

**REPORT**  
**ON THE STATE OF**  
**RELIGIOUS LIBERTY**  
**IN MALAYSIA**  
**FOR THE YEAR 2007**

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THE RELIGIOUS LIBERTY COMMISSION  
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**TO  
THE EXECUTIVE COMMITTEE  
NATIONAL EVANGELICAL CHRISTIAN FELLOWSHIP  
(NECF) MALAYSIA**

**JUNE 2008**

*This report intends to review both government (local and federal) and judicial actions in three principal areas: the right to profess, the right to practise and the impact of Islamisation. All court's decisions made in 2008 (before July) on cases mentioned in this report are placed on the footnote.*

## **1. BACKGROUND TO THE YEAR UNDER REVIEW**

### **Introduction**

The Malaysian socio-political landscape grew even grimmer in 2007 as inter-ethnic, inter-religious and, of course, political tensions, which were already high in 2006, further heightened. Despite clear and increasing evidence of cracks in the nation's social fabric, the top political leadership continued to insist that the bonds holding the different communities together were strong. In contrast to the past, when such religious matters were treated with much greater sensitivity, there were multiple high-profile incidents, such as conversions out of Islam, destruction of places of worship, confiscation of religious material and enforced burials by religious authorities in 2007. Confronted with aggressive denials by the government that anything was wrong and the apparent unwillingness to do anything about them, all ethnic minorities, especially Malaysians of Indian origin, grew more overtly frustrated and resentful. This led to growing support for the Hindu Rights Action Force (HINDRAF) and for the subsequent street protests organised by it to voice the community's discontent.

### **HARDLINE APPROACH**

Rather than seek to seriously engage the community and defuse the situation before the situation worsened, the authorities' response was to take a hardline stand against activists. Expectations of the imminent dissolution of Parliament and the calling of the country's 12<sup>th</sup> general elections undoubtedly also gave rise to acts of political opportunism by both sides that further exploited socio-religious differences and exacted a toll on social cohesion. The BERSIH demonstrations in early November 2007, ostensibly called for the purpose of demanding free and fair elections, managed to draw large numbers of Malaysians out to the street, something that had not been witnessed since the *Reformasi* movement in 1997. Scenes of riot police dispersing crowds with water cannons and tear-gas were televised around the world and posted on the Internet and had the effect of garnering even more support for the movement, both locally and internationally.

### **WEAK LEADERSHIP**

Undoubtedly, one of the major reasons for taking an uncompromising line against ethnic minorities were the accusations of weak leadership and the 'poor defence' of the Malay community's interests launched at the Abdullah administration. The rift within the United Malay National Organisation (Umno), between Dato' Seri Abdullah Ahmad Badawi and his predecessor, Tun Dr Mahathir Mohamad, remained stalemated in 2007, with former Deputy Prime Minister, Parti Keadilan Rakyat's (PKR) Dato' Seri Anwar Ibrahim, waiting in the wings to pick up the political pieces. The Abdullah administration, unable to shake off its critics, played into the hands of opposition parties when it adamantly refused to give in to ethnic minority demands as this would further demonstrate weakness and undermine the authority of Umno leadership in the Barisan Nasional (BN). By listening to party hardliners – most of who eventually turned out to have had shrinking support – the Prime Minister badly misjudged how he and his party interests were best served.

## *Postscript*

### **THE RISING OF THE OPPOSITION**

In the meantime, Anwar Ibrahim had been working in 2007 to build up support among disenfranchised Malays, religious conservatives and now growing masses of embittered ethnic minorities. It was largely through his intervention that opposition parties were much more coordinated than at any time in the past. By the time Parliament was dissolved on 13 February 2008, they were able to work through seat allocation relatively smoothly, perhaps even more smoothly than the BN. Everything pointed to a sizeable rejection of the BN government, a fact that was openly admitted even by BN incumbents. The issue was not whether the BN would lose federal and state seats but rather how many. Conversely, opposition parties expected to win seats but not even they envisaged the outcomes that followed from the massive outpouring of electoral displeasure. Opposition parties aimed only to deny the BN two-thirds majority in the Parliament.

On 8 March 2008, the general elections was held and when all the votes were in, the results were beyond what most on both sides of the political spectrum could imagine. The BN had not only lost its two-thirds majority in Parliament but also control of four states – Penang, Kedah, Perak and Selangor – bringing the total, with the inclusion of previously-held Kelantan, to five. If it were not for the strong BN support in the East Malaysian states of Sabah and Sarawak, the BN might not even have been able to form the government for the first time in history. All opposition parties did well but none more so than PKR, which managed to pick up 30 new seats. How the new political landscape will affect religious liberty and specifically whether it will be able to turn back the tide of religious tyranny and heavy-handedness remains to be seen. The 2008 report will continue to document the state of religious liberty and it is hoped that one may be able to discern seeds of hope.

## **2. ISSUES CONCERNING RELIGIOUS FREEDOM DURING 2007**

### **2.1. CONSTITUTIONAL BACKGROUND<sup>1</sup>**

The Federal Constitution of Malaysia provides for the freedom of religion. The Government however places some restrictions on this right. Islam is recognised as “the religion of the Federation,” but the practice of non-Sunni Islamic beliefs was significantly restricted. There was no change in the status of religious freedom during the year under review.

### **2.2. RIGHT TO PROFESS**

#### **2.2.1. LEGISLATION**

In June 2007, the Kelantan state government under PAS revised and passed laws<sup>2</sup> that allow stiffer penalties on those found guilty of converting Muslims to other faiths: whipping,<sup>3</sup> maximum of 5 years’ imprisonment and/or a fine not exceeding RM10,000. Previously, the maximum penalty was one year in prison, a fine of RM5,000 and no punishment of whipping, but state officials feel stiffer laws are useful “as a form of deterrence.”

#### **2.2.2. CONVERSION**

2.2.2.1. In January, the high court postponed the hearing of an application by a Muslim convert, Siti Fatimah

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1 Readers of this Report who wish to have a detailed background are advised to refer to *Report on the State of Religious Liberty in Malaysia for the year 2005*, section “1.2 Constitutional and Legal Backdrop” available online at [www.necf.org.my](http://www.necf.org.my)

2 Control and Restriction of the Propagation of Non-Islamic Religions (Amendment) Enactment 2007 for the state of Kelantan.

3 Prior to the amendment, there was no corporal punishment under the Control and Restriction of the Propagation of Non-Islamic Religions Enactment 1981 in Kelantan. Under the *Syariah Courts (Criminal Jurisdiction) Act 1965 (Act 355)* which applies to all the states of Malaysia, the courts can impose punishment of whipping not exceeding six strokes.

Rajamanickam, to renounce Islam. She sought declaration: that she had constitutional right guaranteed under the provisions of Article 11(1) of the Federal Constitution to renounce Islam; that she did not have obligation to apply to the *Syariah* court or other religious authorities to renounce Islam based on the same Article; and that the need to apply to the Federal Territories *Syariah* Court before renouncing Islam was inconsistent with Articles 5(1), 8(1) and 74 of the Federal Constitution. Siti had earlier in October 2005 filed a statement of claim to renounce Islam and to change her name. There seemed to be no further development during the entire period under review.

2.2.2.2. On 13 March 2007, the Court of Appeal made a landmark ruling on R. Subashini's appeal, saying that a non-Muslim has no right to restrain a Muslim convert spouse from unilaterally converting their children to Islam, commencing divorce proceedings and application for children's custody at the *Syariah* court.

On 27 December, the Federal Court's three-member panel in a 2-1 decision ruled against Subashini's final appeal on legal technicality. It however said that the *Syariah* court has no jurisdiction over the non-Muslims and therefore the dissolution order made by the religious court was not binding on Subashini. It also found that the Muslim convert husband, Saravanan, had the right to seek remedies at the *Syariah* court as he was subject to Islamic personal and religious laws.

In respect to divorce and children's custody, the three Federal Court judges unanimously agreed that those who contracted civil marriages are bound by the civil law and hence the civil court continues to have jurisdiction over the converted husband. In terms of children's religion, the judges interpreted Article 12(4) of the Federal Constitution as to mean the religion

of a person under the age of 18 years should be decided by a single parent, that is, either spouse has the right to convert a child of marriage to Islam and either party cannot refrain the other from doing so.

Subashini and Saravanan, originally Hindus, were married in a civil ceremony. They have two sons, aged three and one. In 2006, Saravanan converted to Islam. He also converted his elder son. He then obtained an interim (temporary) custody and subsequently initiated a marriage dissolution proceeding at the *Syariah* court. In response, Subashini filed a divorce petition at the civil High Court, seeking dissolution of marriage, custody of both children and an injunctive order to stop the husband from converting the children without her permission.<sup>4</sup> An *ex-parte*<sup>5</sup> temporary order was granted but subsequently set aside. This led to Subashini's appeal at the Court of Appeal.

Following the Federal Court's decision, a converted party is entitled to seek remedies at the *Syariah* court but any order made by such a court is not binding on the non-converting spouse. Such decision will result in more bitter legal tussles between both parties of a civil marriage (when one spouse converts to Islam) as they simultaneously fight for their rights in the civil and *Syariah* courts respectively.

The Commission is also concerned that the

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4 See Appendix A for detailed report

5 *ex parte* means a legal proceeding brought by one person in the absence of and without representation or notification of other parties.

Federal Court's interpretation of the word "parent" in Article 12(4) as meaning "a single parent" may lead to abuse or manipulation by certain parents in advancing their own interests and place the non-Muslim spouses in disadvantage in their effort to obtain children's custody. With such interpretation, a father or a mother can convert a child to another religion (especially Islam with its separate personal laws) without the knowledge or consent of the other.

2.2.2.3. On 28 March, the Kota Kinabalu *Syariah* High Court dismissed the application of a 24 year-old Sino-Kadazan woman to renounce Islam. Her application was based on two grounds: (a) she had the right to choose her religion and must not be prevented from doing so by anyone by virtue of Article 11 of the Federal Constitution; and (b) Islamic law on apostasy is not applicable in Malaysia because there is no total application of Islamic law in Malaysia. In her affidavit, she also said that her non-Muslim lifestyle had caused the society to look down on her and subjected her to the judgement of the *Syariah* court. The Judge Jastri @ Nasip Matjakir however found no concrete evidence to show that she was no longer a Muslim in action, behaviour or deed, adding that her reason to leave Islam based on fear of punishment was not acceptable. He also said in his judgement that the Federal Constitution did not give authority to the *Syariah* court to allow Muslims to renounce their religion although it allowed every individual to choose his or her religion. "The court can only decide whether one's action is permissible according to the Muslim laws."

2.2.2.4. In April, a 58 year-old nurse, Nora Koh Abdullah or Koh Kwee Chew, sought a declaration at the High Court to become an atheist and not a Muslim as stated in her MyKad. She also wanted her name to be reverted to her original Chinese name. In her affidavit, Koh said that her friend persuaded her to embrace Islam in 1986 and brought her to the Malacca Religious Department to be converted. She claimed that she did it to please her friend and had never practised any Islamic tenets. No further development was heard during the year under review.

2.2.2.5. On 30 May, the Federal Court dismissed Lina Joy's appeal to have the word "Islam" removed from her identity card. In a 2-1 decision, the three-member panel ruled that Lina must obtain an apostasy certificate from the *Syariah* court because the word "*murtad*" is related to the Islamic law. "A person cannot, at one's whims and fancies renounce or embrace a religion," said the then Chief Justice Tun Ahmad Fairuz Sheikh Abdul Halim. His answers to the areas raised by Lina Joy in her appeal were: "NRD (the National Registration Department) has the right, NRD was correct and the Soon Singh case had been decided correctly." Dissenting Judge Richard Malanjum, however, said that it was unconstitutional for NRD to demand a *Syariah* court order confirming Lina's conversion, and it was "unreasonable" to ask her to turn to *Syariah* court where she could face criminal prosecution.<sup>6,7</sup>

Following the Federal Court's decision in upholding the Soon Singh case, it appears that *Syariah* court does not need to derive its jurisdiction from an express provision

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6 See also 2006 Report on Lina Joy's case (p3)

7 See Appendix B for detailed report

in the law or enactment in declaring a person's religious status. Such jurisdiction can be derived by implication (in the absence of the express provisions) in the law or enactment.

2.2.2.6. In May, the widely-covered Kaliammal's case was fixed to be heard afresh on 12 December by a new panel of judges at the Court of Appeal. The case involved the religious status of M. Moorthy, a deceased person of Indian origin who was a member of the first Malaysian team to scale Mount Everest in 1997. There was no further development on the case during the year under review.

Moorthy allegedly converted to Islam prior to his death on 20 December 2005, without informing his family. Kuala Lumpur Hospital authorities refused to release his body to his Hindu family. The wife, Kaliammal, then filed an application at the High Court, among others, seeking a declaration that Moorthy was a Hindu. The religious council obtained an order from the *Syariah* Court that Moorthy had embraced Islam prior to his death and his body was released to the council for a Muslim burial. On 29 December, the then High Court judge Mohd Raus Sharif ruled that civil court had no jurisdiction on matters pertaining to Islam based on Article 121(1A) of the Federal Constitution. Kaliammal then took her case to the Court of Appeal. At the time of this report, a decision has yet to be made.<sup>8</sup>

2.2.2.7. In June, Zulhaidi (Eddie), 29, an ethnic Chinese man who was switched at birth and brought up as Malay Muslim, filed a suit at the High Court against the National Registration Department (NRD). NRD failed to respond to his request to delete the word 'Islam'

from his identity card. Zulhaidi, who left his Malay family at the age of 13, wanted to renounce Islam and follow the faith of his biological parents. DNA testing confirmed that he was the son of Teo Ma Leong and his wife Lim Sik Hai. However, the director of the Department of Islamic Developmental Malaysia (Jakim) reportedly said that *Syariah* courts had the authority to determine if DNA testing could be used as a justification to renounce Islam. There was no further development on the case during the year under review.

2.2.2.8. On 21 October, the Terengganu *Syariah* High Court was told that Kamariah Ali could not produce any witness to prove herself an apostate. A former religious teacher, she was charged under Section 7 of the state *Syariah* Criminal Offences (Takzir) (Terengganu) Enactment 2001 for declaring herself an apostate at the *Syariah* Lower Court in Besut in July 2005 to evade punishment. The court set 16 November for a decision.

Kamariah had already been jailed once for 20 months for apostasy in 1992. She joined the ‘Sky Kingdom’ sect in 1998, and renounced Islam at the civil court in the same year. Subsequently on 19 November 2000, she was found guilty of deviant practices and was further charged with apostasy arising from the declaration made on 5 November. Kamariah’s civil appeal was finally dismissed by the Federal Court which held that, although she had renounced Islam in 1998, she was still liable for any offence she had committed while she was still a Muslim.

In July 2006, Kamariah was arrested together with 58 other Sky Kingdom followers; they all were charged for not adhering to the state *fatwa*, which had ruled the

teaching as deviant.<sup>9</sup>

2.2.2.9. On 3 December 2007, Tan Ean Huang (Siti Fatimah), a Chinese convert seeking to renounce Islam, was again told to wait before the Penang *Syariah* Court could deliver a decision. Tan filed her legal petition in July 2006 after her Iranian husband left her. In August 2007, the court postponed Tan's case and referred her to the Penang Islamic Religious Department for a three-month guidance and counselling. Tan embraced Islam in 1998 to marry her Muslim boyfriend. The couple married in September 2004. In her affidavit, however, Tan claimed that she had never practised Islamic tenets since conversion and that she continued to eat pork and practised Buddhist belief.<sup>10</sup>

Despite the fact that the landmark ruling in the Soon Singh case was already eight years old, the year under review did not see any decrease in cases brought to the civil courts by former Muslims who wanted to convert out of Islam. The steady number of such cases and their eventual outcomes showed two things: firstly, the extensiveness of the problem faced by those wanting to leave Islam usually as a result of failed marriages; secondly, the intractability of the Islamic authorities in allowing such persons to leave Islam.

Interestingly, these cases represent the viewpoint that once a Muslim converts to another religion, he or she is no longer subject to the jurisdiction of the *Syariah* courts and therefore entitled to apply for relief in the civil courts. The conservative Muslims however hold that a Muslim

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9 Kamariah Ali was convicted of apostasy by the Terengganu *Syariah* Court on 17 Feb 2008. Her earlier application to leave Islam at the Kelantan *Syariah* High Court was rejected. On 3 March, she was sentenced to two-year imprisonment for apostasy by the Kuala Lumpur *Syariah* Session court.

10 After several times of postponement, a decision was finally reached at the Penang *Syariah* Court on 8 May 2008. Tan was allowed to renounce Islam and return to Buddhism. The judge also ordered the state Islamic Religious Council to cancel her certificate of conversion to Islam, saying that he had no choice because Tan produced undisputed evidence of never having followed Islamic teaching since conversion.

can only prove that he or she has left the religion through religious authorities or *Syariah* courts. Others look on this phenomenon differently. The director-general of IKIM, Dr Syed Ali Tawfik Al-Attas, in an article co-written with Md Asham Ahmad titled “What it takes to be a Muslim”, said that “using the mechanism of the judiciary to ‘Islamise’ people, or to prevent them from leaving the religion is unreasonable” (*The Star*, 1 May 2007, pN40).

The perceptive ones could see that the frequent occurrence of such “conversion” cases and the inability to arrive at a solution would place a strain on the delicate balance and social harmony of the Malaysian society. On 25 July 2007, in the case of *Latifah Bte Mat Zin v Rosmanati Binti Sharibun*, Chief Justice Dato’ Abdul Hamid Bin Haji Mohamad in delivering the Federal Court judgement attempted to correct the flaws made by the civil courts in many earlier cases, which have led to a confusion about the jurisdiction of the *Syariah* court vis-a-vis the civil courts. He affirmed the supremacy of the Constitution and pointed out that the *Syariah* court is an inferior court in its standing compared to the high court. The *Syariah* court must derive its power from express conferment of jurisdiction by some state laws. The Chief Justice also indicated that some state laws have encroached into the areas of Federal laws. He spoke of people who fell in between the two jurisdictions and who could not have access to justice. His judgement clearly ratified the power of the civil courts to decide whether a court has the jurisdiction. The *Latifah* case is a first step by the judiciary to correct the injustice created by the Soon Singh judgement. However, the present Chief Justice is soon due for retirement and it is difficult to say whether his views would be carried on or developed in future cases.

This Commission affirms the stand taken in previous reports that the right to convert out of a religion, including that of a Muslim to leave the religion of Islam, is a fundamental human right conferred by Article 11 of the Constitution. This right is to be exercised by the individual, and to do so, he needs no approval or permission from any authority. Any law or administrative directive that requires him to apply for approval or permission to leave a religion is in violation of his rights under Article 11. Similarly, any law or administrative directive or action that refuses to recognise the exercise of this right by an individual and requires prior approval from some authority is in violation of his rights under Article 11.

This Commission calls for the judiciary, the government and the Parliament to recognise the extensiveness of this problem, to be sympathetic to the plight of the affected persons and to initiate measures that will recognise and facilitate the right of Malaysians to choose their religion.

### **2.2.3. OVERZEALOUS ISLAMIC AUTHORITIES BREAKING UP FAMILIES**

2.2.3.1. Jeevanathan and his sister were in a dilemma as their birth certificates stated that they were Muslims while their MyKads identified them as Hindus. It was reported that the Malacca state religious department snatched their deceased father's body and buried him as a Muslim on 31 January 2007 despite his MyKad stating that he was a Hindu.. Jeevanathan said that the father had renounced Islam in 1991.

“According to the law, when one embraces Islam, there is no provision that allows him to take another religion or go back to his former religion... As far as we are concerned, we did everything according to the law and there is no question of us forcing the family to release the body of the deceased,” said the department enforcement head. He also claimed that the action was based on a police report lodged by the Muslim children from the deceased's first marriage.

2.2.3.2. In February, an elderly couple in Penang and their 10 children were in a quandary over their religious status because of their Muslim names. The couple, Ibrahim Noyah and M. Nagamah, married for 41 years according to Hindu rite, claimed that they had been practising Hindus since birth. After investigation, the Penang Islamic Religious Council considered the couple Muslims as they had in August 2004 returned to the Islamic faith and solemnised their marriage at the religious department. However, the council accepted the fact that the children are Hindus and eventually

resolved to build a house for the couple to live separately from the children.<sup>11</sup>

2.2.3.3. In April, Selangor Religious Department (JAIS) put Marimuthu and his family in limbo. The father of six was told that his wife of 21 years, Raimah Bibi, was a Muslim. Raimah and six of their seven children were then taken to the faith rehabilitation centre. Marimuthu also told the press that he was threatened to either convert to Islam or be charged with khalwat with Raimah. The couple married in a temple and brought up their children as Hindus. Raimah, an Indian who was adopted by an Indian-Muslim family when she was small, was a practising Hindu. Her identity card had never indicated that she was a Muslim until she applied for her MyKad when her name was changed to Rahimah Bibi Noordin and identified as a Muslim. But the couple did not apply for correction with the National Registration Department. Meanwhile, the birth certificates of the couple's children indicated that Raimah was a Indian Hindu. Marimuthu decided on a civil action. Finally in May, a settlement was reached at the High Court: Marimuthu had the custody of their children to raise them as Hindus, while Raimah remained as Muslim and had visitation rights. Both couple must live apart.<sup>12</sup>

2.2.3.4. In May, Magendran Sababathy, a 25 year-old Hindu truck driver, accused JAIS of illegally detaining his wife, Najeera. He filed a suit asking the Shah Alam High Court to order JAIS to free his wife. In April, the religious authorities raided the couple's home and took away Najeera, telling Magendran that their marriage under Hindu rites was illegal because she was a Muslim. JAIS claimed that Najeera was detained on suspicions

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11 See Appendix C for detailed report.

12 See Appendix D for detailed report.

of committing *kehalwat* (close proximity) based on two complaints, one of which was from her brother. It said that it had acted in consistence with the procedures and that Najeera had voluntarily asked to be placed at the faith rehabilitation centre in Hulu Selangor to strengthen her faith.

2.2.3.5. Meanwhile, Suresh, an Indian bus driver, filed a *habeas corpus*<sup>13</sup> at the Shah Alam High Court seeking the release of his wife from the Baitul Aman Faith Rehabilitation Centre. The wife, Revathi, was detained by the Malacca religious council since 8 January on similar grounds as Najeera's.

The couple was married in 2004 and had a daughter. Revathi had applied to change her religious status through the Malacca *Syariah* High Court in 2006. When she came to court for the hearing on 8 January, she was detained by court officials and taken to the rehabilitation centre. Their then 15-month old baby was seized by the Islamic authorities and was handed to Revathi's Muslim mother. In July, after six months of detention, Revathi was brought to the Malacca *Syariah* high court and was then released. The court however ruled that she must stay with her Muslim parents and her child, and that she could not convert out of Islam. The *habeas corpus* application was thereafter dismissed by the Shah Alam High Court. In spite of her "imprisonment", Revathi insisted that she remains a Hindu.<sup>14</sup>

2.2.3.6. In June, Priya, whose father converted to Islam to marry a second wife, wanted to change her religion

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13 *Habeas corpus* is a law that states that a person cannot be kept in prison unless he has first been brought before a court of law, which decides whether it is legal for him to be kept in prison.

14 See Appendix E for detailed report.

so that she could marry a Hindu man. Priya's mother, the first wife who was a Hindu, had already left the family. Priya claimed that she and her five siblings were practising Hindus all their life. However, both her birth certificate and identity card stated her religious status as Islam. The Federal Court's decision on the Lina Joy case crushed her hope to seek legal redress through civil court. Though willing to go to the *Syariah* court to renounce Islam, she was fearful of the consequence and possibility of being detained at the faith rehabilitation centre. Priya told the press that "she was trapped into becoming a Muslim by a twist of fate at birth".

2.2.3.7. Fifty-four-year-old Wong Sau Lan died on 30 December in Hospital Universiti Kebangsaan Malaysia (HUKM). When her husband, Ngiam Tee Kong, went to claim her body, he was told that it would be handed to him only for the purpose of performing rituals according to the Christian faith. The body must then be returned to the Federal Territory Islamic Council for a Muslim burial. Ngiam also received a declaration of conversion dated 31 December stating that Wong converted to Islam on 24 December at a flat in Cheras. Ngiam married Wong in 1979 and before her death, Wong was practising Christianity. Ngiam later filed an interim injunction (a temporary order) application at the high court.<sup>15</sup>

2.2.3.8. The legal battle of a Hindu mother, Rukumony Muthiah, concerning the insurance payout of her soldier son continued on. The son, E. Ragu, had converted to Islam in December 1999 and died in

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15 On 4 January 2008, the High Court granted Ngiam an order to bar the Islamic Council from giving his dead wife a Muslim funeral. On 18 January, the court ordered Wong's body to be released for Christian funeral after the Islamic Council retracted their claim that she had converted to Islam.

August 2000. Rukumony was not recognised by the Koperasi Angkatan Tentera as the rightful beneficiary, although E. Ragu had named her as the beneficiary in the insurance form in 1996. The cooperative claimed that a non-Muslim could not inherit Muslim's property under the *Syariah* law. The payout was instead given to the government-owned trustee company Amanah Raya Bhd. The high court hearing began in November.<sup>16</sup>

Raimah, Najeera and Revathi are names that this Commission hopes Malaysians will remember. They are victims of the decade-old struggle between the movement for restoration of religious rights and the movement to mould Malaysia into an Islamic state. The seizing of corpses of the disputed Muslims was merely the first step of the initiative by Islamists in extending the power of Islamic system in Malaysia. With the victory of the Islamic movements in court seemingly secured by the *Soon Singh* line of cases, the Islamic authorities launched a move in early 2007 to detain persons known to have defected from Islam. Invariably, the persons arrested and detained were women. They were forcibly separated from their husbands, children and families. They were detained without trial. Their civil rights were denied with the utmost contempt. Two of the cases emanated from Malacca where there were state Islamic enactments providing for preventive detention (very much like the ISA<sup>17</sup>). One occurred in Selangor which had no such law. Yet, the Selangor Islamic authorities exercised a non-existent power of preventive detention. The purpose of such detentions was to rehabilitate the apostates from Islam. Thankfully, the Islamic authorities in many cases failed to brainwash these women and had to eventually free them as a result of unfavourable publicity and lawsuits by their husbands.

The actions of the Islamic authorities in exercising control over the bodies and property of persons whom they claim to be Muslims have caused untold sorrow and damage to many families. Justice is a scarce commodity

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16 On 29 January 2008, the case was fixed to be mentioned on March 14 for the parties to consider offers for settlement.

17 Internal Security Act (Malaysia), a preventive detention law in force in Malaysia, which allows for the arrest of any person without the need for trial in certain defined circumstances.

for the families concerned because of the civil courts' reluctance to resolve matters involving Islamic issues. The time has come for the laws to be corrected and the right laws to be enacted to ensure the Islamic system and its officials occupy the place properly allotted by the Constitution.

#### **2.2.4. ACTION AGAINST NON-ORTHODOX MUSLIMS**

The right to profess a religion of one's choice is guaranteed to "every person" by Article 11 of the Federal Constitution. This right is made available in the widest possible terms to all persons – Muslims and non-Muslims alike, citizens and migrant workers. Religious freedom does not only require the recognition of the right of a person to have a religion of his own choice; inherent in its principle is also the right not to have a religion at all if one chooses to be an atheist. A person is to be protected from being subjected, against his wish or will, to profess or to belong in any particular religion; likewise he cannot be compelled to engage in any acts of profession of any religion.

The constituent states are however vested with vast specific powers in regard to the religion of Islam. The State List<sup>18</sup> which vests legislative authority [and hence also executive authority] on the states sets out extensively in Item I matters pertaining to Islam which includes: Islamic law and personal and family law of Muslims, mosques or any Islamic public places of worship, creation and punishment of offences by Muslims against precepts of Islam, *Syariah* courts which shall have jurisdiction over persons professing the religion of Islam, the control of propagating doctrines and beliefs among Muslims. The state legislatures also have powers to determine matters of Islamic law and doctrine. The administration of Islamic law and affairs in the states are more often than not founded upon state legislation. Thus the Administration of Islamic Law Enactments of the various states established the Council of Muslim Religion whose principal role is to advise and assist the Ruler on all matters relating to Islam and Malay customs. The states have also set up Departments of Islamic Affairs which are staffed by civil servants. These officials are recognised by the Administration of Muslim Law Enactments and are clothed with authority to enforce the

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18 *Federal Constitution* (as at 10<sup>th</sup> September 2002), Petaling Jaya: International Law Book Services, 2002, p186.

provisions of the Enactments. The Enactments also establish *Syariah* courts and provide for the appointments of *Kadis*.<sup>19</sup>

The conferment of legislative and executive power over the religion of Islam and over persons of Islamic faith – particularly in the matters of Islamic law and doctrine and the creation and punishment of offences by Muslims against precepts of Islam, and the establishment of *Syariah* courts having jurisdiction over persons professing the religion of Islam – gives the state the power to determine religious orthodoxy which can be enforced by criminal sanctions. Because the Constitution is the supreme law of the land, when a Muslim seeks to practise Islam in a way which is seen to be contrary to Islamic orthodox precepts, the tension between freedom of religion and the power of the state to command submission to state-determined orthodoxy becomes an issue. The issues of religious freedom are exacerbated in cases where the state religious authorities initiates criminal proceedings against a person who unmistakably exercises his constitutional right to profess a religion of his own choice and pronounces that he no longer professes the religion of Islam.

2.2.4.1. In January, the Federal Court gave Abdul Kahar Ahmad, a self-proclaimed prophet from Ampang, and two other men the approval to file a petition that would challenge the Selangor *Syariah* Criminal Enactment. Kahar claimed that the Enactment was unconstitutional, i.e. the laws are in conflict with Article 11 of the Federal Constitution's right to freedom of religion. The trio was charged in a *Syariah* court with offences including spreading false Islamic teaching, ridiculing and violating *Syariah* teaching and acting against the *fatwa* and *mufti*. In August, the Selangor Islamic Religious Council was allowed to intervene.<sup>20</sup>

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19 A Kadi is a judge ruling in accordance with the *Syariah*, Islamic religious law.

20 The Federal Court ruled on 23 May 2008 that it has the jurisdiction to hear and decide the case and rejected the Selangor Islamic Religious Council's argument that the *Syariah* court had the exclusive jurisdiction based on Article 121(1A) of the Federal Constitution.

2.2.4.2. In March, the Selangor State Government under Barisan Nasional sought to expel foreigners who started Islamic sects which did not preach traditional (orthodox) teaching. The then Chief Minister, Dato' Seri Dr Mohd Khir Toyo, reportedly called for websites of Islamic sects to be shut down.

2.2.4.3. In the same month, 70 officers from the Selangor Religious Department (JAIS) and police raided a business centre in Bandar Country Homes, believed to be dominated by businesses linked to Rufaqa' Corporation Sdn Bhd. Rufaqa' was said to be involved in deviationist practices and ideologies, trying to revive the teachings of the banned al-Arqam movement. On 12 December 2006, JAIS issued a *fatwa* stating that Rufaqa' was unlawful. Since then, the department had been keeping a close watch on its movement. In April 2007, JAIS raided a mini-market and a restaurant at the Pelangi Damansara Business Centre, confiscating food items and drinks bearing the Rufaqa' logo and name, seizing computers and books on Rufaqa' teachings. In November, 50 alleged members of the Al-Arqam movement were brought to the Penang *Syariah* Lower Court.

2.2.4.4. In April, the Department of Islamic Developmental Malaysia (Jakim) exposed some 102 deviationist groups and called the state religious departments to help track them down. Director-general Datuk Mustaffa Abdul Rahman said the groups under scrutiny had also attracted professionals who were looking for the "easiest way to paradise."

The Sultan of Selangor urged mosque committees to be vigilant in preventing the emergence and spread of deviant groups. He reportedly said that teachings which deviated from Islam must be curtailed as they could become a threat to the people and country.

2.2.4.5. In May, the Kelantan Islamic Affairs Department was said to have deployed exorcists to drive out the evil spirits from the followers of deviant sects. It was reported that the department had identified 16 cults in the state and had jailed, whipped or fined members found guilty of spreading irregular teachings.

## **2.3. RIGHT TO PRACTISE**

### **2.3.1. BANNING OF BOOKS ON RELIGION**

2.3.1.1. On 6 June, it was reported that the Internal Security Ministry banned 37 book titles and publications on Islam on grounds that their contents and text on Islam were either twisting facts and true Islamic teachings, or containing elements that would misled the faithful and humiliated the prophets. “These publications can cause confusion and apprehension among Muslims and eventually jeopardise public order,” said the secretary of the Publications and Quranic Texts Control Division, Che Din Yusoh. Twenty-one of the publications were in the English language, published in the United States, United Kingdom and Jordan while the rest were in Bahasa Malaysia, published in Malaysia and Indonesia. They were banned by prohibition order under the Printing Presses and Publications Act 1984.

The list of book titles and publications, the names of the authors, compilers or translators and publishers as well as the countries of publication were noted in the Government Gazette dated 26 April 2007. Among the banned books were a number of Christian publications.

2.3.1.2. On 10 December, Pastor Jerry Dusing, the president of Sabah Sidang Injil Borneo (SIB) Church, filed a suit on

behalf of the church at the Kuala Lumpur High Court. Six titles of their Sunday school educational materials were confiscated by customs officers at the Low-Cost Carrier Terminal on 15 August and were subsequently handed over to the Ministry of Internal Security. SIB asked the court, among other things, to compel the minister to return the consignment of materials that were ‘unlawfully detained’.

According to letters from the ministry, the books were banned because the Bahasa Indonesia publications contained various words that are exclusive only to Islam. The words in contention are ‘Allah’ (God), ‘Baitullah’ (House of God), ‘Solat’ (prayer) and ‘Kaabah’ (The Sacred House).”

On 27 December, the High Court postponed the hearing of SIB’s leave application to 16 January. The Senior Federal Counsel Azizah Nawawi informed the Appellate and Special Powers Court Judge Lau Bee Lan that there were discussions between the two parties for an out-of-court settlement.<sup>21</sup>

SIB is the largest Christian denomination in Sabah and its members are mainly Bumiputera Christians of various ethnic groups. The word “Allah” has been used in the liturgy, prayer, worship, sermons and religious education among the Bumiputera Christians

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21 In January 2008, the Minister of the Internal Security ordered the release of the educational books. The books were finally returned to SIB Church in Sabah. On the 16, however, yet another date - 29 Jan - was fixed after Judge Datuk Wan Afrah Wan Ibrahim met with the counsels for the SIB Church (i.e. Datuk D.P. Naban, Lim Heng Seng and Bobby Chew) and senior federal counsels representing the Government (i.e. Azizah Nawawi and Suzana Atan). On 29, the Government, through its federal counsels, requested for another postponement of the court hearing. They asked for the date to be deferred to May or June, claiming that more time was needed to file its written response. On 9 June, the High Court Datuk Abdul Kadir Musa set 7 Aug to hear the SIB’s leave application.

for generations. Not only does it bear theological significance of their faith, it has long become their cultural heritage.

2.3.1.3. In December, *Herald – the Catholic Weekly* faced problems in renewing its annual publishing permit. The Internal Security Ministry issued a letter dated 10 December ordering a ban on *Herald's* Bahasa Malaysia (BM) section because of the use of the word 'Allah'. A new condition for the permit renewal was imposed – that the BM section should be removed altogether. The then Deputy Internal Security Minister Johari Baharum told the press that 'Allah' could not be used in the context of any religion other than Islam. Che Din Yusoff, a senior officer at the ministry's publication control unit was quoted as saying that the use of the word was a "design to confuse the Muslim people."

The Christian community was outraged and criticised the government for wrongfully interfering in the internal management of the church and that its action was unconstitutional. On 28 December, *Herald* publisher Father Andrew Lawrence filed a suit against the government, seeking appropriate declarations of the use of 'Allah'. Two days later, a letter of approval from the Internal Security Ministry dated 28 December was hand-delivered to *Herald*. There were no conditions attached.<sup>22</sup>

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22 On 4 January 2008, *The Star* reported the cabinet's decision disallowing *Herald* to use the word 'Allah' in its publication. Datuk Abdullah Mohd Zin, the then minister in the Prime Minister's Department, said that the restriction on the use of the word 'Allah' decided by the Cabinet (on 18 Oct and 1 Nov 2006 according to *The Star*; 30 July 2002 according to *theSun*) must be upheld. The Minister of Internal Security issued a new Publication Permit dated 12 Feb 2008 stating prohibition to use the word 'Allah'. *Herald* proceeded with its lawsuit, and filed an application for Judicial Review at the Kuala Lumpur High Court on 19 March.

## **2.3.2. DESTRUCTION OF PLACES OF WORSHIP**

2.3.2.1. At a meeting on 14 February at the Kuala Lumpur City Hall (DBKL), 20 Hindu temples were identified for relocation or demolition to make way for various development projects. There were: the Muniswarar temple and 13 others located along Jalan Semarak (to make way for the Duta-Ulu Kelang Highway), another three on Jalan Puchong and Jalan Tun Sambanthan (located on sites targeted for housing development projects), and the remaining temples slated for demolition for various breaches of regulations.

2.3.2.2. Following the demolition of a century-old Hindu temple in Semenyih in December 2006, a lawsuit was filed against Dato' Seri Dr Mohd Khir Toyo, the then Selangor Menteri Besar, and five other parties for contempt of court. An application for an injunction was filed against any temple demolition until the case was settled by court. The case was due to be heard in March 26.

Meanwhile the devotees of Sri Kaliamma Temple in Shah Alam were living in constant fear. What happened in May was the fourth time the temple faced demolition by the Shah Alam City Council. The temple was built on a private land.

In March, another legal proceeding was filed at the Kuala Lumpur High Court against five local authority officials for contempt of court. Apparently in February, the authorities had demolished Sri Maja Nageswari Temple in Ampang despite a court injunction prohibiting them from doing so.

However, during the year under review, there was no further report on the development of the above cases.

2.3.2.3. On 11 April, the Gua Musang district land office issued a stop-work order to the Christians in Kampung Jias, Gua Musang, Kelantan. It stated that the construction of the church building was being carried out on state land without permission from the authorities. The following day, the National Evangelical Christian Fellowship of Malaysia (NECF), in a letter to the land office, said the land belonged to the Orang Asli villagers and “their right is guaranteed under Section 26(1) and 7(1) of the Orang Asli Act 1954.” The building of a church moved on but was subsequently demolished by the land office on 4 June.

On 13 June, the Gua Musang district land office said the state government would build a new structure on another site and bear the cost of construction. However the government’s subsequent “failure to rebuild” the church prompted the villagers to take legal action. A suit was filed against the local authorities and the state government on 1 July, asking the Kota Baru High Court to declare the villagers’ right to the land in Kampung Jias, to practise the religion of their choice under the Federal Constitution and to build a church on their own land. The villagers also sought the court’s declaration that the demolition was unlawful, an “abuse of power,” amounting to infringing the religious rights of the Orang Asli. The case was scheduled to be heard on 15 January 2008.<sup>23</sup>

2.3.2.4. A letter from the Temerloh land and district office, dated 11 April 2007, informed the Kuala Krau Orang Asli Christian community that water and electricity would not be supplied to their church. On 8 October,

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23 The Kota Baru High Court judge Datuk Mohd Azman Husin postponed the hearing to 26 May as the lawyers representing the state government and Gua Musang district assistant administrator of land were not around during the proceedings. The judge gave both parties a month to submit their written submissions.

the office gave its reason saying that the land where the church was located had not been reserved or gazetted as Orang Asli Land, and therefore the building itself was illegal. The villagers filed a suit against the local authorities and state government, asking for the court to review the decision not to connect utilities. They cited in their affidavit Article 5 of the Constitution which provides for the right to life and liberty and Article 11 the right to practise one's religion; and these include having a church with all the basic facilities.<sup>24</sup>

The church was earlier in 2003 torn down by the local authorities but was later rebuilt in 2005 after the Federal Government intervened and compensated the Christians RM35,000.

2.3.2.5. A demolition notice was issued to Sri Maha Periyachi Amman temple on 24 May. The caretakers were told to relocate the temple and tear down the original structure because it was extended without approval and that it caused discomfort among the Malay villagers. The temple was built on a private land in Tambak Paya Village, Malacca. Members of Umno Youth were reported to have placed banners written in Bahasa Malaysia in the vicinity reading "Don't test our patience" and "Tear down this unlawful temple". The devotees submitted the building plan on 24 July, but the temple was demolished on 30 July. They later submitted a memorandum to Chief Minister Mohd Ali Rustam asking for approval of their building plan and compensation. There was no follow-up news on the matter.

2.3.2.6. On 30 October, a brawl between the residents and the authorities resulted in at least four injured and

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<sup>24</sup> In January, the judicial commissioner Abdul Halim Aman set 27 March as the next hearing date. In May, the judge said he would decide whether the review could proceed on 9 July.

eight arrested. The residents sought to stop the demolition of the 100-year Sri Maha Mariaman temple in Padang Jawa. In a statement, Hindu Rights Action Force (HINDRAF) said that the Shah Alam City Hall demolished the temple without a valid court order and involved at least 300 police personnel. “The police were armed with automatic rifles. The temple is completely smashed up, including the temple nursery,” said a lawyer who was at the scene. The Human Rights Commission of Malaysia (Suhakam) condemned the manner employed by the authorities.

2.3.2.7. In December, an appeal under the Sabah Town and Country Ordinance was filed against the Chairman of the Town and Country Planning Board and the Kudat Town Board (KBT) for stopping the construction of Mazu (Goddess of the Sea) statue in Kudat. A row between Sabah Chief Minister Datuk Seri Musa Aman and Tan Sri Chong Kah Kiat (then Deputy Chief Minister) had occurred for months. Musa issued an order to stop work after protests from some Muslim groups, including United Sabah Islamic Association, Angkatan Belia Islam Malaysia, Persatuan Belia Intelek Kudat, Kudat As-Syakirin Mosque committee and Umno Kudat. The reason – the construction was too close to the district mosque.

The project site was approved in December 2005 and a letter of approval valid for two years for the construction was issued by KBT in February 2006. Subsequently in July, the Mufti of Sabah issued a *fatwa* ordering the construction to cease in order to protect the sensitivities of Muslims because it would offend Islam. It was nevertheless understood that the Muslims in Kudat did not have any objection to the building of the Mazu statue. The appeal has yet to be heard.

### **2.3.3. STATUES & CROSSES IN MISSIONARY SCHOOLS**

On 29 October, an Umno member of parliament (MP) from Parit Sulong, Johor, called for the removal of statues and crosses in the mission schools. His comments drew criticism when the extract from the parliament's Hansard was posted on the Internet. His remarks were also deemed seditious by some. In December, in replying to a question posed by an opposition MP, the deputy education minister said that the government would not remove statues and crosses from the mission schools as it was a tradition. However, no action was taken against the Parit Sulong MP.

As pointed out earlier, the Islamic authorities have been particularly aggressive in their expansionist mode during the year under review. This has encouraged the Muslim advocates to seize the opportunity to make political gains out of the situation. Besides political sabre-rattling, the statement by the Parit Sulong MP seeks to eliminate all visible traces of minority religions from the Malaysian society. This Commission calls on the government and those within its ranks to be sensitive to the feelings of religious minorities and to honour their civic responsibility to respect and protect the minorities in Malaysia.

### 3. ISLAMISATION

Under the Mahathir administration in the early 80s, the political objective of establishing an Islamic State demanded by certain quarters and the Islamist party PAS was countered by the assimilation of Islamic values policy. The policy promoted as the inculcation of universal values<sup>25</sup> was unsurprisingly not objectionable. It however became the platform for various quarters to drive an Islamisation policy and initiative, aiming to institutionalise Islam, its system of government, its laws and its structures with attendant marginalisation and alienation of non-Muslims.

The Pak Lah administration sought to introduce his vision of a nation governed by the principles of Islam Hadhari.<sup>26</sup> He declared that the doors of *ijtihad* must remain open and that there should be dynamic interpretation well suited to the context and developmental needs of today. He also called for the recognition of the need to change mindset among the *Ummah*, at the same time assuring the people that the implementation and approach would not cause anxiety among any groups in the context of our multiracial and multi-religious country. Notwithstanding this, Islamisation initiatives, policies and practices along orthodox lines continue unabated and are perceived to have heightened and to be virtually untrammelled.

#### 3.1 ENFORCEMENT OF ISLAMIC MORAL CODE

- 3.1.1 In June, two restaurants in the affluent Bangsar were visited by the officers from the Department of Islamic Development (Jakim), Kuala Lumpur City Hall (DBKL) and the Domestic Trade and Industry Ministry. Pictures of Mecca, Quranic verses and Hindu deities were confiscated from Aiswaria, a Muslim restaurant, and Seetharam, a Hindu restaurant. The notice issued to Aiswaria stated that it did not have the Jakim halal certificate and Muslim workers. Both restaurant owners were outraged and found

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25 identified as: trust, responsibility, honesty, dedication, moderation, diligence, discipline, cooperation, honourable behaviour and thanksgiving

26 This can be roughly translated as "civilisational Islam".

such actions ridiculous.

- 3.1.2. In July, Chinese dailies reported that all female students in Universiti Utara Malaysia (UUM), including non-Malays, were compelled to wear *baju kurung* (Malay traditional female costume). However, the UUM deputy vice chancellor, Assoc Prof Dr Ahmad Faiz Hamid, denied the allegation, saying that there was no such ruling on dress code and that it was merely a misunderstanding arising from the posters released by the university.
- 3.1.3. In the same month, a 24-year-old Malay club singer and four band members in Ipoh was detained by the Perak Religious Department (JAIP). Siti Noor Idayu Abd Moin was also charged for “revealing her body” and “promoting vice” under the Perak *Syariah* Penal Code. She was wearing sleeveless top and long pants when JAIP raided the entertainment outlet. The officers were reported to be rude and accusatory. JAIP later dropped the case against Siti and band members.
- 3.1.4. In September, a member from the Islamist party PAS rebuked the Subang Jaya Municipal Council for banning circus show during the month of Ramaddan, denying non-Muslims the right to watch performance. The Council ordered all entertainment activities to cease during the fasting month. The action had apparently irked the circus operators who incurred a loss in revenue and inconvenienced people who had purchased tickets in advance. PAS secretary-general Datuk Kamaruddin Jaafar suggested that circus shows be allowed but restricted to non-Muslim audience. Although circus performance was not an immoral entertainment, Muslims must give priority to religious activities during Ramadan, he said. He also chided the Council for imposing a ban on the circus while allowing entertainment outlets such as karaoke lounges, pubs, night clubs and video arcades to stay open.

- 3.1.5. In October, parents of several non-Muslim students from SMK Datuk Setia Raja in Rembau, Negeri Sembilan, were upset with the school's decision compelling students to wear *baju kurung*, *baju melayu* and *songkok* in certificate presentation ceremony. They submitted a memorandum to the Negeri Sembilan Education Department which subsequently denied that such order was ever issued.

### **3.2. INTERFAITH CONFERENCE**

In May, the Government banned an interfaith conference due to be chaired by the Archbishop of Canterbury, Dr Rowan Williams. It was called off with just a two-week notice. The Building Bridges Conference, the sixth in a series, was intended to foster dialogue between the Christians and Muslims. It was set up in the wake of September 11 and meant to be an annual get-together of Christian and Muslim academics in an attempt to find theological understandings that might help prevent future terrorist attacks. The government however allowed Dr Williams into the country to preach at the consecration of a new Anglican bishop.

Former deputy prime minister Anwar Ibrahim called the act of banning the conference “a disservice to Islam,” a blow to the country's reputation for religious tolerance. Prime Minister Dato' Seri Abdullah Ahmad Badawi later clarified that the seminar was not cancelled but postponed and that the government would find another suitable date. Many however were perplexed as the seminar was not a government function but private and its approval was not necessary.

### **3.3. ISLAMIC VALUES USED AS BENCHMARK**

Mounting pressure for a clean and transparent election led the Election Commission to propose a special indelible ink to be used on election day to prevent cheating. In August, the National *Fatwa* Council gave its approval after finding that the ink contained no elements that would affect Muslims performing their religious duties.

### 3.4. ISLAMIC STATE

- 3.4.1. On 12 March, PAS president Datuk Seri Abdul Hadi Awang reportedly said that the non-Malays had no reason to reject the concept of an Islamic state since they accepted capitalism, socialism and other Western ideologies. Speaking to reporters after a four-hour close-door meeting on “strategies for the next general election”, he said the party would continue to uphold the Federal Constitution despite pushing for an Islamic state. He added that while Islam could be used for politics, one could not be forced to convert to Islam. “Ask any non-Malay living in Kelantan and Terengganu if he has ever been victimised by Muslims while under the PAS rule,” he challenged. He blamed the media for sending the wrong message to non-Malays.
- 3.4.2. On 3 June, at the PAS assembly, it was reported that PAS wanted the *Syariah* enactments amended to make apostasy a crime in the Federal Territories. Among the five resolutions passed was the imposition of heavier penalties to deter Muslims from renouncing their faith. Dewan Pemuda delegate Abdullah Karim, who tabled the resolution, said that action should be taken immediately as the Federal Court’s decision on the Lina Joy case had made it clear that apostasy was the sole purview of the *Syariah* court.
- 3.4.3. In July, Deputy Prime Minister Datuk Seri Najib Razak said that Malaysia had never been a secular state but an Islamic state that protected the rights of the ethnic minorities. His remark drew reactions and protests from various quarters. The storm led the government to ban mainstream media from reporting on whether the country was an Islamic state. To further pacify the critics, the Prime Minister was forced to make a stand. On 4 August, he said that Malaysia was neither a secular state nor a theocratic state but a country that practised parliamentary democracy.

However, responding to a question raised on social contract at the Dewan Rakyat on 27 August, Abdullah in his written reply said that “Malaysia is not a secular or theocratic nation. It is an Islamic nation/state (*Negara Islam*), governed by Islamic tenets but adhering closely to democratic principles in line with the highest laws of the land, the Federal Constitution... This unique formula has been successfully tested and I do not see why such a government cannot continue to rule... I reject all claims that our method of governing is in conflict with the social contract agreed to by our past leaders.” His statement was made in Bahasa Malaysia.

## 4. CONCLUSION

As in previous years, the one under review saw further curbs on fundamental religious liberty. In many respects, however, 2007 saw a culmination of the tightening regime with the Federal Court's landmark cases such as *Lina Joy* and *Subashini*. These effectively abrogated the constitutional responsibility of the civil courts to hear and decide on the petitions of former converts and believers. For these people, and those closely associated to them such as spouses and children, they have no means of legal redress except from the courts of the religion that they are seeking to leave. Meanwhile, religious authorities continue the practice of incarcerating would-be apostates and snatching the bodies of deceased converts (or alleged converts) from their loved ones. These acts have done more to cause public discontent and stir up negative perceptions about the religion than any speech or writing that can be deemed seditious. State governments, for reasons best known to them, continue to demolish places of worship, while federal government agencies pursue a course of confiscating religious literature and prohibiting the use of certain words in religious publications.

It is clear that there is a great deal of dissatisfaction with the state of religious liberty in this country; the authorities however do not want to be seen as being responsive to discontent as this would be seen as caving in to ethnic minorities. This is as tragic as it is unfortunate. Religious liberty is a fundamental right granted by the Federal Constitution to all Malaysians and not a bargaining chip or a gift of political largesse. Given the dour reluctance to engage in any kind of meaningful discourse and given what can only be interpreted as stonewalling to rectify the consistent and systematic infringements of this right, it would seem that all right-thinking Malaysians have no avenues of recourse but to take their protests to the polling booths. If this occurs to any significant extent, the ruling coalition, which has traditionally prided itself on accommodating the widest possible interests, will be seen to be a myth and there will be no one to blame but itself.

## **Appendix A – The Subashini case**

On 13 March, the Court of Appeal dismissed Subashini’s appeal against the High Court’s decision to set aside the interim injunction granted to her in 2006. The injunction intended to stop her Muslim-convert husband Saravanan from converting their children to Islam and to forbid him from commencing or continuing with the proceedings in the Syariah Court, with respect to dissolution of their civil marriage and custody of children.

In a 2-1 majority decision, Justices Suriyadi Halim Omar and Hasan Lah dismissed Subashini’s appeal while Justice Gopal Sri Ram dissented.

Justice Hasan, in his written judgement, said Subashini could seek recourse at the Syariah court rather than asking the civil court to review the Syariah court’s decision. He held that Subashini could have applied to the Syariah Appeal Court to exercise its supervisory and revisionary powers to make a ruling on the legality of her husband’s application and the interim order. She could do so on the grounds that the Syariah court had no jurisdiction over the matter as she is not a person professing the religion of Islam. Justice Hasan added that the Registrar of Muallafs had determined the date of Saravanan’s conversion. It was not for the civil court to question such decision but to accept it.

Justice Suriyadi, in his judgement, held that Saravanan’s application for dissolution of marriage at the Syariah court was purely administrative in nature. Subashini’s objection merely on the grounds that the Syariah court was constitutionally set up only for Muslims made no sense. “To grant an injunction based on this flimsy ground would certainly be an abuse of the costly process of court”. Since the Syariah court had granted Saravanan an interim custody order of the eldest son, an application to review or appeal against such order must be done through the same court. Justice Suriyadi was of the view that Subashini faced an uphill battle in her attempts to stop Saravanan from exercising his constitutional rights of choosing the Syariah court over the civil court. “By so wanting the civil court to deal with her problems, [Subashini] had attempted to convince us that a civil court has the jurisdiction and knowledge to deal with her matter, even though imbued and intertwined with thick strands of Islamic elements. In short [Subashini] wanted the civil court to arrogate the function and duties of the Syariah court, regardless of [Saravanan’s] right of choice, let alone he already had made his decision.”

Justice Gopal Sri Ram in his dissenting judgement said for a true interpretation of the Constitution, a Syariah court, whether in a state or in a Federal Territory, only has jurisdiction as may be conferred upon it by State or Federal law. Section 46(2)(b)(i) of the Administration of Islamic Law (Federal Territories) Act 1993 confers jurisdiction on a Syariah High Court in civil matters only where all the parties are Muslims. “Any other interpretation would, in my respectful view, produce a manifest absurdity and visit an injustice upon non-Muslim spouses,” he said.

On 27 December, the Federal Court three-member panel in a 2-1 decision ruled against

Subashini's appeal on legal technicality – that her divorce petition was prematurely filed under the Law Reform (Marriage and Divorce) Act 1976 (LRA) and therefore deemed null and void. According to the LRA, Subashini could only file for divorce three months after the date of Saravanan's conversion to Islam. Justice Nik Hashim and Azmel Maamore found that Subashini's divorce petition, was filed two months and 18 days after the husband's conversion to Islam, that was, short of the required three months. However, the three Federal Court judges unanimously agree that those who contracted civil marriages are bound by the LRA in respect of divorce and custody of the children of the marriage. Hence, the civil court continues to have jurisdiction over Saravanan, notwithstanding his conversion to Islam.

Justice Nik Hashim was of the view that by embracing Islam, Saravanan and his eldest son were subject to Muslim personal and religious laws. Hence, it was not an abuse of process for Saravanan to seek remedies in the Syariah High Court. Anyway, the dissolution order of the civil marriage by the Syariah High Court by virtue of conversion would “have no legal effect in the civil High Court other than as evidence of the fact of the dissolution of the marriage under the Islamic law in accordance with Hukum Syarak.” This is because the Syariah court only has jurisdiction over persons professing Islam. The Federal Court also interpreted Article 12(4) of the Federal Constitution as to mean that the religion of a person under the age of 18 years shall be decided by a single parent. It follows that either spouse has the right to convert a child of marriage to Islam and either party cannot refrain the other from doing so.

## **Appendix B – The Lina Joy Case**

On 30 May, Lina Joy lost her final round of appeal when the Federal Court dismissed her appeal against a ruling that the National Registration Department was right not to allow her to remove the word “Islam” from her identity card. Chief Justice Ahmad Fairuz Sheikh Abdul Halim and Federal Court judge Justice Alauddin Mohd Sheriff delivered the majority decision dismissing her appeal. Chief Judge of Sabah and Sarawak Justice Richard Malanjum dissented.

Ahmad Fairuz held that renunciation of Islam was a matter of Islamic law and therefore the National Registration Department (NRD) adopted the policy of requiring the determination of some Islamic religious authority before it could act to remove the word “Islam” from a Muslim's identity card. He was of the view that the Syariah court, which has been expressly conferred with jurisdiction to adjudicate on matters relating to conversion to Islam, should be necessarily implied as also having jurisdiction to adjudicate on matters concerning conversion out of Islam (apostasy). He further stated that a person professing and practising Islam should follow Islamic law which prescribes the mode of conversion and renunciation of Islam. He also opined that Article 11 could not be interpreted as being so wide as to invalidate all laws that require a Muslim to conduct his or her Islamic religious responsibilities or prohibit him or her from engaging in matters prohibited by Islam. This was because the position of Islam in the Federal Constitution was different from the positions of other religions.

On the other hand, Justice Richard Malanjum said that apostasy involves complex questions of constitutional importance especially when some states in Malaysia have enacted legislations to criminalise it. The question of fundamental rights is a constitutional issue and therefore it is of critical importance that the civil superior courts should not decline jurisdiction by merely citing Article 121 (1A). Legislations criminalising apostasy or limiting the scope of the provisions of the fundamental liberties as enshrined in the Constitution are constitutional issues in nature and only the civil courts have the jurisdiction to determine. In addition, he was of the view that the doctrine of implied powers must be limited to those matters that are incidental to a power already conferred or matters that are necessary for the performance of a legal grant. In the matters of fundamental rights, there must be as far as possible an express authorisation for curtailment or violation of fundamental freedoms. No court or authority should be easily allowed to have implied powers to curtail rights constitutionally granted.

On 19 September 2005, the Court of Appeal decided that the NRD director-general was right in refusing Lina Joy's application to drop her religious status from her IC on the grounds that the Syariah Court and other Islamic religious authorities did not confirm her renunciation of Islam.

### **Appendix C – The Dilemma of 10 Siblings**

On 24 February, The Star and The New Straits Times reported that 10 siblings in Penang were seeking to have their religion listed as Islam on their MyKad changed to Hindu. The ten – five men and five women – are children of a Muslim-born man, Ibrahim Noyah who married a Hindu M. Nagamah without registering their marriage. All the 10 siblings were given Muslim names but they were raised as Hindus and eventually got married to Hindus but they did not register their marriages. On 16 February, the 10 siblings submitted individual sworn declarations at the Magistrate's Court in Jawi, South Seberang Prai, claiming that they had been practising Hinduism since birth and praying at Hindu temples. In their declaration, they said that they wanted to change the status of their religion from Islam to Hindu. They also said that they were married to Hindus – although they did not have their marriages registered – and took part in Hindu celebrations, including Thaipusam. Their children were also given Hindu names. Out of the 30 grandchildren of Ibrahim Noyah, three of them did not have birth certificates due to the confusion of their religious status. The birth certificates of other grandchildren were equally confusing as some had the Muslim names of the parents while in others it was stated as not applicable. The birth certificates of some of the grandchildren had only one parent's name stated.

Subsequently, The New Straits Times reported that the Penang Islamic Religious Council had recognised Ibrahim Noyah and M. Nagamah as Muslims because Ibrahim had returned to the Islamic faith while his wife had embraced Islam in August 2004. The wife's Muslim name was Mariah Abdullah. They later solemnised their Muslim

marriage at the religious department on 11 August 2004 and had been issued with the relevant documents. However, the council also accepted the fact that the couple's children were Hindus.

## **Appendix D – The Dilemma of Marimuthu & Raimah Bibi**

On 2 April, officers from the Selangor Religious Department (JAIS) detained Raimah Bibi at her house in Kampung Baru Tambahan, Ulu Yam. Her husband, rubber tapper P Marimuthu was told that his wife of 21 years, Raimah Bibi, was a Muslim and that she and six of their seven children – aged between four and twelve – must be placed in a rehabilitation centre. The couple's eldest son was staying with an uncle at that time.

Marimuthu claimed that an 'ustaz' (religious scholar) had told him to convert to Islam or be charged with khalwat (close proximity) with Raimah. JAIS placed Raimah Bibi and her children in the nearby Kampung Melayu Liga Emas. Raimah purportedly said the villagers, predominantly Malays, had been asked to keep an eye on her daily activities and prevent her from meeting outsiders, especially her husband. Marimuthu said he felt threatened by the villagers' stares when he attempted to visit his wife and children. According to him, Raimah managed to sneak their children over to his house several times without anybody's knowledge.

Marimuthu and Raimah Bibi got married in a temple according to Hindu rituals and he claimed that he did not know if his wife was a practising Muslim before they got married. All their children were brought up as Hindus. Raimah was adopted by an Indian Muslim family and her MyKad had stated her name as Raimah Bibi binti Noordin and her religion as Islam. The couple did not apply to the National Registration Department to have this corrected. The authorities learnt about Raimah's 'religious status' when the couple enrolled their children into a school and copies of their identity cards were submitted to the Education Department.

Subsequently, Marimuthu filed a habeas corpus application against JAIS, alleging that his wife and six of their children were being unlawfully detained by JAIS. At the hearing on 2 May, Raimah Bibi agreed to live apart from her non-Muslim husband and gave him custody of their seven children after choosing to continue practising Islam. She was, however, given unlimited access to her children aged four to 14.

## **Appendix E – The Dilemma of Revathi**

On 26 March, Revathi Masoosai's 15-month-old daughter was taken by the Islamic Religious Department in southern Malacca and handed to the baby's Muslim grandmother. The grandmother was given custody of the baby. Revathi, an ethnic Indian, was held in the Akidah Rehabilitation Centre in Ulu Yam, Selangor since 8 January.

Revathi, 29, was born to Indian Muslim parents who gave her a Muslim name, Siti Fatimah. However, Revathi claimed that she was raised as a Hindu by her grandmother and changed her name in 2001. She married Suresh Veerappan in 2004 according to Hindu rites and the marriage was not legally registered because Suresh did not convert to Islam. After their marriage, Revathi tried to change her name from Siti Fatimah to her Hindu name as well as religious status. She was advised by the Malacca Islamic Religious Department to make the application at the Malacca Syariah High Court. She did so in 2006 and her case was fixed for hearing on 8 January 2007. However, when she turned up for the hearing, she was detained by the court officials and was taken to the rehabilitation centre.

On 18 April, Revathi had her 100-day rehabilitation period extended for another 80 days by the Malacca Syariah High Court.

Revathi's official identification documents stated her status as Muslim. Suresh Veerappan filed a habeas corpus application, seeking to release his wife whom he claimed was illegally detained at the Baitul Aman Faith Rehabilitation Centre. The superintendent of the centre in Batang Kali and Selangor Islamic Religious Council were named as first and second respondents respectively.

On 5 July, Revathi was brought to the Malacca Syariah High Court. The judge ruled that in Islam there is no compulsion and there is recognition of the concept of freedom of religion provided in Article 11 of the Federal Constitution. However, this freedom of religion meant that no one can be compelled to be a Muslim. Once a person has embraced Islam, that person cannot leave Islam. Then the judge dismissed Revathi's application to renounce Islam and ordered her to be placed in the custody of her parents and that she would undergo continual counselling sessions.

In an interview, Revathi told the reporters that the rehabilitation camp was like a prison and that religious officials tried to force her to pray and wear headscarf. "Because of their behaviour, I hate (benci) Islam even now," she added. As a result of the release, the habeas corpus application filed on her behalf in the Shah Alam High Court was dismissed.



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