

Religion, Human Rights and Constitutional-Contract Politics in Malaysia

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Abstract: The debate about human rights in Malaysia took a new turn in the early twenty-first century when it started to focus on the issue of religious freedom. The proponents of secular-liberal notion of religious freedom argued that religious and racial harmony would be better achieved if Malaysians of all races and religions enjoy absolute religious freedom, which includes the right to renounce Islam. However, the secular-liberal approach to religious freedom, contrary to the expectation of its proponents, accentuates religious and racial division in Muslim-majority Malaysia.

Keywords: Malaysia, religion, human rights, racial harmony, social contract

The purpose of this study is to analyse the contest between a group which is intent upon a modern liberal interpretation of universal human rights principles and values and the group insisting on communally-based constitutional-contract politics in Malaysia. Constitutional-contract politics refers to the politicisation of the terms of the political compromise achieved by leaders of the major communal groups in Malaysia prior to independence in 1957. The major terms of the compromise such as the special position of the indigenous Malays, the non-indigenous community's right to citizenship, Malay as the national language and Islam as the religion of the Federation were entrenched in the Federal Constitution. The emerging new liberal human rights struggle revolves mainly around resistance to religious laws and practices which sit uneasily with a modern liberal interpretation of universal human rights principles

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and values. The Islamic mainstream, however, formed coalitions to defend the Islamic faith as well as its communitarian values and “special” constitutional position from the liberal challenge.

Though the new human rights struggle may not be altogether “new,” its predominance in the discourse of law and human rights in Malaysia is a recent development. As the proliferation of liberal legal meanings subsequent to the reformation movement begun in 1998 (known as *Reformasi*) helped civil society coalitions to oppose repressive laws on the basis that they militate against the principles of individual rights and freedoms, the new human rights struggle attempts to re-define the country’s Islamic religious laws on the same basis. One important aspect of this struggle is a plethora of civil society initiatives against so-called “religious authoritarianism” – a complex constellation of official and un-official Islamic religious laws embedded in state laws and edicts of the *ulamā’* (religious scholars) respectively, the former vigilantly enforced by state religious bureaucrats. Equally noticeable is the Islamic mainstream consisting mainly of Malay-based Islamic organisations, which seeks to reaffirm the special constitutional position of Islam. It is in this context that the proliferation of liberal legal meanings contributes to the pre-eminence of communal politics in Malaysia in which religion rather than ethnicity becomes its main marker.

Freedom versus Authoritarianism: A Conflict of Legal Meanings

Since the mid 1990s, the more liberal sections of Muslim society, such as the Muslim intellectuals in Sisters in Islam (SIS), an organisation consisting of professional Muslim women promoting the rights of women using the more liberal interpretation of Islam, have been critical of the implementation of Islamic criminal and family laws. They view these laws as discriminatory and contrary to the principles of human rights.¹ In the early 2000s, the liberal Muslims formed overlapping coalitions with human rights Non-governmental Organisations (NGOs), non-Muslim religious groups and concerned individuals in opposing the allegedly human rights-infringing Islamic laws contained in the various State Enactments and Acts of Parliament. Guided by common humanitarian rather than ethno-religious communitarian values, these groups attempt to promote personal freedoms, as understood in its essentially Western liberal

concept. They advocate the repeal or review of Islamic laws as well as municipal by-laws, which allegedly infringe the principles of human rights and equality. These include prohibition of gambling, drinking liquor, close proximity between unmarried couples and other “indecent behaviour” ranging from “indecent” dressing to participating in beauty contests and patronizing night clubs. These laws have their roots in ethno-religious communitarian doctrine – and are based on Islamic religious texts as interpreted by traditional Islamic religious scholars, often according to the *Shafi’*e school of thought, the religious denomination to which the majority of Malays belong.

The emergence of the view which rejects the primacy of ethno-religious communitarian underpinnings in defining the parameters of what is legally right or wrong, and which prioritises common humanitarian values in guiding state laws and individual behaviour, is indicative of a major shift in the understanding of state law. That emerging view not only rejects ordinary illiberal state laws that infringe on fundamental human rights, the legitimacy of which has been increasingly questioned by *Reformasi*-leaning activists across social, political and religious divisions; but it also opposes state religious laws, the legitimacy of which rests upon a “conservative” interpretation of the sacred religious texts.² It is in this context that the politics of “common humanitarian values,” which militates against the compartmentalisation of the common human race through vigilant enforcement of ethno-religious legal edicts applicable only to Muslims, collided with the politics of “defenders of the faith” which seeks the maintenance of those ethno-religious legal edicts, as embedded in state law.

There have been fierce contests within the civil society between the “liberal” camp (comprising SIS, most secular human rights NGOs and non-Muslim religious groups) and the “conservative” camp (consisting of mainstream Islamic organisations such as the Muslim Youth Movement of Malaysia, ABIM, and the Islamic Reform Movement of Malaysia, JIM, and a host of other Islamic organisations) vying for moral and political authority to guide people’s behaviour and influence state policies. At the core of these contestations are different sets of legal meanings which seek to define the parameters of legitimate state law. As Migdal puts it, there exist

in society “multiple sets of law including those opposed to the state, others not controlled by the state but not necessarily in opposition to it, and still others complementary to state law.”³ That contest has been marked by opposing coalitions within the civil society, one pushing towards liberal reform and the other pulling towards maintenance of the religious status-quo. This, as yet, unresolved struggle between the two camps can be observed in a number of campaigns and initiatives for religious freedom and the debate that has followed.

Anti-Moral Policing Campaign

In early 2005, a multiracial and multi-religious coalition of human rights activists launched a campaign against moral policing by state Islamic and municipal authorities. This initiative was significant in the sense that it offered a different interpretation of basic tenets of Islam and attempted to convince the public that religious interpretations should not be monopolised by a group of conservative ‘*ulamā*’ (religious scholars), the hitherto authoritative interpreters of religion. Put simply, it attempted to challenge the mainstream-defined Islamic legal meanings by offering alternative interpretations of Islamic legal precepts which are based on the Qur’ānic texts and prophetic traditions, but are also infused with modern-liberal perspectives on universal human rights principles and values.

Sisters in Islam (SIS), a strong opponent of moral policing and campaigner for individual liberties, views the religious authorities’ zeal in enforcing Islamic moral laws as violating both the Qur’ānic spirit of morality and fundamental human rights.⁴ They buttress their arguments by quoting such Qur’ānic verses as “Do not spy nor backbite one another” (*Sūrah al-Ḥujurāt*, 49:12), “Do not enter houses other than your own, until you have asked permission and greeting the occupants [saluting the inmates]” (*Sūrah al-Nūr*, 24:27), and the like. The Qur’ānic verses and sayings of the Prophet (SAW) were quoted to support the organisation’s claim that moral policing, as practised by religious authorities in various raids on unmarried couples, night club patrons and gamblers, has no basis in Islam. The statement concluded in liberal style by stating that “the balance between law and morality must be decided by society in a democratic manner and not through legislation driven from above with no public

support nor public discussion.” In another joint statement, the anti-moral policing campaigners maintained that the question of “how people dress and where, how and with whom they socialise” should be best left to their personal choices, indicating the group’s sanctification of the individual’s private space in regard to matters of personal freedom. The opponents of moral policing argued that the use of punitive religious and municipal laws to regulate morality “results not in a more moral society but a mass of terrified, submissive and hypocritical subjects.”⁵

The Anti-Moral Policing Campaign launched in March 2005 was triggered by the arrests of about 100 Muslim patrons of the Singapore-owned Zouk night club in Kuala Lumpur by the Federal Territories Religious Department (JAWI) enforcement officers during a raid in January 2005. The religious officers claimed that those arrested were dressed indecently or had consumed alcohol. The anti-moral policing campaigners, who called themselves Malaysians Against Moral Policing, not simply protested the arrest but also questioned the state’s role in defining the morality of its citizens and the use of punitive religious and municipal laws to curb immorality and indecency. Their campaign called for the repeal of provisions in religious and municipal laws that deny citizens their fundamental right to privacy, freedom of speech and expression, and those that overlap with the federal penal code.⁶ It also called for the appointment of a committee to monitor the process of repealing these laws, including representation from women’s groups, human rights groups, civil society organisations, progressive religious scholars and constitutional experts; and the strengthening of pluralism through community dialogue on the issue of morals in the society.

The campaign was endorsed by about 50 NGOs and more than 200 individuals including prominent government and opposition politicians.⁷ Most of these NGOs had been in the forefront of the 1998 *Reformasi* movement. Three opposition political parties – the Democratic Action Party (DAP), Parti Keadilan Nasional (KeADILan, National Justice Party) and by then the unregistered *Parti Sosialis Malaysia* (PSM, Malaysian Socialist Party) – also endorsed the campaign. Earlier, a women’s group called Joint Action Group Against Violence Against Women (JAG), which consists of Women’s

Aid Organisation (WAO), Women's Development Collective (WDC), Sisters in Islam (SIS), All Women's Action Society (AWAM) and Women's Centre for Change (WCC), also opposed the Zouk raid, citing unprofessional conduct of religious officers against women detainees.⁸ As a result of the various protests, none of those arrested were charged in the Syariah court because, according to Abdullah Mat Zin, the Minister in the Prime Minister's Department (the de-facto Islamic Affairs Minister), of the "lack of evidence which warrants prosecution."⁹ The cabinet also discussed the arrest and ordered a review of religious enforcement powers, including requiring future raids to be carried out only with police approval and in the presence of senior police officers.¹⁰ The Cabinet also ordered the newly formed 4B Youth's "*Mat Skodeng Squad*" (Snoop Squad), which was set up to spy on Muslim couples, to stop their activities.¹¹

In response to the Anti-Moral Policing Campaign, a coalition of mainstream Islamic organisations launched a counter-campaign to defend the enforcement of Islamic moral laws. About 50 Islamic organisations including ABIM, JIM, PKPIM, Malaysian Ulama' Association (PUM), Malaysian Chinese Muslim Association (MACMA) and Indian Muslim Youth Movement of Malaysia (GEPIMA) issued a joint statement claiming that the campaign "has caused confusion and ambiguities about the concepts of prevention of sin and the limits of individual freedom in Islam."¹² The organisations maintained that prevention of sin, especially by the government, is a manifestation of the principles of *hisbah* and *al-amr bi al-ma'rūf wa al-nahy 'an al-munkar* (enjoining good and forbidding evil) which are central to the teachings of Islam.¹³ The group also maintained that although the weaknesses in the implementation of those laws should be properly addressed by the authorities, by no means should they be made an excuse to justify the repeal of those laws. Sharing the same sentiment was the National Fatwa Council, which consists of state muftis and religious scholars who urged the government in its April meeting to uphold the Islamic concept of "enjoining good and forbidding evil" by enforcing those laws more responsibly.¹⁴

As the Anti-Moral Policing Campaign claimed to be a non-partisan initiative aimed at promoting the rights of individuals in choosing

their moral life, and thus essentially not a threat to the existing political regime, some *Barisan Nasional* (BN, National Front) politicians also expressed their support for the campaign. The Minister in the Prime Minister's Department, Mohamad Nazri Aziz, described the arrest of over 100 Muslims at the Zouk night club as an action akin to those under Afghanistan's infamous Taliban rule. He supported the memorandum to repeal the ostensibly rights-infringing Syariah and municipal moral laws by stating that "no one religion should dominate the private lives of Malaysians in general."¹⁵ In a rare display of solidarity between government and opposition Members of Parliament, the bi-partisan Parliamentary Caucus on Human Rights, with the exception of PAS's representative, endorsed the anti-moral policing memorandum.¹⁶

But the endorsement of the campaign by UMNO ministers like Mohamad Nazri, Rais Yatim (Minister of Arts, Culture and Heritage) and Azalina Othman Said (Minister of Youth and Sports), did not represent a consensus within the ruling party. UMNO Secretary-General and Minister in the Prime Minister's Department (the *de facto* Law Minister) Radzi Sheikh Ahmad shot down the campaign and described the demands made by its advocates as "unreasonable." Echoing the same sentiment was the Minister in the Prime Minister's Department (the *de facto* Islamic Affairs Minister) Abdullah Mat Zin. He claimed that the demands made by the anti-moral policing advocates "would only worsen the situation as it could spiral out of control."¹⁷ An outspoken Member of Parliament from UMNO, Badruddin Amiruddin, even accused the anti-moral policing campaigners as traitors for attempting to split the Muslim community. Other party leaders openly supported the actions by the Federal Territories Religious Department (JAWI) officers in conducting the raid on Muslim party goers.

Beneath the surface of these advocacies and counter-advocacies lies longstanding ideological contest between the Islamists and the secularists who since the 1998/99 *Reformasi* had participated in a common struggle for political and legal reforms. The mainstream Islamic organisations, while reiterating their commitment to democracy, human rights and pluralism, rejected what they viewed as a process of secularisation pursued by the anti-moral policing campaigners.¹⁸ This secularisation, they argued, was indicated by

the campaigners' insistence on relegating religion into private space, subjecting observance of religious duties to the whims and fancies of individuals, while rejecting religious authorities' role in enforcing religious laws. Understandably, the campaign was viewed by the mainstream Islamic groups as an attempt to push religion out of the public space in the name of human rights and individual liberties, a process closely associated with secularism. The government, responding to the protests from the Muslim majority, shot down the initiative and promised to retain all laws on morality including the Syariah laws in order to safeguard the moral of Malaysians.

The Interfaith Commission of Malaysia

The outcry over moral policing by religious authorities led a group of human rights organisations, a professional organisation, a number of liberal Muslim organisations and non-Muslim religious groups to propose the formation of an Interfaith Commission of Malaysia (IFCM), a statutory body that would have functions and powers similar to those of the Malaysian Human Rights Commission (SUHAKAM).

The idea for such an interfaith body was first conceived by the Human Rights Committee of the Bar Council and HAKAM on December 10, 2000. A multi-faith committee which included mainstream Islamic organisations as members was then set up to discuss the formation of a multi-faith Inter-Religious Council (IRC).¹⁹ In August 2001, the Malaysian Consultative Council of Buddhism, Christianity, Hinduism and Sikhism (MCCBCHS) submitted a memorandum to the Human Rights Committee of the Bar Council on August 22, 2001 "outlining the main problems in relation to the freedom to profess and practice one's religion faced by members of the non-Muslim communities." The problems stated in the memorandum included the absence of the legal right to revert to one's former religion after converting to Islam, the stating of Muslim religious identity on identity cards which causes problems for apostates from Islam, the illegality of inter-religious marriage, the difficulties faced by non-Muslim family members to claim the body of Muslim apostates upon their death, difficulties in obtaining approval for the construction of non-Muslim places of worship and the ban on the Malay-language Bible.

The MCCBCHS' memorandum became an issue of much contention when mainstream Islamic organisations in the committee rejected reference to the memorandum as the basis for the formation of the inter-religious council. This resulted in their withdrawal from the committee in mid 2003.²⁰ Despite strong objections from Islamic groups such as ACCIN (Coordinating Committee of 14 Islamic NGOs) and ABIM, as well as the International Movement for Just World (JUST), the committee proceeded to organise a workshop "Toward the Formation of an Inter-Religious Council" on May 17, 2003. The Workshop resolved to propose the setting up of a "statutory body whose primary objective shall be to advance, promote and protect every individual's freedom of thought, conscience and religion with a view to promote harmonious co-existence (of different religious communities) in Malaysia."²¹ Initially, SIS boycotted the workshop due to the committee's failure to build common understanding among the faith groups, but later rejoined the initiative.

The committee then proceeded to draft an Interfaith Commission of Malaysia Bill, which was presented for discussion at the National Conference Toward the Formation of the Interfaith Commission of Malaysia in February 2005. The Bill, in concurrence with the points of agreement achieved in the May 2003 Workshop, enumerated the main functions of the proposed commission, which, among others, included clauses to "advance, promote and protect every individual's freedom of thought, conscience and religion" (41a); "identify values and ethical standards universal to all religions, faiths, beliefs and ways of life with a view to promoting the same" (41b); "identify and recommend ways in which harmonious interfaith co-existence in larger society can be promoted and achieved with a view to (promoting) national harmony and unity" (41c); "receive, address and make recommendations in respect of complaints or grievances brought by persons, bodies or organisations in connection with the individual right to profess and practice his religion or faith of choice" (41d); and "recommend to the Government with regard to the subscription or accession of treaties and other international instruments in the field of religious harmony" (41i).

The draft Bill reflected an attempt to substitute the ethno-religious statist conception of legal meanings in relation to laws which regulate matters of religion with those based on universal principles of human

rights and individual liberties. For instance, the draft Bill (Clause 2) defines “infringement of religious harmony” as including “any act or omission which has as its effect the nullification or impairment of the recognition, enjoyment or exercise by any person or community of persons of his or their freedom of thought, conscience, religion or belief *as prescribed by international norms*” (emphasis mine). The draft Bill’s reference to universal human rights principles as prescribed by international norms as a basis for religious harmony was a clear departure from the ethno-religious statist legal meanings in two ways.

First, it contradicted the limited mainstream Islamic legal position on freedom of religion. Though most of the Islamists do not deny a person’s right to profess and practice religion of his or her choice, they adopt a much stricter view in regard to the right of a Muslim to convert into other religion, or to apostatise, which is considered a serious crime in Islam. Some of the states in Malaysia like Pahang, Perak, Kelantan, Sabah and Malacca criminalise apostasy. Only Negeri Sembilan has a clear procedure on application for renouncing Islam. The State’s Administration of Islamic Law Enactment 1991 (Amended 1995) provides for Muslims to declare renunciation of Islam at the state Syariah High Court. All states in Malaysia, except Penang, Sabah, Sarawak and the Federal Territories, restrict propagation of religious doctrines and beliefs other than those of Islam among Muslims. Such restriction is authorised by Article 11(4) of the Federal Constitution. Second, its propagation of religious freedom and equality among religions as a basis for religious harmony is a clear departure from the statist illiberal conception of the Constitution.

The Malaysian State, apart from giving a special position to Islam as the state religion, has instituted various restrictive laws, such as the Sedition Act, the Internal Security Act and the various State laws which restrict the propagation of non-Muslim religions among the Muslims, the objective of which, the government claims, is to regulate inter-ethnic and inter-religious relations in order to maintain racial and religious harmony. By making such references in a Bill intended to be presented to the government for consideration, the advocates of IFCM challenged not only the mainstream legal meanings of religious freedom, but also the illiberal statist vision of

fundamental liberties. The Bill in essence reflected the proliferation of new legal meanings along the lines of universal principles of human rights and individual liberties within the broader political space following the 1998/99 *Reformasi*.

As expected, strong protests emerged from the ACCIN and its affiliated organisations, as well as the Syariah Committee of the Bar Council. In a joint memorandum against the proposed Interfaith Commission of Malaysia, ACCIN described the proposal as essentially anti-Islam and therefore urged the government to reject it.²² The organisation quoted several items in the MCCBCHS' memorandum to the Bar Council to substantiate its claim. These items related to matters of law and administration such as suggestions that: (a) the identity card should not disclose a Muslim's religion, (b) the civil courts rather than the Syariah courts should have jurisdiction to determine the right of a Muslim to renounce Islam, and (c) Article 11 of the Federal Constitution (freedom of religion) should be interpreted in tandem with international human rights instruments. ACCIN also referred to juristic matters that it claimed were specifically internal to Islam. These included suggestions that Muslims should have the right to renounce Islam and nobody should be regarded as a Muslim by reason of both parents being Muslim. ACCIN believed that the motive for the formation of IFCM was based on the MCCBCHS' memorandum, which it described as non-Muslims' interference in Islam. The organisation believed that such an attempt would "imperil rather than ensure communal harmony."

The committee submitted the proposed Bill to the government in March 2005. Copies of the Bill were sent to the Prime Minister, Deputy Prime Minister, two Cabinet Ministers and the Attorney-General for consideration. The government, however, called for the proposal to be deferred due to "different levels of sensitivity among the people." Prime Minister Abdullah Ahmad Badawi told the Parliament in March 2005 that the setting up of the commission "may result in complications arising, rather than achieving inter-religious understanding." Instead of forming the commission, the Prime Minister suggested that more interfaith dialogues be held.²³ Minister of Arts Culture and Heritage, Rais Yatim, who had earlier described the initiative as "a milestone event" when opening the conference toward the formation of IFCM in February concurred

with the Prime Minister's decision and urged all parties involved to engage in more informal interfaith dialogues instead. But as the protests against IFCM persisted, the government finally nailed the coffin on the initiative by saying that it would not entertain any more efforts to set up the commission.

The Article 11 Group

Article 11 is a coalition of thirteen NGOs formed in May 2004, the primary aim of which is to uphold the supremacy of the Federal Constitution and to promote religious freedom in Malaysia. Most of these organisations were either involved in advocating the formation of IFCM or supporting the application by Azlina Jailani, a Malay-Muslim woman who converted to Christianity, to drop the word Islam and her Muslim name from her identity card. The joint secretariat of Article 11 was formed by WAO and SIS. The reason for the setting up of Article 11, as its proponents claim, was to fight against the purported injustices meted out to persons like Shamala, a Hindu woman whose husband had converted to Islam. In April 2004, the High Court in Kuala Lumpur granted Shamala custody of her two young children, but with a condition that she must not expose them to the Hindu faith. Her estranged husband had earlier converted their children to Islam without her knowledge.

The civil court rejected her application for a declaration that the conversion was invalid, citing that the correctness or otherwise of their conversion was a matter for the Syariah court to decide. The court's decision, Article 11 claims, violated Shamala's parental right to co-determine the religious upbringing of the children, and as such a serious infringement of her right to religious freedom. Article 11 itself was named after Article 11 of the Federal Constitution which provides for freedom of religion. Shamala's case has been a rallying point for the thirteen NGOs to promote greater freedom of religion among all Malaysians regardless of race or religion.

The coalition insisted that no citizen should be discriminated against on the basis of religion, race, gender, descent or place of birth. It also called for the individual rights to freedom of thought, conscience and belief to be fully respected, guaranteed and protected, while every citizen should have a responsibility to condemn discrimination and intolerance based on religion or belief. Religion

or belief, the organisation emphasised, should support human dignity and peace. On the issue of guardianship of children, it promoted both parents' equal right to guardianship and that children should be protected from any form of discrimination on the grounds of religion, and in all cases, the interests of children should be paramount.

In its open letter to the government, the coalition outlined its position on the supremacy of the Constitution, the nature of the Malaysian state and the right to freedom of religion.²⁴ Apparently, the bone of the coalition's contention was that although Article 3 of the Federal Constitution provides that Islam is the religion of the Federation, the Federal Constitution is the supreme law of the land and Malaysia remains a secular state. It drew the government's attention to the Report of the Federation of Malaya Constitutional Commission, 1956-57, which states that Article 3 "shall not imply the state is not a secular state." It also referred to the Supreme Court decision in *Che Omar Che Soh v Public Prosecutor* in 1988, which reaffirmed that "the law in this country is still what it is today, secular law."²⁵ Based on this perspective, the coalition, in its open letter, criticised the civil courts which generally declined to adjudicate on "pressing issues simply because they involved some elements of Islamic law, leaving litigants without any remedy."

The coalition referred to judicial attitudes toward Article 121(1A), which provides exclusive jurisdiction to the Syariah courts to hear cases on matters relating to Islamic law. The coalition thus called upon the government and the judiciary to uphold the supremacy of the Federal Constitution; to ensure governance in accordance with the Federal Constitution and premised on the universal values of all Malaysian peoples; to reaffirm that Malaysia shall not become a theocratic state; and to recognise the proper position of the judiciary within the constitutional framework, as an independent and equal arm of Government. Article 11 member organisations had been calling upon the government to repeal or amend Article 121(1A) to enable the civil High Courts to hear cases, which by virtue of the said Article, are strictly within the jurisdiction of the Syariah courts.

Article 11 sought to raise people's awareness about the supremacy of the Federal Constitution and the individual right to freedom of religion through public discussions in a series of nationwide "road

shows.” Its first two public forums held in Petaling Jaya and Malacca on March 12 and April 21, 2006 respectively ran smoothly. About 200-300 participants, mostly non-Muslims, attended the forums. However, its third public forum in Penang on May 14, 2006 met fierce opposition from Muslims led by a group called *Badan Bertindak Anti-IFC* (BADAI, Anti-IFC Action Front). About 1000 protesters gathered in front of the Cititel Hotel along Penang Road, where the public forum “Federal Constitution: Protection for All” was held. The protesters waved banners and placards with words like *IFC Rampas Kuasa Raja* (IFC Seizes (Malay) Rulers’ Powers), *IFC Angkara Zionis* (IFC is Zionist Savagery) and *Batalan IFC* (Stop IFC), indicating their attempt to link the Article 11 initiative with the proposed IFCM. Some of the protesters even joined the forum and engaged in heated arguments with the panelists. As a result, the forum had to be cut short when only three (Honey Tan, Professor Shad Saleem Faruqi and Malik Imtiaz Sarwar) of the five speakers were able to speak.

Another public forum held in Johor Bharu on July 22, 2006 also met with protests from Muslims led by a group called *Front Bertindak Anti Murtad* (FORKAD, Anti-Apostasy Action Front). About 300 protesters gathered outside the hotel venue where the forum was held.²⁶ Similar to the Penang protest, the Johore protesters also held placards and banners with printed slogans such as *Pertahankan Hak Umat Islam* (Defend Muslims’ Rights), *Jangan Cabar Kami* (Don’t Dare Us), *Jangan Ganggu Agama Kami* (Don’t Meddle with Our Religion), *Jangan Sentuh Sensitiviti Islam* (Don’t Touch on Islamic Sensitivities) and *Hancurkan Gerakan Anti-Islam* (Crush Anti-Islam Movement). Tensions ran high and commotion broke out when the organiser refused to call off the forum as demanded by the protesters. The forum proceeded as planned, but with a heavy presence of about 200 police personnel including the riot police.²⁷ This incident again indicates strong contestation between the two contending forces and the possibility of tensions running out of control.

In response to the escalating religious tensions resulting from Article 11’s road shows, which also occurred about the same time that the Azlina Jailani (Lina Joy)’s case was heard at the Federal Court, the government in July 2006 curbed freedom of speech by banning public debate on sensitive religious issues. Describing the

tensions as reaching a “worrying level,” Prime Minister Abdullah Ahmad Badawi warned that such issues “evoke emotions, and when discussed openly, without control, they create anger, and this leads to unwanted situations.”²⁸ The ban was lauded by Islamic organisations, which had earlier opposed the Article 11’s road shows.

The Muslim Professional Forum (MPF) President Dr. Mazeni Alwi welcomed the ban and concurred with the Prime Minister that “issues of religious sensitivity should not be openly debated in the public arena.”²⁹ He condemned the Article 11 advocates for turning the climate of relative openness under Abdullah’s government “into a free-for-all Islam-bashing in the name of championing religious freedom.” In a similar vein, ABIM President Yusri Mohamad urged the Article 11 group not to use a “confrontational” approach in discussing sensitive religious issues like freedom of religion, especially by organising open public debate on the matter.³⁰ As a result of the Muslim protests, the government also dismissed the possibility of amending Article 121(1A) and assured the Muslims that the Syariah courts would retain jurisdiction on matters concerning Islam.

Ayah Pin’s Sky Kingdom

In July 2001, the Terengganu Islamic Affairs Department acted against the followers of Ayah Pin’s *Kerajaan Langit* (Sky Kingdom), a religious cult that had been declared deviant by the Terengganu *Fatwa* (Islamic religious edict) Committee in 1997. Ayah Pin, or Ariffin Muhamad, is a self-styled “spiritual leader” of Malay descent who claimed himself to be the reincarnation of God on earth. He preached that all religions are the same and everybody has the right to submit to God in whatever ways they wish. An anonymous person who claimed to be an ex-member of Ayah Pin’s sky kingdom wrote in *Malaysiakini*, a local internet news source, alleging that the cult leader prohibited Muslims from performing mandatory daily prayers for they had yet to know God.³¹ Four of the cult followers had been sentenced to two years imprisonment in 1998 for attempting to renounce Islam. Ariffin himself was sentenced to 11 months imprisonment by the Syariah court in 2001 for insulting Islam. His followers, who include Malays, Indians, Chinese and a number of foreigners, attended his sermons in a small commune in Hulu Besut,

a district in the interior of Terengganu. The commune itself is home to about 200 cult followers.

Ariffin's teaching could be traced back to the 1980s but his commune came into prominence when a giant teapot, an umbrella tower and other weird structures built on the land housing the commune – which cult members claimed cost millions of ringgits – caught media attention in 2005. Acting on public complaints, Islamic Religious Department enforcement officers and the police broke into the commune on July 2, 2005 and arrested 21 cult members for allegedly possessing documents about teachings which were contrary to Islam. Ariffin and the first of his four wives, however, escaped arrest.³²

On July 20, 2005, a second arrest took place in which 59 cult members, including a New Zealand citizen Judith Lilian, were arrested for breaching the *fatwā* (edict) issued by the Fatwa Committee in 1997 banning the cult. Judith, however, escaped charges as she was a non-Muslim. As for the Muslims, they were charged for the offence and upon conviction would be liable to a maximum of two years imprisonment or RM3,000 fine. On July 31, 2005, the Besut district authorities moved into the commune and destroyed the giant structures, erected on the agricultural land, for violating the National Land Code. Earlier, a group of angry villagers, mostly Malay Muslims, had attacked the commune and torched the structures. By August 2005, most of the residents deserted the commune, leaving only about 10 families who “had no other place to go.”³³

The Ayah Pin's Sky Kingdom episode became the bone of contention between the promoters of absolute religious freedom and the defenders of Islamic faith. It is in this context that there had been calls for the use of restrictive laws against the cult followers as a means to preserve the sanctity of Islamic faith. A threat to the Islamic faith was viewed as a threat to national security. The Religious Adviser to the Prime Minister, Abdul Hamid Othman, for example, said that Ariffin was a threat to national security and thus should be detained. Perak Mufti and member of National Fatwa Council, Harussani Zakaria, shared this view and urged the government to use the Internal Security Act (ISA) against Ariffin and his followers to contain their activities and influence. Ayah Pin's Sky Kingdom,

Harussani claimed, was a “government-within-the-government,” which was a serious threat to national security.³⁴

The Terengganu NGOs Action Front, which consisted of 12 Malay-based national and local NGOs in Terengganu, called upon the government to detain Ariffin under the ISA. In a memorandum submitted to the Prime Minister on July 21, 2005, the movement claimed that the activities of Ayah Pin’s cult for the past 30 years “endangered the Muslim *ummah*.”³⁵ The memorandum also mentioned foreigners’ involvement in the cult and the moral and financial support it allegedly received from international organisations thus constituting a threat to national security and public order.

On the other side of the fence stood human rights NGOs which were perturbed by the government’s apparent persecution of members of a “minority religious sect” and the infringement of their right to freedom of religion. SUARAM filed a formal complaint with the United Nations Special Rapporteur for Freedom of Religion, alleging state-led persecution against Ariffin and his followers. In a letter to the UN Special Rapporteur dated August 15, 2005, SUARAM said the organisation had learnt that the “followers of the minority religious sect have pursued their faith in a peaceful and law-abiding way” and that “none of their activities have in any way infringed other people’s rights or threatened social order.” Thus, SUARAM viewed their arrest and detention as “unlawful and arbitrary and the authorities’ action against them as totally uncalled for.”³⁶ SUARAM also viewed the action against Ariffin and his followers as a deprivation of their fundamental human rights enshrined in the Universal Declaration of Human Rights. Not only that, the human rights organisation named Prime Minister Abdullah Ahmad Badawi and several others involved in the “persecution” of the cult members as “perpetrators (sic) of human rights.”³⁷ SUARAM’s position on Ayah Pin Sky Kingdom signified a challenge to the limited statist ethno-religious legal meaning of freedom of religion, preferring instead a wider interpretation based on the principles enshrined in international instruments. By saying that the cult members did not do anything wrong in law, the organisation in essence was trying to put in question the legitimacy of state Islamic laws which authorised state actions against them.

The Shamala and Mohamad Abdullah @ Moorthy Case

Malaysia's dual legal system - syariah and civil legal systems - proves to be cumbersome when it comes to the conversion of a non-Muslim spouse to Islam. This is when the question of dissolution of marriage, child custody and maintenance criss-crosses the two legal systems. The converting spouse normally approaches the Syariah court for legal remedies, while the non-converting spouse goes to the civil courts.

The Shamala litigation illustrates such a legal limbo. In November 1998, Shamala Sathiyaseelan and Dr. Jeyaganesh were married in a Hindu ceremony. Four years later, the husband converted to Islam and subsequently converted their two minor children to Islam without the wife's knowledge. The marriage eventually broke down. In December 2002, Shamala initiated legal proceedings at the civil High Court, seeking custody of her two children. The matter was fixed for hearing in January 2003, but on the defendant husband's (whose Muslim name was Muhammad Ridzuan) request, was postponed several times until March 2003. In the meantime, Muhammad Ridzuan, through his solicitors on January 7, 2003 filed an application in the Selangor Syariah High Court for an *ex-parte hadanah* (custody) order.

On May 8, 2003, the Selangor Syariah High Court granted him the order. But as the civil High Court on April 17, 2003 had granted an interim custody order to Shamala, the Syariah High Court's *hadanah* order did not change her right to custody.³⁸ Meanwhile, Shamala applied for a civil High Court's order that her children's conversion to Islam was null and void, claiming her right that as the children's natural mother, she had the right under Article 12(4) of the Federal Constitution to determine their religion. However, the Kuala Lumpur High Court on April 13, 2004 dismissed her application on the ground that under Article 121 (1A) of the Federal Constitution, the Syariah Court is the only qualified forum to determine the religious status of her two children, whom the court considered as Muslims at the time the application was made. High Court Judge Faiza Tamby Chik referred to a letter from the Federal Territory Mufti saying that the children were automatically converted to Islam, when one of the parents embraced Islam and the conversion was effective even though one parent opposed it.³⁹

The High Court's decision was criticised by human rights NGOs and non-Muslim organisations. Pushpa Ratnam, a legal officer at the All Women's Action Society (AWAM) described the decision as akin to "slamming the door shut on Shamala's rights as a mother."⁴⁰ The National Evangelical Christian Fellowship of Malaysia (NECF) carried an article in its newsletter which says that "Shamala's case not only illustrates the dilemma of a dual-legal system and infringement of the rights of non-Muslims when their spouses embrace Islam, it also raises the imminent issues on the question of public confidence in the law of the land and the judiciary."⁴¹

The Bar Council President, Kuthubul Zaman Bukhari, commented on the case saying that the right to decide a minor's religion is "an issue of parental right, rather than an issue of religion."⁴² MCCBCHS President Harcharan Singh described the decision as "the last straw in a series of decisions that have systematically emasculated the civil courts vis-a-vis the Syariah Courts." Harcharan further said that the situation in which "a non Muslim parent can have her children converted against her will by her estranged husband" is utterly unjust. He thus called for protection "to those from minority religions in Malaysia on an urgent and immediate basis."⁴³

The issue of conversion to Islam is even more complicated than meets the eye when the Muslim convert dies without his family knowing that he had converted to Islam. The legal battle over who has the right to bury the dead and according to which religious rites had caused considerable tensions in a multi-religious and multiracial society such as Malaysia. The litigation of Mohamad Abdullah @ Moorthy illustrates this point. M. Moorthy, an army commando who became famous as the first Malaysian to climb Mount Everest in 1997, converted to Islam in October 2004 without the knowledge of his wife and family members. He continued to live with his family until he died on December 20, 2005.

The legal battle ensued when the Syariah High Court on December 23, 2005 ordered the Kuala Lumpur Hospital to release his body to the Federal Territory Islamic Religious Council (MAIWP) for burial according to Muslim rite. Syariah High Court Judge Mahayuddin Ibrahim said that Mohamad had converted to Islam and there was no evidence that he had been made an apostate by any Syariah court in the country. A day before the decision was made Mohamad's

Hindu wife Kalliammal filed an originating summons at the High Court seeking an injunction to restrain the Islamic religious council from claiming Mohamad's body from the hospital. On the day the Syariah High Court made the decision, she once again filed an application for an interim injunction at the Kuala Lumpur High Court. She also asked the court to declare null and void all documents pertaining to Mohamad's conversion to Islam and that he never embraced Islam.⁴⁴ Meanwhile, the Kuala Lumpur Hospital, after negotiating with the parties involved, retained Mohamad's body pending High Court decision on Kalliammal's application.

The application was heard on December 27, 2005 and two days later High Court Judge Datuk Mohamed Raus Sharif ruled that the High Court had no jurisdiction to decide on the question of whether Mohamad had converted to Islam because the issue falls within the jurisdiction of the Syariah court. He said his decision "is in line with Article 121(1A) of the Federal Constitution which states that the Civil Courts have no jurisdiction regarding matters over which the Syariah Court has been vested jurisdiction by the written law."⁴⁵ Mohamad's body was then surrendered to the Federal Territory Islamic Religious Council (MAIWP) for burial according to Muslim rite, despite protests from the deceased's Hindu family.

Mohamad Abdullah @ Moorthy's litigation again raised the issue of freedom of religion and the right of religious minorities. Malaysia Hindu Sangam President Datuk A Vaithilingam regretted the lack of legal protection given to non-Muslims, while the Muslim community is fully protected by the law. A coalition of 35 Hindu-based NGOs submitted a memorandum to the King (*Yang di-Pertuan Agong*) on January 9, 2006 requesting the King to "take into account the feeling of the minority and advise (government) officers to take necessary action."⁴⁶ The legal and constitutional side of the issue moved to higher ground when non-Muslim religious groups and NGOs called for the amendment of Article 121(1A) of the Federal Constitution which gives exclusive jurisdiction to the Syariah courts to decide on matters relating to the administration of Islamic law.

MCCBCHS called upon the government to give powers to the High Court, not the Syariah Court, to determine the validity of conversion into and out of Islam so that "all Malaysians can be parties and have equal rights as witnesses."⁴⁷ Catholic Archbishop

Datuk Murphy Pakiam urged the government to consider repealing Article 121(1A) and “restore sovereign power to the civil courts to rule in cases involving non-Muslims in Islamic affairs.”⁴⁸ A DAP-organised roundtable discussion held on January 5, 2006 passed a resolution that the decisions by the Syariah courts should be open for review by the civil high courts. HAKAM President and human rights lawyer Malik Imtiaz Sarwar, speaking at the roundtable discussion, advocated the repeal of Article 121(1A) in order to avoid jurisdictional conflict between the Syariah and the civil courts.⁴⁹

These calls met protests from Islamic groups. A coalition of Muslim organisations called the Syariah Law Action Committee condemned the resolution reached at the parliamentary roundtable discussion. A statement issued by the coalition’s secretary Azmi Abdul Hamid said “the resolution, if accepted by the government, would degrade the status of Syariah judicial system and subordinate it to civil judicial system like the situation was during the colonial era.”⁵⁰ In a separate statement, ABIM called upon the government to retain Article 121(1A) as it is.

The call for review of Article 121(1A) and protection for non-Muslim rights reached new heights when nine non-Muslim cabinet ministers, led by MCA President Datuk Seri Ong Ka Ting, submitted a memorandum on non-Muslim rights to the Prime Minister on January 19, 2006. The memorandum, which was drafted in consultation with NGOs, especially the MCCBCHS, called upon the government to review Article 121(1A), amend laws that allow only one parent to convert children below 18 years of age and rectify conflicts between Syariah and civil laws.⁵¹

On January 20, 2006, about 200 Muslim students gathered at the national mosque in Kuala Lumpur to protest against the proposal to amend Article 121 (1A). The participants in the protest included members of PAS-linked Coalition of Peninsular Muslim Students (GAMIS), ABIM-linked National Union of Muslim Students’ Association of Malaysia (PKPIM) and JIM-linked Malaysian Islah Students’ Peer Group Club (KARISMA). A joint statement issued by the three Muslim student organisations urged the government to retain the powers of the Syariah courts as contained in Article 121(1A). In response, the Prime Minister announced that there would be no changes to Article 121(1A).⁵² UMNO Supreme Council

member and Perlis Chief Minister, Shahidan Kassim, backed the Prime Minister's decision and described the move by the nine non-Muslim ministers as an open criticism of the government. All the non-Muslim ministers, except the Minister in the Prime Minister's Department, Bernard Dompok, withdrew the memorandum.⁵³

The Lina Joy (Azlina Jailani) Case

The debate over the right of Muslims to renounce Islam reached a new height when the Federal Court in June 2006 heard an application by Azlina Jailani, a Malay-Muslim woman, to remove the word Islam from her identity card. Azlina claimed that she had converted to Christianity in 1990. In 1997, she applied to the National Registration Department to change her name to Lina Lelani, stating her conversion to Christianity as the reason. The application was rejected and she made a second application in March 1999 to change her name to Lina Joy but stated the same reason. She received no reply to her second application. In July 1999, she was told by an NRD officer that she should not mention conversion to Christianity as the reason for name change for it would complicate her application. She then resubmitted her application with a new Statutory Declaration sworn on August 2, 1999.

In October 1999, the NRD approved her application and asked her to apply for replacement identity card. Meanwhile, the National Registration Regulation 1990 had been amended, which came into force retrospectively on October 1, 1999, to require that the identity card should state the particulars of religion for Muslims. When Azlina applied for the replacement identity card on October 25, 1999, she stated Christianity as her religion in the application form. As a result, her application was rejected. She then made a third application in January 2000 and asked that the word "Islam" and her original name be removed from her replacement identity card. The NRD refused to accept her application stating that the application was incomplete without an order of the Syariah court to the effect that she had renounced Islam.⁵⁴

Azlina challenged the National Registration Department's decision to require her to obtain the Syariah court order as a proof of her conversion. Her application was rejected by the High Court and the Court of Appeal. When the matter was heard before the

High Court, Justice Faiza Tamby Chik held that, since the plaintiff was still a Muslim, by virtue of Article 121(1A) of the Federal Constitution, the finality of her conversion out of Islam was within the competency of the Syariah Court, not the Civil Court.⁵⁵ The majority decision of the Court of Appeal, with Justice Gopal Sri Ram dissenting, upheld the High Court's decision on the same ground.⁵⁶ The question before the Federal Court was whether the National Registration Department had correctly construed its powers under the National Registration Regulations 1990 to require Azlina to produce a certificate from the Syariah Court as a proof of her conversion to Christianity. The bone of the appellant's contention, as lead counsel Cyrus Das argued, Azlina could profess and practise the religion of her choice without prior declaration by the third party (i.e. the Syariah court) on her religious status, because the right to profess and practise the religion of one's choice is a right under Article 11(1) of the Federal Constitution.⁵⁷ This argument is yet another attempt at offering an alternative liberal legal meaning to that given by the Islamic mainstream in regard to the legal position on freedom of religion involving Muslims as embedded in State law.

As Lina Joy's case generated intense public concern, the Federal Court, in a rare occasion, had allowed a number of interested organisations which held watching briefs to submit their opinion before the court. Taking a more liberal line, the Bar Council, the National Human Rights Society and the Malaysian Consultative Council for Buddhism, Christianity, Hinduism and Sikhism submitted that Azlina's declaration that she is a Christian was a good proof of her religious identity. As such, requiring her to subject herself to the jurisdiction of the Syariah Court, which only had jurisdiction on Muslims, was a violation of her right to freedom of religion under Article 11 of the Federal Constitution.⁵⁸

Representing the Islamic mainstream, ABIM, Muslim Lawyers Association and Syarie Lawyers Association on the other hand submitted that Article 11 uses the words "profess" and "practice," which means if a person wishes to convert out of Islam, he or she must do so in accordance with the laws and regulations of the religion. As determination by the Syariah Court on the status of Azlina's conversion is in accordance with Islamic law, requiring

such determination does not contravene Article 11.⁵⁹

The Federal Court in May 2007 dismissed Azlina's appeal, with two Muslim judges, Chief Justice Ahmad Fairuz Sheikh Abdul Halim and Justice Alauddin Mohd Shariff in the majority and a non-Muslim judge, Justice Richard Malanjum dissenting. Delivering the majority decision, Chief Justice Ahmad Fairuz said:

There was no final decision that the appellant had no longer professed Islam. Thus, the statement that the appellant could no longer be under the jurisdiction of the Syariah Court because the Syariah Court had only jurisdiction on persons professing Islam should not be emphasised accordingly. The way a person renounced from a religion should be in accordance of the regulation or law or practice determined or stipulated by the religion itself The freedom of religion under Article 11 of the Federal Constitution required that the appellant complied with the rituals or law of the Islamic religion specifically regarding renunciation of the religion. Once the decision of the religion of Islam had been complied and the religious Islamic authority admit (sic) her apostasy then only could the appellant profess Christianity.⁶⁰

Stressing that a Muslim who intends to renounce Islam must exercise his right in the context of Islamic law, the Chief Justice added:

Islam is not only a collection of dogma and rituals but it is also a complete way of life comprising all kinds of human, individual or public, legal, political, economic, social, cultural or judicial activities. And when reading Articles 11(1), 74(2) and item 1 in second list of the Ninth Schedule of the Federal Constitution it was obvious that Islam among others included of (sic) Islamic law. Hence, if a Muslim intends to renounce from Islam, he is actually exercising his rights in the syariah law context which has its own jurisprudence relating to apostasy.⁶¹

It is noteworthy that the Bar Council and a host of NGOs which had earlier advocated the formation of IFCM supported Azlina's application. These NGOs include SIS, Interfaith Spiritual Fellowship, MCCBCHS, SUARAM, HAKAM and Pure Life Society.

Islamic organisations on the other hand formed two main coalitions in an attempt to defend the Islamic faith against yet another

“onslaught” on its sanctity. The first was *Peguam Pembela Islam* (PPI, Lawyers in Defence of Islam), formed on July 12, 2006, comprising Muslim lawyers led by former President of the Bar Council Zainur Zakaria. PPI gave priority to tackle the “partisan stand” taken by the Bar Council on cases of apostasy, as well as to counter moves by certain quarters within the Bar to “liberalise” the Federal Constitution.⁶²

The second coalition, which consists of a broader range of Islamic organisations, included the PPI, *Pertubuhan-Pertubuhan Pembela Islam* (PEMBELA, Organisations of Defenders of Islam), formed on July 16, 2006 and led by ABIM. PEMBELA’s main objective is to raise awareness among Malaysian Muslims about the attempts by secular-oriented NGOs and some liberal Muslims to liberalise the constitution by advocating the right to renounce Islam, which the organisation believes constitutes a serious challenge to Muslim faith and a bold attempt to undermine the special constitutional position of Islam in Malaysia.⁶³ It has done so by organizing public forums, *ceramahs* and seminars as well as sending memoranda to the government.⁶⁴ In its memorandum to the Malay Rulers and the Prime Minister, which it submitted together with 701,822 supporting signatures, PEMBELA urged the *Yang di-Pertuan Agong* and the Malay Rulers, as the Heads of the Religion of Islam, to “defend the special constitutional position of Islam in Malaysia.”⁶⁵ It also urged the government to take necessary actions against “those who attempt to question the special position of Islam in the country and promote skewed understanding of the Muslim faith.” Other demands included the maintenance of exclusive jurisdiction of the Syariah courts as stated in Article 121(1A) of the Federal Constitution; amendment to Article 11 of the Federal Constitution by inserting clear provision subjecting the right to freedom of religion to *Hukum Syarak* (Islamic law); and for the states which have yet to pass laws restricting propagation of non-Muslim religions among the Muslims, as provided under Article 11(4) of the Federal Constitution, to immediately pass the laws.

But also high on PEMBELA’s agenda was to funnel Muslims’ resentment in a more contained way so as not to jeopardise racial harmony and law and order. In the memorandum submitted to the Malay Rulers and the Prime Minister, the organisation reminded that

“any efforts or actions taken to solve problems related to sensitive issues of religion must be based on the principles of rule of law and the supremacy of the constitution, and must not in any way jeopardise inter-religious and inter-ethnic relations in the country.”⁶⁶ Despite this reminder, several incidents raised the spectre of mob rule. In August 2006, anonymous Short Messaging System (SMS) texts were widely circulated threatening Malik Imtiaz Sarwar with death. Malik is a Muslim human rights lawyer and President of National Human Rights Society (HAKAM) who strongly advocates the formation of IFCM and who had appeared in courts either representing or supporting applications by Muslims to renounce Islam. In the Azlina Jailani litigation, Malik held a watching brief for the Bar Council supporting Azlina’s application.

There were also malicious SMS texts which claimed that the Federal Court had decided in favour of Azlina’s application, giving rise to increased anxieties among the Muslim population. In both cases, PEMBELA denied involvement and condemned those responsible for making such malicious claims. But such condemnation does not stop beleaguered Muslims from believing in “rumors” easily spread through modern channels of communication, and being jolted into protests and demonstrations in the name of defending the Islamic faith against a clear and imminent danger of aggressive proselytisation. On November 5, 2006, about 300 Muslims gathered in front of the Church of Our Lady of Lourdes in Ipoh to protest against the conversion of Muslims to Christianity, in which the “National Sailor” Azhar Mansor was said to be involved, after receiving a false SMS text on the event. The event turned out to be the first Holy Communion service for about 100 Catholic Indian children. Riot police from the Federal Reserve Unit (FRU) had to be called in to disperse the angry crowd.⁶⁷ A Muslim couple was arrested in relation to the fake SMS case, in which Perak Mufti Datuk Seri Harussani Zakaria, a strong antagonist of liberal Islam, was also implicated.

As the Ipoh incident indicates, apostasy has always been a taboo to Muslims. More often than not, the Islamic mainstream is willing to “defend” their faith in whatever ways possible. Though public gatherings without a police permit are illegal in Malaysia, the Muslim protest in Ipoh suggests that State law is less important when it comes

to defending Islam against real or perceived threat. More pronounced were calls by certain parties within the Islamic mainstream urging the government to use detention without trial law under the ISA against the apostates in lieu of death penalty which is even harsher. In this instance, there is a tendency to liken apostasy to a threat to national security which, according to some traditional jurists, warrants the death penalty.

Echoing this view was a law lecturer at the International Islamic University Malaysia, Zulkifly Muda. He said, during a conference on apostasy held at the university on November 29, 2006, “in the absence of *hudud* laws, ISA can be used against the apostate in order to protect the religion.”⁶⁸ Though his view was not shared by many of his colleagues at the conference, citing the lack of judicial review under the ISA as one of the reasons, ABIM President Yusri Mohamad agreed that ISA can be used “in the extreme or worst-case scenario where certain apostates are threatening peace and order and their activities suggest grave security consequences and the authorities have trouble compiling the evidence to prosecute.”⁶⁹ Yusri’s view caused a stir within the *Gerakan Mansuhkan ISA* (GMI, Abolish ISA Movement), of which ABIM is a member organisation. GMI Chairman Syed Ibrahim Syed Noh called upon Yusri to clarify his statement while maintaining that ISA is a draconian law which should be abolished. Mixed views within the Muslim community on the use of restrictive laws as a means to protect the sanctity of the Islamic faith and maintain national security suggested that perceived or real threats against Islam are likely to restore the semblance of legitimacy to the use of restrictive laws such as the ISA in Malaysia’s multiracial and multi-religious society. To what extent the Islamic organisations, which since 1998 had been at the forefront of the *Reformasi* movement fighting alongside the secular NGOs against the excesses of state powers, will pursue this hard-line approach to law and religion remains to be seen.

Conclusion

It seems that the proliferation of liberal legal meanings, especially the attempt to catapult to prominence the more liberal interpretation of state laws on religious freedom, had reinforced communalism as the main basis of interest articulation and political mobilisation in

Malaysia. Since the 1998 *Reformasi*, overlapping coalitions of non-governmental organisations, non-Muslim religious groups and some politicians had been openly advocating wider interpretation of personal liberties and religious freedom based on secular human rights principles and libertarian values, and had promoted equal rights and privileges for followers of non-Muslim religions. This has put them in direct confrontation with the Islamic mainstream which views such advocacy not only as a threat to the special constitutional position of Islam, but also a challenge to the fundamental principles of the Islamic faith. In the face of such a “threat,” whether perceived or real, the “defenders of the Muslim faith” across ethnic divisions mobilised communal support and, to a certain extent, aligned themselves with the government to defend the sanctity of Islam.

The non-Muslim faith-based organisations, too, mobilised support from their religious communities and worked hand in hand with human rights NGOs to press for greater space for religious freedom. Religion rather than ethnicity has become an important marker of this new phase of communal politics. The politics of constitutional contract had been reinforced with both sides trying to portray the Constitution as either Islamic or secular. This raised the spectre of the communally-based constitutional contract politics, which rests primarily on the mobilisation of distinct ethno-religious consciousness to pursue communal and religious interests.

Notes

1. See for example SIS’s Memorandums on various issues relating to Islam and the Muslims in Malaysia [online] available at <http://www.sistersinislam.org.my/advocacy-memo.htm>, accessed on June 18, 2007.
2. The word “conservative” is used to refer to the majority view among the traditional Islamic legal scholars.
3. Joel S. Migdal, “Why Do So Many States Stay Intact?” in *Weak and Strong States in Asia Pacific Societies*, ed. Peter Dauvergne (Canberra: Allen & Unwin, & RSPAS, ANU, 1998), 24.
4. See SIS press statement “Moral Policing Violates Qur’anic Spirit and Fundamental Rights” [online] available at <http://www.sistersinislam.org.my/Letterstoeditors/010205.htm>, accessed on February 20, 2005.

5. See Joint Statement entitled “The State Has No Role in Policing Morality” [online] available at <http://www.petitionspot.com/petitions/mamp>, accessed on December 7, 2006.
6. These included Section 29 of the Syariah Criminal Offences (Federal Territories) Act 1997 and Section 31 of the Syariah Criminal Offences (Selangor) Enactment 1995 which makes it an offence for a Muslim who, contrary to Islamic law, acts or behaves in an indecent manner in any public place; Section 9 of the Syariah Criminal Offences (Federal Territories) Act/ Section 12c of the Syariah Criminal Offences (Selangor) Enactment which make it an offence for a Muslim to defy the *fatwas* (religious edicts) of a Mufti.
7. Joint Statement, “State Has No Role in Policing Morality” [online] available at <http://www.sistersinislam.org.my/mamp/endorsees.htm>, accessed on June 17, 2007. The NGOs include Sisters in Islam (SIS), *Suara Rakyat Malaysia* (SUARAM, Voice of Malaysian People), National Human Rights Society (HAKAM), *Aliran Kesedaran Negara* (ALIRAN, Movement for National Consciousness), All Women’s Action Society (AWAM), International Movement for a Just World (JUST), Malaysian Youth and Student Democratic Movement (DEMA), Malaysian Trade Union Congress (MTUC), *Pusat Komunikasi Masyarakat* (KOMAS, Centre for Community Communication) and *Universiti Bangsar Utama* (UBU).
8. *The Malay Mail*, January 27, 2005.
9. *Malaysiakini*, April 14, 2005.
10. *The Star*, March 25, 2005.
11. Ibid. Formed in 1965, the 4B Youth is one of Malaysia’s oldest youth organisations associated with UMNO. 4B stands for *Bersatu* (to unite), *Belajar* (to learn), *Bekerja* (to work) and *Berkhidmat* (to serve).
12. See Joint statement titled “*Pencegahan Maksiat dan Salah Laku Moral Harus Dipertahankan*” (Prevention of Sins and Immoral Conduct Should Be Defended) dated March 31, 2005 [online] available at <http://www.abim.org.my/web/modules/news/article.php?storyid=515>, accessed on November 30, 2006.
13. The *Hisbah* refers to a state religious institution to carry out the responsibility of enjoining good and forbidding evil.
14. *The Straits Times*, April 16, 2005.
15. *The Star*, March 25, 2005.

16. PAS Youth Chief and Member of Parliament Salahuddin Ayub withdrew from the Human Rights Caucus after disagreeing with its decision to support the anti-moral policing campaign. *Malaysiakini*, April 8, 2005.

17. *Malaysiakini*, April 14, 2005.

18. See the Joint Statement [online] available at <http://www.abim.org.my/web/modules/news/article.php?storyid=515>, accessed on November 30, 2006.

19. A similar inter-religious committee was set up during the premiership of Tun Hussein Onn. The committee was disbanded after Tun Hussein resigned as the Prime Minister in 1991.

20. The Islamic groups could not accept the idea of the right of Muslims to renounce Islam. Interview with Azril Mohamad Amin, ABIM Vice President, August 19, 2005, Kuala Lumpur.

21. See Points of Agreement “Towards the Formation of an Inter-Religious Council Workshop” dated May 17, 2003.

22. See ACCIN’s “Memorandum on the Proposed Inter-Religious Commission to the Government of Malaysia” dated January 25, 2005.

23. *Malaysiakini*, March 17, 24, 2005.

24. See Article 11’s “Open Letter: Reaffirming the Supremacy of the Federal Constitution” [online] available at <http://www.article11.org/02OpenLetter.htm>, accessed on December 3, 2006.

25. *Malayan Law Journal*, 2(1988):55.

26. *Malaysiakini*, July 22, 2006.

27. *Ibid.*, July 22, 2006.

28. *New Straits Times*, July 26, 2006.

29. See “Issues of Religious Sensitivity Should not be Openly Debated in the Public Arena: MPF” [online] available at <http://myislamnetwork.net/portal/modules/news/print.php?storyid=55>, accessed on June 19, 2007.

30. *Harakah daily*, August 4, 2006.

31. *Malaysiakini*, May 26, 2005.

32. *Ibid.*, July 4, 2005.

33. *Ibid.*, August 12, 2005.

34. *Ibid.*, July 20, 2005.

35. *Ibid.*, July 21, 2005. The NGOs were the 4B Youth Movement, Malaysian

Association of Youth Clubs (MAYC), *Gabungan Pelajar Melayu Semenanjung* (GPMS, Peninsular Malay Students' Association), Terengganu Young Professional Movement, Malaysian Muslim Youth Club, ABIM, Terengganu Literature Society, Terengganu Young Entrepreneurs Assembly, Terengganu Bestari Association, Silat Gerak Sejati Association of Terengganu, Sultan Mahmud College ex-Boys Association and MARA Junior College ex-Boys Association (Ansara).

36. *Ibid.*, August 17, 2005.

37. *Ibid.*

38. See *Shamala Sathiyaseelan v Dr Jeyaganesh C Mogarajah*, *Malayan Law Journal*, 2 (2004): 241. The interim order gave Shamala the custody of the children while Muhammad Ridzuan was allowed to see them over the weekends, but not to take them out of Alor Setar where they lived.

39. *Bernama*, April 13, 2004.

40. See Pushpa Ratnam's article "Law and Equity Shuts its Doors on Women: The Realities of a Spouse's Conversion to Islam" [online] available at <http://www.aliran.com/monthly/2004b/7f.html>, accessed on December 6, 2006.

41. See Lim Sew Foong's article "Courts Causing Confusion" [online] available at <http://www.necf.org.my>, accessed on December 6, 2006.

42. *Aliran Monthly*, 24, no. 4 (2004).

43. See Harcharan's statement "Last Straw in a Series of Decisions - MCCBCHS Aghast at the Situation" [online] available at http://www.ccmalaysia.org/press/release%2020040416_mccbchs.htm, accessed on December 6, 2006.

44. *Bernama*, December 23, 2005.

45. *Ibid.*, December 28, 2005.

46. *The Star*, January 10, 2006.

47. *New Straits Times*, December 29, 2005.

48. *Ibid.*, January 12, 2006.

49. *Ibid.*, January 6, 2006.

50. Mohd Azmi's statement [online] available at <http://www.umno-reform.com/URnews/bantahan121A.htm>, accessed on December 6, 2006. The coalition included the Malaysian Institute of Syariah Research and Development (ISRA), Ulama' Association of Malaysia (PUM), Ulama' Association of Kedah (PUK), Secretariat for the Assembly of Ulama' for Asian Region (SHURA), Malaysian

Syari'e Lawyers Association (PGSM), ABIM, JIM and Movement for Malay Empowerment (TERAS).

51. *New Straits Times*, January 20, 2006.

52. *Ibid.*, January 21, 2006.

53. *New Sunday Times*, January 22, 2006.

54. *Lina Joy v Majlis Agama Islam Wilayah Persekutuan & Ors* [2007] 4 MLJ 585.

55. Article 121 (1A) provides exclusive jurisdiction to the Shari'ah court on matters pertaining to Islam. See judgment by High Court Judge Faiza Tamby Chik in *Lina Joy v Majlis Agama Islam Wilayah Persekutuan & Anor* in *Malayan Law Journal*, 2 (2004):119.

56. See judgement by Court of Appeal Judges Abdul Aziz Mohamad, Ariffin Zakaria and Gopal Sri Ram in *Lina Joy v Majlis Agama Islam Wilayah Persekutuan & Ors* [2005] 6 MLJ 193.

57. *The New Straits Times*, July 5, 2006.

58. *Malayan Law Journal*, 4 (2007): 585, 610.

59. *Ibid.*, 611.

60. *Ibid.*, 595.

61. *Ibid.*, 596.

62. See *Malaysiakini*, July 13, 2006.

63. See Pembela's pamphlet "Frequently Asked Questions on the Azlina Jailani (Lina Joy) Case."

64. The first gathering was held in Kuala Lumpur on July 23, 2006 attended by about 10,000 Muslims. *Malaysiakini*, July 24, 2006. Some of these *ceramahs* were foiled by the police. Informal discussion with Azril Mohd. Amin, ABIM Vice-President, August 25, 2006, Kuala Lumpur.

65. See Pembela's "Memorandum to the Malay Rulers and the Prime Minister of Malaysia" [online] available at <http://myislamnetwork.net/portal/modules/news/print.php?storyid=105>, accessed on December 2, 2006.

66. *Ibid.*

67. *Malaysiakini*, November 6, 2006.

68. *Malaysiakini*, November 29, 2006.

69. *Ibid.*