MEMORANDUM

ON THE INTERNAL SECURITY ACT 1960, OTHER LEGISLATION ON DETENTION WITHOUT TRIAL, AND RELATED LEGISLATION

Prepared by:
Bar Council Malaysia
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MALAYSIAN BAR MEMORANDUM ON THE INTERNAL SECURITY ACT 1960, OTHER LEGISLATION ON DETENTION WITHOUT TRIAL, AND RELATED LEGISLATION

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A. PREAMBLE

1. The Bar Council is encouraged by the recent open-door policy of the Minister of Home Affairs in receiving public feedback on suggested amendments to the Internal Security Act 1960 (**"ISA"**).[1] We are also grateful for the invitation issued via the letter from the Ministry of Home Affairs and Internal Security dated 6 May 2010 requesting our comments on proposed amendments to the Restricted Residence Act 1933, Prevention of Crime Act 1959 and the Banishment Act 1959. Since the 1970s, the Bar Council has adopted and submitted to the Federal Government countless resolutions and memoranda condemning and calling for the abolition of the ISA and other Detention Without Trial laws.

2. In October 2009, representatives of the Bar Council participated in a series of consultative meetings on the ISA arranged by the Ministry of Home Affairs. Further to its participating in the consultative meetings, the Bar Council submits this memorandum for the consideration of the Minister of Home Affairs.

3. There are 3 key points that the Bar Council would like to emphasise namely:

(i) the ISA is archaic and contradicts fundamental human rights principles and hence must be repealed;

(ii) there are adequate legislation to deal with the offences for which ISA has previously been utilised by the Federal Government; and

(iii) where necessary, existing provisions dealing specifically with anti-terrorism could be strengthened alongside improved safeguards and oversight mechanisms.

4. Historically the ISA was enacted for the sole purpose of fighting communist insurgency in Malaya and was intended as a temporary measure

[1] The Malay Mail, *Open to feedback on ISA,* 28 December 2009, quoted the Minister's reply to The Malay Mail, *"I feel the government's present engagement with its current stakeholders is going well. However, it can still be expanded if others would like to come in (and share their views)".*

until the communist threat was removed.[2] The Malayan Communist Party laid down its arms and gave up its struggle officially after the signing of the Bangkok Accord on 24 December 1989.[3]

5. The Government maintains that the continued application of the ISA is instrumental towards preserving public interest and security. However it is clearly documented that the ISA has been abused and utilised in the guise of addressing the following situations - human trafficking, possession of firearms, arms heist, currency counterfeiting, document falsification, terrorism and other activities deemed by the Government as religious deviancy, anti-government or otherwise "sensitive".[4] Moreover, there is existing legislation which adequately deals with these offences which would mean that these situations should proceed to prosecution. The use of the ISA in these situations runs contrary to the fundamental right to a fair trial.

6. The aftermath of 11 September 2001 saw the emergence of preventive detention laws all over the world. It cannot be denied that terrorism has singularly become a major global concern in the 21st century. At a regional level, cross border terrorism exists within South East Asia. For this reason, the Government has strongly proclaimed the necessity for retaining the ISA to combat the threats of terrorism. However, the Government has also advocated the need to protect national security as a further justification for retaining the ISA.

7. While it is reasonable to respect the Government's rationale in protecting national security, it is equally important to ensure that this rationale does not

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[2]This was repeated by various speakers during the parliamentary sitting moving the Act. The then Deputy Prime Minister, Tun Abdul Razak said, *"It is necessary to have this legislation to make provisions for our efforts to continue this fight against communist terrorists. This is why we have this Internal Security Bill."*. The government at the relevant time gave *"a solemn promise to Parliament and the nation that the ISA would never be used to stifle legitimate opposition and silence lawful dissent."* (See p. 127 of the Hansard).

[3] Dato' Seri Rais Yatim, *Freedom under Executive Power in Malaysia* (1995 Edition), p.293.

[4] Aliran's ISA Watch on the number of ISA detainees in Kamunting from 2000 to 2009. http://www.aliran.com/oldsite/monthly/2001/3e.htm

overwhelm its respect for human rights. As such, the Bar Council calls upon the Government to repeal the ISA.

B. CONSULTATIVE PROCESS

(i) Present Consultative Process - 5 Key Areas of Review undertaken by Government

8. Various parties were invited to a consultative process with the Home Ministry to discuss 5 key areas within the ISA identified by the Home Ministry to be in need of review. The **criticisms of the present provisions raised by these parties** may be summarised as follows:

(a) Rights and Treatment of ISA Detainees

9. Documented complaints of the mistreatment of detainees leading to medical and psychological problems, and its effect on the detainee's family, denial of contact with family or lawyers, lack of legal representation during the initial 60 days of detention, interrogation and investigation.

(b) Detention without Trial

10. A detention under the ISA does not come with effective safeguards and substantive judicial scrutiny. The courts can only review *habeas corpus* applications on the basis of procedural technicalities of the detention and not the substantive grounds of the detention itself. ISA should not be used for offences which are covered under other legislation; more of this later.

(c) Detention Period

11. Current initial 60 days of detention should be reduced to 30 days, provided each stage of detention (24 hours, 7-14 days, 30 days) is subjected to judicial oversight and approval.

(d) Powers of Minister

12. Powers of Minister to detain for subsequent 2 years period to be periodically subjected to judicial scrutiny to ensure separation of powers and to prevent minister from being both prosecutor and judge in one swoop.

(e) Perception of Abuse

13. Previous instances clearly showed the abuse of the ISA to silence political dissent, with selective application against individuals who oppose, criticise or disagree with Government policies/decisions, contrasted to the lack of any action against members of Government-aligned entities who have been reported to actually carry out acts blatantly injurious to a multi-cultural nation.

(ii) Preferred Consultative Process – Parliamentary Select Committee v Selective Ad Hoc Consultation

14. The Bar Council has concerns about the lack of a wider participation in the consultation process by the Ministry of Home Affairs and Internal Security (as distinct from a general invitation to provide feedback); **Annexure A** is the list of parties invited by the Ministry of Home Affairs and Internal Security. A more transparent and inclusive consultative method would be by way of a cross-party Parliamentary Select Committee. This would firstly afford an opportunity for wider participation by way of dialogue and discussion by more diverse groups, and secondly, enable a more detailed and thorough study and balanced analysis of relevant issues.

C. REASONS WHY THE ISA MUST BE ABOLISHED AND NOT AMENDED

(i) Adequacy of Present Legislation

15. The main reason for the abolition of the ISA is that there are adequate existing laws outside the present detention without trial laws to address the threats contemplated by the ISA. Set out below are the various provisions in present legislation which are adequate to deal with threats of terrorism:

(a) War against the State

16. Chapter VI (sections 121 – 130A) of the Penal Code provides for offences of the act of waging war against the Yang di-Pertuan Agong. The successful Al-Ma'unah convictions show that these provisions can be used against acts of terrorism.[5]

(b) Terrorism

17. Chapter VIA of the Penal Code contains 19 sections which provide for new terrorism and terrorism related offences. Both the words "*terrorist*" and "*terrorist act*" are widely defined. Such is the width of the definition that civil society groups have been critical of the vague definition which can be read to include assemblies as an act of terrorism. The provision of financial, legal services or facilities may be an act of terrorism if there are reasonable grounds to believe that the facilities will be used by or benefit terrorist. There have been amendments to the Criminal Procedure Code to widen the investigatory powers of the enforcement agencies.

(c) Other Offences

18. In terms of the situations where detainees have been held under ISA, the other offences under which the detainees could have been charged under are

[5] See *Public Prosecutor v Mohd Amin bin Mohd Razali & Ors* [2002] 5 MLJ 406.

counterfeiting money (section 489B Penal Code), falsifying documents (passports and travel documentation) (section 56 Immigration Act), inciting religious hatred (section 298A Penal Code), inciting racial hatred (section 499 Penal Code) and spreading false news (section 499 Penal Code).

(ii) Breakdown of the People's Trust and Confidence

19. Due to the previous abuses of this draconian piece of legislation by the Government, the people's trust and confidence in the Government to utilise this legislation properly and responsibly has substantially deteriorated. The Government exercises absolute or near absolute powers under the ISA. A mere cosmetic change will not change the character of this legislation from being one which allows for detention without trial to one which contemplates trial.

(iii) Detention Without Trial Laws are Offensive

20. Detention without trial laws are offensive to universal human rights norms, in particular the following provisions of the Universal Declaration of Human Rights:-

(i) Article 7 - All are equal before the law and are entitled without any discrimination to equal protection of the law;

(ii) Article 9 - No one shall be subjected to arbitrary arrest, detention or exile.

(iii) Article 10 - Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

(iv) Article 11(1) - Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

(v) Article 12 - No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Observance of these basic Human Rights standards are even more essential in view of Malaysia's recent election to the United Nations Human Rights Council.

D. DISTINCTIVE FEATURES OF ANTI-TERRORISM PROVISIONS IN OTHER JURISDICTIONS

21. In analysing anti-terrorism legislation in certain other jurisdictions, the Bar Council has concluded that in these jurisdictions, their anti-terrorism legislative provisions have primarily sought to clarify, strengthen and enhance their existing penal provisions to address the threat arising from terrorism. There is at the same time a commensurate strengthening of safeguards. The distinctive features identified are as follows:-

(i) Automatic Sunset Clause;

(ii) Judicial Supervision with secrecy provisions;

(iii) Period of Detention; and

(iv) Right to Counsel.

(i) Australia

22. Australia's Anti-Terrorism Act 2004 and Anti-Terrorism (No. 2) Act 2005 amended existing legislation by inserting specific security measures to deal with terrorist threat. The definition of "*terrorist organisation*" and related definitions were inserted into the Customs Act 1901, the Crimes (Foreign Incursions and Recruitment) Act 1978 and the Criminal Code Act 1995. The amendments

included increased powers to stop, question and search persons in relation to terrorist acts and the power to obtain information and documents were inserted into the Crimes Act 1914. Provisions in respect of installing and operating optical surveillance devices at airports and on board aircraft were included in the Aviation Transport Security Act 2004 and the Surveillance Devices Act 2004.

23. In the area of anti-terrorism financing, amendments were made to the Financial Transaction Reports Act 1988, the Criminal Code Act 1995 and the Proceeds of Crime Act 2002. Anti-terrorism measures included the introduction of control orders and preventative detention orders pursuant to amendments made to the Criminal Code Act 1995. Consequential amendments were made to the Administrative Decisions (Judicial Review) Act 1977.

24. It is interesting to note that in Australia, the detention period of any individual is still subject to ordinary remand provisions. Remand can be extended in cases involving terrorism, subject to strict provisions and judicial approval. The new measures still provide for communication with legal counsel and the appointment of guardians for minors. The amendments also provide for legal proceedings to be held in relation to preventive detention provisions and the review of any detention order by the courts on their merits (and not merely on procedural matters). There is also a provision for a defence of acts done in good faith, which includes making constructive comments as to the defects in government administration.

25. An annual report on detentions is required to be provided to Parliament.

(ii) Canada

26. Canada's Anti-Terrorism Act 2001 sets a five-year sunset clause for preventive arrest and investigative hearing powers, with a three-year review period for the legislation as a whole. Section 145 of the Anti-Terrorism Act 2001 requires a committee or committees of Parliament to conduct a "*comprehensive review of the provisions and operation of the Act*" within three years from the

date that it received Royal Assent (18 December 2001). A motion of the House of Commons on 9 December 2004 authorised the Standing Committee on Justice, Human Rights, Public Safety and Emergency Preparedness to review the legislation. The Subcommittee on Public Safety and National Security began its review of legislation in February 2005.

27. The Canadian legislation introduced amendments to already existing legislative provisions. It provided for an *ex-parte* hearing before a judge for an order for the gathering of information for the purposes of an investigation of a terrorism offence. An arrested person had to be produced before a judge within 24 hours. Persons charged for terrorism offences are tried in the courts.

(iii) United Kingdom

28. The United Kingdom's Terrorism Act 2006 (the second legislation for terrorism after the Terrorism Act 2001) provides for arrest without warrant. However anyone arrested must be released within 48 hours unless certain conditions are fulfilled to the satisfaction of a review officer. Such an officer will make his decision in the presence of and upon presentation by the detainee or a legal counsel representing him. Further extensions of detention, up to 7 days of detention and subsequently up to 28 days, must have judicial approval. Legislation also provides that if it is revealed that the grounds of detention cease to exist, the detainee has to be released immediately.

29. The legislation has to be reviewed every year and a report submitted to Parliament.

30. In cases where the evidence is highly sensitive, the defendant is permitted to appoint a Special Advocate who will be permitted to view the evidence and argue against the inclusion of that evidence in a trial before the judge. This will be done in a special in-camera session, without the presence of the defendant and his legal counsel. The Special Advocate is drawn from a list of empanelled independent barristers. He does not communicate at all with the

defendant or his legal counsel. He is appointed by the defendant from the list of empanelled Special Advocates and his brief is to argue in the best interest of his client where highly sensitive evidence is concerned. It is one means of protecting the legal due process and allowing the evidence to still be challenged but without compromising any security arrangements.

(iv) The United States of America

31. The USA's Patriot Act 2001 contained certain provisions which will lapse after 4 years, unless extended (as was in 2005). The legislation provides that actions of government officials pursuant to the legislation, if found by a court to have been carried out in violation of the legislation, can be subjected to disciplinary proceedings. It also provides that any person aggrieved by any violation of the legislation may take legal action against the Government for monetary damages.

32. Section 412 of the Patriot Act 2001 permits the Attorney-General to place designated foreigners in detention pending removal proceedings (i.e. deportation) if charged with a criminal offence. This may be done not later than 7 days after the commencement of such a charge. There is also a provision that designated foreigners (but not citizens) may be detained for up to 6 months if it is found that the release of the detainee will threaten national security. In such instances, habeas corpus applications can be made before a judge during which time all grounds of detention must be revealed. The decision of the judge carries no further right of appeal.

(v) Malaysia

33. Malaysia has already undergone a similar exercise to include terrorism-related offences in the Penal Code and the Criminal Procedure Code in 2006; a new Chapter VIA in the Penal Code entitled "Offences Relating To Terrorism" and a new Chapter XIIA in the Criminal Procedure Code entitled "Ancillary

Investigative Powers In Relation To Terrorism Offences". Malaysia also passed legislations dealing with offences in relation to financing of terrorism in the form of the Anti-Money Laundering and Anti-Terrorism Financing Act 2001 (Act 613).

34. Malaysia has already effectively strengthened its legislative provisions to take into account of and to deal with the threat of terrorism. Therefore, there is no need to maintain the ISA.

E. MOVING FORWARD ON OTHER LEGISLATION ON DETENTION WITHOUT TRIAL ("DWT")

35. Besides the ISA, the Government is given the power to detain individuals without trial under the Emergency (Public Order and Prevention of Crime) Ordinance 1969 (**"EO"**) and the Dangerous Drugs (Special Preventive Measures) Act 1985 (**"DDA"**).

36. The EO was originally drafted to suppress the manifestation of ethnic violence after the 13 May 1969 racial riots.[6] Today, there is no justification to warrant its existence as Malaysia is arguably no longer in the state of emergency. Now, it is being used to arrest and detain individuals who are suspected of dangerous criminal activities and alleged petty crimes.[7]

37. It may be said that the EO is ten times worse than the ISA judging by the number of persons detained under the EO. As at December 2009 it was reported that 247 persons had been detained without trial under the EO (based on the written answer by the Home Minister in Parliament to a written question by Senator Tunku Abdul Aziz Ibrahim).

38. Compared to the ISA, there is no huge outcry over the usage of the EO due to the target group that it is used against. The EO is usually used by the

[6] Emergency (Public Order and Prevention of Crime) Ordinance 1969 (Ordinance 5, 1969), promulgated by the Yang di-Pertuan Agong under Article 150 (2) of the Federal Constitution.
[7] SUARAM 2008/2009 Report, p.17.

police to arbitrarily detain those suspected to be gangsters and violent criminals. More often than not, the EO is invoked against these criminals where the police are unable to detain them due to lack of evidence.[8] Nonetheless, the existence of EO is not justified as detainees are not given the right to be heard before a detention order is issued by the Minister.

39. Salient provisions of the EO:

(i) Detention period up to 60 days: Section 3(3);

(ii). Every detainee is entitled to make representation against the order to an Advisory Board: Section 5(1);

(iii) Detention without a trial up to 2 years: Section 4(1); and

(iv) Powers of Minister:

(a) to issue the order: Section 4(1);

(b) to make rules as to the manner regulating the procedure of Advisory Boards: Section 5(3); and

(c) to order the removal from any place of detention to another: Section 12(1).

40. Detainees do not enjoy the due process of law, i.e. the right to be heard and the right to a fair trial. The provisions in the EO are worded broadly, allowing the police to arrest and detain any person on suspicion of danger to public security: Section 3(2).

41. Upon the expiry of the initial 60 days detention period, the Minister may order detention without trial for up to 2 years. Alternatively, the Minister may issue a restrictive order to restrict the movement of the detainee. The Minister has the power to renew the detention order indefinitely.

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[8] See example of the use of the EO on criminals: Cop mulls use of EO: http://www.mmail.com.my/content/29698-cops-mull-using-emergency-ordinance-%E2%80%98jalit-gang%E2%80%99-members.

42. A detainee may challenge the Minister's order before an Advisory Board. However, decisions by the Advisory Board are not binding on the Minister and it is very rare that the Advisory Board will recommend for release of detainees.

43. Judicial review of detention orders is prohibited, although a detainee may still file an application for judicial review in Court for 'procedural improprieties'. Detainees who have successfully challenged the detention order on procedural grounds are always re-arrested.

44. The DDA, as it stands today, allows the Minister of Home Affairs to authorise a two-year detention order against any suspect who "*has been or is associated with any activity relating to or involving in dangerous drugs.*"[9] While drug trafficking and the use of dangerous drugs remain as a threat to public interest and national security today, sections 3 and 6 of the DDA, can no longer justify nor reconcile with the basis and criteria of a progressive and democratic nation - one which upholds the rule of law and protects fundamental rights and liberties of its citizens.[10]

45. Salient provisions of the DDA:

(i) Detention Period - initial detention period of 60 days with no judicial oversight;

(ii) Rights of Detainees - the constitutional right of the detainee is curtailed as the detainee is denied legal representation during the period of detention;

(iii) Detention without Trial - a detention under this Act does not come with effective safeguards and substantive judicial scrutiny. The detainees do not go through the normal court process; and

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[9] Article 6 of the Dangerous Drugs (Special Preventive Measures) Act 1985. In addition, Article 3 allows any police officer to arrest and detain for the purpose of investigation without a warrant.

[10] Part II, Article 5(4) of the Federal Constitution states that "where a person is arrested and not released, he shall without unreasonable delay, and in any case within 24 hours (excluding the time of any necessary journey) be produced before a Magistrate and shall not be further detained in custody without the Magistrate's authority."

(iv) Powers of Minister - the powers of the Minister to detain for periods of 2 years and to renew indefinitely.

46. In 2005, the Royal Police Commission submitted a report to the Yang di-Pertuan Agong recommending the repeal of the EO, citing that the law is archaic and it "*facilitated the abuse of fundamental liberties.*"[11] It also recommended the amendments to section 3 of the DDA, requiring a detained person to be produced before the magistrate within 24 hours and be allowed access to family members and lawyers.

47. The Human Rights Commission of Malaysia ("SUHAKAM") in its 2003 report "Review of the Internal Security Act 1960", stated that there is a need for the Government to consolidate all laws pertaining to public order and national security, including all preventive detention laws, into one statute that provides protection against threats to public order and national security, but at the same time conforms to international human rights principles.[12]

48. All these recommendations have been ignored, including SUHAKAM's reiteration of the need to repeal the ISA, EO and DDA in 2006.[13]

F. OTHER LEGISLATION

49. The Government is also planning to consider what amendments may require to be made to the Restrictive Residence Act 1933 ("RRA"), the Prevention of Crime Act 1959 ("PCA") and the Banishment Act 1959 ("BA"). Alternatively the Government has raised the possibility of abolishing these laws.

[11] Report of the Commission to Enhance the Management and Operations of the Royal Malaysia Police (2005), p.343.
[12] SUHAKAM, *Review of the Internal Security Act 1960 (2003),* p. 88.
[13] SUHAKAM Annual Report 2006, p.10

50. The Bar Council would recommend the repeal of the RRA, BA and PCA without the necessity of enacting any new legislation.

51. Article 5 of the Federal Constitution guarantees the liberty of all persons. Yet in Malaysia, the RRA allows the police to arbitrarily detain a person and restrict them to a particular area.

52. As at December 2009, 42 people had been issued with a restriction order (based on written answer by the Home Minister in Parliament to a written question by Senator Tunku Abdul Aziz Ibrahim).

53. Some salient provisions of the RRA are:

(i) Powers of Minister to issue a restriction order: Section 2(1);

(ii) Penalty for contravening the restriction order: Section 6(1): imprisonment not exceeding 3 years;

(iii) Tenure of restriction may be for life or such term as stated in the order: Section 2 (3); and

(iv) There is no provision to allow for the person to challenge the restriction order.

54. Article 9 of the Federal Constitution provides for the protection against banishment or exclusion of citizens. With respect to non-citizens, we are of the view that existing immigration laws[14] have adequate provisions for the regulation of entry into and exit from the country. As such, legislation pertaining specifically to banishment and exclusion is no longer necessary nor relevant.

55. The criticisms of the PCA are as follow:

[14] Immigration Act 1959/1963 and the rules and regulations made thereunder.

(i) Detention Period - initial detention period, depending on circumstances, of up to 60 days with limited judicial oversight by a magistrate;

(ii) Rights of Detainees - the detainee is not allowed legal representation during the period of detention, interrogation and investigation. The detainee's right to bail is also denied;

(iii) Detention without Fair Trial - the subsequent determination is conducted by an Inquiry Officer, and not the court. This is inconsistent with the rule of law as detainees do not have access to a trial. The appointment of the Inquiry Officer by the Minister does not accord the detainee the fundamental rights guaranteed by the Federal Constitution;

(iv) Powers of Minister - the Minister has the power to act without a hearing (Section 12(2)) and to make the final decision in a hearing based on the Inquiry Officer's report (Section 11(2));

(v) Period of registration – the Minister may subject the detainee to up to 5 years of having to be registered and monitored by the authorities, subject to renewal of periods of up to 5 years at a time;

(vi) The PCA prescribes certain types of criminal activity over which the PCA is to apply, which are:

(a) Being a member of a certain groups - However, Chapter V (Sections 107 – 120) of the Penal Code provides for the offences of conspiracy and abetment; and Chapter XXIII (Section 511) provides for punishment for attempting to commit offences punishable with imprisonment. Legislation also exists to prohibit membership in proscribed organisations;

(b) Drug Trafficking - However, the Dangerous Drugs Act 1952 provides for the commission of all offences related to drugs, including opium;

(c) Women and Girls Trafficking - However, Chapter XVI (Sections 372 – 374) of the Penal Code provides for the offences relating to sex exploitation. Also, the Anti-Trafficking In Persons Act 2007 also provides for the offence of trafficking in persons; and

(d) Unlawful Gaming - However, the Common Gaming Houses Act 1953 provides for offences relating to illegal gambling.

56. As such, sufficient existing legislation exists to confront the challenges posed by such criminal activity, and to subject a person suspected of criminal activity to prosecution within the due process of the law.

G. CONCLUSION

57. As we enter a new decade, it is time for our country to enter a new chapter where archaic laws are repealed and to move forward by amending relevant laws and drafting new legislation that serve their true purposes without compromising fundamental rights and liberties of its citizens.

58. If the Government is sincere in its open-door policy, it should take heed of the recommendations that have been consistently maintained by independent bodies such as SUHAKAM, Royal Police Commission and other civil society groups.

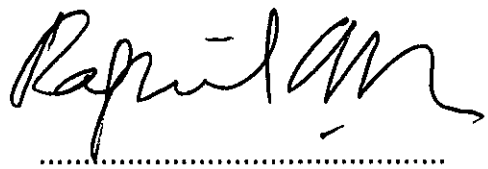
59. The Bar Council would recommend the repeal of the ISA without the necessity of enacting any new legislation and that all other detention without trial

laws, namely the EO and the DDA, should be similarly repealed. It is a fundamental human right that all accused persons are entitled to a fair trial.

60. Additionally, the Bar Council would recommend the repeal of archaic and outmoded legislation, in particular the RRA, PCA and the BA. Adequate legislation exists to deal with the matters once covered by these laws, which represent lingering vestiges of colonial legislation which are now so out-of–step with contemporary society.

61. It is again emphasized that observance of these basic Human Rights standards are even more essential and due in view of Malaysia's recent election to the United Nations Human Rights Council.

19th day of July, 2010



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Ragunath Kesavan
President, Malaysian Bar

ANNEXURE A

Parties invited by the Ministry for the Ad Hoc Consultation process were:-

1) Jabatan Peguam Negara
2) Institute of Stratergic and International Studies (ISIS) Malaysia
3) Angkatan Belia Islam Malaysia
4) Majlis Belia Malaysia (MBM)
5) Kelab Penyokong Parlimen Malaysia/ Barisan Nasional Back Bencher's Club (BNBBC)
6) Biro Tatanegara (BTN)
7) International Movement for a Just World (JUST)
8) Suruhanjaya Hak Asasi Manusia (SUHAKAM)
9) Bar Council
10) Persatuan Peguam-Peguam Muslim Malaysia
11) Persatuan Peguam Syarie Malaysia
12) Dekan Fakulti Undang-Undang UITM, UIAM, UM
13) Polis Di Raja Malaysia
14) National Council of Women's Organisations Malaysia (NCWO)
15) Institut Kefahaman Islam Malaysia (IKIM)
16) Parti Gerakan Rakyat Malaysia
17) Gabungan Pelajar Melayu Semenanjung (GPMS)
18) Penubuhan Kebajikan dan Dakwah Islamiah Malaysia (PEKIDA)
19) Persatuan Kebajikan Pelajar Islam Malaysia (PKPIM)
20) Malaysia Hindu Sangam
21) Persatuan Buddhist Malaysia
22) Persatuan Penganut Agama Buddha Ammitabha Malaysia
23) National Evangelical Christian fellowship (NECF)
24) Kongres Kesatuan Pekerja-Pekerja Di Dalam Perkhidmatan Awam (CUEPACS)
25) Astro Awani
26) Utusan Melayu
27) Reuters

ANNEXURE B

Table of Comparison between Different Jurisdictions on Their Respective Legislative Provisions

	Australia	**Canada**	**United Kingdom**	**USA**
Sunset Clause	Part of Act	Yes	Part of Act	Part of Act
Judicial Supervision	Yes	Yes	Yes	Yes
Period of Detention	Ordinary remand and extension to be determined judicially	Normal arrest remand procedures apply	Provides for arrest without warrant for 48 hours, further extension on certain conditions up to 7 days, and further extension upon judicial approval, up to 28 days	Detention up to 7 days, after which the detainee must be charged. Further detention of up to 6 months if it is found that the release of the detainee will threaten national security
Right to Counsel	Yes	Yes	Yes	Unclear