

Najib and Malaysia's Civil Liberties

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By Our Correspondent

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Seemingly dramatic changes may not be very dramatic but very political

The announcement Thursday of changes to Malaysian civil liberty laws appears to be a major coup for Prime Minister Najib Tun Razak, putting the opposition on the back foot by taking away long-standing demands for expanded civil freedoms that were potent campaign tools.

Much, however, depends on what replaces the laws. There is considerable scope for political theater and not much more in a campaign year, especially if, as expected, the replacements are modeled on US or UK laws, neither of which are particularly liberal despite the perception of liberal democracy in both countries.

National elections are expected in the first quarter of 2012, perhaps in March during school holidays when schools can be used as polling stations. The apparent changes need to be seen in the context of the elections, Najib's rhetoric about freedom of expression to the contrary. There appears to be no move to abandon either the Sedition Act or the Official Secrets Act, for instance, which are routinely used against opposition figures and bloggers and journalists.

The reforms were announced by Najib on television Thursday night. They include abolition of the colonial-era Internal Security Act, which allows for indefinite detention of suspects, as well as the repeal of the Emergency Ordinance allowing for detention without charge for two years. Another provision does away with the annual renewal of press and publication permits. Laws governing right of assembly are to be reviewed "to bring Malaysia into line with international standards" while ensuring that police retain power to prevent violence, he said.

"They will formulate other laws," an UMNO source told Asia Sentinel. "Other countries have provisions for detention without trial. Since the ISA has been stigmatized as draconian, they can just get another law. The model they will take from America's anti-terrorism law. The UK also has a new law for detention without trial."

The US's Patriot Act on which Najib may model his new laws was jammed through the US Congress amid hysteria surrounding the destruction of the World Trade Center in New York and the attack on the Pentagon in Washington, DC on September 11, 2001. The other possibility is that the security law would be modeled on the United Kingdom's law, which allows for detention for 28 days without charge for terrorism suspects. In neither case are the laws particularly liberal, nor would they expand civil liberties by much.

The US's Patriot Act has been under fire from civil libertarians since it was passed, as it vastly expanded police powers, creating new crimes, new penalties and new procedures for use against suspected domestic and international terrorists. It

authorized the indefinite detention of immigrants, allowed for searches of homes and businesses without the owner's or occupant's permission or knowledge, expanded FBI authority for warrantless wiretaps and expanded access to business records, even including the authority to see what books suspects checked out of public libraries. Although the law has been amended slightly, it has been allowed to stand largely in its original form.

There is probably one important change. The new laws will take powers away from the Home Ministry and its feared Special Branch police and vest them in the judiciary, as they are in the United States, the United Kingdom and many other countries. That means law enforcement officials presumably would now have to seek the permission of the judiciary before conducting arrests or surveillance. Malaysia has a notoriously compliant judiciary, which bends to the wishes of the government and which means that probably there will be little change for now. But should elections deliver up a future government that appoints an independent judiciary, the changes could be beneficial.

The lifting of a requirement for media companies to renew their publishing licenses annually, as stipulated in the Printing Presses and Publishing Act, appears to be a bow to reality, although not a very deep one and probably results from the fact that Malaysia was deeply embarrassed when censors blacked out portions of a story in *The Economist* on the crackdown on July 9 demonstrations against marchers calling for reform.

"In no way is this going to transform Malaysian society," said Masjaliza Hamzah, the executive officer of Malaysia's Center for Independent Journalism. "Not the media landscape for sure." The right to grant or revoke initial licenses remains with the home minister and can't be challenged in court, she said. "There are all kinds of changes that his announcement didn't address."

The fact that all of the major media are owned by government parties means they won't be changing their political tune anytime soon, licensed or not. And despite the current stricture that opposition party publications violate the terms of their licenses that they can only be sold to party members, in reality they are sold off the newsstands as well.

The government has hewed grimly to the promise by former Prime Minister Mahathir Mohamad that the Internet would not be censored. As a result, news sites including the *Malaysia Chronicle*, *Malaysia Today*, *Malaysian Insider* and *Malaysiakini* have gained hundreds of thousands of readers while the mainstream media, all of which are owned by component parties of the ruling national coalition, have continued to toe the government line.

"I think UMNO feels that by trying to censor the news, it makes it even worse," a Kuala Lumpur source said. "This is all a matter of defusing land mines ahead of the elections. A lot of burning issues are being defused."

The ISA is particularly a detested law by large numbers of Malaysian citizens. It was instituted in 1960 by the British colonial government at the height of the Communist insurgency but has often been used against political opponents of the government. In 1987, the government ordered Operation Lalang, which resulted in the arrests of 106 people including Lim Kit Siang, the secretary general of the Democratic Action Party, his deputy chairman, Karpal Singh, Halim Arshat, the youth chief of Parti Islam se-Malaysia, and a flock of social activists. Lim, Karpal Singh and 40 others were ordered detained for two years under the ISA. In total, according to

information supplied by the government in connection with Najib's speech, nearly 4,500 people were detained as suspected terrorists between 2000 and 2010. Some 37 are currently being held.

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