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## Malaysia's Security Offences Bill: A Good Replacement of ISA?

By Su Hao'En and Zulkifli Mohamed Sultan

### Synopsis

*The newly introduced Security Offences Bill in Malaysia is meant to fill the gap left by the repeal of the Internal Security Act 1960 in tackling religious extremism. It is also an important tool for combating terrorism in Malaysia.*

### Commentary

Malaysia relies on a number of laws for its counter-terrorism efforts. The most prominent and controversial law is the Internal Security Act (ISA) which it inherited from its colonial past to deal with security threats to the state. It was updated after independence and used against the communist insurgency until the 1980s. Since the 1990's the ISA has been used to counter emergent militant groups and radical individuals espousing violence and extreme ideologies.

The ISA gave the government power to detain an individual without charge and was used to detain those deemed as potential security threats. This extra-judicial power of the government was essential in the post 9/11 environment to proactively deal with the threat of terrorism. The Malaysian government saw the ISA as playing an important role in its anti-terrorism efforts, and the ISA was often compared to the United States' PATRIOT Act and the United Kingdom's Anti-Terrorism Act. However, following years of public protests against the act being used against opposition politicians and activists the Malaysian prime minister announced the government's intention to abolish the ISA on 15 September 2011.

### An Alternative to the ISA

The new Security Offences (Special Measures) Bill was introduced and was approved in Malaysia's Parliament on 17 April 2012. This law effectively repealed the ISA and provides similar legal means to deal with individuals who may be potential security threats. The Security Offences Bill allows an individual to be detained for twenty eight days without being officially charged.(The ISA provided such initial detention for 60 days). The arrested individual is to be provided legal representation after forty-eight hours, which protection was previously not available under the ISA.

The Security Offences Bill does not provide for the same extent of powers as the ISA, but can be just as capable of dealing with terrorism with the existing Anti-Terrorism laws that were also passed. Current Anti-terrorism laws have been criticized by many Malaysian lawyers as being too broad and lacking specifics that

may be subject to multiple interpretations and leave room to be abused. In terms of countering terrorism, the broad definitions meet the requirements of having the means to preventively combat terrorism within Malaysia.

Both the Security Offences Bill and Anti-Terrorism laws provide the Malaysian government the same ability to take proactive and preventive legal actions against individuals who may be harboring militant intentions. This arrangement under the judicial purview is highly unlikely to be abused for political purposes; the Security Offences Bill specifically stipulates against such uses in Clause 4, Part 2. Anti-Terrorism charges are also to be heard by the judiciary which is unlikely to be influenced by political concerns as compared to other government bodies.

Malaysia has been effective in inhibiting terrorism by preventive detention against extreme, violent radical groups such as the Kumpulan Mujahidin Malaysia, the Jemaah Islamiyah, and the older Darul Islam precisely because individuals can and have been detained for holding religious-political views that are extreme in nature even if an "act or threat" of terrorism has yet to be proven. That said the prohibition of using the Security Offences Bill for political purpose may become Malaysia's own Achilles heel in countering terrorism.

The nature of militant terrorist activities in the post 9/11 context connotes specifically political intent. An individual harboring an intention to change the political order by means of an armed struggle may exploit the new Security Offences Bill's specific clause. More importantly, if evidence proving the participation or support of militant activity is not sufficiently gathered within a month or at the point of initial arrest, anti-terrorism charges cannot be used even if the individual is ideologically supportive of extreme, militant political views. Many of the past arrests had been made based on the fact of membership within those groups. Individuals sympathetic towards militant views have also been arrested. Although ideological leanings cannot be criminalized, it has been securitized to a degree and this process has been proved successfully to tackle terrorism in Malaysia.

### **Implications in Counter-terrorism in Malaysia**

Malaysia's current effort in countering terrorism with the new Security Offences Bill would be cast in a better light in the international arena. Past efforts using the ISA had been arduous because of allegations of human rights abuses raised by international and domestic human rights groups and observers. Due to the nature of ISA, details of detention were not made public, evidence of abuses were one sided with only accounts of ex-detainees statements during interviews.

While the ISA has been used for rehabilitation of potential security threats, under the Security Offences Bill rehabilitation efforts of the Malaysian government may be impaired to a greater degree. This is especially so when dealing with the majority of individuals who are suspected of extreme militant views but have not participated or acted to carry out their deviant ideologies. This would be the new situation that the Malaysian government would have to face and tackle in the long run.

Malaysia is an important partner in tackling counter terrorism in Southeast Asia. It is important to note that with the new law in place, the Malaysian government needs to work closely with neighboring countries to formulate a successful remedy in countering terrorism. Time will tell whether this bold move will bear fruit in the near future.

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