

Sun, April 19 2009 - Suhakam chairman Tan Sri Abu Talib Othman, who was Attorney-General between 1980 to 1993, says the Internal Security Act has been abused for too long and hopes there will be a ♦meaningful review♦ or a total repeal of the Act.

Q: The Prime Minister has called for a comprehensive review of the Internal Security Act. Suhakam has been calling for a review from as far back as 2002. What is your response?

A: The fact that the new PM has attached much importance to human rights augurs well for the future of Malaysia. He has made the commitment and we hope it will be a meaningful review in compliance with the principle of human rights.

We fully support an extensive review of the ISA ♦ although it falls short of our recommendation to completely repeal it. When I was appointed Suhakam chairman in 2002, one of the first things I asked for was a review of the ISA. Based on our review, we recommended in 2003 that it be repealed because of the possibility of abuse. But what we got was repeated statements by the relevant ministers that the ISA is still necessary and here to stay.

Past Prime Ministers have also called for a review of the ISA but it did not happen. What makes you think it will be different this time?

Like the new PM said, give him a chance. We must have faith and trust in him. I hope the relevant agencies will provide good advice to him regarding his good intention to review the ISA. The public should also be reminded constantly that (Datuk Seri) Najib (Tun Razak) has given a commitment to review the ISA. The fact that the PM himself has stated that the ISA needs to be reviewed is clear evidence that he is aware that the law in its present form is no longer appropriate. We all value security but it must be balanced with individual rights and not at the whims and fancies of the police.

What has been the most bizarre abuse of the ISA to you?

The detention of the poor reporter and the blogger! If they publish seditious or defamatory statements or did false reporting, we have relevant ordinary laws like the Sedition Act or Defamation Act to deal with it if there is sufficient evidence. But you detain a reporter not because she poses a security threat to the country but for her own safety? The law is not intended for that purpose! Isn♦t that an abuse?

The blogger ♦ why detain him under the ISA? Charge him under the relevant laws. If he makes an alleged false or defamatory statement, there are laws for this. Why resort to the ISA? Clearly there has been an abuse of the Act and this is what we are concerned with.

The ISA should not be used as a short cut to resolve crime or other offences. And lately we have been seeing many cases of abuse of the Act.

Another clear case of abuse is (in 1998) when (Datuk Seri) Anwar Ibrahim♦s tennis partner Datuk S. Nalla was detained and charged under section 57(1)(b) of the ISA for the mere possession of live bullets which carries a mandatory death sentence when he was not even a security threat.

The charge was later amended without explanation by the public prosecutor to the Arms Control Act. Nalla served the sentence (a year and 10 days after the Court of Appeal decision) and later became a supporter of the Government! Why use the ISA for possession of live bullets when there are other laws that could have been used which carry a less severe sentence.

One would argue that the cases of abuse under ISA did not happen recently but as far back as Ops Lalang in 1987?

We have taken those things into consideration in our review, hence our recommendation that it should be repealed. In other countries, the detention is not for 60 days ♦ it is for seven days. Why do you need 60 days? To manufacture evidence? You mean you arrest before you look for evidence? That♦s not fair.

Personally, I feel in view of the present threat, we may need a preventive legislative but it must be such that the

alleged detainee's rights must be protected. It should not be left to one person to decide to detain or not. There should be a committee of respectable people who will be fair and conscious of the state of security of the country and decisions must be made in a transparent manner.

Right now there is no transparency in the action that led the police to detain these people. More so not in the evidence gathering in the 60 days. The purpose of the 60 days, I am told, is because the police need time to gather evidence. Does this mean that when you detain you have no evidence? You must have evidence before you detain people.

How do you feel about the Act not allowing for a judicial review of a person's detention?

For detention without trial, you are allowed to go to court but only on procedural matters. But what is more important is what the person did wrong to justify the detention. Surely that is more important than the procedural matter. Yet the law says he cannot challenge the grounds of detention and the police investigation. The right to seek legal remedy is a constitutional right in a court of law.

To be fair, the detainee must have the right to challenge the report of the police. Why deny the right to challenge which is a right that is guaranteed by the Constitution?

But wasn't the no judicial review clause put into the ISA by you during your time as the Attorney-General?

I don't deny that. I handled those provisions. It was suitable at that time but times are different now. What was good yesterday may not be good today or tomorrow. The law must change to suit the changing circumstances and times. You can't have any form of oppressive laws. The people will not accept it. If this is not addressed, it may lead to anarchy.

Suhakam was formed in 1999. The Government has now accepted the principle of human rights and Najib has said that he will give priority and emphasis to human rights. That is the declared policy and all laws in the country should be amended to comply with principle of human rights.

Not only the ISA, every law in the country should ensure that human rights principles should be observed. Now you have various laws with the ouster clause that prohibits challenging the executive's decision in a court of law. Does this show that the Government has no confidence in the courts?

What are some of Suhakam's recommendations on the ISA?

That the act should ensure the rights of the individual. The authorities cannot detain without prior investigation. Detention cannot be arbitrary to the extent of up to 60 days. We recognise that the authorities have a duty to society but detain for up to seven days? If they don't have a case, release them. And they cannot deprive these people of the right to be represented. They cannot say the decision can't be challenged in court except on procedural grounds. The sting of the matter is not the procedure but what the person did or did not do. How can you not challenge that?

If after seven days the police find that they do have the evidence that the person is a security threat, they can detain him for a maximum of one year after which they must charge or release him.

Also under the rule of law, a person is presumed innocent until proven guilty and it is the prosecution's duty to prove its case beyond reasonable doubt. But if you look at the ISA, the trend is that it shifts the burden of proof to the accused. How can that be? You mean the accused must prove he is innocent rather than the prosecution must prove its case beyond reasonable doubt and cases can't be challenged in a court of law? That is against human rights principles.

Those on the receiving end of the ISA have argued that the Act has been used by the Government in power to suppress political opponents like in the case of Operasi Lalang or the crackdown during Reformasi?

Personally in my view, the decision taken in Ops Lalang was not political. It was based on the question of security. I handled that case in court. I represented the Government and I am convinced that it

was not because of politics. It's because the activities, if allowed to continue, might have affected the security of the country.

Whether this is right or wrong, it is not for me to say. It was challenged in court and I think the decision of the minister then was not disturbed.

The controversy of the ISA centres on the detention without trial. It has been alleged that sometimes the Act has been used against the Opposition ♦ that's why it has become so controversial. I can't confirm if this is happening but to me a politician has no special rights.

But people seem to think that the ISA is used only against some?

It is not true but unfortunately, there is a perception that the enforcement agency seems to adopt a double standard in the administration of the law in this country. It has been said that reports against members of the administration are not investigated or take a long time to be investigated whereas reports against the Opposition are always investigated speedily and given big publicity. Hence this perception of double standard.

Even in court cases, when it involves a member of opposition, it is said to be quick and judgement can be made very fast. But in other cases, a court takes five years to write its judgement. I am not making this up. It is a fact. So can we blame the public for having the perception that there is double standards in the administration of law and justice in this country. Suhakam has taken this matter up with the court.

Some have said the ISA is used as an excuse to hold someone when the prosecution has a weak case?

We have received memorandums from groups alleging the misuse of the ISA and some have been detained for purposes allegedly not connected with national security. We have written to the ministry concerned, and in most cases we received no replies. I took the matter up with the Chief Secretary and he has looked into it. Only then we started getting some responses. But all the responses to us are very standard stating that ♦we comply with the law♦. Suhakam never said they did not comply with the law but what we said is that the exercise of power is against the law.

What is the status of Suhakam now that there is a possibility of a downgrade?

The ICC (International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights) has no issue with our performance. What they are concerned with is the law itself ♦ which we have no control over ♦ in particular with regard to the appointment of the commissioners.

The concern is that there is no transparency in the appointment and that is the crux of the matter. In the ICC's view, this is not in compliance with the Paris Principles but our A-G thinks otherwise. The Government has amended the (Suhakam) law at such lightning speed with the intention that it will help us retain our ♦A♦ status but we have just been informed that it still does not comply with the Paris Principles.

We advised the Government but the amendments that have come out are completely different from what we recommended. So please don't blame the Suhakam commissioners if we are downgraded to ♦B♦ status.

How supportive has the Government been of Suhakam since it was set up?

The Government should give some sort of respect to our annual report. We state our activities, proceedings and recommendations. All these we provided in the Suhakam annual report. But unfortunately, the powers that be do not seem to attach any weight at all to our report. So don't blame Suhakam members when some allege that we are getting ♦gaji buta♦ (money for doing nothing).

We perform our function, we submit our report but if the Government does not accept it, you cannot say that we have not done our part. Tell us where we have gone wrong. The honourable minister ♦ (Datuk Seri) Nazri (Aziz) said Suhakam is only advisory in nature and that the Government never intended to give us powers. What is the purpose of spending money on Suhakam? (RM10mil a year to run the

body) What is the intention of setting up this national human rights institution?

Is Suhakam then just a show piece to show that Malaysia is doing something for human rights?

I can't speak for the Government. What is our concern is that all these years our reports have never been debated and our advice never looked at.