

Human rights and the Malaysian constitution examined through the lens of the Internal Security Act 1960

Poh-Ling Tan

The context

With its ethnic, cultural and religious diversity, Malaysia is typical of countries in South-East Asia. Although there are 16 major ethnic groups and 48 minor ethnic groups in the country, official statistics list the main people groups are the Malays and indigenous people (65.1%) Chinese (26%) and Indians (7.7%).¹ The country's pluralist society arises both from a slow filtering of people probably from south western China into south east Asia dating from 2500 BC and policies of the British colonisers in the mid-19th century.

Among the factors which sets this country apart from its neighbours is that the ethnic and religious identity of the Malays, its main group, is enshrined in the Constitution. The constitutional definition of this group as persons who profess the religion of Islam, habitually speak the Malay language and conform to Malay custom² is evidence that Islam is considered an integral part of the Malay persona and a questioning of one part is considered an attack on the other, leading to a heightened sensitivity.³

In addition, this main group does not form an overwhelming majority of the population. In spite of the relative balance between groups, communalism is a distinct factor in the nation's political and economic institutions.⁴ The ruling coalition, known as the Alliance in early years and the Barisan Nasional in later years comprises the United Malaysian National Organisation (UMNO), their Chinese and Indian partners, and a number of small (and weak) political parties. Despite UMNO's role as the leader of this ostensibly multi-ethnic coalition, it is frequently at the forefront of communal politicking.⁵ Riots in Kuala Lumpur, the nation's capital city, and elsewhere in 1969 mark a low in communal relations.

Coinciding with other parts of the Muslim world, the 1970s saw the re-assertion of Islamic thought in Malaysia. Islamic institutions such as the Bank Islam and the International Islamic University were set up in 1983. From time to time calls by the opposition Partai Islam (PAS) for the setting of an Islamic state are heard.

Through an analysis of the ISA the paper shows how executive acts have cast a pall over all of the human rights mentioned in the Constitution. This paper refers to the original purpose of the ISA and contrasts this with the characterisation of present detainees. It outlines the legislative scheme and examines the lack of safeguards within the Act. This paper concludes that the ISA is unlikely to be repealed, although this Act is now unacceptable to many groups within Malaysia. Until informed debate takes place to resolve old and new tensions within this pluralist society, the

¹ The statistics are based on the Population and Housing Census 2000, <http://www.statistics.gov.my> (6 November 2001)

² Article 160 Federal Constitution.

³ There are many studies to this effect including that by S Husin Ali. *The Malays: Their Problems and Future*, Heinemann Asia, Kuala Lumpur, 1981 and H Mutalib, *Islam and Ethnicity in Malay Politics*, Singapore, Oxford University Press, 1990.

⁴ See T Gabriel, *Hindu and Muslim Inter-religious Relations in Malaysia*, Studies in Religion and Society Vol 47, Edwin Mellen Press, Lewiston, 2000.

⁵ See Mutalib, 1990 note 2 at 162.

observation of human rights will continue to be superficial as will be the practice of constitutionalism.

Human rights under the Constitution

In many ways Malaysia's constitution was adopted to strike a balance between diverse people groups in the nation. H P Lee, a respected commentator on the Malaysian constitution, writes that negotiations over the federal Constitution in 1957 were concerned 'not so much with the distribution of federal and state powers, but.. the tortuous hammering out of acceptable terms and compromises among the various racial components of the Malaysian society, especially on matters of communal interests.'⁶

The main features of the 1957 Constitution were: a bi-cameral government; a strong central government; Westminster-style separation of powers with the executive being part of the legislature, and an independent judiciary; a monarch elected by a constitutionally protected group of sultans; Islam as the official religion of the country; special privileges for Malays and natives of Sabah and Sarawak; and provision of sweeping emergency powers.

Part 2 of the Constitution protected 'fundamental liberties' including liberty of the person, equality before the law, freedom of movement, freedom of speech, expression, assembly and association, and freedom of religion. All of the liberties mentioned are not guaranteed but are subject not only to express limits within the Constitution but in practice also subject to ordinary laws. More of this later. Liberties which are relatively unrestricted are those against slavery and forced labour, against retrospective criminal laws and repeated trials and the protection of property.

The Federal Constitution has been amended numerous times since 1957, some of which amendments were made to accommodate the inclusion of new States into the federation in 1963. Others were made in response to various political tensions. Constitutional amendments require the vote of not less than two-thirds of the total members of each House of Parliament.⁷ Notwithstanding this seemingly difficult amendment procedure, the Constitution has been amended 41 times from 1957 to 1996 because the political alliance in power since independence has, through its colation of political parties, held two-thirds majority in both Houses.⁸

Numerous regressive measures since 1957

There has been little progress in the area of human rights since 1957. Malaysia has not ratified major international human rights instruments except for the Convention for the Elimination of all forms of Discrimination against Women and the Convention on the Rights of the Child.⁹ Along with China and Singapore, Malaysia has argued that the country's social context should determine the context of its laws.¹⁰ Despite this argument, some 50 non-governmental organisations endorsed a

⁶ HP Lee, *Constitutional Conflicts in Contemporary Malaysia*, Oxford University Press, Kuala Lumpur, 1995, 4.

⁷ Art 159(3) Federal Constitution.

⁸ PL Tan, 'Malaysia' in PL Tan (ed), *Asian Legal Systems: Law, Society and Pluralism in East Asia*, Sydney, Butterworths, 1997, p 271.

⁹ See SS Rachgan and R Tikamdas, 'Human rights Commission of Malaysia Act 1999: A Critique', in R Tikamdas and SS Rachgan (eds), *Human Rights and the National Commission*, Hakam, Kuala Lumpur, 1999, 174 at 185.

¹⁰ Shad S Faruqi, 'Human Rights and the Constitution' in R Tikamda and SS Rachgan (eds), *Human Rights and the National Commission*, Hakam, Kuala Lumpur, 1999, 128 at 131.

Malaysian Human Rights Charter in 1993 which mirrors the UN documents.¹¹

Following the examples of the Philippines, Thai and Indonesian governments, the Malaysian government established a National Commission of Human Rights in 1999. However this was done without public consultation or even knowledge of the contents of the draft bill by NGOs despite their request.¹² The Commission consists of retired politicians, judges, social scientists and professionals and has been criticised for its lack of independence. Its members are appointed by King on recommendation by the Prime Minister, hold office for 2 years, and make their decision by a two-thirds majority.

On the other side of the ledger, there have been many regressive measures. Four particular types of measures stand out. First, there has been an erosion of the principle of the separation of powers and the independence of the judiciary. Decisions of Malaysia's judiciary have been conservative and have supported executive actions until the mid 1980s.¹³ Following judgements which were not favourable to the executive, and on the eve of a decisions that could have seen the elite in UMNO being ousted from their political office within the party, the Lord President of the Supreme Court was dismissed in 1988, followed shortly by the sacking of two Supreme Court judges.¹⁴

Secondly, state laws and administrative action have made inroads into the freedom of religion. Communal and political issues cloud the arguments, but essentially non-Muslims find it difficult to construct new places of worship because of planning restrictions; those who want to leave the Islamic faith face ostracism by the Malay/Muslim community and in some states jail and flogging; and those not of the majority Sunni school of Islam have been detained.¹⁵

Thirdly, there has been a neglect of the rights of indigenous people. Although the conferring of special privileges for Malays and indigenous groups may have been justified on historical grounds,¹⁶ not all indigenous groups in Sarawak receive special

¹¹ See 'Malaysia Charter on Human Rights' December 1994 at <http://www.suaram.org>. Its 20 articles relate to (1) the universality of human rights (2) the indivisibility of economic, social, cultural, civil and political rights (3) women's rights (4) the right to holistic development (5) the right to participatory democracy (6) the right to access to, and redress by international institutions (7) the right to a sustainable environment (8) to right to equality and non-discrimination (9) acknowledgement of basic needs and equal access (10) rights to employment and fair working conditions (11) rights to education, one's own language, culture and religion (12) rights to personal safety (13) rights to freedom of association and assembly (14) rights to freedom of expression and access to information (15) rights of children (16) rights of indigenous people (17) rights of the disabled (18) rights of refugees and foreign workers (19) human rights training and education (20) the limiting of emergency powers and the support of an independent judiciary.

¹² See Lim Kit Siang, 'Will the Human Rights Commission be Irrelevant?' in Tikamdas and Rachagan n 3.

¹³ R Yatim, *Freedom under Executive Power in Malaysia: A Study of Executive Supremacy*, Endowment, Kula Lumpur, 1999, 186 and chapter 4 generally.

¹⁴ There are numerous accounts of this. See for example, R Yatim n 6 at chapter 7, HP Lee n 2 at chapter 3, A Harding, *Law, Government and the Constitution in Malaysia*, Kluwer Law, The Hague, 1996, 142-148,

¹⁵ K Boyle and J Sheen, *Freedom of Religion and Belief: A world report*, Routledge, London and New York, 1997, 218-223, MC Lee, *Freedom of Religion in Malaysia*, Kairos Research Centre, Kuala Lumpur, 1999, PL Tan, 'Prime Suspect or Potential Witness? Paying the price for Religious Freedom: A non-Muslim Perspective' in MA Wu (ed), *Public Law in Contemporary Malaysia*, longman, Kuala Lumpur, 1999.

¹⁶ Article 153 of the Constitution provides for the reservation for these groups of quotas in respect of jobs in the public service, scholarships, educational privileges, permits and licences and other matters.

privileges under the Constitution.¹⁷ Indigenous groups are worst affected by forced resettlement for dam development.¹⁸ Even for those with special status granted to many of the indigenous groups, the struggle for land rights has had limited success.¹⁹

In contrast the *orang asli* (the original people) of peninsular or western Malaysia have not been accorded special privileges but allowed protection or advancement under Article 8(5) of the Constitution. The Department of Orang Asli Affairs was set up in 1954 to look after their welfare and this practice continues under the *Aboriginal Peoples Act* 1954. Policies carried out by the Department have tended towards assimilation of the *orang asli*.²⁰ Although recent Court of Appeal and Federal Court decisions have acknowledged that the *orang asli* have a form of native title to customary land,²¹ they continue to suffer day to day violations of their social, economic and cultural rights.²²

Finally, regressive measures taken since independence mostly stem from legislation which impacts on constitutional liberties. Under emergency provisions of the Constitution, once a state of emergency is proclaimed, the executive may invoke powers to override constitutional provisions. Judicial review of the proclamation of a state of emergency is extremely limited because of amendments to the Constitution in 1981.²³

Five separate emergencies have been declared in the country, one pre-independence, the others post-1957. The first was declared in 1948 at the start of a twelve-year communist insurgency when 11,000 people were killed, 22,000 were injured, and the British High Commissioner assassinated. It was lifted in 1960. The others declared in 1964, 1966, 1969 and 1977 have not been lifted.²⁴ As a result, two parallel legal regimes exist in our country—laws are made under the general regime and also under the emergency regime.

¹⁷ 'Natives' of Sarawak are named in Article 161A (7) of the Constitution and this is said to be an incomplete and inaccurate list: see RK Dentan et al, *Malaysia and the 'Original People': A case study of the impact of development on indigenous peoples*, Allyn and Bacon, 1997 and R Bulan, 'Native Status under the Law' in Wu n 8 at 248, 261.

¹⁸ Coalition of concerned NGOs on Bakun, *Empty Promises, Damned Lives*, Final Report of the Fact Finding Mission 7-14 May 1999, Suaram Komunikasi, Kuala Lumpur, 1999.

¹⁹ See *Jok Jau Evong v Marabong Lumber* [1990] 3 MLJ 427 where the High Court dismissed the claim for native customary title to land because it was filed beyond the statutory time period of 36 months; *Ara binte Aman v superintendent of Land and Mines, 2nd Division* [1974] 1 MLJ 208 where the High Court dismissed a claim of customary rights over Government reserve land; and *Nor Anak Nyawai v Borneo Pulp Plantation Sdn Bhd* unreported Kuching High Court decision, 12 May 2001, Justice Datuk Ian HC Chin (under appeal) where the court allowed some form of native title to land.

²⁰ See RK Dentan, 'The Persistence of Received Truth: How the Malaysia Ruling Class constructs Orang Asli', in RL Winzeler (ed) *Indigenous Peoples and the State: Politics, Land, and Ethnicity in the Malayan Peninsula and Borneo*, Yale University South East Asian Studies, New Haven, 1997 and Hooker, 'case Note: Native title in Malaysia: Adong's Case' in 2000 *Australian Journal of Asian Law*.

²¹ *Adong bin Kuwau v Kerajaan Negeri Johor* [1997] 1 MLJ (High Court); [1998] 2 MLJ 158 (Court of Appeal).

²² Colin Nicholas, *The Orang Asli and the Contest for Resources: Indigenous Politics, Development and Identity in Peninsular Malaysia*, International working Group for Indigenous Affairs, Copenhagen, 2000 and Colin Nicholas, 'Suhakam and the Indigenous People's Question', <http://www.malaysia.net/people/aliran/monthly/2001/4i.html> (20 November 2001).

²³ See K Tan and LA Thio, *Constitutional Law in Malaysia and Singapore*, 2 ed, Butterworths Asia, Singapore, 1997, 665.

²⁴ The 1964 emergency was over the Indonesian confrontation; the 1966 emergency was limited to Sarawak for events following the dismissal of the Chief Minister; the 1969 emergency related to racial riots and the 1977 emergency was limited to Kelantan for dealing with political crisis. For details see CV Das, *Government & Crisis Powers: A Study of the Use of Emergency Powers under the Malaysian Constitution and parts of the Commonwealth*, Malaysian Current Law Journal, Kuala Lumpur, 1996.

Since 1960 there has been an increase of laws made under both regimes which abrogate constitutional liberties. Numerous examples exist. They include a requirement for annual licences under the *Printing Presses and Publications Act* 1948 (amended in 1988) that may be revoked at any time. This power was exercised in 1987 when licences of three national newspapers were revoked. Another example is the *Sedition Act* 1948. Amendments in 1970 were made under the executive's emergency powers making it an offence to question certain 'sensitive' matters namely Malay privileges, citizenship, the national language and sovereignty of the rulers.²⁵

The impact of the ISA on human rights

The most insidious example of the executive's power is the *Internal Security Act* 1960 (ISA). It is one of the three major preventive detention laws in force and by far the most detrimental to political dissent and public debate.²⁶ Much has been written about the ISA, almost all of which is critical. This paper does not discuss the evolution of the ISA neither recount issues which have been raised except in a general manner. A number of cases now before the courts may allow fresh analysis.^{27,28}

The purpose of this paper is to outline how the ISA stifles public debate; and to emphasise that unless debate occurs regarding social and political issues, a robust and mature view of constitutionalism will not result. The ISA is thus a key piece of the complicated jigsaw comprising human rights and the Constitution. Its critical role is well recognised by Malaysia NGOs which have made it the target of a public education campaign.²⁹

The ISA's immediate predecessor was emergency regulations of 1948.³⁰ After that emergency was lifted, the ISA was introduced in 1960. Designed to be used solely against the communists, the Prime Minister at that time, Tunku Abdul Rahman, assured Parliament and the nation that the immense powers given to the government under the ISA would never be used to stifle legitimate opposition and silence lawful dissent.³¹

Bearing in mind that it is difficult to get accurate numbers and details of detainees, a characterisation of detainees as at 30/11/2001 shows that the ISA was used on a variety of grounds. They range from alleged involvement with illegal immigration (21 persons); arms heist from the military (15 persons); counterfeiting

²⁵ Sections 2(1)f and 3(2) of the Sedition Act 1948 were amended vide *Emergency (Essential Powers) Ordinance* 35 of 1970. These provisions were later incorporated into Art 63 of the Federal Constitution

²⁶ The other two are the Emergency (Public Order and Prevention of Crime) Ordinance 1969 and the Dangerous Drugs (Special Preventative Measures) Act 1985. The pattern of the three acts are similar altho the measures have different target groups. For details see R Yatim,

²⁷ Although the grounds for review are narrow, on November 17, 2001 the High Court ruled the detention under the ISA of a leading opposition politician in 1988 was unconstitutional. Justice Abdul Hamid Said said that Rule 3 Internal Security (Advisory Board Procedure) Rules 1972 meant that the Advisory Board should have heard the representations of the detained person by March 15, 1988 but did so only on August 2, 1988. The judge ordered costs and damages against the government. See <http://thestar.com.my/courts/> (November 17, 2001).

²⁹ See the website of the Abolish ISA Movement http://www.suaram.org/isa/info_memorandum.html (22 November 2001).

³⁰ Preventive detention powers were used by British colonisers from 1914. R Yatim, 250.

³¹ See the website of the Abolish ISA Movement <http://www.suaram.org/isa> (22 November 2001); see also Rais Yatim p 256 .

(eight persons), ‘militant’ support of reform activities and of Anwar Ibrahim former Deputy Prime Minister (five persons); and activities linked to terrorism (16 persons who are members of an Islamic political party).

Legislative scheme of the ISA

1. Arrest by police under s 73 for interrogation

The considerable powers of arrest without warrant mean that almost any person involved in public debate has reason to fear the ISA. Any police officer may, provided that he or she has reason to believe that a person may be prevented from acting in a manner prejudicial to the security, or the maintenance of essential services, or the economic life of Malaysia or any part of the country, carry out an arrest without a warrant. If the arrest is subsequently authorised by an officer with the rank of Deputy Superintendent, and reported to the Inspector General of Police, then the person may be detained for 60 days without a detention order being issued by the Minister under s 8.

In this period it is not uncommon for the person to be refused access to lawyers or visits by family. Many personal accounts tell of prisoners being interrogated for long periods, sometimes while stripped naked and humiliated, threatened with physical harm, or asked to shoot themselves, or told that if they did not confess drugs or firearms would be planted in their homes or cars.³²

2. Detention order by Minister under s 8

The Minister for Home Affairs may issue a detention order for a period up to two years. In addition the Minister may direct where the person is detained, and make rules for the discipline and treatment of such persons. In the case of Syed Husin Ali, an academic and member of an opposition party (PRSM) who was detained for six years since 1994, for at least occasions when he was moved his wife did not know where he was held.³³

The detention order may be renewed indefinitely. A trade unionist was detained in 1969 and held for nine years. Detainees are often placed in solitary confinement for periods up to five years.³⁴

3. Restriction order under s 8(5)

Alternatively the Minister instead of issuing detention may order that the person be restricted in terms of

- activities, place or residence and employment
- times of personal curfew
- requiring the person to report to authorities
- political activities
- travel either within or outside of Malaysia.

A bond may be required for compliance with the restrictions. The order may be issued for up to two years and again indefinitely extended for two years at a time.

4. Death penalty for firearms offences under s 57

Persons who have in their possession unlicensed firearms or ammunition or

³² See affidavits filed by detainees in support of their applications of *Habeas corpus* in www.suaram.org/

³³ S Husin Ali, *Two Faces (Detention without Trial)*, Insan, Kuala Lumpur, 1996, 22, 121.

³⁴ See statement of Koh Swee Yong at <http://www.suaram.org/isa/statement20011025.htm> (8 January 2002).

explosives shall be punishable by death.

5. Miscellaneous controls on printing and publication under s 22.

Publications may be banned for several reasons including if the Minister views them as prejudicial to national interest, or that they may promote feelings of hostility between different races or classes of the population.

Lack of safeguards under the ISA

The ISA allows detainees a few rights relating mainly to information as to grounds of detention and the allegations of fact on which detention orders are based.³⁵

Besides this, one of the initial safeguards to the arbitrary exercise of power was the review of all detention orders by a Special Advisory Board within three months of the order.³⁶ This power was removed in 1960. The present provisions allow for an indefinite time of detention to elapse before a review by an Advisory Board. Further, the Board now only has the power to make recommendations to the Yang di-Pertuan Agung, the head of state, who is constitutionally obliged to act on the advice of the Cabinet.

More recently, amendments to the ISA in 1989 have removed even the smallest of safeguards to the Act. S 8B(1) reads:

There shall be no judicial review in any court of, and no court shall have or exercise any jurisdiction in respect of any act done or decision made by the Yang di-Pertuan Agong or the Minister in the exercise of their discretionary power in accordance with this Act, save in regard to any question on compliance with *any procedural requirement* (emphasis added) in this Act governing such act or decision.

This amendment goes further than the already conservative stance taken by the Malaysian courts in hearing applications for *habeas corpus*. For example the Federal Court in *Karam Singh v Menteri Hal Ehwal Dalam Negeri, Malaysia* [1969] 2 MLJ 129 restricted their review of the detention order to procedural matters and adopted a subjective approach, that is, that the Minister had complete discretion to his subjective satisfaction whether the allegations of fact were sufficient grounds for detention.³⁷

Apart from narrow procedural arguments, the courts have recognised that Article 11 of the Constitution places limits on the ISA. The article provides for freedom to profess and practice one's own religion subject to State laws which disallow proselytisation of Muslims. In *Minister for Home Affairs v Jamaluddin bin Othman* [1989] 1 MLJ 418 the detainee was born a Malay Muslim but had converted to Christianity about 10 years before his arrest and detention under the ISA. Allegations made against Jamaluddin in his detention order related to his religious activities. Both in the High Court and on appeal to the Supreme Court, it was ruled that the detainee's constitutional right to practice his religion could not be restricted by the ISA. The judgements confirmed that the power given to the Minister under the ISA was wide but had to be exercised within the scope provided by Article 149 of the

³⁵ Art 151(1)(1)(a) Federal Constitution and ISA s 11.

³⁶ Article 151(1)(b) Federal Constitution.

³⁷ For a concise account of the subjective test see K Tan, 'Recent Developments in the Law and Practice of Preventive Detention' in MA Wu (ed) note... and for a more detailed account see K Tan and LA Thio Note 591-654, and Rais Yatim note .. p 262-295.

Constitution.³⁸

Relativism rejected and pluralism accepted by Malaysians

The arguments in support of the ISA in essence rest on those of cultural relativism. Framed in terms of 'Asian values', the country's leaders have argued that in the country's social context, it is more important to preserve social harmony and collective welfare than to uphold a 'western' notion of human rights which focuses on an individual's right against the state.³⁹ The writer accepts that much legal (and human rights) analysis has been Eurocentric and has sought to impose a set of values on societies without acknowledging that the law is value-laden. However, many Malaysian NGOs have accepted the universality of the human rights discourse, and specifically called for the ratification and effective implementation of UN human rights documents. In doing so they have rejected the foundation of cultural relativism that the ISA rests on.

One of the results of the severe restrictions on human rights is the relative lack of ethnic unrest in the country. Although there are eruptions of violence, as recently as 2001 in Kuala Lumpur between Indians and Malays, these are fairly quickly contained. But it is not easy to erase the memory of communal riots of the 1960s from the public minds.⁴⁰

A complex and evolving pluralist or mixed legal system exists in Malaysia with differentiations between peninsular Malaysia, Sabah and Sarawak because of historical and social factors. Indigenous law is more observed in the last-mentioned states. Throughout the country Islamic law plays a large role in specified areas (mainly of a personal nature such as marriage, divorce and the practice of religion). In relation to these areas, Chinese and Indian customary laws were recognised until 1976 when they were abolished after a report of a Royal Commission on the matter and substituted for 'western' concepts of personal law.⁴¹

The open debate which accompanied the change in customary law of the minority groups in the 1970s has not been carried through in relation to other matters. Through the dominant political alliance, the Barisan Nasional, which is avowedly multi-ethnic, compromises between people and interest groups are made behind closed doors often with limited policy debate. For example, Islamisation of the country's legal system is one such concept which has been raised from time to time, both by PAS, an Islamic opposition party, and by UMNO, the dominant party in the ruling coalition. In the most recent wave of arrests under the ISA (from 1998-2001) PAS members have featured prominently.

Effective practice of pluralism has also by-passed the *orang asli*, who in political terms are the country's weakest group. Until landmark decisions in 1998, their legal claims to native rights to land were denied and even now receive limited recognition. Their administrative protectors have carried out policies designed for

³⁸ The list of situations in which Article 149 may be used is long and the emergency powers extremely wide. For a concise but illuminating discussion of Article 149 see A Harding *Law, Government and the Constitution in Malaysia*, Kluwer, London 1996. See C Das at note ... for a full discussion of emergency powers.

³⁹ See discussion in Shad S Faruq, 'Human rights and the Constitution', in Rachgan and Tikamdas (eds) note 6.

⁴⁰ For a recent and lucid analysis of plural politics see D Seah, "Malaysia: Dilemmas of Integration" in MO'Neill and D Austin (eds), *Democracy and Cultural Diversity*, Oxford, Oxford University Press with the Hansard Society for Parliamentary Government, 2000.

⁴¹ See PL Tan, 'Malaysia' in PL Tan, *Asian Legal systems: Law, society and pluralism in East Asia*, Sydney, Butterworths, 1997, p 288.

assimilation not integration. Several Malaysian NGOs have taken up the cause of indigenous people⁴² but have been hampered by the use of the ISA against protestors of dam and logging projects which affect the land rights and livelihood of tribal people.⁴³

Tensions between groups may be dealt with in different ways.⁴⁴ One option may be a strict separation of religion and state, and the country's constitution providing a neutral framework overseen by the courts. This is not the case in Malaysia. The model adopted in Malaysia tends towards compromise by trading between political elites, with resulting relative ethnic harmony which has come with a price. It appears that the control measures under this model are no longer acceptable to many groups within the country who have adopted abolishing the ISA as a rallying point. D Seah in his assessment of Malaysia's political pluralism states that 'ironically, such measures may indeed bring communities together if those who are aggrieved jointly challenge the authorities by collaboration across the ethnic-racial boundary'.⁴⁵

Conclusion

The ISA has been used against trade unionists, members of the Barisan Nasional government who have fallen from favour, those in opposition politics, conservationists, religious groups, etc. Because the grounds of review of the power of detention are extremely limited, few have successfully challenged that the detentions have been made other than for reasons of national security.

Even if the arrests and detentions are made on the grounds of national security, the Bar Council, the association of Malaysia lawyers and one of the loudest critics of the ISA, has for years said that those detained deserve to be brought to trial. Numerous non-government organisations have called for removal of the Act. Within the government, from time to time there have also been calls for the removal of the ISA.⁴⁶

Cultural, social and political tensions are not able to be debated because of laws such as the ISA. Until ideas are able to be freely debated and tensions between group resolved by informed negotiation, the state of human rights in Malaysia is likely to continue to deteriorate. To achieve informed debate, the ISA should not be allowed to remain on the statute books in its present form.

⁴² The NGOs include Sahabat alam Malaysia (Friends of the Earth), Consumers Association of Penang, International Rivers Network, Save our Sungai Selangor, Coalition for Orang Asli Concerns (COAC): see more details on http://www.oneworld.org/ips2/may99/04_31_003.htm (20 November 2001).

⁴³ This occurred in a wave of ISA arrests in October 1987 codenamed 'Operation Lalang': see PL Tan above at p 297 footnote 204.

⁴⁴ See discussion by R Bellamy, 'Dealing with difference: four models of pluralist politics' in O'Neill and Austin above.

⁴⁵ Seah above, at p 195.

⁴⁶ Rais Yatim, a former Minister in the Mahathir government, when in temporary retirement from active politics in 1995 unequivocally called for the revocation of the ISA, p 296.