

HUMAN RIGHTS

By

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The International Commission of Jurists held its Regional Seminar on Human Rights and Development in Rural Areas in South East Asia in Penang, Malaysia on November 30, 1981. The Keynote Speech was delivered by Tun Dr. Mohamed Suffian and was as follows:

Yang Teramat Mulia Tunku Abdul Rahman; Yang Mulia Tuan Niall MacDermott, Setia Usaha Agong International Commission of Jurists; Yang Mulia Encik Idris, Pengetua Consumers' Association of Penang; Yang Berhormat Datuk Khalid, Wakil Kerajaan Negeri Pulau Pinang; Encik Param Coomaraswamy, Wakil Malayan Bar Council; distinguished guests; ladies and gentlemen.

I am honoured to be invited to deliver a keynote speech, but the word keynote is rather frightening, because it assumes something grand, when what I am about to say is not. I would prefer to call what I am about to say a welcoming speech, to which I will add a few observations relevant to the theme of our Seminar.

I am particularly honoured to be sitting on the same platform with Tunku, the Father of Malaysia who did so much to improve the lot of Malaysians, especially those living in rural areas, and who being a lawyer was concerned with the human rights of all Malaysians. I am particularly fond of him, as we were D.P.Ps together. At one time the British thought that he was somewhat troublesome because of his political interest and offered him a judgeship which he refused. What a narrow escape he had!

The Tunku was a man of vision and under his leadership the country was able to achieve independence without bloodshed and with the nation united behind him. I doubt if he was too happy as a D.P.P., because he always saw the big picture and was too kind and generous and soft-hearted to make a good prosecutor. If a man killed somebody as often as not Tunku would be inclined not to advise prosecution — "after all, the man only killed his mother-in-law".

Fortunately for the country, he left the A.G.'s Chambers, and went on to bigger things — and eventually proved that he was a statesman not only in Malaysia but also in the outside world.

I am also happy to be with Mr. Niall MacDermott our Secretary-General, a former Minister of State in the British Labour Government, whose concern for the underdog throughout the world is second to none.

I would like to welcome you all to Malaysia, and in particular to Penang, the Pearl of the Orient, of which we are rather proud. Your choice of this island as the venue of this seminar was very flattering. Perhaps it is not surprising because in this fast moving age of technology, Penang has been able to maintain its sensible way of life where people still have the

time to smile and be friendly and helpful to their neighbours and guests. I sincerely hope that while in Malaysia, not only will you have a fruitful seminar, but you will also have time to look around, visit other parts of the country, meet some of our people, and find out for yourself what we have tried to do since independence 24 years ago, and judge for yourself whether or not we are going in the right direction and whether or not what we have achieved so far has been worthwhile.

I would like on behalf of myself and also of all members of the Commission to congratulate Mr. Keba Mbaye, our President and the President of the Supreme Court of Senegal, who unfortunately is not with us today, on his recent election to the other I.C.J., i.e. the International Court of Justice. His election is an honour not only to him and his country but also to our Commission which now counts two members who are also members of the World Court. We are proud to be associated with him and know that he will discharge his new responsibilities with the same distinction as he did his responsibilities as a member of the Senegalese judiciary.

Ladies and gentlemen, I would like now to say publicly what I have not had the opportunity of doing so far, and that is to acknowledge the great honour conferred on me by my election as a member of your Commission, a body composed of distinguished jurists, which under the wise guidance of our President and that of Mr. Niall MacDermott, our Secretary-General, and their predecessors, is well known for emphasizing that the law is supreme, that we are governed by the rule of law, that it be enforced justly, and that for this purpose, the judiciary should be independent, free from control by the legislature and the executive, and, no less important, that the Bar be also independent.

I hope to be able to contribute in a small way to the important work of the Commission, to justify the confidence they have placed in me.

After these preliminary remarks, I now propose to make a few personal observations on the theme of our Seminar, "Human Rights and Development in Rural Areas". There are gathered here distinguished jurists from many countries, including especially the other four ASEAN countries. I am afraid that I do not know enough to speak about other countries, so I shall speak only about my own country.

We in Malaysia have a written constitution, written during 1956-57; and as you might expect in a new constitution, it has a Bill of Rights, except that we call it "Part II", dealing with "Fundamental Liberties". This Part guarantees the citizen and in many cases the non-citizen also certain political and legal rights, in some cases subject to exceptions. Some of these political and legal rights are:

1. the right of the citizen to live anywhere in the country, his right to return, his right not to be

banished;

2. the right of a person not to be deprived of his life or personal liberty save in accordance with law;
3. his right to *habeas corpus*;
4. his right to live as a free man not in slavery;
5. protection against retrospective criminal laws and repeated trials;
6. equality before the law and the equal protection of the law;
7. freedom of speech, assembly and association;
8. freedom of religion, though Islam is the religion of the Federation;
9. the right not to be deprived of one's property save in accordance with law and the right to compensation where one's property had been compulsorily acquired or used; and
10. the right of the citizen not to be discriminated against in public education on the ground only of religion, race, descent, or place of birth.

All these rights, and they are human rights, are constitutionally protected rights and they have been written into the constitution to emphasize their importance, for being in the constitution they are more difficult to abridge than rights protected by ordinary law. These rights are in the main to secure legal justice. But we on the Commission know that equally important is the need to secure for man everywhere another kind of justice, namely political, economic and social justice — a need which constantly exercises our mind — so that man can live a full life with enough to support himself and his family in dignity and to provide opportunities for his children and generally free from want and fear.

Man should have a say in who should govern him, and in every country human and natural resources must be used in such a way that they work for the benefit of the whole nation, not merely for a privileged section thereof. We in Malaysia are fortunate in that by the grace of God, it has been possible to hold a general election every five years as enjoined by the Constitution, giving the electorate an opportunity to choose their own Government. In some States, for example here in Penang, the electorate have shown their dissatisfaction with the Government by voting their opponents into office.

When I read about a debate being held on whether or not there should be a right to development, I must say I was astonished — because in Malaysia where Government may change every five years, the party in power never doubts for a moment that its duty is Development, its duty is to establish and improve schools, universities, roads, bridges, airports, harbours, public utilities, and so on, such that the people's life is made more healthy and more comfortable. The Constitution does not say that the citizen has a right to development, and yet because of the desire to win the citizen's vote and the fear of losing office at the end of five years, nobody in Government doubts our right to development, and that this right belongs to all citizens and not only to a privileged few. Long may this be so.

In Malaysia too, there has been a clear shift in emphasis to development concepts from "economic growth" to "equitable distribution of national income". Before independence, such development as there was occurred mainly in urban areas, and that was where were concentrated employment opportunities and most amenities, such as schools, hospitals, good roads, electricity, telephones, piped water, and all the other things that make life easier and more comfortable. Such modernization as there was in urban areas, and the urban population had most of the money; while those in rural areas with inferior amenities were occupied in low-income pursuits on their small holdings or as fishermen, and this was true of all races.

Soon after independence, the new Government applied their energy to developing the modern sector of the economy situated in urban areas — because that was the most obvious and easiest place to start — while at the same time, efforts were made to ameliorate the life of the rural people by providing them new lands, simple roads, rural health centres and piped water. The modern sector of the economy showed remarkable progress to the benefit of the urban population. On the other hand, while the rural population also benefited by having new lands on which to grow rubber, oil palm, rice, fruit and vegetables, easier access to market for their produce, better health facilities and clean drinking water, they still lagged behind their fellowmen in town. The benefits of development did not trickle down much to them.

Unfortunately in this multi-racial country, the urban population who benefited were mostly non-indigenous and the rural population who lagged behind were mostly indigenous ("bumiputras").

It was not until after the 1969 general election that Government realized the extent of the dissatisfaction of the rural population; and thereafter there was much faction policy rethinking. That rethinking resulted in the launching in 1971 of our Second Malaysia Plan 1971-75, embodying the country's New Economic Policy, which is still the policy today. This policy has two objects: —

- (a) to reduce poverty among the mass of the country's population, both urban and rural, but more particularly the disadvantaged rural;
- (b) to restructure society by bringing the rural and agriculture-based indigenous population ("bumiputras") into the mainstream of economic activities, especially commerce and industry, in urban areas.

The New Economic Policy plans to achieve its target in 20 years, i.e. by 1990. It plans to enable the indigenous people to own 30% of the corporate sector of the economy. It plans to reduce poverty among the "bumiputras" not by robbing Peter to give to Paul, but by enlarging the national cake.

How to enlarge the national cake? By expanding and modernizing agriculture hitherto the principal source of our national income; by actively encouraging the manufacture rather than the export of our agricultural produce; by fostering the location of agro-based industries in rural areas to stem the population

drift towards towns. Generally, by the removal of obstacles and the creation of facilities to enable the private sector and free enterprise to add to the national wealth.

The ultimate object is so to encourage the economy, such that in the end,

- (1) race will no longer be identified with occupation, as has long been the case; and
- (2) bumiputras will be raised to be on a par economically with their fellow citizens.

I think that we have succeeded in building up our economy. The clearest evidence is the value of our currency which has doubled against sterling since independence. Also we are the world's greatest producer of natural rubber, and have surpassed West Africa in our production of palm oil and soon in cocoa also; we are a great producer of tin; we export large quantities of tropical hardwood and pepper. We are almost self-sufficient in rice our staple food.

Manufactures have also increased tremendously compared to a few years ago.

In the process of all this development, much new wealth has trickled down to the rural population, judging from the number and quality of housing in the kampongs as can be seen from the road. The rural population are better housed, eat better, are better fed, enjoy better health and by means of government scholarships more of their children have opportunities in education.

While much remains to be done, Malaysia, it may be said, certainly believes that the man in rural areas has not only those political and legal rights written in the constitution but also basic human rights to a satisfying life.

A feature of development in this country is that plans are not imposed from the top. Here ideas for development are encouraged to come from the bottom, at the village and district level. After scrutiny they are sent up to the state level and in the case of federal projects they are eventually sent up to Kuala Lumpur. There they are again scrutinized and assessed and a final decision is made in the light of financial resources and national priorities. Thus there is popular participation in the formulation of our development plans.

What is the role of judges, lawyers and law teachers in securing human rights in rural areas?

Judges of course must see to it that disputes are determined fairly and justly, and that the poor and weak are not victimized by the rich and powerful. They should see to it that the poor and weak do not lose the protection of the constitution and the law.

Lawyers too have an important part to play. The role of the private practitioner is rather limited because rural folks cannot be lucrative clients. It is lawyers in the public service who have a more important part to play: they advise Government on how defects and lacunas in the law may be remedied to give better protection to the peasant from, say, the landlord and moneylender.

Law faculties should include the teaching of economics and social anthropology to better equip law students who plan to enter the public service — be it as lawyers or administrators. Both economics and social anthropology teach how conditions and the law may be adjusted to bring about desired results to improve the community.

Quite frankly I think that it is the administrator who can play and does play the most important part in rural development and the protection of the human rights of rural folks, and that the lawyer is only his auxiliary. So if the administrator is also a lawyer he is doubly equipped to protect the villager's right to a decent life.

The administrator should secure law and order so that the villager may pursue his occupation in peace; and provide a clean, incorruptible and efficient public service, so that official tax collected from the villager is credited to revenue and utilized to provide public amenities, and the taxpayer does not have to pay a bribe for service to which he is entitled. The administrator should see to it that whatever subsidies are made available by the Government such as seeds and fertilizer reach the villager for whom they are intended. He should see to it that the villager gets a fair wage for his labour and a fair price for his produce, and does not fall prey to the middleman. Government at the Centre should ensure that the income of the villager is not disproportionately low compared to that of his fellow citizen in urban areas, and that if necessary the food he produces for the nation be subsidized. If his land is taken for a public purpose so that, for instance, a road or a school may be built on it, he should get fair compensation and in cash, or, better still, he should be given alternative land. The administrator should generally see to it that Government is not oppressive and really benefits the villager.

Ladies and gentlemen. Before closing, once again I thank the I.C.J. and the Consumers' Association of Penang for giving me the honour of making this welcoming speech, and I wish all participants a fruitful and enjoyable seminar.