

# VERNACULARISING HUMAN RIGHTS IN SOUTHEAST ASIA

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By the end of the Cold War, the promotion of human rights and liberal democracy had become a key element in foreign policy and development assistance. However, political elites in Asian countries pushed back. Ministers and representatives of 34 Asian states released the Bangkok Declaration at the 1993 World Conference on Human Rights in Vienna.<sup>2</sup> The Declaration protested the use of human rights as ‘a conditionality for extending development assistance’ or as ‘an instrument of political pressure’, stressing that human rights must be considered ‘bearing in mind the significance of national and regional particularities and various historical, cultural, and religious backgrounds’ (World Conference on Human Rights 1993). Singapore’s foreign minister warned that ‘universal recognition of the ideal of human rights can be harmful if universalism is used to deny or mask the reality of diversity’ (Sen 1997, 9). More insidiously, Asian strongmen who had led their countries for decades, often stifling dissent, argued that human rights extended the colonialist project to subject Third World countries to continued domination (Thio 1999).<sup>3</sup>

However, in the late 1990s, against the backdrop of the Asian-values-versus-democracy-and-human-rights debate, the crushing 1997 Asian Financial Crisis, and increasingly widespread discontent over corruption and cronyism, massive street demonstrations exploded in Malaysia and Indonesia, known in both countries as ‘Reformasi’. Both movements peaked when political structures, weakened by elite disunity, became conducive to radical change (Weiss 2006). Importantly, as demonstrated below, we identify this period as one that sowed the seeds for human rights activism and provided the political catalyst for a local turn to human rights.

## **Civil society’s vernacularisation of human rights**

This chapter draws from vernacularisation theory, bringing grounded insights from the field, capturing how human rights is a lived experience for lawyers in Malaysia, and exploring how they ‘use’ human rights. We focus on the practice of *doing* human rights. We examine how lawyers empowered by the Reformasi experience led an initiative – LoyarBurok (LB) and its subsequent manifestation, the Malaysian Centre for Constitutionalism and Human Rights (MCCHR) – that, among other groups,

localised and increased acceptance of human rights for Malaysians. We map the political conditions under which LB/MCCHR grew their body of work and highlight their strategies and modes of organisation. We consider, too, the experience of fellow cause-lawyering organisation Lembaga Bantuan Hukum (Legal Aid Institute, LBH) Jakarta, and its efforts over the course of decades.

We answer the following questions: How did the political situation influence the development of LB/MCCHR? What motivated the founders to champion and advocate for human rights? What were their strategies, and how did they organise themselves? How does the trajectory and focus of LBH Jakarta – launched under a more authoritarian regime – compare? Space does not permit us to go into other important issues, such as the extent of resistance and pushback from state and non-state actors, or matters of funding, personnel, and whether their human rights advocacy succeeded. We do not seek to offer a generalisation of lawyers' human rights mobilisation but rather, to analyse how human rights were translated for and shaped by the local context, emphasising the importance of political regime and agency.

What is human rights vernacularisation? It is a process made up of a series of numerous, repetitive, focused actions by like-minded groups of people to appropriate and adopt international human rights ideas and norms for a local audience, to increase human rights understanding and use. As global human rights laws, norms, and standards emanating from United Nations mechanisms in Geneva and New York travel, vernacularisation is 'the extraction of ideas and practices from the universal sphere of international organizations, and their translation into ideas and practices that resonate with the values and ways of doing things in local contexts' (Merry 2017, 213).

Localisation studies (including vernacularisation, indigenisation, and contextualisation) use ethnographic, actor-centred approaches to examine patterns of behaviour, structural, social, cultural, and historical conditions within which behaviours occur, and interrogate how the local context and experiences of actors on the ground shape the relevance of human rights in practice (Destrooper and Merry 2018). Similarly, within studies on norm acculturation (Goodman and Jinks 2013), legal mobilisation (Chua 2019), legal consciousness (Chua and Engel 2019), regime change and compliance (Risse, Ropp, and Sikkink 2013), and transnational advocacy networks (Keck and Sikkink 2018), we see how top-down socialisation towards global and regional human rights norms may influence both state and non-state behaviour. But groups working from the top-down cannot domesticate human rights. It is local civil society organisations (CSOs) and activist communities that are vital players in moving human rights ideals through advocacy phases and practices within their spaces and spheres of influence to change or mould government behaviour.

Vernacularisation literature elaborates how human rights are 'done' or practised by local communities, including CSOs and victims or survivors of human rights violations. Destrooper and Merry (2018, 3) conceptualise the process of human rights localisation as the 'travel, translation, and transformation of human rights across scales'. Drawing from the works of Simmons (2009) and Goodman and Jinks (2013) on individual and collective agency in disseminating human rights, Destrooper and Merry also emphasise the importance of power, agency, and the processes through which human rights travel.

In real terms, a 'social service' approach led by social workers and activists and a 'human rights advocacy' approach led by lawyers and political elites are two complementary means of vernacularisation. The former utilises a wide range of strategies, including raising awareness, educating the public, assisting victims and survivors,

and growing the movement, while the latter inculcates international human rights standards into domestic law and mobilises shame towards norm-violating governments (Wongsinnak 2009). Both initiatives can awaken human rights consciousness among the public (Chua and Engel 2019).

Local ‘translators’ appropriate and adopt global rights ideas and norms for a ‘domestic context by modifying them to suit local conditions and relating them to familiar images, symbols, and narratives’ to achieve cultural resonance (Chua 2015, 303). There are five types of translators: ‘conveyors’ who transport ideas, ‘converters’ who convert their clients and society at large through campaigns, ‘adaptors’ who adopt global discourses to suit local contexts, ‘transformers’ who change ideas to make them more acceptable, and ‘generators’ who invent new terms and concepts appropriate for local settings. Depending on the type of activities undertaken, an actor may employ different forms of translation (Rajaram and Zararia 2009, 479–482).

Political contexts and local conditions influence how the translators vernacularise human rights. The essentials vary, including the ‘content’ of the message derived from the global human rights value package; how CSOs that select, reinterpret, and re-articulate the message ‘adapt’ it; their ‘choice’ of modes of communicating the message; and the ‘type’ of interventions CSOs adopt, be these victim or survivor support, legal aid, or litigation (Levitt and Merry 2008).

By adopting a discursive approach to human rights that sees the social practice of human rights as, in part, ‘constitutive of the idea of human rights itself’ (Goodale 2007, 8), we are interested in learning how actors talk about, advocate for, criticise, and enact the idea of human rights (Buerger and Wilson 2019; Goodale 2007). Here, we provide a vignette of the Malaysian political condition that influenced LB/MCCHR’s founders and how their work contributed to the vernacularisation of human rights in the country.

### **The indelible mark of Reformasi: resistance and mobilisation of human rights in Malaysia**

Malaysia has been referred to as pseudo-democratic (Case 2004; Chin 2015), soft authoritarian (Means 1996), or semi-authoritarian (Ottaway 2003). These authors describe Malaysia’s political system as paying lip service to liberal democracy – with formal democratic institutions and regular elections, oppositional politics, independent media, and civil society mobilisation – while frequently violating the basic tenets of democracy, civil and political liberties, and human rights, particularly with arbitrary arrests and repressive laws.

In 1997, the Malaysian economy crashed amidst accusations of deep-seated corruption across different factions in the major Malay political party, the United Malays National Organisation (UMNO). UMNO led the ruling Barisan Nasional (BN, National Front) government. It was also at about this time that the Asian values argument started to lose currency across Southeast Asia, as the Asian financial crisis hit the region. Deputy Prime Minister Anwar Ibrahim emerged as the primary challenger to Mahathir Mohamad for the prime ministership. Both came from the same party: UMNO. To stop Anwar, Mahathir had arrested him in September 1998 using Malaysia’s preventive detention law, the Internal Security Act (ISA). Dubious charges were levelled against Anwar. UMNO’s members were split, and so was the nation. Malaysia erupted into unprecedented street protests, marking the beginning of Reformasi – a call for reform to corruption and single-party dominance. When Reformasi began, human rights did not prominently

feature as the rallying cry of Anwar and his supporters. To non-Malays, who were about 30% of the population, it looked like an intra-UMNO struggle concerning Malays only.

Large anti-government demonstrations were held daily in a display of freedom of speech, expression, and assembly unseen before in the country. The police held Anwar in detention to hide that the then-Inspector General of Police had assaulted him during interrogation. When Anwar emerged in public to attend his court hearings, pictures of his black eye circulated widely, becoming a symbol of injustice, galvanising his supporters' struggle to free him.

Reformasi ignited the imaginations of youth. Through experiential learning in massive rallies at parks and protests on the streets, they gained first-hand evidence of police brutality while acquiring skills in mobilising. The protest movement metamorphosed into something larger, catalysing a broad-based social movement that transcended ethnic lines and endures until today. Activists frequently used human rights framing and language. They challenged Asian values rhetoric, even as the government continued to label public assemblies and civil liberties as 'Western' values that were not of 'our culture'. Human rights resonated with Malaysians for several reasons: Anwar's ill-treatment and torture in prison, the perceived lack of a fair trial in the prosecution of his cases, the corruption surrounding the political elite, and shows of police brutality against peaceful protestors.

Notwithstanding this anger against the government, the reformists Anwar motivated still failed to topple Mahathir and the Malaysian political regime in the 10th general election in 1999. Although change did not materialise, the shadow of Reformasi influenced developments in the Malaysian political scene over the next 20 years.<sup>4</sup> Mahathir eventually stepped down in 2003 after 22 years in power. While suppression of dissent marked his legacy, ironically, he empowered a new generation of activists, including LB lawyers. Legal professionals who would otherwise not partake in demonstrations were on the ground daily during the Reformasi protests, including more than a hundred young lawyers, assisting detainees and providing legal representation deep into the night. Malaysian senior lawyers mobilised and sought out volunteers to form legal-defence teams to act for scores of protestors who were being arrested and charged every day. The Bar Council Kuala Lumpur Legal Aid Centre (KLLAC) became the secretariat coordinating the teams. Being the epicentre of mobilisation, the KLLAC hosted a burgeoning network of legal experts that developed into a bastion against state excesses.

Vernacular mobilisation of human rights is a strategy that consists of 'collective action framing processes' through which 'activists translate and put human rights into local practice' (Chua 2015, 301). It produces oppositional consciousness and expands the movement while continuing to recruit newcomers. The inherent social nature of the exercise also helps mould 'a web of social relations and human connections' (Chua 2015, 328). All of these aspects were in evidence at that time. If not for Reformasi court cases, pupils-in-chambers and lawyers who had just started practising would not have been called on to act. Overnight, they were exposed to the reality of human rights abuses and violations on the ground.

Two of six founders of LB – Amer Hamzah and Edmund Bon – cut their teeth in criminal defence work on behalf of Reformasi demonstrators. Both of them also attended street rallies. Another LB founder, Edward Saw, joined Amer and Edmund in court applications to bail out detainees held without trial under the ISA. They were also part of the Bar Council Human Rights Committee. The then-young lawyers subsequently fell into different areas of expertise based on their interests. Fahri Azzat was

LB's pensmith and contributed largely to the group's writings, articulating serious concerns regarding judges and judicial independence. Amer focused on refugee rights. Edmund filed habeas corpus applications for ISA cases related to arbitrary detention, while Edward's expertise was in labour law, acting for vulnerable workers. The other two founders were Shanmuga Kanesalingam and Sharmila Sekaran. Addressing religious freedom, Shanmuga actively took up apostasy cases on a pro bono basis, assisting the Malaysian Consultative Council of Buddhism, Christianity, Hinduism, Sikhism and Taoism. Sharmila was involved with child rights, subsequently setting up a children's rights non-governmental organisation (NGO), Voice of the Children.

Judicial independence, arbitrary detention, child rights, refugee rights, labour rights, and freedom of religion were topical issues that needed a more expansive public airing. All the founders started legal practice around the Reformasi era. The events of that period became etched in their memories and played a large part in how they viewed the law. They felt that it was insufficient to confine the practice of law to just their offices and the courts. The anger of Reformasi was still palpable. Bringing together their collective dissatisfaction with the state of affairs, the six lawyers began submitting opinion pieces to various mainstream print media outlets but soon found themselves up against censorship. The dominant news providers were still newspapers controlled by people linked to the ruling government, who would brook no dissent. Publishing with online news site *Malaysiakini* would only reach a limited audience who had access to the internet.

After some degree of frustration, the founders formed their own platform, setting up LB as a 'blawg' (law blog) or online legal journal in 2006. Hatched over a social gathering, LB aimed to create more open space for critical writings on social issues and legal opinions, challenge wrongdoings by politicians and those in power, and highlight public-interest cases for laypersons' consumption. The politics of Reformasi greatly influenced the LB lawyers; the LB blawg was a manifestation of their years of resistance against the ruling establishment. Reformasi set the tone and conditioned the lawyers to catalyse efforts to domesticate human rights using the internet. The blawg would become the earliest lawyer-led, human rights-based, online initiative combining legal mobilisation and activism in Malaysia. Human stories of suffering made a case for human rights. Legal jargon was simplified. Public-interest court cases were explained. Repeatedly, comments on the blawg saw readers angered by what they had read and calling for change.

The Reformasi movement also provided the LB lawyers with sufficient political reason and opportunity to argue human rights in the Malaysian courts. Initially, Reformasi was an Anwar-driven protest movement seeking to install him as the premier. However, the government's use of the ISA under the pretext of curbing violent action by Anwar's people to overthrow the government and police heavy-handedness in handling Reformasi protestors served to emphasise the lack of human rights protection in Malaysia. These state threats to the right to assemble and to a fair trial left a strong impression on the young lawyers volunteering with the KLLAC. Their views were augmented by media statements of the Human Rights Commission of Malaysia (SUHAKAM), set up in 1999, strongly criticising the government for cracking down on peaceful dissent. The statements elevated the messages of NGOs and Anwar's supporters. The creation of SUHAKAM added a veneer of legitimacy to complaints of human rights abuses.<sup>5</sup>

Armed with the knowledge that what the government was doing was anti-human rights, Amer and Edmund attempted to use the 'ISA 7' case in court to strike down the criminal prohibition on assemblies. In June 2001, seven university-student leaders were

manhandled, beaten, and arrested by the police. They were part of a gathering of 400 students at Masjid Negara, the national mosque, to demonstrate against the ISA and what it stood for – arbitrary detention to suppress political dissent (Weiss 2006). They became known as the ‘ISA 7’. Amer and Edmund were part of the legal team defending them, while Edward Saw held a watching brief on behalf of the Bar Council.

One of the main arguments by the defence was that the Police Act, which makes it an offence to take part in a public assembly without a police permit, was unconstitutional. While the protesters finally lost the case in 2013, they secured a minor victory. The dissenting judge, one of three on the Court of Appeal, held that the Police Act contravened Article 10 of the Federal Constitution. The judge adopted the defence team’s human rights language, stating: ‘This right to assemble is a fundamental right guaranteed by the constitution and is also in line with Universal Declaration of Human Rights, Article 20(1) which says: Everyone has the right to freedom of peaceful assembly and association’ (*Nik Noorhafizi bin Nik Ibrahim & Ors v Public Prosecutor* [2013] 6 MLJ, para. 85, 712).<sup>6</sup> Though the dissenting judge was in the minority, this was the first time a judge had sought to strike down the Police Act, after many failed challenges by lawyers.

By the time the Bersih protest movement calling for free and fair elections started in 2007 (Ufen, this volume), the language of rights and liberties, especially among the country’s urban masses, was entrenched in Malaysia’s social environment. Malaysia had to wait until 2018 to see regime change when the ruling coalition, in power since independence, lost in the 14th general election. In its manifesto, the new administration promised, among other items, greater human rights compliance and alignment with international human rights standards through treaty ratifications. However, in a political coup orchestrated through the realignment of political-party coalitions in 2020, the pre-2018 ruling parties and political leaders regained control over the federal government, jeopardising several human rights law reforms which were being developed.<sup>7</sup>

Throughout this period, then, regime instability in Malaysia catalysed human rights mobilisation in civil society by lawyers to counter the excessive use of force by the state. Energised by the Reformasi movement, LB’s founders attempted to vernacularise human rights among the populace by using their legal know-how to critique national laws and political behaviours that were inconsistent with human rights, and to make international human rights norms relevant to local conditions and for local purposes.

### **Strategies and modes of organisation in vernacularising human rights**

In 2011, [LoyarBurok.com](http://LoyarBurok.com) grew from a non-party political and law blog into a CSO with a physical centre: MCCHR, also known as Pusat Rakyat LB (LB Citizens’ Centre). We focus on the vernacularising work of LB and MCCHR through the lenses of three components: strategic litigation, legal mobilisation, and civic empowerment. These three elements echo what Simmons (2009, 126) presents as required in the politics of change – litigation, elite-initiated agendas (legislation), and political mobilisation (demonstration). In terms of the first component, LB/MCCHR’s lawyers file public-interest cases to implement human rights norms in local courts. Given that individual rights and freedoms under Malaysia’s Federal Constitution have been interpreted restrictively by judges and are frequently trumped by state power,<sup>8</sup> human rights lawyers, including LB lawyers, have attempted to creatively embed human rights in the everyday lives of Malaysians. In terms of the latter two components, and switching between the platforms of LB and MCCHR, LB/MCCHR’s activists infuse human rights demands

into democratic participation and legal reforms, bridging the disparity between human rights as law and human rights as a social movement.

### ***Mainstreaming the language of human rights***

The first blog post on [LoyarBurok.com](http://LoyarBurok.com) in 2006 outlined the general direction that the blawg was to take (Azzat 2006). At that time, there was no expressly mentioned objective of promoting human rights or freedom of speech and expression. The courts were perceived as government-friendly, while politically linked mainstream media heavily censored dissenting voices. Meanwhile, the Bar Council and its committees, in which the LB founders were actively participating, were more formal and did not admit non-lawyers. This led the founders to explore additional means of social advocacy within a limited political space, one where they could freely combine litigation, demonstration, and legislation.

The founders soon decided to open the blawg to anyone interested in contributing, including non-lawyers. The idea was to ‘have everyone write’, to have more people express themselves in writing and to build a communal blog – an army of critical thinkers. The internet provided space for the freedom to express one’s views in urban Malaysia and the founders encouraged critique of local politics, something which was done behind closed doors during the earlier Mahathir reign. This inadvertently vernacularised these rights, empowering rightsholders to claim their right to freedom of thought and expression and exercise these freedoms in their daily lives. Writers were called ‘LoyarBurokkers’.

In line with LB’s image of young lawyers challenging the status quo, the mascot of the blawg was Lord Bobo Barnabus, The Wonder Typewriting Monkey (LoyarBurok n.d.), literally a ‘Monkey in a Wig’ (Kanesalingam 2014), a caricature of an authoritarian mind-controlling figure that seemingly poked fun at judges. The founders claimed that they wrote under the control of Lord Bobo, and they encouraged everyone to also write. LB became the key legal platform to write for at that time. It steadily gained in popularity and young people thought it was hip, especially as the name was anti-establishment and tongue-in-cheek.

The blawg website defined the term ‘loyarburok’ as, ‘noun, colloquialism: one who is full of hot air; one who enjoys talking a lot about things that serve no useful purpose’ (LoyarBurok n.d.). ‘Loyarburok’ means ‘bad lawyer’ in colloquial Malay. Although they faced pressure from their employers, senior lawyers, and judges over their activism, the founding lawyers were unabashedly proud of their delinquent and rebellious image. They found purpose and connection with others over human rights mobilisation; this passion permeated through LB and MCCHR to others. Agency here is significant, as with the opportunities, the right timing and community created, because it was the personalities of the LB founders that led them, together, to create the movement and rope in others.

Many lawyers and non-lawyers (students, conservationists, feminists, doctors, academics, and human rights activists) of all ages wrote for the blawg. Retired judges also contributed. Legal discourse commands prestige in Malaysia, and association with a group of lawyers brings an individual standing by association (Kessler 2014a, 2014b, 2014c, 2014d). At one time, LB had more than 200 contributors or authors. The novelty lay in the fact that it was a communal blog open to all with no censorship; conversations could be had among influential individuals through ‘letter-writing’. Every LoyarBurokker had his or her own username and password. They would upload their posts for publication by a team of volunteer editors and publishers. Pieces were checked

and lightly edited only for defamation and sedition. In addition, blogging was beginning to be trendy. It was like a journal but in itself was the only law blog. Most popular politicians had their own blogs – one of the most prominent blogs was Mahathir's. Subsequently, [LoyarBurok.com](http://LoyarBurok.com) came to allow every LoyarBurokker who wanted it complete control of the blawg for a week. He or she wrote, edited, and curated the content. Often, they invited subject-specific writers to post about the topic the LoyarBurokker chose for the week. This mode allowed the coverage of the blawg to grow exponentially to readers who would otherwise not follow a law-based medium.

Several pivotal moments marked LB's rise in popular consciousness and, with it, the topics that posters debated on the blawg. In 2008, after the state of Selangor fell to opposition parties for the first time in the 12th general elections, the Selangor government, led by Reformasi-era politicians and social activists, began publishing a state-level newspaper, *The Selangor Times*. LB was invited to write a weekly column titled 'Ask Lord Bobo'. This column in a print newsletter allowed LB's authors to reach a different demographic of readers and tap into the anger of the middle classes at governance and political issues in the country.<sup>9</sup>

What truly reflected the LB lawyers' success in making human rights urban, trendy, and wide-reaching was their column, 'Monkeysuit Protocol', in the *August Man* lifestyle magazine, helmed by a lawyer based in Sibu, Sarawak, Adrian Chew. Adrian also curated 'Stories from the East', a series of blawg posts focused on the states of Sabah and Sarawak in East Malaysia.<sup>10</sup> Further, LoyarBurokkers, who included many university-student activists, were actively working on the ground. They performed at the *Urbanscapes* art and music festival in 2010 – LB was one of the first activist groups to be featured in the event.<sup>11</sup>

Opening up the blawg to contributors paved the way for LB to reach the height of its popularity in 2009, during a constitutional crisis in the state of Perak (Choong 2014). A struggle to select Perak's next chief minister emerged when three state lawmakers claimed they had lost confidence in the incumbent and defected to another political party. The incumbent chief minister was sacked and he then challenged his removal in court, represented by Amer and Edmund, among other lawyers. The LB blawg became a focal point where highly respected constitutional and legal experts traded opinions on the matter. At that time, such open discussion in a published format, be it online or in print, critiquing and dissecting the actions of political leaders, royalty, and the courts was unprecedented. Malaysia had had several constitutional crises in the past, involving fallen state governments due to party-hopping in Sarawak in 1966 and Sabah in 1985, but those events occurred before the advent of the internet.

LB collated the articles on the blawg into its first publication, *Perak: A State of Crisis* (Quay 2011). Editor Audrey Quay couched the Perak crisis debate in the language of human rights, evoking the ideals of Article 21 of the Universal Declaration of Human Rights on the rights to democratic participation and to elect a leader of one's choice.

Before and during the years of carrying out blog mobilisation, the founders of LB were also active in public mobilisation through the Bar Council. In 2003, Edmund chaired the Bar Council National Young Lawyers Committee, which launched a campaign to abolish Section 46A of the Legal Profession Act (LPA), regarding Bar Council membership. The government responded by deleting Section 46(1)(a) of the Act. In 2007, Amer, as deputy chair of the Bar Council Human Rights Committee, and Edmund, as chair of the Committee, led a 'Walk for Justice' over a video of a prominent lawyer brokering the appointment of judges with the chief judge of Malaya. This was only the second time in

the Bar's history that lawyers had taken to the streets. The public assembly by lawyers, blatantly breaking the law on public assemblies, was a precursor to unprecedented and persistent shows of public dissent in the country.

On 10 November 2007, Bersih had its first assembly, drawing 100,000 demonstrators. A rally by the Hindu Rights Action Force (Hindraf) followed on 6 December 2007, calling for justice and the protection of rights for Hindu Malaysians after a spate of temple demolitions. A few days later, Amer and Edmund, along with other activists and lawyers, were arrested and remanded for taking part in celebrations and a public procession commemorating Human Rights Day. They were later charged in court and acquitted. Despite the arrests, several other public rallies continued, breaking down the fear of police brutality and intimidation carefully cultivated during the Mahathir years and institutionalising the right to peaceful assembly.<sup>12</sup>

### ***From LB to MCCHR: human rights vernacularisation through institutional strength***

In March 2011, after several years of discussions and postponements, and with support from the other LB founders, Long Seh Lih and Edmund led the establishment of the MCCHR. Seh Lih is a human rights expert who had worked with SUHAKAM and crossed paths with the LB lawyers when the Bar Council participated in a SUHAKAM public enquiry. She then worked with the UN on several human rights assignments abroad before returning to Malaysia to helm MCCHR. MCCHR aimed to 'do human rights' – more specifically, to conduct new forms of education initiatives and public engagement about human rights.<sup>13</sup> The centre is also a resource centre open to interested parties to hold seminars, debates, and even concerts without charge. CSOs and informal groups of activists have meetings and workshops at the space.

The setting up of MCCHR institutionalised LB's legal mobilisation and localisation of human rights. There was now an entity to seek funding, run programmes, and formalise strategic litigation in human rights beyond the pro bono work that LB lawyers had been taking on since Reformasi. As blogging became widespread, many law blogs and platforms providing legal commentaries and operating in the same mode as LB had sprouted up. The founders felt that LB had achieved its purpose; MCCHR is now the primary vehicle to continue their vernacularisation project.

Strategic litigation, in which cases are litigated in court to support victims of human rights violations or human rights defenders and to achieve systemic change through court rulings, is the core of MCCHR's work. The organisation is the first of its kind in Malaysia. Its aim was to have the courts apply human rights principles in their rulings, using provisions in the Federal Constitution. Among the well-known cases, MCCHR has taken on is one related to women's rights, in which the High Court ruled that pregnancy discrimination is a breach of a constitutional right. The judgement stated that:

The word 'gender' was incorporated into art 8(2) of the Constitution in order to comply with Malaysia's obligation under the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), to reflect the view that women were not discriminated. It is settled law that the CEDAW had the force of law and was binding on member states, including Malaysia.

*(Noorfadilla bt Ahmad Saikin v. Chayed bin Basirun & Ors [2012] 1 MLJ, para. C, 833)*

Other noteworthy cases include those related to freedom of religious beliefs (unilateral child conversion), indigenous land rights (land grabs), freedom of expression (book bans, and censorship of political satire and cartoons), and the right to a fair trial (preventive detention under emergency law). Annually, MCCHR runs strategic litigation training camps for young lawyers and non-lawyers, publishing the *Strategic Litigation Training for Lawyers: A Facilitator's Manual* in 2014 and *Litigating Freedom of Thought, Conscience and Religion* in 2016. It hosts a free online training module on religious freedom. In 2019, MCCHR embarked on a new initiative, Project Law Strike, to draft new laws or amend existing ones for the Pakatan Harapan government, covering issues of online sexual harassment, freedom of speech and assembly, trafficking in persons, human rights defenders, and statelessness.

LB/MCCHR founders concur that human rights advocacy through the courts must be complemented by social and media advocacy. Alongside legal work dealing with the courts and government agencies, MCCHR's civic education programme, 'UndiMsia!' (Vote Malaysia!), has harnessed youth energy to channel their unhappiness about how the country is run to take up non-violent and direct forms of activism. Under the umbrella of UndiMsia!, the flagship 'IdolaDemokrasi GameShop' facilitates social and political analysis among students and provides technical support for resistance actions to curtail state power and impact governmental action for human rights. 'We took the Federal Constitution, broke it down, and showed how little power people really had during elections. Thus, we needed to act every day – even a single day!', said one UndiMsia! trainer. More than 200 IdolaDemokrasi GameShops have been organised since 2011, attended by over 5000 participants. Many of these participants have gone on to become UndiMsia! trainers, MCCHR volunteers, and youth political leaders. They have mobilised their peers and executed their own human rights initiatives. Collating information from its programmes, MCCHR published *Activating Malaysians: The D-I-Y Toolkit* (MCCHR 2012), available online for free, which individuals and groups are using for 'do-it-yourself activism'.

The journey from blog mobilisation to increase postings on [LoyarBurok.com](http://LoyarBurok.com) to growing a large number of legally and non-legally trained activists under MCCHR's banner for human rights activism was inadvertent. Many MCCHR activists came initially through the ranks of the blawg. The move to institutionalise human rights work through MCCHR as an organisation is undeniably the vital turn that converted more among the uninitiated, including non-lawyers, to act for human rights at the ground level.

### **Cause lawyering: motivation, agency, and civil society**

Alagappa (2004) categorised Malaysia as having a controlled and communalised civil society stuck in a semi-authoritarian regime. Reformasi set in place conditions that inspired the lawyers of LB to define their careers by using human rights to resist the government. Nevertheless, Reformasi does not provide a complete answer. Living in a restrictive civil society environment, why did the LB founders choose to 'do' human rights? Studies on cause lawyering offer insight.

LB/MCCHR was formed and led by 'cause lawyers' (also referred to as 'lawyer-activists' or 'legal aid lawyers'). They provided pro bono legal services and carried out non-legal social mobilisation activities to promote social justice and human rights. Cause lawyering broadly refers to morally activist lawyers (Luban 1988, xvii). Cause lawyering can be defensive, seeking to prevent or stop rights violations, or to work towards social

transformation. It can be embedded in or independent of social movements working for a shared political goal. It challenges and draws from mainstream professional values, constantly re-examining the legitimacy of the line between law and politics (Munger 2008; Sarat and Scheingold 1998, 24–25). Lev posited that small contingents of private lawyers who are articulate proponents of rule-of-law values go out of their way to defend these values out of personal and professional interest and lawyerly ideology. He observed that ‘interest alone is too confining to explain the complexities and reach of legal activism. Ideology, however, alone or in conjunction with professional interest, goes further’ (Lev 1998, 447). Their reaction to human rights ideas, like the concept of general law, affirms the urge ‘to surround society with a defensive shield of transcendent values against state power’ (1998, 447). Interviews with people who worked closely with LB/MCCHR provided similar observations.

A cause lawyer seeks to empower rights-users and promote public participation ‘by demystifying the law and legal institutions’ (Marshall and Hale 2014, 306). The LB/MCCHR lawyers saw the limitations of using the formal mechanism of court advocacy to effect change. Learning from the Reformasi movement, they sought to harness the energy of a different audience: ordinary young Malaysians. Litigation is slow, time-consuming, and expensive. Human rights cases are often lost because international human rights norms are not automatically part of Malaysian domestic law. But beyond the courts, lawyers’ statements receive attention from the press and parliamentary leaders. They can influence statutory reforms. Human rights principles are often adopted to support the lawyers’ arguments, and critically, they are made public to be understood by the masses.

### ***The Malaysian Bar’s duty and tradition of dissent***

Additionally, the Malaysian legal profession has always been at the forefront of meeting political challenges with the language of rights, thus shaping the legal landscape and discourse along the way. In the 1970s, the Bar Council was vocal in its criticism of the government’s use of the ISA, its amendment of the Federal Constitution to enhance the powers of the ruling party, and its proposal to pass the Essential (Security Cases) (Amendment) Regulations 1975 (ESCAR), which would amend the rules of evidence for security offences, under a proclamation of Emergency (Lev 1998, 443). The Malaysian Bar passed a resolution for lawyers to boycott appearing in ESCAR cases. The government responded by amending the LPA to introduce Section 46A, which disqualified lawyers from membership in the Bar Council until they had seven years of legal practice, on the misguided assumption that young lawyers were behind the protest.

The conflict between the government and the Bar Council continued after Mahathir Mohamad became prime minister in 1981. That year, about 200 lawyers converged at the Parliament building to protest against restrictive amendments to the Societies Act. The Council also protested against amendments to the Official Secrets Act, which reduced judicial oversight of executive decision-making. These protests were followed by ‘Operasi Lalang’ in 1987, when the government detained more than 100 CSO activists, members of parliament, journalists, and other politicians on national security grounds. Then in 1988, Mahathir removed the Lord President of the Federal Court following a spate of decisions that went against the government. Through the Bar Council, Malaysian lawyers highlighted their discontent over these issues and, even to date, continue to critique governmental policies and actions regularly. This practice of dissent has been

elevated among Bar members to be known as a ‘tradition’, understood as justified because the LPA imposes a statutory duty to uphold justice without fear or favour.

### ***Lembaga Bantuan Hukum Jakarta: legal aid and beyond in Indonesia***

Some comparisons with cause lawyers in the leading Indonesian legal aid organisation, LBH Jakarta, are apt. The Indonesian Bar Association (Persatuan Advokat Indonesia, PERADIN) sponsored the founding of LBH Jakarta in 1969 as Indonesia’s first legal aid NGO. Founder Adnan Buyung Nasution had to visit high-ranking officers in the Suharto regime for consent to establish it. Finally, in 1970, with the support of the provincial government of Jakarta, LBH Jakarta officially began operations. LBH Jakarta became Indonesia’s most prominent centre of socio-political-legal criticism and reform and led to a boom in legal aid, with other providers established under public and private university law schools and political organisations, or oriented towards specific interests (Nasution 1981, 189–190).<sup>14</sup> After establishing the national Indonesian Legal Aid Institute Foundation (Yayasan LBH Indonesia, YLBHI) in 1980, LBH Jakarta became a legal aid institute only for the city. Human rights are enshrined in YLBHI’s core values, vision, and mission YLBHI. Since the 1960s, defence lawyers from PERADIN and LBH Jakarta have embarrassed the government at home and abroad by challenging political trials as staged affairs, turning the trials into platforms for political criticism (Lev 1998, 439F).

Nasution argued that the growth and role of legal aid organisations cannot be separated from political, economic, and social developments (1981, 191–192). LBH Jakarta was born out of increasing public demands for justice, particularly for the poor who were negatively impacted by development pressures. The struggle for the rule of law and the upholding of human rights peaked in the late 1960s, when intellectuals, journalists, and human rights activists were arrested, detained, and oppressed. What political freedom the government of the New Order gave to achieve national development and more equitable distribution allowed for the establishment of legal aid organisations. These events in Indonesia, decades ahead of Malaysia’s – or Indonesia’s – Reformasi show how sudden heavy-handedness by the state can galvanise civil society opposition, which freedoms accorded by the state can further facilitate.

Over the years, LBH Jakarta has taken on many high-profile public-interest cases, drawing from international human rights law in its submissions. Particularly outspoken lawyers include Yap Thiam Hien, Suardi Tasrif, Adnan Buyung Nasution, and former LBH directors Mulya Lubis and Abdul Hakim G. Nusantara. The senior lawyers captured public attention and attracted younger advocates to join in the cases to defend political detainees.<sup>15</sup> Yap and Adnan Buyung were arrested for defending students in 1974 and accused of being masterminds behind the movement, as student activists often gathered at the LBH office.<sup>16</sup>

But the organisation has not stopped at the provision of legal aid. Community organising, research, strategic litigation, and policy advocacy are seen as part of the duties of lawyers. For example, in the past, the courts did not recognise a procedure that provided legal standing for class-action suits. LBH Jakarta advocated for such a procedure; now these suits are recognised in Indonesia. LBH Jakarta brought its first legal-standing case to court in 1988, representing Wahana Lingkungan Hidup Indonesia (WALHI, Indonesian Forum for Living Environment), an environmental NGO which is part of the Friends of the Earth International network, as a representative of nature

against a corporation. The court recognised their standing. Another recent example was a citizen suit against the Indonesian president and other government agencies over air pollution in Jakarta.<sup>17</sup>

Further, LBH Jakarta's building has become a space for activists to gather and convene. The lawyers are political activists and work at the grassroots, forming thick ties with other CSOs and setting up other organisations, including Indonesia Corruption Watch and the Commission for Disappeared and Victims of Violence (Komisi Untuk Orang Hilang dan Korban Tindak Kekerasan, KontraS). LBH Jakarta also conducts a highly competitive annual legal aid training for 50 young lawyers, which receives applications from university graduates all over Indonesia. This workshop covers ideology and awareness, human rights knowledge, legal skills, and most importantly, participatory action research for which the lawyers are sent to live with communities. The live-in experience has the power to change perceptions, and LBH Jakarta takes care to place lawyers among communities against which they may be prejudiced – an approach to enhance acceptance of diversity in Indonesia. A selection process then follows this training to recruit new legal assistants. University students are the clients, training participants, and key stakeholders of LBH's movement. LBH also holds professional paralegal training for community organisers.<sup>18</sup>

For the LBH Jakarta lawyers, legal aid does not solely focus on reaching favourable outcomes for the poor. They take on a broader perspective that includes non-litigation activities, coalescing around the concept of making structural changes in law, policy and institutions, and in empowering the community. Likewise, LB/MCCHR's lawyers go beyond taking dock briefs at legal aid centres, to volunteer time and resources to pursue non-judicial human rights activism alongside strategic litigation to effect change.

LBH Jakarta acknowledges that they are more activists than lawyers and call themselves legal aid servants (*pengapi*). *Pengapian* refers to volunteerism; most LBH lawyers adopt this principle of volunteerism and commit to not being paid if the organisation does not have any funds to pay them. Meanwhile, as young wage-earners in the profession, the lawyers of LB/MCCHR pooled their own money to take on strategic human rights litigation cases, run the blawg, then subsequently extend to launch a physical centre.

Both LB/MCCHR and LBH Jakarta closely interact with the law, following a trajectory of using the law (through the courts) or circumventing or resisting it (through activism). Where the law is supportive of human rights, it is readily brandished. Where it is not, the lawyers denounce it as a tool of state oppression and seek in court for it to be quashed.

### Lessons learned from the region

Merry describes human rights as, 'a set of ideals about how governments should treat their citizens and about how all humans should be treated', and suggests rights 'articulate goals that we would like to make effective' (Destrooper and Merry 2018, viii). Vernacularisation then asks how the ideals of 'justice, fairness and equality that underpin human rights' are 'part of everyday life for many people around the world' (Destrooper and Merry 2018, viii). First, because human rights have to be framed in local terms and appropriated rather than imposed, a 'top-down' approach to translating international human rights norms into a domestic setting will fail, while local practices need to be translated 'up'. An effective process can transform the role of a survivor,

parent, or spouse to become an advocate, activist, or proponent, whether by a social or legal transformation (Merry 2006).

Second, LB/MCCHR and LBH Jakarta were formed by lawyers who championed cause lawyering, provided pro bono legal services, and executed non-legal social mobilisation activities to promote social justice and human rights. They were inspired by what they saw and felt in the political conditions around them, thereby raising their oppositional consciousness. The founders of each organisation adopted strategies that catered to their populations. They pursued similar goals that emerged under similar authoritarian pressures but with differing political contexts and local conditions. But to both groups, the pursuit of human rights is not normative or academic; it is a matter of justice and, on occasion, life and death.

Undeniably, there is some Western influence in the growth of human rights movements. International support for human rights has contributed to cause lawyering in developing countries, particularly in the provision of funding. Many cause-lawyering groups that have managed to grow in size while challenging powerful domestic interests in the developing world do so with foreign money. However, this chapter demonstrates Ellman's point that 'cause lawyering in the Third World is the product of developments that Third World actors are shaping as well as being shaped by' (1998, 350–351).

Third, a characteristic shared by lawyer-activists in Malaysia and Indonesia is the 'web of social relations and human connections' brought together by collective-action framing processes, as Chua (2015) mentions in her study of gender activists in Myanmar. Interest, ideology, and agency are supported by social networks, not only within the legal profession but also with other local human rights CSOs. How far vernacularisation can be taken in a given domestic context relies heavily on this web and network.

The experiences of LB/MCCHR and LBH Jakarta lawyers linger with them. Alignment with victims of oppression has taught them not to remain silent in the face of injustice. After leaving these movements, many lawyers continue to pursue public interest and human rights cases through their private law practices. This is the everyday practice of human rights.

## Notes

- 1 We acknowledge Dr. Coeli Barry (Institute of Human Rights and Peace Studies, Mahidol University, Thailand) for her guidance and comments on Edmund's earlier PhD essays on vernacularisation theory, which have influenced the writing here.
- 2 Tew (2020) argues that the Asian values debate is not relevant in the adjudication of human rights.
- 3 Despite the 'Asian' sentiment against human rights, the Association of Southeast Asian Nations (ASEAN) established the ASEAN Intergovernmental Commission on Human Rights (AICHR) in 2009 and adopted the ASEAN Human Rights Declaration (AHRD) in 2012. The effectiveness of these endeavours remains in question, but they have increased the extent and quantity of human rights work in Southeast Asia (Clarke 2012; Davies 2014; Mohamad 2002; Petcharameesree 2013; Renshaw 2013, 2019; Uhlin, this volume).
- 4 Meanwhile, the simultaneous Reformasi movement in Indonesia transitioned the country from a long-term hegemonic authoritarian regime intolerant of civil society, with a distinct military role in government, to what has been perceived to be Southeast Asia's largest democracy. In 2002, the country overhauled its constitution, instituting a fully elected legislature including a new Dewan Perwakilan Daerah (Regional Representative Assembly), provincial and district-level assemblies, stiffer requirements for the passage of constitutional amendments, and a constitutional court (Weiss 2006). At present, Indonesia faces pressures of democratic backsliding (see Caraway and Ufen's chapters in this volume).

- 5 Interestingly, SUHAKAM was formed at the height of Reformasi (and the pushback against human rights in ASEAN). To the surprise of many observers, SUHAKAM was effective in furthering a human rights agenda due in part to the quality and courage of the then-commissioners. It is still unclear how and why Mahathir agreed to establish SUHAKAM. One theory is that former Deputy Prime Minister Musa Hitam convinced Mahathir of the need to form it to enhance Malaysia's international standing, as the image of Anwar's black eye in the global press was too glaring to be ignored (Renshaw, Byrnes and Durbach 2011). CSOs used SUHAKAM to full effect as a platform to raise domestic human rights cases and convey to the public what human rights violations meant. Making a public complaint allowed CSOs to invite media, thereby increasing the possibility of their reporting a story for mainstream public consumption. Since its formation, SUHAKAM has become an important vehicle in the vernacularisation of human rights in Malaysia.
- 6 Because international law and treaties are not automatically enforceable in the courts, lawyers had to first import and weave in human rights through Malaysia's Federal Constitution. The words used before the courts must have legal force. Once they are accepted, lawyers can then edge in normative human rights arguments. This is how global human rights norms can manifest themselves domestically, through judicial vernacularisation.
- 7 For an analysis that takes into account the implications of the 2018 elections, see Sharom and Spooner (2019).
- 8 Interview, Fahri Azzat, co-founder of LB, 24 June 2021.
- 9 Interview, Long Seh Lih, first chief executive officer of MCCHR, 6 and 21 July 2021.
- 10 Interview, Adrian Chew, LoyalBurokker, 20 November 2021.
- 11 Interview, Karl Rafique, LoyalBurokker, 23 November 2021.
- 12 See Choong (2014) and Chan (2019) for more details about the Bersih movement.
- 13 Interviews, Long Seh Lih, first chief executive officer of MCCHR, 6 and 21 July 2021.
- 14 For more on LBH Jakarta and the development of legal aid in general in Indonesia, see Lubis (1985); Lev (1987); Schauble (1990); and Irwan and Hearn (2016).
- 15 See Lev (1972, 276–277) for an account of the arrest of respected attorney Yap Thiam Hein in 1968 and resultant protests by intellectuals, university students, lawyers, and human rights activists.
- 16 Interviews, Febi Yonesta, former director of LBH Jakarta, 18 and 22 November 2021.
- 17 Interview, Alghiffari Aqsa, former director of LBH Jakarta, 26 November 2021.
- 18 Interview, Alghiffari Aqsa, former director of LBH Jakarta, 26 November 2021.

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