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Title : MALAYSIAN HUMAN RIGHTS COMMISSION - AIM AND OBJECTIVE

I am honoured to be invited here to speak on a subject that is of interest to all Malaysians. I would like to thank the Bar Council for inviting me to talk on the Malaysian Human Rights Commission - Aim and Objective. I accepted the invitation on the premise that as Malaysians, all of us share a common aspiration towards peace and prosperity of our nation. It is our joint responsibility, regardless of our beliefs and convictions, to ensure the stability of our nation and the well-being of our people.

3. The setting up of the Human Rights Commission of Malaysia is for the promotion and protection of human rights of all Malaysians. Malaysians from all walks of life are engaged in a healthy debate on human rights. The fact that the debate evokes views that are sometimes conflicting reinforces how important the issue of fundamental rights is. After listening to different views, I am reminded again that the question of rights can be subjective. What is important to one man is not necessarily the same with another. To a poor, starving man without a roof over his head, freedom of opinion and expression may not be his priority. To a man with all his creature comforts met, he would certainly want more say on matters directly affecting his life. It is with this in mind that today, I will address the question of human rights in a holistic way.

3. The question is, what rights do we want? What do we want to achieve for ourselves that will not conflict with that of society? As individuals, I am certain that all of us will, without a doubt, say that we want as little impediment as possible in our actions. That we want to be treated with respect and dignity. But what of society that we are member of? How do we balance our personal desires and be responsible citizens at the same time? How do we pursue our rights while respecting and not impinging on the rights of others? No two human beings have the same concerns. Our different concerns should not be causing a rift between us. We should instead, find common ground for mutual benefit in our quest to build this nation. How we accommodate all needs of all people, how we maintain equilibrium of needs without subsuming the needs of others, is the question all states must address.

4. In a plural society such as ours, reaching a consensus on rights is challenging but necessary to maintain amity. While there may be different interpretations and perceptions of human rights, human rights itself is neither peculiar to any culture nor particular to any nation. No individual or country can claim exclusivity on human rights for human rights are universal and could be generally defined as those rights which are inherent in our nature and without which we cannot live as human beings.

5. Human rights and fundamental freedoms allow us to fully develop and use our

human qualities, our intelligence, our conscience, which will satisfy our spiritual and other needs. Human rights is based on mankind's increasing demand for a life in which the inherent dignity and worth of each human being will receive respect and protection. The denial of human rights and fundamental freedoms is not only an individual and personal tragedy, but also creates conditions for social and political unrest, sowing the seeds of violence and conflict between societies and nations. Respect for human rights and human dignity is the foundation of freedom, justice and peace. The principle and concept of human rights are also not static. It is dynamic and constantly evolving. All values and perceptions that constitute human rights will not remain the same all the time.

6. As members of the legal profession in Malaysia, you are familiar with our own Constitution and laws that view human rights as personal legal entitlements and liberties which include prohibitions against certain types of conduct directed against persons by other individuals, groups and the Government itself. From all perspectives, neither the moral or legal approach regards human rights, as "gifts" which can be withdrawn or withheld at will.

7. Notwithstanding this, we should view human rights not just from its conceptual and legal framework, but from a practical perspective and application. In the exercise and pursuit of our rights, we have a responsibility to respect and not impinge on the rights of others. We need to overcome our biases, prejudices and chauvinism based on race, religion, colour, creed and gender to fully respect human rights and fundamental freedoms. The formulation and enforcement of laws only are not sufficient for us to have the right perception and attitude on human rights.

8. Human rights involve relationships among individuals, and between individuals and the State. In this regard, the exercise of rights entails obligations and responsibilities. The perennial question is how do we create and maintain balance between the rights of the individual and that of society as a whole? There are those who advocate the notion that the fulfillment of human dignity and respect means that the individual be allowed to pursue his rights without restraint. This assertion of the primacy of individual rights is sometimes in conflict with the rights of society. The action of the individual in pursuit of his rights may not coincide with the values, norms and morality of society. Even the English philosopher, John Stuart Mills acknowledges in his treatise, *On Liberty* that "While liberty consists of doing what one desires", he cautioned that, "The liberty of the individual must be thus far limited; he must not make himself a nuisance to other people".

9. In asserting individual rights and undertaking activities that are detrimental to the public well-being, one needs only to look at paragraph 3, Article 19 of the International Covenant on Civil and Political Rights. There, it is clearly stated that the individual has responsibilities in exercising his right to hold opinions and freedom of expression. The individual has special duties and responsibilities to respect the rights and reputations of others and to protect national security, public order, public health and morals. We have successfully contained, by our own laws, any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence as contained in Article 20 of the Covenant.

10. Even the Universal Declaration of Human Rights affirms that the exercise of a person's rights and freedom may be limited. The limitations must be determined by law, and for the purpose of securing due recognition of the rights of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society. Rights may not be exercised contrary to the purposes and principles of the United Nations, or if they are aimed at destroying any of the rights set forth in the Declaration. Neither should the rights invoke by individuals or groups in Malaysia be contrary to our Constitution and laws.

11. In this globalized and yet fractured world, the issue of human rights has attracted intense debates of divergent views and priorities. When we discuss human rights, many have the tendency to focus on civil and political rights. It is deemed that civil and political rights are pertinent for the creation of a truly free and democratic society. Civil rights in itself have different meaning for different people. To some, civil rights is not merely the rights of individual and society regarding their private and day to day life, but the rights of an individual or society to full legal, economic and social equality.

12. The Malaysian perception and attitude on human rights and fundamental freedoms is formed by its history and national experience. Malaysia, like many other countries in Asia and Africa, suffered the indignity of colonialism. The divide and rule policy of our former colonial master sowed the genesis of a complex political, economic, social and cultural configuration of our nation. In spite of the complexity of our nascent society with the sinister threat of communist insurgency, our forefathers achieved independence through accommodation and compromises. They consciously reached out beyond their groups, subsuming all differences and concerns for the common goal of emerging from the yoke of colonialism. They have also given up individual and group rights for the larger interest of forging a nation.

13. Most Malaysians were poor and without access to social services upon independence. They were separated by class, creed and colour. Mitigating the already disparate groups and sub-groups in society was the great disparity between the urban and rural populations. Pundits predicted that our new nation would not last and go the way of other politically unstable and economically vulnerable newly independent countries.

14. The challenges and opportunities were obvious to us, that we have to stand on our own and be responsible for our own destiny. This realization and the determination to avoid the indignity of continued colonialism hastened all groups in Malaysia to put aside their differences and cooperate in forging a successful nation. As the cornerstone for political stability to sustain strong economic growth, a constitutional monarchy and parliamentary democracy was instituted. The motto, "Unity in Diversity" is the apt rallying point for the integration of our society and the creation of a truly Malaysian nation.

15. We also realize over the years that parliamentary democracy itself is no guarantee for political stability and economic growth. Ours is not only an economy in development, but also a society in transition for ours is a society steep in traditions and conservative values. In the quest for modernization, not westernization, we have pursued moderate and pragmatic development policies in all spheres. All the needs and aspirations of our multi-ethnic, multi-cultural and multi-religious society were and are taken into consideration but not all could be accommodated without infringing on the rights of a particular group in society. There is constant give and take between the various groups and very often, one group will have to subsume its short-term concerns to accommodate the other groups for long-term peace and stability. The regrettable lapse of civil conduct with regard to the sensitivities and rights of others in our midst led to the tragedy of 13 May. We realized then that while political and civil rights were burgeoning, we have neglected the economic, social and cultural rights of our people. Almost 50% of our citizens then were living in poverty. Access to health, education and employment opportunities was inequitable. In the background, the country was still racked with communist insurgency.

16. Our nation was at a political watershed. To continue as it was is to invite more restiveness among the marginalized and alienated population. An innovative solution, some would say, radical, was crafted and implemented - the New Economic Policy. This policy has its doubters inside and outside the country, but what is obvious is that, the social engineering programme has succeeded and because of that, we are able to create a more equitable society. Now, the New Economic Policy is widely acknowledged, as the world's most unique and successful economic and social engineering endeavour. Contrary to certain assumptions, the Policy did not deprive any groups of their fundamental rights or access to opportunities. We have managed to reduce absolute poverty from 60% in 1970 to 13.5% in 1990, and God willing we'll reduce it further to 5.5% by the new millenium. There is also now a large and still expanding middle class and this country has maintained its political, social and economic course since 1970.

17. Through it all, Malaysia maintained its democratic system. It held fair and free elections without fail since its independence. It has a vibrant civil society. The number of non-governmental organizations, labour unions, trade associations, think tanks is still increasing. There were political discords, economic crises and social discontents in our nation - over rights, over opportunities over inequity. Yet, we managed to overcome and resolve our differences through consultations, dialogues and consensus. Actions that run contrary to our laws, ethics, morals and sensitivities were also resolved and rectified, sometimes with much soul-searching and dismay. I am sure all of us present here are familiar with this reality and I need not dwell further on this. Suffice to say that the full realization of human rights and fundamental freedoms is possible in a democratic society such as Malaysia. Malaysians already enjoy freedom with accountability and security, where the rule of law assured them that their rights are protected.

18. We need not cast our eyes elsewhere to instruct us on the promotion and protection of our rights. Since independence, all our legislations have the interest of Malaysians at heart - labour laws that provide better conditions and standards for workers, acts that protect the rights and well-being of women and children,

environment laws for future generations. Our laws, through our own volition, are standards that supercede many developing countries and match those in developed nations. As a responsible member of the community of nations, we have also acceded to international instruments, conventions and treaties, without sacrificing our national interest and sovereignty,

19. In this interdependent world, the pace and forces of globalization affects the political, economic and social configuration of sovereign states, including Malaysia. The process of globalization is an impetus for states to use the international concords attained by consensus and with global reach on any given issue for compliance by States Parties in international conduct, relations and negotiations. Malaysia also acceded to international concords, setting global standards in line with the agreed global aspirations on it, including those pertaining to human rights.

20. Samuel P. Huntington, in his book, *The Clash of Civilizations and the Remaking of World Order*, noted that the end of the Cold War is not the end of the divide in political, economic, social and cultural values, or civilizations. Differences that exist if not handled in a compromising and tolerant mode will lead to clashes of civilizations - the greatest threat to world peace. We do not subscribe to the view that the clash of civilizations is the cause of international conflicts, but that conflicts will arise only when the strong and powerful imposed its domination in the economic and political spheres.

21. Huntington himself espoused the view of the west when he stated that, "The west is attempting and will continue to attempt to sustain its preeminent position and defend its interest by defining those interests as the interests of the 'world community'. That phrase has become the euphemistic collective nouns (replacing the 'Free World'), to give global legitimacy to actions reflecting the interests of the United States and other Western powers.....Through the IMF and other international economic institutions, the West promotes its economic interests and imposes on other nations the economic policies it thinks appropriate. Huntington went on to quote Georgi Arbatov's description of IMF officials as, "neo-Bolsheviks who love expropriating other people's money, imposing undemocratic and alien rules of economic and political conduct and stifling economic freedom."

22. I could not express better than Huntington and Arbatov regarding the imposition of western political values, economic system and related institutions as conceived by them, and its dire consequences on global peace. The idea of peaceful coexistence of peoples from various cultures, finding common grounds, seeking similarities for common values is timeless and universal and should be strived for. The principles and purposes of the United Nations and its sister agencies must be made current to the needs and desires of the greater number of its members and not to be at the beck and call of its big and powerful members and their interests.

Human Rights Issues and Instruments

23. Since the adoption of the Universal Declaration of Human Rights 50 years ago, and the adoption of the 1993 Vienna Declaration and Programme of Action (VDPA), the challenge for the United Nations and member states, including Malaysia, remains to enhance and sustain their commitment to the realization of all human rights: civil, political, economic, social and cultural. Although it has acquired universal acceptability, the Universal Declaration itself is a statement of goals and principles without the binding force of a treaty. Many human rights covenants, conventions and treaties enacted since 1948 have restated the Declaration's principles.

24. Though there are now 25 human rights instruments, the Covenant on Civil and Political Rights and the Covenant on Economic, Social and Cultural Rights are the broadest legally binding human rights agreement negotiated under the auspices of the United Nations, each with over 120 States Parties. Both Covenants were adopted in 1966 and entered into force in 1976. Both Covenants took the Universal Declaration of Human Rights a step further by making provisions legally binding and opening the door to international monitoring of human rights practices. Along with the Declaration, these two Covenants, is part of the International Bill of Rights.

25. The Covenant on Civil and Political Rights, initiated by the developed countries, focuses on freedom from, among others, discrimination, torture, slavery, arbitrary arrest and detention, assurances of liberty in speech, conscience and peaceful assembly. The Covenant on Economic, Social and Cultural Rights, initiated by developing countries, is more positive about rights to education, health, shelter and development. It is the precursor of subsequent solidarity or collective rights that include the right to development and the right of people to cultural, economic, political and social self-determination.

26. Over the years, debates between developed and developing countries have ensued over international efforts, particularly at the United Nations, to define, promote and protect human rights. The debate revolves around priorities and conflicts between civil and political rights and economic, social and cultural rights. Developing countries maintain that human rights begin with economic and social concerns - housing, nutrition, health, education, and employment. Developed countries contend that political freedoms are the key to these and other human needs. It is obvious that developing countries have more pressing concerns in providing basic needs for their peoples. Malaysia has also give priority to the promotion of civil and political rights according to our own mould as shaped by our national experience for a stable and peaceful country where all are the beneficiaries of development and none is marginalized.

27. The question being constantly asked within the developing countries is whether they need to attain certain levels of development, before the necessary environment can be fostered for the enjoyment of civil and political. Questions are also raised on how best governments should promote political rights of its citizens when their countries are mired in poverty or chronic underdevelopment. To a man without a without a roof over his head and food in his plate, what is freedom of expression if

he is still not free from want? It is admittedly easy for developed countries to call for the adherence to and respect for the promotion and protection of human rights based on existing standards and principles as contained in the Universal Declaration of Human Rights and the related international human rights instruments. It is much harder for them to assist developing countries to free their own people from want of basic needs.

28. I am disappointed that countries that had been the greatest perpetrators of human rights abuses, fascism and racism, are now posturing as the paragons of democracy and freedom. They are also self-appointed watchdogs of alleged human rights abuses in countries they formerly colonized and plundered with impunity. Not to mention the condescending attitude and appalling treatment of their colonial subjects as second class beings. Their own history showed us of how their own societies and nations had undergone wrenching evolutionary and revolutionary paths over a long period of time in order to be the free and liberal societies with high standards of living that they enjoy now. We are still living in an inequitable world economic order. We are indeed witnessing a new form of imposition based on economic and political intimidation if we do not comply to their interests.

29. Their approach in excessively promoting civil and political rights over economic, social, cultural rights lead to a confrontational atmosphere in international deliberations on human rights. The Malaysian Government has long held the view that development and human rights are inter-related. Both have as their main concerns the survival of, justice for and well-being of the individual. In the broadest sense, development can be viewed as a process by which all human rights are to be realized, and human rights is the goal of development. This is in line with the preamble of the Charter of the United Nations that calls for both "fundamental human rights" and "social progress and better standards of life in larger freedom". People-centred sustainable development is not possible without respect for human rights.

30. It is this principle that Malaysia and other developing countries promoted in the United Nations which led to the adoption of the Declaration on the Right to Development in 1986. The Declaration established the inalienable human rights by which each person and peoples are entitled to participate in, contribute to and enjoy economic, cultural and political development by which all human rights and fundamental freedoms can be fully realized. The fundamentals of the Right to Development are that the human person is the central subject of development and should be the participant and beneficiary of the rights to development. It acknowledges that all human beings have a responsibility for and a role in development. It recognizes that states have the primary responsibility for creating national and international conditions favourable for the realization of the right to development.

31. In Malaysia itself, the Government has unwaveringly implemented the principles of the Right to Development. Our development plans were and are formulated with inputs from all sectors of society. This is consciously done so that none would be left out in the quest for economic and social well-being of our people. The Malaysian

Government has and will continue to include the participation of people in the process of decision-making for their equal opportunities and access to resources.

32. Based on our own national experience, we know that no one model of development or system is universally applicable to all cultures and peoples. What works for us may not succeed elsewhere. What works for others somewhere else may not achieve its desired result here. Malaysia is forever adopting, adjusting and adapting to suit our particularities in all our endeavors. That is our strength, and we need not look elsewhere for a benchmark for our own aspirations. We need to look within us, to have the confidence in our own system and our people's capacity for resilience and self-reliance in our own way forward politically, economically and socially. The Malaysian people and Government have always recognized that regardless of political and economic systems that exist in the world, extreme poverty and exclusion from society are violations of human dignity that inhibit the full enjoyment of human rights and fundamental freedoms.

33. It is with that principle in mind that I find the recent notion of humanitarian intervention as mooted by developed countries disquietening. I do expect these countries to articulate the notion individually, but to call on the United Nations to undertake such action is, to my mind, in direct contravention with the purposes and principles of the United Nations. Its Charter clearly stipulates that the United Nations itself is not authorized to intervene in matters which are essentially within the jurisdiction of any state. Member states are also to refrain from the threat or use of force against any other state. Throughout its history too, the United Nations was called upon only to prevent a dangerous situation from escalating into war, to persuade opposing parties to settle their differences at the conference table rather than on the battlefield, and to help restore peace when conflicts occur.

34. What is more worrisome is the Secretary General of the United Nations echoing the calls for humanitarian intervention during the current session of the United Nations General Assembly. He apparently redefined individual human rights and fundamental freedoms to control one's destiny as individual sovereignty. By his new term, the individual is more paramount or supreme than the state, meaning society as a whole. By that definition and his contention that the state is the servant of its people, it would justify the United Nations or any other country, to violate the territorial integrity and sovereignty of any nation for the sake of the sovereign individual. This new notion will certainly not be executed on the principle of objectivity and non-selectivity.

35. Considering the state of the world today, it is better for all nations to renew their commitments towards the common goal of alleviating the human condition through development and humanitarian assistance instead of insisting on imposing specific norms and values upon other countries as the only accepted way, regardless of national particularities. On the eve of the new millenium, over a billion people are still living in abject poverty and more every day are falling below poverty line. At least 150 million children don't go to school. 40,000 children die every day because of diseases and hunger. 50 million are mentally or physically damaged due to inadequate nutrition. Of the 6 billion people today, only 900 million live in developed countries. Over 50% of the world's population have less than 5% of the world's

income. Commitments by developed countries to allocate 0.07% of their GNP to developing countries to alleviate poverty are not fully met. Assistance was given only with conditionalities even it was sought for human development programmes, health and education. If that is not blatant disregard of meeting basic human needs and rights of people for their dignity and worth as human person, than what is?

36. With increasing education and income among the populace, discussion on rights are becoming more vocal. We are concerned with the question of repression, corruption, environmental degradation, abuses over land and working conditions, as these are part of our ongoing effort to sustain civil and political rights. The debate is certainly lively and healthy. In pursuing these rights within our democratic system, we need to exercise prudence. The pursuit of civil and political rights in the manner as propounded and practiced by the west may lead to regrettable discords in our multicultural society. As the Prime Minister himself said at the United Nations in 1991, "If democracy means to carry guns; to flaunt homosexuality; to disregard the institution of marriage; to disrupt and damage the well-being of the community in the name of individual rights; to destroy a particular faith; to have privileged institutions such as the press which are sacrosanct even if they indulge in lies which undermine the society - if these are democracy's details, cannot the new convert reject them?"

37. As I stated earlier, the Government has long been acutely aware that all human rights and fundamental freedoms are indivisible and inter-related. Equal attention and urgent consideration was always given to the achievement, promotion and protection of both civil and political rights and economic, social and cultural rights. As we all know, in Malaysia, there is a lively fora for the expression of views - be it through the INTERNET, political rallies, NGO forums, the media and the newsletters of political parties that are available to the public freely even if it is purportedly for the members of the political parties concerned. But let us not forget that all these rights can only be fully enjoyed in a society that respects law and order.

Human Rights Commission of Malaysia

38. The setting up of the National Commission on Human Rights is in line with the Malaysian Constitution that guarantees the protection of human rights and fundamental freedoms. It is also in line with the primary responsibility of the Government to ensure the well-being of the people. In this context, the state is not regarded as being opposed to the individual. The state is considered as a politically unified population living in a specified area of land or territory. The state should not be considered as an entity divorced from the people. As such, all individuals and groups share equal responsibility to ensure the collective well-being of our people.

39. Our national experiences and history have determined our perspective on human rights. Our multi-cultural society made us by inclination and necessity, consultative, consensual and accommodative. In tandem with our economic and social development, the Government is striving to create awareness among the people of their rights and be informed and responsible citizens. The Government, in fact, has

over this decade, been studying very thoroughly, various international conventions on human rights.

40. In 1995 itself, the Government of Malaysia ratified the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women. These two Conventions are key human rights instruments. Their ratifications are an extension of the Government's commitment for the well-being of women and children at the national and international level. The ratification of these human rights instruments in this decade is another manifestation of the Government's endeavour in the protection and promotion of all human rights in Malaysia.

41. In December 1996, the Ministry of Foreign Affairs initiated a series of inter-governmental meetings to look into the possibility of setting up our National Commission on Human Rights. The intention is to provide Malaysians another channel to express their grievances which are to be remedied.

42. The deliberations on the setting up of the Commission were done with great care. We have examined the structure of other national human rights commissions in the Asian and Pacific region to see how we can best adapt them to our particular needs in line with our existing laws and regulations. We also considered very carefully how our national commission, while meeting the needs of Malaysians as per their human rights concern, would also be in line with the Paris Principles relating to the status of national institutions as well as the Universal Declaration of Human Rights.

43. You will recall that on 25 March 1999, I made an announcement to the media that the Government of Malaysia has agreed to establish a National Commission on Human Rights. The Act had been passed by both Houses of Parliament. I regard it as propitious that there is widespread awareness and concern about the issue of human rights in Malaysia. I am very grateful for all the inputs I have received before and after the establishment of the Commission.

44. The aspirations of the people and the Government of Malaysia on the setting up of this Commission are in tandem. As an independent body, all Malaysians could use the Commission to air their grievances on human rights abuses and to redress the situation where possible. The Commission is the body empowered to do so in Malaysia to look into complaints on human rights infringements.

45. As you are aware, the aim and objective of the Commission is as stated in the Human Rights Commission of Malaysia Act 1999 (Act 597). In essence, the Commission will promote awareness of and provide education in relation to human rights. The Commission will also advise and assist the Government in formulating legislation and administrative directives and procedures on human rights and to recommend the necessary measures to be taken to remedy infringements of human rights as and when they occur. The Commission can also recommend to the

Government on accession of treaties and other international instruments on human rights.

46. Apart from the Government and the Commission, the individual also has the primary responsibility to promote human rights. Individually and collectively, people can promote awareness and education on human rights. People should be encouraged to respect human rights at all levels for their full participation in national life as constructive and productive citizens.

47. It is my hope that human rights will be considered in all its aspects - social, cultural and humanitarian, and not just from the perspective of individual rights. Genocide, racial discrimination, marriages and divorces, children, youth, aliens, asylum seekers, the disabled, torture, development and social progress all warrant our attention as human rights issues that affect the well-being of all of us as human beings.

48. The Commission will address and redress human rights infringements in Malaysia both through public discussion and investigations of violations.

49. The Commission's dialogues, consultations and recommendations to the Government on human rights will improve the promotion and protection of human rights and fundamental freedoms of all Malaysians. As the Commission is a new body, we should keep an open mind and not prejudge its functioning.

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