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Debate on NSC Act must continue

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The irony was painfully clear when former prime minister Tun Dr Mahathir Mohamad paid my father, former deputy prime minister Datuk Seri Anwar Ibrahim, a visit to show support for the latter's challenge to the constitutionality of the National Security Council (NSC) Act 2016.

Lest we forget, many felt that the path to creating the Act began with Dr Mahathir's move to amend the Federal Constitution to dispense with the need for royal assent in passing legislation.

Eighteen years, of which almost nine were spent behind bars, have passed before my father beamed a gentle smile as he shook hands with Dr Mahathir. Dr Mahathir, the very man who once alleged that Anwar would destroy Malaysia, has now conceded to Anwar's clarion call for reforms in the country.

Indeed, resistance against the NSC Act has gathered considerable steam. Typically, dissent against such unconstitutional and oppressive laws would feature the usual suspects — elected opposition representatives, human rights activists, the Bar Council and the Malaysian Human Rights Commission. But now, criticisms are moving from many legal experts, the Conference of Rulers who had demanded "refinements" and, most shockingly, Dr Mahathir himself.

In other words, Prime Minister Datuk Seri Najib Razak has successfully brought political entities, civil society groups and professional associations together as unlikely allies to fight against the Act, which is deemed unconstitutional, unnecessary and unsafe by many.

The NSC Act, namely the mandate to declare security areas, is unnecessary. The rationale for it, as stated by Minister in the Prime Minister's Department Datuk Seri Shahidan Kassim in his formal briefing to members of Parliament at the parliamentary lounge, is to ensure that the government is given the mandate to declare security areas. Specifically, the prime minister can invoke Section 18 of the NSC Act, which empowers him to designate a security area when "the people, the territories, economy, national key infrastructure or any other interests of Malaysia" are incurring or are likely to incur "serious harm".

However, legal experts refute the necessity for the government to be in possession of such powers, citing Article 150 of the Federal Constitution, where the Yang di-Pertuan Agong may declare an emergency when "the security or the economic life or public order" in Malaysia is at grave risk. The enforcement of these laws would allow for heightened security, including the administration of standard operating procedures under the purview of the military with the aim to protect the well-being of the nation. Hence, the provision to declare security areas under the NSC Act is not necessary.

A case in point was when Malaysia came face-to-face with an immediate national security threat that was handled without the proclamation of an emergency under Article 150 nor by invoking a draconian legislation the likes of the NSC Act.

In 2013, hundreds of armed Filipino intruders breached the eastern shores of Sabah to assert a dormant territorial claim for the Sultanate of Sulu — later known as the Lahad Datu invasion. By leveraging the Preservation of Public Order Ordinance 1962 and the Preservation of Public Security Regulations 2013, the government was able to set up the Eastern Sabah Security Zone (Esszone) and the Eastern Sabah Security Command (Esscom). Just like the purpose



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of a "security area" under the NSC Act, Esszone and Esscom were established to "enhance security and the well-being of the people". In the Esszone, security personnel are able to perform tasks such as resettling of illegal immigrants and supervision of curfew areas.

As I recall, Shahidan argued that the NSC Act would allow for the management of the police, Malaysian Maritime Enforcement Agency (MMEA) and armed forces more efficiently under one uniform law.

But the Lahad Datu invasion has shown that the police, MMEA and armed forces were able to operate effectively under separate laws, guarding disparate areas. In fact, it may prove unwise for the three security forces, trained for different purposes, to be equipped with the same powers of arrest, search and seizure as stipulated in the NSC Act. In the words of former Royal Malaysian Air Force officer Lt-Col (Rtd) Mohamad Daud Sulaiman, "when you ask the military to enforce the law, you are asking for trouble. The military is not trained for that. The soldiers do not know the Criminal Procedure Code".

Clearly, the requirements and functions of a "security area" under the NSC Act are similar to those of a "proclamation of emergency" under the Federal Constitution, and thus the new law is unnecessary. I plan to convey this to Shahidan in the hope that a Cabinet-led reversal of the law will take place.

On the account of the legal challenge brought by Anwar, the NSC Act contravenes the Federal Constitution. The Constitution crafted during Merdeka is the bedrock of Malaysia's democracy, reflecting the social contract between the government and the people — thus, it must always be respected. These precise sentiments are indelibly inked in Article 4(1) of the Constitution, reminding us that "any law passed after Merdeka, which is inconsistent with this Constitution, shall, to the extent of the inconsistency, be void".

Therefore, it is not only disrespectful of the government to legislate the NSC Act without approval of the nine hereditary rulers of Malaysia but also doubly disconcerting that it has chosen to create new powers for itself by shaking the bedrock of our Constitution.

Specifically, the NSC Act displaces the power and structure led by the Yang di-Pertuan Agong, when in fact we require the rulers to be the vanguard to check possible excesses of the executive and vice versa.

By virtue of Article 66(4) of the Constitution, the NSC Bill became law following a quiet interlude of 30 days despite the refusal of the Conference of Rulers to grant assent and returning the bill to the attorney-general's chambers for further "refinements".

However, Article 66(4) is a stranger to our Constitution, sitting itself among the ranks of our supreme law — unprecedented and unwelcome — following a constitutional amendment carried out by Dr Mahathir in 1984. The framers of our Constitution found it imperative that any system of rules regulating members of society must receive the green light from elected members of Parliament and a non-partisan constitutional monarch.

As such, before that fateful day in 1984, bills only became laws after they were passed by both houses of Parliament and assented to by the Yang di-Pertuan Agong. Thus, in exploiting a constitutional amendment that breaches the spirit of our nation's supreme law, the NSC Act is unconstitutional and void.

Dr Mahathir's apology for his role in removing the

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