



REPORT

ON THE STATE OF

# RELIGIOUS LIBERTY

IN MALAYSIA

FOR THE YEAR 2008

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PRESENTED BY  
**THE RELIGIOUS LIBERTY COMMISSION**  
NATIONAL EVANGELICAL CHRISTIAN FELLOWSHIP  
(NECF) MALAYSIA

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

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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 on individuals as well as the nation.

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

### **1.1 Introduction – Malaysian Socio-Political Landscape of Year 2008**

Without doubt, the 12<sup>th</sup> general election held on March 8 was a dramatic watershed in Malaysian political history. While official records will probably say little about events leading up to and after the election, there can be no doubt that what transpired marks a very important break from the past. The election was noteworthy, not because the ruling coalition Barisan Nasional (BN) lost its parliamentary majority – it did not – but for two factors. Firstly, the coalition lost its two-thirds majority, winning only 140 out of the 222 seats (63%), and secondly, out of the 13 state legislatures, five were won by the opposition. The two-thirds majority was important for the coalition simply because it was needed to pass amendments to the Federal Constitution (the only other time the coalition failed to secure this was after the 1969 general election). In many ways, however, it was the loss of the state governments of Penang, Kedah, Perak and Selangor that represented the greater victory for the opposition. If Kuala Lumpur had been a state and not a federal territory administered by a ministry, it too would have fallen as 10 out of the 11 parliamentary constituencies were won by the opposition.

Overall, BN garnered 51% of the popular vote as compared to the 64% it commanded in the 2004 general election. Only 45% of the popular votes cast went in support of Peninsular BN parties. The balance of 6% were votes cast in Sarawak and Sabah. These were sufficient to tip the balance towards BN. In other words, had it not been for the parliamentary seats won by BN component parties in Sarawak (30 seats) and Sabah (24 seats), BN, with

UMNO at the helm, would not have been returned to power. The pivotal role of the two East Malaysian states and its importance was one of the major outcomes of the 12<sup>th</sup> general election. UMNO, which has traditionally boasted that it does not require the support of the other component parties, cornered just 79 parliamentary seats, 30 less than the previous elections. The vote swing against BN and UMNO was therefore a very sizeable one, especially in Peninsular Malaysia. While BN strategists seem to have been under no illusions that component parties would manage to gain support, the magnitude of the losses was still startling. And to make it all the more emphatic and humiliating, many key figures in the BN component parties, including presidents and vice-presidents, lost their seats.

Many post-election analyses have been conducted after what has been called the “2008 political tsunami” and offered a number of reasons for BN’s dismal showing. Among them were the usual litany of economic ills such as inflation, food shortages, lower fuel subsidies and rising crime. These would have contributed to the unpopularity of the Government-of-the-day but are unlikely to have accounted for the losses in traditionally “safe BN” seats. Among the non-Malay communities, voter disgruntlement was clearly evident with the playing of the ethnic card – from well-publicised incidents of *kris* waving and its implied threats of violence – to numerous cases of racial and religious insensitivity and bias. Forced religious conversions, body snatching incidents, unfair child custody awards, demolitions of places of worship, and the banning and confiscation of religious books (issues that have been raised in this Report over the past years) provided great momentum for the groundswell and contributed greatly to the defeats suffered by the non-Malay BN parties. Also taking centre stage were accusations of widespread government corruption and mismanagement, judicial appointments scandal (as captured in the so-called Lingam video clip affair) and high-level involvement in the murder of a Mongolian model. These issues have had a great deal of traction among urban voters and would have added to the loss of support. Other factors that acted as a lightning rod for the opposition were the heavy-handed actions taken against the protesters seeking clean and fair elections (organised by BERSIH) and the plight and poverty of ethnic Malaysian Indians (organised by HINDRAF).

But perhaps the most decisive factor contributing to BN’s “perfect storm” was UMNO’s loss of Malay support. The causes of this are not as well-documented

as the other factors but a few things are clear. First, there were widespread perceptions of, and frustration at, the then UMNO president's "poor" leadership qualities. Added to this, the then Prime Minister's son-in-law, who has been a figure of great controversy, was also cited by UMNO stalwarts to have been a major factor in disuniting the party and leading to its poor showing. Second, the charismatic former Deputy Prime Minister, Datuk Seri Anwar Ibrahim, ran an effective campaign and above everyone else was responsible for his party, the Parti Keadilan Rakyat, picking up the most number of opposition seats – 30. Third, there were strong indications that UMNO went into the elections as a party divided. The rift between the current and former president and unpopular choices of nominees for parliamentary and state seats led to voting across party lines, spoilt votes and low turnouts. It has been said that if every registered UMNO member voted along party lines, the party and BN would not have won the election.

In the aftermath of March 8, the ruling coalition predictably said that it would engage in study and reflection of the reasons for the losses and to undertake reforms in line with the expectations of the voters. Events since then seem to have put paid to most of these promises. The period was essentially characterised by UMNO's busy efforts to oust its party leader (the then Prime Minister Dato' Seri Abdullah Badawi) for the highly embarrassing nature of its victory and to jockey for key positions in the party's March 2009 General Assembly. After firmly rejecting demands that he stepped down to take responsibility for the election results, the Prime Minister finally capitulated but without giving a date. The Prime Minister said he would use his remaining time to accomplish items on his unfinished agenda, such as the creation of the Judicial Appointments Panel and the Malaysian Anti-Corruption Commission. In the meantime, tensions were rife with widely reported efforts by the de facto opposition leader to entice BN members of parliament to cross over on September 16. This however came to nought and, instead, there were defections from the opposition ranks.

Of the five states that fell into the hands of the opposition alliance – Pakatan Rakyat (PR) comprising PKR, DAP and PAS – three were controlled largely by political parties other than PAS. The question might therefore be asked whether these states experienced greater religious and political freedom. It appears the opening up of space for religious and political freedom in the year under review

can only be described as a qualified one. In Selangor, the state government had promised to protect places of worship from demolition at the time of the general elections. On 10 September 2008, the Ampang Jaya Municipal Council tore down a Hindu temple built on forest reserve land. The Chief Minister subsequently said that this was not in line with the PR's principles and suspended the deputy president of the council pending investigations. While there might have been every intention to open up such space, UMNO has been quick to accuse the opposition state governments of "insulting Islam" should there be even the slightest hint to do so. In Penang, where the DAP holds the majority, the Utusan Malaysia (an UMNO-controlled newspaper) together with the Penang Islamic Religious Council attacked the state government's efforts to form the Inter-Faith Consultative Council as an attempt to "insult Islam by placing it on par with the other faiths". As events unfold, the council was never formed and the Chief Minister, rather than arguing it is a good thing, only denied its formation. In Perak, the state government reduced land premiums and quit rent for charitable and religious organisations resulting in substantial cost to the government.

Overall, while more optimistic Malaysian voters would have expected positive developments due to the outcome of the 12<sup>th</sup> general election, an air of despondency and malaise continues to hang over the country. Despite the bracing reality check delivered to the BN Government, there is no firm evidence or manifestation of increasing space on either the political or the religious fronts. If anything, there is substantial evidence that political suppression and heavy-handedness is very much the order of the day and that ethno-religious polarisation is growing. What is far worse – the unwillingness to be guided and held in check by law, even of accepted interpretations of the Federal Constitution by the highest court in the land – is threatening to cast the entire country into a "social-political jungle" where the strong take what they can and the weak give what they must.

## **2. ISSUES CONCERNING RELIGIOUS FREEDOM DURING 2008**

### **2.1. CONSTITUTIONAL BACKGROUND**

The Federal Constitution expressly provides for the fundamental right to

freedom of religion. Article 11 stipulates that every person has the right to profess and practise his religion and subject to State law, [for the federal territories, Federal law] may control and restrict the propagation of any religious doctrine and belief amongst the people professing the religion of Islam. This means the Constitution recognises that all persons have the right and freedom to choose their own religion according to one's own choice, conscience and belief. Any person includes all people of any ethnic group and is not to be confined to a particular segment of society to the exclusion of one particular group. As regards the propagation of religion, state law (in the case of the federal territories, Federal Law) may control and restrict the propagation of religious doctrine or belief among Muslims. That the state has such powers to control clearly does not mandate state action to prohibit the propagation of religion but authority to control or restrict propagation.

The Constitution envisages a secular polity. Malaysia is not a theocratic but a secular state with Islam declared as the religion of the federation under Article 3 of the Constitution. Article 3 contains an express qualifying clause stating that this provision does not derogate from any other provision of the Constitution, including Article 4 entrenching the principle of the supremacy of the Constitution. With regards to religious freedom, Article 3, after providing for the status of Islam, goes on in the same breath to pronounce that all religions may be practised in peace and harmony in any part of the Federation. The Islamisation process however continues to impact on the free and legitimate exercise of religious rights guaranteed under the Federal Constitution while undermining the secular basis and character of the Malaysian polity.

## **2.2. RIGHT TO PROFESS**

### **2.2.1 Legislation**

There was no legislation enacted that affected the state of the right to profess one's religion during the year under review. However administrative and judicial actions continue to give rise to concern.

### **2.2.2 Conversion Issues/Cases**

2.2.2.1 In January 2008, the remains of a 74-year-old Chinese man, Gan

Eng Gor was seized by the police from a Chinese funeral parlour after his eldest son lodged a police report claiming that the deceased was a Muslim. The Negri Sembilan Islamic Affairs Council, the Negri Sembilan Islamic Affairs Department, the Registrar of Converts and the deceased's eldest son filed an ex-parte application at the Syariah Court seeking a declaration that the deceased was a Muslim. Notice was sent to the non-Muslim family members of the deceased but they did not turn up for the hearing at the Syariah Court. The deceased's non-Muslim son and the rest of the family who were all Buddhists then applied for an injunction from the High Court to restrain the Syariah Court from making a decision on the deceased's religious status. The family claimed that Gan had never converted to Islam because he had previously suffered two strokes and could not speak at the time of the alleged conversion. On 24 January 2008, the Syariah High Court ruled that the deceased was a Muslim convert and the deceased was then buried according to Muslim rite. On 29 January 2008, the High Court dismissed the non-Muslim family's application without costs on the ground that it had no jurisdiction to hear the matter since a Syariah Court has already declared Gan a Muslim.<sup>1</sup>

2.2.2.2 On 8 May 2008, the Penang State Syariah Court decided to allow Siti Fatimah to return to Buddhism and ordered the Penang Islamic Religious Council (MAIPP) to cancel her certificate of conversion to Islam. The Syariah Court made its decision on the ground that Siti Fatimah never practised Islam and blamed the state's religious council for not ensuring that Siti Fatimah was a practising Muslim. Subsequently MAIPP appealed against the decision. Among the concerns was the status of Siti Fatimah's marriage as the decision to allow her re-conversion to Buddhism could not dissolve the marriage.<sup>2</sup>

2.2.2.3 On 5 August 2008, the Court of Appeal dismissed an appeal by Lim Yoke Khoon against a High Court's decision to refuse her application for a declaration that she had the right to renounce Islam and embrace Christianity. On 15 February 2005, Lim had

sought a declaration from the High Court that she had the right to renounce Islam and practised the Christian religion under Article 11 of the Federal Constitution and that she could delete her Muslim name and substitute it with her original name. She named the Selangor Religious Affairs Council, Selangor Religious Affairs Department, Selangor state government, the National Registration Department (NRD) director-general and Malaysian government as Respondents. On 17 May 2005, the Shah Alam High Court allowed the Respondents' application to strike out her application for declaration on the basis that the High Court had no jurisdiction to hear and decide on the matter. The court did not hear or adjudicate on the merits of the originating summons.

At the Court of Appeal, a clinical and technical approach was taken; the court questioned Lim whether her appeal was competent before the court as she had two names – the Chinese and Muslim names on the appeal. The Court of Appeal subsequently dismissed her appeal on the grounds her appeal was incompetent as the person (appellant) named in application at the High Court stage no longer existed as she had changed her name to a Muslim name.<sup>3</sup>

2.2.2.4 On 18 August 2008, the Kuantan Syariah Court allowed an application by a Muslim convert, Jeffrey Or Boon Hua, also known as Abdullah, to declare himself a non-Muslim. The Syariah Court allowed the application on the grounds that Jeffery Or had not practised the Islamic teachings since converting to the religion 14 years ago.<sup>4</sup>

2.2.2.5 On 6 August 2008, *theSun* reported a statement by Home Minister Datuk Seri Syed Hamid Albar on the proposed forum on conversion by the Bar Council that it was not a good idea to hold such a forum as it could create misunderstanding and tension among society. On 9 August 2008, the Bar Council proceeded with the public forum entitled "Conversion to Islam: Article 121 (1A) of the Federal Constitution, Subashini and Shamala Revisited" despite the strong reaction and protest from

various Islamic quarters. The forum was originally scheduled to take place from 8.30am to 1.00pm. However, demonstrators from Muslim NGOs and political parties gathered in front of the Bar Council secretariat building and shouted for it to stop. The forum lasted only an hour 10 minutes after a group of protesters led by Peninsular Malay Students Federation Vice-President Jais Abdul Karim and Pembela member Zulkifli Noordin, who is also PKR Kulim-Bandar Baru MP, accompanied by the police, marched into the auditorium where the forum was held. On the same day, a molotov cocktail was thrown into the old house of the President of the Malaysian Bar, Dato' Ambiga Sreenevasan.<sup>5</sup>

2.2.2.6 On 19 November 2008, Bernama reported the views of Datuk Faiza Tamby Chik when delivering a working paper entitled, "Malay and Islam in Malaysian Constitution" at the two-day International Seminar on Comparative Laws (ISCOM 2008) that the concept of religious freedom did not apply to Muslims in the country. It should be pointed out that the view of the former High Court Judge is his own personal view and not based on any judicial pronouncement. It should also be noted that such a view would be in direct contravention of Article 11 of the Federal Constitution.

2.2.2.7 In the states of Sabah and Sarawak, it has been reported that natives who are not Muslims and have never converted to the religion of Islam have found that their religious status is entered as "Islam" in their official identification document issued by the National Registration Department known as the MyKad. This state of affairs arose in the following circumstances and have serious consequences upon persons who are not Muslims or no longer profess Islam being bound by the regime of laws and policies which apply to Muslims:

- When the names of the indigenous persons carry a "bin" or "binti", they are deemed as Muslims although many non-Muslim Melanau and Kadazandusun native peoples use

the connective term. Consequently, their religious status is wrongly reflected as Muslims in the MyKad without their consent;

- Persons who have in the past converted to Islam are not allowed to re-convert to the religion of their forefathers or a religion of their choice; and
- Being deemed to be Muslims in the official documentation even though they do not profess Islam, the entry of their religious status will not be changed unless they obtain confirmation from the Islamic religious authorities.

### **2.2.3 Disputed Religious Status / Body Tussle Cases**

2.2.3.1 On 30 December 2007, Wong Sau Lan passed away at the Hospital Universiti Kebangsaan Malaysia (HUKM). When her husband, Ngiam Tee Kong, an ethnic Chinese Christian went to HUKM to claim his wife's body, he was informed that it would only be released to him if he confirmed that she was a Muslim at the time of her death. He was also told that the body would be released to him only for having Christian rites to be performed, after which it was to be returned to the hospital for it to be buried according to Muslim rites. On 31 December 2007, a day after the death of his wife, he received a declaration of conversion dated the same day signed by the Federal Territory Religious Department director stating that his late wife had converted to Islam on 24 December 2007.

On 2 January 2008, Ngiam filed an interim injunction application at the High Court to restrain HUKM from releasing the body of his late wife, whom he claimed was a practising Christian at the time of her death to the Federal Territory Islamic Religious Council (MAIWP) or its agent. On 4 January 2008, an interim injunction was allowed and the High Court had fixed 18 January 2008 to hear both disputing parties. Subsequently, however, MAIWP issued a letter stating that his late wife's conversion to Islam was not in accordance with the Syariah Law and section 85 of the Administration of Islamic Law (Federal Territories) Act

1993. Following MAIWP's decision to give up all rights on the remains of Wong Sau Lan, the High Court ruled that the husband had the right to claim his wife's body.<sup>6</sup>

2.2.3.2 On 16 June 2008, the Perlis Syariah High Court ruled that Selimah Mat who died on 12 June, was no longer a Muslim and she was not practising Islam at the time of her death. The question over her religious status arose after Selimah's son, Aisok Elan, applied for a death certificate at the Mata Ayer police station, near Padang Besar. Selimah's identity card stated that she was a Malay and a Muslim. The matter was then referred to the state Islamic Religious Council where an investigation was carried out to determine her religious status. Aisok and Selimah's Muslim sister were interviewed during the investigation and they both confirmed that the deceased was a practising Buddhist. The Syariah High Court was also told that Selimah had not been practising Islam since she eloped to Thailand at age 16. The Syariah High Court made the order on the grounds that the facts revealed she was a practising Buddhist rather than a Muslim.<sup>7</sup>

2.2.3.3 On 25 June 2008, Selvam, the brother of Elangesvaran, filed a summons at the High Court in Georgetown to resolve a dispute with the religious authorities that his brother had died a Hindu. Selvam named the Penang Islamic Affairs Department, Perak Islamic Department and the Parit Buntar Hospital as defendants and sought a declaration from the court that his brother had always been a Hindu and had died as one. He sought an injunction ordering the defendants to release Elangesvaran's body to the family.

On 7 July 2008, the Penang High Court dismissed his application for an injunction to restrain the Islamic authorities from burying Elangesvaran's body as a Muslim. Earlier, the Islamic authorities had obtained an order from the Syariah Court declaring Elangesvaran a Muslim. The High Court dismissed the application on the grounds that Elangesvaran was a Muslim before he died and that there was no merit in the application.<sup>8</sup>

## **2.2.4 Disputed Inheritance Claim**

2.2.4.1 In December 1999, Rukumony's son, E. Ragu, converted to Islam. He died in August 2000. Rukumony was not recognised by 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 a Muslim's property under the Syariah law. Rukumony then took out a suit against the Islamic authorities and hearing began in November. On 29 January 2009, the Federal Territory Islamic Council offered to give Rukumony Muthiah two-thirds of the RM56,300 death insurance of her son. The Court adjourned the matter and fixed 14 March for further mention to enable parties to consider the settlement. We have not received further report after 14 March on the outcome of the case.<sup>9</sup>

## **2.2.5 Action against non-orthodox Muslims**

The right to profess a religion of one's choice is guaranteed to "every person" in Article 11 of the Federal Constitution. This right is made available to all persons – Muslims and non-Muslims alike, citizens and migrant workers. Religious freedom means that every person is given the liberty to choose his or her religion according to one's own choice, conscience and belief. The conferment of legislative and executive power to the State over the religion of Islam and persons of Islamic faith together with the establishment of the Syariah courts accords vast powers to the State for the determination of religious orthodoxy which can be enforced by criminal sanctions on Muslims. The following are some reported cases.

2.2.5.1 On 17 February 2008, Kamariah Ali, one of four wives of Ayah Pin, the leader of a banned religious group in Terengganu known as the Sky Kingdom, was found guilty by the Terengganu Syariah Court under section 7 of the Syariah Criminal Offences (Takzir) (Terengganu) Enactment 2001 for declaring herself a non-Muslim to avoid any action being taken against her. On 3 March 2008, the Syariah Court sentenced her to two years' imprisonment. Kamariah Ali was also alleged to have also supported the "deviant" religious

practices of this group.<sup>10</sup>

2.2.5.2 On 22 May 2008, the Federal Court ruled that it had jurisdiction to hear and decide on the action brought by a 57-year-old self-proclaimed prophet to challenge the constitutionality of certain provisions in the Selangor Syariah Criminal Offences Enactment. In coming to the decision, the Federal Court rejected the Selangor Islamic Religious Council's (MAIS) argument that Article 121(1A) of the Federal Constitution, which gives exclusive jurisdiction to the Syariah Court to determine matters relating to Islam, also conferred jurisdiction to the Syariah court to interpret the constitutionality of certain provisions in Islamic law.<sup>11</sup>

On 26 September 2008, the Federal Court declared as valid the prosecution of Abdul Kahar Ahmad under the Selangor Syariah Criminal Offences Enactment for proclaiming himself a prophet. It also made similar rulings in respect of three other persons – Mazli Mansor (deceased) and Mat Razali Kasan who were Kahar's followers and Sulaiman Takrib who was a member of the Ayah Pin deviationist sect – who were challenging their prosecution under the Selangor and Terengganu Syariah enactments respectively.<sup>12</sup> The apex court held that State legislatures may create offences and punishment of offences on persons professing Islam and offences going against the precepts of Islam.<sup>13</sup>

2.2.5.3 On 19 November 2008, Bernama reported that the Islamic Development Department (JAKIM) Malaysia had detected 73 deviationist groups nationwide. It quoted Minister in the Prime Minister's Department Datuk Seri Dr Ahmad Zahid Hamidi as saying that JAKIM had also identified their leaders, teaching contents as well as recruitment methods, including an approach based on multi-level-marketing (MLM). Apparently, MLM is a new and structured method used by deviationist groups to charm Muslims and expand their influence. It is reported that efforts are now made to wipe out deviationist teachings on an intensified basis and continuous cooperation between JAKIM and state religious authorities where necessary.

## *Observations and Remarks*

1. The year under review appear to see a decrease in reported cases of Muslims who having converted out of Islam proceed to seek declarations from the civil courts that they were no longer Muslims and were entitled to change their religious status as compared to the previous year. However, there were individuals who were successful in getting relief from the Syariah Court when they submit themselves to the jurisdiction of the Syariah Court.
2. An analysis of these cases reveals that these individuals had overwhelming evidence before the Syariah Court that they were not practising Muslim. There were however, no cases concerning Malay Muslims who wanted to leave the religion of Islam and sought a declaration from the Syariah Court. It is doubtful whether a Syariah court, even with overwhelming evidence of non-practice of the Islamic religion, will allow a Malay Muslim to convert out of Islam with an order of declaration that they are no longer Muslim.
3. It appears that individuals who wish to convert out of Islam are now seeking recourse at the Syariah courts as opposed to the civil courts only as the last resort to resolving the predicament they are in when recourse to the civil courts are denied. Whether such a position is acceptable and becomes a long- term solution to the conversion issue is a matter of conjecture.
4. 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 recognised 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.

5. This Commission calls for the judiciary, the executive arm of Government and Parliament, to recognise the extensiveness of this problem as well as the impact of other fundamental liberties, including the right to life in its full measure, and to initiate steps that will recognise and facilitate the right of Malaysians to choose their religion irrespective of race or creed.
6. The cases before us also suggest that in most disputes regarding the religious status of a person converting to Islam where the rights of non-Muslim are affected whether in body tussle or disputed inheritance cases, the civil courts are usually not prepared to and have declined jurisdiction to hear the grievances of non-Muslims. This has led to grave uncertainty and in most cases, led to injustice for such non-Muslims. Had the civil courts refused to abdicate their constitutional role as the third judicial arm of governance in a democratic nation and been impelled to acknowledge the constitutional nature of the matter and the serious denial of remedies in clear cases of breaches in fundamental religious rights and guarantees to freedom of religion, the outcome would have been different. The time has come for a change in judicial attitudes from reticence to dutiful performance by the judiciary to preserve, protect and defend the Constitution before the fundamental rights and liberty for freedom of religion of Malaysians are eroded further.
7. This Commission is of the view that governing authorities must recognise the plight of the innocents and injustice caused and created in such situation. This commission also call for a change in judicial attitude in that the civil courts should not abdicate their duty and responsibility to administer the law of the land notwithstanding claims and assertion of jurisdiction by Islamic authorities where jurisdiction resides in the civil courts and to be rigorous in ensuring that the twin pillars of the Rukun Negara – the supremacy of the Constitution and Rule of Law – are upheld.
8. This Commission also observes that there are wide discretionary powers vested in the Syariah courts to direct the detention of individuals who have converted or who have requested to convert to other religion

or those who are following non-orthodox teachings of other sects or individuals considered to be “deviants” to rehabilitation centres for the purpose of religious rehabilitation. The lawfulness of such rehabilitative detentions, which are not punishable for lawfully prescribed offences, is highly questionable and is liable to be impugned on the grounds of being unconstitutional.

## **2.3. RIGHT TO PRACTISE**

### **2.3.1 Banning of Books on Religion**

2.3.1.1 The year under review saw the Government enforcing a ban on some 62 books with religious themes such as *Islamic Politics Brings About Love* by Al Arqam leader Ash’ari Muhamad; *The Life and Times of Muhammad* by John Glubb; *Now You Can Know What Muslims Believe* by Ministries to Muslims; *What Is Ahmadiyah Movement* by Mirza Bahiruddin Mahmud; *Tasawuf in the Quran* by Mir Aliudin; *Secrets of the Koran: Revealing Insights Into Islam’s Holy Book* by Don Richardson; and *Women in Islam* by Margaret Speaker Yuan.

2.3.1.2 In January 2008, state enforcement officials of the Publications and Al-Quran Texts Control Division under the Ministry of Internal Security seized English language Christian children’s books from several bookshops because they contained certain “caricatures of prophets” which were deemed offensive to Muslim sensitivities. The Christian Council of Malaysia accused ministry officials of overstepping their authority by confiscating Christian literature not meant for Muslims. The Ministry subsequently returned the books with no further action.<sup>14</sup>

2.3.1.3 On 28 January 2008, Juliana Nicholas returned from the Philippines with two boxes containing 32 English-language Bibles meant for her church. Customs officials in Kuala Lumpur seized all the Bibles. The matter was subsequently referred to the Internal Security Ministry’s Publications and Al Quran Texts Controls Division. On 4 February 2008, the Customs Department allowed

Nicholas to retrieve the Bibles.<sup>15</sup>

2.3.1.4 In January 2008, custom officials returned six titles of Sunday School educational materials belonging to SIB Sabah that were confiscated at the Low-Cost Carrier Terminal (LCCT) on 15 August 2007 with the condition that the front page of the materials contains the words “Penerbitan Kristian” or “A Christian Publication”. Although the educational materials were returned and the Government arguing the matter as “academic”, SIB, Sabah is pursuing with the declaratory relief sought under a suit filed in 2008.

2.3.1.5 On 4 January 2008, *The Star* reported the Cabinet’s decision to disallow Herald (the Catholic Weekly) to use the word ‘Allah’ in its publication. Datuk Abdullah Mohd Zin, 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* and 30 July 2002 according to *theSun*) must be upheld.

On 12 February 2008, Herald was issued with its new annual publication permit with the condition that it was subjected to the “Garis Panduan Penerbitan” (Publication Guidelines which prohibits the Publisher from using the word “Allah”) in its Bahasa Malaysia segment. On 19 March 2008, Herald filed an application for judicial review to challenge the Home Ministry’s decision pertaining to the conditions attached to its annual publication permit. On 5 May 2008, leave for judicial review was granted. On 9 July 2008, seven Islamic Religious Councils, MACMA and the Malaysian Sikh Gurdwara Council applied to intervene in the case. The Malaysian Sikh Gurdwara Council’s application was made on the basis that the word “Allah” is contained in the Sikh holy book, the Sri Guru Granth Sahib Ji.

2.3.1.6 On 21 November 2008, the seven Islamic Religious Councils and MACMA were given leave to intervene. However, the Islamic authorities are filing an affidavit to the Federal Court to have the matter heard before the Federal Court on grounds that the High

Court has no jurisdiction to hear and determine this case.<sup>16</sup>

2.3.1.7 On 22 May 2008, the Home Ministry lifted the ban on a book entitled *A History of God: The 4000-Year Quest of Judaism, Christianity and Islam* by Karen Armstrong, which was initially banned in April 2005.

2.3.1.8 On 11 May 2008, the Home Ministry seized eight compact discs (CDs) of Christian religious teachings containing the word “Allah” from Jill Ireland, a Sarawakian native (Melanau) of the Christian faith under section 9(1) of the Printing Presses and Publications Act 1984 when she disembarked at the LCCT. Subsequently, Jill Ireland received a letter dated 7 July 2008 from the Ministry outlining the reasons for the confiscation including that they were a threat to security, that they used prohibited words and they were a breach of JAKIM guidelines.<sup>17</sup>

On 20 August 2008, Jill Ireland filed an application for judicial review to quash the decision of the Home Affairs Ministry in seizing and confiscating the CDs and for an order that the CDs be returned to her and that she be allowed to continue using such materials.

## **2.3.2 Places of Worship**

2.3.2.1 The suit filed by the Orang Asli in Kampung Jias against the local authorities and the Kelantan State Government seeking a declaration to practise the religion of their choice under the Federal Constitution and to build a church on their own land was to have been heard on 15 January 2008. On the same day, 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 present during the proceedings. The judge gave both parties a month to submit their written submissions.<sup>18</sup>

Throughout the year under review, the matter was fixed for

hearing on various occasions – 26 May; 7 July; 12 August; and 20 November. In all the dates mentioned, the case was postponed for one reason or another. The case was later fixed for hearing in 11 March 2009.

- 2.3.2.2 The case of the two Kuala Krau villagers suing the Temerloh Land and District Office and the Pahang State Government for a judicial review of the decision to deny the villagers of electricity and water supply to their church building was scheduled to be heard on 27 March 2008. However, the case was postponed to May when the judge said he would decide whether the review could proceed on 9 July 2009.<sup>19</sup>
- 2.3.2.3 On 12 December 2007, the former Deputy Chief Minister of Sabah instituted legal proceedings against KTB and the Sabah State Government for stopping the work project and seeking declarations (1) that the letter of withdrawal of approval dated 15 Nov. 2007 by KTB be revoked, set aside and declared null and void; (2) that the letter of approval dated 8 Feb. 2006 be confirmed as valid and binding on all parties concerned; and (3) for compensation for loss suffered by the project proponents. The case was postponed to 13 January 2009.<sup>20</sup>
- 2.3.2.4 On a positive note, on 24 April 2008, the Ministry of Unity, Culture, Arts, and Heritage announced its intention to set guidelines to solve unsettled religious issues, such as the construction and demolition of places of worship. Through the year under review, the Ministry was gathering feedback from all religious groups, including JAKIM and representatives from the Malaysian Consultative Council of Buddhism, Christianity, Hinduism, Sikhism and Taoism, with the view of creating clear guidelines to be presented to the Cabinet and state legislative assemblies for approval. The discussion and deliberations are still ongoing.

### ***Observations and Remarks***

1. The action by the authorities in seizing and banning Christian materials

and publications has not gone unabated. Currently, the controversy surrounds the use of the word “Allah” in Christian publications and materials. The conditional permit issued to Herald and the subsequent two legal suits instituted focusing on the use of the word “Allah” illustrates the ongoing tension between the Government who wish to control and restrict the use of the word to the Islamic community and the indigenous people speaking Bahasa Malaysia who want to retain their right to use the word which they have been using for generations.

2. As regards the “Allah” controversy, this Commission calls upon the authorities to fully respect and uphold the principle that it is the right of faith communities to determine matters of faith language and to desist from dictating to a particular religious community such matters like faith language and theological conviction.
3. As regards the specific use of the word “Allah”, this Commission is of the view that no one religious community or race may own or have exclusive right and privilege to the word “Allah”, bearing in mind the historical evidence that proves the word has long been in use in many faith communities even before the dawn of Islam.
4. This Commission therefore calls for the Government to uphold the provision of the Federal Constitution regarding the freedom to practise one’s religion and the autonomy in the affairs of a faith community. The authorities are therefore called upon to put an immediate stop to the seizing of religious publications and materials belonging to other religious communities based on flimsy and unsustainable reasons.

### **3. ISLAMISATION**

Notwithstanding Dato’ Seri (now Tun) Abdullah Badawi’s administration to govern the country by principles of Islam Hadhari, the initiatives and policies in Islamisation as well practices along orthodox lines have not abated. Perception abound that this process continues to be vigorously pursued by the administration resulting in heightened concerns among the various non-Muslims and non-Islamic religious groups as well as among some Muslims and

other non-governmental organisations in the country in the year under review.

### 3.1 ENFORCEMENT OF ISLAMIC VALUES AND MORAL CODE

- 3.1.1 On 1 March 2008, *Bernama* reported that Prime Minister Dato' Seri Abdullah Ahmad Badawi had said the Government was committed to implementing Islamic law in a comprehensive manner without affecting the interests of other faiths in the country. The Prime Minister said that Islam was in fact capable of becoming an instrument in the development of its followers in various fields including science and technology.
- 3.1.2 On 3 April 2008, *The Star* (also reported in the *Straits Times*, Singapore on 3 April 2008) reported that the Islamic Institute of Understanding Malaysia (IKIM) and the Syariah Judiciary Department had proposed that non-Muslims found committing *khalwat* (close proximity) with Muslims should also be held liable for the offence. It further suggested that to be fair to both parties committing the offence, non-Muslims should be sentenced in the civil courts as the Syariah courts did not have jurisdiction to sentence non-Muslims. The proposal, contained in a draft resolution, would be forwarded to the Attorney-General's Chambers and for the relevant authorities to decide how to create such a law. On 4 April, IKIM denied there was such proposal and further stated that the report in *The Star* was "entirely erroneous".<sup>21</sup>
- 3.1.3 On 18 June 2008, *Bernama* reported that the Celcom 100 Hari 100 Kereta (100 Days 100 Cars) SMS contest had been declared as being against syariah ruling as it contained elements of gambling, ambiguity and wastage. The Director-General of the Islamic Development Department Malaysia, Datuk Wan Mohamad Sheikh Abdul Aziz, in a statement said the decision was unanimous and advised the telecommunication company to prepare a new competition concept that was in line with Islamic principles.
- 3.1.4 On 4 June 2008, *The Star* reported that the new state director of the Unity, Culture, Arts and Heritage Ministry had disallowed the

directors of an Indian classical dance school to conduct a traditional prayer ceremony prior to a dance performance to honour Nataraja, the Lord of Dancers, before their annual performance this year in Taman Budaya.

3.1.5 On 24 June 2008, *News Straits Times* reported that female Muslim employees in business premises in the Kota Baru Municipal Council area were forbidden to use lipstick and wear high-heeled shoes to work. This directive was contained in a circular dated 25 May 2008. The circular was considered necessary to prevent incidents such as rape and illicit sex, as well as to safeguard the morals and dignity of Muslim women in Kelantan. It also stated that Muslim women were forbidden to wear thick make-up, such as bright-coloured lipstick and wear high-heeled shoes that gave out a tapping sound. Apparently, this directive was in addition to the wearing of scarves that need to cover the chest, blouses with long sleeves, long and loose blouses and socks. Those found breaching this rule could be imposed a compound fine not exceeding RM500.

3.1.6 On 14 June 2008, *News Straits Times* reported that the government was calling for the use of Jawi script on their letterheads in a move to preserve the script.<sup>22</sup> Minister in the Prime Minister's Department Datuk Seri Dr Ahmad Zahid Hamidi said that he was also recommending that local authorities used Jawi on street names and other locations to ensure it remained a significant part of Islamic culture.

3.1.7 On 23 October 2008, the National Fatwa Council issued an edict stating that "tomboyism" – where a girl behaves or dresses in a boyish manner – was forbidden in Islam. Apparently, the decision was prompted by recent developments where young women were inclined to behave like men and indulge in homosexuality. The Council chairperson, Datuk Dr Abdul Shukor Husin, said that many young women admired the way men dress, behave and socialise, violating human nature and denying their femininity. It is therefore unacceptable to see women who love the male lifestyle, including dressing in the clothes men wear. In view of this, the

National Fatwa Council have decided and taken the stand that such acts are forbidden and banned.

Also in relation to this issue, on 10 November 2008, Minister in the Prime Minister's Department Datuk Seri Dr Ahmad Zahid Hamidi told non-Muslim non-governmental organisations not to challenge the National Fatwa Council's credibility. According to him, it was unfair to challenge or dispute a fatwa issued by the council purely on logic because it could create confusion among the people. He told reporters that if the NGOs were confused or wanted further explanations on the background of a fatwa, he was willing to organise a forum. NGOs or non-Muslim writers should not resort to disputing or challenging a fatwa but instead respect the same.

3.1.8 On 23 November 2008, *News Straits Times* reported that the National Fatwa Council announced that Muslims were prohibited from practising yoga. The Council said that the practice could be traced back to Hinduism and concluded that yoga could erode the faith of Muslims. It was said that yoga involved elements that were against the beliefs of Islam in its physical movements, chanting and worship for the purpose of achieving inner peace and ultimately to be one with God. The Council Chairman, Datuk Dr Abdul Shukor Husin, said that "in Islam, one must not do things which can erode one's aqidah (belief). Yoga, even the physical movements, is a step towards the erosion of a Muslim's belief, hence they must avoid it." In view of this, the Islamic Development Department would start a programme to educate Muslims on why yoga was against the teachings of Islam. However, the implementation of the fatwa (edicts) on yoga and tomboys announced by the National Fatwa Council are on hold pending the Council of Ruler's approval. The Sultan of Selangor and the palace of Perak made it clear that the fatwa on yoga could not be enforced in Selangor and Perak as it had not been brought before the State Fatwa Committee.

3.1.9 On 18 November 2008, *Daily Express* reported that the Federal Government might provide special funds for the propagation

of Islam in Sabah. Minister in the Prime Minister's Department Datuk Seri Dr Ahmad Zahid Hamidi said that although there were funds available in various organisations including the United Sabah Islamic Association to propagate Islam, the funds for such activities were limited. The minister was quoted as saying, "I will seek additional allocation of funds to enhance the propagation of Islam with the Prime Minister and Deputy Prime Minister's approval. This is our commitment to the people of Sabah in the area of Islamic propagation." He also said that the Federal Government was also considering building a JAKIM office in Sabah and urged all relevant authorities – especially JAKIM, the Sabah Islamic Affairs Department and non-governmental Islamic organisations – to work closely for this cause since Sabah was a vast state and no one organisation might be able to carry out the task effectively.

3.1.10 In the case of Sabah and Sarawak, it was reported that there were active and concerted efforts in the Islamisation of the native people, the 'Bumiputera' of East Malaysia. The following were some of the reported cases:

- Mass conversion activities conducted by Islamic religious authorities targeted at long houses aimed at converting the native people living there, many of whom are non-Muslims; and
- Setting up hostels or "asrama" where the warden and staff are Muslims who attempt to influence the students living there, many of whom are non-Muslims.

## 3.2 ISLAMISATION OF LEGAL ORDER

The Federal Constitution is both foundational and fundamental for the nation and its people to continue to live, strive and thrive together. It provides the basic features of Malaysia as a secular state with Islam as the religion of the Federation. As a secular state, the constitution is the supreme law of the land and is the *grundnorm*<sup>23</sup> of the national civil and non-religious legal order. Demands for an Islamic State have however raised serious challenges to this basic feature of the nation and the character of its national legal order. This demand is motivated by

Islam as a political ideology and is championed by Islamic State proponents, both within the ruling coalition helmed by UMNO and the opposition parties.

The ultimate vision is the elevation of Syariah law over the Federal Constitution as the supreme law of the land. The underlining demand here is for Syariah law to be the “grundnorm” of our national legal order. In Subashini, this claim based on the Federal Constitution was canvassed. The contention stated simply is that as Article 3 provides that “Islam is the religion of the Federation”, Syariah law should prevail. Such a startling proposition is wholly unsupported by and indeed contradicted by the law in the Constitution as interpreted by the highest court of the land.<sup>24</sup> In affirming the previous decision of the apex court, the Federal Court in the case of Subashini explains that “the thinking behind this argument is akin to one that inclines towards making Islamic law, by virtue of Islam being the religion of the Federation, something like the supreme or prevailing law of this country.”<sup>25</sup>

The demand for an Islamic legal order in the context of Islamisation sets the stage and contributes to the erosion of the secular and civil character of the Malaysian legal order. This process has begun to manifest itself as follows:

- The Syariah Court is said to be of equal status and standing with the civil court. A bench of the Federal court in the case of Subashini in a majority decision held:

“Both civil and Syariah courts are creatures of statutes such as the FC, the Acts of Parliament and the State Enactments. These two courts are administered separately and they are independent of each other. Although the Syariah courts are state courts they are not lower in status than the civil courts. I would say, they are of equal standing under the FC. This recognition of the Syariah courts was largely due to Article 121 (1A) of the FC which excludes the jurisdiction of the civil courts on any matter within the jurisdiction of the Syariah courts”.<sup>26</sup>

- The above pronouncement contradicts an earlier decision of the Federal Court in the case of Latifah bte Mat Zin which held as follows:

“The civil High Courts, the Court of Appeal and the Federal Court are established by the constitution itself. But, that is not the case with the syariah courts. A Syariah Court in a State is established or comes into being only when the Legislature of the State makes law to establish it, pursuant to the powers given to it by item 1 of the State List. In fact, the position of the syariah courts, in this respect, is similar to the Sessions Courts and the Magistrates’ Courts. In respect of the last two mentioned courts, which the Constitution call ‘inferior courts’ ... (emphasis ours)”.<sup>27</sup>

- It appears that legislations intended for general application must not only pass the test of constitutionality but are subject to the scrutiny of religious authorities who can halt the implementation of such laws. For example, the Domestic Violence Act 1994 could not be brought into force for almost two years due to certain provisions of the Act which were said to be contrary to Islamic laws and could not be implemented in their original form.

### **3.3 INTERFAITH CONFERENCE**

On 9 June 2008, the Government co-hosted the Third International Conference on the Muslim World and the West in Kuala Lumpur. The conference aimed to address the “divide” and gap between Muslims and the West as well as to develop projects of shared interest and participation. Prime Minister Dato’ Seri Abdullah Badawi gave the keynote address saying that the Islamic world and the West must work together to regain mutual trust, respect, understanding, and cooperation.

### **3.4 ISLAMIC STATE**

On 18 August 2008, PAS reaffirmed its commitment towards establishing full-fledged Islamic rule in the country but at the same time it assured its secular-based political partners of its loyalty and cooperation. PAS president Datuk Seri Abdul Hadi Awang speaking at the end of the party’s 54th Muktamar (general assembly) said that PAS was duty-bound to implement the Islamic agenda in the states that it ruled and that the party must continue with the struggle as long as this goal was not achieved. In his winding-up speech, Datuk

Seri Hadi Awang was quoted as saying that the party must have an agenda to implement Islamic laws, one that is achievable and accepted by all Malaysians and where non-Muslims' rights and sensitivities would be taken care of. The party was working to woo more non-Muslims into its fold, including giving more recognition and support to its PAS Supporters Club.

## **4. NON-MUSLIM PLACES OF WORSHIP AND LAND USE**

### **4.1 QUIT RENT AND ASSESSMENT**

Selangor Menteri Besar Tan Sri Khalid Ibrahim announced that there would be no more quit rent and assessment rates for all registered places of worship in Selangor, and a token annual fee of only RM1 would be introduced instead.<sup>28</sup> There appeared to be more efforts to be inclusive and to accord recognition to non-Islamic religions and religious communities under the Selangor Pakatan Government where previously restrictions on non-Muslims which paralleled *dhimmi* policies of an Islamic state had been applied.

### **4.2 CONVERSION OF LAND USE**

In 1989, the Holy Light Church in Johor Baru bought a piece of agricultural land in Mukim Plentong next to the Ponderosa Golf Course. When they applied for the conversion of the land use, they discovered that the state government had other plans for it. The church then filed a suit against the Johor Government in 1995. In 1999, the church applied again for the use of the land, which was subdivided into two lots, to be converted for institutional and religious purposes. In 2000, the State Government approved one piece for institutional use<sup>29</sup> whereas the approval for the application to religious use was finally given on 9 April 2008 after a 16-year wait.

### **4.3 LEASES FOR MISSION SCHOOL**

On 17 August 2008, *News Straits Times* reported Deputy Education Minister Datuk Dr Wee Ka Siong as saying that the Education Ministry will assist 410 mission schools to retain their leases and renew them at a nominal premium. He also said that the ministry planned to keep the quit rent for these schools at

a nominal sum of RM1 a year.<sup>30</sup>

### ***Observations and Remarks***

1. The year under review saw the ongoing Islamisation process in various forms. It appeared that religious authorities were bolder in making decisions that affected public morality in the public sphere that had bearing on non-Muslims as well. Such trends and patterns do not augur well for the country which prides herself as an open and modernised nation with a tolerant society. As events unfold, the converse is true.
2. This Commission therefore calls on the Government to preserve the secular nature of this nation and to desist from the ongoing Islamisation process that is bringing about anxiety and concern among non-Muslim.
3. This Commission calls for efforts to be made and centred on promoting racial and religious harmony of acceptance and openness to one another, and to promote a society where pluralistic democracy is cherished so that this nation may flourish and prosper for the common good of all citizens.

## **5. CONCLUSION AND PROPOSAL**

Over the past few years, the Christian community in Malaysia has been concerned that the religious space to affirm and practise one's religion according to one's own persuasion and ways has been severely affected and reduced. Consequently, religious liberty for all religion, and in particular Christianity, is at stake. Some have linked this cause to the ruling Government's Islamisation agenda and the power elite within political circles. In this respect, the observation by Salbiah Ahmad is pertinent when she says, "if privileging Islam (and Sunni-Islam) in Article 11 of the chapter on fundamental liberties is part and parcel of 'Islam as the religion of the Federation' in Article 3 to the Constitution, it makes the freedom of religion illusory".<sup>31</sup> The continuing incidents of denial of religious rights, the Islamisation efforts by Islamic authorities and the positions taken by Islamic state proponents highlighted above seem to justify the fears and

misgivings that religious freedom is merely illusory in Malaysia.

In PR-controlled states, there appears to be an attempt to defend and promote religious freedom and rights. However, doubts remain and indeed questions have been asked whether religious space has actually been liberalised, thus allowing for greater acceptance or is it really constricting. Several reasons suggest why such doubts exist. Firstly, opposition political parties still do not have full control over state public administration machineries. Executive decisions made may not be carried out or what is carried out may be contrary to the actual executive decisions. Secondly, the efforts to ensure Constitutionally-guaranteed religious freedoms are often branded as a betrayal of Islam and those attempting to do so are regarded as “un-Islamic” and risk losing political support among Muslims. Thirdly, opposition parties themselves are divided over what may or may not be done in the name of religious liberty, given the very strong religious proclivities among them. Indeed, on some key issues, there are closer positions between some members of the opposition with the ruling party than among opposition parties.

In short, while the political climate has changed considerably post 8 March 2008, there is no real evidence that religious (and racial) tensions have simmered down. If anything, there seems to be an overarching strategy of solidifying majority support by adopting a hardline, non-accommodative approach towards those of other religions and races. One reason for this may be that the minorities’ support has shifted to the opposition and since any effort to appease them will be perceived as a compromise that will likely incur the wrath of the dominant community, it would be more effective to employ a strategy of vigorous religious-racial contestation to counter the opposition. This would make sense as the opposition, reliant on the minorities’ support, would be put into a difficult position and forced to give in. Given this scenario, the indications are that the problems of religious liberty have not and will not abate despite the political change. This point has to be made emphatically to the various religious communities so that they are not lulled into a false sense of bliss and security.

In the circumstances, it is of utmost urgency to ensure that no one religion is permitted to dominate another. To allow this will only bring into reality the view that what is being enforced is the view of an elite of the ruling majority. Abdullah An-Naim warns that this is a “paramount danger” because “they will

force others, Muslim as well as non-Muslims, to live by the narrow ideological vision of the elite".<sup>32</sup> With these observations, this Commission therefore calls upon the Church in Malaysia as the 'Body of Christ' to consider and undertake the following actions:

- i. The Church needs to be informed. Christians cannot be effective until they understand the issues of religious liberty and its implications to the wider society and the nation. For this purpose, Christians should attend briefings on social-political and human rights issues. Church leaders should also organise talks by believers who understand these important issues so that their congregation may be enlightened.
- ii. The Church must be initiated. More Christians should join political and non-governmental organisations or form voluntary associations of their personal conviction and choice towards public engagements. Numbers do not indicate quality but they should not be underestimated in efforts for concerted actions. In this respect, the Church should initiate steps to re-visit the idea on the formation and setting up of an Inter-Faith Commission. Although this idea was mooted before and faced opposition, the benefits for coming together and for concerted actions are obvious.
- iii. The Church must be involved. Christians should be engaged in efforts to address and counter the undermining and erosion of our political and legal order as well as state institutions. In this respect, Christians should participate in prayer meetings and prayer networks to pray for matters of religious liberty and not just limiting themselves to congregational concerns as part of our intercession before God and be moved to action as the Lord leads and direct. Not all of us have the same abilities or similar opportunities but each should find his/her calling and in small ways attempt to make a difference in the preservation of our religious space and freedom.

~ Ends ~

## ENDNOTES

- <sup>1</sup> See *The Star*, 21 January 2008; *New Straits Times*, 22 January 2008 and 25 January 2008; *The Star*, 25 January 2008 and 30 January 2008.
- <sup>2</sup> For the background and facts of the case, see our *Religious Liberty Report for year 2007* at paragraph 2.2.2.1. See also *The Star*, 9 May 2008; *theSun*, 9 May 2008; *Sin Chew Daily*, 23 May 2008.
- <sup>3</sup> See *theSun*, 6 August 2008; *New Straits Times*, 6 August 2008; *Sin Chew Daily*, 6 August 2008.
- <sup>4</sup> See *The Star*, 20 August 2008; *Sin Chew Daily*, 20 August 2008.
- <sup>5</sup> See *theSun*, 6 August 2008, 11 August 2008; *New Straits Times*, 10 August 2008; *Sin Chew Daily*, 10 August 2008; “Molotov cocktail thrown into Bar President’s old house” at [http://www.malaysianbar.org.my/family\\_law/molotov\\_cocktail\\_thrown\\_into\\_bar\\_president’s\\_old\\_house.html](http://www.malaysianbar.org.my/family_law/molotov_cocktail_thrown_into_bar_president’s_old_house.html).
- <sup>6</sup> See *New Straits Times*, 3 January 2008 and 5 January 2008; *The Star*, 19 January 2008.
- <sup>7</sup> *New Straits Times*, 17 June 2008; *Sin Chew Daily*, 17 June 2008.
- <sup>8</sup> *New Straits Times Online*, 8 July 2008; *The Star*, 8 July 2008.
- <sup>9</sup> *Associated Press*, 30 January 2008.
- <sup>10</sup> See *New Straits Times*, 18 February 2008; *The Star*, 18 February 2008, 4 March 2008.
- <sup>11</sup> For the background and facts of the case, see our *Religious Liberty Report for year 2007* at paragraph 2.2.4.1.
- <sup>12</sup> Kahar, 57, Mazli, 49, and Razali, 44, had sought a declaration that Sections 7, 8(a), 10 (b), 12 and 13 of the Selangor Syariah Criminal Offences Enactment 1995 and Section 49 of the Administration of the Religion of Islam (State of Selangor) Enactment 2003 were invalid. Sulaiman, 59, meanwhile, was challenging the constitutionality of Sections 10 and 14 of the Syariah Criminal Offences (Discretionary Penalty) (Terengganu) Enactment 2001 and Section 51 of the Administration of Islamic Religious Affairs (Terengganu) Enactment 2001. Kahar has been charged under the Selangor Syariah Criminal Offences Enactment 1995 at the Shah Alam Syariah High Court with declaring himself a Malay prophet, spreading deviationist teachings, insulting and breaching Islamic teachings and acting against the edict and mufti. Sulaiman was facing charges in the Besut Syariah Lower Court of acting in a manner which insulted religious authorities for disobeying the fatwa that the teachings propagated by Ariffin Mohamad or Ayah Pin, 65, were false, deviationist and digressing and could threaten public order and destroy the faith of Muslims.
- <sup>13</sup> See *The Star*, 23 May 2008 and 27 September 2008; *New Straits Times*, 27 September 2008.
- <sup>14</sup> See <http://www.malaysiakini.com/news/76951>; *The Star*, 22 January 2008.
- <sup>15</sup> See <http://www.malaysiakini.com/news/77782>.
- <sup>16</sup> For the background and facts of the case, see our *Religious Liberty Report for year 2007* at paragraph 2.3.1.3. In view of this development, the case is fixed for mention in the month of February 2009.
- <sup>17</sup> See *New Straits Times*, 4 May 2009.
- <sup>18</sup> For the background and facts of the case, see our *Religious Liberty Report for year 2007* at paragraph 2.3.2.3.

- <sup>19</sup> For the background and facts of the case, see our *Religious Liberty Report for year 2007* at paragraph 2.3.2.4.
- <sup>20</sup> For the background and facts of the case, see our *Religious Liberty Report for year 2007* at paragraph 2.3.2.7.
- <sup>21</sup> See *The Star*, 3 April 2008 and 4 April 2008. See also Statement by the director-general of IKIM on 4 April 2008 at [http://www.malaysianbar.org.my/letters\\_others/statement\\_by\\_the\\_director\\_general\\_of\\_ikim%7C.html](http://www.malaysianbar.org.my/letters_others/statement_by_the_director_general_of_ikim%7C.html).
- <sup>22</sup> Jawi is one of the two official scripts in Malaysia as the script for the Malay language. Its usage today is confined mainly to religious and cultural purposes.
- <sup>23</sup> The word denotes a basic norm or order that forms an underlying basis for a legal system. The theory is based on a need to find a point of origin for all law, on which general laws are derived.
- <sup>24</sup> The said proposition was rejected by the Federal Court judge in the same case in the following dicta, “that kind of thinking was rejected by the Supreme Court in *Che Omar bin Che Soh v. Public Prosecutor* [1988] 2 MLJ 55, where Salleh Abas LP, who spoke for the court, in considering the word ‘Islam’ in Art/ 3(1), spoke of the religion in this way at p. 56 C-D (left): There can be no doubt that Islam is not just a mere collection of dogmas and rituals but it is a complete way of life covering all fields of human activities, may they be private or public, legal, political, economic, social, cultural, moral or judicial. This way of ordering the life with all the precepts and moral standards is based on divine guidance through his prophets and the last of such guidance is the Quran and the last messenger is Mohammad S.A.W. whose conduct and utterances are revered.
- He then asked the question whether that was the meaning of “Islam” intended by the framers of the Constitution in Art. 3(1) and answered to the effect that it was not. The husband submits that the case is no longer good law because the Supreme Court made two grave errors. I disagree about the two errors, but I will not labour to explain why or to say more about this head of submission because the husband’s counsel explained orally that this head would be relevant only if this court should find that both the Syariah High Court and the secular High Court have jurisdiction in this case and, as has been said, I find that only the secular High Court has jurisdiction.”
- <sup>25</sup> *Subashini Rajasingam v Saravanan Thangathoray & Others Appeals* [2008] 2 CLJ 1, at p 91 para [151].
- <sup>26</sup> *Subashini Rajasingam v Saravanan Thangadoray & Other Appeals* [2008] 2 CLJ 1, at p 32 para [23].
- <sup>27</sup> *Latifah bte Mat Zin v Rosmawati bte Sharibun & Anor* [2007] 5 MLJ 101.
- <sup>28</sup> See *The Star*, 27 March 2008.
- <sup>29</sup> See *The Star*, 21 May 2008.
- <sup>30</sup> See *New Straits Times*, 17 August 2008.
- <sup>31</sup> Salbiah Ahmad, *Malaya: Critical Thoughts on Islam, Rights and Freedom in Malaysia*. (Petaling Jaya: SIRD, 2007), 213.
- <sup>32</sup> Abdullah A. An-Naim, “The Islamic Law on Apostasy and its Modern Applicability: A Case from Sudan”. *Religion* Vol. 16: 197-223 cited in Salbaih Ahamd, *Malaya*, 206.

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