

**PM's Malaysia Day Promises Require Disclosure Of Details, Consultation And Action**  
**MalaysianMirror.com**  
**September 17,2011**

The Malaysian Bar, Advocates' Association of Sarawak and Sabah Law Association applaud the Prime Minister for announcing far-reaching and welcomed promises to review and repeal regressive, oppressive and outdated pieces of legislation, and for the government's stated commitment "to [uphold] the system of Parliamentary Democracy, Constitutional Monarchy, the rule of law, the philosophy of federalism and the check and balance principle between the three branches of government."

This has always been, and is, the right of the rakyat.

Since the 1970s, Bar Council has submitted to the Federal Government countless memoranda, and resolutions adopted by the Malaysian Bar, calling for the abolition of the Internal Security Act 1960 ("ISA"), other detention without trial laws such as the Restricted Residence Act 1933, Prevention of Crime Act 1959, the Banishment Act 1959, elements within the Dangerous Drugs (Special Preventive Measures) Act, the Printing, Presses and Publications Act 1984, as well as the revocation of the various Proclamations of Emergencies.

The Malaysian Bar, Advocates' Association of Sarawak and Sabah Law Association take the view that Malaysia does not need any detention without trial laws because it has already effectively strengthened its legislative provisions to take into account, and deal with, the threat of terrorism. No replacement is therefore needed for the ISA. For example, terrorism-related offences were included in the Penal Code and the Criminal Procedure Code in 2006, and there is a new Chapter VIA in the Penal Code entitled "Offences Relating To Terrorism" and a new Chapter XIII A in the Criminal Procedure Code entitled "Ancillary Investigative Powers In Relation To Terrorism Offences". Malaysia also passed legislation dealing with offences in relation to financing of terrorism, in the form of the Anti-Money Laundering and Anti-Terrorism Financing Act 2001.

If, however, the government insists in formulating additional legislation dealing with terrorism, the Malaysian Bar, Advocates' Association of Sarawak and Sabah Law Association urge the government to emulate Australia, Canada, United Kingdom and the United States of America, where such legislation contains the following safeguards:

- (a) An automatic sunset clause, which requires the legislative body to review the applicability of the law at regular intervals;
- (b) Comprehensive judicial supervision, which permits review of the application of the legislation in specific cases;
- (c) Limitations on the period of detention, subject to ordinary remand provisions; and
- (d) Right to counsel for all detained persons.

These basic features of counter-terrorism legislation are essential to protect fundamental liberties and the rule of law, and to prevent abuse. One such safeguard employed in other jurisdictions is to subject the application of the laws to judicial scrutiny. The Malaysian Government should do likewise, and remove the excessive discretion that now lies with the Minister of Home Affairs. Furthermore, it is unnecessary for such anti-terrorism legislation to also address crime and subversive activities, which are already adequately dealt with in the Penal Code.

In respect of freedom of assembly, the right to gather and march in public is inherent in, and integral to, our Constitutionally-guaranteed rights of assembly and expression. A public demonstration is very different from an event held in a stadium or other fixed venue, as it invites public attention to a particular cause or concern. The right to advocate one's views and opinions in the public arena in a peaceful manner is a foundational human rights principle, and any attempt to confine such expression to a

cloistered space is antithetical to the very right itself. Malaysians have repeatedly exhibited their ability and maturity to assemble peaceably.

Whilst the promises of the Prime Minister are welcomed, their substance will be in the details, and the proof in the implementation. Accordingly, the Malaysian Bar, Advocates' Association of Sarawak and Sabah Law Association call on the Prime Minister to subject the proposed legislation to public debate and consultation, and to establish a clear time frame within which the promises will be fulfilled. The rakyat recalls that prior pledges to review the ISA have rung hollow, and hopes to celebrate the full implementation of the promised legislative reform by Malaysia Day 2012.

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