

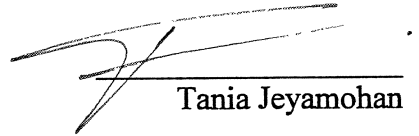
**The Rights of Malaysia's Ethnic Minorities –  
Is Democracy Dead?**

by

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This dissertation is presented for the degree of Masters of Laws of Murdoch University.  
Submitted in 2004.

I declare that this dissertation is my own account of my research and contains as its main content work which has not previously been submitted for a degree at any tertiary education institution.



Tania Jeyamohan

## ABSTRACT

### Synopsis

This dissertation examines the erosion of minority rights in Malaysia through the implementation of special measures in favour of the majority Malays. This dissertation will consider the appropriateness, effectiveness and legitimacy of these special measures under current international law standards. This involves a comparison of Malaysia's constitutional, legislative and statutory provisions with international principles of customary and treaty law, and applicable regional declarations. This dissertation will conclude by recommending appropriate policy and legislative reform, if such measures are found to be appropriate in the circumstances.

### Preamble

Malaysia achieved independence from Britain on 31 August 1957. The *Merdeka* Independence Proclamation declared that the nation was to be 'founded upon the principle of liberty and justice and ever seeking the welfare and happiness of its people'. Insightful words for a nation built upon by racial, cultural and religious separatism, as the term 'its people' was presumably meant to encompass both the majority Malays as well as all ethnic minorities.<sup>1</sup> Unfortunately, the sentiment expressed in the *Merdeka* proclamation was marred by ethnic polarisation and its resultant ethnocentric legal and political system.

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<sup>1</sup> The term non-Malays and ethnic minorities are used interchangeably. The term 'ethnic minority' in the context of this dissertation is restricted predominantly to the ethnic Chinese and Indians in Malaysia. Malaysia's 'other' ethnic minorities, for example, the Eurasians and Ceylonese, are included in this definition of ethnic minorities. It does not specifically include the *orang asli*. The status occupied by the *orang asli* is complicated by the fact that they are also included in the definition of *bumiputras*.

The reasons for this will be explored in chapter one, which considers Malaysia's historical and cultural development and the eventual mass pluralisation of Malaysia without a unifying national identity. An understanding of the formation of Malaysia's cultural hegemony, and its subsequent ethnic polarisation, is required to appreciate the current status of Malaysia's ethnic minorities. Part A will consider in detail the preferential policies in favour of Malays introduced by the government following the 1969 race riots and the resulting effect this had on the economic, social and cultural rights of non-Malays. The introduction of these policies also led to the implementation of race based quota systems in the education, employment and business sectors. Correspondingly, the socio-economic position of non-Malay minorities have been affected. The legal implications of these policies are discussed in the proceeding chapters and the reasonableness of these policies will be measured against international law standards.

To undertake this assessment, Part B discusses the role of international law and examines its implications to Malaysia. It should be noted from the outset that although Malaysia is a member State of the United Nations, it has elected not to ratify significant human rights treaties. Given this, chapter two considers the role of customary law as a part of international law and its implications to the observance of fundamental human rights. This chapter aims to establish that Malaysia as a member of the United Nations, and by virtue of customary law, is bound to recognise fundamental human rights.

As this dissertation discusses Malaysia's observance of minority rights at international law, part C examines the availability of fundamental human rights to Malaysia's minorities. Part C reconciles Malaysia's pro-Malay preferential policies with minority rights and considers whether minority rights in Malaysia have been eroded through such

policies pursuant to international law standards. Chapter four determines whether the language rights of Malaysia's non-*bahasa* speakers, who also constitute the ethnic minorities, are recognised and protected by Malaysia's national language policy. This chapter also assesses the impact of Malaysia's national language policy and planning on the education and employment rights of non-Malays given the introduction of language based quota systems in both sectors. Chapter five examines the role of Islam in Malaysia and considers the extent of religious freedom available to non-Muslims in Malaysia. Chapter six deals with Malaysia's restrictive laws and how these laws were relied on to revise and modify Malaysia's legal system and policies to benefit Malays whilst simultaneously impacting on the civil, political, economic, social and cultural rights of non-Malay minorities. Chapter six also considers the potential risks associated with the government's continued reliance on these restrictive laws to 'control' inter-ethnic tensions.

On the assumption that Malaysia has breached relevant international law standards in some instances, part D recommends possible methods of legislative and policy reform which may be adopted by the government to remedy these breaches. Part D is the concluding chapter of this dissertation. In concluding, this dissertation examines the impact of ethnic divisions on social and political policies in Malaysia and considers the extent of government intervention in the economy based on race which has ultimately impacted on the protection and implementation of minority rights in Malaysia. It is the writer's opinion that the source of ethnic conflict lies within the introduction of legal doctrines which are purposefully detrimental to the rights of minorities. Accordingly, the concluding chapter recommends reforms to Malaysia's legal system and policies to minimise the risk of an eruption of inter-ethnic tensions.

The aim of this dissertation is to demonstrate that Malaysia's politicisation of competing ethnic interests has resulted in the maintenance of preferential policies detrimental to minority rights and contrary to international law.

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