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THE OPERATION OF THE SECURITY OFFENCES (SPECIAL MEASURES) ACT 2012 AND A COMPARISON WITH THE OLD INTERNAL SECURITY ACT 1948. HERALDING A NEW DEMOCRATIC ERA, OR OLD WINE IN A NEW BOTTLE?

Simon Wood
School of Pre-University Studies
KDU College
Kuala Lumpur, Malaysia
wsimon@kdu.edu.my

ABSTRACT **- The *Security Offences (Special Measures) Act* 2012 (SOSMA) repealed and replaced the *Internal Security Act* 1960 (ISA). It was part of a suit of reforms in 2011 and 2012 that Prime Minister Dato Seri Najab Razak claimed heralded a new democratic age in Malaysia. This paper will consider the two statutes, the reasons why both were implemented, the reasons why ISA was repealed and make a comparison between the two sets of laws including some examples of the use of each. Particular attention will be given to the criminal procedure under SOSMA and how it compares to ISA and whether it gives strong protection to suspects' rights. The change in philosophical approach under SOSMA will also be addressed. Conclusions can be drawn about the new regime particularly in light of the recent threats coming from the Sulu incursion, kidnappings in Eastern Sabah and Islamic State. SOSMA provides far more rights for security and terrorist supsects than the draconian ISA whilst still providing ample powers for authorities to investigate detect and punish security offences.**

INDEX TERMS **– security, anti-terrorism laws, preventive detention, criminal procedure**

I. INTRODUCTION

The *Security Offences (Special Measures) Act* 2012 (SOSMA) repealed and replaced the *Internal Security Act* 1960 (ISA). Both laws are primarily concerned with preventive detention of those suspected of serious threats of violence to the security of Malaysia, but who have not yet been charged and brought before the criminal justice system.

The ISA was designed primarily to deal with security offences in the wake of the Communist insurgency; its operation was primarily aimed at the continued threat of the Malaysian Communist Party.

In the new millennium however it was more than timely for Prime Minister Dato Seri Najib Razak to announce a review of its security legislation including ISA which he did late 2011.

The resulting review led to the enactment of SOSMA on 18 April 2012 and repeal of ISA. Similar law reforms occurred contemporaneously including lifting of long-standing emergency proclamations, enacting the *Peaceful Assemblies Act* 2011 and amending the *Universities and University Colleges Act*, as well as a promise to repeal the *Sedition Act* 1949.

Before discussing the main issues of SOSMA introductory comments about preventive detention will be made in part II. Part III will take a look at its predecessor ISA, its provisions and its uses. Part IV will examine the aims and objectives of SOSMA and then examine its provisions. Part V will comment on the provisions of SOMSA and make a comparison to ISA, whilst part VI will examine the early use of SOSMA. Final comments will be made to draw together matters examined in each part to reach some conclusions in part VII.

II. PREVENTIVE DETENTION

A. Definition

Preventive detention has been defined as:

"An order permitting a person to be taken into custody, without criminal charge or trial, and deprived of their personal liberty by executive order for the purposes of preventing a detainee from committing an imminent terrorist act" [1].

Although this definition limits the use of preventive measures to those suspected of terrorist activities, it can encompass a broader range of target activities including those that are detrimental to public order and security.

B. Purpose of Preventive Detention

The aim of preventive detention is to prevent a detained person from committing a future terrorist act. Further, preventive detention can be used as a basis on which to obtain intelligence from the detainee in order to seek to prevent others still in the community from committing terrorist attacks. It can also provide additional time for authorities to gather a case against suspects as there are often transnational issues in terrorist activities that make the gathering of evidence for a prosecution more complex and slow [1] [2].

III. INTERNAL SECURITY ACT 1960

A. The Basis Of The Internal Security Act

The *Internal Security Act* 1960 was designed primarily to deal with security offences in the wake of the Communist insurgency and emergency that began in 1948 and ended in 1960. Although the *Emergency Regulations Ordinance* 1948 was repealed in 1960, the government passed the ISA to deal with the continuing threat.

B. The Constitutional Basis of The Internal Security Act

The ISA was underpinned by article 149 of the Federal Constitution which enables parliament to make laws against

subversion and threats to public order that take precedence over fundamental liberties in part II of the constitution.

C. Provisions of The Internal Security Act

The powers of ISA were found chiefly in sections 8 and 73. Section 73 empowered a police officer to arrest and detain any person suspected of acting prejudicially to the security of Malaysia or the maintenance of essential services and economic life and detain them for up to sixty days. Section 8 allowed the minister to detain a person for up to two years if necessary to prevent action prejudicial to the security of Malaysia or essential services or economic life.

Judicial review of ISA detentions was limited, and made even more difficult by amendments in 1989 that restricted judicial review to encompass only complaints regarding any procedural irregularities, as per section 8B.

D. History of Operation of The Internal Security Act

The ISA is perhaps the most notorious acronym of all time in Malaysia. Although its operation was originally inspired to counter the threat posed by the Malaysian Communist Party and its terrorist-style activities, later on it was often used for perceived threats that were quite distinct and separate to violent or terrorist related activities. And its use for these sorts of activities that often were of the nature of political activities rather than traditional or common criminal activities were the uses that seemed to cause significant public reaction and controversy.

During the 1960s new threats emerged that encouraged use of the ISA notwithstanding that the communist threat was more limited than in earlier times. These were the Indonesian Confrontation of 1963-1965, the racial riots of 1969 following the general election, and in later times threats from drug use and drug trafficking [3].

Controversial use of the ISA took place over many decades. A major example was Operasi Lalang in 1987 in which 119 people were arrested; many of them politicians, academics and social activists [4]. Over the years many prominent public figures were detained particularly opposition politicians including Dato Seri Anuar Ibrahim, the late Karpal Singh and Teresa Kok.

E. Discussion of The Internal Security Act

Criticisms have of course been made over the years of the ISA and its use. The most vocal and consistent criticism has probably come from the Human Rights Commission of Malaysia, SUHAKAM. For example in its 2003 review of the ISA it concluded that not only the provisions were objectionable as they breached human rights and but that the implementation and use of ISA was also of concern [5]. Specifically SUHAKAM noted three problems with the law: it allowed detention without a trial, it did not adequately provide safeguards to check and supervise the use of the powers by law enforcement authorities, and detainees were denied fundamental rights such as being informed of the grounds of their detention and being promptly produced before a court.[6]

IV. SECURITY OFFENCES (SPECIAL MEASURES) ACT 2012

A. Basis of The Security Offences (Special Measures) Act Reform

In 2011 the Prime Minister Dato Seri Najib Razak announced that the ISA would be repealed. By 18 April 2012 it had been replaced by the the new SOSMA. At the time the Prime Minister claimed that this would herald a "new era" for Malaysia so that individuals freedom would no longer be limited but that basic constitutional rights would be protected. He further hoped that this and other reforms would herald a "golden democratic age in Malaysia" [7].

B. Constitutional Basis of The Security Offences (Special Measures) Act

Article 149 of the federal constitution enables parliament to make laws against a range of threats to the Federation and be inconsistent with the fundamental liberties provided in part II of the Federal Constitution: they are the right to liberty (article 5), freedom of movement and freedom from banishment (article 9), freedoms of speech, assembly and association (article 10) and right to property (article 13). Such laws are required to recite that action had been taken or threatened against a substantial body of persons to cause a fear of organized violence, to excite disaffection against the Yang di-Pertuan Agong or any government, to promote hostility between races or classes, to procure the unlawful alteration of anything established by law, to prejudice the maintenance of any supply or service, or to prejudice public order or security. SOSMA does make such a recital to indicate it invokes the provisions of article 149.

C. The Security Offences (Special Measures) Act Provisions

The act is divided into eight parts. The most important provision is section 4 that gives powers of arrest and detention to a police officer that has reason to believe a person is involved in security offences, and allow detention for twenty-eight days, or electronic monitoring if released. The whole act is aimed at providing preventive detention and criminal procedures for persons suspected of having committed security offences.

Part I: Preliminary (Section 1-3). "Security offences" is defined in section 3 to mean the offences specified in the First Schedule which means any offence in Chapters VI and VIA of the *Penal Code*. Chapter VI of the *Penal Code* is headed *Offences Against the State* and lists 28 offences in sections 121-130A. The offences consist of preparing for or waging war against the Yang di-Pertuan Agong and ancillary activities and includes 13 new offences introduced contemporaneously with SOSMA in 2012 by the *Penal Code (Amendment) Act* 2012 such as activities detrimental to parliamentary democracy, inciting violence and violent disobedience of the law, activities likely to cause public alarm, sabotage and espionage. Chapter VIA is headed "*Offences Relating to Terrorism"* and includes 12 offences (s130C-130M) prohibiting the act of terrorism and ancillary activities supporting terrorism and terrorist groups including being member of a terrorist group (s130KA); this last offence also being introduced in 2012. Seven more offences (s130N-130T) are designed to prohibit financial and property support for terrorist activities. Police must now be able to identify a particular offence that they believe has been committed to exercise their power of arrest.

Part II: Special Powers for Security Offences (Sections 4-6). Initially a police officer can only detain a person for 24 hours for the purpose of investigation (s4(4)), but a police officer of or above the rank of superintendent may extend that period for up to 28 days for the purpose of investigation s4(5)).

It is stated in section 4(10) that the provision has effect notwithstanding the right to liberty (article 5) and right to

freedom of movement (article 9) contained in the Federal Constitution.

However, as precaution for protection from abuse, the right to authorize detention of persons for up to 28 days shall be reviewed every five years and shall cease to have effect unless a resolution is passed by both Houses of Parliament to extend the period of operation of the provision.

If the police officer is of the view that further detention is not necessary beyond 24 hours, the person may be released but an electronic monitoring device may be attached on the person for the purpose of investigation (s4(6)).

No person can be arrested and detained solely for their political belief or activity (s4(3)). "Political belief or political activity" is defined in sub-section 4(12) as engaging in the expression of an opinion or the pursuit of a course of action made according to the tenets of a political party. This provision perhaps more than any other indicates an intent of parliament that persons should not be subject to detention for purely political activities, and also demarks that controversial executive actions that took place pursuant to the ISA should be avoided.

The rights of a person arrested are that firstly, they shall be informed as soon as may be of the grounds of arrest by the police officer making the arrest (s4(2)). Secondly, when a person is arrested and detained a police officer conducting the investigation shall immediately notify the next-of-kin of such person of the arrest and detention (s5(1)(a)). Thirdly, such a person shall be allowed to consult a legal practitioner of their choice (s5(1)(b)).

Section 6 allows police to intercept communications for the purpose of investigation of suspected offences. The Public Prosecutor, if he considers that it is likely to contain any information relating to the commission of a security offence, may authorize any police officer to intercept, and open any postal article in the course of transmission by post, to intercept any message transmitted by any communication, or to listen to any conversation by any communication (s6(1)). (It was held in *Public Prosecutor v Hassan bin Hj Ali Basri* [2014] 7 MLJ 153 that the authorization to intercept a communication does not have to be executed by the specific police officer that is the recipient of it (at paragraphs 22-28)).

Further power is given to the Public Prosecutor so that if he considers that it is likely to contain any information relating to the commission of a security offence, he may require a communications service provider to intercept and retain a specified communication or authorize a police officer to enter premises and to install on such premises any device for the interception and retention of a specified communication and to remove and retain such evidence (s6(2)).

These powers of evidence gathering are supported by amendments to the *Criminal Procedure Code (Amendment) (No 2) Act* 2012. New section 116A authorizes a police officer not below rank of Inspector to execute a search and seizure without a warrant where there is reasonable cause to suspect that there is evidence of commission of a security offence (or offence relating to organized crime) and that by reason of delay in obtaining a search warrant the object of the search is likely to be frustrated. Section 116B allows an Inspector conducting such a search to have access to computerized data, and any information so obtained shall be admissible in evidence notwithstanding any other law.

Part III: Special Procedures Relating to Electronic Monitoring Device (Section 7). The procedure for the Sessions Court to attach an electronic monitoring device is prescribed, and it empowers the Court to determine the period for which it shall be attached but it is not to exceed the remainder of the 28 day period of detention (s7(1)).

Part IV: Special Procedures Relating to Sensitive Information (Sections 8-11). Section 8 allows the public prosecutor to apply to be exempted from supplying a sensitive document to the accused. It also allows an accused's counsel to view the sensitive information and object to its admission into evidence. "Sensitive information" is defined in section 3 to mean any document, information and material *(a)* relating to the Cabinet, Cabinet committees and State Executive Council; or *(b)* that concerns sovereignty, national security, defence, public order, and international relations.

Section 9(1) requires the accused to give forty-eight hours' notice to the public prosecutor and the Court if the accused reasonably expects to disclose sensitive information in the defence.

And if sensitive information arises during a trial, section 11 allows the Minister to certify that a document released would prejudice national security or the national interest and thus should not be produced.

Part V: Trial (Sections 12-13). Part V deals with the trial of security offences, which shall take place in the High Court. Section 12 and section 13 require that bail shall not be granted except if the accused falls within certain exceptions, namely infirm or sick, female or a minor, and the accused may have an electronic monitoring device attached if so bailed.

Part VI: Special Procedures Relating to Protected Witness (Sections 14-16). Part VI provides special procedures for protected witnesses. A witness for the prosecution may refuse to have his identity disclosed (s14(1)), and the court may hold an in camera inquiry (s14(2)) to determine the need to protect his identity.

Part VII: Evidence (sections 17-26) deals with evidence, and provides nine exceptions to the *Evidence Act* 1950 to allow evidence to be more easily admitted into a trial for a security offence, which include admissibility of documents seized during a raid or in the course of investigation (s20), admissibility of intercepted communications (s24) (The prosecution does not need to produce a complete transcript of any intercepted communications, but can submit a summary to the court: *Public Prosecutor v Hassan bin Hj Ali Basri* [2014] 7 MLJ 153 at paragraphs 29-33), admissibility of documents produced by computers (s25), creditworthiness of agent provocateurs and admissibility of statements made to agent provocateurs by the accused (s26).

Part VIII: Miscellaneous (sections 27-32) deals with various matters including the remand in prison of a person acquitted of a security offence pending a notice of appeal to be filed by the Public Prosecutor and the remand in prison without bail until all appeals are disposed of, notwithstanding article 9 of the Federal Constitution (s30) and repeal of the Internal Security Act 1960 (s32).

V. DISCUSSION OF SECURITY OFFENCES (SPECIAL MEASURES) ACT

A. Comparison with the Internal Security Act

Activities Targeted. The ISA targeted persons suspected of being involved in activities detrimental to Malaysia's security. It was not necessary to prove that suspects had committed an offence. SOSMA targets those suspected of committing offences as contained in parts VI and VIA of the *Penal Code*:

it is not enough for a person to be suspected of being involved in activities deemed detrimental to Malaysia, law enforcement authorities must suspect that criminal activity is involved.

Detention. Under SOSMA a person can only be held in preventive detention for a maximum of 28 days before being charged and prosecuted in the courts. However, detention is mandatory for most defendants until any prosecution is concluded and all prosecution appeal rights have been exhausted. ISA allowed the police to detain persons for 60 days and the minister to detain them for up to two years. This detention could be renewed repeatedly, meaning that a person was potentially subject to detention without trial indefinitely and with only limited supervision of the minister's actions by the courts.

Charging and Prosecuting with an Offence. Whereas SOSMA mandates that a person must be charged with an offence after 28 days detention, and then prosecuted in the High Court, ISA had no requirement that a person be charged with nor tried for any offence. A person could be detained under the ISA perennially without ever being charged.

Right to a Lawyer. ISA was silent on a person's right to a lawyer and in practice access to a lawyer was severely limited [8], whilst SOSMA prescribes a right to seek the assistance of a lawyer after a maximum 48 hours of detention, and mandates immediate notification of next-of-kin.

Detention for Political Beliefs or Activities. Whereas there was no limitation on the use of ISA to control people engaged in political activities, SOSMA prohibits the use of arrest and detention powers solely on the basis of a person's political beliefs or activities.

Judicial Review. Under ISA an appeal to a court to challenge the lawfulness of detention was limited, and after 1989 even more limited to an appeal against procedural irregularities. Limited appeal every six months was allowed for a detainee to make representations to an advisory board that could only make recommendations to the Yang di-Pertuan Agong. SOSMA does not limit rights to judicial review, and in fact the Prime Minister cited judicial review as one of the safeguards under the new law [9].

Legislative Philosophy. ISA aimed to prevent terrorist and security offences, as well as rehabilitate suspects. SOSMA by contrast is a law that aims to provide law enforcement agencies with the powers to detect and prosecute those guilty of terrorist and security offences. It is not specifically aimed at preventing or rehabilitating suspects and detainees, but rather is court-based and punitive.

Review of Legislation. In SOSMA the right of police to detain suspects for investigatory purposes for 28 days is subject to a mandatory parliamentary review every five years, and will cease to have effect unless both Houses of Parliament resolve that it should be extended. Further the legislation as a whole will be subject to scrutiny by a review committee that will monitor the implementation of the act [9]. No such controls existed under ISA.

B. Support for the Security Offences (Special Measures) Act

Support for the new legislation has come from a number of sources including leading constitutional scholar Emeritus Professor Shad Faruqi who described the reforms including passage of SOSMA in positive terms such as "an incredible achievement" [10], that "it has many positive elements that deserve commendation", as "an important milestone", "a defining and watershed moment in our legal history", its "impact will be far reaching", and that "its positive aspects far outweigh its negative features" [8]. Others who have expressed support for the law include the Malaysian Bar [11], British Prime Minister David Cameron, opposition leader Datuk Seri Anwar Ibrahim [12] and Suhakam [13].

C. Criticism

Not surprisingly views on the legislation have been critical as well and comments cover a range of aspects of the legislation, mostly based on ideals of suspect rights. Some are outlined below.

SUBJECTIVE TEST FOR ARREST AND DETENTION

The power of arrest given to the police merely requires that the police officer concerned "has reason to believe" that the person is involved in a security offence. This is a subjective test requiring no objective criteria that has to be satisfied to justify using arrest powers [14]. Further, the power does not require that the suspicion is that the person has committed a security offence, but merely that the suspect is "involved in" one.

MANDATORY REMAND UNTIL ALL APPEALS EXHAUSTED

Unless a suspect comes within a narrow class of exceptions, there is mandatory remand in custody during the entire trial and appeals process. In practice this means that suspects may remain in custody for a number of years and yet ultimately be released with no criminal conviction, as was the case under the ISA.

ALL ILLEGALLY OBTAINED DOCUMENTS WILL BE ADMISSIBLE IN TRIAL

Section 20 allows the admissibility of all documents obtained during an investigation despite non-compliance with the requirements of the *Evidence Act* 1950. This provision is of paramount implication not only because it allows the admission of illegally obtained evidence, but also because strong investigative powers are given under SOSMA and amendments to the *Criminal Procedure Code*. This provision provides significant curial advantage to the prosecution during the trial process.

THE POWER TO INTERCEPT COMMUNICATION IS NOT SUBJECT TO JUDICIAL OVERSIGHT

The power to intercept communication is held by the public prosecutor who does not have to obtain permission of a judicial officer to intercept. Further, the public prosecutor only has to be satisfied that it is "likely" to contain information relating to a security offence [15]. Further, there is no exclusion of lawyer-client communications from the right of interception [11]. And in urgent and sudden cases a Superintendent of Police may authorize interception.

THE POWER TO CONDUCT SEARCHES WITHOUT JUDICIAL WARRANT

Amendment made contemporaneously with the enactment of SOSMA applies to the *Criminal Procedure Code* to allow the police to enter and search premises where there are reasonable grounds to believe that delay in obtaining a search warrant the object of the search is likely to be frustrated [15]. Such searches do not need to be ratified by a court or the Public Prosecutor.

LACK OF CONSULTATION

It is claimed that there has been a lack of consultation before enacting the new law, for example, SUHAKAM was briefed on 15 April 2012, only two days before the new bill was tabled in parliament, and hence did not have time to properly consider it [16]. It was also suggested that there should have been a parliamentary select committee to look closely at the proposed law, which would have led to a better product [11]. Indeed, the prime users of the legislation, the police, were not

consulted about the new law. (Interview with currently serving police personnel.)

CONSTITUTIONAL CRITICISM

It has been suggested that the new legislation is constitutionally deficient in two respects, firstly that it breaches article 8(1) of the Federal Constitution because criminal defendants under the offences covered by SOSMA – security offences – are treated differently under criminal procedure than those charged with other offences. As has been seen, defendants are deprived of rights under the *Evidence Act* 1950 and the *Criminal Procedure Code*. It is alleged that this deprives such persons of equal protection under the law contrary to the constitutional protection. Secondly it is stated that the legislation as a whole is unconstitutional because no relevant action has been "taken or threatened by any substantial body of persons" as envisaged by article 149(1) that would justify enactment [17].

THERE IS NO PREVENTIVE OR REHABILITATIVE PHILOSOPHY

Firstly, the strong preventive approach of ISA is gone. Under it persons of concern could be held in custody for long periods whether or not they had engaged in any activity that was a criminal offence. Police must now act later on in the process of security or terrorist activity under sufferance of being able to gather enough evidence to support a court conviction. It is possible that more terrorist offences will be committed as a result.

Secondly, an interesting if less controversial provision of ISA was s18, which allowed authorities to move detainees to a particular location for rehabilitation. Authorities could request detainees to take part in specialized rehabilitative courses that aimed to teach them the errors of their beliefs and retrain to have a more moderate and socially responsible attitude. Former detainees took part in rehabilitative programs at the Kamunting Detention Centre in an effort to try to dissuade them from their extremist points of view.

Under the new law this rehabilitative activity is not allowed nor provided for – after a maximum of 28 days detention, the person must be charged and put through the court system. The possibility to rehabilitate suspects is lessened.

VI. THE SECURITY OFFENCES (SPECIAL MEASURES) ACT IN OPERATION

For many months SOSMA gathered dust and no occasion were its provisions used by Malaysian police.

Circumstances changed fairly dramatically in 2013 and the provisions have been used most prominently and frequently against the Sulu intrusion into Sabah and against a number of Malaysians accused of being involved in terrorist activities in Syria. These and other recent events are illustrative of the practical effect of the replacement of the ISA by the new regime.

A. Sulu Incursion into Sabah 2013

In early 2013 over 200 Filipino supporters of the descendant of the former Sulu ruler entered Sabah territory illegally with the intent of claiming back territory in the area allegedly taken from them, using violent and unlawful means. After resisting repeated overtures to surrender and leave peacefully, violent confrontations took place in which many Sulus, and some Malaysian police, were killed. Hundreds of people were arrested and charged for offences, and 181 were detained under SOSMA [18]. Many suspects have been charged and sent to trial for allegations such as waging war against the Yang di-Pertuan Agong and being members of a terrorist group, both of these being "security offences" under the SOSMA.

B. Malaysians with Links to Islamic State

On 7 February 2013, three persons were arrested and detained using for the first time, the arrest and detention powers of the Act, including Yazid Sufaat, a previous detainee under ISA and associate of the 9/11 bombers. Subsequently all three have been charged with terrorist offences related to Syria, and two are awaiting trial whilst the third is at large after being released on bail [19].

Since then, and particularly in calendar 2014 when the Islamic State has made large territorial gains in Iraq and Syria, a total of 39 Malaysian have travelled to the Middle East, and 40 Malaysians have been detained at home under the provisions of SOSMA [20].

C. Related Legislation

In addition to the strong powers under SOSMA, there are other powers in the armoury of the governmental agencies that can be used to protect the security and safety of Malaysia. The *Peaceful Assemblies Act* 2011 and *Sedition Act* 1948 show that authorities still have effective and powerful instruments available to investigate detect and protect against those opposed to the government. And this is particularly salient given the Prime Minister's recent announcement that the *Sedition Act* 1948 will not be repealed. After GE13 there were a number of senior opposition leaders arrested and detained over alleged breaches in holding public rallies without following the procedures required in the *Peaceful Assemblies Act* 2011. And others have been detained for allegedly breaching the *Sedition Act* 1948 for inflammatory statements made since GE13 and particularly recently in the so-called "sedition dragnet". Further, the *Prevention of Crime Act* 1959 was amended in 2013 to provide for the detention of those believed to be involved in a range of serious categories of crime for up to two years at a time without charge, subject to indefinite renewal. The amendment is aimed mainly at criminal gangs [21].

D. Proposed Legislative Changes

Finally, recent media reports indicate that the government is proposing to table in parliament next March a new *Anti-Terrorism Bill* designed to prevent Malaysians travelling to Syria and Iraq to collaborate with IS. The Home Minister Datuk Seri Ahmad Zahid Hamidi has stated that the new law will not be abused and that executive powers given under the proposed law will include a panel to decide on detention orders. As part of the process of dealing with threats from IS and the Abu Sayaf group in the Mindanao Islands in Southern Philippines a White Paper entitled "Towards Handling Threats of Islamic State" also proposes strengthening SOSMA and the Prevention of Crime (Amendments and Extensions) Act 2013. [22]

VII. IN CONCLUSION

It is possible to summarise a number of matters pertaining to the new law as follows:

1. There is a much greater respect for and implementation of civil liberties and proper judicial process than under ISA, making the phrase "old wine in a new bottle" an inappropriate way to describe the reformed law.

2. The powers of arrest are subjective and strong thereby giving law enforcement agencies significant procedural advantage.
3. The time period in which those subject to the legislation can be detained is lengthy and can potentially last years, although less than under the ISA.
4. Evidentiary provisions are heavily weighted in favour of the prosecution and thus towards securing a conviction, possibly at the expense of defendants obtaining fair trials.
5. Whereas ISA allowed agencies to pursue prevention of offending and rehabilitation of suspects, SOSMA focuses on punishment and deterrence.
6. Whilst the strong powers theoretically create a risk of further abuse under the new provisions, the first few years of operation indicate that the abuses that took place under ISA have not occurred.
7. With the recent incursion into Lahad Datu by Sulus, the kidnappings by the Abu Sayaf group in eastern Sabah and the new threat of IS it seems likely that the government will strengthen preventive and detention laws again in the near future. However such laws are expected to be narrow and targeted.
8. Although the ISA has been repealed, the Prevention of Crime (Amendment) Act 2013 allows detention under similarly strict conditions for those suspected of serious crimes. And whilst SOSMA prohibits arrest for political belief or activity, the rash of investigations and prosecutions recently pursuant to the *Sedition Act* 1949 indicates that it is being used to stem political opponents in a way similar to the old ISA [23]. Overall then, it is not appropriate to describe Malaysia as entering a new era or a golden democratic age.

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