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## Smoke and Mirrors: Malaysia's "New" Internal Security Act

BY MICKEY SPIEGEL

**Mickey Spiegel**, Senior Advisor with the Asia Division at Human Rights Watch, explains why Malaysia's replacement bill for the Internal Security Act "does not go far enough to protect the fundamental rights and freedoms of Malaysians."

When Malaysian Prime Minister Najib Razak announced last September that the country's infamous Internal Security Act (ISA) would be repealed, he referred to tensions "between national security and personal freedom," and promised that new "legislation formulated will take into consideration fundamental rights and freedoms." Fast forward seven months to this April when Parliament's Lower House, followed in short order by the Upper House, passed ISA's replacement, the Security Offences (Special Measures) 2012 Act (SOSMA). Unfortunately, this new bill does not go far enough to protect the fundamental rights and freedoms of Malaysians. While this bill is not yet the law of the land, all that remains is for the king, Sultan Abdul Halim Mu'adzam Shah, to assent and for the text to appear in the *Federal Gazette* with the date it will take effect.

A far better plan would be for Malaysia's policymakers to immediately scuttle this first attempt at replacing the ISA and seriously rethink what it means to protect national security concerns while simultaneously protecting the democratic rights and freedoms of all Malaysia's people. There may yet be hope if influential allies of Malaysia, including the United States, publicly raise their concerns.

When the government initially tabled SOSMA, just a week before Lower House passage, longtime supporters for repeal of the ISA cheered the announcement that the new SOSMA included a clause granting suspects the right to a fair trial, an option not available under the Internal Security Act. Rather, the ISA permitted 60 days of initial police detention, which could be followed by two years of detention, renewable *ad infinitum*, on the say-so of the home minister. In short, no trial and no judicial review.

Under SOSMA, initial police detention is cut to a maximum of 28 days, after which the attorney-general must decide whether to prosecute and on what charges. On the down side, judicial oversight is notably absent during the first 24 hours of police custody and such absence can be extended to the entire 28-day investigatory period. SOSMA also promised to ease incommunicado detention by mandating immediate notification of next-of-kin and access to a lawyer chosen by the suspect. However, that initial access can be postponed for 48 hours should a higher level police officer consider it prudent; another serious violation of an individual's due process rights.

When Malaysian and international NGOs, civil society organizations, activists, legal experts and local politicians long opposed to ISA took a closer look at SOSMA, they realized that while the new law marked some improvements in some areas, it was actually more repressive and retrograde in others. It demonstrated yet again that the Malaysian government was playing "bait and switch" with human rights. Critics also

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noted that the bill, coupled with amendments to other laws, tightened restrictions or banned outright activities already under constraint, added limits to previously unrestricted activities, and broadened police apprehension and surveillance powers in new and innovative ways.

Moreover, the SOSMA definition of a security offense—“an act prejudicial to national security and public safety”—is overly broad, as it gives the government sufficient power to bring partisan politics into decisions as to what is or is not a security breach. For example, the government could decide that the ongoing Bersih “clean elections” campaign is a security offense as it is intended to influence or compel the government to change electoral practices that help preserve the status quo.

Penal code amendments that accompanied the passage of SOSMA establish additional broad security offenses such as “activity detrimental to parliamentary democracy.” Printing, selling, possessing, publishing or importing so-called “detrimental” documents and publications, disseminating false reports, and counseling “violent disobedience to the law” all became security offenses. Importantly, the amendments do away with the presumption of innocence by requiring the defendant to prove he or she is unaware that a given document is “detrimental.” Yet that key word “detrimental” is nowhere defined, leaving wide scope for political manipulation.

Even the much-applauded language stating that “No person shall be arrested and detained...solely for his political belief or political activity” is less than it appears due to SOSMA’s definition of political activity and belief as opinion or action reflecting the views of a political party that is legally registered under the Societies Act. But the Registrar of Societies, a political appointee, has unassailable power to refuse or delay registration *ad infinitum*—a power that has been used repeatedly for political ends such as denying registration to a newly formed political party.

SOSMA also further erodes citizens’ individual protections, for example by ceding to the police rather than judges the power to intercept communications and, at trial, keeping secret the identity of prosecution witnesses, thus preventing cross-examination. Other changes refer to the rules of evidence, where prosecutors can utilize information without disclosing sources.

Should a suspect be acquitted despite all these roadblocks, SOSMA preserves a way to detain individuals for years by simply filing appeals. As long as the appeals process continues, an acquitted suspect may be detained or tethered to a monitoring device, a blatant denial of personal liberty that could potentially take years to resolve. The process may be different, but the resultant detention without trial is no different than the ISA’s two-year renewable terms. In fact, from initial arrest to final appeal, a person may be kept under lock and key indefinitely.

Detaining people indefinitely is, as noted, already a longtime government practice in Malaysia. Approximately 45 suspects are still held under the ISA, at this writing the last detainee is due for release in January 2014. Even if SOSMA goes into effect, it specifically provides that any order issued or action taken under ISA remains in force unless previously revoked by the home minister.

The Malaysian government should immediately withdraw the SOSMA provisions that violate protection of fundamental human rights. Then it should eliminate the overly broad and often vague language in SOSMA and associated bills that undermine basic human rights in the name of national security. And finally, those still held under the ISA should be immediately released or tried in a court of law with all the due process protections that international law demands and the Malaysian people deserve.