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## The Office of Haris bin Mohamed Ibrahim

23<sup>rd</sup> August, 2001.

The Chairman,  
Human Rights Committee,  
Bar Council of Malaysia,  
No. 5, Jalan Tun Perak,  
50050 Kuala Lumpur.

Dear Sir,

Re : Towards An Inter – Religious Council - A Summary Of Incidences

I refer to the abovementioned matter and now render hereinbelow a summary of incidences together with supporting documentation, where available, for the consideration of the pro-tem committee.

1. Complaint by a group of 29 individuals as regards the unconstitutionality of the proposed Restoration Of Faith Bill

On 25/9/2000, 29 individuals, all Malaysian citizens who profess the religion of Islam, submitted a complaint to SUHAKAM that should the above referred proposed legislation become law, it would constitute an infringement of their constitutional rights guaranteed under Article 11(1) of the Federal Constitution.

A copy of the full text of the complaint is annexed hereto and marked "A".

I am obliged to disclose now, before proceeding further, that I am one of the 29 individuals abovementioned.

As the 29 individuals were not able to obtain a copy of the proposed legislation, their stated concerns proceeded on the assumption that in the main, the proposed legislation did not depart substantively with the enactment passed by the Perlis Legislative Assembly. A copy of the Perlis Enactment is annexed hereto and marked 'B'.

In section 2(1) of the Perlis Enactment, "attempt to change aqidah" is defined to mean 'any act by a Muslim who is mukallaf on his own free will either by word, deed or by any means that may be interpreted as an attempt to change his aqidah and belief towards the religion of Islam'.

The following are immediately noted :

- 1) this definition is ambiguous in that it does not expressly state whose interpretation is definitive that the act in question is an attempt to change aqidah.

- 2) “aqidah” is itself not defined in the Enactment.
- 3) if “aqidah” is taken to mean “faith”, the phrase “attempt to change aqidah” would , for the purposes of the Perlis Enactment, mean an attempt to change faith and belief in the religion of Islam. Such an attempt to change faith and belief in the religion of Islam is a right protected under Article 11(1) of the Constitution.
- 4) “change faith and belief in the religion of Islam” is sufficiently wide to encompass not only to apostate from Islam , but also to include adherents to the religion of Islam whose perceptions of the tenets of Islam are not on all fours with that of other adherents of Islam, mainstream or otherwise.

Section 4 of the Perlis Enactment provides that, both for the purposes of the Perlis Enactment and any other written law, a Muslim shall at all times be acknowledged and treated as a Muslim unless such a person has been declared, pursuant to the Perlis Enactment, no longer a Muslim.

It is firstly noted that “Muslim” is nowhere in the Perlis Enactment defined. However, section 2 of the Administration of Islamic Law ( Federal Territories ) Act, 1993 ( hereinafter referred to as the “Administration Act” ) defines Muslim as :-

- a) a person who professes the religion of Islam;
- b) a person either or both of whose parents were, at the time of the person’s birth, Muslims;
- c) a person whose upbringing was conducted on the basis that he was a Muslim;
- d) a person who has converted to Islam in accordance with the requirements of section 85;
- e) a person who is commonly regarded to be a Muslim;
- f) a person who is shown to have stated, in circumstances in which he was bound by law to state the truth; that he was a Muslim, whether the statement be verbal or written.

These 6 definitions of “Muslim” are clearly disjunctive so that the existence of the factual circumstances of any one of the 6 definitions abovestated in relation to a person would constitute such a person a Muslim. At this juncture, it is submitted that the definition of “Muslim” both in the Perlis Enactment and the Administration Act can lead to constitutional complications. We defer the illustration of this point for the moment. Suffice to say here that the 6 definitions abovestated are impractical when applied to a person who has apostated from Islam. The 6 definitions simply do not cater for this change and for the purposes of the Administration Act, would still treat an apostate as a Muslim and subject the person to the jurisdiction of the Syariah Court ( See sections 46 and 47 of the Administration Act ).

Section 3 of the Perlis Enactment provides, inter alia, that the Syariah Court shall have jurisdiction to declare that a person is no longer a Muslim. However, there is no provision in the Perlis Enactment that clothes the Syariah Court to make such a declaration at the instance of an application on the part of a person who wishes to apostate. It is therefore submitted that any suggestion that the Perlis Enactment is also to facilitate a procedure by which a person may apostate from Islam is pure fiction.

In truth, the triggering mechanism in the Perlis Enactment which avails to the judge of the Syariah Court the jurisdiction to declare a person no longer a Muslim is to be found in sections 5 to 10 inclusive.

Section 5 requires a Syariah Enforcement Officer, where he has reason to suspect that a Muslim has committed an act which amounts to an attempt to change his faith and belief in Islam, to initiate an investigation of the matter as soon as possible. By section 7, if the Enforcement Officer, upon completion of the investigation, is of the opinion that “there is sufficient evidence or reasonable ground of suspicion to justify the commencement of proceedings” under the Perlis Enactment against the person investigated who has attained the age of eighteen, the Enforcement Officer shall apply to the Syariah Court for the issuance of a summons to the person investigated requiring him to attend court.

It is noted here that section 7 is patently ambiguous. It is not stated what the “sufficient evidence” relates to or of what there must be “reasonable ground of suspicion”.

It is also plain from section 7 that the application for the issuance of the summons is on an ex-parte basis. This is pertinent when the procedure prescribed in the Perlis Enactment upon attendance at court of the person summoned is scrutinised. It does not appear from the provisions of the Perlis Enactment that the person summoned is made privy to the evidence, if any, presented when the application for the summons was made nor is it stipulated what must be established by way of evidence on the application for the summons before the same may be issued. There is absolutely no provision in the Enactment which details the evidential requisites before an application may be made for the issuance of a summons or before such application may be approved.

By section 8, the judge of the Syariah Court, when the person summoned appears, shall advise the person to repent. If he does to the satisfaction of the judge, he is released. If not, he is ordered to be detained for a period not exceeding one year at the Aqidah Rehabilitation

Centre.

Section 9 provides for the earlier release of the person detained where he has repented to the satisfaction of the Syariah Court judge.

By section 10(2), at the end of the term of detention, when the detainee is produced in court, the officer in charge of the Aqidah Rehabilitation Centre shall submit to the judge a 'progress report pertaining to the rehabilitation programmes' carried out on the detainee.

Section 10(3)(b)(i) of the Perlis Enactment provides that if at the end of the one-year period of detention, the detainee has still not repented, he is to be produced before the judge of the Syariah Court who shall, after examining reports submitted and now, for the first time, hear any explanation from the detainee, record his refusal to repent and declare the detainee no longer a Muslim and order his release. If, however, the detainee is married Section 10(3)(b)(ii) states that section 11 shall apply. By section 11, the judge shall not only declare the detainee no longer Muslim but shall also proceed to declare his marriage dissolved.

It is necessary to remind ourselves that the "mischief" sought to be dealt with under the Perlis Enactment is an attempt by a Muslim to change his faith and belief towards the religion of Islam. It is submitted that such an attempt would in fact be in furtherance of the right to so do as is protected under Article 11(1). The Perlis Enactment as such is an attempt to interfere with a legitimate exercise of a constitutional right.

It is also most necessary to take note that the draconian powers afforded to the Religious Enforcement Officer couched in the most ambiguous of terms is so open to abuse. On the pretext of a tip-off as the basis for suspicion, an investigation may be initiated and concluded. On reasonable suspicion of something or the other, the person investigated is hauled off to court. Without any evidence put before him, or the preferring of any specific charge, he is advised to repent. In the absence of an expressed repentance, he is detained for a year without trial. It is quite amazing that even as the government is said to be contemplating relaxing the detention laws under the ISA, the religious authorities should contemplate a new set of "ISA" laws exclusively for Muslims. In reality, if the Perlis Enactment is closely scrutinised, it is the Religious Enforcement Officer who wields the power whilst the Syariah judge appears merely to rubber-stamp the initiative of the Enforcement Officer with the seal of authority.

It is submitted that two categories of persons would have cause for concern with regards to the

provisions of the Perlis Enactment and any like legislation occasioning an interference with their constitutional right to profess and practise their religion. The first is the apostate from Islam. The second is the Muslim whose perceptions pertaining to the tenets of his faith are not entirely in accord with the mainstream or the clergy.

First the case of the apostate. Premised on any one of the 6 definitions of "Muslim" under the Administration Act, he would still be regarded as a Muslim notwithstanding that he now professes and practises some other religion. By sections 46 and 47 of the Administration Act, the Syariah Court would still have jurisdiction over him, notwithstanding the fact that he no longer "professed and practised" the religion of Islam. Whilst the Syariah Court may declare him no longer a Muslim pursuant to the Perlis Enactment, there is no procedure by which he may apply for such a declaration. In fact, the only way he may obtain such an order pursuant to the Perlis Enactment is by enduring a one-year term of detention and submitting himself to a forced rehabilitation programme. And yet he vows that he no longer "professes and practises" the religion of Islam. The scheme of the Perlis Enactment envisages that the apostate in detention will be subjected to a rehabilitation programme. To the extent that this would include instructions on the virtues of Islam, this would be in violation of Article 12(3). Indeed, the very notion that a de facto non-Muslim may be summoned before a Syariah Court judge and told to repent or face incarceration is the grossest violation of Article 11(1). In reality, when the full rigour of the Perlis Enactment is inflicted on an apostate, the result is nothing short of religious persecution.

Then the case of the second category of persons. It is noted here that the Constitution does not define or delimit Islam. However, in 1996, the Jabatan Kemajuan Islam Malaysia (JAKIM) defined deviationists as being those who professed the religion of Islam but whose practices were "contrary to Islam which is based on the Al-Quran and al-Sunnah and against the teaching of Ahli Sunnah Wal Jamaah". It is also rumoured that the Selangor equivalent of the Perlis Enactment defines "Hukum Syarak" according to the teachings of the Mazhab Shafie, Hanafi, Maliki or Hanbali. The intent to now delimit or define Islam by the perceptions of a certain quarter can be discerned from the provisions of section 39(1) and (2) and section 34(3) of the Administration Act read together with section 12 of the Syariah Criminal Offences (Federal Territories) Act, 1993 (hereinafter referred to as the "Offences Act"). Section 39(1) and (2) provide that in issuing any fatwa, the mufti shall ordinarily follow the accepted views firstly of the Mazhab Shafie unless such views would lead to a situation repugnant to public interest, in which event he shall follow the views of

the Mazhab Hanafi, Maliki or Hanbali. By section 34(3), where a fatwa has been gazetted, the fatwa “shall be binding on every Muslim resident in the Federal Territories as a dictate of his religion and it shall be his religious duty to abide by and uphold the fatwa, unless he is permitted by Islamic Law to depart from the fatwa in matters of personal observance, belief, or opinion”. Finally, section 12 of the Offences Act makes it an offence for any person to give, propagate or disseminate any opinion concerning Islamic teachings, Islamic Law or any issue contrary to any fatwa.

The scheme of legislation described above and the definition by JAKIM of deviationists completely disregards the historical fact that even prior to the independence of Malaya and the promulgation of the Federal Constitution, there was then already present in Malaya a significant number of Muslims who were not of the Mazhab Shafie, Hanafi, Maliki or Hanbali. One clear example would be the Shia. It is submitted that when the Federal Constitution was promulgated, the protection under Article 11(1) was intended to apply equally to the Shia as it did to the Ahli Sunnah Wal Jamaah.

The second category of persons then would include anyone whose perceptions of the tenets of Islam do not accord with the perceptions of the adherents of the Mazhab Shafie, Hanafi, Maliki or Hanbali or the teachings of the Ahli Sunnah Wal Jamaah. Any difference and consequent manifestation of such difference is liable to be interpreted as an attempt to change faith or belief towards the religion of Islam. What may then follow is an investigation, a summons, a detention order and a declaration that such a person, who in fact “professes and practises” the religion of Islam, is no longer a Muslim. The Shia and a significant number of persons who profess and practise the religion of Islam, as they perceive it, are at risk.

It is submitted that the protection of Article 11(1) applies with equal force to those persons who come within the second category. They too, must be permitted to profess and practise their faith without the threat of molestation and deprivation of their personal liberty constantly hanging over their heads. If their differences in perception as to the tenets of Islam in fact amounts to a renunciation of faith in Islam, that is their constitutional right. If, on the other hand, those differences in perception are not such as would take them out of the fold of Islam, then this too must be well within their constitutional right to profess and practise Islam as they understand the tenets of Islam to be, subject to Article 11(5).

The 29 individuals abovementioned have plainly stated in their complaint to SUHAKAM that they profess the religion of Islam. They acknowledge that the differences in their perception with that of the Ahli Sunnah Wal Jamaah do give rise to differences in the practice, faith and beliefs between the former and the latter. It is submitted that just as it is with the Ahli Sunnah Wal Jamaah, the 29 individuals too are entitled to profess and practise Islam as they understand it. If it is a constitutional right of the former to profess and practise Islam as they understand it, it is then no less a constitutional right afforded to the 29 individuals under Article 11(1) to profess and practise Islam as they understand its tenets to be.

2. The case of
    - 1) Mad Yaacob bin Ismail K/P No. : 530622-03-5303
    - 2) Mohamed bin Ya K/P No. : 500811-03-5305
    - 3) Kamariah bt. Ali K/P No. : 510125-03-5208
    - 4) Daud bin Mamat K/P No. : 311226-03-5053
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These four individuals, all Kelantanese, were charged in the Syariah Court in Kota Bharu in 1992 with having engaged in deviationist activities contrary to Islam. They were tried, found guilty and sentenced to various terms of imprisonment.

Their appeals to the Syariah Court of Appeal were dismissed in 1996 save that the sentences of imprisonment were set aside and substituted with orders requiring the four individuals to appear monthly over a period of 3-5 years before the kathi and pronounce repentance.

The four individuals attended at the kathi's office on two occasions and on each occasion were informed that the schedule of the repentance programme was not as yet prepared. Thereafter, the four individuals did not attend at the kathi's office.

In August, 1998, these four individuals swore statutory declarations that they had renounced the religion of Islam. A copy each of those statutory declarations are annexed hereto and collectively marked "C"

In October, 2000, these four individuals were charged in the Syariah High Court of Kota Bharu for having failed to adhere to the order of the Syariah Court of Appeal. In November, 2000 whilst those charges were still being heard in the Syariah Court, the four individuals informed the Syariah Court judge that they had, in 1998, renounced their faith in the religion of Islam. At the request of the prosecutor, the four individuals were remanded to facilitate investigations into their claim of having renounced from Islam.

On 19/11/2000, the four individuals were produced in the Syariah High Court and presented with new charges of attempting to leave the religion of Islam pursuant to section 102(3) of the Enakmen Majlis Agama Islam dan Adat Istiadat Melayu Kelantan 1994. Bail was refused. They were also then convicted of the earlier charge of having failed to comply with the order of the Syariah Court of Appeal and each sentenced to a term of 3 years imprisonment. They are presently serving out the sentence of imprisonment at the prison facility at Pengkalan Chepa, Kelantan.

On 29/11/2000, applications for writs of habeas corpus and declarations that the four individuals, having previously renounced their faith in Islam, were no longer subject to syariah laws and the Syariah Court, were filed in the Kota Bharu High Court. These were heard and dismissed on 25/2/2001. Appeals against these dismissals are now pending in the Court of Appeal.

3. The case of Ariffin Bin Muhamad - K/P: 430622-03-5313

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This individual hails from the same kampung as the four individuals mentioned above which is situated in Besut, Terengganu at the border with Kelantan. He too, swore a statutory declaration in August 1998 that he had renounced the religion of Islam. A copy of the said statutory declaration is annexed hereto and marked "D".

In April of this year, the religious authorities in Terengganu wrote to him requiring his attendance at the office of the religious authorities on 26/4/2001 for questioning pertaining to, inter alia, his having renounced the religion of Islam.

Encik Arrifin responded by letter before the appointed date and confirmed that he had indeed renounced Islam, stating further that in the circumstances he felt himself outside the jurisdiction of the Islamic religious authorities and for that reason he would not be attending at the office of the religious authorities on the appointed date.

In June of this year, Encik Arrifin was arrested by the religious authorities and charged in the Syariah Court in Besut, Terengganu under section 209(1) of a 1986 enactment with "menghina agama Islam". The factual basis of this charge – the letter that Encik Arrifin had sent to the religious authorities referred to above.

Whilst Encik Arrifin was in court, he informed the Syariah Court judge that he had renounced Islam and as such did not recognise the jurisdiction of the Syariah Court. This statement in open court subsequently formed the factual basis of a second charge of "menghina agama Islam" under section 209(1).

On 27/6/2001, on the advice of a syariah lawyer in attendance, Encik Arrifin pleaded guilty to one charge under section 209(1) and was sentenced to 11 months imprisonment. He is presently serving out his sentence at the prison facility at Pengkalan Chepa, Kelantan.

Should you require any clarification or further information on the matters hereinstated, please do not hesitate to contact me.

Thank you.

Yours faithfully,



*"If it had been thy Lord's Will, they would all have believed – all who are on earth! Wilt thou then compel mankind, against their will, to believe?" – Surah 10 verse 99 of the Holy Qur'an.*