

## **Linking and Implementing the Human Rights with the Environmental Mechanisms in Malaysian Context: An Overview**

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**Abstract:** Malaysia is one of the largest environmentally rich and diverse countries in the world. But at present, her traditions and heritages have been facing numerous environmental degradations. To cope with these problems, the Government of Malaysia has already passed some important environmental laws and policy such as the Environmental Quality Act 1974, the Protection of Wildlife Act 1972 Act 76, the Fisheries Act 1985 Act 317, the National Forestry Act 1984, the National Parks Act 1980, the Town and Country planning Act 1976, the Land Conservation the Act 1960, the International Trade in Endangered Species Act 2008; the Bio Safety Act 2007, the Animals Act 1953 etc. On the other hand, in order to ensure the quality of life, some human rights laws such as the Universal Declaration of Human Rights 1948 with other related laws, the Human Rights Commission Act 1999 etc; have already been passed. In addition, some the international environmental laws such as the Montreal Protocol on Substances that Deplete the Ozone Layer 1990, the United Nations Convention on Biological Diversity 1992, the United Nations Framework Convention on the Climate Change 1992, the Kyoto Protocol to the United Nations Framework Convention on Climate Change 1997, the Ramsar Convention on Wetlands of International Importance especially as Waterfowl Habitat 1971 etc; have also been passed. But unfortunately these laws and policies have not yet been properly implemented due to some causes such as non-coordination, weak enforcement, weak penal provisions, corruption etc. An important relation exists between human rights laws and the environmental legal issues. But we hardly realize this importance and we often ignore it as well. We need to emphasize and assess this relationship in our daily life for bringing about sustainable environment and development in Malaysia. This study will examine the position of human rights under the environmental legal mechanisms in Malaysia based on the primary and secondary sources consisting of at least 50 respondents in different criteria through structured and unstructured questionnaire in Melaka City, Malaysia.

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**Key words:**

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### ***I. Background, literature review and results in global context:***

In order to establish the world peace and prosperity, some of the world leaders such as Henry Kissinger, Rose Veldt, Vladimir Putin, Stalin etc., have made some significant contributions towards the human rights and the peaceful global environment context (Wikipedia, 2011). They began to formulate the world bodies such as UNO, OAS, and EU etc., to conserve, develop and regulate the world environment. Relevantly, the Role of League of Nations in promoting the environmental development and human rights may be discussed with the development of the international environmental laws (The League of Nations, 1919). With the end of the World War I, the world leaders began to think for globe peace and security. As a last resort, the League of Nations was established in 1919 based on the Treaty of Versailles (Wikipedia, 2011). Its concept was originated as far back as 1795 outlined in Immanuel Kant's Perpetual Peace: A Philosophical Sketch. Some ideas relating to peace are found in the concert of Europe, Geneva Conventions, and Hague Convention. It includes the Rights of Man including rights of women, rights of soldiers, disarmament, preventing war through collective security, settling disputes between countries through negotiation, diplomacy and improving global quality of life but lacked in own armed force and so depended on the Great Powers to enforce its resolutions, keep to economic sanctions which the League ordered, or provide an army, when needed, for the League to use with so many limitations and occurred the World War II and showed that the League had totally failed its primary purpose, which was to avoid any future world war. The United Nations replaced it after the end of the war and inherited a number of agencies and organizations founded by the League (Wikipedia, 2011). In the Monroe Doctrine (December 2, 1823), (President Monroe's seventh annual message to Congress put "European Powers" on notice that American continents were off limits to European colonization and that any attempts to interfere with American lands would be considered the "manifestation of an unfriendly disposition toward the United States"). This doctrine has reflects an amicable negotiation the respective rights and interests of the two nations on the northwest coast of this continent. It wished to make a best understanding with his Government. He emphasized that interference in all respects should be stopped and security to be ensured and maintained. In the Woodrow

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Wilson, Fourteen Points (October, 1918): He states that the world should be made fit and safe to live in. Particularly, that it be made safe for every peace-loving nation which, like our own, wishes to live its own life, determine its own institutions, be assured of justice and fair dealings by the other peoples of the world, as against force and selfish aggression. All the peoples of the world are in effect partners in this interest, and for our own part we see very clearly that unless justice is done to others it will not be done to us (Wikipedia, 2011). The Paris Peace Conference was the meeting of the Allied victors in World War I to set the peace terms for Germany and other defeated nations, and to deal with the empires of the defeated powers following the Armistice of 1918. It took place in Paris in 1919 and involved diplomats from more than 30 countries. They met, discussed and came up with a series of treaties (Peace of Paris Treaties) in an attempt to form a lasting peace throughout the world. They were the pioneer for setting up the United Nations Organization in order to establish the global peace in the world. The people began to understand about the process of industrialization and introduce and conducted with the advent of the new international organizations in 1945. During this period, peoples and nations began to understand that the process of industrialization and development required limitations on the exploitation of certain natural resources and the adoption of appropriate legal instruments.

Environment has become a global issue to the man kind due to its degradation (Global Environmental Degradation, 2011). Its present state is alarming due to over population, unwise use of natural resources, unplanned construction, ozone layer depletion, acid rain etc. To cope this problems and pollution, a good number of international legal initiatives such as the Stockholm Conference, 1972; the Rio de Janeiro, 1992; the Vienna Convention, 1985; the Montreal Protocol, 1987; the Basel Convention, 1989; and the Biodiversity Convention, 1992 etc.; are passed (International Treaties, 2011). These are ratified by the most of the States of the world. In addition, many international and regional organisations such as UNO, OAS, and EU etc.; have been developed in order to protect the environment in different dimensions throughout the world. It is also supported by the Religious Scriptures. The study urges to implement the messages of the International Human Rights Legal Foundation such as the Magna Carta, 1215; the Petition of Rights, 1628 and the Bill of Rights, 1689; the Act of Settlement, 1701; the French Declaration of Rights of Man and of the Citizen, 1789, the Universal Declaration of Human Rights, 1948; the International Covenant on Civil and Political Rights, 1966; the International Covenant on Economic, Social and Cultural Rights, 1966; the International Convention on the Elimination of All Forms of Racial Discrimination, 1966; only for bringing about the sustainable development and environment (Wikipedia, 2011). The concerned member States of the United Nations Organizations should come forward to implement its purposes and objectives without any discrimination. They should think that we are member of a same family. We should whole heartedly extend our helping hands to one another without discrimination in caste, language, sex, religion etc. The reorganisations of the UNO suggested by the scholars of the world should urgently be implemented immediately. The position of the Secretary General cannot be kept as an 'ornamental' position. It should be more effective and functional and this position should be seated with the universally accepted preferable a (Nobel Laureate) personality who can work focusing the sustainable development and conservation of the environment in the world as a whole. The world leaders work and be prepared together in that way. Lastly, the internal values of the different Religious Scriptures such as Quran, Hadith, Gita, Bible, Christian, Buddhism, etc.; should be realised and be implemented without any thinking twice. The study finds that there is a close relation between human rights and the environmental legal frameworks and these are inter related; and therefore, the environment should be protected and preserved by all means for our own sake and existence. It is keenly observed that the Articles of the above mentioned International Human Rights Laws fully support the provisions of the International Environmental Law. It is noted that an adequate number of provisions or articles are dealing with the environmental aspects and human rights under the international human rights. Moreover, an interlinked between the environmental rights and human rights may be made.

## ***Ii. Results and discussion in malaysian context:***

In the 1970s and the early 1980s, palm oil and rubber wastes were the major problems. In the second half of 1970s, the problems of air were acute (Rhoda Habtemichael, 1995). Later on, the toxic and hazardous problems were largely found which leads to the creation of the laws. The legislations usually follow the policy formulation. It defines the rights, duties, authorities and responsibilities etc. The following laws and policy are sectoral in nature dealing with land, water, forests, marine, fisheries and mining etc., for tackling the environmental pollution problems. At the state levels, there are many laws dealing with the same kind and these are quite in line with the human rights provisions as made in the international human rights documents as mentioned above. Their powers and functions are determined by the Malaysian Constitution. The state of Sabah and Sarawak has taken the initiatives to generate and implement their own legislations relating to the Environment.' The Natural Resources and Environment Ordinance (NREO) was established amending the Natural Resources Ordinance (NRO) 1949. In this regard, there is an order entitled 'the Sarawak Natural Resources and Environment Prescribed Activities) Order' 1994 for protecting the environment. There are many provisions of the environmental legislations dealing with the environmental aspects of the country. A However, the following legislations have been enacted to serve the Malaysian Environment: The Straits Settlement

Ordinance 1894, the Mining Enactment 1992, the Forest Conservation Enactment 1934, the Drainage Works Ordinance 1954, the Road Traffic Ordinance 1958, the Fisheries Act 1963, the Land Conservation Act 1960 (revised 1985) Act 385, the Environmental Quality Act 1974 Act 12, the Protection of Wildlife Act 1972 Act 7, the Factory and Machinery Act 1967, the Protection and Wildlife Act 1972, the National Parks Act 1980 Act 226, the Fisheries Act 1985 Act 317, the National Forestry Act 1984 Act 313, the Town and Country planning Act 1976 Act 172, The Mining Enactment 1929, the Merchant Shipping (Oil Pollution) Act 1994, the Bio safety Act 2007 ACT 678, the Animals Act 1953 (Revised - 2006) ACT 647, the National Heritage Act 2005 ACT 645, the Protection of New Plant Varieties Act 2004/ ACT 634 etc., the Environment Quality (Scheduled Wastes) Regulations 1989, the Environment Quality (Prescribed Premises) (Scheduled Wastes Treatment and Disposal Facilities) regulations 1989, the Environmental Quality (Prescribed Premises) (Scheduled Wastes Treatment and Disposal Facilities Regulations 1989 ETC. The Straits Settlement Ordinance 1894 was also passed in order to protect the several species of wild birds, as well as the Waters Enactment 1920. This Waters law prohibits diversion or abstraction of water, modification of channels, and construction of riverbanks. This was followed by the subsequent legislations such as the mining Enactment 1929, the Forest Enactment 1934 etc., which had relevance to the environmental development. The Environment Quality Act is a milestone for the development and conservation of the Malaysian Environment. The Department of Environment was established under this Act. It is the first example in the developing world as specific legislation. It has a great concern for the environmental management incorporating the cross-sectoral concerns into the body of legislation. It addresses the overall adverse impacts in the industrialization process which are reflected in the different Malaysian Year Plans. It is noted that much of the laws are sectoral in nature. These laws are passed in order to maintain sound environment in the various sectors of the environment in Malaysia. Currently, around forty to fifty environmental related legislations in the country. Malaysia enacted first its kind the environmental legislation in the form of the 'Environmental Quality Act' 1974 and has given on the charge for the first time for controlling and regulating the industrial pollution, wastewater, air pollution from factories and solid waste management problems. It is mentioned here that this Act has been amended three times since it was first enacted. The preventive measures in the form of environmental impact assessment were introduced in the 1985 amendment. The Government passed some important laws in protecting and developing the environment. With the change of time, some legislative changes are also made. It is noted that section 25 of the 1996 created the Payment of Cess and Environmental Fund'' for the environmental conservation and development. It has some other purposes such as research into pollution control, cleaning up and controlling pollutants, prevention of oil spills, hazardous substances dumping and waste dumping and encouraging conservation measures substance dumping and waste dumping etc.; (Noor Mohammad, 2009). The Water Act 1920 is scattered which should be reorganised. Some findings on the legal provisions have been made that need to be implemented. The government should rethink about human rights issues in line with the environmental laws and policy context. This relationship should be more focused and the necessary mechanisms should be developed to ensure these rights. Clean water as human rights is not a debatable issue that should be made properly for all. The human rights laws pertaining to clean water should be ensured by enacting new laws and policy for developing their personality. The awareness program regarding the clean water as our life should be made properly and authorities under the water Act 1920 should be realized fully for our existence and our healthy generations on this mother earth (Noor Mohammad, 2010).

#### ***Relationship between Human Rights and Environmental Mechanisms in Malaysia:***

It can be discussed in relation with the Human Rights Commission Act 1999 in Malaysia as follows: The Human Rights Commission of Malaysia known as SUHAKAM was established under the Human Rights Commission of Malaysia Act 1999, Act 597. Section 2 of this Act defines "human rights" as referring to the "fundamental liberties as enshrined in Part II of the Federal Constitution". According to section 4 of the Act, the functions of the SUHAKAM is to promote awareness of and providing education relating to human rights and advising Government in formulating legislation and procedures whilst recommending necessary measures to be taken (Shuhakum, 2011). In issue concerning deprivation of human rights, SUHAKAM seems like have been giving an active role in advising the government, especially on issue of Internal Security Act that allows the derivation of some citizen. Section 4 further reads, the function of it to recommend to the Government with regard to subscription or accession of treaties and other international instruments in the field of human rights and to inquire into complaints regarding infringements of human rights. Furthermore, section 4(4) of the Act provides that regard shall be had to the Universal Declaration of Human Rights 1948 (UDHR) to the extent that is not inconsistent with the Federal Constitution. This means that whatever rights and liberties not mentioned in Part II but referred to in the UDHR must be considered provided that there is no conflict with the Constitution. The function of inquiring into complaints about human rights infringements is subject to the conditions imposed by section 12 of the Act. Section 12 empowers SUHAKAM to act on its own motion to inquire into allegations of infringement of human rights, in addition to acting on complaints submitted to it. SUHAKAM, however, may not investigate complaints which are the subject matter of proceedings pending in a court of law or which have

been finally decided by any court. Such investigations have to cease if the matter being investigated is brought before the courts. Section 4(2) provides on the purpose of the Commission in exercising its function, they are allowed to in order to promote awareness to undertake research conducting programs, seminars and workshops and disseminate and distribute the results of such research, to advise the Government and/or relevant authorities of complaints against them and to recommend appropriate measures to be taken, to study and verify any infringement of human rights, to visit places of detention in accordance with procedures as prescribed by laws relating to the places of detention and to make necessary recommendations, to issue public statements on human rights as and when necessary and to undertake appropriate activities as are necessary.

The Charter of the Shuhakum may be discussed in this line as follows:

The Charters of the Human Rights Commission of Malaysia (SUHAKAM)

The preamble of the charter reads that SUHAKAM, the National Human Rights Institution established by the Human Rights Commission Act 1999 (Act 597), with due compliance with the 1993 Paris Principles relating to the status of National Institutions.

It asserts its mandates to promote and protect human rights in Malaysia, adhering to the Universal Declaration of Human Rights (UDHR) 1948, to the extent that it is not inconsistent with the Federal Constitution. It recognizes the diversity of the cultures, religions and moral values in a multi-racial society. It also recognizes that human rights continue to be universally developed, However, the statutory responsibilities of SUHAKAM are as follows:

- To promote awareness and provide education relating to human rights;
- To advise and assist the Government in formulating legislation and procedures and recommend the necessary measures to be taken;
- To recommend to the Government with regard to the subscription or accession to treaties and other international instruments in the field of human rights;
- To inquire into complaints regarding infringements of human rights.
- SUHAKAM shall fulfil these responsibilities by:
  - Promoting awareness of human rights and undertaking research and conducting programmes, seminars and workshops and to disseminate and distribute the results of such research;
  - Advising the Government and/or relevant authorities of complaints against them and to recommend appropriate measures to be taken;
  - Investigating and verifying any infringement of human rights;
  - Working with civil society organizations and human rights defenders for the promotion and protection of human rights;
  - Conducting Public Inquiries on major infringements of human rights;
  - Visiting places of detention in accordance with procedures as prescribed by laws relating to places of detention and to make necessary recommendations;
  - Issuing public statements on human rights as and when necessary;
  - Undertaking appropriate activities as are necessary.
- Development of annual strategic plans of action on core areas of concern:•Inculcation of human right values in all Malaysians;
- Promotion and protection of Economic, Social and Cultural Rights as well as Civil and Political Rights;
- Advocacy and monitoring for the ratification, accession and implementation of international human rights treaties by the State;
- Advocacy and recommendations to amend or repeal laws those are against the principles of human rights.

***The framework of operation for SUHAKAM shall be guided by the following core values:***

- Respect for differences in cultures, religions and social sensibilities with due recognition of the rights and responsibilities of the State as in Article 29 of the UDHR.
- Independence-Exerting independence in the performance of its functions in relation to the legislative, judiciary and executive branches of the Government.
- Integrity-Ensuring that the Commission and its members operate to the highest level of integrity, responsibility and accountability in performing their tasks and responsibilities.
- Engagements-Enhancing relations with all stakeholders which include the Government, civil societies, regional and international networks and United Nations (UN) human rights bodies and mechanisms.
- Efficiency-Promptly responding to public complaints, through active assistance to resolve difficulties, within the provisions of existing laws and regulations.
- Openness-Maintaining transparency and providing sufficient avenues to obtain feedbacks and opinions from the public.
- Capacity development-Recognizing the value of human resources and the important need for continuous capacity building for Commission members, staff, and other stakeholders.

### ***The Internal Security Act (ISA) 1960:***

According to Tunku Abdul Rahman, Malaysian first and former Prime Minister, the ISA was formed by reason of fighting the communist subversion in the 1950s and was not initially a medium to venture detainee with deprivation of their liberty. This law was enacted pursuant to Article 149 of federal constitution and the preamble of the act explain the function of it as to protect the internal security of Malaysia, preventive detention, prevention of subversion, suppression of organized violence against persons and property in specified areas of Malaysia, and for matter there to. The seriousness of the legislation is that it has provided the sanction of death penalty and providing non bailable offense for certain matter. Among the backtrack that has been employed by power of ISA is the misuse by certain parties to detain one in other terms of no relation at all with the issue of terrorism but just a mere the sake assumed of security tenure of the state. The issue of three politically motivated ISA detentions unrelated to terrorism seems sparkled unprecedented public criticisms. Among the political issue that we may touch is one the ancient case where got three opposition leader was detain under ISA during the era of Mahathir's reign and it was held in no question on the reason why they were arrested, and there is no clear justification. The court recently in the case of Raja Petra blowing an unanticipated critics on the ISA injustice work in interpreting the s 8 of the Act, where the judge ruled that Home Minister cannot at his own discretion made arbitrary decision, as they were considering the act as to be in accordance with the Act to either focus on threat to national security, such as the economy, maintenance of essential services, and many others. The UN nation seems like has been commenting on this issue. The UN working group, the Amnesty International in the writings, suggest the abolishment of ISA, duly refer to their research on human rights situation there established reason on Hindu Rights Action Force (HINDRAF), a group dedicated to defending the rights's of Malaysia's ethnic South Asians, for marginalisation of their ethnic within Malaysian society. In 2007, the Government of Malaysia has been demolishing a number of Hindu Temples to make way for development projects, despite petition made by local Hindu communities showing their deprivation of their right. Donna Guest, one of the Amnesty speaker said that, if Malaysians are serious in reforming country's political system, they need to start process of abolishing this draconian legislation.

### ***The Convention of the Right of Child:***

It has been a highly debated issue on matter pertaining rights toward the children that mostly involve participation of the school teachers and the students. It has been 10 years Malaysia has been agreeing to abide on the Convention of Right of The Children and studies conducted by SUHAKAM reveal that there were less than 10 per cent of the school teachers are aware of the children's right. The kids do have the right to development as in accordance and supported by the Education Act 1996, in making it compulsory for the citizens to obtain primary studies though not to all children. This is duly referred to Article 28 and 29, the CRC pertain to education. Encouragement on s28 of to have a varied secondary education is fully applied in Malaysia, but s29 seems like hardly to achieve that the development here meant towards the developments of their personality, talents, and mental, and physical abilities. The caning is also has been debated between many parties, it was held that more than 70% of the teacher would agree on empowering them the permission to can disciplinary problem students, including girl. But the argument was quashed on canning is not the best way to train the disciplinary of the student but only to stop what they would have prospectively repeat the said offense again. The student also has the right to participate under the Article 13 which recognizes their right to establish or express their view and opinion, irrespective of whether it is done orally or in writing. According to Malaysian law, this was subjected to the interpretation by the University and College University Act. Children also has the right to protection from the abuse, child labour, drug abuse, sexual and other forms of exploitations enshrines in Articles 19, 32, 33, 34, and 36 of the CRC.

### ***Some Problems and Prospects of the Internal Security Act:***

There are many issues which have been held in question and criticisms were put forward on the enacted act that affecting the power confers to SUHAKAM. The first issue is on the noncompliance of the Act with assumption of good example shown in Paris Principle, which generally gives a verily discrete power to the society, and this was proposed by the HAKAM the Human Right Society. Another hectic criticism is on the s4(4) where the act suggest, on any contradiction of matters concerning human rights and is not included in the Federal Constitution, regard shall be given to the Universal Declaration of Human Rights enacted in UK. The question is how far shall this regard amount to? Whether did it follow on matter in conflict with the Constitution we are bound to follow the qualification spoke in the Constitution or to follow the terse language of the UDHR which goes well beyond on matter not specifically dealt in the Constitution. Other critics is on the issue of appointment of Members of the Commission which did not show the independence of the appointment, which came with recommendations of Prime Minister in accord to the appointment by Yang DI-Pertuan Agong. The neutrality shall be put forward to preserve the credibility and public trust on the commission. Among the nature of the framework there are some lack and loopholes and can be observe in the submission of the body's annual report to Parliament, which seems to be the dead end of the commission (Mahadev Shanker, 2007). There were

also sayings that the Members of Parliament did not really give a satisfactory attention on matters brought by SUHAKAM, it has been neither debated nor discussed, thus denting the public credibility of SUHAKAM of non-other than a pretender of human rights. There were even some commissioners who have resigned due to the futility engagement they experienced. From its first establishment in year 2000, the commission had initially started out with 200 reports but increase to averagely 1400 in another six years, 2006 making it relevant to say that they are heroically doing service for the people, despite their limited funding's. Its true there was enumerated value of RM 6. 8 million was provided for its annual expenditure but in comparison with the federal territory it does not even seems to fit into merely 1% of the country profit. How do we expect a better precursor on this measure? It was emphasized by Mahadev Shankar that the foremost issue of SUHAKAM shall be on the concern of s21 the interpretation of the word 'submission' pertaining the annual report. It has been suggested that it can be either voiced out during the first reading or as a start in the very least, to be a dialogue by all party of Select Committee. According to SUHAKAM Annual Report in the year of 2005, there has also been occurring problems on the disclosure in advance of the Bills that was to be presented in Parliament, even towards the other members of Parliament also. The other issue is on having a joint venture in their framework like to have link with other official bodies such as the NGOs and other working group in the ministry, this therefore can help in upholding the independence and momentum of the commission. One other crucial and important issue that needs to be acknowledged is on the discretionary power of the executive in enacting a bill that shall be held in no question or court of appeal. This doctrine was said to borne by reason of economically driven society and was initially started by the Internal Security Act. The recent view can be exemplified in the Water Bill s120 providing vested power on the order of the Minister that shall be held in no question. As a general rule, human would have basic minimum rights, and as what has been established by the law is that every law shall conform to certain minimum standard of natural justice. Basically human do have their right to live freely and not to be deprived, but theory remains virtual, not practically. In this article I am going to give a view on what the law of the land did is providing for principle of our rights, what are the obstacles that prevent these rights, and what is the major contribution towards the weakness of our system. In Malaysia context, we are assuming that we have right as enshrines under Article 5 of the Constitution, to have liberty and shall not be deprived, so as long under Article 6 it concerns on protection against slavery and forced labour, Art 9 to protect against the banishment and freedom of movement, Art 10, freedom of speech, peaceful assembly, and association, and Art 121 on the principle of judicial review. Basically all the cited reference above shall give us enough protection as a Malaysian but due to some deliberate interference by other act and the weakness of Constitution itself did contribute to the severance of human right. Among the national law that involve which are respectively the Banishment Act 1948, Immigration Act (1959), Sedition Act (1948, 1971), Internal Security Act (1960, 1988, 1989), Public Order (Preservation) Ordinance (1958), Police Act (1967, 1988), Official Secrets Act (1972, 1986), Essential (Security Cases) Amendments Regulations (1975), Trade Unions Act (1959, 1980, 1989), Societies Act (1966, 1981) University and University Colleges Act (1971, 1975), Essential (Strikes and Industrial Actions) Regulations (1967, 1971, 1975), and amendments to Article 121 (1988). Most of these acts provide contradiction towards what did the Constitution did generally provide. Take for example the Sedition Act,

Under section 3(1), those acts defined as having a seditious tendency are acts with a tendency:

“ (a) to bring into hatred or contempt or to excite disaffection against any Ruler or against any Government; (b) to excite the subjects of the Ruler or the inhabitants of any territory governed by any government to attempt to procure in the territory of the Ruler or governed by the Government, the alteration, otherwise than by lawful means, of any matter as by law established;

Where it appears here, the act is providing opinion on the restrictions of freedom of expression, which there has been series of cases, involving the apprehension of certain parties who wrote some word that he did not really meant of saying to government but the fact was brought into question, as such the right of government prevail rather than the right of people, the citizen, the Human Right.

In another option is on the law on Internal Security Act (the law enacted under article 149), is valid even though it is inconsistent with articles 5, 9, 10 or 13 of the Federal Constitution. Under the ISA, the Minister by virtue of section 8 of the Act can issue a detention order for certain period of not exceeding two years. The detention order can be extended for a period of not more than two years at a time. It is to be emphasized that the issuance of detention order is conditioned by the Minister's satisfaction that the detention is necessary to prevent any person from committing any act, which is deemed to be prejudicial to the order or security of the country. Besides that, section 73 of the Act allows any police officer to arrest and detain any person, while the investigation is carried out, up to 60 days without an order for detention under section 8. As a safeguard, the police officer concerned must satisfy that: (a) that there are grounds which would justify his detention under section 8; and (b) that he has acted or is about to act or is likely to act in any manner prejudicial to the security of Malaysia or any part thereof or to the maintenance of essential services therein or to the economic life thereof. 33. Among the major factor that contribute to the weakness of our protection of human rights is duly to the non-incorporating behaviour showed by our government in the ratification International Covenant that such

would bring the major impacts is the International Covenant of Civil and Political Rights (ICCPR), International Covenant for Economic, Social, and Cultural Rights (ICESCR), Convention for the Elimination of All Forms of Racial Discrimination (CERD), and Convention Against Torture and other Cruel Inhumane or Degrading Treatment or Punishment (CAT). According to SUARAM, Malaysia has not yet ratified the three most significant human rights instruments on civil and political rights that would bring major differences towards the protection of rights among the Malaysians.

#### ***Nuclear Investment Issue:***

Whether should we allow nuclear project to be upheld in Malaysia or not. Recently there has been an investment by international company from Australia, Lynas Corporation which proposed to the setting up of a nuclear plant to process nuclear source and Malaysia has one of the highest deposits of thorium and uranium. In the tin industry, six per cent of among (tin tailings) is thorium. In a statement yesterday, Lynas Malaysia Sdn Bhd said the independent panel review of its Gebeng rare earth oxides plant would help to address public concerns about its health, safety and environmental aspects. Debates that has been occurring here is that on the usefulness of the material itself in contributing towards the manufacturing of high tech product, such as to be use in smart phones, LED TV, hybrid cars and computers. Lynas was also granted a manufacturing licence in January 2008 to produce rare earth oxides and carbonates at the Gebeng Industrial Estate, Kuantan, after it complied with the conditions under the Atomic Energy Licensing Act as well as Environmental Quality Act 1974. In Malaysia, Lynas plans to import rare earth ore from its Mount Weld mine in Western Australia, truck it to the port of Fremantle, send it by container ship to Kuantan, and process it at the Gebeng Industrial Estate in Pahang. At Gebeng, the Lynas plant will extract rare earth minerals from the ore. Most of this will be for export. Lynas says waste (residue) from the refinery will be used to make products which will be made safe and can be sold commercially, or stored in safe and secure containers in specially prepared sites. The RM700 million projects by Australia's Lynas Corp have raised public concerns about radiation exposure and its effects on health, safety and the environment. Among the resulting effects are breaking chemical bonds and thus does cause cancer. Examples of this kind of radiation include X-rays, gamma rays and the alpha or beta particles emitted by radioactive elements as they decay. This is the issue raised by organization such as by the Human Right Commission. According to the Environmental Protection Act 1994, a policy may be allowed on issue pertaining anything that affects or may affect the environment. The Malaysian International Trade Minister has been making a media statement saying that an independent panel will be appointed and conducted by several international experts to review the health and safety aspects of this project, and to report to the Government its findings. According to him also, as long as the panel has not finish on their findings, there will be No pre-operating licence will be issued to Lynas by the Atomic Energy Licensing Board, There will be no importation into Malaysia of raw materials from Australia, A review will be undertaken to ensure that construction of the facility at the site fully complies with international safety standards. The granted license in January 2008 to produce "rare earth oxides and carbonates" at Gebeng Industrial Estate, Kuantan was granted subject to a number of conditions such as to be in compliance with Atomic Energy Licensing Act 1984, and also Environmental Quality Act 1974. S 17 of Atomic Energy Licensing Act 1984--licences may be restricted to radioactive materials, nuclear materials or prescribed substances of a specified kind or kinds, or may be restricted to specified diagnostic or therapeutic purposes, which are limited in their type and nature; and a licence issued in respect of an irradiating apparatus may be restricted to a specified kind orchids of such apparatuses, or may be restricted to specified diagnostic or there international Atomic Energy Agency

#### ***iii. Human rights under the international environmental law context:***

We could also discuss the human rights context under the international environmental mechanisms. Some of the legal matters may be discussed herewith:

This matter has been dealt with the amendment to the Montreal Protocol on Substances that Deplete the Ozone Layer 1990 (Date of Ratification: 14 September 1993), Amen dement to the Montreal Protocol to Substances that Deplete the Ozone Layer 1992 (Date of Ratification: 14 June 1994), the United Nations Convention on Biological Diversity 1992 (Date of Ratification: 22 September 1994), United nations Framework Convention on Climate Change 1992 (Date of Ratification: 11 October 1994), Kyoto Protocol to the United Nations Framework Convention on Climate Change 1997 (Date of Ratification: 4 September 2000), The Ramsar Convention on Wetlands of International Importance especially as Waterfowl Habitat 1971 (Date of Ratification: 10 March 1995), The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal 1989 (Date of Ratification: 8 January 1995), The International Tropical Timber Agreement 1994 (the date of Ratification: 1994) & The International Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or desertification, particularly in Africa 1994) etc. The Straits Settlement Ordinance 1894 was passed in order to protect the several species of wild birds, as well as the Waters Enactment 1920. This Waters law prohibits diversion or abstraction of water, modification of channels, and construction of riverbanks. This was followed by the subsequent legislations such as the mining Enactment

1929, the Forest Enactment 1934 etc., which had relevance to the environmental development. The Environment Quality Act 1974 is a milestone for the development and conservation of the Malaysian Environment. The Department of Environment was established under this Act. It is the first example in the developing world as specific legislation. It has a great concern for the environmental management incorporating the cross-sectoral concerns into the body of legislation. It addresses the overall adverse impacts in the industrialization process which are reflected in the different Malaysian Year Plans. It is noted that much of the laws are sectoral in nature (Azmi Sharom, 2002). These laws are passed in order to maintain sound environment in the various sectors of the environment in Malaysia. Currently, around forty to fifty environmental related legislations in the country. Malaysia enacted first its kind the environmental legislation in the form of the 'Environment Quality Act' 1974 and has given on the charge for the first time for controlling and regulating the industrial pollution, wastewater, air pollution from factories and solid waste management problems. It is mentioned here that this Act has been amended three times since it was first enacted. The preventive measures in the form of environmental impact assessment were introduced in the 1985 amendment. The Coordinating Laws have also been significantly playing critical role in Federal and State Governments by protecting human rights and the environmental conservation and development issues. The councils are generally consultative bodies established by law to advise the federal and state governments on policy formulation and legislative changes. On the other hand, committees are set up to consider particular issues and are normally short term in nature. The National Council on Land (NCL) was established by the Federal Constitution with a mandate for the promotion and control of the utilization of land in Peninsular Malaysia. The NLC serves as a forum for the federal and State governments to resolve common problems and issues relating to land and forestry policies, administration and management. It is noted that there is no council directly responsible for the environment. The Ministry of Science, Technology and the Environment currently maintains a relationship with states through regular council meetings involving the Minister and State executive Councillor's on the Environment. The Malaysian Federal Constitution bears important role in ensuring human rights and the environmental conservation. In the meantime, some states passed some laws relating to the protection and conservation of the environment as per the guidelines of the constitution. It is mentioned here that these lists bear effects indirectly on the environment. The constitution is the guarantee of the fundamental rights which is quite made in line with the human rights. The National Forest Policy seeks to ensure the maximum social, economic and environmental benefits through the adoption of sound forest management practices (Carol Yong, 2006). The National Agricultural Policy's (NAP) (1992-2010) aim is to create a market-led, commercialized, efficient, competitive and dynamic agricultural sector in the context of sustainable development. The National Mineral Policy 1992 aim is to balance the expansion of the mineral industry with the protection of associated environmental and social impacts led to the creation of the Mineral Development Act 1994. The National Policy on Biological Diversity 1998 was formulated to conserve, manage and promote the sustainable utilization of biological resources. The National Coastal Zone Management Policy was formulated in order to protect coastal and marine resources. The National Policy on the Environment (NEP) was passed to serve as a guide to achieving economic, social and cultural progress through environmentally sound and sustainable development. The National Forest Policy (NFP) seeks to ensure the maximize social, economic and environmental benefits through the adoption of sound forest management practices. The National Agricultural Policy's (NAP) (1992-2010) aim is to create a market-led, commercialized, efficient, competitive and dynamic agricultural sector in the context of sustainable development.<sup>47</sup> The National Mineral Policy 1992 aim is to balance the expansion of the mineral industry with the protection of associated environmental and social impacts led to the creation of the Mineral Development Act 1994. The National Policy on Biological Diversity 1998 was formulated to conserve, manage and promote the sustainable utilization of biological resources. The National Coastal Zone Management Policy was formulated in order to protect coastal and marine resources. The national Policy on the Environment (NEP) was passed to serve as a guide to achieving economic, social and cultural progress through environmentally sound and sustainable development. The NPE is based on the following eight inter-related and mutually supporting principles<sup>49</sup> such as stewardship of the Environment, conservation of nature's vitality and diversity, continuous improvement in the quality of the environment, sustainable use of natural resources, integrated decision making, the role of the private sector, commitment and accountability, active Participation in the International Community. Under the International agreements, the government of Malaysia has been working with some international memberships such as the Association of Southeast Asian Nations (ASEAN), UNO, Specialized agencies encourage stable relations among the member states fostering economic, social, and cultural co-operation in the spirit of equality and partnership. The ASEAN emphasizes non-interference in its members' domestic affairs, seeks consensus and cooperation, and aims to facilitate national implementation of regional agreements. It focuses two main areas such as the management of shared natural resources (Biodiversity) and pollution control (Air Pollution from forest fires). The concrete vision of ASEAN is to live in peace, stability, and prosperity, bonded together in partnership in dynamic development and in a community of caring societies.



**iv. Recommendation and Conclusion:**

Based on the above study, some recommendations may be made as follows:

- To make more effective of the Malaysian Human Rights Commission
- To make a harmony with the human rights commission and the concerned departments of the government of Malaysia, particularly the Department of Environment
- In deciding the environmental matters, the representative from the Human Rights Commission to be invited as a part of the panellists
- The government should be given more attention to the national human rights and international human rights issues for the sustainable environment and development of the nations
- The government should be more informal in deciding the human rights issues along with the environmental matters
- To implement the recommendations as made by the Malaysian Human Rights Commissions
- To implement the research reports on the human rights and the environmental rights
- To implement the human rights and environmental conservation issues as instructed in the holy Quran as well as the Islamic Law etc.

Environmental mechanisms have been dealing with the areas of right to life, right to freedom from torture and other forms of cruel, inhuman or degrading treatment or punishment, freedom from arbitrary arrest and detention, freedom of movement, to safe guard, to safe housing, right to healthy environment etc. the environment is polluted due to air pollution, water pollution, sound pollution, industrial pollution, over population, poverty, drainage system etc. Consequently, the natural rights as well as the environmental rights of the flora and fauna have been affected. The different governments of the world are very aware about the environmental conservation and development and of course the human rights issues. With a view to coping with this situation, many landmark laws in different countries have been passed. For example, the Government of Bangladesh like many other countries of the world passed several laws such as the Environmental Conservation Act, 1995; The Environment Conservation Rules, 1997; the Environment Courts Act, 2000 etc.; in this regard. Every man/people have a right to regulate a sound and friendly life and he should be given an opportunity in that way. His/her rights cannot be infringed by any means; his rights shall be protected by all means. We need to follow the recommendation as made in this study for our sustainable future on this mother earth.

From the empirical point of view, it is noted that the most of the respondents did not understand the linkage between the human rights and the environmental mechanisms directly. But we explain the issue; they can understand the relationship between human rights and environmental mechanisms. The Malaysian respondents and people are not really with the human rights issue due to some official restrictions imposed by laws and policy

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