By Malik Imtiaz Sarwar
via [Disquiet]

THOUGH the Government has said much about the repeal of the infamous Internal Security Act, little has been said to explain how its so-called replacement, the Security Offences (Special Measures) Bill (SOA), will impact on our lives. Even less has been said about the bill tabled to amend the Penal Code that went hand in hand with the SOA. I think there was a reason for this.

To say that the two bills are draconian would be a gross understatement. They brutally curtail the constitutional freedom of Malaysians to dissent. It seems that we have been made the victims of a sleight of hand. While we were being distracted by the song and dance that attended the termination of the ISA, Parliament was being harnessed to diabolical purpose. The passing of the two bills has sounded the death knell of civil liberties.

I am not given to hyperbole. The facts speak for themselves.

The SOA is more a procedural instrument. It puts in place the legal framework for the investigation and prosecution of what are described as “security offences”. It allows for the kinds

of invasive measures that we have come to understand are needed for governments to combat terrorism effectively. Government tells us that terrorism is the raison d'etre of the legislation.

The SOA could arguably be justified on this basis, though I question the need for such extreme anti-terrorism legislation in light of our not having been subjected to terrorist attacks or even threats. Curiously, the preamble to the SOA states that action has been taken and further action is threatened by a body of persons both inside and outside Malaysia to cause organized violence against Malaysians, to excite disaffection against the Yang di-Pertuan Agong and to procure the alteration though unlawful means of legal institutions in the nation. This is news to me. These are matters of great significance to us; they suggest that we are virtually in a state of war or that we are in the midst of an insurgency.

The truth of the matter is that we have not been made the subject of such scurrilous action and we have not been threatened with such action. The bill recites this so the Government can invoke a provision of the Federal Constitution, Article 149, that allows for Parliament to enact laws that contravene certain constitutional guarantees including those that prohibit detention without trial and guarantee a fair trial. The SOA allows, amongst other things, detention without trial for a period of twenty-eight days, and empowers the Attorney General to take extraordinary measures including the interception of all forms of communication where he has reason to believe a Security Offence (this is explained below) has been committed.

We should not lose sight of the fact that the ISA was enacted under Article 149 to address the guerrilla insurgency we faced in the 1960s. I have been made to understand that the Opposition's unwillingness to associate with an obvious untruth is one of the main reasons it does not support the bill. The fact that Government has resorted to Article 149 gives credence to suggestions that the ISA has merely been repackaged and that the Government is not ready to give up the political advantages that such legislation gives it. As one Minister has observed, there were abuses under the ISA and no law is beyond abuse.

The SOA could perhaps be stomached if it was confined to terrorism. It however is not. In fact there is no mention of the word terrorism or terrorist in the legislation at all. Instead the SOA applies to what is referred to as “Security Offences” which is defined by newly introduced offences, hence the amendments to the Penal Code. This is where the real evil is.

The new offences fall within three categories: activity detrimental to Parliamentary democracy, espionage and sabotage. What is immediately apparent is that the three offences, and the various permutations the amendments allow for, are so widely defined so as to capture almost any form of conduct deemed undesirable by the powers that be. This is extremely alarming in light of trends on the part of the authorities where civil liberties are concerned.

Take the offence of activity detrimental to parliamentary democracy. It is defined to mean *“an activity carried out by a person or group of persons designed to overthrow or undermine parliamentary democracy by violent of unconstitutional means”*
. This is worry in light of the way in which we have heard accusations of unconstitutional behaviour being hurled at diverse persons from opposition members to activists. Consider also the way in which the members of Parti Sosialis Malaysia were arrested prior to the Bersih 2.0 demonstration last year for the alleged offence of “waging war” against the Yang di-Pertuan Agong.

This point is further illustrated by the offence of *"possession of documents and publications detrimental to parliamentary democracy"* which carries a jail term of up to ten years. This offence is defined to include documents or publications that have a tendency to, amongst other things, counsel disobedience to the law pertaining to public order. It would clearly impact of demonstrations like those organised by Bersih 2.0 and other activist groups which were deemed by the police to be unlawful. Under this offence, any notices concerning such an event would be a document or publication detrimental to parliamentary democracy.

It does not stop there. Such offending documents or publications include any invitation or request for contributions or donations for the use of persons who counsel disobedience to the law, amongst others. Persons receiving such offending documents or publications are required now to deliver the same to a police officer failing which that person may be convicted and sentenced to a jail term of ten years as well. This would be the case if those offending documents or publications were republished. So, the net would widen to include any bloggers who author or publish material deemed undesirable.

In the same vein, espionage means *"an activity to obtain sensitive information by ulterior or illegal means for the purpose that is prejudicial to the security or interest of Malaysia"* . What that means is not clear.
"Sensitive information"
is defined to include any information that concerns, amongst other things, public order and the *"essential public interest of Malaysia"*
. The scope of these provisions become a little clearer when we consider how it is our leadership has a tendency to label activities detrimental to its political standing as being aimed at undermining the Government. It seems to me that whistleblowers might also be caught by this provision as well, a point worth noting in light of the numerous scandals the Opposition have been disclosing recently.

I could go on but the point has, I think, been demonstrated. The scope of these offences leaves no room for doubt. They are self-evidently geared towards far more than terrorism. The question I have is this: why has the Government led us to believe that these laws are intended to combat terrorism when in fact they do far more. Parliament has created a monstrous law that defies legal logic as much as it flies in the face of promise of reforms towards a more inclusive and participatory democracy.

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