in various important positions within the religious bureaucracy. An example is Ahmad Awang who was

placed in the Prime Minister's office. Other ABIM activists such as Dr Mohd. Noor Manuty, Anuar Tahir and Kamarudin Jaffar were brought into government institutions and within UMNO's political structure.

The Islamisation race that ensued between UMNO and PAS centred around each contesting the vision of Islam represented by the other. PAS's attacks against UMNO were premised on the religious credentials of UMNO leaders and its secular-nationalist ideology. These included the demonisation of UMNO leaders as infidels. UMNO's decidedly 'materialistic' and 'secularistic' approach to governance was contrasted with a PAS platform extending from the ideological and intellectual tradition of the teachings of reformist Islamist ideologues who have emphasised the total inseparability of religion and politics (Liow 2004).

In response to PAS's Islamic rhetoric, Mahathir defined the discursive boundaries between UMNO and PAS through scathing indictment of PAS as a 'deviant' movement, including assertions that PAS leaders worship a God who was a 'thug'. Mahathir and UMNO leaders have also sought to portray PAS as a fundamentalist movement that supports violence. PAS was equated to violent movements such as the Taliban and Al-Qaeda. The fact that several PAS members and leaders were arrested for their membership of Kumpulan Mujahidin Malaysia (KMM) militants gave UMNO leaders ammunition to substantiate the claims that PAS is linked to militancy (Arosoaie 2016). While epitomising itself as the 'right' Islam through opportunistic assimilation of PAS's conservative Islamic rhetoric, UMNO portrayed PAS as an extremist party whose policies are detrimental to inter-religious harmony in Malaysia. Over the years, the unintended consequence of the PAS–UMNO Islamisation race was shifting the Islamic discourse to a more conservative register. Likewise, both parties have also converged in their position on a number of issues such as the implementation of Islamic law in Malaysia. The Islamisation race also reveals that there are few differences between UMNO and PAS regarding their core beliefs in Islam. This is especially the case in their understanding and interpretation of political concepts that both parties have evoked for their political objectives.

### ***Contesting Vision of an Islamic Polity and the Role of the Criminal Law***

The Islamisation race between PAS and UMNO also saw leaders from both parties argue for the formation of an Islamic state. While UMNO and PAS differ in the shape and substance of their respective conception of the Islamic state, the debate helped normalise the idea of it. Since its inception,

PAS had pledged to struggle constitutionally for the attainment of an Islamic state (PAS 1951). The discourse for an Islamic state became dominant when Dr Burhanuddin Al-Helmy and Zulkifli Mohamed took over the leadership of the party in 1955 (Farish 2004: 60). Both leaders pushed strongly for Malaysia to develop as a modern state in which ethical aspects of Islam would be used as guiding principles. In 1980, the PAS Ulama Council published a book, *Islam and Politics*, where the idea of an Islamic state was introduced to the Malaysian Muslim masses (Dewan Ulama PAS Pusat 1980: 11–15). One of the earliest writings on this issue was that of Abdul Hadi Awang, the party's current president, who argued that the duty of establishing an Islamic state is a responsibility for all Muslims (Abdul Hadi 1986: 4–5). He reasoned that God bestowed upon men three areas of responsibility: *ibadat* (worship), *amanah* (faith) and *khalifah* (leadership) (Abdul Hadi 1995: 5–8). He interpreted the concept of *khalifah* as men's responsibility as God's vicegerent who will promulgate an Islamic political system (Ibid.). One of the key feature of PAS's Islamic state is the office of the Caliph who will serve as the head of state whose role was to replace the prophets, uphold the sanctity of Islam and administer the country (Ibid.: 57–8). PAS's position on the concept of the Caliphate can be seen in the speeches made by its leaders. Hadi Awang has long supported the idea of the Caliphate. In both his writings and speeches, Hadi praises the Caliphate, arguing that it is crucial for Muslims to revive the Caliphate. Another PAS leader, Ustaz Nazry Chik, the treasurer of the PAS Ulama Council, explained that PAS's aim of establishing an Islamic state is a short-term plan and that, in the long run, PAS aspired to establish the Caliphate. He added that this vision is reflected in PAS's transnational linkages. The strong relationship between PAS and other groups such as the Muslim Brotherhood in the Middle East and Jamaat-e-Islami in South Asia underscores this vision (Mohamed Nawab 2009: 654). While the modern-day Caliphate may not take the exact form of the historical Caliphate, he argued that a union comprising all Muslim countries in the world is a goal that all Muslims must strive for.

In facing the challenge from PAS, UMNO has also evoked Islamic political concepts. Yet UMNO's evocations of these concepts come with a political caveat; that they are made for galvanising support from the Malay populace in Malaysia. The politicisation of Islam in the state is a central strategy of the ruling government's appeal to more conservative Muslim actors in the society. Such a strategy has been employed since Mahathir Mohamed was prime minister in the late 1980s, and still prevails (Liow 2004: 196). It is thus unsurprising that in response to PAS's criticism of the

Malaysian state as being un-Islamic, Mahathir declared that Malaysia already was an Islamic state in 2001 (Lee 2001). Shortly after this declaration, a number of government-linked religious scholars issued justifications to support Mahathir's claim. Nakhaie Ahmad, the ex-secretary general of PAS, stated that Malaysia was an Islamic state since many aspects of Islam had already been implemented in Malaysian society.<sup>2</sup> These include support for the Islamic finance industry, promotion of Islamic education, legal mechanisms to eradicate deviant Islamic teachings and the establishment of Islamic legal institutions.

Unlike PAS's open support for the Caliphate, UMNO leaders have generally steered away from discussing the subject. However, Prime Minister Najib Razak has evoked the greatness of the historical Caliphate and encouraged Malaysian Muslims to refer to it as a benchmark for the success of Malaysian society. The curriculum for the compulsory Islamic Civilization subject in Malaysian universities presents an uncritical conception of a historical Caliphate which is deemed as the perfect form of societal organisation (Osman and Baharudin 2009). In more recent times, the Malaysian government has unwittingly given credence to ISIS fighters for their bravery (Chi 2016), a statement the administration quickly distanced itself from.

In ISIS's discourse, the concept of the Caliphate is a reference to a sacred space. Abu Mohammed al-Adnani (2014), IS's spokesperson, declared the establishment of the Caliphate on 29 July 2014 by specifically mentioning the divine origin of the Caliphate: 'Allah (the Exalted) said, {And mention when your Lord said to the angels, 'Indeed, I will make upon the earth a khalifah'} [Al-Baqarah: 30]'. For Muslims worldwide, the notion of the Caliphate designates a sacred space which has an existential meaning for the religious person. Moreover, the *ummah*, ISIS claims, can exist only within a Caliphate. Since the sacred designates the absolute, non-contingent reality of an individual, living in a sacred space equates to living in the objective reality, in contrast to the subjective reality of the profane. A few months before declaring the Caliphate, IS flattened the border markings between Syria and Iraq in a symbolic act which represented the end of the subjective neo-colonial world order originating in the Sykes-Picot agreement. The agreement was forged at the end of World War I, when the Ottoman Caliphate, the last historical Caliphate, disintegrated. In a

<sup>2</sup> Nakhaie Ahmad was interviewed by Mohamed Nawab Mohamed Osman in June 2008 at Batu Caves, Selangor.



secret understanding, France and UK carved up zones of influence in territories previously part of the Ottoman Caliphate under the disguise of 'artificial, arbitrary and conflict-laden borders' (Fattah and Fierke 2009: 202). Understood as rooted in European colonialism, the present geographical divisions in the Middle East, as well as the region's relationship with the United States, are commonly narrated as present-day manifestations of the 'historical humiliation, betrayal and subordination' of people living in the region (Ibid.). By taking down the border which symbolised subjective reality, ISIS installed in its place the Caliphate which was meant to represent an absolute, non-contingent reality. As such, ISIS (Al-Adnani 2014) highlighted:

We clarify to the Muslims that with this declaration of khilafah, it is incumbent upon all Muslims to pledge allegiance to the khalifah Ibrahim and support him (may Allah preserve him). The legality of all emirates, groups, states, and organisations, becomes null by the expansion of the khilafah's authority and arrival of its troops to their areas. Imam Ahmad (may Allah have mercy upon him) said, as reported by 'Abdus Ibn Malik al-Attar, 'It is not permissible for anyone who believes in Allah to sleep without considering as his leader whoever conquers them by the sword until he becomes khalifah and is called Amirul-Mu'minin (the leader of the believers), whether this leader is righteous or sinful'

ISIS (2014b: 25) also qualified itself in reference to *hijrah* and *darul-Islam* (the house of Islam), urging families to join its territory by means of juxtaposing itself to the profane Other:

The first priority is to perform hijrah from wherever you are to the Islamic State, from darul-kufr to darul-Islam. Rush to perform it as Musa (alayhis-salam) rushed to his Lord, saying, {And I hastened to you, my Lord, that You be pleased} [Taha: 84]. Rush to the shade of the Islamic State with your parents, siblings, spouses, and children. [...]

### ***Discursive congruence on Shari'a and hudud***

The hallmark of PAS's struggle for an Islamic state is the implementation of Islamic criminal law. In the Islamic State document alluded to earlier, PAS outlined the vision of the implementation of Islamic criminal laws (Dewan Ulama PAS 2004). In 1981, PAS Ulama Abdul Hadi Awang, currently PAS president, denounced Muslim leaders in UMNO as *munafiquns* (hypocrites) and that to confront a nominal Muslim government that fails to implement *hudud* law was part of a Muslim's *jihad* (struggle). He added

that UMNO's ethno-nationalism was un-Islamic and the party could never claim to represent Muslim interests. Exemplifying this belief, PAS leaders have been unyielding in their effort to implement Islamic criminal laws in states under the party's rule. Since 1990, when it returned to power in the state of Kelantan, PAS has presented draft proposals to Parliament for the introduction of *hudud* criminal law in Kelantan. Similar efforts were made after the PAS electoral triumph in Terengganu in 1999 (Stark 2004). In 2002, PAS president Abdul Hadi Awang proposed a motion in the Malaysian Parliament seeking to enhance the Shariah courts' powers. The amendments to the Shariah Courts (Criminal Jurisdiction) Act 1965 will allow the Islamic courts to enforce any punishment except the death penalty. In supporting *hudud* implementation, Nik Aziz Nik Mat, the late spiritual leader of the party, argued that the rejection of *hudud* is tantamount to rejecting an integral part of Islam and, as such, anyone who is against the implementation of *hudud* is deemed to be refuting God-ordained laws. These individuals are then deemed to have fallen outside the fold of Islam. PAS's unequivocal support for *hudud* has not only created an environment where PAS members are engaged in the practice of *takfir*<sup>3</sup> against any individuals opposed to *hudud*. It has also created a religious atmosphere in Malaysia where *hudud* is deemed to be a sacred law that cannot be questioned.

UMNO leaders have maintained a non-committal position on *hudud* implementation. Dr Mahathir dealt with the issue of *hudud* in a sophisticated manner. While not rejecting *hudud* laws outright, he opposed PAS's plan to implement *hudud* by arguing that he found the latter's interpretation of the laws did not fully fulfil 'the laws, spirit and characteristics inherent in Islam'. Mahathir explained that 'PAS laws not only cannot be accepted but should be rejected as the implementation of such laws would taint the image of Islam through the injustice that these laws will cause' (*Straits Times* 1994). Many of the government ulama who supported the idea that Malaysia is already an Islamic state have unequivocally stated that it was key for the Malaysian government to work towards the implementation of *hudud* laws (Wan Zahidi 2001: 2). In supporting the government's position that sufficient provisions and preparations must be undertaken before the implementation of *hudud* laws in Malaysia, Nakhaie Ahmad proposed that the government revamp the legal institutions in

<sup>3</sup> In Islamic Law, *takfir* refers to the practice of excommunication wherein one Muslim declares another Muslim a non-believer, thus justifying the shedding of his blood.

Malaysia, including the Shariah courts, amend the Constitution and carry out a detailed study on the impact of *hudud* implementation on Malaysian society (Ibid.: 14–19). As such, the rejection of the *hudud* bill proposed by PAS in Kelantan did not mean that these ulama did not support the implementation of *hudud* (Nakhaie 1992: 10).<sup>4</sup> Fathul Bari Mat Jahaya, an UMNO Youth Council member, remarked that the implementation of Islamic criminal laws comprising *hudud*, *ta'azir* and *qisas* is an obligation for all Muslims (interview with Fathul Bari Mat Jahaya, 2016). In stating his opposition to PAS's proposal for the implementation of Islamic law, Fathul Bari argued that PAS scholars have not thought through the implication of *hudud* implementation within the current judicial system which, he argued, will cause more problems and injustice. In sum, both UMNO politicians and government ulama have showed clearly that they support the implementation of *hudud* laws in Malaysia even if they are opposed to PAS's interpretation of Islamic law. The push by both PAS and UMNO for the implementation of Islamic law has led to the acceptance of *hudud* as being an important aspect of Islam. As a result, surveys conducted by the Merdeka Centre showed that more than 88 per cent of Malaysian Muslim youth support the implementation of *hudud*.

On announcing the establishment of the so-called Caliphate, Al-Adnani (2014) outlined that the succession of Allah 'is not simply kingship, subjugation, dominance, and rule', but to utilise all those for the purpose of compelling the people to do what the Shari'a requires them concerning their interests in the hereafter and worldly life, which can only be achieved by carrying out the command of Allah, establishing His religion, and referring to His law of judgment. Within the same speech, Al-Adnani (Ibid.) also mentioned that under the flag of the Islamic State 'the hudud penalties are implemented – the hudud of Allah – all of them'. Adnani's statement has a strong potential appeal for Malaysian Muslims, since the issue of Shari'a, with a special focus on hudud, has been one of the most crucial aspects for the political contestation against UMNO in Malaysia.

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<sup>4</sup> Others who oppose the bill had argued that the bill is not comprehensive enough and must cover more aspects of the *hudud*. See Abdul Halim Muhammad, 'Undang-Undang Jenayah Syariah dan Perlaksanaannya di Malaysia'; paper presented at *Seminar Perlaksanaan Hukun Syarak di Malaysia*, 9–10 February 2001 held at Penang Gold Resort, Kepala Batas, Penang. However, many government ulama support the bill such as the Mufti of Perak and Selangor (see Sayuti 1994).

### ***Contesting Visions of the Ummah and Jihad***

In their rhetoric, UMNO leaders make vague and unspecific references to the concept of *ummah*. UMNO politicians have used the word ‘*ummah*’ as a unifying concept to galvanise support under a religious banner. Dr Mahathir was the first Prime Minister to constantly evoke the concept of *ummah*, especially in his relations with Muslim countries. In a 2003 speech (Tarabay 2003) at the Organisation of Islamic Cooperation (OIC) meeting, Mahathir stated:

The whole world is looking at us. Certainly 1.3 billion Muslims, one-sixth of the world’s population are placing their hopes in us, in this meeting, even though they may be cynical about our will and capacity to even decide to restore the honour of Islam and the Muslims, much less to free their brothers and sisters from the oppression and humiliation from which they suffer today.

Such rhetoric lends credence to the claim by UMNO leaders to be defenders of Islam without the necessity for concrete measures to strengthen and further entrench the position of Islam within the country.

While the concept of *ummah* refers to Muslims on a global scale in the realm of Malaysia’s foreign relations, the term is evoked domestically to refer to Malaysian Muslims. The most recent example of the use of ‘*ummah*’ can be seen at the 2016 UMNO General Assembly, where members of UMNO – including Deputy Prime Minister Zahid Hamidi – spoke of cooperating for the sake of the Muslim ‘*ummah*’. This stands alongside Prime Minister Najib Razak’s assertion that it is the duty of Muslims in Malaysia to support the private member’s bill submitted by Hadi Awang (purportedly to strengthen Shariah courts and introduce *hudud* law) for the sake of developing Muslims within the country (Malaysiakini 2016). The statement is part of a political strategy for harnessing the electoral support of the Muslim constituency ahead of the 2018 general election. Yet, unaware of UMNO’s strategies, Malaysian Muslim masses perceive and appreciate only the rhetorical congruence between PAS and UMNO.

For PAS leaders, Muslims in Malaysia should see themselves as belonging to the larger *ummah*. The conception of *ummah* is an integral part of the party’s ideology enshrined in PAS’s constitution. The former deputy president of PAS, Nasharuddin Mat Isa (2011), in a speech at an event organised in support of Palestine, cogently explained PAS’s approach to the concept of *ummah*:

We do not see boundaries within the Muslim World. For us the Muslim World is like a body. If u hurt one part of the body, the whole body will feel pain. Malaysian Muslims must stand up against the atrocities perpetrated by Israel against our Palestinian brethren.

In line with this vision, PAS is at the forefront in promoting global Muslim causes. As stated earlier in the chapter, the party has established formal ties with a number of key Islamist political parties and has been in the forefront of promoting global causes where Muslims are deemed to be oppressed. As such, the conception of the *ummah* is imbibed by the party membership.

The concept of the *ummah* has usually been conceptualised as the transnational Muslim collective identity, with most academic investigations conceptualising it through the lens of social belonging and social identity (Mandaville 1999; Roy 2004; Haleem 2012). In explaining the necessity of reviving the *ummah* under the newly established Caliphate, ISIS (2014a: 5) stated in the first number of its magazine, *Dabiq*:

The time has come for the Ummah of Muhammad to wake up from its sleep, remove the garments of dishonor, and shake off the dust of humiliation and disgrace, for the era of lamenting and moaning has gone, and the dawn of honour has emerged anew.

Moreover, ISIS justified the establishment of the Caliphate as a sanctuary for the *ummah*. In its narrative of the Muslim *ummah*, ISIS (Ibid.: 25) challenged the inaction of Muslim governments worldwide, thus the incapacity of both PAS and UMNO to fully and consistently comply with the Qur'an:

From amongst the aspects of this great millah that have begun to fade from within the souls of many people and be viewed as nothing more than fantasy, is the notion that the Muslim Ummah (nation) should strive to be united behind a single imam (leader), fighting under his banner and empowering him to guard the landmarks of this religion and implement the Shari'ah of Allah.

### ***Jihad in the rhetoric of UMNO, PAS and ISIS***

*Jihad* is another Islamic political concept that is often evoked by PAS and UMNO. It is evoked regularly and without consistency, generally to provide some basis for mobilisation of the Malay masses, often against the supposed threat of non-Muslim Malaysians. In general, UMNO leaders have avoided framing any Muslim struggles in militaristic terms; instead, they pedagogically articulate *jihad* along the lines of socio-economic

efforts to build and strengthen Islamic society and identity. To substantiate its interpretation of *jihad*, UMNO has ventured to publicise the party's economic and cultural activities associated with *jihad* on its website. UMNO Information Chief Annuar Musa called for a '*jihad*' to counter 'hate politics ... to fight against slander, hate, and divisive politics' (Malay Mail Online 2016). During a public rally to pledge support for Rohingya Muslims, UMNO Supreme Council member Ismail Sabri Yaakob referred to the gathering as PAS-UMNO *jihad* 'for the sake of Muslims' which can be used as a platform for further Islamic cooperation (*New Straits Times* 2016). Additionally, UMNO delegate Syamsul Amri Ismail called for '*jihad*' against ignorance by continuing educational programmes and scholarships, as well as against diseases and other ailments (Bernama 2016). Thus the evocation of *jihad* is highly contextual, and mainly used as a vehicle to justify or promote one ideal or another.

For PAS leaders, the concept of *jihad* has a rather militaristic nuance. Former PAS spiritual leader, Yusof Abdullah al-Rawa, in explaining the meaning of *jihad* argued that:

Any Muslim who is not brave enough to take part in a jihad cannot call himself a real man, because a real man would not run away when he is called upon to undertake a jihad. All Muslims must prepare themselves for jihad to show that they are prepared to do anything to ensure the victory of Allah. (Mujahid Yusof Rawa 2001: 128)

PAS also used the involvement of its members and supporters in religiously justified conflicts outside the country, such as in Afghanistan and Iraq, to lend credence to its image as a party committed to the struggle of Islam and *jihad* against its enemies (Farish 2003: 221). However, in the 1990s PAS was forced to redefine its understanding of *jihad*, especially after its disastrous loss in the 1986 election where party leaders concluded that the Malaysian public – including the Malay-Muslim majority populace – were unable to accept a political party that openly called for a revolutionary struggle against the state.

In the 1990 general election Nik Aziz used the concept of *jihad* to state that voting was part of a *jihad* to topple the UMNO-led government that had gone beyond the pale of Islam. Thus, he urged Malaysian Muslims to embark on a political *jihad* by voting against UMNO. The employment of the concept of jihad was powerful enough to partially contribute to PAS's excellent performance in the election which saw the party winning control of the Kelantanese state government. PAS's reconceptualisation of *jihad* also saw the party suggesting that Muslims in Kelantan must undertake an

economic jihad to ensure that the state enjoyed progress and development. Nik Aziz stated that the party would pursue the agenda of economic development as part of the party's *jihad* (Quoted Farish 2004a: 153). While the party's promotion of *jihad* was broader during this period, some of its key leaders continued to support a militaristic *jihad*. In an effort led by Hadi Awang to promote the party abroad, PAS began establishing ties with the global network of Islamist parties and movement, some of which have utilised violence to achieve their objectives. These groups include the Jama'ah Ihya al-Sunnah of Indonesia that was led by Jaafar Umar Thalib, various mujahideen factions in Afghanistan, Hezbollah and HAMAS. At the party conference in September 2003 Hadi Awang overtly supported the actions of suicide bombers in the Middle East and Chechnya (Lim 2003). He further stated that the party would continue to support HAMAS and Islamic *jihad* and that it was self-defence rather than terrorism. He described the suicide bombers as martyrs. Such rhetoric has led to the normalisation of violent *jihad* amongst its members which could also explain why many Malaysian militants were either members or supporters of PAS (Farish 2004: 153).

Along with PAS's discursive engagements with *jihad*, ISIS elegantly intermeshes the discourse on the revivification of the *ummah* with the discourse on the morality of performing *jihad*, which is perceived as a divine ordinance and a responsibility for every Muslim, especially in the context of an endangered *ummah*: 'O soldiers of the Islamic State (the Exalted) ordered us with jihad and promised us with victory but He did not make us responsible for victory' (Al-Muhajir 2016). As such, ISIS (2015) claims it 'has taken it upon itself to fulfill the Ummah duty towards this generation in preparing it to face the crusaders and their allies in defense of Islam and to raise high the word of Allah in every land'. Irm Haleem (2012: 112) claimed that *jihad* in the case of Al Qaeda was understood through the lens of Mohammed Abd al-Salam Faraj as 'the duty of each Muslims individual to challenge injustices, particularly those of which one's own government was responsible'. Moreover, by drawing on Sayyid Qutb's infamous writing 'Milestones', Haleem (Ibid.: 116) claims that his qualification of the Shari'a as a universal law and the inclusion of *jihad* as a fundamental part of it marks waging *jihad* with an 'implied inviolability'. This conceptualisation remains equally valid in the case of ISIS. In fact, all the more with the establishment of the Caliphate, ISIS created a systematic and convincing narrative that the Caliphate it established must be defended by and for the *ummah* by performing *hijrah* to fight jihad according to the Qur'an:

Hijrah has been a pillar inherent to jihad, particularly in eras void of darul-Islam. Allah's Messenger said: 'Hijrah will not cease as long as there is jihad.' Because there were almost no safe havens on the earth left for the mujahidin, the ideal land for the hijrah was a place where they could operate without the threat of a powerful police state.

## Conclusion

This article highlights the rhetorical consistencies between Islamist parties in Malaysia – PAS and UMNO – and ISIS, a violent Islamist extremist organisation. In essence, the article outlines how a sustained political phenomenon, in this case the Islamisation race between PAS and UMNO, penetrated cultural repertoires and, by virtue of promoting an increasingly conservative mind-set, inadvertently legitimised violent extremist discourses. This article's argument is rooted in a theoretical framework drawn from social psychology and cultural sociology which highlights how human agency, both individually and collectively, is a historical and contextually contingent phenomenon, emerging at the confluence of cultural and structural factors. The political contestation between PAS and UMNO in Malaysia vis-à-vis the polity of an Islamic state, the Caliphate, Islamic law, and concepts such as *jihad* and *ummah*, shaped Malaysian Islamic cultural structures into a more rigid and conservative Islamic normativity.

Based on the resonance between the Islamic terms underpinning the Islamisation race and ISIS's violent justifications drawing on Islamic tenets, Malaysian nationals found ISIS as a natural extension of their political context advocating for Islamic righteousness. This can be concluded based on the motivations invoked by the Malaysian individuals and families who joined the outfit in Syria and Iraq. It is the opportunity to wage jihad for *ummah*'s self-defence, the opportunity to live righteously within the Caliphate governed according to Shari'a and the opportunity to epistemologically defeat the Westphalian world order that triggered their joining ISIS. As such, in contrast to the Malaysian state-led condemnations of ISIS as a terrorist outfit which has infiltrated the Malaysia social fabric, this article emphasises the great role that protracted political developments and cultural dynamics play in aligning the mind-set of Malaysian individuals with ISIS's violent narratives. Thus, ISIS, as a rhetorical phenomenon, is not extrinsic to the Malaysian society, but rather deeply entrenched within Malaysian politics and culture.



BABI



HARAM

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# Life in Limbo: Refugees in Malaysia

*Gerhard Hoffstaedter and Louise Perrodin*

Refugees<sup>1</sup> have become a global issue for many governments and civil society around the world, but in Malaysia they remain in the margins. Officially, their legal status is no different from that of illegal or undocumented immigrants. In reality, refugees have been displaced and usually have nowhere to return to safely, whereas undocumented immigrants are able to return to their home countries safely. Yet, in a common posture with several of its ASEAN neighbours, Malaysia has been rejecting international refugee law since the Indochinese refugee crisis (Davies, 2008). More than that, the Malaysian government rarely speaks of refugees, especially those living inside its borders. Malaysia is not a signatory to either the 1951 Geneva Convention or the 1967 New York Protocol Relating to the Status of Refugees.<sup>2</sup> Its national legislation, starting with the Immigration Act 1959/1963 (Act 155),<sup>3</sup> does not mention refugees

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<sup>1</sup> Refugees are defined in article 1A2 of the 1951 Convention relating to the status of refugees as those who fled their country of origin – being out of the country of origin is one of the criteria to be considered as a refugee – because of persecutions based on ‘race, religion, nationality, membership of a particular social group or political opinion’.

<sup>2</sup> ASEAN, Association of the South East Asian Nations, is a regional organisation that was created in 1967. It now counts 10 member states, out of which only Cambodia and the Philippines ratified the 1951 Convention relating to the status of refugees. The South-East Asian states hold a strong regional opposition to a widely ratified convention (146 of the 193 UN member states have ratified the text). Both Convention and Protocol can be accessed on the following link: <http://www.unhcr.org/protection/basic/3b66c2aa10/convention-protocol-relating-status-refugees.html>

<sup>3</sup> Cf. <http://jpt.mohe.gov.my/images/InstitutusiPengajianTinggi/MengenalJPT/AKTA/Bil11.aktaimigresen.pdf>

or asylum seekers. Accordingly, in the eyes of the Malaysian law there is no difference between refugees and undocumented immigrants. As such, Malaysia's legislation provides for the deportation of these populations.

In practice, however, Malaysia is a 'country of first asylum', i.e. it temporarily tolerates refugees before they are resettled to a third country – first and foremost the US and Australia. The United Nations High Commissioner for Refugees (UNHCR) in Malaysia is responsible for the process, even though no formal agreement has been signed with the Malaysian government. The UNHCR conducts the lengthy, selective Refugee Determination Status procedure to register refugees in Malaysia, then is supposed to select those eligible for resettlement before sending them to countries offering resettlement places. However, even though Malaysia has one of the highest resettlement quotas in the world, the pace of resettlement is very slow. The UNHCR occupies a difficult and fraught position as a conflicted arbiter between resettling governments – as it is dependent on being offered resettlement places – and the Malaysian government, which merely tolerates the UNHCR in Malaysia and expects them to resettle refugees quickly. Thus the UNHCR's contested position is often played out at the cost of many refugees who remain trapped in a legal limbo marked by informality for a protracted period of time.

The time refugees spend in Malaysia offers them only few prospects. Malaysia's low human rights standard applies to refugees and asylum seekers. Besides, civil society is relatively weak: the great majority of Malaysian non-governmental organisations are small in size, hardly autonomous, and operate in a context where space for contestation is very limited, up to the point that they often become powerless (Giersdorf and Croissant, 2011). Furthermore, civil society actors have been concerned mostly with religious freedom, good governance and economic inequalities (Weiss, 2014), so that migration questions, including refugee and asylum seekers, do not arouse great mobilisation (Gurowitz, 2000). In such a context, the Malaysian government, currently facing greater opposition, remains uninterested in the plight of refugees and offers little hope for integration into Malaysian society or legal acceptance. Thus, both civil society and government support for refugees is very limited.

What is more, refugees in Malaysia are caught in a context where ethnicity is at the heart of both political and social life. Malaysian political life has been organised along ethnic lines. The dominant political party is the United Malays National Organisation (UMNO), which leads a national government coalition that has been in power since independence in 1957, relying on the electoral majority of Malays in West Malaysia and

other Bumiputeras (sons of the soil – a governmental category denoting most indigenous groups in East and West Malaysia) in East Malaysia. Multicultural politics have largely been instrumentalised through policies of racial preferences, as illustrated by the affirmative actions favouring the Malays and other Bumiputeras. Refugees therefore have to find their place in the Malaysian racial<sup>4</sup> pyramid that these policies strengthen. Finally, racism is both institutionalised and a common feature in everyday life in Malaysia. Thus many refugees are captured by the Malaysian racial prejudices towards people of a particular religion and cultural background, which has a great influence on the general perception Malaysians have of refugees.

The vast majority of refugees in Malaysia have fled Myanmar. Of the over 150,000 refugees registered with the UNHCR as of August 2016,<sup>5</sup> the two largest communities are Rohingya (54,856) and Chin (41,420), both ethnic groups from the western fringes of Myanmar. Myanmar is one of the most ethnically diverse nations in Southeast Asia and its modern history has been shaped by the struggle between ethnic groups for independence, autonomy and self-determination. The colonial redrawing of borders, colonial administration and the categorisation of ethnic groups for a population census have defined the backdrop for today's displacement of minorities in Myanmar. Chinland (and the supra-ethnic category of Chin) was created by the British, and the Rohingya's predicament, too, is partly the result of colonial population movements and the, often arbitrary, drawing of borders in the region. The Rohingya and Chin communities are at the centre of this chapter. Their experiences highlight how different refugee community structures can be: Rohingya communities are poorly organised, while Chin ones are well organised, providing numerous services to their members. Last, but not least, their religious representations – as Muslim for the Rohingya and as Christian for the Chin – provide insights in the role religion plays in service provision for refugees in Malaysia. Religious and ethnic differences and similarities also play a role in everyday interactions

<sup>4</sup> 'Racial' is used in the Malaysian context where Malaysians commonly use race to denote belonging to an ethnic category. Use of the term race to denote ethnic differences is not endorsed by the authors.

<sup>5</sup> UNHCR. Figures at a glance. October 2016. Available online at [http://www.unhcr.org/my/About\\_Us/-Figures\\_At\\_A\\_Glance.aspx](http://www.unhcr.org/my/About_Us/-Figures_At_A_Glance.aspx) (consulted on 5 January 2017). This figure accounts only for those registered with the international organisation, therefore excluding others who struggle to access the international agency responsible for their protection in the country. Plus, Chin and Rohingya have to go through community leaders to be registered, a step which can represent one more barrier to registration.

with Malaysians; for instance, Rohingya are often mistaken for Bengalis (Bangladeshi migrant workers), a perception that mixes up representations of illegal immigrants and refugees. Thus religion and ethnicity can work against each other in processes to bring about local integration or acceptance of refugees. This chapter will demonstrate how the Malaysian government has resisted legal norms to deal with refugees in Malaysia and why it may chose to do so. The legal informality it places upon refugees places a burden on refugees and their need to survive in the urban environments of Malaysia. While most literature on urban refugees focuses on service provisions and work rights, this comparative chapter shows the role played by ethnic and religious identity in this context.

## **Two Refugee Worlds: Chin and Rohingya**

### ***Chin***

The Chin are a predominantly Christian minority from northwest Myanmar. Most are from Chin state, one of the poorest and most remote areas in Myanmar. The area was missionised by American missionaries in the late nineteenth century. Today most people in Chin state are evangelical Christians and have been persecuted for their beliefs by the military junta. Chin have argued for more self-determination since independence; however, after the military coup in 1962 the situation escalated, with Chin becoming targets for the military regime. Chin state was heavily militarised and Chin people became subject to forced labour (most often portering for the military), abuse (including torture) and forced eviction from their land. Some Chin joined the armed struggle with the Chin National Army whilst many others fled to neighbouring India, Thailand and Malaysia. The human rights abuses have displaced a whole generation, with many growing up in India before making their way to Malaysia or other third countries. Since the 1990s Chin in Malaysia have been organising their community and building links with local churches, employers and local civil society organisations. Most Chin do not identify as Chin, but belong to community refugee organisations based on their ethnic group or home village. Nonetheless, two large Chin refugee organisations exist to ostensibly represent the majority Chin refugee community. They both work very closely with the UNHCR for registration purposes as well as to provide services and help to their members.

Chin seek protection in Malaysia for several reasons. First, many have come via India and spent time in New Delhi where registration times are



considerably longer than in Kuala Lumpur. In addition, fewer resettlement places are available in India, which means that refugees there are faced with a protracted stay and often no resettlement option. Those who can and have the means to make it to Malaysia subsequently do so. The journey can be cumbersome, dangerous and expensive, but in the Chin community smugglers are abundant to provide for a relatively easy journey from Myanmar or India to Malaysia. Once there, they can quickly register with their community refugee organisation and rely on family, church and village networks to get a job and accommodation. The ready availability of relatively well-paid (compared to Myanmar and India) work is another pull factor to Malaysia. Many refugees manage to earn enough money to pay for their rent, food and, in some cases, to remit money to family members in Myanmar or India.

The role of the churches cannot be overemphasised in providing a community backbone to make life in Malaysia possible. Churches do not just provide spiritual sustenance on Sundays (or Saturdays for the Adventist communities); many churches are actively engaged in outreach, schooling and the provision of other services. Chin pastors are automatically also community leaders and there are a sufficient number of pastors in Malaysia to service the numerous churches and numerous community languages spoken by Chin refugees. Language is another issue where Chin refugees are often at an advantage compared to other refugees in Malaysia. Many have learnt some English and, unlike Burmese, Chin languages are usually romanised when written (a remnant of the American missionary work). Thus Chin find work in tourist restaurants and shops in central Kuala Lumpur where English is required as well as with professional employers who require higher educated workers (some Chin refugees have college degrees from Myanmar or India). Less-well-educated Chin refugees can find work in plantations, factories, small businesses and restaurant kitchens, where they are often prized as good workers by employers.

Employers are tied into refugee networks through an array of chance encounters, systematic recruitment and the chance to recruit cheap labour. Some employers know about the refugee situation and want to help by employing refugees rather than other undocumented workers, whilst others are happy to simply find cheap and hard-working labour to satisfy their needs. Some agents mediate between refugee organisations and employers, making sure both parties know what to expect, and can become valued assets for refugee communities. Many Chin started out working in plantations, mostly oil palm, in the interior of West Malaysia as many initially settled in the tropical forests, away from prying police and locals.

However, the jungle camps were demolished in the early 2000s and refugees moved into the obscurity of the large cities, mostly Kuala Lumpur, where Chin found homes and work in predominantly Chinese neighbourhoods. There they could blend in a little and establish their churches, community organisations and, most importantly, stay close to the UNHCR compound in case they had to go for interviews. Today Chin neighbourhoods are easy to spot on Sundays, when brightly coloured traditionally dressed Chin men and women make their way to their local churches. Some neighbourhoods also have Chin cafes that serve traditional dishes and sell the ubiquitous betel leaf with tobacco. The centre of Kuala Lumpur is littered with the red-stained spittle that is produced by chewing the betel.

### ***Chin informal presence and Malaysian internal politics***

Chin refugees, like all refugees, present a ‘radical other’ in Malaysia (Hoffstaedter, 2014). They have no governmental representation, no patron to look out for them and their interests. Their informality and illegality results in their powerlessness vis-à-vis the government and its agents. As a result, refugees, and Chin refugees especially, have been subject to arbitrary arrests, immigration raids, extortion and abuse by local gangs as well as by police and immigration officials. Without a powerful ally within Malaysia, Chin refugees have successfully found allies outside Malaysia to speak with and for them on the international stage as well as within Malaysia. A growing diaspora of resettled Chin refugees in the United States of America has been successful in lobbying local US politicians to intercede on their behalf in Malaysia and to provide expedited resettlement quotas for Chin refugees to the US. This programme ran for several years in the early 2000s and saw Chin refugees resettled at a higher rate than any other refugee group. Thus resettlement became the norm and most Chin only remained in Malaysia for a couple of years, making life in limbo and their informal existence bearable. For the Malaysian government it presented a welcome short stay of a hard-working refugee population that was nonetheless premised on the eventual resettlement of all Chin refugees. Thus the tolerance of Chin refugees was made possible by their quick resettlement and short stay in Malaysia. However, in 2015 the UNHCR decided to stop registering Chin refugees as they believe the situation in Chin state is sufficiently calm for refugees to return. This has caused shock and increased anxiety amongst Chin refugees, especially those not yet registered, as they are unsure of their future in Malaysia. It is highly unlikely that the Malaysian government would offer Christian Chin refugees work rights in Malaysia; therefore most remain ensnared in the shadow economy, eking out a living

at the margins, hoping for resettlement and a new life in a third country.

### **Rohingya**

The Rohingya are one of Myanmar's Muslim minorities. Originating from the Rakhine state bordering Bangladesh, Rohingya have been suffering from systematic state persecution for decades, and the international media has dubbed them the 'most persecuted minority in the world'. The Myanmar government considers them as Bengali illegal immigrants, and on that ground it has refused to grant them citizenship and violently chased them out of the country in 1978 and 1992. Rakhine authorities have multiplied restrictions vis-à-vis the Rohingya who, for instance, require a permit to exit their township. Lastly, fed by strong anti-Muslim resentment, some Rohingya have regularly died during inter-communal violence with Buddhist Arakanese, without getting any protection from the police (Green et al., 2015: 74). Besides, Myanmar's newly elected government, led by Aung San Suu Kyi, has continued the long silence on the issue; coupled with renewed unrest in October 2016, there is little hope for an improvement in the Rohingya's situation in Myanmar.

This widespread violence has pushed Rohingya to seek refuge in Malaysia: offering better prospects than Bangladesh's neighbouring refugee camps, Rohingya hope to find a safer environment to live as Muslims, and gain support from their nascent diaspora there. Most depend on smugglers to guide them on the dangerous boat trip to southern Thailand, and from there via the hilly and porous Thailand–Malaysia border to Malaysia. Rohingya have settled in Malaysia since the 1990s, which means there already exists a generation of Rohingya refugees born in Malaysia (Azis, 2014). The numbers of refugees coming to Malaysia has increased markedly in recent years.

Rohingya tend to live in communities in enclaves of Malaysian urban areas. Signs confirming their large presence in these areas are numerous: women wearing a headscarf protect their face with *thanaka* (a traditional light yellow cosmetic), men in *longyi* (Myanmar equivalent of the sarong) hang out in coffee shops and speak in the Rohingya language, and betel leaves are sold at every street corner. As highlighted by Parthiban Muniandy in his study of Little Burma and Little Myanmar, the high visibility of undocumented residents is frequent in Malaysia (Muniandy, 2015: 571). The location of these communities is known to the authorities, who in particular admit to 'turn a blind eye' towards the Rohingya's presence (Equal Rights Trust, 2014: 31).

If proximity in these enclaves facilitates solidarity, Rohingya remain far less organised than other refugee communities. Not all Rohingya live under the patronage of a community leader and, for those who do, leadership is often disputed. This lack of structure constitutes a major hindrance to access to services. First, UNHCR urban refugee policy is designed to rely on community leaders (Hoffstaedter, 2015). They are the necessary intermediaries to obtain a refugee card, and non-registration prevents Rohingya from accessing services they could be eligible for, starting with health care at UNHCR accredited clinics in the centre of Kuala Lumpur. Second, Rohingya communities have not developed strong services themselves. Access to housing illustrates this situation: refugee communities sometimes offer shelter to those most in need – for example, a worker fired following a work accident – but these services are only provided on a case by case basis, with very limited capacities and are not thought of as a response to general needs of the community.

As refugees do not have the right to work in Malaysia, Rohingya are relegated to the informal economy. A particularity of Rohingya is their especially low level of education. Prevented from accessing education in Myanmar, they also cannot enter public school in Malaysia since the 2002 education ban (Lumayag, 2016). As UNHCR, local and international NGOs have very limited capacities, Rohingya attend community education where facilities and teachers' qualifications are minimal. Consequently, Rohingya are found in similar jobs to those occupied by very low-skilled migrant workers, from construction workers, to mamak restaurant cooks and grass-cutters.

However, Rohingya's links with Malay society counterbalance some difficulties. Their knowledge of the Malay language – most speak basic Malay after a few months in the country – facilitates interactions with the Malay population. In addition, their representation as pious Muslims has become an asset for them in finding employment: their employers tend to be Muslim, first and foremost Malays and Bangladeshis, and some have found work as religious teachers (Wong and Tan, 2012). Plus, they have benefitted from Malay and Muslim NGOs' support, strengthening the image of the Rohingya as the 'best-fed community' at times of Muslim celebrations such as *Aidilfitri*.

### ***Rohingya informal presence and Malaysian internal politics***

Malaysia's government has been playing a very ambiguous role towards Rohingya, one vacillating between tacit and express tolerance of their

presence. 'Tacit tolerance' is marked by the government's indifference towards Rohingya in place of the repressive posture enshrined in Malaysian law. Thus the government turning a blind eye toward the Rohingya presence and their work in the informal economy appears as tacit tolerance. But the government has also been proactive in tolerating Rohingya's presence, fostering some 'express tolerance'. Plans to legalise Rohingya with the IMM13 work permits appear this way. The IMM13 is a one-year working permit granted on exceptional grounds by the Minister which has already benefited Moro and Acehese refugees in Malaysia. Even though it has never fully materialised, the government regularly announces the extension of IMM13 visas to Rohingya: in 2006, registration for the permit even started haphazardly, and most recently in mid-2016 it was announced that Rohingya would unilaterally be granted the permit. On a much smaller scale, it has been announced that 300 UNHCR-registered Rohingya would be granted a 3-year work permit to work legally in the plantation and manufacturing sectors, starting in March 2017. The small scale of the pilot scheme makes it appear symbolic and does little to ensure an improvement in the conditions of even those who will be registered. Even legally employed migrant workers in Malaysia are regularly exploited, and working in the plantation and manufacturing sectors does not fit the situation of Rohingya who mostly live in large urban areas where they benefit from community protection (Hoffstaedter, 2016b). The extensive media coverage of the pilot scheme aimed exclusively at Rohingya is striking. What is more, some government agencies have directly supported some Rohingya in the country. Malaysia's Department of Islamic Development, for instance, regularly shelters pious Rohingya. Other ministries, such as the Ministry of Education and the Ministry of Women, regularly fund Malaysian NGOs providing services to Rohingya. And yet, both tacit and express tolerance *de facto* enables the government not to raise the issue of legalisation of Rohingya, and as such maintains them in informality.

A reason for this situation of protracted informality is that the government has an interest in maintaining a grey zone around the Rohingya presence: it makes them a very flexible instrument, used in the service of various objectives. First, Rohingya are a part of Malaysia's informal labour force, which represents a main driver for the Malaysian economy. Quantitatively speaking, Rohingya represent only a small proportion of this workforce: undocumented migrants are estimated to be between 2.5 and 4 million in Malaysia and the Rohingya population accounts for 50,000 to 100,000 individuals, of whom not all can work. But their role to the Malaysian government is manifold. Malaysian policies of amnesty

periods followed by mass deportation of illegal immigrants regularly result in major economic slowdowns, as economic sectors such as the palm oil industry rely on the undocumented workforce. The legalisation of Acehnese workers following the 2006 crackdown to fill a sudden need for cheap labour (Nah, 2007) is akin to the Rohingya's situation. Indeed, both Acehnese and Rohingya populations can be legalised with less harm to public – especially Malay – opinion: persecuted in their own country, they fit better governmental promotion of Malay, Muslim domination. As such, the Rohingya constitute an 'adjustment variable' for Malaysian economic policies.

Second, the Rohingya informal presence is used in the service of electoral calculations. Rohingya are sometimes used as an electoral argument in the struggle between UMNO and its rival PAS, Malaysia's Islamic party. Both have been competing for Malay votes, and in their struggle have long argued over which one embodies the best version of Islam (Farish, 2013). Rohingya's representation of a highly persecuted Muslim population appeals to the rhetoric of solidarity among the *umma*, the Muslim transnational 'community'. As such, Malay Muslims' duty to support persecuted fellow Muslims is reflected in several UMNO and PAS speeches.<sup>6</sup> However, the position of the Rohingya as potent electoral argument fluctuates. Times of economic crisis have meant the Rohingya can be portrayed as undesirable again. Similarly, PAS rhetoric has occasionally been harsh on Rohingya, portraying them as 'cowards' for not fighting in Myanmar.<sup>7</sup> As such, the informality of Rohingya refugees seems to facilitate both parties' fluctuating rhetoric. In addition, the Rohingya have been used as a convenient and pliable vote bank to ensure UMNO's electoral success. Following a similar scheme with Moro refugee vote-buying in Sabah (Sadiq, 2009), some Rohingya were given temporary IC cards, valid only for a few months, to enable them to vote in the 2013 elections before they were returned to a state of informality.

Thus, the government has interest in refugees' informal presence. Even more than other undocumented workers, they constitute a flexible instrument as they can support a large range of government rhetoric

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<sup>6</sup> Debates between UMNO and PAS in the Dewan Rakyat, Malaysia's Parliament, were for example reported in Ghazali R. 2014 'Parliament: Malaysia 'most humane' to refugees, says Shahidan.' *The Star*. 8 April. Available from: <http://www.thestar.com.my/>

<sup>7</sup> Palansamy, Y., 2015. 'PAS delegate tells Rohingya cowards to go home and fight'. *The Malay Mail*. 6 June, Available from: [www.themalaymailonline.com](http://www.themalaymailonline.com)

and policies. At times used as a more tolerable population than other undocumented migrants, they can also be portrayed as ‘radical others’ and as such become scapegoats depending on government needs, with no repercussions for the Malaysian body politic (Hoffstaedter, 2014).

### **Informality of Refugees: Permanent Instability**

Refugees in Malaysia are generally tolerated for a limited amount of time before they are resettled to a third country. The Malaysian government never uses the ‘r’ word (refugee) to denote them, but has offered sanctuary to a number of displaced peoples since independence on a case by case basis. This suits the government as it can use refugees as an international bargaining tool to its advantage without having to provide any legal or economic assistance to those currently residing in Malaysia. Thus this tolerance has never been formalised in Malaysian law, and the resulting informality of refugees largely shapes their everyday lives.

The absence of formalisation of refugee rights gives actors like the police and immigration officers undue power over refugees. One of the most striking examples resides in the tolerance of the refugee presence itself. Non-refoulement is a legal principle enshrined in the 1951 Geneva Convention relating to the Status of Refugees, according to which a state cannot stop a refugee from entering its territory nor deport those already in the country.<sup>8</sup> Academics differ on the value of this principle: some argue it is a ‘wishful legal thinking’ (Hailbronner, 1986), others claim it has become a customary norm of international law (Barcher, 1992) so that a country will comply to this principle regardless of whether it has ratified the 1951 Convention. Malaysia’s informal tolerance of a temporary refugee presence supports the latter perspective. However, practices towards non-refoulement are far from consistent. The inconsistency is largely a product of the discretionary power of individuals – foremost immigration officers, police officials and members of RELA (Malaysia’s large auxiliary police force). Indeed, the detention of refugees, sometimes leading to their deportation, does occur regularly. In practice it is up to Malaysian officials to decide whether a person should be considered an illegal immigrant or a refugee. Whilst some officers tend to be more considerate towards refugees holding UNHCR documents, others simply consider them as illegal immigrants,

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<sup>8</sup> This principle is enshrined in article 33 of the 1951 Geneva Convention relating to the Status of Refugees. It is one of the rare articles on which ratifying states cannot express a reservation, as stated in art. 42.

and therefore subject to arrest and deportation. As a consequence, refugees are dependent on the discretionary actions of a range of Malaysian actors – officials responsible for policing Malaysian immigration policy, but also employers or healthcare providers – who are all very powerful actors in enabling refugees' presence in Malaysia.

What is more, the refugees' informal presence implies that their 'tolerated existence' can be denied at any time and, when they are abused, they have no means to access the legal system and make a claim on their 'tolerance'. As a result, many Malaysian officials extort significant sums of money from refugees. They know refugees fear arrest and deportation and use this to their advantage. This makes refugees living in a state of informality very vulnerable to extortion, abuse and discrimination.

Finally, the informal presence of refugees is coupled with a sense of uncertainty regarding their resettlement opportunities, which places them in a situation of permanent instability. In addition, the Malaysian government's lack of long-term policy towards refugees places them at the mercy of the government's vacillating rhetoric towards refugees and immigrants in general – sometimes desired, always distrusted. However, the intention of this chapter is not to idealise a formalisation of rights, but to illustrate the current desolate situation for many documented migrant workers in Malaysia. Documented migrants are those who hold documentation testifying that they are in Malaysia legally, such as a valid visa. Malaysian law formalises that documented migrants are eligible for a range of rights. Yet, similar abuses to those observed for undocumented migrants are experienced by unskilled documented migrants. Access to justice has, therefore, been an issue for both unskilled documented as well as undocumented migrants, with the former experiencing harassment, visa cancellation and other civil rights abuses when they attempt to take employers to court (Nah, 2014).

However, refugees can also use informality to 'ameliorate somewhat their formally precarious condition' (Muniandy, 2015). Thus informality not only strengthens refugee communities, but also favours entrepreneurship as a way to secure income.

### **Informality of the Status of Refugees in the Service of Malaysia's International Image**

Refugee informality has also been used in the service of Malaysia's fluctuating rhetoric on the international scene. Indeed, it has enabled the country to develop a multi-faceted rhetoric that differs from one



international platform to another, from the UN General Assembly to ASEAN and the Organisation of Islamic Cooperation (OIC).

Towards the international community, Malaysia has developed a collection of arguments to justify its formal rejection of both the refugee Convention and Protocol since the Indochinese refugee crisis. Mahathir's Third Worldist rhetoric rejected these legal instruments as Eurocentric. Najib's government has preferred arguments ranging from the inadequacy of the convention to Malaysia's specific situation: the convention text provides for individual arrivals, not major refugee flows and Malaysia's fragile ethnic social contract renders them unable to welcome a great number of refugees for economic reasons and issues of 'social cohesion'. Finally, the government has long argued that legalising refugees would increase incoming flows, to the point of Malaysia being submerged by asylum seekers. Yet, these arguments appear as a moot point in the light of the above developments. Malaysia's claim to be a developed country by 2020 contradicts the argument of economic incapacity to welcome refugees – especially as some far less developed countries in the region have ratified the international covenant and others shoulder much greater refugee burdens.

Malaysia's formal opposition to the Convention on the international scene has been coupled with announcements to welcome some refugees as part of burden sharing. Malaysia's Prime Minister Najib Razak announced at the UN General Assembly in September 2015: 'in order to help alleviate the current refugee crisis, Malaysia will do its share and open our doors to another 3,000 Syrian migrants over the next three years'.<sup>9</sup> These announcements contribute to Malaysia's international image as a cooperative state, ready to accept those in need. Finally, the fact that it tolerates refugees as a first asylum country, even though it keeps reiterating that it does not have the means to do so, supports Malaysia's benevolent image.

However, the presence of refugees in Malaysia is presented in a different light at ASEAN. Southeast Asian governments have long rejected international refugee protection frameworks. Cambodia and the Philippines are the only ASEAN member states to have ratified the 1951 Geneva Convention, and refugee status is not recognised in Southeast Asia's largest refugee receiving countries: Thailand, Malaysia and, to a lesser extent, Indonesia. Rejection translates into a range of different policies. Thailand and Malaysia's fluctuating migration policies, punctuated by regular major immigration crackdowns, have been far more publicised in Malaysia than in

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<sup>9</sup> At the end of January 2017, the UNHCR had registered 1,875 Syrian refugees.

its northern counterpart (Hedman, 2008), while Indonesia, mostly a refugee transit country to Australia, has shown greater tolerance towards refugees and cooperates with the UNHCR to a greater extent than its neighbours (Kneebone, 2016: 160). However, even though many ASEAN members face common refugee issues, the regional platform has rarely been mobilised to address them.

A core principle of the 'ASEAN way' is non-interference in each other's affairs. Granting official asylum, then, equates to highlighting that the refugee's country of origin has failed in its sovereign duty, namely the protection of its citizens (Haddad, 2008). Malaysia therefore claims to be concerned about good neighbourliness and non-interference to justify the absence of any formal recognition of refugees. As such, it has avoided mobilising the regional platform to tackle refugee flows. Furthermore, refugees are relegated to a security issue in the regional organisation. Significantly, the 2007 Convention on Counter-terrorism<sup>10</sup> is the only ASEAN legal instrument that names refugees. Similarly, the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime approaches refugees solely as a security issue (Kneebone, 2014).

Thus, Najib's attendance at the 'Rohingya Rally' held in Kuala Lumpur on 4 December 2016 represents a surprising breach of ASEAN's non-interference principle. In one of the rare parts of his speech in English, the Malaysian Prime Minister accused Myanmar of 'genocide' against the Rohingya and called on the OIC, the UN, as well as the ASEAN community, to take a stand on the issue. Yet, this speech appears first and foremost as an instrumentalisation of Rohingya for the domestic political sphere. It enabled Najib to appear at the centre of the Malaysian political scene at one of the rare rallies that gathered both UMNO and PAS presidents. It therefore allowed Najib to redirect his own political difficulties domestically and take a leadership position on the Rohingya issue internationally and regionally. The rally was also not accompanied by any material support for Rohingya in Malaysia or any formal recognition of Rohingya in Malaysia, so that Najib's speech and the government's posturing appear aimed at short-term domestic political gains.

Finally, Malaysia has progressively built a tradition of sanctuary to Muslim populations that has anchored its representation as a Muslim country (Hoffstaedter, 2016a). This tradition has been internalised by the UNHCR office in Malaysia, as illustrated by its website only mentioning

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<sup>10</sup> Cf. <http://agreement.asean.org/media/download/20131229172152.pdf>

Muslim refugees, namely ‘Filipino Muslims’, ‘Muslim Chams from Cambodia’ and Bosnian refugees and, as such, omitting major non-Muslim refugee communities such as the Chin community.<sup>11</sup> Malaysia’s sanctuary for Muslim refugees therefore contributes to the country’s representation as a prominent member of the global *umma*.

This representation targets both the Malay population and other Muslim countries whose international recognition Malaysia has long struggled for (Freedman, 2015: 116). In particular, at the Organisation of Islamic Cooperation, Malaysia presents itself as the main actor on the Rohingya issue. Former Malaysian Minister Syed Hamid Albar<sup>12</sup> was the first to be appointed OIC Special Envoy for Myanmar in May 2014, and Malaysia’s tolerance of Rohingya refugees is regularly exhibited on OIC’s website. Similarly, the 19 January 2017 Extraordinary Session of the OIC on the Situation of the Rohingya Muslim Minority in Myanmar was held in Kuala Lumpur, thus enabling Malaysia to establish itself as a central actor in the protection of Rohingya. However, Najib’s speech largely focused on the situation in Rakhine state. He did present Malaysia as a generous host for Rohingyas, but also called for a quick resettlement to third countries or safe return to Myanmar of the ‘displaced Rohingya’.

Thus, Malaysia presents itself very differently from one international scene to another. The informality of refugees’ presence makes it easy for Malaysia to continually change its rhetoric towards refugees, from a position of indifference to a posture of burden-sharing state of international migration or defender of fellow Muslims on the international stage. Finally, its partial perspective on refugees in the OIC, largely neglecting the presence of non-Muslim refugees, reinforces the assessment of an ethno-religious based difference in the treatment of refugee communities.

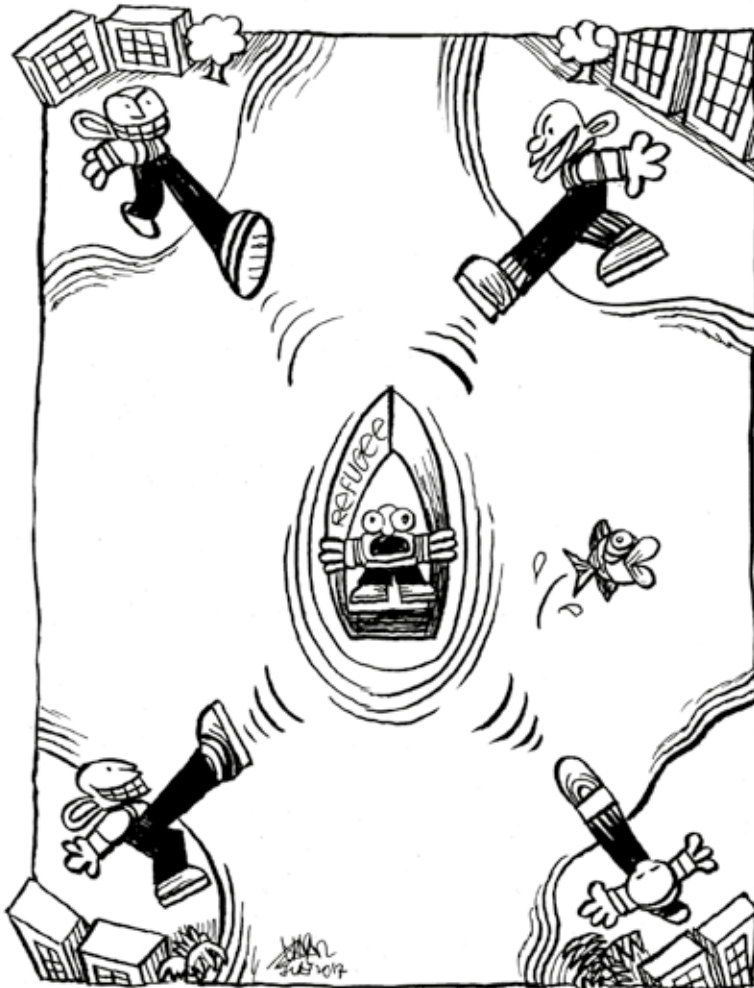
## Conclusions

By looking at the two most populous groups of refugees in Malaysia, Chin and Rohingya, it has been shown how divergent the government response has been. The Malaysian government does not recognise refugees legally, but has a track record of providing sanctuary for a range of refugees,

<sup>11</sup> [http://www.unhcr.org/my/About\\_Us@-UNHCR\\_in\\_Malaysia.aspx](http://www.unhcr.org/my/About_Us@-UNHCR_in_Malaysia.aspx) (last consulted on October 25th, 2016).

<sup>12</sup> Syed Hamid Albar is a Malaysian UMNO politician who held several ministries throughout his political career, including foreign affairs from 1999 to 2008. He has been the OIC Special Envoy for Myanmar from 2014 to early 2017.

without using this term. Staying clear of legal terminology and framing their responses in religious and humanitarian terms allows the Malaysian government to engage with refugees on a case by case basis – most notably when there is political expediency at play. Malaysians, too, have been largely informed by the religious ties and rhetoric on how they see refugees. Racism continues to be a major obstacle to greater acceptance and integration of refugees into Malaysian society. Refugees themselves have found ways to make a life for themselves in the face of legal non-recognition and their prolonged informal presence. Informality has a disastrous long-term effect on people, but can afford opportunities in the short term. As long as resettlement is the only path towards a rights-based existence for refugees, many will have to make do with a prolonged informal existence in Malaysia.



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# ‘Malay Muslim First’: The Politics of Bumiputeraism in East Malaysia

*James Chin*

This chapter traces the political marginalisation of the main Bumiputera (indigenous) political grouping in the East Malaysian states 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 are 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 were 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-Muslim, 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 40 per cent of the

population,<sup>1</sup> they should at the very least be able to command a key position in the state political structure. The first two Chief Ministers of Sarawak, Stephen Kalong Ningkan and Tawi Sli, were both from the Iban-Dayak community. From the 1960s till 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 the Dayak to unite under a single political party. In the 1960s and 1970s, Dayak support was mainly found in two parties: the Sarawak National Party (SNAP) and the 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 and Leo Moggie, rejected Wong's leadership. Their logic was simple: SNAP's president must be Dayak, more precisely an Iban.<sup>2</sup> PBDS had support from both the federal Barisan Nasional, 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 as it was a threat to 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 politically out-manoeuvre the Dayak and the Chinese.<sup>3</sup>

<sup>1</sup> The latest population figures 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.

<sup>2</sup> The Iban constitute the largest segment of the Dayak community.

<sup>3</sup> 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 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 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, 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 Sarawak BN parties (PBB, SUPP, SNAP and PBDS), effectively turning the Dayak numerical majority into political minorities. From 1970 until 2011,

the first Deputy Chief Minister's post was always been 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) an 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<sup>4</sup> and the fact that it only 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 election, due in 2004. Two factions immediately emerged to take over: one led by Dr James Jemut Masing which had the support of Taib Mahmud, and the other led by Daniel Tajem, the incumbent deputy president who had Moggie's support. Moggie and Tajem had started the party together and were also ringleaders in the 1987 putsch against Taib Mahmud described earlier. Taib obviously had not forgotten 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 Commissioner to New

<sup>4</sup> 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 run around.

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 PBDS. Meanwhile, in the TDC organised by Tajem, he was the 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 officially deregistered, Masing was able to 'join' PRS, became 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 lesson on keeping their parties intact. But this was not the case. In 2006 it was the turn of PRS; it nearly collapsed 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 (*New Straits Times*, 27 May 2006), and 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 de-registered or Masing would be forced to re-admit them (*Malaysiakini*, 7 Dec 2006). However, to the surprise of many, in April 2008 the RoS sided with Masing (*New Straits Times*, 4 April 2008). Masing may be the winner but he owes his position entirely to the Chief Minister.

Things were also brewing in SPDP. Five SPDP MPs and State Assemblymen, styled 'Group of Five',<sup>5</sup> openly challenged Mawan's position as SPDP president. They refused to attend any meetings convened by Mawan and openly called on Mawan 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 (*Borneo Post*, 30 April 2011; *Free Malaysia Today*, 30 May 2011).

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

<sup>5</sup> 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 election Tiki Lafe was replaced by a Mawan loyalist. Tiki stood as a 'BN-friendly' independent candidate but lost to the official SPDP candidate.

In an ironic twist, in 2013 Mawan suddenly resigned from SPDP and formed a new political party, Parti Tenaga Rakyat Sarawak (TERAS) (Sarawak People's Energy Party). He took all five SPDP State Assemblymen and one of the four SPDP Members of Parliament with him. Mawan had a falling-out with his erstwhile ally, Tiong. He was now siding with the five SPDP assemblymen he had sacked earlier. Mawan declared TERAS as 'BN friendly' and applied for Sarawak BN membership. Tiong immediately became SPDP president and demanded that Mawan be expelled from the state Cabinet. In a clear sign that Mawan had the support of Taib Mahmud, the Chief Minister, he kept his state Cabinet position. TERAS was, however, unable to join Sarawak BN because membership requires unanimous support from all existing BN members. Only PBB supported TERAS's membership while the other three Sarawak BN parties (SPDP, SUPP and PRS) objected. It should be noted here that they objected to TERAS's membership, not because they were worried about TERAS's political strength; rather, they were worried that by admitting TERAS, their own members would be encouraged to split from their party, establish a new 'BN-friendly' party before joining Sarawak BN. In the 2016 Sarawak state election, Mawan and his TERAS colleagues stood as 'direct' BN candidates despite protests from SPDP that their seats belonged to SPDP.

The act of allowing Mawan and his breakaway group to maintain their positions in the Sarawak state government and allowing them to stand as direct BN candidates is consistent with the overall aim of dividing the Dayak community politically into many parties so that they cannot mount a united challenge to the Melanau-Muslim hegemony.

### **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) from the mid-1980s until the mid-2000s, which is able to appeal to the Kadazandusun community for two main reasons. First, Joseph Pairin Kitingan, the traditional paramount leader of the Kadazandusun – the Huguang Siou – founded PBS, hence it has 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 was 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'. Prior to the formation of the Federation of Malaysia in 1963, Sabah and Sarawak demanded some constitutional guarantees, widely known as the 'Twenty Points'.

The main features of the safeguards were (Govt of Malaya, 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) Borneanization 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 (Mustapha Harun and Harris Salleh), has not adhered to these guarantees, especially in the area of Islam and Borneanisation of the civil service (Chin, 2014).

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 for, 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 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 the MCA and Gerakan moved into Sabah (Chin, 1999). Four years later PBS won the 1994 state election 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 election 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 would 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 would ensure that the NMB and Kadazandusun would never be able to win on its own. This was done by issuing 'blue' identity cards – signifying Malaysian citizenship and allowing the holder to vote – to Muslim migrants from the southern Philippines and Indonesia. 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 increase); 976,269 to 2,012,616 in Sarawak (106 per cent increase); and 636,431 to 2,449,389 (285 per cent increase) in Sabah (*Malaysiakini*, 6 Oct 2008). In 1960 the population of Sabah comprised: 32 per cent Kadazandusun, 23 per cent Chinese, 15.8 per cent Other Muslims, 13.1 per cent Bajau, 5.5 per cent Indonesians, 4.9 per cent Murut, 1.6 per cent Filipinos and 0.4 per cent Malays. By 2006 the population profile was: 17.76 per cent Kadazandusun, 14.62 per cent Other Bumiputeras, 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 casualty was the Kadazandusun and Chinese communities – their percentages 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 Sabah was a 2003 doctoral study. Kamal (2003) 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 the 1960s 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, Prime Minister Najib Tun Razak reluctantly established a Royal Commission of Inquiry (RCI) into 'Project M' in 2012. The RCI report provided clear evidence that many migrants were given ICs deliberately to change the political balance in favour of the Muslims in Sabah (*Malaysiakini*, 20 May 2013).

Thus by the early 1990s, the NMB 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).

**Table 1. Sabah: Political Affiliation and Ethnic Group Representation (percentage), 1960–1991**

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
Regional{	Filipino	1.6	3.1	8.2	
	Sabah-based Chinese parties, PBS	Chinese	23.0	21.4	11.5

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

The moves to make Sabah a Muslim majority state include converting NMB to 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. The process of becoming a 'Malay' is simple.<sup>6</sup>

### **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 consider 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).

## **Consequences of Political Marginalisation**

### ***The Denial of Political Power***

The NBM are denied key political positions with power. Officially, Alfred Jabu, an Iban, has been Deputy Chief Minister 2 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. When Taib Mahmud stepped down as Chief Minister in 2014, Alfred Jabu was the logical choice to succeed him as he was the next most senior leader in PBB. Despite this,

<sup>6</sup> 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 not possible for a Malay to leave Islam in Malaysia.



Adenan Satem, a Malay Muslim, became Chief Minister and Jabu was forced out a year later. As a consolation, his son was allowed to replace him in the Layar constituency.

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 thinly across PBB, SUPP, SPDP and PRS. PBB alone holds half of the seats in the Council Negri (State Assembly) 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 the Iban 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 UMNO aims at Muslims to be 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 2 (see below), it can be clearly seen that the number of Dayak seats

has decreased 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 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
MMM	12	15	18	27	+13 per cent
Chinese	8	8	11	12	0 per cent
Mixed	-	-	3	3	+4 per cent
<b>Total</b>	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 3). In 1975, before 'Project M', MB accounted for 18 of 48 seats (37.5 per cent). In 2008, the 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 3. Sabah: State Constituencies by Main Voting Groups**

	1976	percentage	2008	percentage	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	-	-	5	0.83	+0.83
<b>Total</b>	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 worse in Sabah because of 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 and one million, or about one-third to half of Sabah's population (Chong, 2009; *The Malaysian Insider*, 5 April 2011).<sup>7</sup>

### ***Emergence of a Second Class of Bumiputera***

The promise of the New Economic Policy (NEP) which was supposed to help the Bumiputera population in East Malaysia appears to have only benefited 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).

Thus, many NMB often refer 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](http://www.sarawakreport.com))<sup>8</sup> has systematically compiled a list of land grabs by Taib Mahmud and his associates using information

<sup>7</sup> This author believes the figure to be around half a million.

<sup>8</sup> Sarawak Report was founded by Clare Rewcastle Brown, a British investigative journalist. Her interest in Sarawak is because she was born in Sarawak and she spent part of her childhood there.

provided by a former staff of the Sarawak Land and Survey Department. The method used is simple; Taib, who was also the Minister in charge of land issues, simply alienated or leased a piece of land – many under NCR claim – to companies in which his family had an interest or close associates. The premium paid was usually just a fraction of the market value. Shortly afterwards, the land was sold to investors at its true value, or a joint value was established to develop the land. Any compensation paid to the Dayak was 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 Taib Mahmud in the past two decades (<http://www.sarawakreport.org/tag/taib-land-grabs/>).<sup>9</sup>

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 pressure from MB political leaders. Although under the ‘Twenty Points’ Islam’s position as the religion of the federation was not supposed to be imposed in East Malaysia, Muslim leaders such as 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 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: 536–570). 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 longhouses into Islam. Many of the NMB were promised material goods and money in exchange for entering Islam. In recent times there are persistent reports of Muslim

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

teachers converting minor Christian Bumiputera students without their parents' knowledge. In all cases, the teachers involved were transferred and suffered no real sanctions for their actions, suggesting that there is tacit approval of their actions at the highest level of government (*Free Malaysia Today*, 6 Feb 2015; *Borneo Post*, 15 Nov 2015).

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 (*Strait Times*, 10 Jan 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 (*Star*, 16 January 2010). This led to the opposition leader in Sarawak asking:

Does it mean that these native Christians cannot bring their bibles into Semanjung Malaysia (West Malaysia) when they come to Semanjung 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?<sup>10</sup>

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.<sup>11</sup> Many of the large government-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

<sup>10</sup> Wong Ho Leng, 'Allah' can be used in Sarawak and Sabah, <http://holeng.dapsarawak.com/?p=1103> (accessed on 28 July 2011).

<sup>11</sup> In an interview with a Sarawak Minister, the author was told that Chinese controlled about 80 per cent of the Sarawak economy.

is the taming of Kadazandusun and Dayak leaders. By destroying their political power base and forcing those 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 to 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 slush 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 did 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 were finally tamed by UMNO and the federal government. In Sarawak, UMNO is just waiting for the opportune time to move in. In 2014 Taib Mahmud moved from the chief ministership to the Governorship despite widespread allegations of corruption. His handpicked successor, Adenan Satem, announced that one of his key priorities was to ensure that UMNO does not establish itself in Sarawak. Nonetheless, there is general consensus that this state of affairs is untenable in the long run, and sooner or later, when Sarawak BN is weak, UMNO will move in.

## Conclusion & 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.<sup>12</sup> 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 (Chin, 2015: 85).

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 and Sabah where one sibling is a Muslim and another Christian. There was never any real political tension over the different faiths.

Nowadays, the conversion of any NMB to Islam is seen as a political act, given that this is widely seen as '*masuk Melayu*' or 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.

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<sup>12</sup> For a succinct account of *ketuanan Melayu* and the building of a Malay-dominated polity, see Wade (2009).



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# Troubling Malaysia's Islamic State Identity: The 'Young' Struggle of LGBTQ Narratives and the State's Art of Misrepresentation

*Angela M. Kuga Thas*

## Introduction

Framed within a human rights discourse, lesbian, gay, bisexual, and transgender and queer people (LGBTQ) identity politics in Malaysia is relatively young.<sup>1</sup> Their fledgling struggle is juxtaposed against the rising ethno-religious politics of a self-righteous, purist, misogynist, and supremacist interpretation of Sunni Islam (Hassan, 2008: 49–54, 286–287).<sup>2</sup> LGBTQ narratives of identity jar Malaysia's internationally projected image as a *model Islamic country* despite being a country that is constitutionally secular (see chapter by Mohd Nazim). Unlike neighbouring Indonesia where 99 per cent of Muslims are Sunni and follow the same Islamic school of thought as Malaysia, the Shafee school of Sunni jurisprudence, Malaysia's Islam is a 'Malaysian Malay Islam'. It is an increasingly puritanical

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<sup>1</sup> The human rights struggle of the sexual minorities in Malaysia has largely been dominated by lesbians, gays, bisexuals, and transgender and queer people (LGBTQ).

<sup>2</sup> Through his research, Hassan showed that this version of Islam is not only prevalent among three UMNO-led states (meaning all states ruled by Barisan Nasional, the ruling coalition government, appoint the Menteri Besar or the head of state government from UMNO) but also two states led by Parti Islam Se-Malaysia (PAS) at the time of the survey.

Sunni Islam, dictated by the seasoned political dominance of the United Malays National Organisation (UMNO) in retaining their political control over the country since 1957. As a result, the State disallows both inter- and intra-religious pluralism, and discourages public discourse on both the interpretation of Islamic texts and how sharia law is developed and implemented in the country. The interpretation of Malaysia's Islam dictates heterosexuality, and increasingly heteronormativity that upholds patriarchal norms,<sup>3</sup> as the only sexuality to which Malaysians must conform (Lee, 2011: 97–108). Malaysia's Federal Constitution protects the right of equality before the law and therefore all persons are entitled to equal protection of the law. However, LGBTQ-identified Malaysians strive to be accorded this very right, and to enjoy – as others do – equality in the law, and equal benefits and protection of the law.

This chapter begins with the Malaysian context of the politicisation of Islam, despite a sizeable 39 per cent of the Malaysian population being non-Muslims, and the State's growing emphasis on relying more heavily on an Arabised and legislated Islam, an Islam that is constitutionally protected as the 'official religion' of Malaysia. The chapter then explores Malaysia's self-identification as an Islamic State which is entrenched in the ethno-religious politics of UMNO's elite against the growing amplification of LGBTQ narratives between 2008 and 2015. This chapter then goes on to elaborate the beginnings of the sexuality rights movement in Malaysia. It next examines the State's art of mis-representation of the LGBTQ and Seksualiti Merdeka, and the attacks on the largest human rights coalition in Malaysia, the Coalition of Malaysian NGOs in the UPR Process (COMANGO). The chapter concludes with a summary of how the LGBTQ in Malaysia continue to engage in spaces to influence the State and to claim their human rights as Malaysia's citizens and in exercising their sexual citizenship, despite how formidable the task appears to be.

### **Moral Policing of Sexuality**

Moral policing of sexuality in Malaysia is a phenomenon that extends not only to the LGBTQ but to heterosexuals as well, that is, heterosexuals who do not conform to patriarchal heteronormative norms. As Lee points out:

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<sup>3</sup> These patriarchal norms largely protect the allowances provided to Muslim men – such as the privilege to marry up to four wives, the expansion in Islamic family law in easing the pronouncement of men in divorcing their wives, and the non-recognition of marital rape for Muslims.

Contemporary Malaysia tends to be repressive of non-heterosexual gender identities and non-marital sexual practices. ... [T]his intolerance has become integrated into the administrative and legal infrastructure of the Malaysian State. ... and much of the moral policing in Malaysia reflects rising conservative Islamic sensibilities about gender and sexuality (Lee, 2011: 99).

The growing interest and emphasis to give wider powers to the sharia legal system to parallel that of the civil legal system has witnessed a largely unquestioning acceptance by Malaysians for a legislated Islam. Hoffstaedter expounds on this phenomenon of Malaysia's Malay and Sunni Islam:

[I]t is now a given that Malaysian Islam(s) have radically changed. This is most visible in how Muslims dress, consume ... and engage with fellow Malaysians of different religious backgrounds. ... Today, Islamic enforcement agencies have not just the funding and reach to delve into the everyday lives of most Malaysian Muslims, but also the agenda-setting power to change political debates and positions. ..., furthering the influence of Wahhabi and other fundamentalist ideologies into the doctrines and practices in Malaysia. ... The key aim is to make Malaysia and Malaysian Muslims more exclusivist Muslims who will ... adhere to a particular Malaysian state-sponsored version of Islam that increasingly has more in common with fundamentalist Middle Eastern versions than the pluralist history of its own vernacular forms of Islam (Hoffstaedter, 2017).

It is within this politicised Islamic and Arabised Islamisation context, the preoccupation of Islamic religious authorities on enforcing the sharia law on *khalwat* (close proximity between unmarried and unrelated persons) (Lee, 2011: 103), and the criminalisation of Muslims based on gender identity and consensual sexual relations and/or acts, that Malaysians witness the growing amplification for LGBTQ rights.

### Contesting Narratives

LGBTQ narratives in Malaysia began to occupy social and political spaces when Seksualiti Merdeka was started by Pang Khee Teik<sup>4</sup> and

<sup>4</sup> Pang is a Malaysian arts consultant, activist, curator, organiser, photographer and writer. In 2008, together with fellow activists and artists, he co-founded sexuality rights festival Seksualiti Merdeka in Malaysia. Under a Chevening scholarship, Pang graduated in 2013 with an MA in Gender, Sexuality & Culture from Birkbeck University of London. He remains active in speaking on LGBT issues. Presently, Pang is the director of art and activism bazaar Art For Grabs.

Jerome Kugan<sup>5</sup> in 2008. *Seksualiti Merdeka*, an annual sexuality rights festival<sup>6</sup> that witnessed the coming together of not only the LGBTQ but politicians, lawyers, academics, artists, actors and human rights activists, was subsequently banned in 2011 (Star Online, 2011). Pang describes *Seksualiti Merdeka* as not only the name that designates the sexuality rights festival, but a name that has 'come to signify the movement itself, that is the movement of sexual rights activism' for many LGBTQ rights activists, human rights activists and other actors that are friendly, neutral or hostile, both state and non-state (Pang, 2013: 6). The movement, however, faces a growing challenge in how to make LGBTQ rights more palatable to those who oppose these rights, particularly the Malaysian government.

The Malaysian government has played a very visible role in objecting to the human rights of sexual minorities in various fora, including internationally at the United Nations, as a member of the Organisation of Islamic Cooperation (OIC: see for example, Williams, 2010: 11), and regionally in the Association of Southeast Asian Nations (ASEAN: Zurairi, 2013). The country is, according to Amnesty International, one of 76 countries<sup>7</sup> where identity and private consensual sexual behaviour of these sexual minorities as adults are criminalised (see for example, United Nations Human Rights Office of the High Commissioner for Human Rights, 2013; Jones, 2013). Malaysia's opposition to the human rights of sexual minorities is largely premised on the State's projected identity of Malaysia as an Islamic country. While it is a majority Muslim country, with about 61 per cent of its population Muslim,<sup>8</sup> it would be erroneous to ignore that a sizeable population of 39 per cent are non-Muslims.

<sup>5</sup> Jerome Kugan is a writer and musician based in Kuala Lumpur. One of the co-founders of *Seksualiti Merdeka*, Jerome has also been the organiser of *Rainbow Rojak*, a queer social night event in Kuala Lumpur, since 2012.

<sup>6</sup> The festival provided a platform to educate people across sexualities on human rights and the laws that are enforced (or not enforced) in policing sexuality; and the significance of history and the politics of the categorisation of the different ethnicities and religions of the Malaysian population; to share experiences and the human rights issues of the LGBTQ; and to provide spaces to explore the meaning-making behind human rights activism when it failed to accommodate the human rights of the LGBTQ.

<sup>7</sup> According to Colin Stewart's analysis, this number can be as high as 81 (Stewart, 2014).

<sup>8</sup> Current statistics are questionable as there have been anecdotal evidence regarding forced conversions or conversions to Islam because of incentives provided; otherwise, development and opportunities for education, work and so on are denied. See, for example, Chin (2014).

At the global level, Malaysia is touted internationally as a moderate and *the model* Islamic country of the world by both its leaders and foreigners (Backman, 2002; Tan, 2002; Shanon, 2010; Pak, 2011; Mariam, 2013; Zainah, 2013). Yet, constitutionally, Malaysia is a multi-religious, multi-ethnic, secular State. Provisions for the sharia legislative system with clear and distinct jurisdiction over Islamic family and personal law are framed within Malaysia's Federal Constitution, a secular legislative system. In 2001, this constitutional guarantee was unsettled by the then Prime Minister Dr Mahathir Mohamad when he declared Malaysia a 'fundamentalist Islamic State' (Tan, 2002; CNN, 2002) as a political and economic strategy, especially in bolstering the country's membership of the OIC.

Adding to the political complexity is the constitutional reality of how Malay ethnicity is bound to Islam (Roff, 1980: 67; Gullick, 1988: 139). Furthermore, any kind of discourse on Islam and how it is administered in Malaysia, as well as on issues related to Malay ethnicity, is actively discouraged. The marital rubric of the ethnicity, Malay, and the religion, Islam, places further pressure in the political arena on establishing and maintaining a puritanical Malaysian ethnicity.

Historically, the human rights issues of sexual minorities have been used for political mileage and distraction, both by those who are seen to uphold the rights of sexual minorities and those who are opposed to these rights (Geoghegan, 2013; Ladan, 2013; Rush, 2013; Fierstein, 2013; IGLHRC, 2001). In Malaysia, harassment of the sexual minorities is to maintain the Malay Muslim ruling elite's political dominance by creating *the other*, 'a common enemy' that Malay Muslims must unite against (Hafidz, 2012; see also Lee, 2014: 184–5).

The more vocal and visible opposition to the existence and human rights of sexual minorities ostensibly started to take hold when Mahathir launched his Islamisation policy soon after he took office in 1981.<sup>9</sup> Since then, numerous attempts have been made to control sexual minorities in

<sup>9</sup> Homosexuality was not necessarily accepted prior to 1981, but it was tolerated as long as it was 'practised' behind closed doors. Gender reaffirmation surgery (formerly referred to as sex reassignment surgery) was also allowed back then until the National Fatwa Council issued a *fatwa* (religious edict) in 1983 to disallow sex reassignment surgery for Muslim transsexuals (Zainah, 2009). Prior to 1983, such surgeries were conducted in Malaysia at the public University of Malaya Hospital by a Malay Muslim doctor and his team, Dr Khairuddin Yusuf (Human Rights Watch, 2014: 57). Women, too, used to be able to hold hands in public with very little to almost no harassment.

Malaysia.<sup>10</sup> However, media coverage has often downplayed these human rights issues, or been one-sided in its coverage of the stories of sexual minorities (for example, see Maznah, Ng and Tan, 2006: 135).<sup>11</sup>

The media tend to play a significant role in amplifying selected narratives and portraying these as the dominant sentiment and views of society. In Malaysia, with the rise of new media, alternative narratives are better able to compete with those narratives that favour the status quo. Hartley (2005) has recognised that with the blurring of public culture and private life, identity politics has forced the State to consider attributes of identity that were once thought personal matters, such as sexuality, as equally important to issues of citizenship and citizenry.

In Malaysia, however, State control over traditional and mainstream media is observable in the way propaganda is perpetuated, and through media ownership. In 2010 the Malaysian Film Censorship Board announced that it would only allow the depiction of homosexual characters if the characters repent or 'go straight in the end', that is, some form of 'good' lesson has to be learnt by these homosexual characters (Asia One, 2010; Amand, 2012; see also Gooch, 2010). Opportunities to circumvent State control over media presented themselves when launching the Multimedia Super Corridor in 1996, Mahathir promised that the Internet would not be censored, in order to lure foreign investors (Hachigian, 2002: 53). The Internet and the use of social networking platforms have certainly enabled marginalised communities, and civil society in Malaysia in general, to expand spaces for discourse with aims of securing human freedoms. Regardless, censorship in Malaysia still occurs, and in various ways.<sup>12</sup> This

<sup>10</sup> The start of the timeline is based on research conducted on the trans women in Malaysia and their own reference point as to when their situation began to worsen (see for example, Teh, 2002: 45–52). The situation of trans women in Malaysia is used as a reference point as they are the most visible and the most vulnerable among the sexual minorities in the country. Their accounts of narrowing spaces for their gender identities and gender expressions coincided with the introduction of Mahathir's Islamisation policy in 1981. For types and trends of human rights violations, see KRYSS & Outright International (2014); Women's Aid Organisation (2012); Human Rights Watch (2014a).

<sup>11</sup> A few Malaysian journalists, especially from the English media, have become more sensitive to the human rights of the LGBTQ, especially after the publicity on the judicial review of Section 66 of the Sharia Criminal Enactment 1992 of the state of Negeri Sembilan.

<sup>12</sup> Laws such as the Official Secrets Act 1972 and the Printing Presses and Publications Act 1984 are often used against editors and the owners of media if they highlight



in turn has resulted in the narrowing of spaces for freedom of expression enjoyed by Malaysians. This disabling environment has become a huge obstacle for the advancement of the human rights of sexual minorities in Malaysia.

### **The Beginnings of a Sexuality Rights Movement in Malaysia**

At the international level, before the early 2000s the human rights of lesbians, gays, bisexuals and transgender, intersex and queer people (LGBTIQ) had to be defined within two forms of human rights struggle: the struggle for sexual and reproductive health and rights, and the struggle for the rights of people living with HIV and AIDS. It was around the turn of the millennium that LGBTIQ activists witnessed more funders willing to resource activities that explicitly speak to the human rights of the LGBTIQ. While such funding is rarely available in Malaysia due to the perceived economic development of the country by funders, the lack and oftentimes absence of funding failed to deter the emergent explicit discourse on LGBTIQ rights as human rights. The discourse in Malaysia has, however, largely focused on the human rights of the LGBTQ, as narratives of those who are intersex are yet to be uncovered or to be as vocally expressed as the rest.

In Malaysia the more explicit struggle for the human rights of the LGBTQ can be said to have begun in 2003 when a memorandum on the ill representation of the LGBTQ by the media was sent to the Human Rights

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issues that run against the interests of the Malay Muslim ruling elite in UMNO (see Mustafa, 1990; Zaharom, 1994, 2000). Internet service providers (ISPs) in Malaysia are officially instructed to block access to certain websites without the public's knowledge. Other Acts are also used to clamp down on dissent, such as the Sedition Act 1948, and the Security Offences (Special Measures) Act 2012 (SOSMA) under which Maria Chin Abdullah, the chairperson of Bersih, was detained on 18 November 2016. Other human rights activists and civil society actors have also been detained under SOSMA. Finally, in growing attempts to control freedom of expression online, amendments have been made to existing acts, such as the new section 114a to the Evidence Act 1950, which essentially presumes guilt in the event of publication (Yap, 2012). Proposed amendments to the Communications and Multimedia Act 1998 are also expected to further limit freedom of expression online, including that of bloggers; they were expected to be tabled in Parliament in March/April 2017 (Article 19, 2016; Bernama, 2017) but this tabling has been delayed. Even expressions on Twitter are monitored by no less than the Inspector General of Police (*Free Malaysia Today*, 2015).

Commission of Malaysia (SUHAKAM),<sup>13</sup> to which there was no response. It was only in 2007 that women's rights groups and human rights groups in general began to see LGBTQ rights as equal in priority for human rights advocacy,<sup>14</sup> and it was only in 2008 that the LGBTQ finally had some form of local platform to discuss their human rights issues – Seksualiti Merdeka – with relative freedom. The visibility of the human rights advocacy of the LGBTQ can be said to have reached a pinnacle in 2010 when the Department of Islamic Development Malaysia (Jabatan Kemajuan Islam Malaysia or JAKIM)<sup>15</sup> learnt of the activities of Seksualiti Merdeka and a visit and dialogue was held with one of its co-founders, Pang Khee Teik, in the presence of two human rights activists.<sup>16</sup> In October of the same year, Persatuan Kesedaran Komuniti Selangor (EMPOWER) co-organised a roundtable with SUHAKAM to discuss the human rights of lesbians, bisexual women and transgender people (LBT), which became controversial before the roundtable could be held because SUHAKAM had announced the organising of the roundtable on its website and had gained some unwanted publicity. The roundtable also intended to discuss the status of women's rights under Family Law, both Islamic and non-Islamic.<sup>17</sup> In December

<sup>13</sup> While it is meant to be an independent human rights commission, in practice, SUHAKAM's position on the human rights issues in the country is largely dependent on the courage, conviction and leadership of the chairperson. For example, when Tan Sri Hasmy Agam was chairperson from 2010 to 2016, and with the strong support of the vice chairperson, Datuk Dr Khaw Lake Tee, human rights issues of the LGBTQ began to be highlighted and worked on by SUHAKAM as long as complaints were submitted by LGBTQ rights activists. It is also important to note that SUHAKAM has yet to have any of its annual reports debated in Parliament despite being established by an act of Parliament.

<sup>14</sup> In 2007, arguments were raised against highlighting LGBTQ rights issues during the negotiations on what should be included in the Malaysian civil society's report to the United Nation's Human Rights Council's Universal Periodic Review reporting process for 2009.

<sup>15</sup> The central planning and management federal agency under the Prime Minister's Department for the development and advancement of Islamic matters in the country. For more information, see <http://www.islam.gov.my/>.

<sup>16</sup> The author was present at this dialogue, which appeared to be more about presenting how the Abrahamic religions of Islam and Christianity condemn homosexuality rather than the JAKIM representatives being open to actual dialogue. The different perspectives and treatment by other religions on homosexuality and transgenderism of Buddhism and Hinduism were not raised by JAKIM representatives.

<sup>17</sup> The presentation and discussion were limited to the human rights of the LBT as the Convention on the Elimination of All forms of Discrimination (CEDAW) was used as the rights framework.

the same year, Azwan Ismail, a Malay Muslim gay man who took part in the local initiative of the It Gets Better project under Seksualiti Merdeka received over 150,000 views to his video message, 'Saya gay, saya ok' (trans: I am gay, I am ok) within five days of its launch on YouTube.<sup>18</sup> Within the same period, despite it being a message of knowing oneself and accepting oneself, and meant to discourage suicidal tendencies by those who were questioning their sexual orientation, gender identity and gender expression, he received over 3,400 abusive comments, most of which condemned and threatened him.<sup>19</sup> In November 2011, Seksualiti Merdeka was subsequently banned and labelled as '*pesta seks songsang*' (deviant sex festival).<sup>20</sup> Many suspected that the banning was due to inviting Ambiga Sreenevasan to open Seksualiti Merdeka in that year. She was at the time chairperson of Bersih, the largest campaign and movement for clean and fair elections in Malaysia. However, in a letter dated 24 April 2012 responding to the query of three UN special rapporteurs on the freedom of opinion and expression, freedom of peaceful assembly and of association, and the situation of human rights defenders, the government of Malaysia cited among other reasons that 'the Police undertook the action of dispersing the SM festival to ensure that the LGBT community was kept safe from any retaliatory acts by certain fractions of society which were unhappy with the message the festival carried.'<sup>21</sup>

The banning of Seksualiti Merdeka failed to derail the advocacy for the protection and promotion of LGBTQ human rights, known also at the United Nations fora as rights based on sexual orientation and gender

<sup>18</sup> Azwan's original video is no longer on YouTube as it had to be taken down to better ensure his safety, but four other video messages uploaded by Seksualiti Merdeka can be viewed on YouTube. See <https://www.youtube.com/watch?v=3EcTQpbFF4w>; <https://www.youtube.com/watch?v=qxQljntpGe4>; <https://www.youtube.com/watch?v=4pErJT2xtJo>; and [https://www.youtube.com/watch?v=Om\\_BERG9puk](https://www.youtube.com/watch?v=Om_BERG9puk).

<sup>19</sup> The video had to be taken down on the sixth day because Azwan's life was in danger and by that time, a Malay Muslim blogger, Zainol Abideen, had implied to his readers that there was an Islamic way of killing Muslim homosexuals, and provided a step-by-step elaboration of the alleged method (Zainol, 2010).

<sup>20</sup> See, for example, <http://www.theborneopost.com/2011/12/07/program-seksualiti-merdeka-terus-dibantah/>.

<sup>21</sup> The official reply was in response to the three UN special rapporteurs' communication, [https://spdb.ohchr.org/hrdb/20th/AL\\_Malaysia\\_23.01.12\\_\(11.2011\).pdf](https://spdb.ohchr.org/hrdb/20th/AL_Malaysia_23.01.12_(11.2011).pdf). The official reply by the Government of Malaysia was found by the author on 28 January 2015 while doing an online search in Australia. The document surprisingly cannot be found again in online searches in Malaysia.

identity (SOGI).<sup>22</sup> When *Seksualiti Merdeka* was banned, a number of groups spoke up for the need to defend a discursive space for LGBTQ human rights.<sup>23</sup> This surprisingly included a religious group, the Malaysian Consultative Council of Buddhism, Christianity, Hinduism, Sikhism and Taoism (MCCBCHST) when evangelical Christians and conservative-minded people of different religious backgrounds have been known to reject the LGBTQ, especially their own families.<sup>24</sup>

MCCBCHST is against all forms of harassment, intimidation, threats and violent attacks on any Malaysian including those from the lesbian, gay, bisexual or transgender (LGBT) community. Their right to personal liberty, dignity and privacy must be respected. We also note that all Malaysians have a right to freedom of expression and can disagree with our existing laws. As long as they assemble in peace to discuss these matters, to educate and create awareness, and to seek law reform, their right to express themselves and to assemble peacefully must also be respected (OutRight Action International, 2016).<sup>25</sup>

The struggle to promote and protect LGBTQ human rights persists in different spaces, but one of the most significant spaces is within the United Nations Human Rights Council's Universal Periodic Review (UPR)<sup>26</sup> process engaged by COMANGO,<sup>27</sup> a coalition of 54 civil society organisations at the time.

<sup>22</sup> This has been extended in numerous circles outside the United Nations as SOGIE (sexual orientation, gender identity and gender expression), or SOGIESC (sexual orientation, gender identity, gender expression and sex characteristics).

<sup>23</sup> See <https://www.outrightinternational.org/content/malaysia-ban-sexuality-rights-festival-violates-human-rights>.

<sup>24</sup> Knowledge and Rights with Young People through Safer Spaces (KRYSS) collaborated with OutRight Action International to research violence and discrimination against lesbians, bisexual women and transgender people in Malaysia. The research unearthed how the worst discrimination and violence is perpetuated by families of the LGBTQ, and usually by people from within the same religious or ethnic backgrounds. The full report and the chapter on Malaysia can be downloaded from <https://www.outrightinternational.org/content/violence-through-lens-lbt-people-asia>.

<sup>25</sup> For MCCBCHST's full media statement of 4 November 2011, see <https://charleshector.blogspot.my/2011/11/mccbchst-rights-to-life-liberty-right.html>.

<sup>26</sup> See <http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRMain.aspx> for further information; see also [www.upr-info.org](http://www.upr-info.org).

<sup>27</sup> <https://www.facebook.com/COMANGO/>

## The State's Art of Mis-Representation

COMANGO's report in 2009 included the mention of human rights based on sexual orientation and gender identity. However, the report did not raise any alarm bells among Islamist and government authorities until the next report under the UPR process in 2013. It was in this year that COMANGO was banned and vilified for highlighting human rights violations based on factors such as sexual orientation, gender identity, religion, and ethnicity.<sup>28</sup>

The deliberate misrepresentation of COMANGO by both state and state-endorsed actors included JAKIM and the Muslim Lawyers Association (Persatuan Peguam-Peguam Muslim Malaysia or PPMM). Attacks were primarily directed at COMANGO by the group who call themselves Muslim NGOs in the UPR Process (MuslimUPRo), of which, Ikatan Muslimin Malaysia (ISMA) – apparently the more antagonistic of them – is a member (see Annex 1 for an example of ISMA's fear tactics). These actors had purported that COMANGO was behind a conspiracy to destroy Islam in the country (*Ismaweb*, 2013; *Malaysiakini*, 2015) and, by extension, the *destruction of Malaysia as an Islamic state*. Accusations also included that COMANGO's demands are 'against Islam as the official religion of the federation' and, by engaging in a United Nations process, COMANGO was trying to put international pressure to 'force Malaysia to accept human rights principles based on secularism, liberalism and pluralism', and as such, attempted to deny Malaysia its national sovereignty. ISMA in particular kept asserting that because of COMANGO, 'Muslims and political parties must put aside all personal and political differences to defend the interest and sanctity of Islam' (Jamilah, 2014), another effort to create the 'other' and to unite Malaysian Muslims. This unification call was repeated by JAKIM and Jamil Khir Baharom, Minister in the Prime Minister's Department, prior to Malaysia's human rights review in Geneva (Syed Jaymal, 2013; *Malaysiakini*, 2013).

COMANGO's main demand in its 2013 report for the human rights of the LGBTQ was that the LGBTQ be free from violence and criminalisation based on international human rights standards. ISMA had claimed that COMANGO's report demanded the abolishment of Section 377A of the Penal Code<sup>29</sup> and that it was asking Malaysia to bow to the Yogyakarta

<sup>28</sup> Why has COMANGO been banned? <http://poskod.my/cheat-sheets/why-has-comango-been-banned/>.

<sup>29</sup> The law states that 'Any person who has sexual connection with another person by the introduction of the penis into the anus or mouth of the other person is said to

Principles of 2006.<sup>30</sup> Section 377A of the Penal Code is on carnal intercourse against the order of nature and is a relic of British colonial rule.<sup>31</sup> The law criminalises consensual oral and anal sex acts between adults, including heterosexual adults. The Yogyakarta Principles, as an international document, is non-binding and remains a guide to interpret existing international human rights law agreed upon by UN member states for the protection and promotion of human rights based on sexual orientation and gender identity. The Yogyakarta Principles is unique in that its content is drawn from existing jurisprudence around the world that upheld LGBTIQ rights in at least one country, if not others.

The misrepresentation of COMANGO was likely politically motivated as the ruling coalition, the Barisan Nasional, politically led by UMNO, had performed poorly in two consecutive general elections, in 2008 and 2013, and Bersih, the campaign and movement for clean and fair elections, was growing larger as its support base of both Malay Muslims and Malaysians of other ethnicities and religions widened. Opposition political parties have also been supportive of Bersih. The Malay Muslim ruling elite of UMNO in particular are afraid of losing their political power, and view this as largely embedded in the political choices of Malay Muslims.<sup>32</sup> When Mahathir

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commit carnal intercourse against the order of nature.’ This means that penetration is sufficient to constitute the sexual connection necessary to the offence described in this section. Seven counts of criminal charges under Section 377A of the Penal Code involved the former Deputy Prime Minister, Anwar Ibrahim.

<sup>30</sup> The Yogyakarta Principles outlines the application of international human rights law in relation to sexual orientation and gender identity. It is a response deliberated by a distinguished group of international human rights experts who met in Yogyakarta, Indonesia to well-documented patterns of abuse against people based on perceived and actual sexual orientation, gender identity and gender expression. The result was the Yogyakarta Principles: a universal guide to human rights which affirms binding international legal standards with which all States must comply. The Yogyakarta Principles can be found at [www.yogyakartaprinciples.org](http://www.yogyakartaprinciples.org).

<sup>31</sup> Human Rights Watch produced a 66-page report, *The Alien Legacy: The Origins of ‘Sodomy’ Laws in British Colonialism* that describes how laws in over three dozen countries, from India to Uganda and from Nigeria to Papua New Guinea, derive from a single law on homosexual conduct that British colonial rulers imposed on India in 1860 (see <https://www.hrw.org/report/2008/12/17/alien-legacy/origins-sodomy-laws-british-colonialism>; to access the report, go to [https://www.hrw.org/sites/default/files/reports/lgbt1208\\_webwcover.pdf](https://www.hrw.org/sites/default/files/reports/lgbt1208_webwcover.pdf)). In 2008, India repealed this law. There was a similar attempt in Singapore in 2010, but the constitutional challenge failed in 2014 (Feder, 2014; Human Rights Watch, 2014b).

<sup>32</sup> UMNO’s fear of losing political power could also be observed in the way a private member’s bill – PAS President Abdul Hadi Awang’s motion to amend the Shariah

declared Malaysia an 'Islamic fundamentalist state', Malaysia's secular Federal Constitution was suddenly rendered a social contract that revolved around the centrality of Islam. Thus, the Malay Muslim ruling elite of UMNO could now project itself as the protector of Islam and bestowed upon itself the power to police the Malaysian public according to their literalist interpretation of Islamic principles.

## Conclusion

Despite the setbacks they have experienced in claiming their human rights at the national level, such as the banning of Seksualiti Merdeka, the LGBTQ and their narratives continue to disrupt and confront power that is bent on subjugating them, exercising – as much as they can – their rights as citizenry and their sexual citizenship. The LGBTQ in Malaysia continue to make themselves visible in democratic spaces that they can access, choosing to exercise their freedoms of expression and association and assembly despite the challenges and risks. These include reporting and working closely with the national human rights institution, SUHAKAM, and supporting Bersih's demands for clean and fair elections in the country. The LGBTQ were particularly visible in the Bersih 3, Bersih 4 and Bersih 5 rallies. The LGBTQ have also participated in the consultations leading up to the development of Malaysia's National Human Rights Action Plan (NHRAP). Their proposals and recommendations, however, were not considered for incorporation by the legal firm, Hazizah & Co which was hired to conduct the 18-month consultancy from 13 November 2015 by the Legal Affairs Division (Bahagian Hal Ehwal Undang-Undang or BHEUU) under the Prime Minister's Department. An e-mail communication from a representative of the consulting team to the LGBTQ activists on 21 February 2017 stated:

We have proposed a plan of action for the LGBT group that is for the government to set up a working committee to further study all your proposals. However, the ministry officers told us that they are unable to establish that working committee until the cabinet has come out with a clear policy on the matter. Therefore, our proposal could not be included in the current draft NHRAP. Therefore, moving forward, maybe your group can think on how to address the issue to the cabinet.

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Courts (Criminal Jurisdiction) Act 1965 (Act 355) – was brought forward and debated (though not fully) in the March/April 2017 Parliamentary session before all remaining government bills. This allowance was probably permitted due to the pressure from Muslim NGOs who threatened to campaign against any Muslim MP who decides to oppose Abdul Hadi Awang's motion (Nawar, 2016).

From the response, one can ascertain how an already disempowered and marginalised group in Malaysia is asked to do the impossible in Malaysia's current political climate. Ever since their poor showing in the 2008 general election, the ruling Malay Muslim elite in UMNO and as part of the Barisan Nasional have been struggling to create a common enemy against whom Malaysian Malay Muslims will stand united, and one such politicised enemy is expected to continue to be the LGBT, demonising them with the help of groups like ISMA.



SEE NO PROBLEM  
WITH LGBTQ



HEAR NO PROBLEM  
WITH LGBTQ



SPEAK NO PROBLEM  
WITH LGBTQ



NO  
LGBTQ!



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**Annex 1**

**An Example of Misinformation by ISMA: Tactics of Fear and Hatred**



Protest against COMANGO's demands:  
Allow homosexual sex. Lesbian. Gay. Bisexual. Transgender.  
Will there be a day when you come across your son kissing another man?  
Come on, give your support to the Islamic NGO representatives who will protest against this demand!



# Malaysia's Green Movement: Old Continuities and New Possibilities

*Yew Wei Lit and Azmil Tayeb*

The environmental movement in Malaysia has been a relatively under-explored subject,<sup>1</sup> even though it arguably stands as one of the liveliest in Southeast Asia. As this chapter will show, it is constituted of a number of established civil society organisations and a multitude of community-driven protest groups, involving a wide range of actors and issues. It is perhaps remarkable that the movement has progressed under testing semi-authoritarian conditions, suffering from restrictions over registration of organisations, as well as fears of state intimidation and coercion (see Lemière's chapter in this volume).

Environmental movements in authoritarian regimes have attracted significant attention, not only for representing a critical component of an emerging civil society, but also for their democratic potential in fast-tracking political change. Whether it is the movement's contribution to regime transitions in former communist Eastern and Central Europe, or the vibrant contestations environmental nongovernmental organisations (ENGOS) have undertaken in one-party China, environmental mobilisation has unleashed attempts in various degrees that pry open closely patrolled public spaces (Ho and Edmonds, 2008; Jancar-Webster, 1998). As such, there is value in seeking to understand the extent to which Malaysia's environmental movement measures up as a democratising force, as well as the existing obstacles that constrict that potential force.

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<sup>1</sup> Important contributions on this topic include Kathirithamby-Wells (2005); Nair (1995); Ramakrishna (2003); Majid Cooke and Hezri (2017).

Through a historical perspective, this chapter aims to chart the evolution of the Malaysian environmental movement from its beginnings in the early 1970s to the anti-Lynas campaign in recent years. The historical overview will proceed through the lens of different political eras. While highlighting the changes in grievances, mobilisational technologies and tactics, and actors, this chapter also maps the connection between the movement dynamics and the wider political context, in particular the regime in power and global environmental issues. Brief case studies of historically significant environmental campaigns will illustrate the imperative of coalition-building among protest organisations that extends beyond pre-existing Malaysian ENGOs networks, and sometimes beyond national borders. Next, the systemic challenges, which include racialised politics, constraints on civil society, and a highly institutionalised party system, that continue to stymie environmental activism in Malaysia are discussed. This is followed with concluding remarks on the new possibilities for the green movement.

## The Environmental Movement in Malaysia<sup>2</sup>



**Figure 1:** Locations of key environmental controversies in Malaysia  
Map is not to scale and attributed to <http://www.mapeet.com>

### The Beginnings (1970s–1980s)

The emergence of urban-based ENGOs in the late 1960s and early 1970s, such as the Consumers' Association of Penang (CAP), Friends of the Earth Malaysia (Sahabat Alam Malaysia, SAM), Environmental Protection Society of Malaysia (EPSM), and World Wide Fund for Nature Malaysia (WWF Malaysia), marked the beginning of Malaysia's environmental movement.<sup>3</sup>

<sup>2</sup> For accounts of Malaysia's environmental history, refer to fn.1 and Tan (2013a, b).

<sup>3</sup> Consumer Association of Penang: <https://www.consumer.org.my/>; Sahabat Alam Malaysia: <http://www.foe-malaysia.org/>; Environmental Protection Society of

Though the Malaysian Nature Society (MNS) was established by British expatriates in 1940, its activism truly began in the 1970s. WWF Malaysia and the MNS tend to be more conservationist and lobbying-oriented, contrasting with the CAP, the EPSM, and SAM that are more vociferous but smaller in membership size (Nair, 1995; Ramakrishna, 2003). Together, they are considered as 'world-view-oriented' ENGOs, being generally concerned for the environmental well-being and ecological biodiversity. Guided by a set of core values, they educate the public and work with the government to propagate environmental protection policies (Tong, 2005: 169).

The enactment of the 1974 Environmental Quality Act, combined with ENGO campaigns against natural resource exploitation that threatened ecological damage, began to lodge environmental issues in the public consciousness. Facilitation by the federal government, signalled by the passing of the aforementioned act, lowered the cost of collective action (Tilly, 1977: 4-26). The cornerstone of the ENGO mobilisation in the 1970s was the opposition against timber exploitation in the Endau-Rompin region that straddled the state boundaries of Pahang and Johor. Despite the proposal of a joint federal-state committee under the Ministry of Agriculture and Fisheries and the Prime Minister's Department to establish the region as a national park, the Pahang state government issued logging concessions in a section of the core area in 1977. In response, the MNS led a coalition of ENGOs that included SAM and the EPSM to run the 'Save Endau-Rompin National Park' campaign. They mobilised newspaper attention, collected signed petitions, and lobbied the federal government. Between 1985 and 1986, the MNS organised the 'Malaysian Heritage and Scientific Expedition' to Endau-Rompin, enlisting scientists, youths and schoolchildren in its regular field trips, partly as a way to bring public attention to the issue. The struggle lasted until 1993 when the Johor government conceded by setting up a state park within its borders. The ENGOs hence blazed the trail in soliciting public support for environmental protection, as evident in the support from the International Union for Conservation of Nature (IUCN), chambers of commerce, and even the United Malays National Organisation (UMNO) youth wing. It was also fortuitous to receive the backing of the federal government that had pressured Pahang state leaders into suspending logging activities by 1978 (Aiken, 1993; Aiken and Leigh,

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Malaysia: <http://www.epsm.org.my/about.html>; World Wildlife Fund Malaysia: <http://www.wwf.org.my/>.

1984; Kathirithamby-Wells, 2005).<sup>4</sup> In short, the political opportunities afforded by the federal government in the 1970s allowed the local ENGOs to mobilise effectively and successfully.

The type of regime in power influences the selection of issues advocated by the local ENGOs (Tarrow, 1998: 18). In the 1980s, the development-oriented administration of Mahathir Mohamad which aimed at growing the economy at a fast rate led to a high degree of environmental degradation in the country.<sup>5</sup> This generated increased instances of ‘pollution-driven protests’, or movements that revolved around direct and immediate risks to the health of affected residents (Tong, 2005: 168). The most notable example was the campaign against a Japanese rare earth refinery factory, Asian Rare Earth (ARE), in Bukit Merah, Perak. From 1983–93, residents of Papan and Bukit Merah opposed the dumping of radioactive waste near their neighbourhoods, and demanded a total closure of the plant. The CAP and SAM publicised and supported their struggle, holding demonstrations, contacting Japanese politicians and ENGOs, and engaging in a legal battle against ARE, which in the end closed its operations due to financial reasons. As the Mahathir government doubled down on securing its strategic economic projects, the anti-ARE movement resorted to an overt confrontational strategy that summoned thousands to march on the streets, distinguishing itself from the Endau-Rompin campaign (Consumers’ Association of Penang, 1993; Poh, 2015; Sahabat Alam Malaysia, 1984). The movement thus laid the foundation for future residents-led protests, which are backed by ENGOs armed with the know-how and experience. Similar coordination and coalition-building among ENGOs also helped defeat proposals to construct the Tembeling Dam that threatened to destroy the National Park (1982) and to turn Penang Hill into a theme park (1989–90).

The developmental juggernaut of the Mahathir administration did not spare East Malaysia, either. For instance, the federal government and the Sarawak state government allowed logging companies to rapaciously clear the vast old-growth rainforest in the state. The indigenous Penan communities, with the support of SAM’s branch office in Sarawak, erected

<sup>4</sup> That the Pahang chief minister belonged to a competing UMNO faction to the then Prime Minister partly explained the attitude of the federal government (Shafruddin, 1987).

<sup>5</sup> The optimistic theory of ‘ecological modernisation’, however, posits that techno-industrial advancement accompanying modernisation offers clean technology and heralds progressive tightening of environmental regulations, thus improving overall environmental quality (Mol and Sonnenfeld, 2000).

blockades against logging companies in 1987. Though framed as an indigenous rights campaign, it attracted worldwide attention and became an international symbol of resistance against rainforest destruction, thanks to the reports of a Swiss environmentalist, Bruno Manser, who later mysteriously disappeared in Sarawak, most likely due to foul play (Brosius, 1997). Similarly in Sabah, indigenous land action groups, such as the Land Action Committees and the Partners of Community Organisations Sabah, intricately wove environmental issues with land rights (Majid Cooke and Hezri, 2017). Despite reframing environmental issues as an erosion of indigenous rights and gaining international coverage, local ENGOs barely made any headway in their struggle against the neo-liberal, developmentalist policies of the federal and state governments.

In the context of the overall civil society movement, the 1980s marked the government's hostile stance against NGOs. The federal government fired the first salvo in 1981 by proposing to amend the Societies Act, which aimed to compel NGOs that intended to critique government policies to register as political societies (Tan and Bishan, 1994). By 1987 the repressive arm of the federal government finally reached the environmentalists when it employed the draconian Internal Security Act (ISA) to detain the leaders behind the anti-ARE campaign (Means, 1991: 211–14). Despite the chilling effect of the federal government's onslaught against the civil society at this time, environmental mobilisation continued almost unabated into the 1990s.

### **The Heady Nineties (1990–1999)**

While the federal government's repression of NGOs persisted into the new decade, the 1992 Rio Earth Summit brought new momentum to environmental action in Malaysia by putting sustainable development on the global agenda. The government appeared to be willing to embrace discourses about environmentalism and societal consultation, with Mahathir notably declaring that 'NGOs were no longer enemies of the government' (Gurmit, 2007). This shift was influenced by Malaysia's increasing diplomatic influence and its eagerness to counter international criticisms of its deforestation policy (Hezri and Mohd Nordin, 2006). At any rate, the change in the federal government's stance, along with environmental issues being at the top of the global agenda, provided local ENGOs with political opportunities to mobilise vigorously. However, as Poh (2015: 137–8) argues, these opportunities were constrained by neo-liberal notions of maintaining dual emphasis on economic growth and environmental protection. Specifically, policymakers believed that environmental problems are solvable through

investment in technological tools without changing the orientation of economic development. For example, a grand-scale waste incinerator plant was believed to be necessarily better for the environment; this was exemplified in the case of the Broga incinerator discussed below.

Building on the coalitional approach well-honed and tested in previous decades, buoyed by the rejuvenating focus on sustainable development, ENGOs mobilised around various environmental issues such as the Selangor River dam and the Bukit Nenas hazardous waste treatment facility.<sup>6</sup> Nevertheless, the government's continued intransigence over implementing economic projects with potentially devastating environmental consequences forced ENGOs to pool resources and broaden their collaborative network to include other non-environmental NGOs, such as human/community rights NGOs, and sometimes even opposition politicians (Weiss, 2006). These two factors, in turn, transformed the ways the environmental movement in Malaysia advocated its concerns at this time or, as Charles Tilly terms it, 'repertoire of contention', by employing a sophisticated multi-pronged mobilisational approach, as opposed to simply focusing on a single strategy (Tarrow, 1998: 30).

The multi-pronged mobilisational approach adopted by the local ENGOs found its expression in the case of Bakun hydroelectric dam in Sarawak. The construction of the dam became the most prominent Malaysian environmental controversy of this period, resulting in coalition-building not only among local NGOs (Coalition of Concerned NGOs Against the Bakun Dam), but also the formation of an impressive transnational advocacy network. Initiating what is called a 'boomerang strategy' by looking outside the country for support against domestic issues, NGOs at home linked up with foreign NGOs such as Greenpeace and Survival International to apply international pressure on Malaysian policymakers and the foreign corporation in charge of the project (Keck and Sikkink, 1998). Apart from visits to Sarawak by various international ENGOs to oppose the dam, 120 NGOs worldwide urged the Swedish–Swiss engineering corporation in a written statement to pull out from the Bakun project (Jaura, 1996). The local coalition, on the other hand, comprised mainly peninsular-based groups, coordinated by the leader of Suara Rakyat Malaysia (SUARAM), a human rights NGO.<sup>7</sup> Unfortunately, differences in strategic preferences arose within

<sup>6</sup> For analyses of the campaigns against the Selangor dam and the Bukit Nenas facility, see Ramakrishna (2003) and Khoo and Rau (2009), respectively.

<sup>7</sup> <http://www.suaram.net/>.

the anti-Bakun Dam movement, as with most broad-based coalitions. For instance, the Sarawak-based NGOs launched legal action over land rights violated by the land seizure while the Coalition disputed the Environmental Impact Assessment report and publicised the abuses the resettled native people had to endure. While the Coalition gradually disbanded, the court case lasted for over twenty years before being dismissed (Majid Cooke and Hezri, 2017). Nonetheless, the Bakun dam project was ultimately postponed and scaled down due to public pressure and the economic downturn in the wake of the 1997 Asian financial crisis.

In short, the 1990s saw the environmental movement in Malaysia becoming more sophisticated in its mobilisation strategies as various ENGOs worked together to pool their resources. At the same time, they were also boosted by the international environmental network to advance their causes on the national and international stages. The political turmoil at the end of 1990s, dubbed Reformasi, that followed the ousting of the Deputy Prime Minister, Anwar Ibrahim, and the reinvigoration of oppositional politics again transformed the mobilisational strategies of the Malaysian environmental movement as the political space opened up and ethnic politics became less salient in national discourse.

### **The Post-Reformasi Period (1998–2007)**

The initial years of Reformasi witnessed violent crackdown by Mahathir's administration against the protesters, who included political and civil society groups such as the aforementioned SUARAM. As the Reformasi movement soldiered on, groups began to forge a closer relationship with each other, in turn encouraging a shift of activism to the electoral arena as a means to usher in political change. However, ENGOs had been reticent to work closely with opposition parties due to their desire to keep an image of neutrality that was crucial to avoid state repression and maintain a collaborative relationship with the government (Mohamed Hafiz, 2011). Nevertheless, despite the tepid involvement of environmental activists in electoral politics at this time, the environmental movement made full use of the increasing relevance of the Internet as a tool to disseminate information and instil public awareness through alternative media such as blogs and online news sites. The Internet became a new tool to mobilise support and link forces with other like-minded groups. The government repression, closer cooperation between political and civil groups and the fast-growing online activism during the early years of Reformasi marked a new phase in the trajectory of the Malaysian environmental movement.

The post-Reformasi period also saw the expansion of the environmental movement. New ENGOs joined a few older organisations to formalise an independent network called the Malaysian Environmental NGOs (MENGO). This organisational expansion inevitably resulted in disagreements among its components. MENGO indicated that one of its goals was to collaborate with the government in sustainable development policies as some of its member organisations believe in 'working from the inside'. On the other hand, other groups such as the CAP still prefer a neutral 'outsider' status to avoid the perception of government co-optation (Mohamed Hafiz, 2011).<sup>8</sup> While ENGOs largely earned government acceptance, reactive grassroots environmental resistance, which operated locally and sometimes alongside established ENGOs, was often viewed negatively by the government, and even by certain ENGOs because such resistance was perceived as being driven by self-interest and emotion, often resorting to alliance with opposition politicians.

Even though Reformasi did not yield substantive political change, its legacy in transcending the old communitarian divides proved to be essential to subsequent environmental mobilisation. In the past, government and opposition parties usually engaged in grassroots environmental issues based on the ethnic profile of the aggrieved community. For example, an environmental complaint by a Chinese community was likely to be perceived as a 'Chinese issue' that pitted the ethnic Chinese component parties of BN against the oppositional Democratic Action Party (DAP). However, the 'trans-ethnic solidarity' that underpinned the Reformasi movement captured the public imagination and persisted even after the demobilisation of Reformasi (Mandal, 2003).<sup>9</sup> Encouraged by this trans-ethnic solidarity, opposition parties began reaching out to citizens and issues beyond their core constituencies and concerns. Additionally, like other forms of alternative media, Malaysiakini, a news online portal that was launched on the eve of the 1999 election, started covering controversial (environmental) issues typically underreported by the government-controlled mainstream media. The environmental movement, in short, managed to reframe the public discourse of environmental issues from one that was ethnic-based to one that concerned all communities.

<sup>8</sup> Hilary Chiew, interview by first author, Petaling Jaya, 28 February 2015.

<sup>9</sup> Trans-ethnic solidarity here refers to political effort that bridges ethnic divide and directly challenges the racialised politics as practised by the BN government.



The nature of this new trans-ethnic and trans-class environmental movement came to the fore in 2002 in the protest against the building of an incinerator in the state of Selangor. Strong public pressures by the local citizens forced the relocation of a planned waste-to-energy incinerator in Puchong township in Selangor (Ong, 2003). Its new site was Broga, Selangor, where it also provoked a fierce grassroots campaign led by residents of a suburban Semenyih neighbourhood and Broga village (Poh, 2015; Yew, 2016a; see also Azmi Sharom, 2014). In contrast to previous pollution-driven contention that tended to revolve around rural issues of environmental justice, these protests recruited new urban middle-class actors from various professional backgrounds, such as academics, engineers, government officials, and businesspersons. With Internet connectivity, ordinary citizens were less hindered by their inexperience as they were able to directly contact ENGOs and perform online research on behalf of their campaigns. Nevertheless, a few ENGOs continued to work alongside these campaigns, assisting with capacity building and transnational networking. For instance, due to its long involvement against incinerators, the CAP aided the Broga protesters by supplying information and contacting foreign scientists and NGOs.<sup>10</sup> Though the campaign was animated by fears about the health effects of dioxin emissions from the incinerator, it framed its objections by questioning the permitted distance between the incinerator and the water catchment area, as well as its location on a slope. Malaysiakini extensively reported on the Broga issue, as it found no coverage in mainstream media, hence sustaining the public attention it very much needed. Significantly, politicians from the Islamist oppositional party, Parti Islam Se-Malaysia (PAS), worked with Broga's Chinese villagers on this environmental issue, deviating from their previous focus on Malay welfare and Islamic practices. In return, the Broga voters overwhelmingly voted for the PAS candidate in the 2004 general election, as if keeping alive the trans-ethnic solidarity celebrated by Reformasi.<sup>11</sup> This trans-ethnic and trans-class character would soon become more pivotal in the Malaysian political landscape in the aftermath of the 2008 electoral wave that significantly increased the influence of the opposition in national politics.

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<sup>10</sup> Mageswari Sangaralingam, interview by first author, Penang, 23 January 2015.

<sup>11</sup> Alice Lee, interview by first author, Broga, 31 January 2015.

## The Post-March 2008 Tsunami Era (2008–Present)

The historic electoral gains achieved by the Pakatan Rakyat (PR) oppositional coalition in 2008, including depriving BN of its two-thirds parliamentary majority and winning control of five state governments (Selangor, Penang, Kelantan, Kedah and Perak), translated into higher popular expectations towards an electoral turnover at the national level. With this newfound influence, opposition politicians became far more vocal in championing social and environmental issues. In addition, PR state governments had to be more responsive to environmental grievances in their respective states, rather than agitating from the opposition bench. On the other hand, the weakened BN government oscillated from repression to contingent tolerance over social mobilisation. After inciting backlash at home and abroad for the harsh treatment of demonstrators at the Bersih 2.0 rally in July 2011,<sup>12</sup> Prime Minister Najib Razak announced the repeal of the Internal Security Act and the promise to study electoral reforms. The apparent gains of mass demonstrations inspired by Bersih have thus emboldened activists across the country, including the local ENGOs, which had begun to incorporate electoral mobilisation and mass demonstrations as part of their organising repertoire.

It was through such a political opening that environmental movements, particularly the anti-Lynas movement, achieved new highs in Malaysia. While the anti-Lynas movement was driven by concerns over the dangers the Australia-owned plant posed to health and environment, the campaign focused on contesting the lack of a radioactive waste disposal plan since the rare earth ores contain thorium, a radioactive element. As one of the most prominent opposing residents groups, Save Malaysia Stop Lynas (SMSL) comprised middle-class professionals and businesspersons, and tended to deploy institutionalised strategies of petitioning and suing government agencies. Its members travelled to Australia, networked with environmental activists and Green Party politicians there, and protested at Lynas' headquarters in Sydney. Besides obtaining the help of scientists overseas to question technical claims about the project, they also made use of digital media to publicise their grievances and mobilise people.<sup>13</sup> Another protest

<sup>12</sup> Bersih (the Coalition for Clean and Fair Elections) is an electoral reform movement which was then led by Ambiga Sreenevasan, a lawyer-activist and former president of the Malaysian Bar Council. Held in Kuala Lumpur, Bersih 2.0 and subsequently Bersih 3.0 in April 2012 followed up on the first edition in 2007.

<sup>13</sup> One person who had training in graphic design was responsible for designing

group, Himpunan Hijau (Green Assembly, HH), utilised non-institutionalised confrontational tactics, such as holding mega rallies, marching from Kuantan to Kuala Lumpur, and blockading the shipment of rare earth ores at the port. Led by Wong Tack, a Sabah-based environmentalist, the group was 'inspired' by Bersih and sought to similarly pressure the government politically.<sup>14</sup> In alliance with Bersih, its rallies, which were held in Kuantan, Kuala Lumpur and other cities across West Malaysia, attracted thousands of people as a sheer demonstration of collective solidarity.

Both SMSL and HH depended less on established ENGOs than previous pollution-driven protesters. They imaginatively initiated links with environmental resisters in other states, including former anti-ARE activists, to mobilise together against the government.<sup>15</sup> In the run-up to the 2013 general election, they helped mobilise voters to defeat BN, particularly since PR promised to shut down the plant upon coming into power (Nazreen, 2014). Wong Tack's electoral candidacy in the Bentong parliamentary seat in Pahang represented potentially the first green candidate in Malaysia, attracting endorsements from political and environmental activists.<sup>16</sup> A calculated electoral strategy to field opposition candidates in areas with environmental disputes, such as Cameron Highlands, Kuantan, and Raub was also executed.<sup>17</sup> Although Wong Tack lost by a narrow margin in the election, PR won a few state assembly seats in Kuantan for the first time in history, as well as retaining its parliamentary seat. Opposition parties were at the forefront of the anti-Lynas movement, mobilising thousands of people to enlarge the crowd at mass rallies. The retreat for the opposition party Parti Keadilan Rakyat (PKR) was relocated to Kuantan to coincide with the February 2012 Himpunan Hijau rally so that national opposition leaders, including Anwar Ibrahim himself, could participate (*Rocket*, 2012). Though the Lynas plant remained in operation, the government was forced to set up an expert monitoring committee and radioactive monitoring stations around the site (Star, 2013).

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publicity posters that incorporated provocative images of mothers and children amidst an apocalyptic setting, which were then disseminated online through social media and their official Blogspot website. Anonymous interview by first author with SMSL committee member, Kuantan, 10 March 2015.

<sup>14</sup> Wong Tack, interview by first author, Kuantan, 13 March 2015.

<sup>15</sup> Ibid.; anonymous interview by first author with SMSL committee member, Kuantan, 14 March 2015.

<sup>16</sup> Established ENGOs, by contrast, were noticeably missing from the endorsement list (Aliran, 2013).

<sup>17</sup> Wong Tack, interview by first author, Kuantan, 13 March 2015.

There was renewed assertiveness among environmental protesters on other fronts. In Sabah, from 2008–11, a coalition of established ENGOs and local action groups fought against the construction of a coal-fired power plant through street marches and lobbying policymakers. It forced the planned development to be relocated twice before being abandoned (Majid Cooke and Hezri, 2017). In Sarawak, building on traditional methods of blockades, the protest by indigenous villagers and ENGOs against the Baram Dam successfully pressured its cancellation in 2016 (Bardeen, 2016). The organisational proliferation and tactical diversification that characterised the anti-Lynas movement was found in subsequent movements, such as the campaign against a proposed waste incinerator in Kepong, Kuala Lumpur. A couple of groups emerged to contest the siting by networking with Japanese anti-incinerator experts and activists such as those from the Environmental Research Institute Tokyo, organising a march to parliament, and confronting the Minister in charge on his Twitter account and on a local radio programme.<sup>18</sup> Moreover, a budding worldview-oriented grassroots group, Anak Malaysia Anti Nuklear (Anti-Nuclear Children of Malaysia), has been campaigning against recent government plans to construct nuclear power plants.<sup>19</sup>

In PR-administered states, where state governments have access to land and natural resources, local development drives have similarly stoked environmental concerns, pitting environmentalists against state governments. Without generous access to federal grants like the BN-controlled states, ambitious development has been viewed in these states as a means to meet the imperative of financial self-reliance (Loh, 2015). Cases include the Seri Tanjung Pinang reclamation project in Penang, in which the state government had a 21.2 per cent stake, and excessive logging in Kelantan, both of which had dismissed local protests and continued on regardless (Mohamad Fadli, 2016).<sup>20</sup> The former saw a coalitional mobilisation of about forty civil society groups, including CAP, SAM, and Aliran, that voiced public objections on the media and to government agencies. However, because many opposition politicians were elected on the promise of a people-centric government and on the back of civil society mobilisation, there had been strong incentives for them to sometimes appease the public (Weiss, 2009). Indeed, in some instances the state

<sup>18</sup> Lam Choong Wah, interview by first author, Kuala Lumpur, 2 March 2015.

<sup>19</sup> <http://amantinuklear.org/>.

<sup>20</sup> Anil Netto, interview by first author, Penang, 22 January 2015.

governments used their prerogatives to cancel controversial projects, such as the Kinrara–Damansara Expressway in Selangor (Lee, Aiezat and Achariam, 2015).

### Old Obstacles in the New Era

Apart from the flawed legal framework governing environmental public participation (see Azmi, 2014), individual ENGOs also have to contend with the politically miasmatic climate of Malaysia's semi-authoritarian system. Local ENGOs are still facing similar obstacles despite the relative openness of the Malaysian political system since 2008. This final section addresses the elements of Malaysia's flawed democratic system that throws up systemic roadblocks for the environmental movement, specifically racialised politics, limits imposed on the civil society, and a rigid authoritarian party system.

In Malaysia, for a universal issue such as the environment, BN's ethnicised political practices continue to have the power of rendering ethnic cleavages salient, which in turn can reduce cross-ethnic sympathies and incentives for mobilisation. For example, rural Malays who lived far closer to the Lynas factory than the Kuantan activists had less incentive to protest because many relied on government subsidies and employment.<sup>21</sup> But because the majority of the visible activists were ethnic Chinese and opposition politicians, the anti-Lynas movement was repeatedly depicted by BN politicians as lacking multi-ethnic support, or being hijacked by the political opposition (Albrey, 2011; Bernama, 2012). This tactic was successful to some extent in discouraging wider Malay support, turning it into a 'self-fulfilling prophecy' of an exclusively 'Chinese matter'.

In addition, authoritarian controls over social activism, such as the use of the Sedition Act and police intimidation, remain effective in demobilising and demoralising activists, especially given the latest repressive turn under Prime Minister Najib (Yew, 2016b). Even if environmental mobilisation is generally not totally suppressed and given room to manoeuvre, activists still have to contend with subtle state-imposed constraints, such as arbitrary delays in court action, bureaucrats' unresponsiveness, and surveillance by the Special Branch (Malaysia's police intelligence organisation) (Yew, 2016a).

Reinforced by existing curbs on political space, the highly institutionalised party system in Malaysia has also meant that it tends to channel popular discontent into elections and direct contentious activities toward political parties (Weiss, 2015). Many grassroots pollution-driven

<sup>21</sup> Andansura Rabu, interview by first author, Kuantan, 6 March 2015.

protesters in the past have resorted to electoral mobilisation and working with the opposition parties. While this is not necessarily undesirable, if mismanaged it can foster discord within the movement by ostensibly distorting the image of neutrality, as happened to the anti-Lynas activists.

## Conclusion

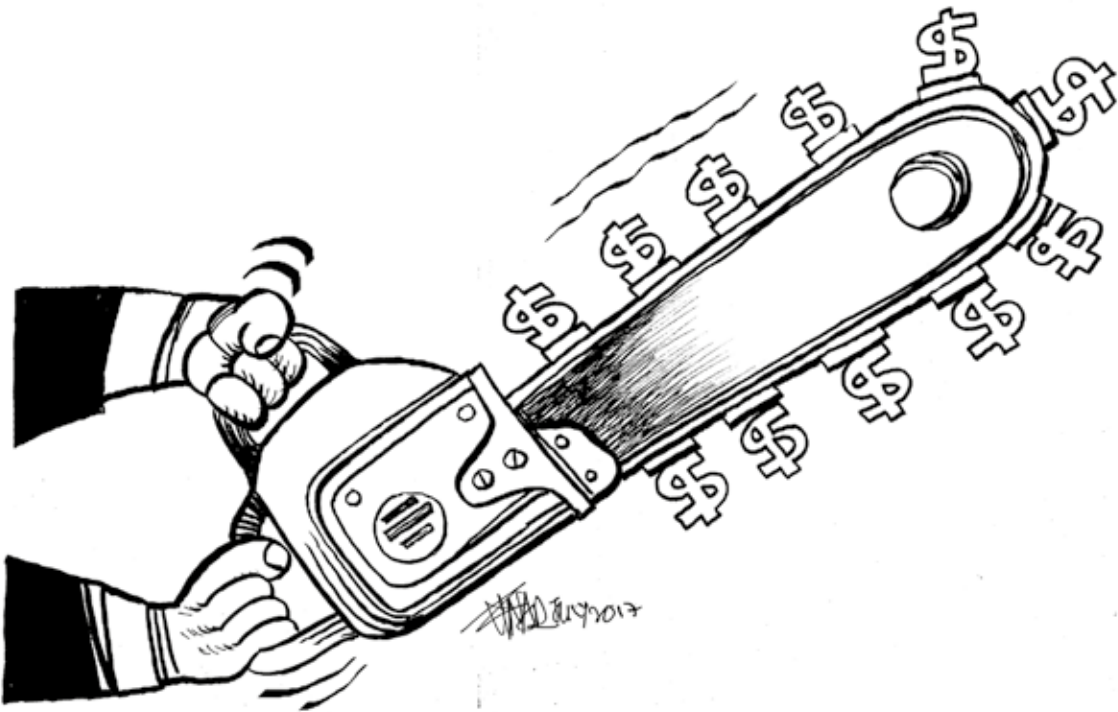
Because environmental issues are usually viewed as 'soft issues' that fall short of challenging regime hegemony by semi-authoritarian governments, the green sector has arguably greater latitude in its activism (Doyle and Simpson, 2006). Malaysia's green movement is no exception to this trend.

Elaborating on small advances and learnt lessons of the past, the environmental movement has grown through robust coalition-building efforts that extend beyond pre-existing ENGO circles. With greater access to various technologies, such as the Internet, alternative media and social media, it has been able to collect information, network directly with environmentalists worldwide, attract public support, and shape the movement image on its own terms. While movement strategies have diversified, many adopted tactics such as electoral mobilisation and mass demonstrations, were particularly inspired by political movements such as Reformasi and Bersih.

With the multiplicity of actors, organisations and issues, even the terrain of pollution-driven protests is becoming more complicated and organisationally sophisticated. Grassroots groups motivated by different ideological orientation, as in the anti-Lynas movement, have emerged to contest overlapping environmental issues, suggesting a lowering of barriers to public participation. Similarly, the framing of grievances has extended beyond relatively abstract notions of natural conservation and environmental rights/justice. During negotiations between affected citizens and the state, attention is often directed to legal and/or procedural impropriety, technological viability and scientific debates, as evident in the cases of Broga's waste incinerator and Lynas.

Despite the putative distance of the green movement from political agitation, it is clear that it is conscious of and reacts to the national political rhythm. Simply put, the local environmental movement in Malaysia is not separate from politics. However, the acceptance level of 'politics' varies among different environmental groups. Worldview-oriented ENGOs generally steer clear of partisan politics in favour of critical collaboration. Pollution-driven community groups, by contrast, have been taking greater initiatives and are far more inclined to embrace the political route,

allying with opposition political parties such as PKR and DAP. Even though the latter do so based on a sense of opportunism, it demonstrates that environmental issues carry mobilisational possibilities that can be maximised and channelled into a broader movement for political change. In any case, the environmental movement has firmly lodged 'the environment' in the current issue-based political discourse that has already incorporated pertinent matters such as electoral reform and human rights – a necessary contribution to any future shift away from the entrenched ethnic-based discourse.



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# Responsible Resource Management of the Oil and Gas Sector in Malaysia: Issues, Challenges and Opportunities

*Tricia Yeoh*

## Introduction

Malaysia is blessed with abundant resources, revenue from which has contributed significantly to national development. Oil and gas revenue is especially prominent, contributing about 40 per cent of national wealth at its peak in 2009, although this fell to almost half of that (20 per cent) in 2015. 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 instead of translating wealth into better development. US\$1 billion, for example, reportedly disappeared from Angola's oil and gas accounts annually due to corruption (McMillan, 2005). Per capita incomes in resource-poor countries grew two to three times faster than resource-export driven countries between 1960 and 1990 (Auty, 2001). Have Malaysia's resources been optimised for maximum returns?

The oil and gas sector has contributed significantly to national development. The proportion of national revenue contribution from oil and gas 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 a low of 19.94 per cent in 2015 (Economic Reports, 1980–2015), equivalent to its proportional contributions to national revenue 15 years earlier in 2000. National revenue is highly dependent upon the stability of the oil and gas sector and, as the recent national financial situation shows,

the government's budget has suffered because of the rapid fall in oil prices.

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 is now ranked as one of Fortune Global 500's largest companies in the world. Fortune also ranks PETRONAS as the 13<sup>th</sup> most profitable company in the world and most profitable in Asia with some publicly listed companies (see Fig. 1).<sup>1</sup>

Given this, the role and contribution of the oil and gas sector to national growth must be examined, 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. Third, whether there have been satisfactory levels of revenue transparency and accountable reporting in the oil and gas sector. This chapter seeks to examine overall good governance in the management of the oil and gas sector in Malaysia.

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<sup>1</sup> It operates in more than 30 countries, including Iraq, Republic of Sudan, China, Myanmar and Gabon, in a mix of upstream and downstream activities (see Fig. 2). International operations contribute almost half of total revenue – 41 per cent in 2015, contributing RM102.1 billion (PETRONAS, 2015). It posted a revenue of RM247.7 billion for the 2015 financial year, which was a relatively large decline of 25 per cent due to 'significantly lower product prices in line with the downward trend of benchmark prices'. PETRONAS has more than 100 subsidiaries and owns a fleet of more than 100 tankers and ships through MISC (Fong, 2010). PETRONAS's publicly listed companies are PETRONAS Dagangan Berhad, PETRONAS Gas Berhad, PETRONAS Chemicals Berhad, Malaysian International Shipping Corporation (MISC) Berhad, Malaysian Marine and Heavy Engineering (a subsidiary of MISC) and KLCC Property Holdings Berhad.



Fig. 1, 2 Map of PETRONAS's international presence. (source: PETRONAS 2015 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:

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 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 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. One pressing issue is the management of resources between the Federal and state governments. Oil and gas resources are concentrated in Sabah, Sarawak, Terengganu and Kelantan (see Fig. 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.<sup>2</sup>

<sup>2</sup> 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;

The PDA states that the Prime Minister has ultimate oversight over PETRONAS.<sup>3</sup> The Prime Minister's sole discretionary power over the management of PETRONAS is far-reaching as he 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 can 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 is drilled outside state boundaries.<sup>4</sup> 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.<sup>5</sup> In 2014 the poverty rate was reported as 0.6 per cent in Peninsular Malaysia, and three out of the four resource-rich states had a higher than average poverty rate: 4 per cent in Sabah, 0.9 per cent in both Kelantan and Sarawak (Department of Statistics Malaysia, 2014).

Section 4 of the PDA does not mention quantitative percentages owing to the states,<sup>6</sup> but 12 states signed an agreement with PETRONAS relinquishing their rights and accepting the 5 per cent profits from petroleum production; the exception was Sabah, which wanted the agreement amended. In Sarawak, the British granted concessions to Shell

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regulation of labour and safety in mines and oilfields'.

<sup>3</sup> 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).

<sup>4</sup> 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.

<sup>5</sup> 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.

<sup>6</sup> '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).





for ‘as long as the sun, the moon and the stars are in the sky’. Other energy policy documents include the National Petroleum Policy 1975, the National Depletion Policy 1980, the Gas Supply Act 1993, and other electricity enactments.

Most recently, former Sarawak Chief Minister Adenan Satem negotiated with Prime Minister Najib Razak after a series of controversies with regards to PETRONAS in Sarawak. Adenan emerged victor in August 2016, when the Federal government agreed to a seven-point list of demands, all of which benefit Sarawakians in the natural resource sector.<sup>7</sup>

1. A Sarawakian should be appointed on Petronas’s board of directors.
2. The 192 vacant posts would be advertised in local papers and filled by Sarawakians.
3. PETRONAS would provide up to 50 places for Sarawakians to do undergraduate studies at Universiti Teknologi Petronas.
4. PETRONAS would intensify technical training and enrol more Sarawakians in their training centres.
5. Petronas would support two petrochemical industries in the state.
6. The federal government would consider the Sarawak government’s intention to participate in Production Sharing Contracts (PSCs).
7. Petronas would agree to recruit more Sarawakians from the non-executive to management levels.

These policies will determine how much of the revenues from minerals found offshore would eventually accrue to the state governments.

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<sup>7</sup> Two years earlier, a resolution was passed in the Sarawak State Legislative Assembly to increase Sarawak’s oil royalty received from production sharing contracts from 5 to 20 per cent. Finally, the Sarawak state government is reportedly developing a new regulatory framework with regard to territorial sea boundaries, rejecting the Territorial Sea Act (2012) that it says is unconstitutional as it is argued that any law altering state boundaries first requires the consent of that state via the state legislature. The Act reduces the breadth limit of Sarawak and Sabah’s territorial waters – including their rights to fisheries, mineral resources and tourism sites – to three nautical miles from their coastlines. The contention is that, based on the Act, territorial sea is defined as 12 nautical miles for all other parts of Malaysia, whereas it is only three nautical miles for Sabah and Sarawak, and three nautical miles also for the purposes of oil and gas, which would also include Kelantan and Terengganu.

## 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.<sup>8</sup> World crude oil 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, and then fell again very rapidly to 19.9 per cent in 2015, as a result of falling oil prices, which is an important issue addressed later. Since its inception, PETRONAS has contributed RM881 billion to the government (PWC, 2016), which Table 1 traces from 1975 to 2015, and has borne a cumulative subsidy of RM97 billion under the national gas utilisation plan.

**Table 1. Federal Government Revenue from Oil and Gas, 1975–2015 (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
<b>Total Revenue from Oil &amp; Gas</b>	<b>400</b>	<b>2,758</b>	<b>6,318</b>	<b>7,481</b>	<b>6,746</b>	<b>12,869</b>	<b>18,600</b>
<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>
<b>WTI US\$ per barrel (Dec)</b>	<b>11.16</b>	<b>37.00</b>	<b>27.23</b>	<b>27.34</b>	<b>19.04</b>	<b>28.46</b>	<b>19.33</b>

<sup>8</sup> These mega-projects, pursued by then Prime Minister Mahathir Mohamad, are explored in detail in the next section.

<b>Total Government Revenue</b>	<b>5,117</b>	<b>13,926</b>	<b>21,115</b>	<b>29,521</b>	<b>50,594</b>	<b>61,864</b>	<b>79,567</b>
<b>Type of Oil &amp; Gas Revenue by Year</b>	<b>2002</b>	<b>2003</b>	<b>2004</b>	<b>2005</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>
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
<b>Total Revenue from Oil &amp; Gas</b>	<b>15,394</b>	<b>16,814</b>	<b>24,615</b>	<b>30,888</b>	<b>45,239</b>	<b>53,280</b>	<b>62802</b>
<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
<b>Total Government Revenue</b>	<b>83,516</b>	<b>92,608</b>	<b>99,397</b>	<b>106,304</b>	<b>123,546</b>	<b>141,073</b>	<b>159,793</b>
<b>Type of Oil &amp; Gas Revenue by Year</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>
Petroleum Income Tax	27,231	18,713	27,748	33,934	29,753	26,956	11,559
Petroleum Export Duties	1,104	1,745	1,997	1,968	1,632	1,577	989
PETRONAS Dividend	30,000	30,000	30,000	26,260	27,000	29,000	26,000
Petroleum Royalty & Gas	4,800	4,900	5,100	6,423	6,186	6,532	5,142
<b>Total Revenue from Oil &amp; Gas</b>	<b>63,135</b>	<b>55,358</b>	<b>64,845</b>	<b>68,585</b>	<b>64,571</b>	<b>64,065</b>	<b>43,690</b>
<i>% share of Total Government Revenue</i>	<i>39.80</i>	<i>34.67</i>	<i>34.97</i>	<i>32.99</i>	<i>30.26</i>	<i>29.04</i>	<i>19.94</i>
WTI US\$ per barrel (Dec)	74.30	89.04	98.57	88.19	97.9	59.1	37.24
<b>Total Government Revenue</b>	<b>158,639</b>	<b>159,653</b>	<b>185,419</b>	<b>207,913</b>	<b>213,370</b>	<b>220,626</b>	<b>219,089</b>

Source: Ministry of Finance, Economic Report (various years).

PETRONAS recorded revenue of RM248 billion in 2015, a 25 per cent drop from 2014, hit hard by low oil prices (PETRONAS, 2015). The

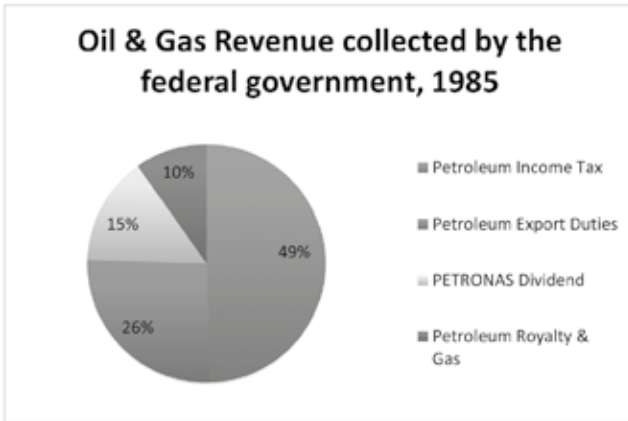
Federal government receives revenue from oil and gas via three sources: direct tax (petroleum income tax), indirect tax (export duties on petroleum and petroleum-related products) and non-tax revenue (dividends from PETRONAS to the Federal government and petroleum royalties). In 2012 petroleum income tax accounted for more than a quarter of total direct tax collected, an estimated RM31.96 billion out of a total of RM116.83 billion (Economic Report, 2012/2013), but this fell drastically in 2015 to just a dismal 8.2 per cent, or RM9.53 billion out of a total of RM116.76 billion (Estimates of Federal Government Revenue, 2016). The Federal government collected an estimated RM53.3 billion in 2015 from its total indirect taxes, comprising excise duties, import duties, sales tax, service tax and others from all sources. In 2012 the oil and gas sector contributed RM2.4 billion of the total export duties collected, but the amount collected fell in 2015 to just RM904 million due to the decrease in export duty on crude oil.

For non-tax revenue, dividends from PETRONAS to the Federal government between 2008 and 2011 were consistently fixed at RM30 billion, but a decision was later made that this was no longer sustainable. The dividend in 2016 was RM16 billion, almost half of its former contributions. One of the reasons given was that PETRONAS needs to hold onto cash to help reverse a production slump and retain the company's profits to invest in exploration after Malaysia's oil and gas production fell in three consecutive years between 2010 and 2013. In 2012 dividends made up 41 per cent of total oil and gas revenue collected, but dividends made up 60 per cent of total oil and gas revenue collected in 2015. Petroleum royalties amounted to RM5.14 billion in 2015. Non-tax revenue from the oil and gas sector amounted to RM5.14 billion, just 10 per cent (in 2012, this component contributed 65.6 per cent) of the Federal government's total non-tax revenue of RM51.4 billion in 2015.<sup>9</sup>

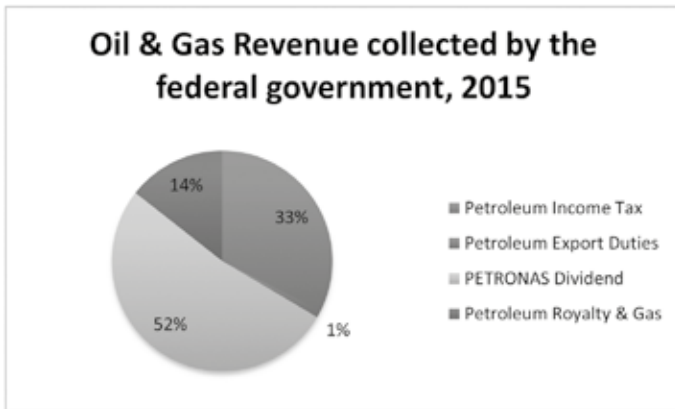
Charts 1 and 2 compare the percentage of oil and gas revenue collected by the Federal government in 1985 (the first year PETRONAS gave dividends to the government) and 2015. Dividends to the government as a percentage of total oil and gas revenue first increased significantly from 15 per cent to 41 per cent over 27 years, and then fell drastically back to

<sup>9</sup> In the past, government revenue was 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. However, this is no longer the case; in 2015 oil and gas revenues financed less than one-fifth of the total expenditure of RM259.8 billion.

19.9 per cent in the most recent two-year period. In 2015, dividends to government made up almost 60 per cent of total revenue, compared to just 46 per cent in 2011.



**Chart 1.** Oil & gas revenue collected by Malaysian federal government, 1985.



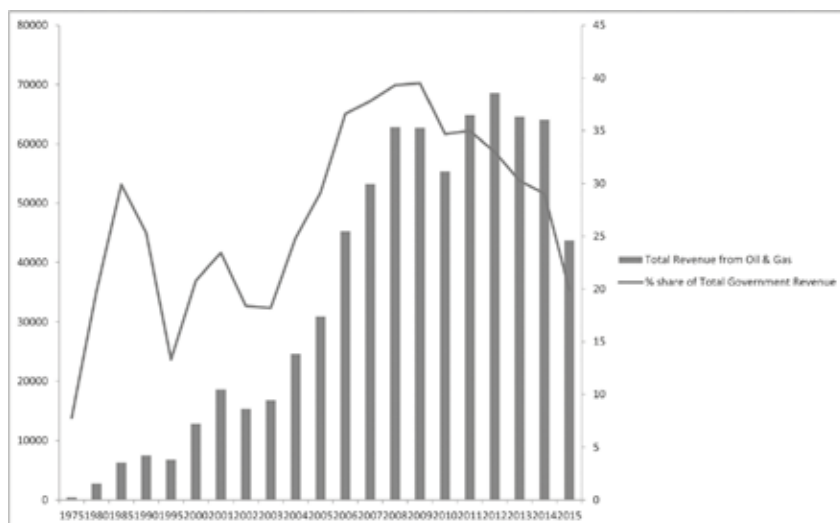
**Chart 2.** Oil & gas revenue collected by Malaysian federal government, 2015.

Chart 3 shows the increase in oil and gas revenue from 1975 to 2015; 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. Even the total volume of oil and gas revenues declined steadily from 2012 to 2015. That said, a significantly large proportion of the budget is still sourced from natural resources. The

government therefore has discretion on how it decides to utilise these resources in their appropriate proportions, in the form of expenditure, investments, savings or subsidies.

### ***How Oil and Gas Money is Spent in Malaysia***

It is significant to note that PETRONAS's formation took place soon after the New Economic Policy (NEP) was announced. The NEP,<sup>10</sup> which was formulated following violent clashes<sup>11</sup> 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 overarching theme was therefore to uplift the socio-economic standing of the Malays by increasing their ownership and control of national wealth.



**Chart 3.** Oil and gas revenue as a percentage share of total government revenue (1975–2015).

<sup>10</sup> New Economic Policy was Malaysia's first five-year development policy aimed at promoting growth in 1971. (Economic Planning Unit, Accessed March 2017)

<sup>11</sup> Clashes between the Malay and Chinese ethnic communities broke out on 13 May 1969, in the aftermath of the 1969 general election when opposition parties made gains at the expense of the ruling coalition, the Alliance (Kua, 2007).

PETRONAS was instructed to prepare a blueprint for Bumiputera participation in the petroleum industry in 1985. 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 most of PETRONAS petrol stations in Malaysia and, according to Yusof (2009), more than half of the upstream and downstream contracts from 2000 until May 2006 were awarded to Bumiputeras.

Because oil and gas funds are not earmarked for specific spending, scrutiny is needed of how the government spends its consolidated funds. For instance, in 2015 only 15.7 per cent of the total expenditure was for developmental purposes, with the remaining 84.3 per cent for operating expenditure. Development expenditure used to make up at least 23–24 per cent of total expenditure before 2010, but this has fallen steadily every year – 20.26 per cent in 2012, 16.51 per cent in 2013, and 15 per cent in both 2014 and 2015. For funds to reach the most appropriate targets in serving public interests, development expenditure ought to make up the higher proportion. Table 2 shows the progressive increases in operating expenditure as a proportion of total expenditure in recent years.

**Table 2. Federal Government Operating and Development Expenditure, 2003–2015 (RM billion)**

	2003	2004	2005	2006	2007	2008	2009
Operating Expenditure	71.7	80.0	89.1	101.2	113.0	128.8	157.1
	68.5%	73.4%	76.4%	75.6%	72.9%	76.7%	75.3%
Development Expenditure	33.0	29.0	27.6	32.8	42.0	39.2	49.5
	31.5%	26.6%	23.6%	24.4%	27.1%	23.3%	24.7%
Total Expenditure	104.7	109.0	116.7	134.0	155.0	168.0	204.7
	2010	2011	2012	2013	2014	2015	
Operating Expenditure	152.2	162.8	205.5	211.27	219.59	216.99	
	73.8%	76.8%	83.6%	82.66%	84.43%	84.3%	
Development Expenditure	54.0	49.2	49.8	42.21	39.5	40.8	
	26.2%	23.2%	20.26%	16.51%	15.19%	15.7%	
Total Expenditure	206.2	212.0	245.8	255.6	260.1	259.8	



PETRONAS has prided itself on corporate social responsibility initiatives in education and human capital development. However, some funds may not have 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).<sup>12</sup> In 1991 PETRONAS was again asked to bail out the same bank with RM1 billion (Fong, 2010).

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.<sup>13</sup>

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 Malaysian 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.<sup>14</sup>

<sup>12</sup> Bank Bumiputera was eventually acquired from PETRONAS for RM1.15 billion by the Ministry of Finance Incorporated in 1991 (Gomez and Jomo, 1999).

<sup>13</sup> 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*).

<sup>14</sup> 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 Nominees (Tempatan Sdn Bhd) which holds the shares on behalf of PETRONAS

It is estimated that the government pumped RM2 billion into the project (Tyndall, 2002).<sup>15</sup> 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).<sup>16</sup> Altogether, PETRONAS controls 84.41 per cent of Putrajaya Holdings Sdn Bhd.<sup>17</sup> These landmark projects would not have been possible without revenue from natural resources.

### ***Investments, Savings and Subsidies: Identifying Ideal Proportions***

Oil revenues can therefore be spent to invest, save or subsidise elements in the economy. This requires the government to analyse the impact of its investments. For instance, PETRONAS financed and built a private healthcare facility, Prince Court Medical Centre, in Kuala Lumpur, with costs estimated at RM544 million. This is not within the mandate of PETRONAS's core business and, more importantly, it adds a costly burden to its enterprise.<sup>18</sup> In this instance, the question emerges as to whether PETRONAS should be running a hospital instead of investing in supplying energy to the country.

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(KLCC Property Holdings Berhad, 2010).

<sup>15</sup> Estimates for the PETRONAS Twin Towers have been cited as up to RM6 billion (Fong, 2010: 63).

<sup>16</sup> Estimates for the contributions of PETRONAS to Putrajaya have been cited as up to RM22 billion (Fong, 2010: 63).

<sup>17</sup> 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.

<sup>18</sup> 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.

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 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.<sup>19</sup> Benefits from a depleting resource should be spread across current and future generations (Sachs, 2007).

Malaysia has such a fund: 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. The National Trust Fund Report 2014 states that RM9 billion remains in the fund. The Fund's objective was to ensure sustainability of resources for future generations.<sup>20</sup> 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 12<sup>th</sup> of 23 countries.<sup>21</sup>

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<sup>19</sup> 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).

<sup>20</sup> Bank Negara Malaysia (Malaysian Central Bank) is responsible for the day-to-day administration and management of the affairs of the fund.

<sup>21</sup> The Norwegian Petroleum Fund is a good example of a successful SWF. It was set up in 1990 to smoothen oil price fluctuations and stabilise Norway's currency, with the purpose of catering to long-term needs of future generations. The fund contained US\$914 billion as at March 2017. The fund's operations are strictly controlled and monitored by the Parliament, to which it reports three times a year. On the other hand, Nigeria is an example of a country whose Excess Crude Account (ECA) 'will

Apart from savings, the government has spent substantial amounts of national revenue on subsidies. Dato' Seri Idris Jala, 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;<sup>22</sup> 47.8 per cent of this was for fuel subsidy. The government has subsequently used this argument to gradually remove subsidies from petrol prices.

In reality, larger subsidies were 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).<sup>23</sup> IPPs consume about 60 per cent of the natural gas in Malaysia. It is reported that only RM11 billion 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).

Apart from developmental expenditure is the question of how the government deals with off-budget spending and that related to non-financial public enterprises (NFPEs), which seems to be where the real projects are taking place, leaving the official budget documents to handle

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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. 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.

<sup>22</sup> Subsidies were spent for social reasons (RM42.4 billion), fuel and energy (RM23.5 billion), infrastructure (RM4.8 billion), and food (RM3.4 billion).

<sup>23</sup> Independent power producers that benefit from government subsidies include Genting Sanyen Power, YTL Power, Malakoff Berhad and Tanjong Plc/ Powertek Berhad (*The Edge*, 2005).

smaller administrative expenses. In recent years there have been large financial scandals that have wrecked Malaysia's international reputation, and one cannot speak of GLCs without referring to 1Malaysia Development Berhad (1MDB), which is linked directly to Prime Minister Najib Razak. In short, global investigators believe that more than USD1 billion entered into Najib's personal bank accounts, with a total of USD3.5 billion being misappropriated from 1MDB altogether.<sup>24</sup>

## **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 government and the corporations involved in the extractive industry. In a Resource Governance Index (2013), Malaysia was categorised as having a 'weak' score of 46, ranking 34<sup>th</sup> of 58 countries. A satisfactory 'Enabling Environment' was contrasted with poor scores on the 'Institutional & Legal Setting' and 'Safeguards & Quality Controls' components, the latter two of which were categorised as 'failing'. Malaysia does not have an adequate legislative framework since there is no independent regulator in this sector, and there is no freedom of information law – in fact the report states clearly that 'the Official Secrets Act restricts disclosure of information deemed crucial to national security' (Natural Resource Governance Institute, 2013).<sup>25</sup> Second, a lack of disclosure policies and checks on licensing authorities led to a low score in safeguards and quality controls. The Auditor-General's Report does not cover the resource sector, hence there are no publicly available audits that are readily viewed.

Malaysia's relatively weak 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,<sup>26</sup> agreements and negotiated

<sup>24</sup> The case is being investigated in at least four countries at the time of writing, including a high-profile investigation being carried out by the US Department of Justice, reportedly the biggest case of its kind in history.

<sup>25</sup> The Resource Governance 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.

<sup>26</sup> At the beginning of 2010 PETRONAS had 74 production sharing contracts (PSCs)

terms for exploration and production is publicly disclosed. In the same report, PETRONAS scored 61 out of 100 in the national oil company category, ranked 32<sup>nd</sup> of the 58 countries surveyed, putting it in the category of 'weak' governance of natural resource management. 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 26<sup>th</sup> 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.<sup>27</sup>

### ***Ensuring Long-Term Sustainability of Energy Supplies and Implications on National Development***

One important area of responsible resource management lies in resource sustainability for the future. PETRONAS's reserves replacement ratio<sup>28</sup> was 1.1 times as at 2014. The group's total reserves were recorded at 1 billion barrels of oil equivalent (boe). However, PETRONAS announced in August 2015 that operational revenues would be insufficient to cover capital expenses and the dividends, forcing them to draw on reserves and implement further cost savings. In Malaysia, total average production was 2.24 million boe per day in 2016, comprising both local and international production. Given that the number of mature oil fields off Malaysian shores has declined, the Ministry of Finance confirmed that Malaysia has swung from being a net oil exporter of oil to a net importer since 2014 (*Star*, 2015).

The National Depletion Policy 1980 was aimed at capping total

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with international oil companies including ExxonMobil, Shell, ConocoPhillips.

<sup>27</sup> Related to revenue transparency is budget transparency; in an Open Budget Survey 2015, Malaysia ranked in the category of providing the public with limited budget information, with a score of 46 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, 2015). It scored particularly low in the areas of public participation (12 out of 100) as it does not allow sufficient opportunities for the public to engage in the budget process, and budget oversight by legislature (15 out of 100).

<sup>28</sup> 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.

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 reported that it would consider deepwater areas as good prospects for new oil and gas discoveries since existing oilfields are depleting (PETRONAS Sustainability Report, 2009), but these efforts may now prove to be futile given the low oil prices.<sup>29</sup> It is also involved in renewable energy research.<sup>30</sup>

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).<sup>31</sup>

Domestic capital expenditure (capex) has increased from 51.5 per cent to 54 per cent of total capex from 2007 to 2015. PETRONAS seems to be focusing more on domestic capital expenditure (capex), with 57 per cent targeted at upstream investments.

Under the ETP, 'enhanced oil recovery' and 'marginal field development' were key thrusts with 25 marginal fields in Malaysia previously identified as a strategy to grow reserves, and an expected 1.7 billion barrels of oil equivalent to be produced for a total investment of RM70–75 billion. PETRONAS had initially awarded several multi-billion ringgit contracts for the development of these marginal oil fields with significant tax incentives for the industry, including to local players. However, this government strategy was adopted when oil prices were above USD100 per barrel, and

<sup>29</sup> 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.

<sup>30</sup> PETRONAS established an energy loss management (ELM) framework in 2006 with the objective of improving energy efficiency and reducing greenhouse gas emissions. PETRONAS reported in their 2009 Sustainability Report that they had 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, reduced external lighting at the PETRONAS Twin Towers by 50 per cent and saved 56,142 MT of fuel at MISC.

<sup>31</sup> It was also reported that no real reason was given to end former chief executive Hassan Merican's tenure in PETRONAS.

this is no longer viable given that the break-even point for marginal oil fields is oil prices at USD65 per barrel.<sup>32</sup>

The severe fall in oil prices was largely unexpected by the Malaysian government. While oil prices averaged out at around USD100 per barrel from 2011 to 2014, they suddenly started falling in October 2014 and reached a low of USD29 in January 2016. This had huge implications for Malaysia, since 40 per cent of government revenues came from oil and gas. For instance, the 2015 budget was formulated in mid-2014 with the assumption that oil would be an estimated USD100 per barrel. As a result, the government had to revise its 2015 budget in January that year, assuming a global oil price of USD55 per barrel, and revising its growth forecast to 4.5–5.5 per cent, and widening the expected fiscal deficit to 3.2 per cent of GDP. The following year, the Treasury, in formulating the 2016 budget, assumed oil prices at USD48 per barrel, but by end of 2015 the rate fell to a near seven-year low of USD40.

In the last few years, particularly the 2016 and 2017 budget cycles, there have been massive budget cuts in the federal government allocations to most ministries, including education, energy, finance, urban wellbeing, housing and local government, transport and higher education. In both years, the allocations to the Prime Minister's Department increased from RM19 billion in 2015 to RM20.3 billion in 2016.

Although the Malaysian government aims to improve its fiscal position, it is also necessary to determine where resources would be best allocated. There are two issues here: first, priority should be given to long-term investments that will bear fruit in the future, such as educating our young. In already financially tight conditions, the government must strive even harder to cut the fat and introduce more efficiency in the administration.

Second, while oil has certainly contributed to the rapid reduction of hardcore poverty in Malaysia since its discovery in the 1970s, and we must attribute our country's success to it, the government must now detach itself from depending on these revenues (Murniati, 2015).

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<sup>32</sup> PETRONAS reached an agreement with SapuraKencana Petroleum Bhd and another partner, Petrofac Energy Developments Sdn Bhd, for the cessation of the Berantai RSC offshore Terengganu, citing that 'the low oil price environment had made the venture uneconomical' (*Star*, 2016).



## Conclusion

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. 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.

PETRONAS's production sharing contracts (PSC) and investment agreements details can be made available for public scrutiny. Finally, efforts could 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, the PETRONAS Code of Conduct and Business Ethics launched in 2012 expressly prohibits the giving and accepting of bribes by PETRONAS employees, and other developments include the signing of the corporate integrity pledge, establishing the corporate governance & international compliance unit and appointing a chief integrity officer.

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 from 18<sup>th</sup> to 25<sup>th</sup> position in the World Economic Forum (WEF) Global Competitiveness Index 2016–2017, where the top four most problematic factors for doing business included access to financing, corruption, inefficient government bureaucracy and government instability. Malaysia also fell by one rank from 22<sup>nd</sup> to 23<sup>rd</sup> position in the World Bank's Doing Business Index 2017, where 'starting a business' fell 53 ranks. These are all problematic and do not indicate a healthy trend moving forward. Malaysia is still suffering from 15 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, 54 per cent in 2016).

Most recently, it was reported that Malaysia lost up to about US\$431 billion in illicit flow of money between 2005 and 2014, outflows of which amounted to US\$287 billion representing about 10 per cent of total trade (Global Financial Integrity, 2017). In 2013, Malaysia was the world's number five in terms of illegal capital outflow, 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 previous report in 2011 had specifically noted that there have been media reports that large state-owned enterprises such as national oil company PETRONAS 'could be driving illicit flows'. In this case, illegal capital flight from Malaysia far surpassed legitimate capital inflows. 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 strong, resilient and innovative new generation for the long-term future of the country's economy.

With Malaysia now an oil-importing country, the government – together with civil society and oil corporations – must work to ensure the natural resources that remain will continue supporting future generations. Responsible resource management is the only way to ensure a sustainable and promising long-term future for Malaysians.



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