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Article 11 - setting the record straight

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I am the current president of the National Human Rights Society (Hakam). Hakam is a member of the coalition which calls itself 'Article 11'. You would have read about the controversy surrounding the road-show currently underway. The forum in Penang held in May was disrupted by protestors. The forum in Johor Bahru held earlier this month was almost disrupted and was regrettably shortened, again due to protestors. There is a significant amount of material on the web in the Bahasa Malaysia which, while doing many things, chiefly presents a distorted picture of not only what Article 11 is attempting to achieve but also the way things are. These distortions have perhaps unfortunately become the foundation of the prime minister's caution as reported in the media yesterday. I believe it is essential to set the record straight, not only for the security of those concerned but also for the sake of the nation.

The Article 11 initiative is in no way connected with the Interfaith Commission initiative. They are separate initiatives, with very different objectives. Unfortunately, unscrupulous parties have twisted this state of affairs and presented the objectives of both initiatives as not only being highly objectionable but also as being connected. It should be borne in mind that the Interfaith Commission initiative was aimed at making the government aware of the benefits in establishing a statutory non-adjudicative body which could, through recommendations, assist the government of the day in shaping coherent policies pertaining to religious harmony. A draft bill was endorsed by a national conference in February 2005 and, together with a plenary statement, presented to the government. That is when all formal efforts pertaining to the proposed commission ended.

The Article 11 initiative is, however, aimed at creating awareness of the Federal Constitution, the guarantees provided therein and the concept of rule of law against increasing assertions that Malaysia is - in law - an Islamic State. In presenting the Federal Constitution, the initiative has at no point sought to question the status of Islam as the official religion of Malaysia - it is what the Constitution says, after all. Neither has the initiative sought to challenge or attack the administration of Islamic Law nor the esteemed position of the Malay Rulers.

The initiative has however shown that the provisions in the constitution relating to Islam have a context and, amongst other things, are to be read in the light of the constitutional declaration that the Constitution is the supreme law of Malaysia. The context being suggested by Article 11 is not that of the members of Article 11, the organisers or even the speakers at their forums. The context being suggested is one which the courts of this country have recognised. The suggestion that Malaysia is a secular country has recently been wrongly attributed to persons who have unfairly been characterised as trouble makers intent on attacking the

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administration of Islam. That is wholly incorrect. The statement is one of declared law. In 1988, the Supreme Court decision in Che Omar Che Soh, declared:

'... we have to set aside our personal feelings because the law in this country is still what it is today, secular law, where morality not accepted by the law is not enjoying the status of the law ... Until the law and the system is changed, we have no choice but to proceed as we are doing today.'

The law stands as that decision of the Supreme Court has not been reversed or departed from. In fact, during the recent Lina Joy Federal Court appeal, the court asked whether it was being asked to depart from the principle in Che Omar Che Soh. Counsel opposing the appeal answered in the affirmative, indicating an acceptance that declared law in this country is as it stands in Che Omar Che Soh.

We must not confuse the crucial distinction between a country in which the majority are Muslims, and is thus an Islamic country, and a country in which the supreme law is the syariah, an Islamic state. In Che Omar Che Soh, the Supreme Court stated:

'If it had been otherwise (an Islamic State), there would have been another provision in the Constitution which would have the effect that any law contrary to the injunction of Islam will be void. Far from making such provision, (the Constitution), on the other hand, purposely preserves the continuity of secular law prior to the Constitution ...'

As an illustration, the Pakistani constitution has provisions which declare the syariah law as the supreme law of Pakistan, and any laws inconsistent with the syariah as being void. The Malaysian Constitution does not. Furthermore, our constitutional history clearly reflects that the thinking of the alliance leaders and all key stakeholders in the period leading to the establishment of the Federal Constitution. That while Islam was to be given protected status, as a matter of law and the application of law, Malaysia was to be a secular, Westminster-style democracy. This thinking, having gone to the establishment of the free nation of Malaya and then later, Malaysia, with its gloriously pluralist, multi-racial, multi-religious make up, cannot be dismissed as being mere opinion.

In view of this, it is grossly unreasonable for various parties to have characterised Article 11 as having challenged the status of Islam as the official religion and the status quo. Article 11 has not done so, in fact, it has championed the law including the declaration of Islam as the official religion of the Federation. Conversely, it is its detractors who have, through distortion and by preying on religious and racial sensitivities, sought to challenge the status quo. It is this very process of mixing religion, politics and the rule of law resulting in the ensuing confusion that Article 11 has been cautioning against. Regrettably, this process is gaining ground.

This is not say that I or Article 11 condemn those who aspire to put in place around them a complete system based on syariah principles. That aim should, however, be achieved through constitutional process, that is constitutional change. The Federal Constitution, in as much as it is a living document, cannot be subverted through reinterpretations inconsistent with the objectives underlying the Federal Constitution when it was introduced in 1957.

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That would be amount to a hijacking of the Federal Constitution and the social contract it put in place.

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