



Human Rights in Southeast Asia: Comparing Malaysia and the Philippines

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Abstract

This article is a comparative study of human rights issues in Southeast Asia with particular focus between Malaysia and the Philippines. Its approach is primarily an eclectic, by concentrating on the strengths and weaknesses of the human rights regimes as practiced by both countries. This paper is divided into three parts. The first part looks at the six fundamentals of human rights that include: Respect for the integrity of the person; respect for civil liberties; and respect for political rights, more specifically, the rights of citizens in Malaysia and the Philippines to change their governments. The second part looks at the Malaysian and Filipino governments' attitudes regarding international and non-governmental investigation of alleged violations of human rights, such as discrimination based on religion, race/tribe, gender, disability, language or social status. The last part looks at worker's rights. The data for this analysis comes from primary and secondary sources, namely newspapers, the Internet, books, magazines and journals. The study found that the records of human rights in Malaysia is relatively good when compared to her ASEAN neighbour; the Philippines. For instance, Malaysia's experiences demonstrate that parliamentary democracy have been well-maintained in that elections have been held regularly ever since independence in 1957 compared to the disruption of the regular elections in the Philippines caused by the so-called “EDSA” Revolutions or People Power Revolutions. Indeed, Malaysia enjoys one of the fastest-growing economies and is one of the ‘Asian small tigers.’ It may have occasional political and religious arrests of some opposition leaders, but physical force is not/and/or rarely exerted against opponents, in contrast to what Ferdinand E. Marcos and Gloria M. Arroyo did in the Philippines. Furthermore, there is nothing that resembles the violence that frequently erupts in the Philippines and the continuing human rights abuses committed by the Armed Forces of the Philippines (AFP) and its agents against its people.

Keywords: *Human rights, political rights, civil rights, religious rights, democracy and ethnic harmony*

Background of the Study

Historically, the concept of human rights has evolved through three distinctive generations. The first generation of human rights is divided into two categories: Civil and political; and economic, social, and cultural. The first category refers to material security and integrity, and the freedom to function politically. The second component of this category refers basically to a number of 'entitlements' or 'claims.' Because of the limited resources of the Less Developed Countries (LDCs), their governments would not be able to satisfy these 'claims.'

The second generation of human rights consists of two basic categories: Solidarity rights include environmental rights; and the right to development. The third generation of human rights consists of group rights, which is concerned with the entitlements of cultural minorities to use their respective languages and religions without harassment from the dominant cultural group (Donnelly, 1982:12). The evolution of these three generations has profoundly widened the scope of human rights, particularly after the Second World War. The United Nations, non-governmental organisations, and Western governments have been instrumental in promoting the cause of human rights, using the approach of those actors has been that human rights have 'universal applicability.' However, many intellectuals and politicians from the Least Developed Countries (LDCs) reject this Western claim of universality of human rights. The general impression in the West is that there are serious 'breaches' of civil rights in the LDCs as they do not set a really high priority on civil rights. The main focus is on economic development, political stability, and social harmony. Indeed, many LDC governments believe that human rights activists, who are being encouraged by foreign quarters, are an inhibition to economic development through endangering societal stability.

Some developed countries, however, have not escaped criticism for alleged human rights breaches. The Bush Administration was criticised for mistreating Iraqi detainees in the Abu Ghraib Prison and allegedly systematic widespread tortures of prisoners at the Guantanamo Bay's prison, using water boarding tactics to extract information from the so-called terrorists. Not to mention a very controversial U.S. Patriot Act, which had been promulgated in the aftermath of the September 11th attacks. Supporters of the Act proclaimed it to be essential to national security, while critics argued that some of its causes are highly intrusive (Etzioni, 2005: 23; see also Mears, 2007). It was also revealed that the CIA was maintaining secret prisons in Europe and Morocco, where suspected terrorists have been detained. In this respect, former President Bush said that the prisons were a vital tool in the war on terror and that intelligence gathered had saved lives. He added that the CIA treated detainees humanely and did not use torture. He further said that all suspects were afforded protection under the Geneva Conventions (BBC News, 2006). However, the most serious breach of civil rights came with the admission of President Bush in December 2005 that he had authorised the National Security Agency (NSA) to practice eavesdropping on American citizens (Yahoo.com, 2007). The operation appeared to be the first anti-terrorist measure aimed directly at U.S. citizens and was therefore the most controversial put in place during Bush administration. The current revelation by Edward Snowden, a former CIA agent, of the government's years-long collection of phone records and Internet usage have vindicated

the fears and concerns of Civil Rights Groups and now the American Civil Liberties Union and its New York chapter sued the federal government and asked a court to demand that the Obama administration end the program and purge the records it has collected (Jakes, 2013: 1-2).

Human Rights in the Philippines and Malaysia

Browsing Western literature, one gets impression that there are serious breaches of political, civil and religious rights in Malaysia. Malaysian democracy, not infrequently, has been dubbed as ‘semi-democracy,’ ‘quasi-democracy,’ ‘limited-democracy,’ ‘less democratic,’ and worse still as soft or even outright ‘authoritarian’. However, when we compare Malaysia’s record with that of her ASEAN neighbour the Philippines we discover that Malaysia has been performing relatively well. Taking stock of the Malaysian experience demonstrates that parliamentary democracy has been well-maintained in that elections have been held both regularly and freely though not necessary fairly ever since independence in 1957. The latest election was on 5 May 2013 where the ruling parties, or *Barisan Nasional*, not only further reduced their parliament seats (from 140 in 2008 to 133 in 2013) and states’ seats, but it was the first time BN lost in popular votes which they enjoyed for 56-year in power since 1957 of the country’s independence from British rule. .

The country enjoys one of the fastest growing economies and is one of the ‘Asian small tigers.’ Although we may sometimes have ‘political arrests’ of some opposition leaders, ‘physical force’ is not exerted against opponents in contrast to what Marcos and the current Arroyo regimes have done in the Philippines (Sy, 2007:1; see also Anon., 2007; Suara Bangsamoro, 2007:1–2). There is nothing that resembles the violence that frequently erupts in the southern Philippines and southern Thailand. For instance, the Moro Islamic Liberation Front (MILF) and the Philippine government armed forces had engaged in fierce fighting fuelled by the unprecedented cancellation of the signing of the Memorandum of Agreement on Ancestral Domain (MOA-AD) on 6 August 2008 due to a Temporary Restraining Order (TRO) issued by the Philippine Supreme Court.

In contrast, there is law, order and security in Malaysia. In addition, Malaysia has not been plagued by the incidence of ‘politically motivated disappearances’ and ‘extrajudicial killings’ (The Asian Human Rights Commission, 2007:1; see also Lacorte, 2007:1) which characterise many polities of developing nations. Unlike some of its neighbours where the military plays a key political role, in Malaysia the military remains under the tight control of the centre (Milne, and Mauzy, 1999:105). This is not to suggest that we have a flawless democratic experience in Malaysia. Some of the blemishes in the system are overlooked ostensibly in a bid to preserve the stability and consensus of Malaysian society (ibid.). The system does not set a really high priority on issues of human rights; rather the main priorities are sustainable development and ethnic harmony and stability. This positive development on the issues of human rights and democracy can be seen with a recent dramatic decrease of international criticism from the West, more specifically, the United States.

Respect for the Integrity of the Person in the Philippines and Malaysia

This aspect of human rights can be conceptualised as referring to freedom from arbitrary and unlawful deprivation of life; the act of disappearance; torture and other cruel, inhuman, or degrading treatment or punishment; arbitrary arrest, detention, or exile; and denial of a fair public trial. If we apply the above criteria in the Malaysian context, we will have the following mixed picture.

The main provision of the Malaysian Constitution which is relevant to this dimension of human rights is Article 5-1, which reads: ‘No person shall be deprived of his life or personal liberty saves in accordance with law’ (Tun Suffian et al., 1978).

As far as one can ascertain, Malaysia has neither experienced political killings, nor politically-motivated disappearances. However, we have some cases of police killing suspects while apprehending them. Malaysian NGOs have consistently asked for the forming of an independent commission to investigate police killings. The government, however, takes disciplinary action against officers and members of the Malaysian Royal Police who abuse power, or who acted violently against detainees. Based on official statistics of disciplinary action taken against police officers on an annual basis, there seems to be a trend towards implementing this policy more strictly and thoroughly (Milne and Mauzy, 1999:107). For instance, police leadership continues its efforts to curb police abuses, including inviting National Human Rights Commission (*Suhakam*) officials to provide education to police officers on how to treat prisoners. An additional check is that whenever a person dies in police custody, the law requires that a magistrate investigate.

Although there is no constitutional provision or law that specifically prohibits torture, the understanding is that laws and provisions that prohibit ‘committing grievous hurt’ cover torture too. There are reports that some police tortured, beat and otherwise abused prisoners, detainees and other citizens. Local NGOs stated that some criminal suspects and illegal foreign detainees have been subjected to ‘physical and psychological torture’ during interrogation and detention. In response to such reports, the authorities continue to require police to attend community relations and ethics courses to address public concerns over alleged police misconduct. In some cases, authorities reacted promptly to cases of police abuses. One high profile case was the 2001 case involving former Police Chief Rahim Noor, who pleaded guilty for ‘causing hurt’ to former Deputy Prime Minister Anwar Ibrahim in 1998 while Anwar was handcuffed and blindfolded in police custody. Rahim, who subsequently lost his influential post, was fined and jailed (Milne and Mauzy, 1999:107).

On a number of occasions, riot police forcibly dispersed peaceful demonstrators around the country, using tear gas, truncheons and water cannons. Following the dismissal, arrest and trial of Anwar Ibrahim in 1998, the government has sternly dealt with populist backlash of the *Reformasi*, ABIM, GERAK and other pro-*Reformasi* agencies, the matter that has given rise to serious civil unrest. However, in contrast to Philippines, no-one was shot or killed. Amnesty International deplored what it called the excessive force used against demonstrators. Permits for opposition *ceramahs* (public rallies) were blocked, but, so too were proposed pro-government gatherings in the interest of ‘public order,’ allowing claims of ‘even-handedness.’ However, while street protests continued during those days, much of daily life went on as normal. Perhaps part of the reason for this lies in the nature of legitimacy that prevails in Malaysia, in contrast, for instance, to the Philippines and other ASEAN member-countries like Myanmar, Thailand

and Indonesia. This reflects middle-class sensitivities and a general aversion to violence on the part of Malaysians (Hilley, 2001:157).

These laws permit the government to detain suspects without judicial review or the filing of formal charges under then Internal Security Act (ISA) and now Special Offence Special Measure Act (SOSMA), the Emergency (Public Order and Prevention of Crime) Ordinance, and the Dangerous Drugs Act (Special Preventive Measures). According to the authorities, the goal of the ISA is to control internal subversion. It is used against what the authorities consider non-political crimes. For instance, the government considers deviant Muslim groups as posing a danger to national security because of their radical beliefs. The then ISA and the current SOSMA, and the threat of invoking them, however, have sometimes been used to restrict political dissent. For instance, in 2001, the authorities resorted to the ISA to detain some political activists who were associated with the opposition National Justice Party (Keadilan) on the grounds that they represented ‘a threat to national security.’ A number of Suhakam Commissioners conducted a series of public inquiries into the conditions of the ISA detainees. On a number of occasions Malaysian judges have ordered the release of ISA detainees, calling their detentions unlawful. In May 2001, a Shah Alam High Court judge ordered the release of two opposition leaders who had been detained under the ISA. In that ruling, the judge said that the police could not simply cite the ISA’s function to ‘preserve national security’ as justification for its use (U. S. Department of State, 2003:9). Such a ruling rebuts the allegations made by critics that the Malaysian judiciary is subservient to the executive branch of government. Perhaps, the clearest manifestation of judiciary’s independence of the country was its reversion of its verdict on Anwar’s case that led to his freedom.

Opposition leaders and human rights organisations had called on the government to repeal the ISA. A group of 71 NGOs and opposition parties joined together in 2001 to form the ‘Abolish the ISA Movement’ (AIM). However, the prevailing international campaign against terrorism at that time had dampened support for the anti-ISA Movement. However, there had been tremendous pressures to repeal the ISA, not only from the opposition parties and civil societies, but also within the ruling government. For instance, the former Prime Minister Tun Abdullah Ahmad Badawi and Khairy Jamaluddin (UMNO Youth Chief) called for the repeal of the ISA. As a result, ISA was repealed and replaced with SOSMA on June 22, 2012.

Less well known than the ISA, is, the Emergency Ordinance of 1969 that was designed as a temporary measure to respond to race riots of that year. Under this Ordinance, the Home Minister may issue a detention order for up to two years against a person to protect public order and for the ‘suppression of violence, or the prevention of crimes involving violence’ (U. S. Department of State, 2003:9). For instance, the government detained 700 persons indefinitely without charge or trial in the Simpang Renggam Detention Centre in Johor state for alleged involvement in criminal activities. Government officials publicly acknowledge that the Emergency Ordinance is used against criminal suspects because the police do not have sufficient evidence to charge them. Detainees are barred by law from challenging the merits of their detention and some have been detained for eight years. While detainees may raise procedural challenges and on this basis are occasionally ordered to be released by courts, the government often re-arrests them on the same charges. In June 2006, police re-arrested

11 detainees as they were leaving the Simpang Renggam Detention Center after a court-ordered release.

Provisions of the Dangerous Drugs Act (special preventive measures) delegate the authorities' specific powers to arrest and detain suspected drug traffickers without trial. Detainees may be held without charge for successive two-year intervals with periodic review by an advising board, whose opinion is binding on the authorities.

On fewer occasions, the Restricted Residence Act was used by the authorities to restrict movements of criminal suspects for an extended period. This act allows the Home Ministry to place criminal suspects under restricted residence in a remote district away from their homes for two years. Banishment orders may be issued without any judicial or administrative hearings. Although human rights groups questioned the need for this Act, the government continues to justify it as a necessary means to banish suspects from locations where undesirable activities take place. Some opponents of the Act likened it to 'forced exile.' This is an overstatement; as a matter of policy, the government does not use forced exile.

Upon assuming the premiership, Abdullah Ahmad Badawi restored a little more faith in the police through the establishment of a Royal Commission of Inquiry. The Commission consists of members from the government, civil society groups, and opposition party representatives.

The provisions concerning the judiciary are contained in Part IX of the Constitution. The independence of the judiciary and the security of judicial tenure was entrenched in the *Merdeka* Constitution, and is a theme which is regularly taken up by judges in judicial and extra-judicial statements (Harding, 1996:139). However, in recent years, a number of high-profile cases, such as those against former Deputy Prime Minister Anwar Ibrahim and some of his associates, raised serious questions about judicial independence and impartiality. During Anwar's corruption trial, the judge made second questionable rulings which greatly restricted the scope of Anwar's defence, e.g., allowing the prosecutors to amend the charges in the middle of the trial. Overall, government action, constitutional amendments, legislation restricting judicial review, and other factors would tend to cumulatively erode judicial independence, and to strengthen executive influence over the judiciary. In Malaysia, members of the bar, NGOs, and other legal observers express serious concern about these problems (see Chuan, 1994).

There has, however, been a noticeable improvement in judicial independence over the last five years. This coincides with the appointment of a new Chief Justice in December 2000. Upon his appointment to the post, Tan Sri Mohamad Dzaidin Abdullah went on record as stressing the importance of 'restoring public trust in the judiciary;' following that he put in place a rotational case-assignment system whose aim was to ensure judges' impartiality in the assignment of hearing any given case. The highest judge in the country stressed in unequivocal terms that 'a judge's loyalty must be to the law rather than to outside factors such as politics' (quoted in U. S. Department of State, 2002:12). In addition, the Federal Court's decision to release Anwar Ibrahim from prison in 2004 restored a large measure of confidence in the Malaysian judiciary.

If we examine the Philippine case, the main provision of the Philippine Constitution which is relevant to this dimension of human rights is Article 3 (1), which reads: "No person shall be deprived of his life, liberty or property without due process of law, nor shall any person be denied equal protection of the laws."

As far as one can ascertain, the Philippines has experienced tortures, extra-judicial killings and politically motivated disappearances. We have several cases of police/military/paramilitary torturing or even killing suspects while apprehending them. This pattern of killings has becoming very rampant all over the country. For instance, a prominent journalist who researched extrajudicial killings in Davao City alone, since 1999, found that in the course of a month of from mid-June to mid-July 2008, he documented 60 killings and an additional 8 attempted murder. It shows that a steadily upward trend in the numbers of killings in recent years from 65 in 2006 and 126 in 2008 (Coalition against summary execution... (1 February 2009).

Similarly, there are several cases of false accusation by the some personnel or arresting office of the Philippine National Police (PNP) against suspects through planting evidences. They (PNP) also used to force their suspects to accept crimes they (suspects) never committed. For instance on April 24, 2002, Region 12 police led by Director Senior Supt. Bartolome Baluyut arrested four suspects in Purok Lote, Barangay Calumpang and later charged with illegal possession of explosives using “planted evidences (60mm mortar shell and a fragmentation grenade). Baluyut claimed that they traced the location of the supposed bombing suspects following a call made by one of them purportedly warning of more planted explosives to an unidentified telephone number with “caller ID feature, but the suspect (Macalintal) claimed that he was forced to call at gunpoint by two unidentified persons (believed to be PNP operatives) who barged into the clinic of his cousin Napsalita Sala in Lote, Calumpang a day before the raid. In this connection, a Hong Kong-based Asian Human Rights Commission (AHRC) said that Baluyut “had previous records of having involvement in illegally arresting, detaining, planting evidence and torturing persons arrested during police operations (MindaNews, 2010: 1-4).

Philippine civil society organizations have consistently asked forming of independent commission to investigate such human rights violations (Mindanews, 2008: 1). The government, however, did not seriously take disciplinary action against those violators who abused power, or who did violently with innocent civilians (Luwaran.com, 2008: 1). Indeed, the authorities have failed to investigate these most grave crimes with any credible effort or results, leading to a deep climate of impunity (Hong Kong Mission for Human Righeyhts & Peace in the Philippines, 2006:5).

The existence of the so-called “Davao Death Squad” (DDS) has generated serious questions on the motive and wisdom of the authorities, more specifically, the Davao City Mayor Rodriquez Duterte. However, they have continued to deny the very existence of the said group (DDS). For instance, Davao City police director, Sr. Supt. Ramon Apolinario insists that DDS does not exist, adding there is no community or city will allow such group to do thing outside the legal parameters (Santos, 31 January 2009). Similarly, Davao City Prosecutor argues that there is no hard evidence ... on the existence of the so-called DDS.

This denial, however, contradicts to the detailed claims (evidences) of both foreign Human Rights Watch and its local counterparts. These groups documented and revealed pattern of killings by the perpetrators’ modus operandi, including commonalities in the profiles of the individuals targeted for killings, advance warning to victims that they would be targeted, the types of the vehicles and weapons used by the assailants, and the location of the killings. In this regard, “Alston claims the killings have clear patterns -

similarly described perpetrators, victims and methods - and are rarely the subject of successful police investigations,” in his April 29, 2009 report to the United Nations (Arguillas, 11 May 2009). Confession of one of the members of the DDS through sworn statement led to the issuance of search warrant by the Regional Trial Court Branch 34 in Manila. The court authorized the search of the said area, known as Gold Cup Firing Range, a privately owned premises, run and operated by a retired policeman, retired SPO4 Bienvenido Laud (Arguillas, 8 July 2009: 1). The area was allegedly a dumping ground of bodies of victims of summary killings.

Moreover, Bayan Muna party-list Rep. Neri Colmenares who led the Philippine nine-man delegation to the Hanoi Congress on 21 June 2009 revealed to the lawyers’ Congress about human rights issues in the Philippines. In this respect, he was quoted as telling:

a long list of extra-judicial killings and enforced disappearances of lawyers, judges, activists and known opposition figures in the Philippines. He even cited ... presentation by the Armed Forces of the Philippines, which listed four known human-rights lawyers in its “order of battle” and the filing of trumped-up charges against labor lawyer Remigio Saladero Jr. and other leaders of people’s organizations (The Daily Tribune Without Fear, 21 June 2009: 1-2).

Article 3 (12) of the Philippine constitution specifically prohibits torture, but several reports of torture committed by the government’s personnel. NGOs stated that several militants/activists or even suspected innocent civilians have been subjected to ‘physical and psychological torture’ during interrogation and detention. In response to such reports, the authorities continue to deny such commission of crimes against its people. Despite the obvious commission of human rights violation of the AFP to its people, the Manila authorities have still in the state of denial. With this, del Callar argues:

while hundreds of activists, trade unionists, journalists and religious leaders in the Philippines have been killed or abducted since 2001, the Arroyo government continues to deny any involvement of the country’s security forces and the military in the killings, despite evidence presented by the UN and other international human rights watchdogs (del Callar, 16 June 2009: 2).

On a number of occasions, personnel of the Armed Forces of the Philippines have been arresting or detaining suspects not only militants groups or rebels, but also political activists/rivals of administration and its local supporters. In some cases, they also forcibly arrested innocent civilians in some refugee camps in the provinces of Maguindanao, North Cotabato, Lanao del Sur, Lanao del Norte and others and they subsequently disappeared whom the military accused of members of the so-called renegade commander of the MILF, Ustadz Ameril Umra Kato of 105th Base Command of the military wing of the MILF, the Bangsamoro Islamic Armed Forces (BIAF) (Luwaran.com, 2008:1). NGOs



deplored what it called a violation of human rights committed by the Philippine government itself. In this respect, Michaela P. del Callar says:

that the United Nations (UN) has again flayed the Arroyo administration's dismal human rights record after the UN Committee against Torture (UNCAT) expressed grave concern at the "routine and widespread use of torture" in the country and the "climate of impunity for perpetrators of acts of torture, including military, police, and other state officials (del Callar, 16 June 2009: 1).

As pointed out earlier, it was noted the use of torture and ill-treatment of suspects in police custody aimed at extracting confessions or information to be used in criminal proceedings. It is true that the Manila government, in some cases reacted promptly to cases of police abuses. One high profile case was the 2001 case involving former Police Chief, who pleaded guilty for "massacre" to militants in 1998 while they were arrested. In addition to that, President Arroyo had sent Executive Secretary Eduardo Ermita during the UNCAT's assessment of the country's compliance with commitments to the UN body last April 28. On the ground, however, the situation was totally different. The Arroyo administration has been accused of only paying lip service to it. It seems it has no serious effort or commitment to address violations of human rights committed by some members of the AFP personnel. In this respect, some critics said that the President Arroyo's administration has been hostaged by the military, in general, and, the 1978 Philippine Military Academy (PMA) Batch, in particular. This PMA Batch has posted to all key positions and sensitive posts as well.

Muslim leaders and human rights organizations called on the government to stop the human rights violation against its people, in general, and, the Muslim, in particular. A group of civil societies and Muslim political parties joined together in their call to the visiting United Nations (UN) Secretary-General Ban Ki-moon to urge both the MILF and the GRP to stop war and go back to the negotiating table (Mindanews, 2008: 1). They lamented that the police and military who allegedly committed torture are seldom investigated and prosecuted. The perpetrators are either rarely convicted or sentenced to lenient penalties that are not in accordance with the grave nature of their crimes because of the lack of the insufficiency of law against torture in the country. (del Callar, 16 June 2009: 1-2). Del Callar quoted Gaer as saying:

Gaer was not satisfied with the replies concerning the delays in adopting the anti-torture bill. She noted that the Philippines had managed to enact other legislation in the meantime, including the anti-terrorism law. She also wanted to hear what the executive was doing to prioritize the passage of the Anti-Torture Law. Gaer also expressed concern that the Commission on Human Rights did not have the authority to independently investigate the allegations of torture, disappearances and extra-judicial killings, and she wanted to know what was being done to address that (del Callar, 16 June 2009: 1-2).

Philippine government's declaration of the punitive action against the so-called three reneged commanders of the MILF as mentioned earlier (Kato, Bravo and Pangalian) and the unfolding conflict between the GRP and the MILF caused many lives mostly innocent civilians. Arguillas (23 June 2009: 1) quoted Geneva-based Internal Displacement Monitoring Centre as claiming that Southern Philippines is now known worldwide as hosting "the biggest new displacement in the world" – at 600,000 out of 4.2 million newly displaced in 2008, according to the Geneva-based Internal Displacement Monitoring Center. The influx of *bakwit* or evacuees or known as Internally Displaced People (IDPs) have been increased steadily as fighting Armed Forces of the Philippines and the Bangsamoro Islamic Armed Forces (the MILF military wing) continues unabatedly. Recently, there have been new concerns about the very safety of the *bakwit* even inside their own refugee camps due mortal shelling and abduction conducted by the AFP. For instance, on June 18, 2009, MindaNews reveals that three evacuees, including a seven-year old girl, were reportedly hit by shrapnel of 105 mortars their evacuation centers (Maguindanao Province) from the artillery shelling of the AFP (MindaNews, 2009: 1). It also caused hundred of thousands of refugees and damaged hundred of millions of properties. With these several human rights violations committed by some personnel of the AFP and their agents against their own people, the Philippines image has tarnished. Indeed, the inaction of the part of the Arroyo administration to address the issues pointed out earlier, led to a chorus of condemnation against the Arroyo regime.

Respect for Civil Liberties and Political Rights in Malaysia and the Philippines

This dimension of human rights can be conceptualised as referring to a host of rights, including freedom of speech and press; freedom of peaceful assembly and association; freedom of religion; and freedom of movement within the country, foreign travel, emigration and repatriation.

Article 10 of the Malaysian Federation Constitution provides for freedom of speech and freedom of the press. However, the same article imposes limitations on this freedom to 'protect national security, public order, and friendly relations with other countries.' A number of statutes have been designed to regulate freedom of speech and expression. Foremost among these is the Sedition Act, which prohibits public comment on issues defined as 'sensitive,' such as racial and religious matters. The official Secrets Act of 1972 is used to regulate press freedom. Its original scope was limited by a 1986 amendment. The Printing Presses and Publication Act was introduced in 1984 and it prohibits the publication of 'malicious news.' This Act empowers the authorities to ban or restrict publications through suspension or revocation of permits. Despite these limitations, licenses have been liberally awarded, and where newspapers' licenses were revoked, they were usually quickly restored (in 1987, the *Star*, *Sin Chew Jit Poh*, and *Watan* had their licenses revoked, but the three publications were allowed to re-appear again in March 1988). Even oppositional periodicals, such as *Aliran Monthly*, have been able to obtain licenses. Party-affiliated periodicals, such as PAS's biweekly *Harakah*, were for a considerable time allowed to sell to the public; however, in 1991, the authorities restricted their circulation to party members.

Control over the press has been exercised rather discreetly through ownership. The press is largely owned by groups associated with the government, e.g., the *New*

Straits Times, Berita Harian, Utusan Melayan, the Sun and the Star. This means that news and commentaries unfavourable to authorities have been scarce. This, however, does not mean that only unilateral points of view have been expressed. There were times when pro-government newspapers represented different viewpoints, more so when there had been dissension within the ruling coalition (Rashid, 1993:181–82,207).

Chinese-language newspapers generally are relatively free in their reports and commentary. Similarly the press in Eastern Malaysia has a larger margin of freedom than in the peninsula. This is perhaps due to the fact that newspapers in Eastern Malaysia are owned by different political groups and are used to further particular political interests (Crouch, 1996:87).

The government enjoyed a virtual monopoly over radio and television until 1985 when a private television station was granted license. Naturally, news and public affairs programmes have been heavily skewed in favour of the government. Generally speaking, the electronic media is restricted more tightly than the print media. By way of contrast, Internet television faces no restrictions. In 2001, PAS launched its own internet television studio.

A government censorship board censors films for profanity, nudity, sex, violence, and certain political and religious content. However, the widespread use of the internet dilutes such restrictions. The Communications and Multimedia Act was promulgated to provide for legal action against those who misuse information technology.

The authorities place some restrictions on academic freedom, in particular regarding expressing unapproved political views. Since May 2002, university faculty and students have been required to sign a ‘pledge of loyalty’ to the government. Although a few academics have been publicly critical of the government, most academics have elected to follow self-censorship on campus.

Freedom of association is regulated principally by the Societies Act of 1966, but also by the Trade Unions Act of 1959, the Industrial Relations Act of 1967, and the Universities and University College Act of 1971. According to the Society Act, any association of seven or more persons is required to register with the Registrar of Companies or the Registrar of Societies. The government sometimes refuses to register organisations or may impose conditions when granting permits for a society to register. This is usually justified on grounds of society, peace, welfare, public order or morality, affiliation or connection outside the Federal, and unlawful purposes (Harding, 1996:198). On the basis of this Act, the government prohibits the Communist Party and affiliated organisations.

To avoid the demanding requirements of the Act, many NGOs usually register under the Companies Act or under the Registration of Businesses Act, both of which have less burdensome registration requirements than the Societies Act.

The Universities and the University Colleges Act mandates university approval for student associations on campus and prohibits student associations and faculty members from engaging in political activity (Thomas, 1995:13). The Constitution provides for the freedom of peaceful assembly. This has been regulated by the Police Act of 1967. Gatherings of more than 3 persons in public places require a permit, which must be applied for two weeks in advance. The government justifies the restrictions on the right in the interest of society and public order.

Although opposition leaders frequently maintain that police issue permits for public assemblies in a manner that discriminates against the opposition, the police departments rebut such allegations by providing statistics that indicate that most applications for permits have been granted, except in certain sensitive cases political prudence leads to denial of permits. There are occasions though when opposition rallies have ignored the requirement for a permit, or even when the authorities denied a permit. Generally, the authorities' reaction in such cases has been mild.

In its annual reports, *Suhakam* voices the Commission's criticism of government-imposed restrictions on the freedom of assembly, recommending easing police permits for gatherings, and setting up a special 'speaker's corner.'

Freedom of religion is specifically safeguarded in the Constitution via Article 11. Article 12 prevents discrimination on religious grounds in the administration of public education and scholarship. The primacy of religious rights is understandably of the utmost importance if cultural stability is to be maintained in the country.

The Registrar of Societies registers religious organisations which enables them to receive government subsidies.

The proselytising of Muslims by members of other religions is prohibited, although persons proselytising non-Muslims are free to do so.

The government opposes what it considers to be 'deviant interpretation of Islam,' by maintaining that 'deviant thought endangers national security.' Members of such sects are periodically detained by the authorities under the ISA. For instance, in 2000, the authorities invoked the ISA to detain thirty-three members of the Al-Ma'unah sect, who had reportedly been involved in an arms theft incident.

Generally, the government restricts remarks or publications that might incite racial or religious disharmony. This includes restrictions on the context of sermons at mosques.

As far as freedom of movement within the country, foreign travel, emigration and repatriation are concerned, citizens have the right to travel, live, and work where they please. However, the government uses the Restricted Residence Act to limit movements of those suspected of criminal activities. The government, on a number of occasions, has prohibited a number of citizens from travelling abroad because they had 'tarnished the country's image while abroad' (quoted in U. S. Department of State, 2002:31).

Although the government does not recognise the principle of first asylum, it sometimes grants temporary refuge to asylum seekers. The government enjoys a cooperative and amicable relationship with the UNHCR, and usually it does not obstruct the UNHCR's efforts to process refugees for third country resettlement.

In terms of political rights, Malaysian Federal Constitution stipulates that parliamentary and state elections must be held every five years. The Constitution also provides for an independent Election Commission to conduct elections. Since independence in 1957, elections have been held regularly. The Malay-based UMNO party has dominated the ruling National Front Coalition (*Barison Nasional*), which has ruled Malaysia continuously since independence. A discernible trend in Malaysian politics is that power has increasingly been concentrated in the executive branch, and more particularly, in the Prime Minister. For opposition parties, their share of parliamentary seats has undergone sharp ups and downs. Despite the predictable outcome, elections have been held regularly, votes have generally been recorded

accurately, and opposition parties have been able to mobilise substantial shares of votes and, in a few cases, win power at the state level.

A number of factors mitigate the freeness, though not necessary fairness of elections and opposition parties are unable to compete on equal terms with the governing coalition. This is mainly due to significant restrictions on campaigning, freedom of assembly, freedom of association, and access to the media. The principle of 'rural weightage' is significant in that it ensures a 'Malay domination' since Malays dominate the rural areas. Redelineation of constituencies, like the one conducted in August 2002, result in increasing the number of Malay-majority parliamentary constituencies. The opposition parties depict this as gerrymandering (Ong, 2002). The opposition's argument sounds credible in light of the fact that the delimitation exercise concluded in 2003, resulted in the creation of additional seats particularly in urban areas, where the ruling coalition usually performs well. The states of Kalantan, Terengganu and Kedah, where PAS performs relatively well, received no additional constituencies in the aforementioned exercise.

There were some concerns expressed by opposition leaders about the impartiality of the Election Commission. Although this body is nominally independent, the opposition perceives it to be under the control of the government. For instance, the opposition complained of irregularities by election officials during the 1999 and 2013 campaigns and the elections which favoured the ruling government. For instance, allegations that there was an intervention of election officials which significantly changed the outcome of the 2013 elections. Another election anomaly is absentee ballots (postal votes) by police and army personnel and their dependents and phantom voters. Citing security considerations, the government does not allow party agents to monitor postal vote boxes. The opposition questions the wisdom of such security restrictions. Since 1999, the Election Commission has substantially changed some of the procedures to allow better monitoring of absentee votes.

Sometimes the government adopts some measures that thwart the ability of the opposition to compete on equal footing with the ruling coalition. This would include threats of suspending allocation of federal funds beyond the constitutionally-mandated minimum to states controlled by the opposition (see also U. S. Department of State, 2002:35).

The authorities abolished the elected local government following the 1969 ethnic violence. As a substitute, the government opted for appointed municipal committees and village notables. Many political activists have been advocating for the reinstating of local government elections.

One of the major strengths of the Malaysian human right practices is that women face no legal bounds as far as participation in government and politics is concerned. The government encourages this trend of redressing inequalities based on gender through the adoption of a number of programmes, e.g., the 'plan of action for the advancement of women,' and the establishment of a Ministry of Women's and Family Development in 2001. Women are represented at the Cabinet level, and the two chambers of parliament. However, that representation remains substantially less than that of men.

Chinese, Indian and other ethnic minorities hold positions in the cabinet, as well as in the highest echelons of civil service. However, ethnic Malays hold the most powerful senior positions in government and in the civil service (Halim, 1990). It seems

that there has been some sort of acceptance and understanding on the part of minority ethnic groups about the *Ketuanan Melayu* or supremacy of Malays which is enshrined in Article 153 of the Federal Constitution.

If we look at respect for Civil Liberties in the Philippines we can find at article 1, section 3 of the Philippine Constitution which also provides for freedom of speech and freedom of the press. There is also “other legal means for the protection of human rights” can be found in Article 8, Section 5 (5) of the 1987 Constitution which states that the Supreme Court, among others, shall have the power to promulgate rules concerning the protection and enforcement of constitutional rights. However, the government, in most cases, has utilized some other measures such as “Emergency rule”, “Martial Law” “Human Security Act (HAS)”, etc. in the name of protecting national security, public order, and friendly relations with other countries to curtail those freedoms which is similar if not the same with those limitations imposed by Malaysia government. When Marcos declared martial law on September 21, 1972, resulted in the arrest of activists and opposition leaders. Congress was abolished while media establishments were shut down to prevent critics from exposing the ills besetting the country. It was a dark period of Philippine history as thousands were subjected to various human rights abuses, including extra-legal killings and enforced disappearances. Press freedom and other civil liberties were arbitrarily curtailed in the guise of Marcos’ version of peace and order. The usual targets of Marcos’ regime were political opponents, activists, revolutionary leaders and other critics of administration such as intellectuals and students (Marcos, 1978: 20-25).

But in 1986, the glory days of the dictatorship came to an abrupt end when the EDSA “People Power” Revolution forced former President Marcos and his family to flee to Hawaii. This was fueled by a brutal assassination of a prominent opposition leader, Senator Benigno Aquino Jr., allegedly concocted by President’s wife (Imelda Romualdez Marcos and the former Chief of the defunct Philippines Constabulary or PC (now Philippine National Police or PNP), General Fabian Ver. Though, there were a lot of factors that led to the downfall of the Marcos’ regime, but this single incidence uncovered its ugly face both domestically and internationally. Since then, the Marcos’s never recovered until it was ousted through people’s power known as “EDSA Revolution” in 1986.

A revolutionary government was then established under former President Corazon C. Aquino who immediately restored democracy and created the 1986 Constitutional Commission for the purpose of drafting a new Constitution. The 1987 Constitution, duly ratified in a plebiscite held on February 2, 1987, embodies the pronounced effort of the Commission to provide within the constitutional structure of government a remedy against the emergence of another dictator by not only providing checks and balances within the three co-equal branches of government but also by providing for other legal means for the protection of human rights.

However, the Philippines under the watch of former President Gloria A. Macapagal, were politically motivated killings and disappearances, were not only revived, but they were even increasingly rampant in the country. Perhaps, the Arroyo era was the darkest history of human rights violation in Philippine history. Political warlord in the Southern Philippines, namely former Governor Datu Andal Ampatuan, Davao City Mayor Duterte and many others targeted their political opponents, journalists, activists, revolutionaries and other groups-including innocent civilians whom they perceived threat

to their political interests in their respective cities or provinces. The Philippine government, under her (Arroyo) watch, had not seriously addressed this concern. Some groups even accused the Arroyo regime and the AFP's personnel had collaborated with culprits. In this connection, the poor masses in the country suffer from risks arising from threats to their human rights; lack of employment and income security; poor governance and government corruption; lack of education and health services; and environmental deterioration and climate change, among others (Gamolo, June 18, 2009: 1-2).

The renewed fighting between the forces of the AFP and the BIAF, fueled by the unprecedented cancellation of the signing of the Memorandum of Agreement on Ancestral Domain (MOA-AD) on August 6, 2008 due to Temporary Restraining Order (TRO) issued by the Philippine Supreme Court, has raised serious concern over the increase of the incidence of "politically motivated disappearances" and "extrajudicial killings" (The Asian Human Rights Commission, 16 May 16, 2007: 1, Davao Today, May 15, 2007: 1) which characterized many parts of the country.

The military plays a key political role and thus it suggests that it has a flawless democratic experience in the Philippines. It seems that the Philippine political leaders do not set a really high priority on issues of human rights, development; rather their main priorities are enriching themselves once in power; they compete for patronage from Malacanang to remain in power and continue enriching themselves (Diaz, 3 May 2009, 1). In return, these political warlords must ensure votes for Malacanang and its candidates to win in the election at all means- including use of force.

Malaysia and the Philippine Governments' Reactions to the Alleged Abuse of Human Rights

This dimension investigates the extent to which the Governments of Malaysia and the Philippines tolerate the activities and allegations filed by international organisations and NGOs about alleged violations of human rights.

There are a large number of public interest groups and NGOs which concentrate considerable attention on the issue of human rights in Malaysia. Governmental attitudes towards the activities of such groups are to tolerate them. Officials meet and hear views of the NGOs' representatives. In the recent years, the Malaysian government has not revoked the registration of any human rights NGOs. Former Prime Minister, Tun Dr. Mahathir Mohamad, used to harshly criticise domestic NGOs for their collaboration with their foreign counterparts; however, his successor, Abdullah Ahmad Badawi, was more tolerant of NGOs' activities. In his premiership, no group has been banned or decertified so far. The current government under the premiership of Najib Razak seems more willing to engage with advocates of human rights issues in dealing with it.

In the past, non-Malays dominated most domestic human rights NGOs, a matter that circumvented the effectiveness of NGOs. However, the disenchantment of a broad spectrum of Malays with the arrest and subsequent trial of Deputy Prime Minister Anwar Ibrahim in 1998, led to their increased entanglement in NGO activity.

Although the government of Former Prime Minister Tun Dr. Mahathir Mohamad did allow Amnesty International to establish a Malaysian branch, it nevertheless allowed its incorporation as a business. This has allowed Amnesty International to function much like an NGO (U. S. Department of State, 2002:38).

A positive development in the Malaysian human rights regime has been the establishment in April 2000 of the National Human Rights Commission, *Suhakam*. So far, the Commission has earned itself respect for being a credible monitor of the human rights situation in Malaysia and is an effective check on police activities which in the past lacked oversight. Every year *Suhakam* releases a human rights report. These annual reports usually express concern over such issues as detentions without trial and opposition to government-imposed restrictions on freedom of assembly. However, *Suhakam* also highlights positive developments that result in improving the human rights situation in the country, one of those being the 2001 Constitutional amendment prohibiting discrimination based on gender.

Suhakam Commissioners make frequent tours of the country to educate community leaders, including police personnel on human rights. In addition, the Commissioners make visits to prisons to monitor conditions. While some of the detractors express scepticism about what they regard as the strong civil-service orientation of many members of *Suhakam*, we have to acknowledge the Commission as one of the few institutions in Malaysia with any aptitude to check and challenge abuses of human rights in the country.

With respect to the Philippine government, it also responds to the activities and allegations filed by international organizations and NGOs about alleged violations of human rights by the personnel of the Armed Forces of the Philippines and their agents against, not only against militants, revolutionaries, political opposition, but also innocent civilians. There are several responses by the Manila government on the alleged violation of human rights in the country. Some of the most important are the following:

The Supreme Court of the Philippines (SC) responded by creating 99 Special Courts nationwide to fast-track the resolution of extrajudicial killing cases. Necessarily, the Commission must provide the judges of these special courts essential human rights trainings. As a result, the Commission of Human Rights in the Philippines (CHRP) and the Philippine Judicial Academy conducted a series of seminars and workshops for judges on extrajudicial killings and enforced disappearances” to address the concerns on the procedure to identify and decide cases on it. On July 2007, the SC in cooperation with the CHRP held a multi-sectoral conference on extrajudicial killings. The conference aimed at the followings:

1. To arrive at holistic solutions and provide inputs to the SC in its objective of enhancing existing rules, or promulgating new ones, in the protection and enforcement of constitutional rights, including the protection of the witnesses;
2. To examine the concept of extrajudicial killings and enforced disappearances pursuant to the standards provided for by local and international laws, including United Nations instruments; and,
3. To revisit the rules of evidence and to explore more remedies for the aggrieved parties aside from the writ of habeas corpus (Arguillas, 11 May 2009).

This widely attended conference came out with several recommendations, including again calls for giving more powers to the CHRP, which according to the multi-sectoral participants, “is more trustworthy than the justice department”(Arguillas, 11 May 2009).

Another important domestic measure that CHRP worked out with its partners is the expansion and strengthening of the Presidential Human Rights Committee (PHRC). On December 8, 2006, President Gloria M. Arroyo signed Administrative Order (AO) 163. This order aimed at “strengthening, increasing the membership and expanding further the functions of the Presidential Human Rights Committee”. Under AO 163, PHRC has graduated from a mere advisory body to the President. Now, it serves as the President’s arm to coordinate implementation of the various human rights treaties by the concerned government agencies.

Thus, CHRP has one strategic partner in the government through the PHRC. AO 163 strengthened PHRC by: (1) increasing the number of member agencies with the inclusion of five critical government agencies namely, Office of the Executive Secretary, Department of Budget and Management, Office of the Press Secretary, National Economic Development Authority and National Anti-Poverty Commission; (2) elevating the representation of the agencies to the level of Secretary thereby making decision and policy making at the highest level possible; (3) transferring the chairmanship of the committee to the Executive Secretary thereby putting human rights in the executive agenda encompassing all human rights concerns; and, (4) clearly defining its functions in relation to human rights treaty implementation.

Moreover, the 13th Congress passed On April 2007 the “Human Security Act” (HAS) of 2007 (R.A. 9372) or the anti-terrorism law that provides the Commission prosecutorial powers and more responsibilities. Section 55 states that:

The Commission on Human Rights shall give the highest priority to the investigation and prosecution of violations of civil and political rights of persons in relation to the implementation of this Act; and for this purpose, the Commission shall have the concurrent jurisdiction to prosecute public officials, law enforcers, and other persons who may have violated the civil and political rights of persons suspected of, accused of, or detained for the crime of terrorism or conspiracy to commit terrorism.

So this section defines the role of the Commission (CHRP) which shall give the highest priority to the investigation and prosecution of violations of civil and political rights of persons in relation to the implementation of the HSA; and for this purpose, the Commission shall have the concurrent jurisdiction to prosecute public officials, law enforcers, and other persons who have violated the civil and political rights of persons suspected of, accused of, or detained for the crime of terrorism or conspiracy to commit terrorism.”

Moreover, Section 19 states that in “in the event of an actual or imminent terrorist attack, suspects may not be detained for more than three (3) days without the written approval of a municipal ... or regional official of a Human Rights Commission.”

The implications of the Human Security Act on human rights pose a huge challenge to the Commission on many aspects. On one hand, it empowers the CHRP to give protection to suspected terrorists from human rights violations. On the other hand, to grant authority for the longer detention of a suspect in the event of an actual or imminent terrorist attack.

This law (HSA) raised fears among political opposition, revolutionaries, militants, religious groups, human rights advocates and many others that the Arroyo regime would use it to crack down on political enemies. The Arroyo administration, however, insisted that the law was enacted to protect the Filipino people and the country from possible terrorists' attacks. They were suspicious that the government might use this new enacted against its own people. Critics said that the HSA is a dangerous law because it authorizes preventive detention, expands the power of warrantless arrest and allows for unchecked invasion of our privacy, liberty and other basic rights. For instance, persons merely suspected of engaging in terrorism may be arrested without warrant and detained without charges (Norma, 2007: 1).

The suspects may be placed under house arrest, prohibited from using their cell phones, computers and any other means of communication, even when they are granted bail on the ground that evidence of guilt is not strong. They may also be subjected to surveillance and wiretapping, as well as examination, sequestration and freezing of bank deposits and other assets, on mere suspicion that they are members of a terrorist organization.

Despite of the government's assurances, the law has violated human rights rather protected it. The government's personnel (AFP and its agents) have used this law to neutralize their enemies. Worse, its application in the Southern Philippines where the Philippine government has battling several revolutionary groups- such as Abu Sayyaf Group (ASG), Moro National Liberation Front (MNLF), Moro Islamic Liberation Front (MILF) and many others. As pointed earlier, the new law is mainly to protect the Filipino people and the country from terror. Since, the Philippine government considered all revolutionary groups in the country-including the MILF (but unofficially declared) as terrorist groups and those who support them, the Human Security Act (HAS) seems very instrumental in arresting, detaining and persecuting anyone in the region, in the guise of fighting against terrorism. For instance, in the Provinces of Maguindanao, North Cotabato, Lanao del Sur, Lanao del Norte, Sarangani and Basilan, the AFP personnel and their agents have committed grave human rights violations such as illegal arrest, torture, extrajudicial killings and disappearances. It seems the HSA is a prototype of the USA Patriot Act (2001).

Conclusion

This paper offered a comparative study of human rights in Southeast Asia, with particular focus on Malaysia and the Philippines. It looked at the six fundamentals of human rights that include: respect for the integrity of the person; respect for civil liberties; and respect for political rights, more specifically, the rights of citizens in the Philippines and Malaysia to change their governments. It also examined and compared the attitudes of governments of both countries regarding international and NGO investigation of alleged violations of human rights, such as the integrity of the person; respect for civil liberties and so on. This study has found out that the records of human rights in Malaysia is relative good compared to her neighbour, the Philippines. Indeed, the experience of Malaysia shows that parliamentary democracy has been well-maintained in that elections have been held regularly ever since independence in 1957. The country enjoys one of the fastest growing economies and is one of the 'Asian small tigers.' Despite the periodic occurrence of political arrests of some opposition leaders, physical force is not exerted

against opponents in contrast to what Ferdinand E. Marcos did in the Philippines. There is also nothing that resembles the violence that frequently erupts in the southern Philippines committed by military government against its people.

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