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*Changing Federal-State Relations*

**New Malaysia:  
Whither The Human Rights Debates?**

*By Najwa Abdullah*

**SYNOPSIS**

*With politics volatile, the Pakatan Harapan (PH) coalition's manifesto on enhancing human rights remains a challenge. While reforming the status quo could be politically detrimental, the PH government has to show political will to push it through.*

**COMMENTARY**

OTHER THAN the widespread anger over the 1MDB scandal, the Pakatan Harapan's (PH) reformist platforms, which put a high premium on social justice and equality, were key factors that contributed to the coalition's victory at the ballot box in the last general election. PH called for the strengthening of the Human Rights Commission of Malaysia (Suhakam) and ratification of outstanding international human right treaties.

It also rejected the racial politics of the then BN government and asked for the creation of "a harmonious multi-racial and multi-religious society in Malaysia". Further, PH championed the interests of the indigenous communities in the peninsular states, as well as Sabah and Sarawak. "Special commitments" were also declared to improving the living conditions of the Federal Land Development Authority (FELDA) settlers, the Indian community, and women.

**Limits to Championing Human Rights**

The post-election scenario, however, shows that any attempt to implement these promises will be challenged by many groups. These can be seen from the controversies surrounding the debate over child marriage, the backtracking on ICERD (International Convention on the Elimination of All Forms of Racial Discrimination),

and the Temiar tribe's grievances over customary land issues in recent months. Will the PH manifesto continue to be a manual for reform or an electoral reverie?

### *The ICERD backtrack*

Following the decision to backtrack from ratifying the ICERD, Prime Minister Mahathir Mohamad reportedly told Malaysian media in November 2018 that it was "almost impossible" to sign the treaty as it would entail amending the Federal Constitution with regards to the "special position" of the *bumiputra* and Islam as the official religion of the federation.

The debate over ICERD opened up Pandora's Box and created a furore. It was a wake-up call for the PH government to pay more attention to the concerns of the Malay community or risk losing support. At the Mid-Term Review of the 11th Malaysian Plan released in October 2018, the government stated that enhancing the Bumiputra Economic Community (BEC) would continue to be a key policy.

While this step will assist needy Malays, some observers have called for a fair and equitable implementation of the policies to enhance the BEC and that it should not be simply to win Malay votes. On the other hand, others have called for policies to help needy Malaysians of all races. The government will want to find a way to balance the two without too high of a political cost.

### *Rights of the Indigenous Peoples*

The Cameron Highland by-election on 26 January 2019 brought the plight of the indigenous communities to the forefront. A week prior in the constituency that has a significant proportion of indigenous people, the federal government filed a lawsuit against the Kelantan state government for the encroachment of the Temiar tribe's ancestral forests in Gua Musang that was razed to clear space for commercial logging.

For a brief period, this succeeded to stir up the public, as it was the first time in Malaysia's modern history that the federal government sued a state government while a member of indigenous communities was elected into parliament. The Kelantan government viewed the legal suit as an attempt to taint PAS' image and agitate the people during the Cameron Highland by-election.

Their position is that customary lands are recognised constitutionally in Sabah and Sarawak, where there is a dual legal system that allows for a greater application of customary laws. This is not the case in Peninsular Malaysia where the common law is the sole abiding law.

The PAS member of parliament for Kota Baru, who is also the party's secretary-general, Takiyuddin Hassan, pointed out that the concept of customary land did not exist in Kelantan's state laws and that the disputed land areas belonged to the state government. It is also useful to note that the federal structure puts matters regarding land under the purview of the state government.

However, according to some scholarly works, there are law codes that provide the

basis for protection of indigenous communities' customary land rights, including the National Land Code of 1965 and Article 8(5)(c) of the Federal Constitution.

### *Child Marriage*

Another issue that highlights the difficulty of enacting reforms and the complexities could be seen in the debate over the rights of women and children and the inapplicability of the mainstream, international views of universal human rights in certain communities.

Following the controversy surrounding child marriages in Kelantan, an anti-child marriage bill was to be tabled in parliament in late 2018. The legal minimum marriage age for both genders would be set at 18 regardless of their religion, as expressed in the PH manifesto.

The states of Malacca, Penang, Kedah, Johor, and Sabah expressed support for this proposal. However, others have opposed this. In November 2018, during a conference on underage marriages in Kota Baru, the Kelantan state government decided to continue allowing underage marriages in line with the classical Islamic law, which does not provide a set age for marriage.

Two United Nations conventions on children and women's rights –which did not allow for children under 18 to be married — were condemned during the occasion. Amidst the debate, there has been little news about the anti-child marriage bill.

The differences over the issue of child marriage show the complexities faced by any government wanting to enact reforms on an issue tied to religious beliefs. Resolving the issue of child marriage in Malaysia — especially these days where religious conservatism is perceived to be gaining traction — will require a strenuous discussion between the federal government and states' religious authorities.

### **Road Ahead: Complexities in the Reform Agenda**

The debate over the rights of the indigenous peoples and the issue of child marriage are two examples of the complex challenges facing the PH government and its reform platforms, especially those relating to human rights.

It is made even more complex given that fundamentally, these are legal issues, namely pertaining to constitutional law, state law and sharia law. Clearly, the PH government will have to contend with the intricate political, legal, and religious dimensions to fulfill their electoral promises on human rights.

Yet, even if it manages to surmount the myriad challenges, the PH government will have to balance between implementing its reformist policies and political expediency. The PH government is in a difficult position right now – it knows that it has to try to implement its promises but some of these promises may not be popular with certain segments of the Malaysian society. Does it have the political will to push through with these difficult issues?

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