

REPORT
ON THE STATE OF
RELIGIOUS LIBERTY
IN MALAYSIA
FOR THE YEAR 2006



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

JUNE 2007

1 BACKGROUND TO THE YEAR UNDER REVIEW¹

The year under review was one which saw a continuing rise — indeed an escalation — of religious and racial tensions from the year before. A number of unfortunate events marked the year, but the low-points were undoubtedly reached with the potentially incendiary demonstration outside the Church of Our Lady of Lourdes in Ipoh, Perak by prominent Muslims and members of Islamic non-governmental organizations (see 2.4.1) and the proceedings of the 57th UMNO General Assembly held in November 2006. [To our knowledge,] the people who were alleged to have made the false and baseless claims that incited the unlawful gathering in Ipoh have yet to be prosecuted and investigations are no longer being carried out. With respect to the General Assembly, various police reports made in connection with the speeches made on the grounds that they were seditious have been closed without action being taken.

1 Readers of this Report who wish to have a detailed background are advised to refer to this Commission's Report on the State of Religious Liberty in Malaysia for the Year 2005, in particular, the sections entitled "1.1 Political Developments" and "1.2 Constitutional and Legal Backdrop" available at www.necf.org.my.

2 ISSUES CONCERNING RELIGION DURING 2006

2.1 DEVELOPMENTS IN LAW

2.1.1 Legislation

During the year under review, the state of **Perlis** passed the Administration of the Religion of Islam Enactment 2006. Of note is the Section 61(3)(b)(x) & (xi) whereby the *syariah* High Court's civil jurisdiction was amended to include the power to declare that a person is no longer a Muslim or that a deceased person was a Muslim.

There was no other new legislation passed that would affect the freedom of religion. There was also no review or repeal of any existing legislation impinging on the religious rights. However, it was reported that the Attorney General's Chambers had embarked on a programme to ensure that laws, policies and State actions are *syariah* compliant.

Article 121(1A) of the Constitution continues to be the source of inter-religious problems. The Article was inserted when the Federal Constitution was amended in 1988. Its intended purpose is to maintain a proper demarcation between the civil law system and the *syariah* law system. Unfortunately, the said Article has been invoked to extend the *syariah* law system to those who fall in between the two systems and, in many cases, to those who fall clearly outside of the ambit of Islam. The calls for amendment to right many cases of injustice have gone unheard.

A memorandum on this very issue submitted by the top leadership of Barisan non-Malay parties was withdrawn in January at the order of the Prime Minister, YAB Dato' Seri Abdullah Haji Ahmad Badawi. In addition, the public movement calling for a just application of the Article and the

upholding of the Constitution's supremacy met its harshest response. In the first half of the year, meetings organised by a coalition of civil groups called Article 11 were disrupted and warnings to use the Internal Security Act against them were announced.

2.1.2 Court Decisions

During the year under review, The ***Lina Joy*** case² was heard at the Federal Court between 28 June and 4 July and the judgment was reserved. Lina Joy, a Malay woman who had converted to Christianity, applied to the High Court to have the word 'Islam' removed from her identity card. The High Court in 2001 dismissed her application on the grounds that the jurisdiction to decide whether she had converted out of Islam was a matter that laid solely in the hands of the *syariah* court.³ In September 2005, the Court of Appeal turned down her appeal on the grounds that her renunciation of Islam was not confirmed by the *syariah* court or any other Islamic authority and therefore the National Registration Department (NRD) could reject her application to amend her identity card. Up to the writing of this Report, the Federal Court has yet to announce its decision.

The ***Moorthy*** case had also come before the Court of Appeal. Kalamammal Sinnasamy, the widow of the mountain climber M. Moorthy who died in December 2005, was appealing against the High Court ruling that it had no jurisdiction to determine whether or not a person had validly converted into the religion of Islam.⁴ The presiding High Court judge invoked Article 121(1A) and held that civil court could not act to review the decision which had already been decided by the *syariah* court. Citing the issue of jurisdiction as important constitutional point to be

2 See 2005 Report para. 2.1.2.

3 The Federal Court in *Soon Singh's* ruled that the *Syariah* Court had the sole jurisdiction to determine whether or not a Muslim had left the religion of Islam.

4 See 2005 Report para. 2.1.2.

decided, the Court of Appeal decided to adjourn the *Moorthy* appeal to await the decision of the Federal Court in the *Lina Joy* case.

The Commission has noted in its 2005 Report that the widow who challenged the conversion of her deceased husband to Islam was left without any legal remedy in her claim for the right to bury her husband. The court decisions so far did not take into account the fact that the applicant, i.e. the widow, was not a Muslim and had therefore no *locus standi*⁵ to file any case in the *syariah* court, and that the deceased was publicly known to be a Hindu which was theoretically not outside the civil jurisdiction.

Also adjourned for the same reason was the case of ***Shamala Sathiaseelan*** who had filed an application at the High Court to declare that the conversion of her two children (aged four and two) to Islam by her estranged husband was null and void. The High Court ruled that it had no jurisdiction to hear the matter as it was within the purview of the *syariah* court and dismissed the application. Shamala was appealing to the Court of Appeal against the decision.

The Commission calls for a decision from the Federal Court that recognizes the right of individuals under Article 11 of the Federal Constitution to leave a religion without requiring approvals from the authorities. It also calls for a restoration of the jurisdiction to the civil courts to decide on the religious status of persons who have left one religion for another.

In the absence of a clear ruling from the Federal Court, similar cases continue to occur. On 11 August, the Kuala Lumpur High Court granted an *ex-parte*⁶ injunction to a non-Muslim mother *R. Subashini* to restrain her

⁵ *Locus standi* is the ability of a party to demonstrate to the court sufficient connection to and harm from the law or action challenged.

⁶ *ex parte* refers to a legal action in which only one party to a lawsuit appears to argue a case.

Muslim convert husband T. Saravanan from converting their children (i.e. Dharvin Joshua, three, and Sharvind, one) pending the disposal of their divorce petition. The injunction also enabled Subashini to temporarily restrain Saravanan from commencing or continuing with divorce and custody proceedings in the *syariah* court. Saravanan, whose Muslim name is Muhammad Shafi Saravanan Abdullah, applied to set aside the order on the grounds that he had already embarked on divorce proceedings and that he was granted an interim custody order of their elder child, who had converted to Islam. On 25 September, the *ex-parte* injunction was set aside. However, Judicial Commissioner Aziah Ali granted Subashini a stay of execution after her lawyers told the court that they would file an appeal at the Court of Appeal. Meanwhile, Saravanan's lawyers indicated that they would appeal against the stay order. It appears that there is a trend of *Muallaf*⁷ unilaterally converting his or her children to Islam and proceeding to obtain custody from the *syariah* court whereas the non-Muslim spouse is deprived of any right to appear at that court.

In July 2006, the Federal court ruled that the authorities had acted within the law in stopping students from wearing turbans during school hours. ***Meor Atiqulrahman Ishak*** and brothers ***Syed Abdullah Khaliq Aslamy Syed Ahmad Johari and Syed Ahmad Syakur*** were expelled from Sekolah Kebangsaan Felda Seriting in Negri Sembilan on Nov 10, 1997 for refusing to shed their turbans.⁸ In his judgement, Justice Abdul Hamid said the issue was whether or not the School Regulations 1997⁹ violated the Federal Constitution in prohibiting the wearing of turban during school hours. While the appellants argued on

7 *Muallaf*, a person who has just embraced Islam, also called *saudara baru*

8 They filed a summons through their guardian and father, Syed Ahmad Johari Syed Mohamed, naming the headmistress, Fatimah Sihi, the secretary-general of the Education Ministry and the Government as respondents. Seremban High

9 The School Regulations 1997 prohibits the wearing of the turban as part of the school uniform during school hours.

the grounds of their constitutional right to profess and practise their religion, Hamid was of the view that “ whether a practice is or is not an integral part of a religion is not the only factor that should be considered” but also the importance of the practice in relation to the religion. Simply put, if a practice is of a compulsory nature or an integral part of the religion, it should be given more weight. Hamid said that the practice of wearing a turban was of little significance from Islam’s point of view, more so in relation to young boys.

The decision was consistent with the 1994 case¹⁰ in relation to a Muslim woman who was dismissed from the civil service for contravening a circular prohibiting the female civil servants from wearing *purdah* that covered the face. She argued that it was her religious obligation to wear the *purdah* and that the circular violated her constitutional rights under Article 11. The Supreme Court accepted that expert opinion that Islam did not require or prohibit a woman from wearing *purdah*. The Court concluded that the wearing of *purdah* had nothing to do with her constitutional right to profess and to practice her religion. In other words, the Court’s decision appears to recognize freedom to practice a religion but reject extremism, and that substance is more important than form.

Court judge Datuk Mohamed Noor Abdullah on 6 August 1999 nullified the expulsion order after ruling that the headmistress did not have the authority to expel them. The ruling was however set aside with costs by the Court of Appeal on 22 November 2004. They then appealed against this decision to the Federal Court.

10 *Hjh Halimatussaadiah bte Hj Kamaruddin v. Public Services Commission, Malaysia & Anor* [1994] 3 MLJ 61.

2.2 ADMINISTRATIVE DIFFICULTIES

2.2.1 Restrictions on the *Al-Kitab*

The seizure and detention of the 1,000 copies Indonesian *Al-Kitab*¹¹ in 2003 was considered “resolved” in 2005 when the Minister of the Internal Security required the importer to imprint the mark of a crucifix and the phrase “*Penerbitan Kristian*” (Christian Publication) on every copy before distribution. Subsequently in 2006, the Ministry issued a letter modifying the condition by asking for a different phrase “Untuk Penganut Beragama Kristian” (For Christians Only) to be imprinted on the *Al-Kitab*.

The 2005 requirement violates the right of religious practice of the Christian community because: (a) it is discriminatory in that no other religious communities are required to imprint similar wordings on their scriptures; and (b) it is oppressive to dictate the form and appearance of the scriptures against the wishes of the religious communities, especially when they are meant to be used by the adherents and within their own places of worship. The right to freedom of religion carries with it the right to have the scriptures of one’s religion in a language of one’s choice which one understands. The restrictions on the *Al-Kitab* for whatever reason infringe upon the right of Christians to have scriptures in the national language.

However, the 2006 condition is even more draconian and restrictive as it confines the access to *Al-Kitab* to Christians only. This means

11 The Indonesian language bibles were imported by the Bible Society Malaysia.

that the persons of non-Christian faith like Hindus, Buddhists, Sikhs or even atheists are not allowed access to the *Al-Kitab*. This blatantly violates the right of all the non-Christians in Malaysia to obtain religious literature of their own choice even if it is not of their own faith. Part of the right to freedom of religion is the right to free inquiry of religions other than one's own including access to the scriptures of other faiths. This Commission therefore calls on the Ministry of Internal Security to withdraw the 2005 and 2006 conditions and restrictions imposed on the importation and distribution of the *Al-Kitab*.

2.2.2 Errors in MyKad

In July, ***Kandasamy Sayapu***, a father of two, died in Banting Hospital after suffering heart attack. The family brought his body home and notified the police. Discovering the deceased's religion was stated as Islam on the MyKad, the police took the body to the hospital mortuary and told the family that the matter could only be resolved by the Selangor Islamic Religious Department (JAIS).

Although JAIS later declared that Sayapu was not a Muslim, the Hindu community was outraged to find out that the NRD¹² had arbitrarily declared the deceased as a Muslim on his identity card based on the name 'Sayapu'.

The Commission is of the view that situations like this should not be allowed to occur. The problem does not lie in the administrative errors of the NRD, but in the insistence of the Islamic authorities to bury someone whom they believe to be a Muslim according to Muslim rites even if it is against the wish of the surviving family. A family's right to have access to the remains and to determine the burial rites should be respected.

12 NRD, National Registration Department

2.2.3 Enforcement of Islamic Moral Code

In October 2006, an American elderly couple, **Randal K. Barnhart** and his wife, had some unexpected visitors at 2 am in their rented condominium in Langkawi. Six men, dressed in blue uniforms from the State Religious Department, pounded on their door accusing them of committing *khalwat* (close proximity). Despite being told that they were Christians, the officers demanded to see his “woman,” marriage certificate and passports. The trauma led the Barnharts to review the plan to make Malaysia their second home. They wanted the State Religious Department to issue a letter of apology and to compensate them RM4,315 for the return tickets and not to bother them again.

During the year under review, the non-Muslim policewomen were ordered to wear **Muslim headscarves** for the police annual parade. Many non-Muslims were perturbed by such precedent. There had also been moves by some local authorities to ban or restrict dog ownership¹³ and prosecute couples for holding hands or kissing in public. Some deem such acts as inappropriate in a multi-religious, multi-racial country, while others feel strongly the creeping Islamization in the society.

The Commission views with grave concern the increasing trend of moral policing according to the tenets of one particular religion. It is notably disturbing when the moral standards of a particular religion are imposed on the non-adherents. Article 12(3) provides that no person shall be required to receive instruction in or to take part in any ceremony or act of worship of a religion other than his own. By logical extension, a person should not be compelled to order his personal conduct in accordance with the norms of another religion.

13 The conservative Muslims see dogs as unclean.

2.2.4 Banning of Books on Religion

On 22 June, *TheSun* reported that a group of independent writers had asked the government to lift the ban on 18 books. Among them were celebrated academic works on religion and religious studies published by Oxford University Press (OUP): Mathew S. Gordon's *Islam* and John L. Esposito's *What Everyone Needs to Know about Islam*, and *The Battle for God: Fundamentalism in Judaism, Christianity and Islam* by Karen Armstrong who was honoured by the Islamic Centre of Southern California in 1999 for "promoting understanding among faiths."

In a statement, the Writers Alliance for Media Independence (Wami) urged the Ministry to publish its review of the banned books for Malaysian citizens and media to examine its decision. This would be in line with the administration's call for greater transparency and accountability within the government, it said.

2.3 GOVERNMENT ACTION IN RELATION TO RELIGION

2.3.1 Destruction of Places of Worship

The Hindu Rights Action Force (Hindraf) reported that from 22 February to 30 November, 74 Hindu temples were either demolished, threatened with demolition, served with eviction notices, had their deities broken, been torched and burnt down, or forced to relocate next to sewage tanks, among others. Many Hindu temples have been in existence before Malaysia's independence in 1957 or for more than 100 years. It has been estimated that about 90 percent of these temples risk demolition as they are situated on state or private land.

It was reported that Hindraf had brought its concerns to the attention of the Yang DiPertuan Agong, the Malay rulers, the Prime Minister, the Ministers, the Attorney-General, Chief Ministers, the Inspector-General of Police, the local councils and other relevant parties. Despite the 60 or more letters or memoranda submitted throughout the year 2006, there had been no official response from the government.

Acting on behalf of Hindraf and some two million Hindus in the country, lawyer P. Uthayakumar filed a suit against the federal and state governments on 18 December over the demolition of Hindu temples. He was also seeking an injunction against any future demolition until the matter was settled. Up to the end of the year under review, the case had not yet been heard.

In November, an attempt by the Seberang Perai Municipal Council to demolish the ***Tou Mu Kung Temple*** in Bukit Mertajam resulted in a near riot and the arrest of some temple devotees. The devotees became angry when the enforcement team prevented them from entering the building to remove statues of deities and other praying material. The temple, built in

1985, was relocated last year to its current site. Its original site was sold to a property developer and the temple committee later purchased another plot of land to rebuild the temple. The authorities said the temple was built without planning approval even though it stood on its own piece of land. Since being served with the demolition notice, the temple committee had written an appeal for a grace period to solve the matter and had applied for approval of the building plan. Despite, the demolition proceeded to tear down the temple's front portion. Few days later, the Penang Executive Council had reportedly decided that the current site had been earmarked for future road expansion and the temple must therefore move. Sufficient time would be given for the relocation, it claimed.

2.3.2 Action against non-orthodox Muslims

According to the *Star Online*, two preachers belonging to the Ibrahim Bonjol sect were detained by JAIS in September. JAIS officers came in amid the sermon attended by about 40 followers. The preachers, both in their 50s, would be charged in the *syariah* court for unlawful activities.

The sect, outlawed through a *fatwa* (religious decree) issued in 1998, originated from Indonesia and has been active in Paya Jaras and Sungai Buloh in Selangor. The sect was said to sanction solemnisation of marriage without a *wali* (father or guardian) and allow men to freely socialise with women as long as their intentions are good. The followers can say prayers in their hearts instead of carrying out the ritual if they are busy with work.

2.3.3 Conflict of Laws

The problem of setting up a generally accepted mechanism to determine the legal status of persons who have left the religion of Islam continues unabated in 2006. The Federal Court in the 1999 *Soon Singh* case ruled that civil courts had no jurisdiction in this matter and that the power to

make decision belonged exclusively to the *syariah* court.

The Commission, in its 2005 Report, has pointed out that there are people who are caught in between the civil law and the *syariah* law, having no access to justice from either system. Besides the question of burial, the conversion of a person to Islam poses various problems to his or her non-Muslim family members. They would be denied of their inheritance rights if they choose not to follow the new religion of the converting family member. This is a form of discrimination. The non-Muslim spouse would also be denied the custodial right because, under the Islamic law, the guardianship of children is given to the Muslim party only. Children who are born after the conversion would be considered as Muslims without any say from the non-Muslim parent. By virtue of a broad definition of “Muslim” in the state Islamic enactments, the existing children would also be deemed as Muslims. In other words, they are automatically denied the personal liberty to choose a religion. To compound this inequality and injustice, affected individuals cannot obtain legal redress because the civil courts refuse to exercise jurisdiction to consider their complaints. As non-Muslims, they cannot petition the *syariah* courts for relief.

Nyonya Tahir, an 89 year-old Malay woman who was reportedly a practising Buddhist since young, died in January 2006. The Negeri Sembilan Religious Affairs Department (JHEAINS) obtained a *syariah* court order to postpone her burial until the case was heard in the *syariah* High Court concerning her religion status. Satisfied with the documents, exhibits and statements provided by the witnesses, the court’s decision was in favour of the deceased’s family. Significantly, this was the first time non-Muslims – Nyonya’s children, Kwai Ying and Ah Fatt – came forward to be witnesses at the *syariah* court. As a result, Nyonya’s body was released to her family for burial according to Buddhist rites.

The case was eventually cited as evidence of *syariah* court’s ability to declare a person’s religious status and to safeguard the rights of the non-

Muslims. The judge himself, however, believed that the ruling should not be considered as precedent setting as it was made based on specific facts of the respective case. In his judgment, he made an alarming statement, quoting the Muslim scholar Syaik Abu Syujak, saying that “a person who had left the Muslim faith should be asked to repent three times and if he did not, he should be killed, his body cannot be bathed according to Muslim rites, prayers cannot be performed for him and he cannot be buried in a Muslim cemetery”.

In November, **Chandran Dharma Dass**, who had converted to Islam and assumed the name Mohamad Arfan, died at age of 28. Following his death, a tussle to claim the body started between the Pahang Religious Department and his Hindu family. According to the Department, the deceased had converted to Islam on 25 Feb 2001 at the Kemaman Islamic Religious Office in Terengganu and did not embrace any other religion after that. Chandran was eventually buried according to the Muslim rites in his hometown in Gopeng, Perak.

Also in November, **A. Rayappan**, 71 years, died of complications related to diabetes at the Kuala Lumpur Hospital. Rayappan had converted to Islam in 1990 and was officially known as Muhammad Rayappan Abdullah. In 1999, he divorced his Muslim wife and returned to Lourdes Mary, his first wife and the family. The surviving family claimed that Rayappan had returned to the Catholic faith as he had renounced Islam by signing a “deed poll” which was submitted to the NRD on 10 May 1999. He had successfully changed his name. In the deed poll, Rayappan had also stated that he would be using the name “Rayappan Anthony” in all documents. His religion was listed as Christian in the MyKad.

On 1 December, the Selangor Islamic Affairs Council (MAIS) obtained an order from Shah Alam *syariah* court to claim Rayappan’s body (subject to the endorsement of the Federal Territory *syariah* court). The order was later revoked for a review. Subpoenas were issued to the daughters to

testify on their father's religious status. Refusing to submit themselves to the jurisdiction of the *syariah* court, the daughters did not turn up. The *syariah* judge then decided to refer to the *syariah* Court of Appeal for a decision.

The next day, MAIS dropped its claim citing not having "enough evidence to back its case". The body was then released to his Christian family for burial. MAIS chairman Datuk Mohamed Adzib Mohd Isa said the decision was made after consulting the state mufti, the state legal adviser and its panel of *syariah* lawyers. The notice of discontinuance was filed at the *syariah* High Court.

The Commission expresses its grave concerns over the cases mentioned above. The civil courts have evidently abdicated their responsibility to adjudicate on the religious status of persons caught between the civil law and *syariah* law systems. The non-Muslims trapped in such legal entanglement have nowhere to turn to but the civil courts, which time and time again, turn them away. While there have been suggestions for them to seek legal recourse at the *syariah* courts, non-Muslims must not be compelled to submit to the Islamic jurisdiction. This would not only contravene List II of the Ninth Schedule of the Federal Constitution, it would also constitute a violation of the non-Muslims' rights under Article 11. Some *syariah* scholars, based on the Nyonya Tahir case, have proposed non-Muslims to voluntarily consider seeking remedy at the *syariah* court. It is still unconstitutional, in the opinion of this Commission, because *syariah* courts are empowered by the Federal Constitution to have jurisdiction over Muslims only.

The Commission is also greatly perturbed by the manners of which certain matters relating to marriage dissolution are being handled. For a marriage contracted under the Law Reform (Marriage & Divorce) Act 1976, all matters relating to its marriage dissolution including maintenance and custody of children are within the jurisdiction of the civil courts. The

syariah courts have jurisdiction only in cases where both parties involved are persons professing the religion of Islam. However, there appears to be an assertion of jurisdiction by the *syariah* courts over matters of a civil marriage when one spouse converts to Islam.

The impunity demonstrated by some parties in exploiting the dual-legal system pertaining to family law results in the non-Muslim party being excluded from the process of adjudication, as a *syariah* court has no jurisdiction over a non-Muslim. Orders will be made in his or her absence. This is a gross violation of the Rule of Law, the Constitutional guarantee and protection of equality before the law under Article 8 of the Federal Constitution.

The injustice demonstrated in cases like Moorthy and Subashini has not only violated the Rule of Law but has also made a mockery of the principal national precept, the supremacy of the Constitution. Non-Muslims, who cannot invoke the jurisdiction of the civil courts but face the prospect of *ex parte* orders handed down by the *syariah* court, are cordoned off in a judicial no-man's land. Effectively, they become a class of citizens with rights but without remedies.

2.4 INTER-FAITH ISSUES

2.4.1 The Silibin Incident

On 5 July 2006, based on an unfounded SMS rumour, a large crowd of angry Muslims, including representatives of several Islamic non-governmental organisations, gathered at the Church of Our Lady of Lourdes in Silibin, Ipoh to stop an alleged mass conversion of Muslims to Christianity. The national solo sailor, Datuk Azhar Mansor, was said to be conducting the baptism. It was then found out that it was only a “first holy communion” ceremony for some 110 children of Indian origin. The crowd however refused to budge, wanting to wait until the function was over. The police had to dispatch a team of the Federal Reserve Unit to keep watch on the situation. Such irrational response towards a malicious rumour nearly caused a racial riot in Ipoh. The police pledged to track down the author of the SMS.

The Commission is concerned that religious issues have been inflamed by certain parties to the point of mob action. It is disturbing to note the roles played by certain prominent Islamic officials. Religious leaders should exercise their influence to promote harmony and understanding between religions rather than aggravating existing tensions.

2.4.2 Action against Proselytization

In February, the *Mufti* of Perak announced on the national television that there were close to 250,000 Muslim apostates in Malaysia. This included 100,000 Malay Muslims who had declared themselves Christians, 100,000 who were in the process of filing for apostasy while the rest were filing to have their Muslim name changed to “other religious name.”

The controversial statement provoked some Islamic quarters. In March,

PAS announced its intention to table a private member's Bill in Parliament to make it an offence for a Muslim to leave the religion. The proposed Prevention of Apostasy Bill would require the apostates to be sent for rehabilitation, but it would not prescribe a punishment for those who do not repent.

In July, a group of Muslim lawyers formed a movement to defend Islam from what they perceived as attacks against the religion. *Pembela* (or Lawyers in Defence of Islam), headed by the former Bar president, Zainur Zakaria, stated its priority as clearing the misconception on the status of Islam based on recent court cases of apostasy and conversion to Islam.

On 21 August, the Prime Minister called on the states to enforce laws to stop the spread of other beliefs among Muslims.¹⁴ Four states, namely Federal Territories, Penang, Sabah and Sarawak, had yet to legislate laws to prevent proselytization among the Muslims. The Prime Minister urged these states to consider the matter in order to preserve racial harmony in the country. Article 11(4) of the Federal Constitution allows the states to pass laws to “control or restrict the propagation of any religious doctrine or belief among persons professing the religion of Islam.” The four states concerned had reportedly agreed to pass the necessary laws to restrict the spread of other religious beliefs among the Muslims.

In November, the participants at the “Convention on Freedom of Religion and the Issue of Apostasy: Towards Practical Solutions” called for the death penalty to be meted out for the apostates, or alternatively, the preventive detention power under the Internal Security Act 1960 be used against

14 On 11 August 2006, the executive secretary of the ‘Front’ Bertindak Anti-Murtad (Frokad), Abdullah Abdul Karim, urged the government to promptly investigate the Church of Our Lady Fatima at Brickfields which was alleged to have baptized Lina Joy on 11 May 1988 (Harakah Daily, 11/8/2006). About ten days later, the Prime Minister had called on the states that have yet to enforce laws to restrict propagation of non-Islamic religions to Muslims to implement them.

them. The convention was organised by the Islamic Law Department of the International Islamic University of Malaysia Law Faculty and the *syariah* Judiciary Department of Malaysia.

2.4.3 Threats against Religious Liberty Advocates

In August, certain Islamic websites posted the photographs of the lawyers representing Lina Joy in her appeal to the Federal Court and described them as the enemies of Islam. Lawyer, Malik Imtiaz, who held a watching brief for the Bar Council and who spoke in support of Lina Joy's appeal, received death threats.

Expressing its concern in a public statement, the Council of Churches of Malaysia "wholly and unreservedly condemns the circulation of posters with the intent to intimidate and threaten all lawyers representing Lina Joy in her case which is currently before the Federal Court."

2.4.4 Action against Article 11 Forums

On 14 May 2006, a forum on "The Federal Constitution: Protection for All" organised by Article 11 (a coalition of 13 groups) in Penang was forced to an abrupt end due to a protest by some 500 people. The forum, which had the required police permit and was attended by about 200 people, started as scheduled but was interrupted by a group in the hall. The hecklers stood up accusing the organisers of holding the forum without a permit. Plainclothes policemen seated in the crowd told them to calm down. To contain the situation, police advised the organisers to end the forum two hours before the scheduled time. Only three of the five speakers had spoken.

The Penang forum was the third in a series of roadshows. It was to promote awareness of an open letter that called on the government to uphold the supremacy of the Constitution in the wake of concerns raised by recent

court cases involving Nyonya Tahir, Sjn M. Moorthy and S. Shamala and the increasing claims of Malaysia as an Islamic state.

On 21 July, the Article 11 forum in Johor Bahru proceeded without any untoward incident with an overwhelming police presence quelling the fears of a violent clash with the anti-apostasy protesters. The 300 protesters were reportedly members of the opposition party PAS and non-governmental organisations from as far as Kuala Terengganu, Penang, Kota Baru and Alor Star. They were calling for a total elimination of any attempt to form an IFC (inter-faith council) or use constitutional provisions against Islam. They also demanded for the Police Act to be used to halt proceedings. The group, led by Johor PAS commissioner, Dr. Mahfuz Mohamad, marched right up to the hotel steps chanting various slogans in Malay and Arabic interspersed with *do'a* (prayer) and recital of Qur'anic verses.

2.5 RELIGIOUS POLARISATION

In October, Mohd Fauzi Mustaffa, the *syariah* Department head of Takaful Malaysia, created an uproar when he issued an internal e-mail forbidding company's employees from wishing Hindus "Happy Deepavali" because wishing "Happy Durga Pooja", "Happy Lakshmi Pooja" and "Happy Deepavali" was deemed as expressing greetings to the Hindu Gods. It was blasphemous and against the Islamic teaching. The email also advised those who had "committed the sin of extending such greetings" to immediately repent. Subsequently, Takaful apologised and retracted the directive. The Prime Minister had personally expressed his unhappiness over the incident.

It is disturbing to note that after 50 years of social experimentation, Malaysian society remains deeply divided along racial and religious lines. The specific problems outlined above represent the point of contact and tensions between the conflicting interests of the country's religious communities. It is regrettable that law and policies have become instruments by which religious expansion in the public sphere has been achieved. The Commission calls for a renewed effort on the part of all religious communities to enter into dialogue and to cooperate with each other for amicable solutions to common problems. The Government should play a leading role in mentoring Malaysians to pursue the path of tolerance, respect and peace.

2.6 POLITICIANS EXPLOITING RACIAL AND RELIGIOUS ISSUES

Despite attempts to paint the proceedings of the UMNO General Assembly as "normal", the inflammatory speeches clearly crossed the bounds of civility, decency and, as some have argued, public order. As with previous Assemblies, there were numerous thinly veiled threats of violence against those who did not support the Malay agenda. For the second year

running and despite a previous public outcry, the president of UMNO Youth, Dato' Seri Hishamuddin Tun Hussein, brandished a *kris* (a Malay dagger) at the Assembly, as a symbol of the protection of special Malay privileges. In his speech, he warned those who raised questions about Article 11 and Article 121(1A) of the Federal Constitution (concerning religious liberty and the role of the *syariah* courts) that there would be "big consequences". This led Datuk Hashim Suboh, the Deputy Chief of the Kangar division to ask Dato' Seri Hishamuddin, since he had drawn the *kris* on two occasions, when he would use it to actually stab, adding that "force must be used against those who refuse to abide by the social contract."

In other speeches, Encik Hasnoor Sidang Hussein, a delegate from Malacca, said that "UMNO is willing to risk lives and bathe in blood to defend the race and religion. Don't play with fire. If they mess with our rights, we will mess with theirs." Youth executive council member, Dato' Azimi Daim, in his speech, said, "When tension rises, the blood of Malay warriors will run in our veins." Terengganu Youth information chief, Encik Razali Idris, reminded the audience that "Malay rights cannot be challenged, or else the Malays will run amok and May 13 will recur." Among other things, these speeches were clearly aimed at stopping the discourse on a number of significant and current inter-religious and inter-ethnic issues. Despite a much welcomed conciliatory closing speech by the party president, YAB Dato' Seri Abdullah Haji Ahmad Badawi, and an unprecedented reprimand issued by UMNO's management committee to the delegates concerned, many UMNO members continue to play the racial-religious card with relative impunity. Given the domestic and international furore at the speeches made, the practice of televising the proceedings is likely to be discontinued.

3 CONCLUSION

Since the Religious Liberties Commission's reports began, there has been a noticeable degeneration of religious tolerance and an increase in the use of political, legislative, judicial and administrative authority to decide and enforce decisions that favour an austere and dogmatic brand of Islam over other religions, and at the cost of basic human rights. When even forums organised to uphold the Federal Constitution are allowed to be disrupted and called-off without any consequences to the illegal actions of the perpetrators, a reasonable person will have cause to seriously doubt the sincerity of the government in power and any claims of religious tolerance and harmony.

The Commission insists that it is both the right and responsibility of every citizen to protect the Constitution and also to question the constitutionality of actions that are taken even by the government itself. When this right and responsibility is contravened, for example, by mob actions or the threat of violence and death, the government must intervene, regardless of race and religion, to uphold the rule of law. We note with deep regret that this has not been the case and the lack of action may be encouraging even more religious extremism.

The Commission calls for recognition that non-Muslims have absolutely legitimate complaints, particularly with respect to the formulation and administration of laws in a way that denies natural justice to a citizen. Natural justice is denied to the non-Muslim spouse of a Muslim convert, especially with respect to child custody, divorce settlement and inheritance. Natural justice is denied to non-Malays who wish to convert out of Islam but face the prospect of incarceration. Natural justice is denied to the family of former Muslims who have died and who want the deceased to be buried according to their religious rites. Natural justice is denied to any petitioner who appears before a court

of law where the judges are compelled to rule based on their religious beliefs rather than the laws of the land and the merits of the case. Natural justice is denied when political leaders make, and are allowed to make, racist and seditious statements and issue threats of violence.

The present lacuna in the Federal Constitution must be addressed. Action to rectify Article 121(1A) and previous landmark Federal Court cases cannot be postponed indefinitely given that the number of cases currently awaiting the decision of the Federal Court has grown and will only grow longer over time. In the meantime, social pressures that affect the judges' ability to come up with fair and impartial decisions can only continue to build. With due respect for the present administration's noble intentions, and appreciating the difficulties in containing the religious and racial radicalism, the Commission appeals for open, fair and transparent actions to defend the rights of ethnic minorities. Short of firm actions to back up its righteous ideals, the present situation can only deteriorate further and faster and we cannot look forward to documenting the state of religious liberties in the year ahead. Ω

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