



**Resolution Adopted at the 78th Annual General Meeting of the Malaysian Bar
(Held on 16 March 2024)**

Resolution Regarding SOSMA Cases

Whereas:

1. At the EGM of the Malaysian Bar held at the Merlin Hotel, Kuala Lumpur on Tuesday, 18 October 1977, the following resolution was adopted:

To resolve that all members of the Bar of the States of Malaya **be advised not to appear in trials under the Essential (Security Cases) (Amendment) Regulations 1975 whether retained or assigned from henceforth** as these Regulations are oppressive and against the rule of law

Provided that those who have been retained prior to 18th October 1977 may either discharge themselves and refund any fees collected or complete their brief.

Proposers: Mr Karpal Singh

Seconder: Mr R.. Rajasingam

Resolution: The Motion was carried with a majority vote of 188.

2. Security Offences (Special Measures) Act 2012 (SOSMA), as stated in the preamble is ‘An Act to provide **for special measures relating to security offences** for the purpose of maintaining public order and security and for connected matters.’
3. SOSMA, just like the ESCAR [Essential (Security Cases) Regulations 1975], allows for the admission of evidence not permitted to be admissible by the Evidence Act, and for the use of procedures different from those provided for in other criminal trials as provided for in Malaysia’s Criminal Procedure Code. It permits also for the non-compliance with the Federal Constitution.
4. Section 4(10) of SOSMA states that ‘This section shall have effect **notwithstanding anything inconsistent with Articles 5 and 9 of the Federal Constitution and section 117 of the Criminal Procedure Code.**’
5. Section 14(1) of SOSMA states that, ‘**Notwithstanding Article 5 of the Federal Constitution and section 264 of the Criminal Procedure Code**, where at any time

during the trial of a security offence, any of the witnesses for the prosecution refuses to have his identity disclosed and wishes **to give evidence in such a manner that he would not be seen or heard by both the accused and his counsel**, the Public Prosecutor may make an oral application to the court for the procedures in this section to apply.... (3) If after such inquiry the court is satisfied as to the need to protect the identity of the witness, the **evidence of such witness shall be given in such manner that he would not be visible to the accused and his counsel**, but would be visible to the court; and further if the witness fears that his voice may be recognized, his evidence shall be given in such manner that he would not be heard by the accused and his counsel...(4) The court **may disallow such questions to be put to the witness** as to his name, address, age, occupation, race or other particulars or such other questions as in the opinion of the court would lead to the witness's identification...’.

6. Section 17 of SOSMA states, ‘This Part shall have effect **notwithstanding anything inconsistent with the Evidence Act 1950 [Act 56]**.’ This part, amongst others, deals with statement by any person who is dead, etc, Statement by accused, Communications during marriage, Conviction based on testimony of a child of tender years, Documents or things seized or howsoever obtained, Evidence of identification of accused or other person, Lists of documents and things, Non-production of exhibit, Admissibility of intercepted communication and monitoring, tracking or surveillance information, Admissibility of documents produced by computers and of statements contained therein, and Evidence of accomplice and agent provocateur. Hence, the requirements of the Evidence Act can be ignored.
7. **REMAND HEARINGS** — Parliament in its wisdom **to protect suspect's rights, and to deter abuse or wrongdoings of police during remand** made significant amendments to law on remand, restricting also the maximum duration of remand orders that can be obtained during 1st, 2nd and subsequent applications. Police is not free to detain persons allegedly for investigation on their own. They can do so only for less than 24 hours after arrest, and thereafter further remand detention is only possible if the Magistrate after a remand hearing, where the suspect or his/her lawyer has the right to be heard, orders further remand.
8. Maximum remand period permissible was shortened by Parliament, and this decreases the possibility of abuse including torture – A black eye, swellings or other evidence of torture during remand may still be visible during these much earlier remand hearings.
9. Remand is only for the purposes of investigation that requires detention, noting that investigations can also effectively continue even if the suspect is not in detention by law enforcement, as in the case of former Prime Minister Najib Razak.
10. The Malaysian Bar considers that remand hearings are important, including the right of the arrested suspects to know their rights and the right to be represented by lawyers. That is why it started and developed the **Dock Brief program** that is handled by the Malaysian Bar Legal Aid Centres since mid-90s, which provides advice and

representation to those that are brought for remand hearings after their arrest within 24 hours, and also subsequent remand hearings.

11. However, Section 4(5) of SOSMA says that ‘Notwithstanding subsection (4), a police officer of or above the rank of Superintendent of **Police may extend the period of detention for a period of not more than twenty-eight days, for the purpose of investigation.**’ In short, it effectively removed the need for remand hearings, and remand orders by Magistrate for any further detention ‘for the purpose of investigation’. This also goes against Art.5 of the Federal Constitution, which states, (4) Where a person is arrested and not released he shall without unreasonable delay, and in any case within twenty-four 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:...**’
12. The motion for the **extension of Sub-section 4(5) of the Security Offences (Special Measures) Act 2012 (SOSMA) (Act 747)** for another five years beginning July 31 was passed by Dewan Rakyat on 26/7/2022, after it was defeated earlier. The motion was again re-tabled by Home Minister Datuk Seri Hamzah Zainudin on 26/7/2022 was approved in a bloc vote which saw 111 members of Parliament agreeing while 88 disagreed with 21 absent. ...In March 2022, a motion to extend Sub-section 4(5) was not approved when tabled at the First Meeting of the Fifth Term of Dewan Rakyat for a vote which saw 85 MPs agreeing while 86 disagreed. [Edge, 26/7/2022).
13. Sadly, Anwar Ibrahim’s PH led Coalition Government failed to do anything about this after coming into power for over 14 months, despite the fact that PH MPs were opposed to the extension before.
14. SOSMA even allows **DELAY of the right to consult and/or be represented by a lawyer** which is provided in Section 5(1)(b). Section 5(2) states that ‘A police officer not below the rank of Superintendent of **Police may authorize a delay of not more than forty-eight hours** for the consultation under paragraph (1)(b) if he is of the view that- (a) there are reasonable grounds for believing that the exercise of that right will interfere with evidence connected to security offence; (b) it will lead to harm to another; (c) it will lead to the alerting of other person suspected of having committed such an offence but who are not yet arrested; or (d) it will hinder the recovery of property obtained as a result of such an offence.’ Section 5(3) says, ‘This section shall have effect **notwithstanding anything inconsistent with Article 5 of the Federal Constitution.**’. Art 5(3) of the Constitution says, (3) Where a person is arrested he shall be informed as soon as may be of the grounds of his arrest and **shall be allowed to consult and be defended by a legal practitioner of his choice.**’
15. The right to a lawyer must be immediate, and it cannot be delayed. A suspect ignorant of his legal rights may foolishly do things most detrimental to himself/herself. That’s why the right to immediate access to a lawyer is very important.

16. **BAIL** is a fundamental right of any accused, and whether one is granted bail (which can come with conditions) is within the jurisdiction of the court and/or judges, but through SOSMA, Parliament has taken away or 'stolen' the right of judges to consider and grant bail from the Court and/or Judges. Section 13(1) states that '(1) **Bail shall not be granted to a person who has been charged with a security offence.**' 13(2) provides the exception for certain persons, being a person below the age of eighteen years, a woman; or (c) a sick or an infirm person, charged with certain SOSMA listed offences.
17. It must be noted that the Courts and/or High Court judges will not grant bail for certain accused persons, maybe because they are a flight risk, or may do things like the destruction of evidence or harass witnesses. It is up to the courts to decide on bail, after hearing the prosecution and the accused.
18. A **denial of Bail goes contrary to the presumption of innocence until proven guilty in court** after a fair trial. Article 11(1) Universal Declaration of Human Rights states, '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.'
19. Further, **in Malaysia there is still to date NO right to be compensated for pre-conviction detention even when the court after trial finds him/her not guilty of the offence charged.** Pre-trial detention also has a serious impact on employment, business and other income generation activities which affects not just the detainee, but also his/her family and dependents. More so when they never even get charged, or they are charged and later found not guilty or discharged.
20. **SOSMA is NOT a Detention Without Trial Law.** The SOSMA Act may have been used to repeal the draconian Internal Security Act (ISA) but that does not make it a detention without trial, **as all who are charged under any of the SOSMA listed offences are entitled to a trial**, and after trial, if found not guilty, will be acquitted. For Detention Without Trial laws, the victim is not even charged in court, let alone tried in court.
21. After the repeal of ISA on 31/7/2012, what happened was the new Detention Without Trial Law, Prevention of Terrorism Act 2015 (POTA) was enacted, and the POCA was amended in 2014 to make it into a DWT law, with a very much broader scope compared to the previous ISA.
22. **Compliance with the requirements and/or standards of Malaysia's Evidence Act, Criminal Procedure Code and the Federal Constitution are fundamental to ensure a suspect and/or accused person's right to a FAIR TRIAL.** If not, the trial will be not fair or just, and lawyer members of the Malaysian Bar that are committed to the upholding of the cause of justice without fear or favour have to act.

23. **Ever since the enactment of SOSMA, the Malaysian Bar has been repeatedly calling for its repeal**, and there are also several Bar Resolutions to that effect, BUT to date the Malaysian government, even the current Anwar Ibrahim Pakatan Harapan-led coalition government, after more than 14 months in power, has failed to repeal it, or even repeal any or some of the draconian provisions therein. “Justice delayed is justice denied”.
24. It must be noted that the Pakatan Harapan had previously committed to the repeal of the Security Offences (Special Measures) Act 2012 (SOSMA).
25. We recall that **after the Bar passed the RESOLUTION on ESCAR calling for a ‘boycott’ of cases that used ESCAR, the Malaysian government did retaliate**, and the following extract of an article by then member of the Malaysian Bar, Salbiah Ahmad, helps us recall what happened then or at least captured a gist of it.

‘On Jan 9, 1978, the newly appointed Law Minister and Attorney-General Hamzah Abu Samah laid the Legal Profession (Amendment) Bill 1977, before the House of Representatives for its second reading. The country's third Prime Minister, Tun Hussein Onn, attended the session.

The amendments which became law on Jan 24, 1978 were multi-pronged. It restricted the Bar's autonomy in the conduct of its affairs by placing restrictions on office bearers in the Bar Council, the State Bar Committee and any committee thereof.

The amendments increased the quorum to any general meeting of the Bar and it allows the attorney-general several “supervisory powers” over lawyers including the admission of foreign lawyers into the country.

As reported in Hansard, the law minister began by speaking about increased communist activities in the country. He cited the bombing of the war memorial and a police division in Kuala Lumpur as reasons for the executive to pass the Essential (Security Cases) (Amendment) Regulations 1975, popularly known as Escar, under a proclamation of emergency.

From his address it would appear that the Malaysian Bar's opposition to Escar became the government's raison d’etre for the infamous amendments to the Legal Profession Act, 1976 (the LPA). The Bar, in what appears to be its final stand on the matter, passed a resolution in Oct 1977 to boycott Escar cases.

Inexperienced lawyers

According to the law minister, “Kerajaan bertanggungjawab kepada rakyat jelata yang memilihnya bukan kepada sebilangan kecil dari satu-satu Persatuan peguam-peguam itu lupa iaitu dengan sebab adanya peraturan-peraturan baru sejak 1975, keganasan-keganasan sudah jatuh berkurang.”

The minister concluded that the boycott was initiated by inexperienced lawyers. He proposed that henceforth lawyers of seven years are eligible for office “supaya ahli-ahli Bar Council atau Bar Committee ..terdiri daripada peguam-

peguam yang ..cukup pengalaman dan matang dan ada perasaan tanggungjawab”.

The minister also castigated the Bar for allowing politically active lawyers to influence the October emergency general meeting: “dengan galakan dan desakan dari sebilangan peguam-peguam yang berbetulan pula ahli-ahli politik yang aktif, telah dapat mempengaruhi sebilangan peguam-peguam lain untuk mengadakan mesyuarat khas Majlis Peguam ..meluluskan satu ketetapan.”

The law minister and attorney-general was not precise in his use of the term “ahli-ahli politik yang aktif”.

To be political is to be involved in articulating and defending interests. One need not be a professional politician to be political. All of us who are interested in articulating and defending interests or concerns are political beings.

“Mr Opposition” Dr Tan Chee Khoo (Kepong) insisted that the Barisan Nasional government had over-reacted in proposing the amendments. The Bar’s political opposition to Escar reflected the views of sections of the people. (emphasis is the writer’s).

*The Bar had, previous to the boycott, proposed changes to Escar and made representations to the former law minister and AG (Hamzah Abu Samah’s predecessor) to no avail. **This constructive engagement between the Bar and the government covered a period of two years.***

A passage which reflected the sentiment of that time reads, “Bar Council tiada mencari satu confrontation dengan kerajaan, tetapi nampaknya kerajaan berkehendak menunjukkan “mailed fist” kepada peguam-peguam.sekiranya Dewan meluluskan pindaan itu, kita mesti sedar kuasa untuk mengawal (control) legal profesion telah diletakkan di dalam tangan Peguam Negara.”

The fact of putting the Bar under the control of the AG would, according to Tan Chee Khoo, place too much power in the hands of one person, the AG; “tiada checks and balances kalau sekiranya pindaan yang dikemukakan oleh menteri..diluluskan”.

The requirement of one-fifth of the total Bar membership for any general meeting and the necessity of a vote of not less than two-thirds present and voting for a decision to be carried, in effect means that “Kerajaan berkehendakkan peguam-peguam kita tidak boleh meluluskan apa-apa resolusi”.

*Tan Chee Khoo’s prediction in 1978 resonates with the experience of the near impossibility of achieving the requisite quorum in recent years. **In 1977, there were some 1,200 lawyers nationwide.** Today there are about more than 4,000 lawyers in Kuala Lumpur alone.*

He concluded that the government is in fact forcing lawyers to obey the wishes of the government of the day by the amendments; “pindaan..berkenaan (me)maksa mereka bekerjasama dengan kerajaan”. This forced obedience to the state is a thin edge of the wedge.

Ariffin Daud (Permatang Pauh) was of the view that 'politically active' members of political parties, trade unions and legislative assemblies should not face disqualification for office." Pada fikiran saya..kita akan menafikan sumbangan yang boleh diberi oleh mereka ini kepada Jawatankuasa Peguam ataupun Majlis Peguam, kerana mereka inilah yang berdamping rapat dengan masyarakat lain daripada lain-lain pertubuhan."

Unworthy intention

There were 10 speeches in all with a right of reply by the law minister the next day. Hansard recorded some 30 pages of the debate. Among the 10 speeches, there was one plea (of perhaps Malay unity?) by Shaari Jusoh (Kangar) to bumiputra lawyers to support the government. "Saya berharap ..khasnya kepada peguam-peguam bumiputra supaya menarik seboleh-bolehnya kepada seluruh peguam untuk mencenderung ataupun menyokong segala dasar-dasar kerajaan."

Ten days after the amendments became law, the Bar held its statutory general meeting on Feb 3, 1978. The meeting was called to order when 246 members were present. Hundred and sixty lawyers passed a resolution among others, expressing regret that the government "has with the clear and unworthy intention of muzzling the Malayan Bar; proceeded with the passing of the Legal Profession (Amendment) Bill, 1977 thereby showing itself to be unwilling to accept valid and constructive criticism."

The Feb 3 annual general meeting of the Bar was rescheduled from an earlier date, three days after the LPA amendments became law on Jan 24, 1978. The requirements on quorum necessitated the change of date...' - Clampdown on lawyers' speech, Salbiah Ahmad, Published: Sep 24, 2001 5:15 AM, Updated: Jan 29, 2008 5:21 PM (Malaysiakini)

26. The Resolution passed at the said 32nd AGM of the Malaysian Bar held at the Merlin Hotel, Kuala Lumpur – Friday, 3 February 1978 is as follows.

Number of Members present: 246

Motion 1:

The Malaysian Bar **regret that the Government:–**

(a) in complete disregard of the reason of the Bar for the stand it had taken on the Essential Security Cases (Amendment) Regulations, 1975, leading to the passing of the Resolution by the Extraordinary General Meeting of the 18th October, 1977, which was that such Regulations essentially denied an accused person of the most fundamental safeguards against wrongful conviction;

(b) without making proper enquiries as to its allegation that the Bar is being influenced by practitioners of less than seven years' standing or who are politically motivated; and

(c) despite objections expressed by the Bar Council both publicly and to the appropriate authority,

has with the clear and wholly unworthy intention of muzzling the Malayan Bar proceeded with the passing of the Legal Profession (Amendment) Bill, 1977, thereby showing itself to be unwilling to accept valid and constructive criticism.

Proposer: Bar Council

Seconder: Mr R. Ponnudurai

Resolution: The Motion was carried.

27. The federal government has **no intention to repeal the controversial Security Offences (Special Measures) Act 2012 (SOSMA)**, Ramkarpal Singh said today. Instead, the deputy minister in the Prime Minister's Department (Law and Institutional Reforms) said the government plans to introduce two amendments to the law, one of them being the issue of bail....' — (FMT, 23/8/2023)
28. A mere amendment about Bail, which has still not come after more than 6 months, is simply not enough. The draconian SOSMA must be repealed.
29. As such, given that our repeated calls for the repeal of SOSMA has not been effective. It is time for the Bar to take the next step, similar to what was done in 1977. We are all aware that the government may retaliate against the Bar, but we are committed to upholding the cause of justice without fear or favour.

Therefore, it is resolved that:

1. The Malaysian Bar resolves that the Malaysian Bar shall endeavour to appear as *amicus curiae* in matters and trials of cases under the Security Offences (Special Measures) Act 2012 (SOSMA), as the Malaysian Bar views Security Offences (Special Measures) Act 2012 (SOSMA) as oppressive and against the rule of law.
2. The Malaysian Bar reiterates the call for the immediate repeal of Security Offences (Special Measures) Act 2012 (SOSMA).
3. That the Bar Council consider all possible actions, including organising a Peaceful Assembly or protest, to urge the government to repeal SOSMA and all other draconian laws speedily.