



**Resolution Adopted at the 77th Annual General Meeting of the Malaysian Bar
(Held on 18 March 2023)**

Resolution on Security Offences (Special Measures) Act 2012 (“SOSMA”) and Related Matters

Whereas:

- (1) According to a news report in *The Star* on 7 March 2023 (emphasis added):

A total of 624 individuals were detained under the Security Offences (Special Measures) Act (SOSMA) last year, says Datuk Seri Saifuddin Nasution Ismail.

The Home Minister added that 140 of these detainees had already been released.

“Of those detained, 71 were charged in court, **401 were punished**, 140 were released and 12 are still under investigation,” he said in a written reply to a question by Chow Yu Hui (PH-Raub) in the Dewan Rakyat yesterday.

- (2) **The admission by the Minister that SOSMA was used to punish 401 detainees is most shocking.** Under Malaysian law, persons arrested are detained prior to being charged in court **ONLY for the purpose of investigation**, and thereafter they may be charged, tried and, if convicted, sentenced. There should be no “punishment” until there has been a fair trial and a conviction.
- (3) Persons are arrested, investigated, charged and tried for offences under the Penal Code and other laws, not SOSMA. Even without SOSMA, there is nothing stopping arrest, investigation, prosecution and fair trials.
- (4) However, if any of these offences under the Penal Code or any other laws are listed as “SOSMA offences”, then the police and others can resort to using “special” procedures, and evade the requirements of the Evidence Act 1950 and Criminal Procedure Code.
- (5) SOSMA, like the Essential (Security Cases) Regulations 1975 (“ESCAR”), is an “Act to provide for special measures relating to security offences...”. It is not a detention-without-trial law like the (repealed) Internal Security Act 1960 (“ISA”), and now the Prevention of Crime Act 1959 (“POCA”), Prevention of Terrorism Act 2015 (“POTA”), and Dangerous Drugs (Special Preventive Measures) Act 1985.

- (6) SOSMA violates Article 5(4) of the Federal Constitution, which says that the police shall not detain any person beyond 24 hours of arrest, and that a person “shall not be further detained in custody without the magistrate’s authority”.
- (7) Under SOSMA, there is no need to bring a suspect before a magistrate within 24 hours, or for the police to apply for and obtain a remand order for further detention for the purpose of investigation.
- (8) Instead, under SOSMA, “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**” (emphasis added).
- (9) Hence, the important role of the magistrate in ensuring that the suspect’s rights are not abused by the police or detaining authority, is removed. It is notable that the concern about police abuse and torture led to the amendment to the Criminal Procedure Code that came into force in 2007. Now, the maximum remand period on the first application for offences punishable with imprisonment of less than fourteen years is four days, and is seven days for more serious offences.
- (10) If the Government deems that there is a need for a longer period of detention for investigation purposes, then there can be a law that extends the remand period beyond the current maximum of 14 days. However, the requirement of an application for a remand order before a magistrate must never be excluded, and such an application for remand ought to happen every four to five days, at the very least.
- (11) Bail should be under the jurisdiction of judges and courts. However, with SOSMA, Parliament ousted the court’s jurisdiction, as section 13(1) of SOSMA states that “[b]ail shall not be granted to a person who has been charged with a security offence”.
- (12) However, section 13(2) provides exceptions to the non-granting of bail for certain offences, where bail can be granted to a person below the age of eighteen years, a woman, or a sick or infirm person. This is certainly **discriminatory** in terms of age and gender. Why is a man not accorded the same right as a woman? Why is a 22-year-old denied bail? What about a senior citizen?
- (13) Noting the presumption of innocence, the detention of suspects and/or accused persons prior to conviction and sentencing is grossly **unjust**. It impacts employment, business, or income generation, which impacts not just the suspect and/or accused person but also the family, including children.
- (14) SOSMA allows evidence that is not admissible in criminal trials under the Evidence Act 1950. SOSMA allows procedures in our Criminal Procedure Code to be violated.
- (15) During trial, an accused person and his/her lawyer’s rights can be denied. SOSMA allows for procedures to conduct proceedings in the absence of the accused person and his/her lawyer. It also allows for the restriction of questions that can be posed to a

witness. How can an accused person's lawyer effectively cross-examine a witness without knowledge of his/her identity, the right to even pre-trial interviews, and the ability to investigate the witness?

Therefore, the Malaysian Bar resolves:

- (A) To reiterate the call that the Security Offences (Special Measures) Act 2012 ("SOSMA") be repealed;
- (B) That no laws be used to "punish" a suspect or accused person prior to a conviction after the completion of a fair trial; and
- (C) That an innocent suspect or accused person be compensated by the State for the loss of liberty and other losses suffered by reason of detention under SOSMA and other laws.