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## Protecting security, safeguarding liberties

By Mohamed Jawhar Hassan

*MOVING WITH THE TIMES: Moving with the times on protecting security and safeguarding liberties, Legislative reforms signal a radical change in the approach towards managing security, writes Mohamed Jawhar Hassan*



*A law to facilitate and regulate peaceful assembly has been enacted and university students will be allowed to be members of political parties.*

A PIECE of history will be made when, as widely expected, the Internal Security Act 1960 (ISA) is repealed and the Security Offences (Special Measures) Bill 2012 is passed by Parliament after its tabling by the government on Tuesday.

While still remaining vigilant against grave security threats, the nation will move with the times in terms of the standards of law enforcement and the protection of civil liberties.

In some respects the standards applied in the country will be even more compliant with human rights and human dignity than some of the security laws that have been introduced by Western democracies in the wake of the Sept 11, 2001 terrorist attacks.

The legislative reforms to provide for greater civil liberties (while retaining the essentials for protecting national security and preserving public order) have been comprehensive under the Najib administration. They are also an integral part of the prime minister's wide-ranging political transformation programme.

Besides the bill now in Parliament, three Emergency Proclamations were lifted on Malaysia Day last year. Along with that, the Restricted Residence Act 1933, the Banishment Ordinance 1959 and the Emergency (Public Order and Prevention of Crime) Ordinance 1969 were repealed.

The Printing Presses and Publications Act 1984 has been amended to make it no longer a requirement to annually renew permits to publish. Amendments have also been made to the Universities and University Colleges Act 1971 to enable undergraduates to be members of political parties. A law to facilitate and regulate peaceful assembly has also been enacted.

Taken together, these legislative reforms signal a radical change in the approach towards managing security. The balance between meeting the requisites of national security and upholding civil liberties in the laws of the country will shift from a bias towards the former to a tilt towards the latter.

This will be in keeping with changing times and the challenges of a new political and strategic environment.

The old laws and legal provisions, disparaged and denounced by some quarters, were actually a vital and indispensable tool at a time when the survival of the nation as we know it today was at stake.

The armed communist insurgency threatened to destroy the democratic political order even as it caused widespread deaths and economic damage. The May 13, 1969 riots similarly threatened to unravel social order. Subsequently, laws such as the ISA were handy for several other security incidents, such as against the militant and terrorist groups Al Ma'unah and Jema'ah Islamiyah.

The security environment, however, has changed remarkably since then. Though serious ethnic and religious strife is still possible (for which there are other laws as well), an armed insurgency on the scale of that mounted by the Communist Party of Malaya is extremely unlikely.

Public sentiment has also changed. In more volatile times, people were tolerant and supportive of laws that compromised civil liberties in the greater interest of safety and security. Today, the security situation has improved substantially, thanks to some of the very laws that some despise now.

Memories of the bloody communist insurrection and the May 13 incident have faded.

Indeed, the majority of the population, those below 40 years of age, have no memory of them at all. They are less inclined to vest the same primacy to security that the older generations did in more difficult circumstances.

Awareness of human rights and the importance attached to civil liberties has also grown over the decades. Incarceration without a public trial is simply unacceptable.

This attitude will remain strong unless the security situation deteriorates dramatically.

The erosion of safeguards such as judicial review and the use of the ISA for lesser offences such as forgery of passports and counterfeiting of currency also undermined the integrity of the act.

Except for clear terrorist cases like Mas Selamat, applying the ISA and similar laws allowing for preventive detention has in fact become counter-productive, as the Hindraf detentions demonstrated.

The cost of using them would be higher than the cost of not using them. Alternative ways of managing issues that pose security problems need to be employed.

Indeed, security governance, as with other aspects of public governance, has become more complex, difficult and demanding. The requirement for accountability and transparency is much greater now.

Authorities are less able to discharge their duties, however responsibly, without close public scrutiny. Intelligence and evidence gathering skills will have to be upgraded.

The new bill is superior to the preventive detention provisions of the ISA in several important respects. No person will be subject to preventive detention and detention without trial any more. The minister's power to order detention has been removed.

There is an express undertaking that no person will be arrested and detained under the law solely for his political beliefs and identity. Detention for the purposes of investigation has been reduced from the 60 days of the ISA to just 28 days. Notification to next-of-kin and access to legal counsel is prompt.

The special measures contained in the bill are no more than the minimum necessary to enable the authorities to effectively combat the unique threats posed by terrorism, sabotage and espionage.

The minimal infringements on civil liberties are standard practice in many democracies noted for their respect for human rights.

Lest it be forgotten, security and safety are fundamental human rights, too, and the provision of security is a *raison d'être* of the state.

The new bill, therefore, deserves full support inside and outside Parliament.

Though some details may attract debate, the Bar Council, Suhakam, other human rights organisations and activists in the country and abroad and concerned citizens should have little difficulty in welcoming and endorsing it.

**The writer is chairman of ISIS Malaysia. The views are his own.**