

The Politics of Democracy in Malaysia

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This article¹ provides a review of the condition of Malaysian democracy after 20 years of Prime Minister Datuk Seri Dr. Mahathir Mohamad's rule. To this end it looks into issues that were identified as political causes of the Asian crisis in the years after 1997. These are in particular: weak democratic institutions and electoral systems, an executive that dominates parliament, the judiciary, and the media. Considering the Malaysian constitutional background and evolving political trends in recent years of the Mahathir era, the article finds these issues basically unresolved. The country thus seems unprepared for future political challenges and crisis scenarios.

In Southeast Asia democracy and the rule of law emerge with many stakeholders, who increasingly request democratic institutions to protect their fundamental rights and liberties. In 2001 the Indonesian legislative managed to impeach president Wahid and established his deputy Megawati Soekarnoputri as the new president. During the same year, the "People Power" of the Philippines won sufficient support for the impeachment of president Estrada. Meanwhile, Thailand struggles to implement rules and institutions that were stipulated in its new democratic constitution.²

Thinking about the situation in Malaysia makes one realize that only news on the trial against former Deputy Prime Minister Anwar Ibrahim and recent arrests of political opposition under the Internal Security Act (ISA) have appeared in the international press. This article looks into current Malaysian politics vis-à-vis the background of the Federal Constitution and the Malaysian democratic institutions. It examines political processes and democratic rights in Malaysia in order to assess the stability and sustainability of the political system. The bulk of literature on the Asian financial crisis in the late 1990s concentrated on its economic causes. Now there is an increasing concern with the relevant political causes leading to the inherent instability of Southeast Asian societies. Rudolph identified in particular: corruption, collusion and nepotism; non-democratic systems of government and weak democratic institutions; inadequate electoral systems; a lack of separation of powers; manipulation and dependency of the judiciary; and the role of civil society and the media.³ This article looks into some of these issues in order to assess the political stabi-

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² For an overview of processes of democratic transition in Southeast Asia until the 1990s, see: Sachsenröder, Wolfgang, Ulrike E. Frings (eds.): *Political Party Systems and Democratic Development in East and Southeast Asia*. Volume I: Southeast Asia, Aldershot 1998; and Johannsen, Uwe, James Gomez (eds.): *Democratic Transitions in Asia*, Singapore 2001.

³ Rudolph, Jürgen: "The Political Causes of the Asian Crisis", in: Johannsen, Uwe, Jürgen Rudolph and James Gomez: *The Political Dimension of the Asian Crisis*, Singapore 2000, p.13-93.

lity of the Malaysian society and the preparedness of Malaysian democracy to fend off traumatic developments of the kind experienced in the last Asian crisis.

The present political situation in Malaysia is unavoidably linked to Prime Minister Datuk Seri Dr. Mahathir Mohamad who is primarily responsible for the outstanding development of the Malaysian economy. In 2001, the Prime Minister at the age of 75 celebrated his 20th anniversary in power. After the removal of other icons of authoritarian rule in Southeast Asia, Dr. Mahathir is the longest standing ruler in the region. His name is associated with images of an outspoken critic of Western hegemony and an advocate of the interests of the developing world.

This article sets out to look into the politics of democracy in Malaysia. It approaches the task by looking at the political issues behind the last crisis in Southeast Asian societies, i.e. the system of government and democratic institutions, the electoral system; the separation of powers, the judiciary, and the role of the media. The following chapters of this article will examine the respective importance of these issues within the Malaysian context by looking at the Federal Constitution and the political institutions in Malaysia as well as the political trends in recent years.

Democratic system of government and democratic institutions

Throughout the last decades, Malaysians have enjoyed regular elections and political stability. However, a full-fledged democracy requires fulfilment of three essential conditions: extensive political competition, a high level of political participation as well as guaranteed civil and political liberties.⁴ The Malaysian paradox of "semi-authoritarian"⁵ rule in a participatory political system has therefore often been labelled as "semi-democratic"⁶ or "quasi democratic".⁷ Jesudason convincingly described Malaysia as a "syncretic state", which "operates at a multi-dimensional level, mixing coercive elements with electoral and democratic procedures; it propagates religion in society as it pursues secular economic goals; it engages in ethnic mobilisation while inculcating national feelings; and it pursues a combination of economic practices ranging from liberal capitalism, state economic intervention, to rentier arrangements."⁸

The ambiguous operations of the government are, to a large extent, caused by its attempt to secure social stability in the multi-ethnic Malaysian society of about 23 million people, which in July 2000 consisted of 65% so-called "Bumiputeras" (i.e. mostly ethnic Malay as well as Ibans, Kadazans, Melanaus and other indigenous people), 26% Chinese, 8% Indians and 1% other ethnic groups. Ever since the racial

⁴ Diamond, Larry, Juan J. Linz, Seymour Martin Lipset (eds.): *Democracy in Developing Countries*, Volume Three: Asia, Boulder 1989, preface p.xvi.

⁵ Crouch, Harold: "Malaysia: Neither Authoritarian nor Democratic", in: Hewison, Kevin, Richard Robison, Garry Rodan (eds.): *Southeast Asia in the 1990s: Authoritarianism, Democracy and Capitalism*, Sydney 1993.

⁶ Diamond, Linz, Lipset (eds.) 1989, preface p.xvii.

⁷ Zakaria, Haji Ahmad: "Malaysia: Quasi Democracy in a Divided Society", in: Diamond, Linz, Lipset (eds.) 1989, p.347-381.

⁸ Jesudason, James V.: "The syncretic state and the structuring of oppositional politics in Malaysia", in: Rodan, Garry (ed.): *Political Opposition in Industrialising Asia*, London 1996, p.128-160.

riots of 13 May 1969, when, according to official figures, some 196 people died, 9,143 were arrested and 753 buildings were damaged or destroyed by fire,⁹ government action mainly aimed at reducing tension and avoiding ethnic conflicts. Its political legitimacy¹⁰ draws from attaining this goal rather than from the compliance with democratic rules. Case draws a rather optimistic conclusion, stating that the government impressively managed to uphold political stability through its acceptance by the Malay majority and ethnic support from the Chinese and Indians.¹¹

However, there is evidence that his assessment may have been overly enthusiastic and that there is still widespread resentment against privileges granted to the Bumiputera in an affirmative action policy of the government. The Malaysian Chinese Organizations Election Appeals Committee "Suqiu" with more than 2,000 signatory bodies, submitted a 17-point appeal to the government before the November 1999 general elections. While the group did not question Article 153 of the Federal Constitution which stipulates the special position of Malays and natives of Sabah and Sarawak, they criticised special rights and privileges as well as the bumiputera/non-bumiputera distinction that is not foreseen in the constitution. At the time, their appeals did not cause any major reaction by the Prime Minister, because it was obvious that Chinese voters were going to be the kingmakers during those elections. A massive outrage by the Prime Minister followed only much later, on National Day, 31 August 2000, when Mahathir tried to mobilize the support of the Malays. He unleashed an angry attack and made the Federation of Peninsular Malay Students (GPMS) threaten mass demonstrations against Suqiu and indirectly, the Chinese. The main result was that Suqiu backed down and put aside seven most controversial sub-points of its appeals, the ruling coalition lost the support of Chinese voters during the subsequent by-elections in Lunas, and finally Malaysians of all ethnic backgrounds were angry about the move that obviously showed little respect for their intelligence.

Another evidence of unresolved ethnic tensions are the racial clashes in Kampung Medan between 8 and 12 March 2001. Six people, predominantly Indians, died and many more were injured in riots that followed the armed gang clashes and subsequent rumours of attacks on Malays. A group of 51 non-governmental organisations immediately drafted a memorandum, which called for the establishment of a "Race Relations Commission" that has "the power to investigate overt and institutional racism, and to recommend possible remedies".¹² Dr. Mahathir called the clashes "isolated incidents" and threatened the press and opposition parties with charges under the Sedition Act,¹³ if they were to publish other information.

⁹ Brown, David: *The State and Ethnic Politics in Southeast Asia*, London 1994, p.230.

¹⁰ Alagappa classified it as a "goal-rational legitimacy", which he adds to Max Weber's three pure types of legitimate rule. Alagappa, Muthia: "The Bases of Legitimacy", in: Alagappa, Muthia (ed.): *Political Legitimacy in Southeast Asia. The Quest for Moral Authority*, Stanford 1995, p.31-53.

¹¹ Case, William: "Malaysia. Aspects and Audiences of Legitimacy", in: Alagappa 1995, p.69-107.

¹² Group of Concerned Citizens (*mimeo*), Memorandum to the Prime Minister on the recent socio-economic centred ethnic clashes in Kampung Medan and its surrounding areas off Old Klang Road, Selangor, English Version, 20 March 2001.

¹³ The Sedition Act No. 14 of 1948 has been published in a compilation of Malaysian press laws, in: Razak, Abdul (ed.): *Press Laws and Systems in ASEAN States*, Jakarta 1985, p.307-314.

In general, the government increasingly uses political pressure and repressive acts in order to stop ethnic and political discontent from being voiced in the public sphere. While the "syncretic state" previously managed to merge seemingly incompatible policies in order to preserve political stability, the government in the late-Mahathir era is merely stamping out occasional bush fires. Multiracial politics were supposed to guard national unity and to create a Malaysian national culture based on the traditional culture of Malays and other indigenous people.¹⁴ However, they turned out only to camouflage the real problems of race relations and national integration in Malaysia.¹⁵ The detention of former Deputy Prime Minister Anwar Ibrahim and the subsequent sentence of 15 years for charges of corruption, abuse of power, and sexual misconduct made the public lose its faith in the integrity of the government's aims.¹⁶ Meanwhile, a growing number of detentions under the Internal Security Act (ISA) and other repressive laws severely threaten political competition, participation, and civil and political liberties. In the final analysis, growing public concerns about the government's compliance with democratic rules are undermining the legitimacy of the regime.¹⁷

Even Malays increasingly resent racial policies that have granted them a comparative advantage over other ethnic groups but meanwhile distorted markets, jeopardised efficiency, lowered competitiveness, and ultimately discredited successful Malays as mere beneficiaries of the affirmative action policies.¹⁸ The Prime Minister himself has repeatedly criticised the passiveness of the Malay community and their lacking drive for academic and entrepreneurial success. One of the last occasions for this critique came in May 2001, when the education ministry reported 7,000 unfilled places in public universities, because there were not enough students to make up the 55% quota reserved for ethnic Malays and other Bumiputeras. The universities had decided to leave these places vacant, instead of opening them for applicants of other ethnic groups. Subsequently, the Prime Minister threatened to have these quotas abolished.¹⁹ In his speech during the opening of the general assembly of UMNO on 21 June 2001 he openly criticised Malays for being lazy, greedy, and not worth the privileges of the Bumiputera policy.²⁰

Besides growing Malay concerns about the Bumiputera policy, however, the more predominant discourse among Malay scholars and politicians concentrates on Islamisation as an attempt to restore pure and pristine Islam and to make it a part of

¹⁴ Hashim, Wan: *Race Relations in Malaysia*, Petaling Jaya 1983, p.87/88.

¹⁵ Oo, Yu Hock: *Ethnic Chameleon. Multiracial Politics in Malaysia*, Petaling Jaya 1991.

¹⁶ A survey of the Internet-newspaper www.Malaysiakini.com in 2001 had all together 16,022 votes for the following classifications of Dr. Mahathir: father of modern Malaysia 2100, Anwar Ibrahim persecutor 6936, Third World statesman 311, a good dictator 4072, Vision 2020 518, Defender of Malay Rights 255, Others 1830.

¹⁷ The government provided a valve for these concerns with establishing the Human Rights Commission of Malaysia (SUHAKAM) in April 2000. Its first annual report was handed over to the parliament in April 2001. It is available under www.humanrights.com.my.

¹⁸ Bakri Musa, M.: *The Malay Dilemma Revisited. Race Dynamics in Modern Malaysia*, Gilroy 1999.

¹⁹ Chong, S.H.: "Quota system doesn't add up", in: *Bangkok Post*, 15 May 2001.

²⁰ A survey of www.Malaysiakini.com shows the little impact of the words of the Prime Minister. While only very few of the readers regarded his speech as "inspirational", "commendable", "oay" or "disappointing", 10301 out of 12915 votes were given to characterise it as "useless".

the reassertion of a Muslim identity.²¹ It focuses on an increased Islamisation of the Malaysian state as an attempt to reinstate moral integrity in the newly industrialized Muslim society by resolving the contradictions between Islamic beliefs and a growing modernity of lifestyle and material culture.²²

Since the 1970s the Malaysian society has been influenced by a global Islamic upsurge²³ that appeared to solve problems of alienation and social dislocation by providing a new sense of individual identity and communal solidarity.²⁴ Originally, government's attempts to foster Islamic beliefs were meant to spiritually balance the social implications of economic development and modernisation. However, the discussion on Islamisation has reached a degree that goes far beyond the intentions of the government.²⁵ Intra-ethnic income differences and growing cultural Westernisation during the rapid economic development of the last decades alienated many rural Malays. They perceived the government to be hostile to Malay interests.²⁶ The ill-perceived accusations against Anwar Ibrahim further aggravated Malay discontent with the government and substantially increased the votes for the oppositional Islamic Party (PAS)²⁷ in the 1999 general elections. While Yousif still points to Malaysia as an example for religious tolerance in a Muslim country with a high ethnic and religious diversity,²⁸ PAS as well as rather aggressive groups of Malay nationalists managed to gain support for their less tolerant stance towards non-Muslims, women, and unorthodox Islamic scholars.

The quest for good governance and a "creeping radicalism"²⁹ establish the two sides of the "Janus face of Malaysian Islamisation",³⁰ which has a crucial impact on further democratic development in Malaysia.

²¹ Muzaffar, Chandra: "Islamisation of State and Society: Some Further Critical Remarks", in: Othman, Norani (ed.): *Shari'a Law and the Modern Nation State*, Kuala Lumpur 1994, p.113-122.

²² Othman, Norani: "The Sociopolitical Dimensions of Islamisation in Malaysia: A Cultural Accommodation of Social Change?", in: Othman (ed.) 1994, p.123-143.

²³ The University of Malaya was the birthplace of Islamic revivalism in Malaysia after the riots of 1969. Anwar, Zainah: *Islamic Revivalism in Malaysia. Dakwah Among the Students*, Petaling Jaya 1987.

²⁴ Brown 1994, p.249. Academic analysis has long regarded ethnicity as a derivative manifestation of class and ethnic consciousness as a distorted ideological manifestation of class consciousness (Brown 1994, p.207). However, as Derichs has rightfully pointed out, the theoretical interpretation of Malaysian politics by the parameters of ethnicity *cum* class is losing ground. (Derichs, Claudia: *Looking for Clues. Malaysian Suggestions for Political Change*, Gerhard-Mercator-University, Duisburg, Discourses on Political Reform and Democratization in East and Southeast Asia in the Light of New Processes of Regional Community Building, Project Discussion Paper No.10, February 2001.

²⁵ Derichs, Claudia: *Die janusköpfige Islamisierung Malaysias*, Gerhard-Mercator-University, Duisburg, Discourses on Political Reform and Democratization in East and Southeast Asia in the Light of New Processes of Regional Community Building, Project Discussion Paper No.4, October 2000, p.5.

²⁶ Gomez, Edmund Terence, K.S. Jomo: *Malaysia's Political Economy. Politics, Patronage and Profits*, updated second edition, Cambridge 1999, p.5.

²⁷ For a critical review of the development of PAS see: Mohamed, Alias: *Malaysia's Islamic Opposition. Past, Present and Future*, Kuala Lumpur 1991.

²⁸ Yousif, Ahmad F.: *Religious Freedom, Minorities and Islam: An Inquiry into the Malaysian Experience*, Sungai Tua 1998.

²⁹ www.Asiaweek.com, January 26, 2001.

³⁰ Derichs 2000, p.19.

The electoral system

Malaysia is a constitutional monarchy. The "Yang di-Pertuan Agong" as king and head of state has the obligation to act in accordance with government advice. He also presides over a chamber of nine Malay sultans and four governors, the "Conference of Rulers", which has discretionary powers on matters pertaining to Malay culture and tradition. Malaysia's bicameral parliament consists of the Senate (Dewan Negara) and the House of Representatives (Dewan Rakyat). 29 senators of the Dewan Negara are appointed by the State Assemblies, while the king appoints the remaining 40 senators. The federal parliament presently holds 193 members, which are elected from territorially delimited single-member constituencies with plurality voting. Federal elections are held at intervals no longer than five years. Each of the states has a unicameral State Legislative Assembly, whose members are elected at the same time³¹ and in a similar manner to the federal elections.³² The local councils are not elected by popular vote.

The plurality-majority electoral system, which grants parliamentary seats to those candidates who simply win most votes in their constituencies, is a legacy of British colonial rule in Malaysia. The advantages of the so-called "First Past the Post" (FPTP) system lie in its simplicity and its tendency to support the link between constituencies and their individual representatives in parliament. It has the capacity to ease the administration of elections and to enhance political stability. It thus gains special importance in nascent democracies. Furthermore, it can help in bridging diverse interests of different societal groups because within this majority system, political parties tend to either have a broad-based membership or they will consider seeking broad political coalitions. The FPTP system in Malaysia has led to a broad governing coalition (BN, Barisan Nasional, "National Front") of 13 parties representing various Malaysian ethnicities. Likewise, the system presents an incentive to the opposition parties to follow the example of the ruling coalition and merge in a comparable coalition of oppositionists. The two Malay-based opposition parties Keadilan (Parti keADILan Nasional, "National Justice Party") and PRM (Parti Rakyat Malaysia, "Malaysian People's Party") intended to merge in mid-2001. Furthermore, a group of opposition party youth members and academics drafted a working paper in 2001 calling for the loose coalition of opposition parties (BA, Barisan Alternatif, "Alternative Front") to register as an official party coalition. This move was intended to prepare for the next general elections. However, Malaysian law requires a minimum of seven political parties to register as a coalition. The BA, which currently comprises of Keadilan, PAS and PRM (the Democratic Action Party, DAP, pulled out in late 2001), would need to seek support of four more parties to qualify for this move.³³

Meanwhile, FPTP has been criticized for some crucial disadvantages: Minorities are excluded from fair representation; women are less represented in FPTP systems than

³¹ Elections for State Assemblies of Sabah and Sarawak in East Malaysia are not held together with federal elections.

³² For an overview of the political system in Malaysia, see: Gomez, Edmund Terence: "Malaysia", in: Sachsenröder, Frings (eds.) 1998, p.226-288.

³³ Tong, Yee Siong: "Paper calls for BA to register as a party", www.Malaysiakini.com, June 6, 2001.

in democracies with proportional representation; it encourages the development of parties which are based on clans and ethnic or regional ties; it tends to create regions where one party holds almost all parliamentary seats; a large number of votes are "wasted"; it is unresponsive to changes in public opinion; and it invites arbitrary manipulation of electoral boundaries.³⁴

A "fair" representation implies that a party does get a percentage of parliamentary seats that equals its percentage of votes. In Malaysia, however, there have been significant discrepancies since independence. Fig.1 shows the relationship of percentages of seats and votes gained in the last three federal elections in 1990, 1995 and 1999. While the ruling coalition BN won 53.4%, 65.1% and 56.5% of votes in those year's elections, it gained 70.6%, 84.4% and 76.7% of seats in the federal parliament "Dewan Rakyat" respectively. In contrast, all the main opposition parties (PAS, DAP and Semangat '46, later Keadilan³⁵) together gained 39.4%, 29.6% and 39.2% of the votes, but took only 19.4%, 11.5% and 21.8% of seats in parliament.

Elections in Malaysia are foreseen in articles 113-120 of the Federal Constitution and are explained in a set of specific election laws.³⁶ The Malaysian government has thereby created the legal framework for the technical conduct of elections.³⁷ However, election results are severely influenced by some repressive acts that do hamper political participation efforts, especially those of opposition members. If their political opinions are regarded as threats to social peace and national security, they are punishable under a range of acts, like the Internal Security Act, the Sedition Act, and the Official Secrets Act. The Printing Presses and Publication Act, the Police Act as well as the University and Colleges Act are further impediments to free and open political debate. In their observation mission report about the 1999 elections, the Asian Network for Free Elections (ANFREL) found all these acts responsible for "creating a climate of fear in which the conduct of free and fair elections has been made virtually impossible".³⁸

³⁴ The summary of advantages and disadvantages of the First Past the Post system was taken from International Institute for Democracy and Electoral Assistance: *The International IDEA Handbook of Electoral System Design*, second edition, Stockholm 1997, p.27-31.

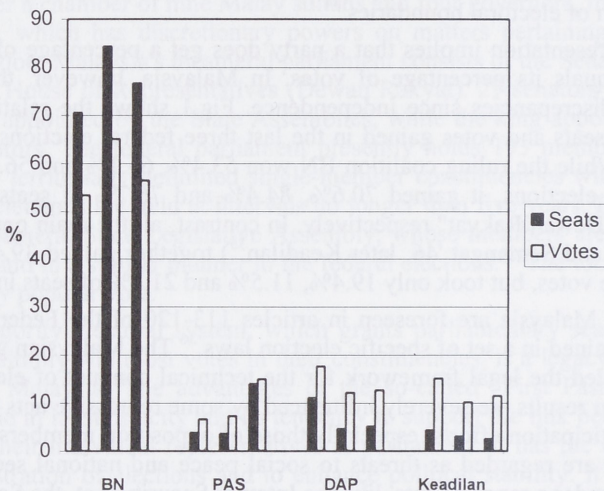
³⁵ Keadilan was founded only before the 1999 elections. Election results of 1990 and 1995 refer to the Semangat '46 party, a similar dissident group of ex-UMNO members, which was dissolved in 1996.

³⁶ Federal Constitution (as at 25th April 1993): *International Law Book Series*, Kuala Lumpur 1993; Election Laws (as at 5th January 1994): *International Law Book Series*, Kuala Lumpur 1994.

³⁷ An overview is provided by Rahman, A. Rashid: *The Conduct of Elections in Malaysia*, Kuala Lumpur 1994.

³⁸ Asian Network for Free Elections: *Malaysia. Report of the 1999 Election Observation Mission 25 November – 1 December*, Bangkok 2000, p.20.

Fig.1: Seats and votes in Malaysian federal elections 1990, 1995, 1999 (%)



Besides these fundamental concerns about the political culture in Malaysia, there appears to be several flaws in the conduct of Malaysian elections that point to structural problems of the electoral system. These flaws might be grouped into three areas – flaws that appear before, during, and after elections.

The main concern of all observers has been manipulations of the electoral boundaries in favour of the ruling coalition. The 1957 constitution still allowed for a maximum disparity of 15% from the size of the average constituency. The 1962 constitutional amendment allowed rural constituencies to be half the size of the urban ones. In 1973 any restrictions on the scope of disparity were abolished. Subsequently, there have been constituencies with three or four times as many voters than others.³⁹ Constituency delimitation is the key factor in BN's consistent victories in federal-level elections, because rural Malays are the main support group of UMNO.⁴⁰ The number of Bumiputera-majority constituencies rose from 57% of the total number of parliamentary seats in the 1960s to 65% after the mid-1980s re-delineation exercise. Prior to the 1995 elections it was reduced to 61%, because it appeared that a growing number of urban Chinese would support the ruling coalition.⁴¹

³⁹ Crouch, Harold: *Government & Society in Malaysia*, St. Leonards 1996, p.58; ANFREL reported about the constituency of Ampang Jaya, in Selangor near Kuala Lumpur, which had more than five times as many voters (98,527) as the remote constituency of Hulu Rajang in Sarawak (16,018) in the 1999 elections, ANFREL 2000, p.29.

⁴⁰ Gomez 1998, p.267.

⁴¹ Gomez, Edmund Terence: *The 1995 Malaysian General Elections. A Report and Commentary*, Singapore 1996, p.6-11.

The latest re-delineation exercise before the 1999 elections allowed the opposition coalition to gain only 21.8% of the seats as compared to 39.2% of the popular vote.⁴² Likewise, the apportionment of seats in parliament to the component states of the Malaysian federation does not follow defined principles and is equally regarded as arbitrary.⁴³ By these means, the electoral system successfully maintains Malay domination and leads to a situation where only an all-Malay government or a Malay-dominated coalition can emerge from elections.⁴⁴

All Malaysian citizens are entitled to vote if they have registered their names on the electoral rolls, and if they have attained the age of 21 years on the "qualifying date" on which the electoral rolls are prepared or revised by the Election Commission. They are then to vote within the one constituency where they reside; otherwise they are regarded as absent voters. Prior to the last general elections, about 680,000 young voters registered during the registration exercise in March/April 1999. The Election Commission blamed the lengthy process of registration, inspection, and certification of the roll for the fact that the registration of these young voters could only be confirmed in February 2000.⁴⁵ However, the opposition had no understanding for the length of the process in times of improved technology and electronic government. They claimed that after Anwar's sacking, most young people were supporting the political opposition and therefore the Malaysian government chose to hold elections already in late 1999, i.e. before the beginning of the fasting month in early December and the subsequent Chinese New Year in early February 2000.⁴⁶ Dr. Mahathir called on the Malaysian king to dissolve parliament on November 10, about half a year before the five-year parliamentary term expired, and elections were held on 29 November 1999 without the participation of 680,000 "unqualified" voters.

Other concerns with regard to events prior to the elections refer to the use of the government machinery in support of the ruling parties,⁴⁷ inadequate rules and restrictions on campaign resources and expenditures,⁴⁸ as well as the short campaign periods, which left the opposition with no time to prepare for the elections. ANFREL has pointed out that although the Constitution requests the formation of a new government only within 60 days from the dissolution of parliament, in the 1999 elections the parties were only allowed to campaign for a period of nine days after

⁴² ANFREL 2000, p.29.

⁴³ Sothi, Rachagan: "The Apportionment of Seats in the House of Representatives", in: Zakaria, Haji Ahmad (ed.): *Government and Politics of Malaysia*, Singapore 1987, p.56-70.

⁴⁴ Crouch 1996, p.59.

⁴⁵ ANFREL 2000, p.28.

⁴⁶ Funston, John: "Malaysia's Tenth Elections: Status Quo, *Reformasi* or Islamization?", in: *Contemporary Southeast Asia*, Vol.22, No.1, April 2000, p.23-59.

⁴⁷ Crouch 1996, p.62-64; Gomez 1998, p.264-266. One example has been reported by Crouch, who informed about the practise of the government to send 2,000 young women, who were participating in a youth employment scheme, to families considered being swing voters in a 1990 by-election in the state of Terengganu. The families received monetary compensation for these "adopted daughters" and were hence expected to vote for the ruling coalition. Crouch 1996, p.63.

⁴⁸ ANFREL 2000, p.36-37.

the day of nomination of candidates.⁴⁹ However, this was in line with Malaysian laws, which request a period of not less than seven days.

On the actual day of elections, polling is usually carried out in schools and other public buildings. There are various complaints with regard to irregularities during the elections. The most serious ones refer to the practice of postal votes. Mostly absent voters, like members of the armed forces, members of the public service in positions outside the Federation, and overseas students, are entitled to postal voting.⁵⁰ There was in general little accountability of the election process. The armed forces, for example, administered the balloting on their premises. ANFREL received complaints that members of the military were pressured to vote a certain way, or of never receiving the ballots at all.⁵¹ Malaysian poll-watchers stated that these votes, numbering over 200,000 in the 1999 general elections, finally appeared in constituencies where they were brought in at the end of ballot counting, if the government needed them for a majority for their candidate.⁵²

Further criticism referred to a considerable disorder of the electoral roll and tens of thousands of registered, but non-resident "phantom voters" during the 1999 elections.⁵³ After the elections, opposition parties in the state of Sabah provided a list with 49,270 dubious voters and lodged a police report. Finally, the Election Court ruled in June 2001 that the election in the Likas-constituency was null and void since the electoral roll was "tainted with phantom voters", and called for by-elections. Likas was once a constituency with a Chinese majority, but after the last re-delineation of electoral boundaries the new electorate includes 16,000 Muslim-Bumiputeras and only 8,000 Chinese.⁵⁴ Hence, the BN-candidate won a landslide victory in these by-elections with a majority of 7,500 votes.

There are only few complaints with regard to the correct counting of the votes. However, the problem that occurs after the polling lies in retaliations against those who voted or campaigned for the opposition. In a 1990 amendment of the Elections Act, the government changed the previous system of centralised constituency counting to a vote counting directly at the polling stations. While the government argued that this was to reduce undue interference with ballot boxes in transit, the opposition pointed out that it would make it easier for the government to identify pro-opposition areas. Local officials have frequently threatened their constituency to be excluded from state development schemes if they voted for the opposition.⁵⁵ In March 2000, the state government of Malacca announced a blacklist of supporters of opposition parties during the 1999 election campaigns. It comprised names of law-

⁴⁹ ANFREL 2000, p.31/32.

⁵⁰ Rahman 1994, p.94.

⁵¹ ANFREL 2000, p.47.

⁵² Funston 2000, p.48.

⁵³ Funston 2000, p.48.

⁵⁴ Ng, Boon Hooi, Likas roll still a 'dubious affair': PBS; and Ng, Boon Hooi, "Phantom voters still exist, claim Likas residents on by-election eve", in: www.Malaysiakini.com, July 20, 2001.

⁵⁵ Crouch 1996, p.61.

yers, medical doctors, construction companies, etc., which were henceforth banned from government procurement and service contracts.⁵⁶

The Malaysian Election Commission (Suruhanjaya Pilihan Raya, SPR⁵⁷) was established in 1957 with the following main functions: to prepare and revise the electoral roll, to conduct elections, to resolve claims and objections from candidates and voters, to conduct the vote counting, and to set electoral boundaries. However, the 1962 amendment of the Constitution abrogated the Election Commission's right to enforce the delineation of constituencies. Ever since, it had merely the right to make recommendations to parliament, which accepts or rejects the recommended delineation.⁵⁸ ANFREL recommended in its election observation report that the Election Commission should be granted the power to enforce its decisions and that it should be free from any form of political pressure or influence. It concluded "Malaysian electoral laws and practices should therefore be reviewed to provide the Election Commission with all powers and authority to better ensure that elections are free and fair for all."⁵⁹

The separation of powers

The Malaysian parliamentary system follows in general the principles of the British Westminster-system⁶⁰ with distinctive differences when it comes to its application and the relative strength of the legislative vis-à-vis the executive power.

Within this system, the second chamber of parliament, the Senate or Dewan Negara, is supposed to provide continuity and an element of mature deliberation in order to check the first chamber's legislation which might have been passed under the pressure of actual circumstances. However, Milne and Mauzy have found that the Senate has not shown any initiative nor even made use of its power of non-financial legislation. They concluded, "it rather acts as a rubber stamp for the House of Representatives".⁶¹

The House of Representatives or Dewan Rakyat acts as the main legislative power and thus warrants some closer attention in the subsequent paragraphs. Each parliamentary session lasts one year and there is about one meeting per month. Each meeting lasts one week. The main element of the legislative function of parliament is to pass bills which are to be transmitted to the Senate and finally assented to by the king. Almost all of them are public or government bills that are introduced by

⁵⁶ U.S. Department of State, Bureau of Democracy: "Human Rights, and Labor, Country Reports on Human Rights Practices – 2000: Malaysia", February 2001, in: www.state.gov/www/global/human_rights/2000_hrp_report/malaysia.html.

⁵⁷ For more information see the SPR website at: www.spr.gov.my.

⁵⁸ Gomez 1998, p.267.

⁵⁹ ANFREL 2000, p.58.

⁶⁰ Milne and Mauzy point out the fundamental difference that the British Parliament is "supreme" and remains unchallenged by courts or others, while the Malaysian Parliament is bound by the Constitution and can thus be challenged if its acts are judged to be contrary to the Constitution. Milne, R.S., Diane K. Mauzy: *Politics and Government in Malaysia*, Singapore 1978, p.230.

⁶¹ Milne, Mauzy 1978, p.239/240.

ministers and relate to matters of government policy for the entire nation.⁶² They are drafted within the ministries and thereupon sent to the Attorney General for advice on legal and institutional implications. If the cabinet gives its approval, the bill will then be introduced to parliament.⁶³ Those who discuss draft bills that have not yet passed the office of the Attorney-General might be charged for breach of the Official Secrets Act.

The Standing Orders of Parliament require a nominal first reading of a bill, which is merely the presentation of a bill. The presentation ends with the statement of the date for the second reading, which, by principle of the Standing Order, should not take place at the same day. The second reading allows for the discussion of the principles of a bill. It should therefore be printed and circulated to all members.⁶⁴ After the second reading, parliament automatically resolves itself into a committee to discuss the details of a bill. It thus follows the British example with an initial discussion in the House before the draft bill is sent to the committee. However, the Malaysian parliament resolves into a committee comprising the whole house.⁶⁵ It seldom decides to form a Parliamentary Select Committee on certain subjects, like education, defence, etc, or on certain bills.

The existing Sessional Select Committees⁶⁶ are mostly concerned with administrative matters of parliament. The Public Accounts Committee determines, however, whether the budget was disbursed according to the intentions of parliament. It relies mainly on the Malaysian Auditor-General to fulfil this second important function of parliament besides its legislative power, i.e. the control of the accounts of the federation and the appropriation of sums granted by parliament.⁶⁷ The opposition criticises that it confines itself mostly to points raised in the Auditor-General's report and does not involve much "digging" into the accounts".⁶⁸ In Britain an opposition member chairs this committee to ensure that expenditure is open to scrutiny, whereas in Malaysia a member of the government party holds this position.

The main critique of the opposition lies in the fact that parliament is hardly given the opportunity to be involved in the deliberation of a bill. A bill might be given to the members of parliament only a few days before being presented for passage, even if the bill had taken years to formulate. The legislative is therefore accused of merely legitimising the decisions of the executive and thus acting as a rubber stamp legislative. "Time has been used as main weapon by the Government to deny the Opposition the opportunity to fully use Parliament to conduct a national inquest into the

⁶² The Constitution also foresees Private Member Bills, Private Bills and Hybrid Bills, but they have almost never been introduced to the Malaysian Parliament. Milne, Mauzy 1978, p.231.

⁶³ This is a simplified description of a more complex process. For a detailed overview of procedures in Malaysian Parliament see Ahmad bin Abdullah: *The Malaysian Parliament. Practise and Procedure*, Kuala Lumpur 1969.

⁶⁴ Ahmad bin Abdullah 1969, p.113-115.

⁶⁵ Milne, Mauzy 1978, p.231.

⁶⁶ Committee of Selection, Standing Orders Committee, House Committee, Committee of Privileges, Public Accounts Committee: Ahmad bin Abdullah 1969, p.141-144.

⁶⁷ Milne, Mauzy 1978, p.232.

⁶⁸ Lim, Kit Siang: "Role of Parliament", in: ALIRAN, *Reflections on the Malaysian Constitution*, Penang 1987, p.123.

affairs of the nation."⁶⁹ The second opportunity for the opposition in parliament to voice their concerns occur during question time. The clerk has to be notified 14 days in advance. Each question time allows for up to 20 questions and provides only one hour for oral answers. Therefore the order in which the questions are listed is of special importance. The opposition parties lament that their questions are listed at the end so that they are often excluded from discussion in parliament.⁷⁰

The ultimate limit to parliamentary opposition and the effective work of the legislative was brought about by the Constitution (Amendment) Act of 1971, which intended to bar debates on constitutional principles pertaining to the relations between communal groups. Consequently, statements of MPs and State Assemblymen in the legislature were no longer protected from court proceedings and were instead made subject to the provisions of the Sedition Act.⁷¹ The most prominent victim was the Malaysian Member of Parliament Lim Guan Eng (DAP), who accepted the plea of a young girl in 1994 that the Chief Minister of Malacca had abused her. Lim raised the matter in parliament and began to gather public support. He was subsequently charged for sedition and for printing false news and in 1998 he was finally sentenced to jail for 36 months.⁷²

When it comes to the role of the executive, the Malaysian constitution follows the British tradition where the formally separated executive is in fact part of the legislature. Specific regulations on the extent of each of these powers are not provided for by the Malaysian constitution but found in subsidiary and other legislation. The rule of law can only be safeguarded, if the executive is accountable to parliament. However, the Malaysian government has retained the power it gained under the laws and regulations made under the emergencies of 1969. Subsequently, the previous president of the Malaysian Bar Council, Param Cumaraswamy, regarded ministerial accountability in Malaysia as "a myth".⁷³

Democratic systems of government follow the twin principles of collective ministerial responsibility to parliament and of individual ministerial responsibility for the department. Although in Malaysia, ministerial responsibility has been formally accepted as part of the parliamentary system, it is frequently traded off in favour of party solidarity and party discipline. Ministers in Malaysia are not accountable to parliament, but only to government or, more precisely, to their component party in the ruling coalition. Similar to this, members of parliament depend more on the party leadership than on their constituency in their nomination as a party candidate. Milne and Mauzy conclude, "the legislator is seen less as a person who can influence *what* is legislated and more as a person who can advise his constituents on *how*

⁶⁹ Lim 1987, p.127.

⁷⁰ Puthuchery, Mavis: "Ministerial Responsibility in Malaysia", in: Suffian, Tun Muhammed, H.P. Lee, F.A. Trindade (eds.): *The Constitution of Malaysia. Its Development: 1957-1977, third impression*, Petaling Jaya 1979, p.123-135.

⁷¹ Milne, Mauzy 1978, p.236.

⁷² Lim, Guan Eng: *MP in Jail. Second edition: Malaysian Dream From Kajang Prison*, Petaling Jaya 1999.

⁷³ Cumaraswamy, Param: "Role of the Executive", in: ALIRAN, *Reflections on the Malaysian Constitution*, Penang 1987, p.130-135.

the legislation can be implemented to the latter's benefit".⁷⁴ This is facilitated by the general political culture in Malaysia, which regards a strong government as a requirement for political stability and national unity while political competition is seen as irrelevant to Malaysia's needs. When it comes to political opposition in the legislative, this culture is adequately summarized in the brief and concise statement of Puthuchery, "generally the opposition is regarded at best as unnecessary and at worst as evil".⁷⁵

The Malaysian judiciary

The Malaysian Westminster-type constitution does not explicitly mention the independence of the judiciary.⁷⁶ In countries that apply the British Common Law system, the independence only manifests itself in the relevant provisions of laws and regulations, which are required to be interpreted by judges. If the judiciary does not only resolve disputes, but also develops the law, then judges need to consider the values and morality of the community, because their decisions have to reflect the interest of the people. Hence, they have to be trusted and respected members of society. The tenure of Malaysian judges is dependent on good behaviour until they attain retirement age. They are appointed by king on the advice of the Prime Minister.

The secular⁷⁷ legal system in Malaysia consists of subordinate courts, i.e. Magistrates' Courts and Sessions Courts, as well as superior courts. The latter comprise the High Court of Malaya, the High Court of Sabah and Sarawak, the Court of Appeal and the Federal Court. The Federal Court, the country's highest court, has jurisdiction to determine appeals of decisions of Court of Appeal.⁷⁸ The Chief Justice (formerly Lord President) presides over the Federal Court whereas the presidents of the two High Courts are called Chief Judge. The military has a separate system of courts. In the years until 1988, the Malaysian judiciary was well regarded as an independent institution and its integrity was never questioned.⁷⁹

The blow that changed the Malaysian judiciary was the removal of the Chief Justice Tun Haji Mohamed Salleh Abas on the grounds of alleged misbehaviour in 1988. At that time, the government had lost a couple of law suits and the ruling UMNO party of the Prime Minister was involved in a law suit about its electoral practices and consequently the legitimacy of the party's existence. Prime Minister Dr. Mahathir was making public assaults at an alleged political interference by the judiciary and

⁷⁴ Milne, Mauzy 1978, p.241.

⁷⁵ Puthuchery 1979, p.127.

⁷⁶ The relevant articles 121-131A of the Constitution merely refer to the administration of justice in Malaysia.

⁷⁷ Islamic religious laws, which are legislated by state authorities, fall under the jurisdiction of Syariah Courts.

⁷⁸ After independence from British rule in 1957 Malaysia decided to retain the right of appeal to the Judicial Committee of the Privy Council in London. At that time, an appeal from a decision of the Federal Court on a civil matter could be made to the king, who referred it to the Privy Council. (Wu, Min Aun: *An Introduction to the Malaysian Legal System*. Revised Third Edition, Kuala Lumpur 1982, p.130) In January 1985 Malaysia cut links with the Privy Council and the Federal Court became the court of final appeal.

⁷⁹ Lee, H.P.: *Constitutional Conflicts in Contemporary Malaysia*, Kuala Lumpur 1995, p.2.

its power of judicial review. At the same time, the government used its two-third majority to amend article 121 of the Constitution. While this article originally provided that the judicial power of the Federation shall be vested in the "High Courts of co-ordinate jurisdiction and status", it now reads that the High Courts "shall have such jurisdiction and powers as may be conferred by or under Federal Law". Tun Salleh Abas felt that this and other amendments made a serious inroad to the doctrine of separation of powers, particularly the independence of the judiciary.⁸⁰ As he considered it to be of equal importance to the jurisdiction of secular and Islamic courts, he wrote a confidential letter to the king and the Conference of Rulers, in which he expressed the judges' concerns about the development in the relationship between the executive and the judiciary, as well as their disappointment with public accusations of the Prime Minister.⁸¹ Consequently, he was accused of favouring the imposition of Muslim law on all and sundry, of attacking the government, and of abuse of his public office. He was removed from office along with two supportive Supreme Court judges.⁸²

Since the Tun Salleh Abas⁸³ tribunal, constitutional amendments, and legislation restricting judicial review have further eroded the independence of the Malaysian judiciary and have strengthened the influence of the executive over the judiciary.⁸⁴ This process reached its ultimate height when Anwar Ibrahim got in conflict with the Prime Minister and was sacked as Deputy Prime Minister in 1998. He was detained after organizing a mass rally that called for political reforms (*reformasi*) and for Mahathir's resignation. He and his adopted brother, Sukma Dermawan, were accused of sodomizing the former driver of Anwar's wife. The status of detention was later changed to detention without trial under the Internal Security Act and subsequently again to criminal detention on four charges of corruption in relation to the alleged sodomy. In 1999 he was first tried and sentenced to six years imprisonment for corruption. In the second trial on charges of sodomy he was sentenced to another nine years term, which runs consecutively with the previous six years. Once he has completed the 15 years in prison, he will be banned from holding any public office for another 5 years.

⁸⁰ Tun Salleh Abas, Haji Mohamed: *The Role of the Independent Judiciary*, Kuala Lumpur 1989, p.15; see also The International Bar Association, The Commonwealth Lawyer's Association: *Justice in Jeopardy: Malaysia 2000*, p.65.

⁸¹ An English translation of the letter is published in Tun Salleh Abas 1989, p.152-153.

⁸² An account of the events during the time is given in Tun Salleh Abas, Haji Mohamed, K. Das: *May Day for Justice*, Kuala Lumpur 1989. New Zealand Queen's Counsel Peter Alderidge Williams responded in 1990 with publishing *Judicial Misconduct* in order to justify the dismissal of the Chief Justice. This provoked the response by the distinguished Malaysian lawyer Raja Aziz Addruse: *Conduct Unbecoming*, Kuala Lumpur 1990.

⁸³ In the 1999 elections, Tun Salleh Abas participated for the Islamic Party PAS and won a seat in the State Assembly of Terengganu. He is now a senior State Minister and fights the Federal Government in a lawsuit on revenues from oil fields off the Terengganu coast. Singh, Jasant: "Former top judge poses challenge to Mahathir", in: *Bangkok Post*, May 4, 2001.

⁸⁴ Important steps in this process have been reviewed in: U.S. Department of State 2001, section "Denial of Fair Public Trial", p.11-16.

The case against Anwar is widely viewed as an act of revenge of the Prime Minister.⁸⁵ The trials are criticized for judicial irregularities that point to a massive interference of the power of the Executive with the independence of the Malaysian judiciary. Human Rights Watch summarized these irregularities:

Key witnesses recanted their confessions and alleged that they were extracted through police coercion and physical abuse. The judge admitted into evidence a contested confession that interrogators had obtained from co-defendant Sukma Dermawan while he was in incommunicado detention without access to counsel, and that he subsequently retracted. Prime Minister Mahathir repeatedly stated publicly that Anwar was guilty before the court delivered its verdict. Defense attorneys Zainur Zakaria and Karpal Singh were prosecuted for statements made in court in the course of Anwar's defense. Finally, the court permitted the prosecution to twice change the dates of alleged crime.⁸⁶

In a response to the high profile trial of Anwar Ibrahim, the International Bar Association (IBA), the Centre for the Independence of Judges and Lawyers of the International Commission of Jurists (CIJL), the Commonwealth Lawyers' Association (CLA) and the Union Internationale des Avocats (UIA) decided to send a mission to Malaysia. The team of Supreme Court Judges and advocates from Scotland, Zimbabwe, and India was to examine the legal guarantees for the independence of the judiciary in Malaysia and whether these guarantees are respected in practice, the ability of lawyers to render their services freely, as well as any impediment that jeopardises the proper administration of justice.⁸⁷

The findings of the mission were published in the mission report "Justice in Jeopardy: Malaysia 2000" which received widespread attention inside Malaysia and abroad. The report expressed concerns about the relationship between the judiciary and the executive and lists some legislative milestones along the way of deteriorating independence of the judiciary since the defamation suit against UN Special Rapporteur for the Independence of Judges and Lawyers Dato' Param Cumaraswamy in 1986 and the "perhaps most shocking" events of 1988.⁸⁸ In the vast majority of cases there are generally no complaints about the independence of the judiciary. However, concerns arise from the few but important cases that touch upon the interests of the executive. And it is in this respect that the mission concludes that senior members of the executive usually do not intervene in the jurisdiction of the senior judiciary by direct commands and instructions. Rather, interventions arise from close personal relations, as "the upper echelons of the establishment will know each other personally".⁸⁹ Under such circumstances, the executive would have to be very cautious to discuss matters of judicial relevance with members of the senior judiciary. However, "the mission got the impression that members of the executive did not always do

⁸⁵ The International Bar Association, The Commonwealth Lawyers' Association 2000, *Trial of Anwar Ibrahim*, p.40-48; Human Rights Watch, World Report 2001: *Malaysia*, in: www.hrw.org/wr2k1/asia/malaysia.html.

⁸⁶ Human Rights Watch 2001, p.1.

⁸⁷ The International Bar Association, The Commonwealth Lawyers' Association 2000, p.3.

⁸⁸ The International Bar Association, The Commonwealth Lawyers' Association 2000, p.56.

⁸⁹ The International Bar Association, The Commonwealth Lawyers' Association 2000, p.57.

that".⁹⁰ It quotes the example of a Minister who called a member of the Court of Appeal to enquire about the reasons for their decision in a matter within the Ministry's jurisdiction.⁹¹

Close personal relations, which obscure the practices of an independent judiciary, exist for example between the former Chief Justice Tun Eusoff Chin, the prominent lawyer Dato' V.K. Lingam, and the powerful businessman Vincent Tan. The Chief Justice was on the panel that sentenced the freelance journalist M.G.G. Pillai to a 2 million Ringgit fine in a defamation suit brought by Vincent Tan through his lawyer V.K. Lingam. Later, a photograph was produced that showed the Chief Justice and the lawyer on their – supposedly separate – holidays in Australia. During the term of Tun Eusoff Chin⁹² the Malaysian judiciary has lost the remnants of its reputation. A survey of attitudes towards the judicial system in Malaysia showed that only about one in five respondents had confidence in the judiciary. Malays mostly harboured little hope of any improvement, while most of the Chinese felt the judiciary could be run better.⁹³

On 20 December 2000, Chief Justice Mohamed Dzaiddin Abdullah took over the helm of the judiciary from Eusoff Chin and sparked cautious optimism among concerned Malaysian citizens. In a speech at a closed session meeting of 71 judges and judicial commissioners on 13 January 2001, he set out as his aim the restoration of public confidence in the judiciary and to give justice to the people. He considered this would also help to gain back the confidence of foreign investors.⁹⁴ The Minister in the Prime Minister's Office in charge of law, i.e. *de facto* law minister Rais Yatim had previously expressed the need of judicial advancement.⁹⁵ On 30 May 2001 a crowd of 150 opposition supporters cheered the decision of Judge Hishamudin Mohomad Yunus of the Shah Alam High Court near Kuala Lumpur to release two senior officials of the oppositional Keadilan party from detention under the Internal Security Act. Hishamudin said that the police had failed to state clearly the reasons for detention by just parroting the provisions of the security act. He also called for the parliament to review the relevance of the act, because the communist insurgency, i.e. its reason of existence, ended years ago.⁹⁶ Shortly afterwards, however, the rising hopes in Malaysian civil society took a downturn when Minister Rais Yatim accused the judge of overstepping his function by calling for law reviews.

The events around the Likas by-elections then dealt the final blow to overly optimistic assumptions of a speedy recovery of the judiciary. In 1999 Judge Muhammad Kamil had to decide on a petition calling for declaring the elections in Likas null and

⁹⁰ Ibid.

⁹¹ Ibid.

⁹² On the advice of the Prime Minister his term was extended by half a year and hence covered the period during which Anwar was to appeal the judgement in the sodomy trial.

⁹³ Pereira, Brendan: "Rulings by ex-CJ hit by disputes", in: *The Straits Times*, February 23, 2001.

⁹⁴ Kabilan, K.: "Restore confidence in the judiciary, CJ tells judges", in: www.Malaysiakini.com, January 13, 2001.

⁹⁵ Kabilan, K., Steven Gan: "Judicial reforms 'an uphill task'", in: www.Malaysiakini.com, January 2, 2001.

⁹⁶ "ISA detainees freed in landmark ruling", in: *The Nation*, May 31, 2001; see also Zakiah, Koya: "ISA duo freed, police told not to re-arrest", in: www.Malaysiakini.com, May 30, 2001.

void, because of apparent phantom voters in the electoral roll. The judge later reported about a telephone call from an undisclosed top legal officer, who instructed him to strike off the petition without a hearing. He refused and subsequently ruled that the Likas electoral roll was illegal and that Sabah chief minister Yong Teck Lee had to vacate his state assembly seat, which he had won in this constituency.⁹⁷ In the by-elections on 21 July 2001 Yong won his seat back in a landslide victory. Subsequently, the ruling coalition in Parliament amended the constitution to the effect that once the electoral role is gazetted, it is deemed true and non-disputable. Minister Rais Yatim was quoted as saying that this will indirectly help eliminate the problem of phantom voters. Critiques, however, regarded the move as the legalisation of phantom voters⁹⁸ and the erosion of democratic rights.⁹⁹

The role of the media

Civil society plays a crucial role in a democratic system, especially if the legislative power cannot effectively control the executive. In Malaysia there are thousands of self-help groups, non-governmental organisations (NGOs) and other civil initiatives which actively pursue the enforcement of fundamental rights in the civil, political, economic, social, and cultural realm or which actively support the interests of a specific target group. As such, they outperform the formal opposition in raising social consciousness of key public issues. However, they are frequently threatened with punishment under the Internal Security Act and other repressive regulations.¹⁰⁰ They have thus not yet carved out their own democratic space in the public sphere.¹⁰¹

Malaysian media are controlled by means of coercive legislations as well as ownership and control of the major publications.¹⁰² Journalists are suffering the same pressure from existing repressive acts as other actors of the civil society. Moreover, the Printing Presses and Publication Act requires all newspapers and regular publications to possess a publishing permit issued by the Ministry of Home Affairs. These permits are valid for one year and require annual re-application. They are only granted, if the minister does not consider the publication to be prejudicial to public order. The last amendment of the Act in 1988 disallowed judicial review of the minister's decision.

⁹⁷ "Judge says top legal officer told him to drop political case", in: www.Malaysiakini.com, June 12, 2001.

⁹⁸ Kim, Quek: "Constitutional amendment to legalise phantom voters", in: www.Malaysiakini.com, July 19, 2001.

⁹⁹ Puthuchear, Mavis: "Amendment to electoral roll will erode democratic rights", in: www.Malaysiakini.com, July 21, 2001.

¹⁰⁰ Irene Fernandez, Director of the NGO "Tenaganita", reported about the abuse, torture, and dehumanised treatment of migrant workers at Malaysian detention camps. She was charged under the Printing Presses and Publication Act in 1995. The case has not been completed. (The International Bar Association, The Commonwealth Lawyers' Association 2000, "Ms Irene Fernandez's case", p.49-52).

¹⁰¹ Jesudason 1996, p.155.

¹⁰² Loh, Kok Wah Francis, Mustafa K. Anuar: "The Press in Malaysia in the Early 1990s. Corporatisation, Technological Innovation and the Middle Class", in: Said, Muhammad Ikbāl, Zahid Emby: *Malaysia: Critical Perspectives. Essays in Honour of Syed Husin Ali*, Petaling Jaya 1996, p.96-131.

In general, licenses were liberally awarded and even obtained by very critical periodicals of the political opposition and human rights organisations, e.g. *Aliran Monthly*.¹⁰³ However, in 1987, permits of four newspapers were temporarily suspended and in 1991, the minister forced the party-affiliated periodicals *The Rocket* (DAP) and *Harakah* (DAP) to restrict circulation to only party members.¹⁰⁴ The situation worsened considerably in the year 2000. *Harakah* saw its permit renewed but its frequency was reduced from eight per month to two. The permit of the weekly tabloid *Eksklusif*, which reported mostly on opposition parties, was suspended when its publication permit expired. The ministry explained the suspension with "imbalanced reporting" and "non-compliance with publication rules".¹⁰⁵ During the same year, the privately-financed youth magazine *Al-Wasilah*, as well as its sister publication *Detik* had their permits cancelled for giving too much coverage on opposition parties. Furthermore, the ministry's committee in charge of monitoring publications issued warnings to the Malay language daily *Utusan Malaysia* for its coverage on the Suqiu election appeals and to the entertainment magazine *FHM* for a saucy interview with singer Ning Baizura.¹⁰⁶ In October 2000, a 14-member Coalition of Independent Media activists petitioned to the Human Rights Commission of Malaysia (SUHAKAM) for a repeal of the Printing Presses and Publications Act and the abolishment of the practice of awarding permits.¹⁰⁷ It further called for the termination of a policy that holds printers liable for mistakes and inaccuracies perpetrated by publishers, editors, and writers.¹⁰⁸

More indirect controls are exerted through ownership by some of the ruling coalition's component parties over the private television network, TV3, and the major Malay, English, Chinese, and Tamil newspapers. UMNO and its close allies own direct or indirect (via holdings and subsidiaries) majority stakes in *Utusan Melayu*, *Utusan Malaysia*, TV3, *The New Straits Times*, *Business Times*, and *Shin Min Daily News*. The Malaysian Chinese Association (MCA), also a component party of the ruling coalition, holds a majority stake in the English newspaper *The Star* and the Chinese language *Nanyang Siangpau* and *The China Star*.¹⁰⁹ Finally, the Indian component party of the coalition, the Malaysian Indian Association (MIC), holds majority stakes of "Tamil Nesan" and "Malaysia Nanban". The situation is similarly reflected in the West Malaysian states of Sabah and Sarawak. Direct government controls are applied to TV 1, TV2, and the radio networks.¹¹⁰

¹⁰³ Crouch 1996, p.85.

¹⁰⁴ Loh, Anuar 1996, p.100/101.

¹⁰⁵ Interview with the Home Ministry's head of publications unit, in: Loone, Susan: "'Eksklusif' banned for 'imbalanced reporting'", in: www.Malaysiakini.com, September 6, 2000.

¹⁰⁶ Ibid.

¹⁰⁷ Loone, Susan: "Suhakam to meet independent journalists", in: www.Malaysiakini.com, October 3, 2000.

¹⁰⁸ The printer of *Harakah* was charged with sedition for an article that appeared in *Harakah* in 1999. He was fined 3,200 Ringgit.

¹⁰⁹ The acquisition of a majority stake in Nanyang Press by the investment company of MCA in May 2001 resulted in a heated debate among the Chinese community. The Chinese feared that Nanyang Press-owned *Nanyang Siangpau* and *The China Star*, with a combined circulation of nearly 400,000, would lose their independence after the take-over by MCA.

¹¹⁰ Gomez 1998, p.265; Crouch 1996, p.86-87; Loh, Anuar 1996, p.101-104.

Besides these direct and indirect controls, the government promotes the conduct of "development journalism"¹¹¹ which subordinates the media to the concerted efforts of government agencies fostering social stability and economic development.

Malaysian newspapers are not uniform in their reporting nor do they express only a single point of view. But they usually abstain from reporting about activities of the political opposition. If they do, then they present these activities in an unfavourable light. Furthermore, there is little critical commentary and analysis of political and economic developments.¹¹² ANFREL expressed in its observation mission report its concerns about the biased media coverage of the election campaigns before the general elections in 1999:

ANFREL observers were struck by the blatant bias seen in both in the print and electronic media, in favour of the ruling coalition. Both Bahasa and English-language newspapers ran full-page ads, some of which used reworked or faked photos, aimed at showing the opposition in a bad light. As well, stories alleging corruption and sexual impropriety were widely circulated in the government-controlled press. Many of these newspapers refused to publish opposition advertisements, or run coverage of its campaign. Similarly, television advertisements and coverage were BN exclusive.¹¹³

The members of the Malaysian middle class especially, are increasingly disappointed with this lack of critical commentary and political analysis. They turn to foreign media as well as the alternative press within Malaysia. The latter mainly comprises the publications of opposition parties, independent publications as well as those of public interest groups like consumer associations and human rights organisations.¹¹⁴ Most recently, independent internet periodicals entered the media scene in Malaysia without having to apply for annual ministerial permits.¹¹⁵ The internet-daily *Malaysiakini* was launched in November 1999 and is currently visited by about 150,000 readers a day. It has become the most important source of independent political information in Malaysia.¹¹⁶ Meanwhile, foreign news magazines experience restrictions, if they are found to be critical of the Malaysian government. In March 2001 the government delayed the clearance of several issues of *Asiaweek* and *Far Eastern Economic Review* by a few weeks.¹¹⁷

Journalists and editors are severely stifled by mega-awards in defamation suits. Until the mid-1990s they generally did not exceed 100,000 Ringgit. In 1995 Vincent Tan was awarded 10 million Ringgit for libel in the above-mentioned suit against journalist M.G.G. Pillai. Several suits against journalists and news organisations fol-

¹¹¹ Loh, Anuar 1996, p.100.

¹¹² Crouch 1996, p.87; Loh, Anuar 1996, p.106-107.

¹¹³ ANFEL 2000, p.34.

¹¹⁴ Loh, Anuar 1996, p.107-111.

¹¹⁵ In March 2001, Lycos Inc. of the United States has shut down more than a dozen Malaysian opposition websites. The move is believed to follow pressure from the Malaysian government. ("Pro-Anwar websites closed by US hosting service", in: *The Straits Times*, March 20, 2001).

¹¹⁶ Angered by these independent reports the government barred reporters of *Malaysiakini* from covering government press conferences because of its alleged "doubtful credibility" in February 2001. (*The Nation*, 12.02.2001).

¹¹⁷ Kaur, Ajinder: "Three delays in a row for Review and Asiaweek", in: www.Malaysiakini.com, March 13, 2001.

lowed with claims of up to 550 million Ringgit. There are more multi-million Ringgit defamation suits pending, in which press reports are blamed for loss of reputation and business opportunities. So far the largest amount was filed in February 2001 by a businessman, who sought 1.3 billion Ringgit from eight news organisations. Subsequently, the Malaysian Bar Council, which represents almost 10,000 lawyers, criticized the awards in defamation cases as too high and causing negative effects on the freedom of speech in the country.¹¹⁸

Conclusions

Corruption, collusion, and nepotism still prevail in the country. Major corporate assets are subject to the corrupt practices of rent-seeking cronies with an implicit blow to the confidence in the Malaysian corporate sector. In this regard, Malaysia seems not to have learned the lesson of the last crisis. Moreover, the major political causes that have contributed to the last crisis in Southeast Asia appear unresolved by the Malaysian government.

Racial issues have a significant impact on the democratic dialogue in Malaysia. The ruling coalition under Prime Minister Dr. Mahathir has made the dominant role of the Bumiputeras and their peaceful coexistence with Chinese, Indians, and other ethnic minority groups a matter of national security. However, it is necessary to reconsider the affirmative action policy that mainly favours Malays in order to prevent occasional clashes of ethnic groups from developing into massive ethnic confrontations like in Indonesia and the Philippines. The political opposition is threatened by direct government interventions as well as repressive acts, like the Internal Security Act. In summer 2001 the government launched a crackdown on VCDs with statements of opposition leaders against the government. At the same time it banned all public gatherings of opposition parties and detained those who ignored this ban. The repressive acts need to be abolished to allow an effective political opposition. Within its own rank and file, the opposition is confronted with growing Islamic revivalism that may help gain popular support for the democratic opposition in the short term, but which may ultimately lead to other forms of repression and discrimination in the long run. The leading opposition party PAS needs to define its notion of an Islamic state and determine its view on the democratic separation of secular powers.

The electoral system has been criticized for flaws that block young voters from balloting and for allowing irregularities like phantom voters and the abuse of postal votes. There is demand for the empowerment of the Election Commission to enforce strict controls of the electoral processes. Furthermore, as every citizen above the age of 12 years holds a National Registration Identity Card, it should hardly be a problem to switch to an automated registration system.

There are several unresolved issues with regard to the Malaysian executive, legislative, judiciary, and the fourth power, i.e. the media. The existing parliamentary procedures create severe impediments for effective parliamentary opposition.

¹¹⁸ Kabilan, K.: "Defamation mega-awards stifle media: Bar Council", in: www.Malaysiakini.com, March 15, 2001.

Moreover, ministers are seldom held responsible and accountable before parliament. Ministerial responsibility has hence to be enforced and the legislative process should open up, so that formulation and deliberation of bills take into account the public views and parliamentary debate. Finally, the people should elect at least some of the members of the Senate.

The judiciary is generally independent except in those cases that touch upon the interest of the political and economic elite of the country. Several of such cases have significantly affected the reputation of the judiciary. The executive needs to recognize that it should not interfere with the independent constitutional position of the judiciary. The judiciary itself needs to maintain its independent decision-making.

Lastly, there are several direct and indirect controls of the media that have led to a biased reporting in favour of the ruling coalition. In this respect, the annual licensing procedure and the party ownership of news organisations have to be reviewed.

The general elections in 1999 mainly focused on such issues like Islam and democratic reforms, cruelty, corruption and mismanagement, foreign policy, and the affirmative action policy towards Bumiputeras. Following the events described in this article, the next elections that will be held at latest in 2004, will probably revolve around the same issues. But as tensions have risen since 1999, they might be tackled in a rather aggressive manner. Jesudason projected that "future political changes in the country are more likely to come from the loss of coherence of the ruling coalition, particularly the UMNO, than from a more effective political opposition."¹¹⁹ Given this realistic prognosis, a break up of the ruling coalition, whether it is in 2004 or in following elections, bears the option of a termination of the social contract between the various ethnic groups in Malaysia. If this is to happen in an emotionally charged election scenario, there is the risk that this process unfolds itself with violence, just like after the general elections in 1969 when the mainly Chinese opposition eroded the majority of the Malay-dominated ruling coalition. Malaysia mourned the death of 196 people, of which three quarters were Chinese.

The major failure of the present government is that it failed to develop skills in dispute management and dispute resolution. Civil society groups hardly have the legal options to fight lawfully for their respective causes, the reputation of the judiciary has deteriorated due to government interference, and there is no significant extra-judicial arbitration. Moreover, the government has suspended popular elections for local governments, which has led to negative repercussions on the political culture in the constituencies. The Malaysian democracy is equipped with weak institutions that are conditioned to prevent crisis. Once a crisis hits, there are no competencies to master the situation. The country thus appears not sufficiently prepared for future political challenges and possible crisis scenarios ahead.

¹¹⁹ Jesudason 1996, p.155.