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HUMAN RIGHTS DISCOURSES AND PRACTICES  
AT THE GLOBAL, STATE AND LOCAL LEVELS:  
RIGHTS NARRATIVES AND CONTESTATION IN  
MALAYSIA AND THE GLOBAL MILLIEU

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## Abstract

The present study offers a multi-layered analysis which aims to assess the state of the Malaysian human rights movement in light of rights discourses found at the global, state and local levels. A basic assumption of the study is that the State is not the sole locus of power having an impact on human rights. Instead, the complex interplay between global and local political and economic forces has a strong bearing on the basic rights and well being of people in Malaysia and throughout the world. In terms of human rights, the State must respond to pressures from 'above' and 'below,' meaning from power configurations arising from the global milieu, and from politico-social movements found in local civil society-- where actors strive for democratic space *within* national civil society. Complicating the equation, in the post-September 11th world, states are juggling to find a balance between basic rights and national security as they aim to protect themselves from possible attacks by non-state actors, often labeled as terrorist organizations. On the other side of the rights and security equation, it is necessary to analyze instances of state terrorism, or military actions by international actors against 'sovereign' nations which have run afoul of powerful global interests, and have suffered invasion by hegemonic military forces. It is necessary to examine the impact of said military actions on the rights and well being of people found in areas designated as war zones. The present historical moment calls for a genuine reassessment of the global human rights narratives which would, among others, be broadened to include the rights and well being of people affected by war.

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**I THE CHANGING ROLE OF THE STATE:  
BETWEEN MULTINATIONAL CAPITAL,  
THE 'GLOBAL WAR ON TERROR' AND NATIONAL CIVIL SOCIETY**

Human rights scrutiny and research tend to be highly State-centric, focusing on the paradoxical relationship between the State and national civil societies where the former is simultaneously the guarantor and the primary violator of citizens' rights. Traditionally the government had the charge of seeing to the basic well-being and security of its citizens. However, it is the same government which may resort to the use of restrictive legislation, military and police force or coercive potential, as well as intimidation through the controlled press, in order to put down any perceived threats to its hold on power. Further, *a primary role of the contemporary government is to act as a mediating force between transnational capital and national civil societies.*

Governments often implement policies facilitating transnational investment, helping these entities to maximize profits and, in the process, minimize their social and environmental responsibilities. A government may create tax incentives, suppress minimum wages, limit labor's right to organize, and lower environmental standards in an effort to attract transnational investment.<sup>1</sup> This trend finds government policies consistently favoring transnational economic interests to the detriment of the less well off within national civil societies. Therefore, the economic and thus the *political* power of transnational corporations (TNCs) around the globe cannot be underestimated, since the need to attract their investment pressures governments to create policies which may have strong adverse impacts on citizens' basic rights and well being.

The indirect impact of these global actors on basic rights, as seen in pro-TNC national policies, is often not considered in the equation when civil unrest is expressed at the national level. In Malaysia, TNC impact on basic rights and well being is generally not a topic of discussion among human rights actors, within national media, nor by the government itself. Instead, the government, through its controlled press, uses the rhetoric

of the need for national stability, for racial harmony in order to maintain the stability so vital to the profitable functioning of TNCs.

In the post-September 11 world, States find themselves struggling to find the balance in the equation between basic rights and national security issues. While authoritarian states may use September 11 as a justification for their already heavy-handed policies, states cannot afford to err in terms of security and the prevention of attacks within their borders by non- state actors. The Malaysian State has detained members of groups such as Jemaah Islamiah for suspicion of having links with the Al Qaeda network. While it is imperative for the State to take measures to ensure that no attacks take place; how should the practice of 'preventive detention' for the sake of national security be viewed in light of basic rights such as freedom of association and liberty of person?.

It is true, the stakes are high, and much would be lost if an attack by non-State actors were to occur. Nonetheless, there is a large gray area when it comes to detaining people on suspicion, because they have alleged links to organizations such as Al-Qaeda. The Malaysian State is not the only one engaging in 'preventive detention' for national security reasons; the United States, Canada and Australia, among others, have enacted legislation allowing for the detention of people believed to be linked to 'terrorist organizations.' How does this globalized trend toward 'preventive detention' fit with current human rights discourse?

A further area which merits discussion concerns what happens to the rights and the well being of people in areas which have been designated as 'war zones.' The focus of rights scrutiny must be broadened to include systematic observation of military activities and how these impact on all generations of rights. Specifically, the narrative of 'war' somehow allows the rules to change, and once a place is declared a 'war zone,' the actions of military forces which have dire consequences for human rights are not taken to task in the same way as authoritarian states are for alleged abuses of their citizens' rights. The destroyed lives, economies, and infrastructures; the traumatized individual and collective psyches left in the wake of war go beyond the scope of current rights narratives.

This again begs dialogue and discussion of the global human rights situation, which would dare to unpack the 'war' narrative and see it for what it is. The rights and the well being of people affected by armed conflict must be taken into account, and the war machines which have wrought destruction and the infringement of people's rights must be taken to task. They need to be held morally and materially responsible for ensuring the basic rights-- beginning with 'the right to life and limb'-- of people who suffer from their bellicose actions.

Where would a global dialogue on human rights take place? This brings us to another crucial question arising from recent events. What is the role and the relevance of the United Nations in the wake of the US' decision to override the Security Council's ruling and declare war of the 'sovereign' nation of Iraq? The United Nations is the standard bearer for the global human rights instruments, to which the nations of the world are to submit and obey. Yet, if politico-military might can override the Security Council's ruling with impunity, what does this say for both the global rights narrative, and for the United Nations' power to uphold it? Here is an additional area in which frank dialogue and discussion among nations needs to occur in order to ensure world peace and stability, not to mention human rights-- which have been said by the global powers to be universal, indivisible and non-hegemonic.

## **II HUMAN RIGHTS: THREE GENERATIONS AND THREE DEBATES**

Reference is often made to the 'generations' of rights as espoused in the United Nations' *Universal Declaration of Human Rights* (UDHR). 'First generation rights' are those civil and political rights such as freedom of association, assembly and expression. The term 'second generation rights' refers to social, economic and cultural rights; here the focus is on material well being, as well as the upholding of the right of cultural communities to sustain their unique values systems and ways of life. 'Third generation rights' refer to current global issues which are thought to cut across ideological and geopolitical divides, joining

humanity in a 'borderless world,' such as the right to a clean environment. Third generation rights are considered necessary for the survival of the individual, the community, and of humanity itself.<sup>2</sup>

Three areas of debate have been proposed, primarily by developing states with authoritarian tendencies, which challenge certain assumptions underlying the global human rights narrative. One of the important debates which has emerged concerns the United Nations' formulation of the *indivisibility* of basic rights. The *indivisibility argument* does not allow States to prioritize one set of rights over another. For example, many authoritarian governments in developing nations suggest that it is necessary to curtail citizens' first generation-- civil and political rights in order to ensure the stability needed for development, since progress in developing the nation would allow for citizens' enjoyment of second generation rights, particularly by providing for the socio-economic or material well being of the populace.

The Malaysian State provides an example of a government which calls into question the validity of the mainstream assumption of the indivisibility of rights. The government has long maintained that it is necessary to curtail certain civil and political rights in order to achieve economic development (Mahathir, 1995), thereby implicitly prioritizing one set of rights (economic and social well being) over others (freedom of speech, association, assembly, etc.). The logic behind this position, lies in the assumption that social and economic well being are prerequisites to the enjoyment of civil and political rights, or 'citizens' rights' in a democracy.

Conversely, non-state actors-- such as NGOs SUARAM, HAKAM, ALIRAN and the Bar Council's Human Rights Committee-- which argue for the indivisibility of human rights, maintain that in order to ensure social and economic well being, citizens and grassroots organizations must at times exercise their civil/political rights, and contest the State, i.e. in order to pressure for access to adequate housing, medical care, education, etc. From this viewpoint, it is necessary to exercise civil and political rights, i.e. free expression and assembly, in order to ensure basic socio-economic well being. This position implicitly



suggests that basic rights are, in fact, indivisible. This is one of the critical junctures of ongoing contestation between the Malaysian State and non-state actors concerning basic rights.

A second area of debate arises between the 'Universalist' and the 'Relativist' understandings of human rights. The Universalist position holds that the rights expressed in the United Nations' UDHR are applicable to all individuals and societies around the globe-- in all possible contexts-- regardless of race, religion, or culture. The Relativist position holds that human rights are subject to interpretation based on local norms, values, religious traditions and national priorities. In the Malaysian context, the State's position is essentially Relativist, while global human rights actors and many local NGOs advocate a more Universalist position. This constitutes a second critical juncture, or area of contestation, between the Malaysian State, national non-state actors, and global human rights actors.

A third and related debate revolves around the nexus between the mainstream interpretation of human rights and its connection with globalization. Many governments in developing nations suggest that the mainstream articulation of human rights as expressed in the UDHR is actually a political tool, or an ideological spearhead for the penetration of Western values and consumption patterns around the globe. For our purposes, we will refer to this third area of contestation as the Hegemonic Debate. The Malaysian State often expresses this position, as can be seen in Dr. Mahathir's speech on globalization, "Japan must lead Asia," where the Prime Minister states, "they [USA] are no longer the liberators. They have become the dominators. ... [Asian] youth want to... discard the traditional ... Eastern culture of filial piety and discipline," become blondes and play more (*New Straits Times*, 19 January, 2001). Here Mahathir indicates that young people are losing their traditional values to the incursion of American ways of life and culture, implicitly threatening the social and moral fabric of the nation.

### III THE MALAYSIAN STATE: HUMAN RIGHTS IN RHETORIC AND IN PRACTICE

In the balance between coercion and consent, regimes aim to establish agreement, or consent, whereby the governed will support State actions and policies. Governments tend to take coercive measures only when consent is perceived to be threatened. As such, a primary tool for the achievement of consent within a polity lies in the struggle to control narratives, or discourses. Control of narratives can create reality. The words then become and justify programs of action. Actors who control the narratives program people for particular actions and understandings. Words change what people will do in the history they are making now. "Words are changing history, and people are being programmed to act on the words, i.e. Osama wrote his Fatwas [sic] against the US, and his words toppled mighty buildings... [In the Middle East,] the battle is raging, and the words are fighting alongside the tanks and the bombs.

Partisans are busy rewriting history. Suicide bombers are being written out by one side, civilian casualties are being written out by the other... Thus, the words help to create 'realities,' thereby shaping the manner in which each side will view and respond to the other (24/7/2002. MidEastWeb for Coexistence). Meanwhile, the global hegemony with the help of certain elements in the media create an atmosphere of fear of 'potential terrorist attacks,' or the use of chemical and biological weapons by actors who have fallen out of favor with the powers that be. Interestingly, the rhetoric employed by Western powers in their attempt to justify the invasion of Iraq has been viewed with an unprecedented degree of dissent by members of civil society and states around the world. As globalization brings people into closer contact with each other, it becomes ever more difficult for States and the media they control to justify their unpopular actions in the eyes of people throughout the world.

No stranger to press control, the Malaysian State also engages in the struggle to define the discourse concerning myriad issues, including the official vision of how human rights should be understood in the context of Malaysia. From the Eighties to the mid-

nineties, a primary tool used in response to g/local critique of its human rights record was the Asian Values narrative, popularized by Dr. Mahathir and Singapore's Lee Kwan Yew. Although much less has been said in the new millennium about Asian and Western values,' the belief in a dichotomy between the two continues to be prevalent.

#### **IV ASIAN VALUES AS A COUNTER-NARRATIVE TO THE WEST AND THE GLOBAL HUMAN RIGHTS DISCOURSE**

The discourse on Asian Values stresses community priorities rather than individual liberties. Said values emphasize deference to authority, acceptance of relatively strict government control, and non-interference by one nation in the internal affairs of others as the basis for their concomitant understanding of human rights. Dr. Mahathir maintains that 'some of the values which Asians hold dear,' are having an orderly society, societal harmony, accountability of public officials, openness to new ideas, freedom of expression and respect for authority (in Hashim 2000: 15). Whether or not these values are held dear solely by Asians, the Malaysian government has used the Asian Values rhetoric to prioritize economic development over civil and political rights. It has further served to justify the existence of repressive laws which, at times have been used to ensure stability by stifling competing views or criticism.

The following excerpts of speeches made by Dr. Mahathir may clarify his understanding of Asian Values as well as his views of the West:

We do subscribe to the universality of human rights, but not to the irresponsible variety propounded by the West. Human rights are not a license to do anything without regard to the rights of others. The rights of the majority are just as valid as the rights of the minority or the individual. A society has the right to protect itself from the unbridled exercise of rights by individuals or a minority, which in the West, has contributed to the collapse of morality and the structure of human society (Mahathir in Hashim 2000: 74)... [Furthermore], if democracy means to carry guns,

to flaunt homosexuality, to disregard the institutions of marriage, to disrupt and damage the well-being of the community in the name of individual rights, to destroy a particular faith, to have privileged institutions (i.e. the Western Press) which are sacrosanct even if they indulge in lies and instigations which undermine society, the economy, and international relations... if they are the essential details, can't [States]... opt to reject them? Hegemony by democratic powers is no less oppressive than hegemony by totalitarian States  
(in Bello, 1998: 2).

Following the same Asian values critique, the government has remained firm in its relativist position on human rights. While in his post as Finance Minister of Malaysia, Tun Daim Zainuddin summarized the official position pertaining to citizens' rights, "For the record, let me categorically mention Malaysia's own position on human rights. For Malaysia, the protection of human rights and fundamental freedoms, consonant with the principles enshrined in the UDHR is guaranteed in the Malaysian Constitution. Malaysia, however, believes that human rights and fundamental freedoms would be meaningless if the country is destabilized by social, political and economic choice," (In Aidcom, 1999: 19). It has long been the position of the State that the 'excessive exercise' of individual civil and political rights might destabilize the country. With respect to the mainstream human rights narrative, Tun Daim states:

Developing countries, particularly from the South, have always been skeptical of the West's insistence that they conform to the high ideals that the West itself cannot match. I think that such highhanded treatment smacks of arrogance of a bygone era when nations of the North believed they ruled the world. That era has gone and will never return again... Besides, the social and cultural milieu, the widely differing state of development of the countries of the South as compared to those of the North makes any attempt to ensure universal compliance by all nations sound hollow. The developing countries believe that development is prerequisite for the promotion and protection of human rights. The indifference of the western countries towards the crucial link between human rights and development may be construed as a

deliberate intention to maintain and perpetuate the North-South divide. The international community must recognize the interdependence and indivisibility of political, civil, economic, social and cultural rights. The excessive pursuit of one set of rights to the exclusion of others, only builds up a confrontational atmosphere... As we are aware, the great religions of the world have expounded concepts of human rights within the relationship between Man and God. Religious texts and treatises of the great civilizations of the East also contain discussions on various aspects of human rights and human dignity. One should never therefore regard human rights as a value that has to be imported from the West but as an indigenous value that has to be developed with the times but from within one's own experiences and value systems (in Aidcom, 1999: 19-21).

Here again, the State's espouses a relativist position on human rights, arguing for the need to develop rights discourses from within local experience, history, culture, and values systems.

## **V THE CONTROL OF THE RHETORIC AND POPULAR MOVEMENTS**

While local NGOs such as SUARAM, HAKAM and ALIRAN view human rights as transcending political borders, the regime continues to selectively apply them within the limits of political interests and the security needs of the nation. The State has consistently critiqued the applicability of global mainstream human rights discourse to the Malaysian political and developmental framework (Mahathir, 1998). Over the years, the government has demonstrated a wariness toward civil society movements in general and, more recently, toward human rights-oriented and other political NGOs specifically. It has employed a variety of strategies in order to maintain stability in the face of these potentially 'destabilizing' civil society movements.

The State has, for example, maintained a general media treatment of progressive NGOs as potential threats to society's harmony, stability and security. Nair (in Weiss

1999: 5) finds that "the State has labeled advocacy-oriented NGOs, together with the organized left, ... dissident student movements, labor groups, and opposition political parties an 'internal other' against whom society must struggle to remain peaceful, unified, and secure. In this way, *alternative ideas were rendered subversive and deviant* [emphasis ours]." In a similar vein, Ramdas Tikamdas of SUHAKAM and the Malaysian Bar Council states, "the authorities and their media are very good at shaping people's perception of the issues in their favor.

When plantation workers or squatters advocate for their basic rights, their campaigns are ingeniously diverted by the State as if they were positions taken against the law. For example, you see a squatter community stand up and defend their homes; the FRU goes in with water cannons and truncheons, and calls it an illegal assembly. Basic human rights struggles are re-labeled by the State as law breaking activities, effectively diminishing popular support for their struggles (Personal Interview. July 21, 2003).

Other strategies for controlling popular activism have ranged from co-optation, to threat of coercive force, to downright repression. A further technique is to evoke an 'evil' West, whose individualistic, amoral human rights constructions will surely lead to the decay of national society. The State then casts itself in a positive light as the protector of local norms, values and ways of life, morally superior to the 'anti-values' inherent in Western society, with which the global rights narrative is associated. As stated by Weiss (1999: 5) "at the same time that NGOs have been making pronouncements about universal rights and liberties, the government has maintained its own discourse on human rights, spearheading an 'Asian values'-based critique of Western-oriented definitions of human rights." The Asian Values discourse constitutes a counter-hegemonic narrative which offers a critique of the incoming mainstream human rights narrative. As such, it constitutes a prime example of state contestation to global pressures from the position of the Third, or the 'Hegemonic Debate.'

At this juncture, it is necessary to say that since the 1999 advent of SUHAKAM and the incident of September 11, 2001, there is a certain shift in the *rhetoric* employed by the

State concerning the global human rights narrative. The regime continues to espouse a relativist position on human rights, furthermore, it has been outspoken concerning Western hegemony and military actions in the Middle East. Nonetheless, it has diminished its use of the Asian Values rhetoric *per se*. Factors influencing this shift may be the advent of SUHAKAM, along with the national security concerns which Malaysia finds itself sharing with the United States and other nations throughout the world. It seems as if the priority has shifted from critiquing the global rights narrative-- convoluted with the notion of a decadent West-- to a critique of Western, particularly US and British, military incursion into sovereign nations. The critique continues, but its focus appears to have shifted. The ensuing section aims to analyze rhetorical tools are used by political actors on all sides of the spectrum to further their own positions concerning rights and security in the post-9/11 world.

## VI RHETORICAL DEVICES AS POLITICAL TOOLS

What constitutes the power of the word? An important thrust of the Ideological-Structural Analysis (López, 2001a, 2001b, 1997, 1990) at the level of micro-theory is to explore, precisely this question. Actors who are able to control words or narratives, wield extreme power over how communities will understand and therefore respond to phenomena in their environment. Nation states, global media and commercial advertisers are very much aware of the power of the word. Within polities, states go to great lengths to create narratives which will garner widespread support for their actions. *Evilspeak* is an important tool in the vast arsenal of devices used to shape people's thoughts.

It is basically a strategy used by states and other actors to consolidate popular support within national civil society. The official line, with the help of local media, tends to create an image of an 'evil other,' which is depicted as posing a threat to national interests, values and way of life. Once a populace feels threatened by the 'evil other,' the government then paints itself as the protector of all that which national society holds dear. When used effectively, this strategy creates a significant rise in popular support for the

government in power. At the global level, its use can be seen, for example, in the US' depiction of a terrorist threat, from which it will 'protect its citizens interests at all costs'-- thereby serving the dual function of gaining national popular support, and aiming to justify its bellicose policies and actions in the global arena.

The same strategy can be seen at work on the other side in the depiction of a monolithic 'evil West,' whose values threaten ways of life and tradition in national civil societies. The local government then, sets itself up to 'ward off' and protect local virtue from the incursion of Western 'anti-values' into national civil society. In Malaysia and Singapore the Asian Values rhetoric proved itself fairly effective in gaining support for the States' authoritarian *modus operandi*, while simultaneously detracting from local human rights advocacy in the Eighties and the Nineties, by painting progressive NGOs within the camp of the 'non-virtuous other'-- as lackeys or spearheads for Western ideological penetration into local spaces.

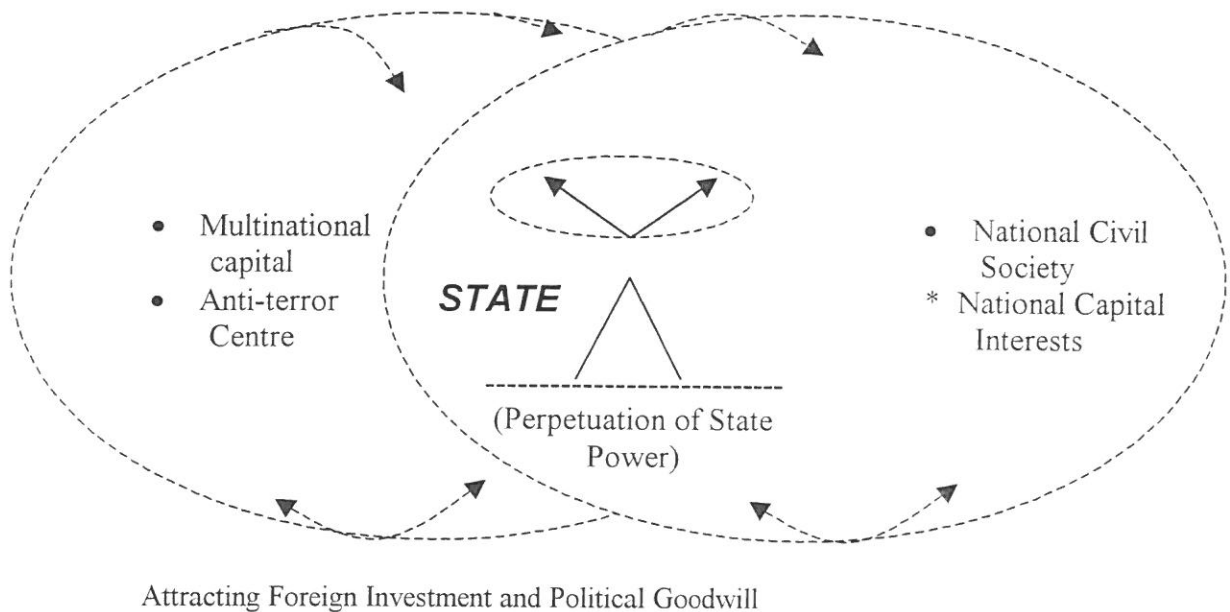
It is the author's belief that there are important normative differences in values between Asian and Western societies. The point to be made here is not that the societies are the same, but that *evilspeak* gains mileage for its users by constructing a 'bad guy' from whom to protect civil society. As such it is an inherently divisive rhetorical tool, which creates an 'us' and an 'other.' On the other hand, approaches calling for dialogue and collaboration based on common foundations also attempt to garner support for socio-political issues, but they aim to be collaborative as opposed to the oppositional device of *evilspeak*. A complimentary strategy to *evilspeak* is known as *doublespeak*.

*Doublespeak* is employed, for example by states, their media and their diplomats in the ongoing attempt to attract transnational capital and to maintain good binational relations with states which may used to depict 'the evil other' on the domestic front. An example of this might be a State which has fed the populace a steady diet of anti-Westernism, but it must also court investment and political cooperation with the Western nations. Taking the example of the economic necessity for investment, *doublespeak*, then turns and utilizes attractive rhetoric, along with economic incentives, for Western transnational interests to



invest in the local economy. Figure 1 below serves to illustrate the position in which a State may find itself with respect to multinational forces, national business and civil society interests.

**Figure 1: The Paradoxical Position of the State: Between 'Protecting National Virtue' and**



The paradoxical position of the State finds it sandwiched between national society, global politics, and transnational capital. Developing nations often wish to sustain their traditional values and ways of life; yet, in order to survive and progress they must attract capital investment from the global milieu. Can capital and political goodwill from the global powers be brought in without the accompanying values and socio-cultural baggage?

In the balance between coercion and consent, States aim first to govern the national populace through consensual means. However, history has shown that when the fabrication of consent is deemed untenable by a ruling apparatus, then the coercive mechanism--sustained and institutionalized through restrictive laws and acts-- comes into play. Strategies used in Malaysia to limit the discourses of NGOs and other actors who critique the system have ranged from cooptation, to threat of coercive force, to the exercise of restrictive laws and measures against those who have not come into alignment through

consensual means. For example, Bello (1998) writes, "NGOs are tolerated, but those who step out of line are summarily dealt with.

In Malaysia and Singapore, no amount of talk about Asian values has been able to hide the truth among both its citizens and an increasing number of outsiders that the ultimate guarantee of stability is the Internal Security Act (ISA), which allows the government to pick up and jail people indefinitely without charging them with any crime" (Bello, 1998: 3). The ensuing section examines some of the laws and acts presently in force in Malaysia which restrict people's civil and political rights.

## **VII LAWS AND ACTS RESTRICTING FUNDAMENTAL RIGHTS AND LIBERTIES**

Within the rubric of the Federal Constitution, a series of restrictive laws and acts are in force which allow to State to limit citizens' rights and freedoms as the authorities deem necessary. Some of these are the Internal Security Act that allows for detention without trial, the Police Act-- which curtails aspects of individual freedom, the Official Secrets Act-- used primarily to keep Parliamentary decisions secret, and therefore off limits for public debate and discussion, the Printing Presses and Publications Act-- which curbs press freedom and freedom of written expression, the Sedition Act-- with its coverage of Sensitive Issues, the University and University College Act-- which limits students' political participation, and the Societies Act-- granting powers to the Registrar of Societies which strongly limit the modes of action and expression of NGOs.

National and international human rights actors have long criticized the use of these pieces of legislation as State mechanisms for stifling legitimate dissent from national civil society. These elements of national legislation constitute a powerful mechanism for limiting basic civil and political rights. Local human rights activists and international watchdog organizations lobby continually for "the repeal of the Internal Security Act and other laws providing for detention without trial, the Official Secrets Act, and the Printing

Presses and Publications Act, as well as the amending of all national laws to bring them in line with global human rights standards" (Malaysian Charter on Human Rights, 1999: 8).

While the State considers these laws necessary in order to maintain stability and enhance the quality of life, NGOs and other global-local actors consider the enactments as unnecessary limits placed on basic rights. As national and international NGOs discourse and propagate their human rights agendas, they attempt to engage the State and contest existing limitations to official policies and articulations pertaining to human rights. Using the discourse on Asian Values, or in the name of security from a potential terrorist threat, the government's prioritization of economic development above civil and political rights serves to justify the existing repressive laws, which are used to ensure stability by stifling competing views or criticism. The Asian Values discourse and the national security narrative used by the State play an important role in enhancing social control and ensuring State power.

#### **VIII NGO CONTESTATION OF HUMAN RIGHTS-RELATED LEGISLATION AND PRACTICES**

So far, the government has at best, suggested that it may modify or replace the ISA with some other legal decree. *It has not, however, shown indications of moving toward the repeal or amendment of the various laws which limit citizens' fundamental liberties as guaranteed in Chapter II of the Malaysian Constitution.* Dr. Mahathir maintains that it is necessary to limit civil and political rights in order to provide for the material needs of the populace: "We care for the well-being of our people. We want to develop so as to give them a reasonable standard of living" (Mahathir 1993 in Hashim 2000: 67) and that "freedom from poverty and the wish to develop are also essential elements of human rights" (Mahathir 1993 in Hashim 2000: 74).

The existence of these restrictive laws and acts constitutes a major area of contestation between that Malaysian State, and the local and the international NGO communities. In addition, local civil society actors, such as HAKAM, SUARAM and

ALIRAN continually pressure the State concerning the independence of the judiciary, the right to a fair trial, press freedom, and freedom of association, expression and assembly. Furthermore, they call for an end to all forms of arbitrary arrest and detention, including the detention of people with links to suspected 'terrorists.'

The human rights NGOs have applauded some of the State's actions, such as its decision to amend the Constitution in order to prohibit discrimination based on gender. In other areas, however, they continue to express concern about the regime's human rights record. For example, the SUARAM 2001 Human Rights Report claims that the government has made use of the September 11 incident to legitimize its own use of force and arbitrary detention, as it has cracked down on student movements, political rallies, and on the 'already suppressed' media. The Report highlights the political debate caused by Mahathir's comment that Malaysia is an Islamic State, which caused heavy contestation on both sides of the political opposition, coming particularly from the DAP and Pas.

When the dust settled, the DAP had left the Barisan Alternatif, weakening it considerably, and implicitly strengthening the regime's hold on power. Concerning the State's response to critiques voiced by SUHAKAM's in 2001, it is apparent that the regime was not happy with some of the Commission's observations of State behavior and policy. In response, the government announced its intentions to set up guidelines within which SUHAKAM must conduct its investigations and inquiries, further limiting the Commission's ability to arbitrate independently between the State and civil society actors (SUARAM, 2002).

The State has generally not allowed international human rights organizations to form domestic branches; yet, it usually has not restricted access by representatives of international human rights organizations, nor denied them entry into the country. The Government chose not to allow Amnesty International to set up a Malaysian branch as an NGO. However, Amnesty has incorporated itself as a business, and has been able to function much like an NGO. To avoid the stringent requirements of the Societies Act, many NGOs register under the Companies Act or under the Registration of Businesses Act. The Government has the power to revoke the registration of an existing society for

violations of the Act, a power that has been enforced selectively against political opposition groups and NGOs critical of the regimes human rights record.

In July 2001, officials said that the Government would prosecute or deregister societies that did not accurately declare whether they received foreign funds. In the same month, Parliament amended the Registration of Businesses Act to enable the Registrar to revoke or refuse the registration of organizations deemed to be engaging in unlawful activities or for purposes that were incompatible with national security. Some human rights activists have claimed that this can be used to restrict NGOs which are critical of the Government. Amendments to the Companies Act, passed in 1998, empowered the Registrar of Companies to refuse registration of a proposed company if satisfied that the company is likely to be used for any purpose prejudicial to national security or the public interest.

The Registrar also may cancel the registration of an existing company-- or NGO registered as such-- and disband it on the same grounds. Opposition parties and NGO activists claimed that the sweeping powers granted to the Registrar of Companies are designed to stifle criticism. The Government has denied such charges and has stated that financial irregularities are the amendments' main target (USSD, 2003).

As has been illustrated above, in both discourse and in practice, the Executive continues to maintain a relativist position concerning the global human rights narratives and instruments. Furthermore, both its discourse and its actions show it to be in the 'divisibility' camp of the Second Debate, where it is said to be necessary to suppress some rights for the enjoyment of others. The logic goes something like this: freedom of assembly, association, press and expression must be restricted in the name of national security and stability-- which are necessary for harmony and development-- which are in turn said to allow for the enjoyment of second generation, socio-cultural and economic rights.

In its rhetoric, the State continues to argue from the 'hegemonic position' that the global human rights narratives act as a spearhead for the penetration of Western values into the nation sphere, which constitutes a threat to local values and way of life... Do we dare to propose a 'Fourth Generation' of rights, which would examine the impact of war on human rights? If so, it would be fair to say that the Malaysian State has voiced strong concern

The Foreign Minister spoke of not blindly following the model of other nations, but of improving 'ourselves' so as not to let the nation descend into chaos. While the government listens to the plurality of interests, it must give priority to its "primary responsibility for the development of the nation for the benefit of all" (Syed Hamid Albar in Sothi and Ramdas, 1999. p. 105). He added,

The Human Rights Commission of Malaysia Bill 1999 should be regarded as a positive development towards protecting the interest and realizing the aspirations of our people. This Bill is intended to give greater opportunities for citizens to express whatever grievances they may have for the Commission to investigate. [However,] we must not be hasty in our accusations [to think that] just because there are certain preventive laws, we deny the existence of the true practice of human rights in this country. We must admit that in reality, there is no such thing as absolute freedom. We must respect the rule of the law when we practice individual and group freedom and rights (p. 106).

Given the existing laws which limit citizens' rights, the last sentence, "we must respect the rule of the law when we practice individual and group freedom and rights" *implicitly* subordinates rights as expressed in the UN instruments to legal restrictions placed upon them at the national level, once again making apparent the relativist position of the State. After Syed Hamid's speech, which assured society that the Commission was not formed in response to critique of the State's human rights record, Parliament enacted the Human Rights Commission of Malaysia Act 1999 (Rights Act, 597), on 25 September, 1999. The Act delineates the powers and functions of the Commission for the protection and promotion of human rights in Malaysia.

## X THE HUMAN RIGHTS COMMISSION OF MALAYSIA ACT 1999, (ACT 597)

Part II, Section IV of the Rights Act specifies *functions and powers* of the Commission, which are as follows: to promote human rights awareness and education, to advise the government concerning human rights policies and treaties; to inquire into complaints about infringements of citizens' rights. The powers designated to the Commission include the government's authorization to conduct research, seminars and other programs concerning human rights; to advise the government and other authorities of complaints of human rights abuse and to recommend measures to be taken by the authorities to improve respect for human rights; to investigate and certify infringements of human rights; to visit places of detention and advise authorities concerning the basic rights of the detained; to issue public statements concerning human rights.

"For the purpose of this Act, regard shall be had to the *Universal Declaration of Human Rights* of 1948 to the extent that it is not inconsistent with the Federal Constitution," [Act Part II, 4. (4)]. Note the much commented stipulation that the UDHR will be given regard only in as much as it is 'not inconsistent with the Federal Constitution,' which has several built-in clauses explicitly limiting to citizens' civil and political rights. This restricted mandate, which binds SUHAKAM to Constitutional limits to citizens' rights, casts doubt among human rights actors about the Commission's ability to safeguard citizens' basic rights *viv-a-vis* an authoritarian State.

NGOs have also voiced concern about the fact that the commissioners are recommended by the Prime Minister for appointment by the *Agong*, as opposed to having a more plural and participatory manner in which to chose commissioners. Furthermore, the two year tenure of the commissioners, subject to renewal by the *Agong* has caused some to wonder if this short tenure subject to official review might limit commissioners' ability to judge human rights situations without fear or favor. For example, two of the commissioners who played a primary role in the *Kesas Highway Inquiry*-- which was critical of State agencies' treatment of demonstrators-- failed to have their tenure renewed after their initial term had expired. A further area of concern lies in the fact that once a

human rights complaint or issue becomes a matter of judicial review-- once it is taken to court-- SUHAKAM must drop all inquiries into the affair. This means that when any alleged human rights violation is taken to court, SUHAKAM must step aside, and look no further into the matter, raising further questions about restrictions placed on its mandate.

## **XI INSIDE SUHAKAM: THE COMMISSION'S INTERNAL STRUCTURES AND THE FUNCTIONS OF ITS SUB-COMMITTEES**

In spite of the multiple voices of protest about the manner of formation and the limitations placed on the Commission, SUHAKAM came into being. It is made up of four sub-committees, which are the Education Working Group, the Complaints and Inquiries Working Group, the Treaties and International Instruments Working Group, and the Law Reform Working Group. The goal of the Education Working Group is to create a culture of human rights both within government agencies and in civil society at large. This sub-committee is particularly important for its potential to promote a narrative or a discourse of respect to human rights throughout the nation. So far the Committee has done human rights training and education activities and seminars in schools, as well as with NGOs, companies and government agencies, such as the police force.

The job of the Complaints and Inquiries Working Group is to register and investigate complaints made by citizens alleging human rights abuses perpetrated against them. In addition to complaints from citizens and people residing within national boundaries, the Committee has received hundreds of complaints from the international milieu, particularly from global human rights watchdog organizations who are concerned, above all, about the rights of people who they consider to be political prisoners. Here a clear link becomes visible in the nexus between global-national-local human rights contestation. The function of the International Treaties and Instruments Working Group is to examine and recommend the UN Human Rights Treaties for ratification by the State.

This Committee works closely with the Law Reform Working group, whose duty it is to review national legislation and recommend ways in which to make it compatible with



international rights legislation. A case where these last two committees appear to have had an impact on national legislation concerns Article 8 of the Federal Constitution where, after ratification of the *Convention on the Elimination of All Forms of Discrimination against Women*, sex [or gender] has been included as prohibitory ground of discrimination. Prior to ratification, there had been no protection under national law from discrimination based on gender. However, after the ratification of the *Covenant without reservation*, Article 8 was modified to bring the Constitution into line with this international guarantee of freedom from gender discrimination, probably gaining the State some mileage from the decision.

*(i) SUHAKAM's Early findings*

In the initial phases of SUHAKAM's existence, the Commission offered several substantive critiques of the human rights system in Malaysia. For example, in the *Annual Report for 2000*, the International Instruments and Treaties Group, together with the Law Reform Working Group, strongly urged the government to align national legislation and practice with the UN human rights instruments. They commissioners observed that the State had received considerable criticism for its failure to sign and ratify the majority of the UN human rights instruments. National and international criticism had been particularly strong concerning its non-ratification of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights which, together with the UDHR, make up the *International Bill of Human Rights*.

SUHAKAM thereby recommended that Malaysia should ratify as soon as possible the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social and Cultural Rights; and the Convention against Torture. It further suggested that new Legislation be drafted so as to incorporate their precepts into domestic law. It also recommended that existing legislation, regulations and administrative directives be brought into line with the United Nations' Conventions already ratified by the State. Furthermore, "The Malaysian Judiciary [should] be more responsive in interpreting the definition of 'human rights' in the Federal Constitution. *If human rights are indivisible*

*and universal, then they are an inherent and integral part of the common law of Malaysia and should be enforced accordingly"* [emphasis mine], (TIIWG, p. 30).

Both in rhetoric and in practice, the State has consistently critiqued the indivisibility premise, by prioritizing socio-economic rights over civil and political rights. Furthermore, it has come from a position which questions the universality of these rights, as indicated in Mahathir's statement, "we do subscribe to the universality of human rights, but not to the irresponsible variety propounded by the West" (Mahathir in Hashim 2000: 74). However, it may be here that Mahathir is convoluting his ideas of a decadent West with what is actually espoused in the human rights instruments. Whatever the reasons for these official positions and rhetoric, it is not surprising that the authorities would, as yet, be hesitant to ratify the remaining human rights instruments.

In response to this hesitance, the Treaties and International Instruments Working Group pointed out that Malaysia has been a member of the United Nations since September 15, 1957 and, "in joining this international organization, Malaysia undertook to uphold the United Nations' Charter by signing a Declaration of Acceptance of the obligations contained in the Charter." It added, "One primary purpose of the United Nations is to promote and encourage 'respect for human rights and for fundamental freedoms for all without distinction as to race language or religion'... Through Article 56 'the members of the United Nations pledge cooperation with the UN to take joint and separate action to achieve these purposes'" (p. 27). At the time the 2000 Annual Report was written, Malaysia had ratified five of the 25 major international UN Human Rights Instruments, while signing but not ratifying a sixth. The rights instruments which had been ratified are the following:

1. Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, (Ratified November 18, 1957).
2. Convention on the Nationality of Married Women, (Ratified February 24, 1959).
3. International Convention against Apartheid in Sports, (Signed on May 16, 1986).
4. Convention on the Prevention and Punishment of the Crime of Genocide, (Ratified

October 20, 1994).

5. Convention on the Rights of the Child, (Acceded on March 19, 1995, subject to reservations).
6. Convention on the Elimination of All Forms of Discrimination against Women (Ratified August 4, 1995, subject to reservations) (TIIWG p. 27)<sup>3</sup>

Signing a convention is only an act of symbolic significance that the signatory has taken cognizance of the existence of the instrument. Ratification on the other hand means that the member state has formally acknowledged its liability to be bound by the provisions of the Convention and will take the necessary steps to make its provisions a part of its domestic law... The strict rules of international law require a party ratifying a multilateral Convention to accept the whole of the Convention without qualification if the ratification is not to be regarded as void

(TIIWG, pp. 27-28).

The *State's* non-ratification, and/or signing with reservation, of many of the international human rights instruments, once again reflects its relativist position.

In response to complaints lodged by members of civil society, SUHAKAM found the following areas to merit review:

° *Freedom of Assembly.* Complainants alleged that they were unable to obtain police permits to assemble peacefully for *ceramahs* and discussions concerning social issues. SUHAKAM recommended to the government that peaceful assemblies be allowed. They proposed guidelines which would ensure that organizers assume responsibility for the assembly to be peaceful and orderly, and that cleanliness be restored. Nonetheless, at the date of this writing, the State continues to enforce its ban on *ceramahs* and, to deny permits to many of those wishing to organize other types of public gatherings.

- *Freedom of Religion.* Complainants alleged that the *Islamiah Aqidah* Protection Bill, drafted by the Federal Government constituted an infringement of the right to Freedom of Religion.
- *Freedom of Expression:* Complainants alleged that the Ministry of Home Affairs had denied them permits for publishing newspapers and magazines, or had refused renewal of annual publication permits, or had limited the number of issues allowed to be published each month.
- *Right to a Fair Trial.* Complaints have been lodged concerning the Syariah Court's delay in passing a decision, resulting in hardship and injustice for the complainant.
- *Right to Life, Liberty and Security of Person:* Complainants report of police brutality in breaking up public assemblies, and ill treatment of those detained.
- *Right to Property:* Complainants alleged that state governments in conjunction with private developers have encroached and violated their customary land rights (CIWG, pp. 33-34).

***(ii) State responses to SUHAKAM***

When the State has responded to SUHAKAM, it has not always been in an amiable fashion. According to SUARAM's *Malaysian Human Rights Report for 2001*, (MHHR 2001), several events have witnessed SUHAKAM being prevented from and reprimanded by the government in discharging their duties. The report goes on to list a series of significant State responses to the Rights Commission's input. For example, SUHAKAM's recommendation that restrictive national laws be reviewed and that international human rights instruments be ratified elicited a response by the State's that *it was in no way bound by SUHAKAM's recommendations*, since national security was the responsibility of the State and its police force, and not of SUHAKAM.

When a SUHAKAM public inquiry found that the police had committed human rights violations and used excessive force during the peaceful Kesas Highway demonstration in November 2000, *the Prime Minister asserted that the report was Western-influenced* and that its findings were not in the interest of the nation. The Inspector General of Police further said that the police were not taking the report very seriously, since it was clearly biased.

When SUHAKAM recommended the release of activists detained under the Internal Security Act, Dr. Rais Yatim of the Prime Minister's Department claimed *that the Commission was "behaving a little extraneous and exuberant"* [sic], (MHRR 2001, p. 3). Furthermore, the Report points out that while the Commission is empowered under the Malaysian National Human Rights Commission Act of 1999 to visit detention camps, commissioners had to wait for police clearance before meeting with the ISA detainees. After seven weeks delay, four of the Commissioners met with ten of the detainees under close police supervision, which made it impossible to guarantee a fair and unbiased investigation into the matter.

In addition, when the Commission called for increased government tolerance of peaceful assemblies, *the Prime Minister's response was that while SUHAKAM was free to give suggestions, it was the government's prerogative as whether or not to follow them*. In response to the suggestion that Dato' Seri Anwar Ibrahim be allowed to choose the treatment for his back problems, the comment was, "You cannot expect us to accept directions from SUHAKAM. In that case, it is better if they replace the government... and we hand everything to them" (in MHRR 2001, p. 2). SUHAKAM, whose spaces are already limited by Constitutional constraints and restrictive aspects of its mandate, must also contend with a State which is at times hostile to its attempts to discharge its duties.

*(iii) A Shift in Tone: SUHAKAM from 2001 Onward*

A marked change in tone becomes apparent between the type of critique issued in SUHAKAM's Annual Report for 2000 and for 2001. The apparent 'softening' of critiques directed toward the State and the human rights-related statues in the country, may be due to a combination of SUHAKAM's response to government discomfort with the earlier reports, and to the events taking place on September 11, 2001. Reflecting the nexus between global and local events, the SUARAM *Human Rights Report for 2001* states,

The comments of the chair of SUHAKAM in the wake of the September 11 attacks in the US, i.e. that in Malaysia it was perhaps reasonable to suspend democracy and human rights, also raised ire and eyebrows. [Although the Chair] later claimed to have made the comments in his individual capacity. The Vice-Chair commiserated. "The government has enough problems... we are going to cool down for a little while but we will remind the government quietly of human rights issues... And 'cool down' they did. Towards the latter part of the year, [2001], SUHAKAM focused its work on issues of socio-economic rights, fueling speculation that this was in response to the unrelenting verbal attacks from the Government upon its civil and political rights work

(SUARAM, 2002, pp. 3-4).

In response to this shift in SUHAKAM's position, a coalition of thirty-two human rights-oriented NGOs-- represented by the National Human Rights Society, HAKAM, suspended all dialogue with SUHAKAM for one-hundred days-- from April 24 to August 2, 2002-- meaning they refused to have any type of dialogue, or to send memoranda to the Commission. The suspension was carried out in an attempt to pressure SUHAKAM to take a more definitive stance in protecting citizens' rights *vis-a-vis* the State, while simultaneously drawing the attention of ordinary citizens to SUHAKAM's perceived failure to defend basic rights. HAKAM president Ramdas Tikamdas stated that:

The disengagement was to highlight our concern and alarm over the lack of motivation by SUHAKAM to perform as a national human rights body. There have been thirteen cases of human rights violations since the disengagement period commenced, and there has been no positive change to deal with the issues. We will now resume dialogue with SUHAKAM to see if it keeps its promises to uplift human rights standards in the country. We will continue to be vigilant and speak out about any human rights violation cases

(in *The Star*, 8/03/2002: 10).

Having resumed dialogue as of August 3, 2002, the thirty-two NGOs continue to monitor SUHAKAM's performance as the official protector of civil rights. At this point, they express mixed responses to the Commission. For example, NGO activists commend SUHAKAM's reports and fact-finding in areas such as the rights of remand prisoners, the detention of women and juveniles, the stripping of suspects upon incarceration, deaths of prisoners, conditions in detention camps, and the slowness of courts in bringing the accused to trial. In other areas, however, they continue to express concern about SUHAKAM's performance *vis-a-vis* the State's human rights record.

On the positive side, there is general agreement that SUHAKAM is a very important statutory vehicle for the promotion and protection of human rights. Furthermore it has made human rights a legitimate issue of social advocacy, as well as promoting the idea of human rights through its education activities. Non-governmental actors have further commended the Commission's performance in various areas, including its recommendations that restrictive national laws be reviewed and international human rights instruments be ratified; they are also pleased that SUHAKAM has recommended that the government allow freedom of assembly for peaceful gatherings. In addition, NGOs have viewed in a favorable light the fact that SUHAKAM Commissioners visited ISA detainees, as well as their findings of police human rights abuses and excessive use of force during the Kesas Highway demonstration. Nonetheless, the NGO community continues to express various concerns. For example, Ramdas Tikamdas of the HAKAM states,

In its response to human rights violations, SUHAKAM has not made concrete recommendations of sanctions to be imposed against the violators. They should recommend to relevant agencies that sanctions be imposed on the violators; if not, their activities are little more than academic exercise. For example, when the university students filed their complaint with SUHAKAM about election irregularities, they were the ones castigated. SUHAKAM should have investigated and recommended sanctions against the Vice-chancellor or whoever was responsible for the irregularities. Sanctions should not have been leveled against the complainants. Also, in the Keras Highway inquiry, SUHAKAM was critical, but no recommendations of sanctions against the violators were made. SUHAKAM must act without fear and favor if it is to be credible in the eyes of the people

(Personal Interview July 21, 2003).

A further area of concern lies in the change of commissioners in 2002, when Anuar Zainal Abidin and Mehrun Siraj were denied renewal of their commission after having criticized the police's use of excessive force during the Keras Highway demonstration. The controversial former Attorney General Abu Talib Othman, was named the new Chairman of the Commission, while Anuar and Mehrun were replaced by ex-civil servants who had spent their careers embedded in the State apparatus, and had little or no experience in the area of human rights advocacy. NGOs and other civil society actors widely saw this reshuffling as an indication that commissioners who were critical of the State would surely lose their tenure at the end of their terms, thus compromising their ability to be impartial and independent in judging alleged State excesses.

Seemingly verifying this concern, SUHAKAM has recently chosen to lessen its focus on civil and political rights, which are known to give rise to defensive or, at times, repressive responses on the part of the State. Instead, the Commission has since around 2001, chosen to focus on less controversial issues, such as those pertaining to the conditions in prisons, human rights education, native customary rights, police training, rights of the disabled, and inter-faith relations.



NGOs further sustain that SUHAKAM tends to 'write complaints of civil and political rights violations out of the agenda' by classifying them as "not requiring further action" (SUARAM, 2003). In other words, the Commission, at times, appears to be dancing around the State when it comes to limitations on citizens' first generation rights. Another tendency observed lies in SUHAKAM's declaration that more than sixty percent of complaints lodged are under the purview of other authorities within the State apparatus. This referral of complaints by SUHAKAM to other organs *within* the State structure enables the Commission to avoid getting involved in many of the rights matters brought to its attention by civil society complainants. It is questionable whether these other government agencies, which do not have a mandate to protect citizens' rights, will see the complaints through once referred to them by SUHAKAM.

Other areas where NGOs express disappointment with SUHAKAM's performance include its inaction in response to complaints of individuals and group members forced to sign the *Aku Janji* promise of unwavering support to the government. SUHAKAM also balked when asked to deal with the issue of *hudud* law, which in many respects does not follow the rights principles expressed in the UDHR. In this matter, SUHAKAM finds itself in a precarious position. While part of its mandate is to review and recommend international human rights instruments for signing and ratification, its commissioners are fully aware of the sensitive issue of contravening laws which arise from a religious tradition. How is the Commission to reconcile the sacred nature of divine law with international rights instruments which may contravene said laws?

NGOs question SUHAKAM's credibility in various situations, such as its defense of the government's threat to use the Sedition Act to silence dissent about the use of English for Math and Science instruction. When the DAP Youth Section complained about the State's threats, SUHAKAM responded by saying that freedom of speech was not an absolute right, and that it should be seen in light of 'other relevant laws' of the country (SUARAM, 2003). The Commission has also been critiqued in the NGO community for its inaction concerning various deaths of people held in police custody, where allegations

were made of police brutality and of the denial of medical attention, leading to the loss of life of individuals held in custody.

NGOs further express disappointment that SUHAKAM used the 'no follow-up required' ruling in cases such as the arrest of the DAP's Lim Kit Siang and others for distributing leaflets expressing their discontent with Mahathir's September 2001 statement that Malaysia was an Islamic State. When the DAP asked SUHAKAM to intervene concerning the arrests and police intimidation tactics, Commissioner Hamdan Adnan's response was to say that, "we wrote to the police and inquired about what had happened. They told us a different story. *When it is a recurring or structural problem such as police response to gathering and assembly, it is difficult for us to do anything* [EMPHASIS OURS]," (in SUARAM, 2003: 143). Yet human rights commissions exist precisely to monitor and eliminate the *recurring violation of citizens' rights by agencies within the State structure*. This is a primary purpose of national rights commissions throughout the world. What, then, is SUHAKAM doing if it is not aiding in the reshaping of State structures in such a manner as to curtail systematic abuses to citizens' rights?

In terms of SUHAKAM's reluctance to make substantive or structural critiques of the State, the SUARAM 2002 Human Rights Report says the following:

It was...announced that SUHAKAM was accepted as a full member of the Asia Pacific Forum of National Human Rights Institutions. This body was set up to facilitate dialogue, cooperation and mutual support among the national human rights commissions in the region. This is rather unfortunate, as SUHAKAM has clearly on many occasions not complied with the Paris Principles. It is, however, hoped that with SUHAKAM's admission into the institution, the rules and regulations guiding human rights commissions, namely the *Universal Declaration of Human Rights* and the Paris Principles, will be made more binding on SUHAKAM

(p. 142).

Although the NGOs are hopeful that this international linkage will mould the Commission more into a likeness of the global principles, SUHAKAM's embeddedness in the apparatus of an authoritarian State may make it difficult for this to happen.

All in all, the general sense in the NGO community is that SUHAKAM must still prove itself and convince civil society that it truly exists to protect the basic rights of Malaysian citizens. Along these lines, the SUARAM 2002 Report states the following:

While the appearance of SUHAKAM on the human rights field has been encouraging, the jury is still out on the sincerity of SUHAKAM as a national human rights commission capable of taking up all types of human rights issues. This is especially true when the commission is addressing civil and political rights issues that are problematic for the government, namely freedom of speech and expression, peaceful assembly, association and personal liberty. Detractors view SUHAKAM's role as merely justifying the authorities' actions and providing the international community with a warped view of the state of human rights in the country

(SUARAM, 2003: 141).

Upon examining the mixed comments coming from the NGOs concerning SUHAKAM performance, it becomes apparent that while they are pleased with certain aspects of it, they would like to see the Commission do more in other areas which are of concern to human rights commissions worldwide. It is the author's position that, regardless of how SUHAKAM was formed, and in spite of the areas where it has not taken a strong stance to improve the rights situation, people should support SUHAKAM as it struggles to define itself and its degree of compliance with its mandate.

Not surprisingly, SUHAKAM does appear to be juggling between wanting to protect human rights and not 'rocking the boat' with a State upon which it ultimately depends for survival. The Commission is new and is in the process of finding its spaces and boundaries *viv-a-vis* the State, and g/local human rights actors and institutions. It is important to

provide sound and constructive critique of the Commission's performance while continuing to support it, and in this manner challenge it, and help it grow in its ability to carry out its mandate.

### XIII CONCLUSIONS

From the preceding analysis, it becomes apparent that, in both discourse and in practice, the Malaysian State maintains a relativist position concerning the global human rights narratives and instruments. Furthermore, its prioritization of Second Generation Rights over civil and political rights constitutes an implicit challenge to the principle of the *indivisibility* of rights. In terms of the Third, or Hegemonic Debate, the Executive continues to suggest that the mainstream human rights narratives do, at times, serve as an ideological spearhead for the penetration of Western values and consumption patterns into local spaces. Meanwhile, NGOs such as HAKAM, SUARAM and ALIRAN clearly align more closely with the global human rights regime. Meanwhile, SUHAKAM it seems, may 'have a foot in both camps;' on the one hand it is duty-bound to examine and recommend the global instruments, and to attend to human rights contestation from civil society actors. On the other side of the balance, it must work in such a manner as to not run afoul of the State. Which side of the balance weighs more heavily for the Commission?

With reference to the State itself, in response to critique of its human rights performance, the Government has called for serious study and revamping of the global rights narratives and instruments, as expressed in a speech made by former Finance Minister, Tun Daim Zainuddin, in which he states:

The passage of time and the emergence of new situations and issues necessitate the formulation of a new Declaration or a major overhaul of the present declaration to make it acceptable to all nations and peoples."... "). Malaysia believes also that there is a need to review the various human rights instruments and also the standards of human rights which were defined and established almost 50 years ago. Such a review should also take into account the peculiarities of national values,

religions, customs, tradition, social and economic systems in a particular country, and attempts should be made to harmonize human rights in a balanced manner, moving away from the present unhealthy predominance of Western values and concepts

(in Aidcom, 1999: 19).

In agreement with this point, the author of the present analysis would like to make a call to all those interested in human rights to sit at the dialogue table, and reassess the state of human rights at the g/local levels. This would mean, as well, taking a look at the rights instruments as they currently exist. Said assessment would invite rights actors to move beyond a state-centric analysis and open the way for systematic scrutiny of transnational actors-- meaning both capital interests and global institutions which impact on the rights and the well being of people throughout the world. Further assessment should be carried out in light of the Three Debates, and should take into account the diverse Generations of Rights.

In addition, it should examine the possible double standards in rights scrutiny and the accountability of strong militaristic states, and that carried out on the developing nations, known for their tradition of authoritarianism, which have not taken part in recent military incursions into 'sovereign' lands. Furthermore, the author would like to see a frank discussion about balancing the need for national security with respect to the First Generation Rights of people with suspected links to potentially-violent non-state organizations. Is there a double standard being exercised, particularly concerning Muslim men, in the g/local search to ensure national security? If so, how can the balance be found between ensuring the safety of nations, and respecting the *indivisible and unalienable rights*, i.e. liberty of person, and the freedoms of association, expression and movement, *of all people by virtue of being human*, regardless of religion or ethnicity?

A final area of discussion which the author would like to table concerns the possible addition of a Fourth Generation of rights into the discourse and into the global instruments. This 'Generation,' if we choose to call it such, would concern the systematic scrutiny and *accountability* of military actors having an impact on human rights and well

being. Specifically, the destruction of lives, psyches, families, economies and infrastructures of people and regions left in the wake of armed conflict goes 'beyond the pale' of rights contestation and narratives as they currently exist. The rights and well being of people in 'war zones' must be respected as *indivisible and unalienable by virtue of being human*.

The war machines which have wrought infringements on these rights must be taken to task, tried and held morally and materially responsible for what occurs to members of civil society in the 'war zones.' Without this unmasking of the *war* narrative and the ensuing accountability of those responsible, any talk about rights from powerful global actors cannot be seen as much more than hypocritical rhetoric. Global institutions, such as the United Nations-- if it does continue to be relevant-- can begin by including in the discourse, the *right to life and limb*, in addition to the existing generations of rights. Human rights actors the world over can unmask the 'war narrative' and reveal it for what it is... a thin facade which fails to disguise powerful geo-political interests and the wonton destruction of all generations of rights which it leaves in its wake.

### Notes

1. States are often involved in the privatisation of public works, thereby reducing their own expenditure in areas such as medical services, education, housing, and social spending in general.
2. Here a question arises about whether it would be useful to suggest a 'fourth generation' of rights, which would address the question of the rights and the well being of the victims of war.
3. Article 8 of the Constitution has now been amended to include sex [gender] as a prohibitory ground of discrimination.

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