

Seminar on

Understanding Human Rights & Islam:

Motivation, Ideology and Relevance
in a Contemporary Society



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ERA
CONSUMER
MALAYSIA

ERA CONSUMER, Malaysia
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About ERA Consumer

The Education and Research Association for Consumers, Malaysia (ERA Consumer, Malaysia) is a voluntary, non-profit and non-political organisation that was founded in Ipoh, Perak in 1985. ERA Consumer is a registered membership organisation under the Malaysian Societies Act of 1966. It was set-up to undertake and promote the task of developing critical consciousness on public-related issues out of the larger socio-economic issues.

ERA Consumer is a dynamic institution that is constantly responding to and developing its services according to the needs and demands of the people. It aims to create awareness among the public on issues that are effecting their lives, through research and educational programmes by undertaking independent, authoritative, balanced research on public issues; carrying out public education projects; making policy recommendations to the government & international institutions; building solidarity and understanding among NGOs in Malaysia and society at large, and to increase South-South relations and North-South understanding. ERA Consumer's components and main programmes are consumer issues; human rights education; food, trade and economics.

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***Seminar on
Understanding Human
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and Relevance in a
Contemporary Society***

***September 26, 2002
Tanjung Jara Resort, Dungun, Terengganu***

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Foreword

Differences and divisions among peoples and nations based on race and religion are one of the oldest and most challenging problems that mankind as a global community continue to face. Many would say that there is no end in sight to this problem - but we do not believe so.

The reasons and causes for these differences and divisions are numerous and while there have been countless individuals and groups that worked and continue to work tirelessly to narrow the causes of discord and build bridges between communities; globally there has been little progress.

This is why we believe that these efforts should continue, and on a much larger scale, using the time-honoured methods of consultation and discussion that would involve all strata of society - the man-in-the-street, so to speak.

We in Malaysia today are confronted with the "Islamisation" of the country, where the leaders of the nation have said that based on the practices of the citizens, Malaysia can be categorised as an "Islamic State". This is a really sensitive matter, sensitive to both Muslims and non-Muslims.

That is why we believe that discussions and consultations between people of all races and religions in a multi-everything nation-state like ours must go on in an open, unfettered manner, so that matters that affect all citizens of Malaysia are thrashed out and understood before any systems of belief and governance, and doctrines, are put into place.

We kicked off this seminar in Terengganu, a state which is ruled by the so-called Opposition - the Islamic party PAS. Our aim is to initiate more rounds of discussions between Muslims and non-Muslims around the country, opening participation to as diverse grassroots groups and concerned citizens as possible, on this issue of Human Rights and Islam.

This is based on our belief that everyone should engage with all the groups, government and non-government, political and non-political and religious and non-religious, in the efforts to help build a just and sustainable Malaysia for all its citizens.

It gives me great pleasure therefore to present these proceedings, which we believe can serve as grounds to kick off more dialogue and consultation among Malaysians towards breaking down barriers, imagined or otherwise, between Muslims and non-Muslims.

Positive engagement will bring positive results.



MARIMUTHU NADASON
President
ERA Consumer Malaysia

Seminar on Understanding Human Rights and Islam: Motivation, Ideology and Relevance in a Contemporary Society

September 26, 2002

Tanjung Jara Resort, Dungun, Terengganu

Agenda

8.00 am - 8.25 am	Registration of participants Arrival of VIPs
8.25 am - 8.30 am	Doa Selamat
8.30 am - 8.45 am	Welcome Address <i>by Mr Marimuthu Nadason</i> <i>President, ERA Consumer Malaysia</i>
8.45 am - 9.15 am	Keynote Address: Towards an Egalitarian Multiracial Society in the Context of Islam <i>By Hon Dato' Haji Mustaffa Ali</i> <i>State Executive Councillor of Terengganu</i> <i>Moderator: Mr Ramdas Tikamdas</i> <i>President, HAKAM</i>
9.15 am - 9.45 am	Question and Answer Session
9.45 am - 10.05 am	Overview: National Development and Competing Religious Interests <i>By Assoc. Prof Dr Abdul Aziz Bari</i> <i>International Islamic University</i>
10.05 am - 10.30 am	Overview: Islamic Laws in Malaysia: The Constitution and Human Rights <i>By Puan Mehrun Siraj</i> <i>Former Human Rights Commissioner</i> <i>Moderator: Mr Charles Santiago</i> <i>Group of Concerned Citizens</i>
10.30 am - 10.45 am	Tea Break

10.45 am - 11.30 am	Question and Answer Session
11.30 am - 12.15 pm	Panel Discussion: Role of Muslim Women in the Family and Society: Rights and Responsibilities <i>Presenters: Dr Lo' Lo' Ghazali,</i> <i>PAS Central Executive Council Member</i> <i>Puan Zaiton Kassim</i> <i>Sisters in Islam</i> <i>Moderator: Puan Mehrun Siraj</i>
12.15 pm - 1.00 pm	Question and Answer Session
1.00 pm - 2.15 pm	Lunch and Prayers
2.15 pm - 3.15 pm	Panel Discussion: Multiculturalism and Islam <i>Presenters:</i> (i) Islam and Privatisation of Essential Services: Issues and Challenges <i>By Dr Dzulkifli Ahmad</i> <i>Director, PAS Research Centre</i> (ii) Equitable Distribution of Wealth and Power: Its Relevance to Islam and Human Rights <i>By Dr Mohd Hatta Ramli</i> <i>PAS Research Centre</i> (iii) Is Parliamentary Democracy Inconsistent with Islam? <i>By Prof Dr Abdullah al-Ahsan</i> <i>International Islamic University of Malaysia</i> (iv) Minority Rights in Islam: A non-Muslim Perspective <i>By Mr K. Shanmuga</i> <i>Malaysia Consultative Council for Buddhism, Christianity, Hinduism and Sikhism</i> <i>Moderator: Encik Zaid Kamaruddin</i> <i>Deputy President</i> <i>Jemaah Islah Malaysia (JIM)</i>
3.15 pm - 4.15 pm	Question and Answer Session
4.15 pm - 4.30 pm	Synthesis and Concluding Remarks
4.30 pm	Tea Break and Close

***Welcoming Remarks
Seminar on Understanding Human Rights
in Islam: Motivation, Ideology and
Relevance an a Contemporary Society***

***By
Marimuthu Nadason
President
ERA Consumer Malaysia***

YB Dato' Mustaffa Ali
Terengganu State Executive Councillor,
Chairman of the State Economic Development, Petroleum
Industries and Human Resource Committee and
Vice-President of PAS

Distinguished Guests,
Ladies and Gentlemen:

A good morning to all of you and welcome to this seminar *on Understanding Human Rights in Islam: Motivation, Ideology and Relevance in a Contemporary Society*, which ERA Consumer Malaysia is proud to organise here in this State of Terengganu.

We at ERA Consumer have been involved in the area of human rights for many years now, having organised consultations on human rights in Malaysia even before our National Human Rights Organisation, SUHAKAM, was established. In the past two years, we have been holding national consultations for NGOs on the performance of SUHAKAM each previous year.

We are also the only organisation in the country - mind you, even the government agencies and SUHAKAM have not done this - to have translated a number of human rights documents into the national language, Bahasa Malaysia, so that such information and knowledge are accessible to a much wider section of the population. These publications have been distributed to all libraries in the country, to university and college libraries and to NGOs and political parties.

And, we have also been active in conducting human rights education training programmes all over the country for various groups, including students, grassroots community leaders, workers, members of NGOs and members of political parties, both in the Malay and English languages.

At this juncture, let us make it very clear that our intention in holding this seminar is purely altruistic. We believe in engagement with all systems of belief and governance,

and doctrines, and we have no ulterior motives, political or otherwise, in doing so.

ERA Consumer Malaysia is an open, responsible organisation and to those who have made unwarranted remarks, let me make it clear once and for all: We, as a truly Malaysian NGO, believe in engaging with all groups, government and non-government, political and non-political, religious and non-religious, in our effort to help build a just and sustainable Malaysia for all its citizens.

And to those who asked, 'why hold this seminar in Terengganu?', we say, 'why not?' Why hold everything in Kuala Lumpur? Terengganu is an important part of the federation, and is the second state in recent years to come under the rule of the Islamic party, PAS. We are here to learn and to understand better what is going on in the state.

We also believe in holding more of seminars and dialogues like this, which will lead to the further breaking down of barriers, imagined or otherwise, between Muslims and non-Muslims. We are convinced that positive engagement will bring positive results.

We believe that the topic of our seminar today is not only important but also timely, given the situation in Kelantan and Terengganu.

Kelantan passed its Hudud law more than five years ago, while Terengganu has just passed its Syariah and Hudud laws. Kelantan, unfortunately for its government, is not able to enforce its Islamic law because of a conflict with the Federal Constitution which is now before the courts.

In the case of Terengganu, the Syariah administration and Hudud criminal laws have been passed by the State Legislative Assembly and signed into law. All Malaysians will surely follow closely how Islamic law is administered in the state.

For the Malaysia as a whole, our Prime Minister, Dato' Seri Dr Mahathir Mohamad, has declared that the country is an Islamic state. His explanation on this aside, this declaration has been alarming to non-Muslim Malaysians. We, who have all along accepted the word and spirit of our Federal Constitution that Malaysia is a multiracial, multicultural and multireligious nation, with Islam as the official religion and where the people are free to practise their own religions, are truly alarmed.

There are more than a dozen treaties and documents under the United Nations Charter that touch on human rights.

The International Bill of Human Rights, which encompasses the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, outlines 38 salient rights that must exist if human beings are to live in dignity.

These instruments of international law, many of which are yet to be ratified by countries like ours even, grew out of the social, cultural and economic progress of the human race around the globe as a whole. This religious, social, cultural and economic progress of the human race resulted in the ending of many practices that we today consider as barbaric, such as slavery. Others, such as the torture of a person for his political beliefs, continue to be practised widely.

While it can be said that almost all non-Muslims in Malaysia would know something about the basic beliefs and practices in Islam, it cannot be said that Muslims understand the basics of the other religions, though they may know something about the cultural practices of non-Muslim Malaysians.

As a Malaysian, I do know quite a bit about Islam, for I have many Muslim friends and the religion is practised all around me. And I also read about Islam, though not the heavy stuff but articles written by Muslims. I make a point in my reading this because I do not want to be given the wrong picture by non-muslims writing about Islam. I also make it a point to learn what I can from the few Islamic websites I surf whenever I have the time.

My own little understanding of human rights in Islam is from what I have learned in the writings of Alamah Abul Ala Al-Mawdudi. In preparing for this conference, I went back to refer to one essay by Al-Mawdudi that I saw on the Internet, from Volume 4, No. 3 of the Al-tawhid Journal, and also looked again at a few other sources. These readings made clear to me that in Islam human rights are granted by God and not by any king, dictator, president or parliament.

Since these rights are granted by God, they cannot be changed, suspended, violated or taken away as and when the king, president, dictator or parliament desire. And since it is decreed that Islam is the faith of the "believers", what then are the rights of the "non-believers"? Where do the non-muslims stand, in so far as their human rights are concerned.

I ask this because it is also stated in the Holy Quran that "those who do not judge by what God has sent down are disbelievers" (Chapter 5, Verse 44).

Nevertheless, I believe that many answers will come forth at this eventful seminar today, where we have lined up prominent speakers whom I am certain will not only be able to clear some of our doubts but also provide us with plenty to reflect on.

Lastly, I would like to thank all of you for your presence here in this beautiful place, especially members of the Terengganu State Administration who have been so kind as to take part in our deliberations.

Thank you.

Keynote Address

Towards an Egalitarian Multiracial Society in the Context of Islam

***By Hon Dato' Haji Mustafa Ali,
State Executive Councilor of Terengganu***

Over the years, many people - scholars and thinkers, sociologists and philosophers, politicians and theologians - have put forward questions on the viability, possibility and practicality of adapting Islam as a way of life in a real, modern world. Answers were searched on how to espouse Islam as a complete socio-economic and political tool of governance. Doubts were raised as to whether Islam would succeed as a comprehensive ruling institution.

Much has been said about the different standards that Islam applies in its ideas and teachings. These differences were said to have brought about inconsistencies to the practice of the religion. Examples and hypothetical scenarios, most of which were not at all of a positive nature, were portrayed. Questions were raised on the kind and type of foundations that the ulamas and clergymen would apply in the running of an Islamic state. Perhaps all these arguments and inquiries were constructed to lead to one conclusion: That Islam does not possess a genuinely strong, solid platform to accept the challenges of governing a modern and dynamic society that the world sees today. It is our duty, then, to try and explain that Islamic governance is not merely a notion in philosophy but already a proven and accepted method of ruling, as once practised some 1,400 years ago. It is our task to convince non-Muslims that the foundation that was laid then would last a lifetime. And we will show that striving to attain the concept of an egalitarian society has always been one of the objectives of an Islamic state.

We understand that most of these queries came about from the lack of understanding of the foundations that the Islamic ideas and practices were built upon. In this particular instance, the doubt that came upon many of us would be on the question of how an Islamic government would address the issue of ruling a multiracial society. As such, we will try first to build our case from the perspective of understanding the basic human rights in Islam.

Historical accounts gave us the impression that the concept of basic human rights was given its birth by the Magna Carta of Britain. Interestingly, Islam has already outlined the groundwork of human rights in its teaching, which came into existence 600 years *before* the inception of the Magna Carta. The fact is that until the 17th Century, no one even knew that the Magna Carta contained the elements of human rights, such as the principles of trial by jury and habeas corpus and the control of Parliament on the right of taxation. It is argued that even the people who drafted the Magna Carta would be greatly surprised if

they were told that their document contained all the basic ideals and principles of human rights.

It is not much to say, then, that the concept of human and civic rights were first conceived and promoted by Islam? Now, what constitutes the basic rights of a human being in Islam?

The following are some of these human rights that Islam promotes and protects:

i. **The right to life and to safety of life.**

"Whosoever kills a human being without (any reason like) manslaughter, or corruption on earth, it is as though he had killed all mankind."

- Surah Al-Maaidah: 32

Islam recognises the importance of protecting the lives of people and the Quran even prescribes punishment for murders and certain other crimes (*Hudud & Qisas*).

ii. **Islam recognises the respect for the chastity of women, and the rights of women to be protected.** The protection and respect is not limited to Muslim women alone but is extended even to non-Muslims and women captured in war.

iii. **The right to the basic needs of life.**

The Quran mentions:

"And in their wealth there is acknowledged right for the needy and destitute."

- Surah Adz-Dzaariyat: 19

It is clear from this verse that everyone who is suffering from poverty and deprivation has the right to ask for help from anyone who has the means of property and wealth. And it is a duty of those who can provide to come to the assistance of the needy.

iv. **Individual's right to freedom.**

Everyone has the right to enjoy his freedom and to be rid of any fear that someone else can take the freedom away from him at will. The person is free in physical and mind. He is protected for as long as he does not encroach into other people's freedom. One example of how serious Islam is on the question of freedom can be seen from the history of slavery, where in Islam it was voluntarily abolished, while the Western world went through great pain and much blood to end the tradition.

v. **The right to justice**

Islam is a religion of justice. In fact, this is one of the most important aspects of this religion, one that travels across the boundary of race, ethnicity and other religions. God has said:

"Truly God commands you to give back trust to those to whom it is due, and when you judge between people, to judge with justice..."

- *Quran, Surah An-Nisaa': 58*

And Allah in Al Hujuraat: 9 said :

"... and act justly. Truly, God loves those who are just."

We should even be just with those whom we hate, for God has said:

"...and let not your hatred of others cause you to act unjustly. Be just: That is nearer to piety ..."

- *Quran, Surah Al Maaidah: 8*

These verses are clear about the point that Muslims have to be just not only with other Muslims, but with non-Muslims as well, not only with ordinary human beings but even with their enemies. In other words, justice in Islam is not only subscribed to the citizens of their own country, or the people of their own tribe, nation or race, or the Muslim community as a whole, but it is meant for all human beings of the world. In short, Muslims cannot be unjust to anyone. For Islam commands its followers to treat every human being everywhere with justice and fairness.

vi. **Equality of human beings**

Islam recognises absolute equality between all men, irrespective of any distinction of colour, race or nationality. Racism and ethnic barriers are not allowed in Islam, for the Quran expresses the importance and significance of this principle, with the following:

"O mankind! We have created you from a male and a female and have made you into nations and tribes for you to know one another. Truly, the noblest of you with God is the most pious. Truly, God is All-Knowing, All-Aware."

- *Quran, Surah Al-Hujuraat: 13*

vii. **The right to co-operate or not to co-operate**

"Co-operate with one another for virtue and heedfulness and do not co-operate with one another for the purpose of vice and aggression"

- *Surah Al-Maaidah: 2*

This means that the man who undertakes noble and righteous work, irrespective of whether he is Muslim or non-Muslim, has the right to expect support and active co-operation from the Muslims. On the contrary, he who embarks on vice and aggression, even if he is our closest friend, relative or neighbour, does not have the right to acquire or force our support. Muslims have the right not to co-operate with or support him.

We have studied the premises of basic human rights under Islam, as detailed out above. We will find that these rights form a rather important foundation towards establishing a just society, where everybody is treated equally and justly. Another significant outcome

of the discussion above is that the rights are extended to Muslims and non-Muslims alike. These premises lend a credible argument that Islam has, from the beginning, set a very strong and solid foundation of governing a multiracial, multireligious society. Understanding these very basic concepts of human rights as taught by Islam provides us with a link towards understanding the concept of human rights in an Islamic state.

Now, as a subject of an Islamic state, a person is guaranteed the rights mentioned above, plus others. Among them are:

- The protection of life and property
- The protection of honour and dignity
- The protection and security of private life
- The right to protest against an unjust ruler
- The rights to expression and association
- Freedom of conscience and conviction
- Freedom of religion
- Protection from cruel and unjust law
- And last but not least, the right to participate in the affairs of state

All the above point to one direction, that Islam confers and protects the rights of an individual, for it understands that the pillar of any institution would be the people themselves. In this respect, certain privileges are accorded to the most fundamental political unit so as to provide support and strength to the whole political structure.

To provide an illustration, the life and property of all citizens in an Islamic state are considered sacred, whether a person is a Muslim or not. Islam also protects honour. So, in Islam, insulting others or even making fun of them is not allowed. The Prophet Muhammad said:

"Truly your blood, your property, and your honour are inviolable."

Islam also does not recognise individuals or nations being favoured because of their wealth, power or race. God created human beings as equals and they are to be distinguished from one another only on the basis of their faith and piety. The Prophet Muhammad said:

"O people! Your God is one and your forefather (Adam) is one. An Arab is not better than a non-Arab and a non-Arab is not better than an Arab, and a red (i.e. white tinged with red) person is not better than a black person and a black person is not better than a red person. Except in piety."

Now, these are rights inherent to all human beings. They are considered sacred because when we speak of human rights in Islam, we refer to the fact that these are rights have been granted by God; that they have not been granted by any mortal being or worldly

institution. The rights granted by the kings, the parliament or dictators can always be withdrawn in the same manner in which they are conferred. In any discussion on the viability of an Islamic government ruling a multiracial and multiethnic state, the roots and background of human rights in Islam must be fully understood; that these rights are there right from the beginning and that no one can take them away from any individual.

The last principle mentioned under the protected rights of people living in an Islamic state brings us to the next topic of discussion: How do we get down to the business of governing a multiracial society from the point view of Islam? We wish to embark on only one premise here; that the elements of people's participation in governing has long existed in Islam. It is known as *syura*, or mutual consultation.

Democracy and *syura* share the ideas of egalitarian politics and popular political participation, but differ significantly in relating participatory government to the overall purposes of social organisation and political action. The concept of *syura*, which is based on equality of participation, is a significant tool in creating a fair and just egalitarian society. *Syura* is the approach that can best be taken to tackle issues normally stemming from a multi-interest society.

It is true that contemporary Muslim awareness of popular political participation is due to the exposure of contemporary Islamic thought to the modern West and its democratic institutions. But this should not be used to negate the Islamic concept of egalitarian politics. Islamic revelation has laid strong emphasis on the practice of *syura*. The Quran has made it explicitly clear that practising *syura* is an important duty of Muslims and a crucial component of what constitutes a believing person. The emphasis can best be derived from a verse in the Quran:

"Those who respond to their Lord, and establish regular prayer; and who conduct their affairs by mutual consultation (syura) ..."

- Surah As-Syura: 38

The Quran does not spell out the conceptual or procedural aspects of *syura*. It does not even define the term to the fullest, but takes it for granted that the word would be understood by and translated to its intended meanings. Political involvement was meant to be part and parcel of the Islamic practice.

One of the major problems facing mankind today is division of people based on race, ethnicity and religion. These factors will always play a determinant factor in politics. The Islamic world will never forget how the Muslims of Bosnia were massacred because of ethnic hatred. The Tutsis and Hutus in Rwanda killed each other despite the fact that they have lived peacefully together in the same country for centuries. The developed world need not create all the destructive weapons because man can carry out the destruction of his fellow man just as efficiently. A mechanism of bridging these differences and bringing

the parties together obviously needs to be sought here.

Ever since the days of the Prophet Muhammad, Islam has provided a vivid example of how the problem of division among the people can be resolved. The annual pilgrimage (Haj) to Mecca is an example of the real spirit of Islamic brotherhood of all races and nations, with more than two million Muslims from all over the world coming to Mecca yearly to perform the pilgrimage.

Just like the pilgrimage is important to Muslims, the concept of *syura* can also be extended to promote the prevention of further division of the people, for *syura* is not confined to Muslims alone but to all the people who are subjects of the state. The divisions normally reflected in a multiracial society can be turned into the union of diverse subjects, yet of same interest and objective, that are based on justice and equality. This same concept, in conclusion, is going to be one of the major ingredients towards building an egalitarian society.

This discussion shall never be able to present the topic adequately nor in great detail. However the groundwork has been laid. Now we need to build a path towards that direction. The presenters and participants of this seminar shall have the privilege to take upon this task.

Thank you.

Question and Answer Session with YB Dato' Mustafa

ALICE LEE (Human Rights Section, Selangor Chinese Assembly Hall): I have a question about non-Muslims who could be participating in the government, in the case where the government is an Islamic government. We know that non-Muslims are not well versed in Islamic laws, so, would their points be heard by the Islamic government? And, owing to the fact that they are non-Muslims, can they be appointed to hold important positions and will their opinions be heard or listened to, since they are not Muslims?

DATO' MUSTAFFA: Thank you, Ms Alice Lee. You have a good question. I would like to give a very specific example on whether non-Muslims can participate in the government, hold positions and have their views heard by the Islamic government. We will take our country Malaysia as an example. We have our Parliament. Even if Malaysia is under the rule of PAS or any Islamic government, Parliament will still be there. It will be represented by all the people, regardless of whether they are Muslims or non-Muslims. Non-Muslims could hold government posts as they do now. So there is no problem with non-Muslims participating in the political life of this country. You too have rights, just like any other citizen.

ARUTCHELVAM, of SUARAM: My question is related to the Hudud. Initially, when there was a draft and there was much public opinion opposing certain sections of the Hudud, the Terengganu government made amendments to the law to please public opinion. I would like to know, how much democratic right do the citizens in participating in government under Islamic law? I don't believe that when you choose a government, you give that government a free hand to do as it likes. So, how can people actually participate? Of course, there has been debate that in Islam, because not everyone can interpret Islam, it will be left to just a few people in power to decide for the majority. That goes against the notion of democracy. Can you please respond to this?

MUSTAFFA: Thank you Mr Arul. There are a few questions that you have posed. One is concerning Hudud, the amendments that have been made in the so-called original Act. And how far, for example, can a non-Muslim participate in an Islamic government and discuss Islamic laws, and so on. The draft on the Hudud law was discussed at a seminar in Kuala Lumpur. When law is enacted, it's not only the principles of law that are involved, but also the technicalities of it, the procedures and so on. What were amended were not the basic principles of the law but just the procedural matters. That is why we held this seminar to get public opinion on how best the Hudud law can be implemented. It was just on the procedural and technical matters, not on the basic principles of the law.

Now on the participation of the non-Muslims. For example, to give views on Islamic laws and other aspects such as human rights. We have now the Federal Government under

Barisan Nasional. Here, I am not going to be very particular. We in PAS are in control of two states, Kelantan and Terengganu. When we want to enact laws, we hold seminars for the public to attend, to participate, and to air their views. In the case of laws to be passed by Parliament, to be tabled in Parliament, well, these have never been discussed in public.

We have in Malaysia draconian laws that is laws which are not acceptable to the people. One is the recent one, the law on the Election Offences Act. I think this is a very bad law. I would use the word bad. It has never been posed to the public for discussion. When you raise queries, questions in Parliament, they are never been taken into consideration. We from PAS are just ignored. This is the tyranny of the majority that they have in Parliament right now. Every law can be passed because the Barisan Nasional has the majority. So this is my response. Thank you.

WAN ROSLAN: Since PAS is a Muslim political party, can you explain the news that I heard on the new policy of PAS to accept non-Muslims as associate members? My second question is about the policy of PAS to appoint women as candidates in the next election. And thirdly, can you please explain how the new Islamic enactment which was passed in Terengganu provides justice to women and non-Muslims in the state?

MUSTAFA: Thank you Wan Roslan. The PAS constitution says that only Muslims can be members of PAS. So the question of non-Muslims being associate members of PAS or full members of PAS will have to be deliberated and the constitution has to be amended if this is to happen.

When we put Islam as the basis for one to be a member of PAS, we already transcend racial barriers. Non-Malays, whether Chinese, Indian or of any other race, can be members of PAS, as long as they are Muslims. PAS is not a racist party in that sense. It is not confined only to Malays, like UMNO (United Malays National Organisation) for example.

UMNO is only meant for Malays and the bumiputras. No Chinese can be a member of UMNO. But Chinese can be members of PAS, if they are Muslims. We made it this way because Islam is the basis of our struggle. So, in the very beginning, that was the basis.

But now, there is the question of whether non-Muslims can be associate members of PAS. This will have to be deliberated further. We haven't as yet decided whether to have associate members or full members.

The question within PAS is that if a person already subscribes to the principles that PAS is struggling for, why can't he or she become a full member of the party? This has been debated, openly also. At this point of time, the party constitution has not changed. It has to be changed if we want to accept non-Muslims. For non-Malays, of course if they are Muslims, they can be members of PAS.

Now for the question of women election candidates. In the past we had a few women candidates standing for Parliament throughout Malaysia. A fine example is one who stood in this constituency of Dungun. We had the leader of the Muslimat wing, Khatijah Sidek, who stood in Dungun and won. This is the seat that I represent today.

We stopped putting up women candidates for a while is because politics had become very rough. In 1969 for example, in the situations of the *tahan lasap/lasak* and all that, we stopped fielding women. We felt that we better have it in such a way so that no *fitnah* (false allegations) and all that would come into play. So we decided, for the time being, to field men only. But now, I can assure you, that for the next election in 2003 or 2004, we will have women candidates.

The Hudud Enactment of Terengganu: This topic I will leave it to those who have the authority on this. I see Dr Abdul Aziz Bari here. He is very well-versed with the enactment in Terengganu. So, I would rather answer some other questions. This enactment involves technicalities, legal terms and so on and I must humbly submit that I am not very well-versed with these legal Islamic terms. I will leave it to the legal men to explain. But rest assured, you will get an explanation on this, *Insyallah*

ARUMUGAM, of Group of Concerned Citizens: I had a very enlightening morning with your input on the fundamentals of Islam and the rights it confers on the fellow human beings. That itself creates confusion, in the sense that you say there is equality, but then you divide us into Islam and non-Islam. Where then is the concept of equality? How do we look upon people who are unequal becoming equal when they become Muslim, then start practising Islam, enacting laws, running the country and telling their fellow citizens that there is equality?

I don't see any kind of equality in this. To me, this means that in Islam, you actually divide. Divisive forces then become built into policy making, into the administration, into the laws and the constitution. Our Constitution distinguishes between Malays and non-Malays, bumiputras and non-bumiputras. My first question is on this equality that Islam promises. Islam may be one of the best religions, but in terms of administration, it has encompassed divisive forces, in terms of "us" and "them" or Muslims and non-Muslims.

My second question is whether the PAS government has a clear-cut policy on the rights of all citizens, irrespective of whether they are Muslims or non-Muslims, whether they are Kelantan people, Terengganu people or from elsewhere in Malaysia? Great philosophies and religious concepts established in Islam, or in Hinduism or in Christianity, all are noble. But we cannot practise extremism. For example, if Hindus of India were to demand for a Hindu India, we will object very strongly because that will separate Hindus from Muslims. It has to be a state upon which a citizen, whether Hindu or Muslim, stands on the same platform, if there is equality in the true sense. I believe that these two states run by the PAS government should come out with clear-cut, true philosophies of the religious

practices and principles of Islam so as not to cover themselves under a dogma of PAS philosophies or PAS Islamic states and PAS this or PAS that, which are very fearful to the non-Muslims.

MUSTAFA: The fact that you say Islam is the best religion is complimentary enough. But when you come to the practice of Islam, this is where your questions come in. We in PAS are in control of Kelantan and Terengganu. I just want to ask those who have been in Terengganu, Muslims or non-Muslims, whether they can find any element of discrimination in Terengganu against the non-Muslims. I have asked this even of the journalists who have come to interview me. Have we done worse than the previous government? Can you just give us one example of PAS discriminated against the non-Muslim?

You have probably said what you have said by reading press reports. The press has not been very fair to Terengganu and Kelantan. All sorts of accusations have been levelled at the two states. This is why, I say, find out for yourself whether there has been any discrimination meted out against the non-Muslims in Terengganu or Kelantan.

Coming back to your other question: You say you do not want a state labeled, for example Islamic state, or Hindu state, or anything like that. In Islam, all this boils down to the system of belief. In Islam we believe in life in the Hereafter; that Man is accountable to God not in this world but in the Hereafter. So, a government must be just because it is accountable to God. Belief in life in the Hereafter is a very strong defence mechanism for people to avoid being unjust to others. A person can escape the eyes of the police, the ACA (Anti-Corruption Agency) for example, but he cannot escape the eyes of God. So it is this belief in Islam we believe that when we struggle in the cause of Islam, human rights will be preserved. Justice will be preserved because we believe that this system is good. If the people implement the system as Islam really espouses, then, *InshaAllah* (God Willing), we can have a just and good government.

Of course, we cannot force people to become Muslims, just as you cannot force people to become Hindus, Christians and so on. It is out of their own free will that people convert to Islam.

NORA (Sisters in Islam): I would like to seek some clarification. Sir, you said just now that there were seminars held to discuss the draft of the Terengganu Hudud laws before they were tabled in the State Assembly. But then, after that, you said that the discussion was only on the implementation of the Act. I do agree that PAS did ask women's organisations to come and discuss the Hudud law. However, none of our voices were heard. When we look at the final enactment, again we see a lot of sections which we disagreed with were not amended. So, where is the concept of *syura* here? You did say earlier that all of us were consulted in the law-making process. However, we have not been heard.

Secondly, Sir, you did ask just now whether there is discrimination in Terengganu between the Muslims and non-Muslims. But Sir, when I look at the law itself, I am confronted with the Hudud law and the Takzir Enactment, where there is discrimination against Muslim women. Off hand, I do not remember all the sections. But I do remember two sections. One section says that a woman can be charged (in a syariah court) if any part of her body entices a man. The other section says that if an *anak dara* or *tayeb* leaves the house, then she may be charged with disobeying the parents' wishes. There are discrepancies between what you say and what is being perpetuated. We do feel that Muslim women are being discriminated against.

MUSTAFA: Your question about the concept of *syura*: You have said you have given your opinions on various issues on the Terengganu Hudud law, and that the amendments were not based on what you have raised.

Syura is based on the will of the majority. It is not the will of one person. So after we got your opinions, from Sisters in Islam and the other groups, we still have to go back to the principles of Islam, on whether this is within the principles of Islam or not. If it is not procedural or technical, then it can be changed in terms of implementation. We had a series of seminars on the Hudud law. The one that you attended was probably held in Kuala Lumpur, but we had a seminar earlier on, before the Bill was passed in the State Assembly.

We invited a cross-section of the people and they gave their opinions and views. Their views were considered, but again, these views have to conform to the principles of law itself. When it comes to being procedural, and technicalities, these can be amended. And we have amended, to a point. But not on principles. I am not saying that you could agree with all these. Some people might not even agree with the basic principles of Islam itself. So, with regard to these things that are debatable, then we leave them to be debated further.

Even in Islam there is this question of *khilaf* - uncertain and not on the principles of it. On the minor matters, we could have differences. So I will not dwell on the differences of opinion pertaining to matters of procedure and technicality.

I don't see that there is any discrimination between men and women in Terengganu. I find in the laws that both can be prosecuted for the same crime that they commit. With regard to what you said, about a girl leaving the home without the permission of her parents ... could you elaborate?

NORA: It is an offence if she were to leave the house without permission. The first question is, if any part of my body were to entice a man, I would be charged. My question is, what part of my body? Could it be my fingers which entice the man? Why should I be charged? It should be the man. I mean, why should I be charged if one finger of mine entices a man?

MUSTAFA: To be fair, I haven't really gone through all the aspects of the Takzir and the Hudud. But so far I have not found any discrimination, to be fair. Perhaps you could refer this to those who know the enactments better, from the legal people who can explain them to you. So I am not really in the position to explain about this. I haven't come across what you have said. Thank you.

RAMDAS: We have come to a close of the first session of our conference here. With the keynote address by Yang Berhormat, this first session, followed by the first series of questions-and-answers, has set the pace for us to discuss this very important topic of human rights in relation to Islam for the rest of the day. Human rights advocacy, insofar as civil society is concerned, is based on the Universal Declaration of Human Rights.

So, I am sure that in the course of the day, we will see how it is that we can, if at all, reconcile, for example Hudud on the one hand and amputation under Hudud and the principles of the UDHR, principles of freedom of speech and expression, and whether all these issues can be reconciled under the concept of human rights in Islam. This has now evoked a lot of questions which will set the pace for the discussions in the afternoon. Can I now, on behalf of all of you, thank and give our appreciation to Yang Berhormat for gracing this occasion and making his presentation?

The opening session closes with the presentation of tokens of appreciation to YB Dato' Mustafa and Ramdas by ERA President Marimuthu Nadason.

SESSION I

Session Moderator: Mr Charles Santiago. Charles, a former lecturer in economics at a private institution of higher learning, is an activist with the informal Group of Concerned Citizens. He continues to conduct research in issues such as human rights and water.

CHARLES: This session will have two parts to it, the first being two formal presentations by our speakers for the session, followed by tea break, and then continuing with a question-and-answer session. To facilitate the first part of the session, I would like to invite Dr Abdul Aziz Bari and Puan Mehrun Siraj to take their places in front with me.

Our first speaker, Dr Abul Aziz Bari is an Associate Professor of Law at the Islamic University of Malaysia. He is the Course Coordinator for Constitutional Law and an accomplished author with 35 different publications. Among the publications are *Cabinet Principles in Malaysia: The Law and Practice* and *Majlis Raja-Raja: Kedudukan dan Peranaanya Dalam Perlembagaan*, published by Dewan Bahasa dan Pustaka. Dr Abdul Aziz's paper is on National Development and Competing Religious Interests. Please join me in inviting Dr Abdul Aziz in presenting his paper.

National Development and Competing Religious Interests

By Dr Abdul Aziz Bari

International Islamic University, Malaysia

The title of this paper poses quite a controversial question and I do not necessarily agree with it. I must admit that I am not an expert in the subject and as such, what follows is basically my own personal opinion on the issues.

It is submitted that the answer to the above question depends very much on the manner one views both religion and development. A formalistic view of religion presupposes conflict between religions. Similarly, if one views development as a mere physical and material development then conflicts - not only between religions but also between races and interests - are inevitable.

The Concept of Development - An Overview

Broadly speaking there are two types of development; namely the planned and the natural or unplanned one¹. The former consists of conscious human efforts to change their lifestyle; a process that may also be called social engineering. Development encompasses more than just economic growth and productivity; it also includes politics and culture. Naturally this process involves almost every member of the society - politicians, professionals, academics, businessmen, peasants and so on².

In Malaysia, development planning is not new and the earliest one was perhaps during the Malacca Sultanate³. This was later continued during the Portuguese and Dutch occupations, albeit of course with different philosophies, aims and emphases⁴. The existing development planning owes its origins to the British rule: they started the first development plan under the Draft Development Plan 1950-51⁵. It is to be noted that it was during the Second Malaysia Plan (1971-75) that the new Economic Policy was put in place⁶.

It has been observed that development studies often neglected the value and role of religion.

¹ For more on this see Shamsul Amri Baharuddin, *Masyarakat Malaysia yang Membangun*, Kuala Lumpur: Dewan Bahasa Dan Pustaka, 1990, p.1

² Ibid.

³ Ibid, p.4

⁴ Ibid, pp. 4.5

⁵ See ibid, pp. 6.8

⁶ For more on this see, e.g., Chandra Musaffar, *The NEP - Development and Alternative Consciousness*, Penang: ALIRAN, 1989.

And it is quite often found that religion is included among the factors that stand as a stumbling block to development⁷. This is quite natural as development is considered from a perspective that puts the emphasis on material advancement.

Given that most of the studies were initiated by Western scholars, it is thus not surprising to find that religion is viewed negatively. Added to that was the fact the people in the West no longer consider religion important: instead rational and scientific thinking has taken over the place and role of revelations and spiritual traditions⁸.

Having noted that, perhaps one could say that actually there are two different approaches in discussing the role of religion and spirituality in development. The first one merely gives religion a place; or just acknowledges that religion has a role and function to play, without giving it a leading role in shaping and directing the manner development is to be planned and executed. The other approach looks at the role if religion is in a more commanding position; i.e. religion and spirituality actually guide and perhaps dictate development plans and projects.

Religion and Development

Given the question posed above, it is necessary for us to understand the meaning and essence of religion. The word 'religion', which has its roots in the Latin word *religare*, implies the idea of "binding"⁹ and thus, religion could be defined as something that "binds man to God and at the same time, men to one another as members of a sacred community or people", or what Islam calls as *ummah*¹⁰. In principle, true religion binds man to the Origin, the Ultimate Reality, through a message, revelation or manifestations.

It has been argued that even religions outside the Abraham umbrella, such as Hinduism, Taoism and Buddhism, play the same role with respect to the relationship between man and God¹¹. Multiplicity or plurality of religions in reality is not a problem, for "there is but one Tradition, the Primordial Tradition"¹². From this point of view, all true religions are the earthly manifestations of celestial archetypes that are ultimately rooted in the immutable archetype of the Primordial Tradition¹³. It follows that all true religions are necessarily against the modernism which installs human reason above God¹⁴. In the light of this idea, it is difficult to see how one could find a situation where there is competition between the so-called 'religious interests'.

⁷ Shamsul Amri Baharuddin, *supra*, p. 116

⁸ Ibid. See also S.M.N. al-Attas, *Islam and Secularism*, Kuala Lumpur : ABIM, 1978, pp. 1-46

⁹ S.H. Nasr, *Knowledge and the Sacred*, Albany: State University of New York, 1989, p.72

¹⁰ Ibid, p. 73

¹¹ Ibid.

¹² Ibid, p. 74

¹³ Ibid.

¹⁴ S.H. Nasr, *Islam and the Challenge of the 21st Century*, Kuala Lumpur: Dewan Bahasa Dan Pustaka, 1993, pp. 8-13

Apparently, such a notion of religion is missing from public debate about the role and place of religion in Malaysia. Almost on all fronts, religion is seen as something rigid and formal. Even among those committed to religiosity, the sense of spirituality and sense of the sacred does not seem to be present. An appreciation of these underlying ideas in religion would prevent the kind of uproar seen in the debate about Islamic state, Hudud laws or anything Islamic such as Islamic education or Islamic banking. Of course there exists what is called the line between religions and human weaknesses and failings (in implementing the precepts and ideals of religion), but this should not be allowed to obscure that common, underlying philosophy in all religions.

Be that as it may, given the above notion of religion, it is therefore important to ensure that human being must be at the centre of development¹⁵. It must be emphasised that man must be at home with Heaven, otherwise there would be problems on Earth, be it in the form of his relationship with his fellow man or with the environment. As has been noted above; i.e. given the meeting point between religions, especially their roots in the Ultimate Reality, there is no question of real competing, let alone conflicting, "religious interests" in development, especially one that is planned and implemented within those parameters.

Competing Religious Interests - Do They Exist?

The answer to this question eventually depends on how one views religion. If one looks at religion by concentrating on the details and forgetting the underlying philosophy, then this conflict would be inevitable.

In any case, some have argued that secularism is the formula to prevent the feared conflict between religions. It is to be noted that neither Malaysia, nor its Constitution, are secular¹⁶. Although this does not mean that the country is therefore Islamic, the point to be made here is that our policy is not out-and-out secular. Apparently, the most important argument here is the declaration of Islam as the official religion¹⁷ as well as the prominence given to Islam; something that is essentially an affirmation of the country's history¹⁸. But at the same time, other religions are allowed to be practised freely¹⁹, something that is guaranteed by the Constitution as well as by Islam itself.

¹⁵ That is man who stands as God's viceroy on Earth: see G.Eaton, *King of the Castle - Choice and Responsibility in the Modern World*, Cambridge: The Islamic Text Society, 1990.

¹⁶ The constitution does not contain the word 'secular' though such a character may be concluded by looking at the provisions. In any case the only constitutional document that contains the word is the White Paper by the context and real meaning in it was ambiguous.

¹⁷ See art 3.(1) of the Federal Constitution.

¹⁸ For more on this see S.M.N. al-Attas, *Islam dalam Sejarah Dan Kebudayaan Melayu*, Kuala Lumpur : Penerbit Universiti Kebangsaan Malaysia, 1972. See also his *Preliminary Statement on a General Theory of Islamization of the Malay-Indonesian Archipelago*, Kuala Lumpur : Dewan Bahada Dan Pustaka, 1969.

¹⁹ Federal Constitution, art.3(1) and 11 (1).

It is worth noting that even in the West, the situation is not really out-and-out secular. Thus, in America, one still finds expressions such as "we are a religious people"²⁰. Indeed the more recent trends seem to be the one where the courts prefer to dodge the question of separation between Church and State²¹. Terms such as 'Judaean-Christian tradition' as the basis of good conduct, for example, also reflect such a scenario. Some modern phenomena, such as environmental movement, cannot deny their roots in religious thoughts²². Environment is one of the issues where religions could sit together and form an alliance against greed and developments based on war and aggression against Nature²³.

The bottom line here is simply that secularism does not guarantee peaceful coexistence between various religious groups and sects and may deny society the benefits religion can offer²⁴.

The problem in Malaysia today is that not all the participants in the debate on religious issues are actually representing religions. Thus a Muslim's opinion does not necessarily represent the entire or true teachings of Islam. To a certain extent the debate - in some cases may be more of a conflict - is between those who feel that religion should be at the centre and those who feel that religion should be kept out of public life.

Concluding Remarks

Admittedly, there are problems as far as the relationship between religions is concerned. However these are not insurmountable so long as we are willing to talk. But there must be some adjustments, or perhaps in some cases, fundamental change to the way religion is understood. Religion must not be dominated by formalism and legalism. Although these aspects are indispensable in order for us to lead an orderly life, inappropriate emphasis to them may lead to misunderstandings and conflicts.

There are two ways to avoid or minimise conflicts between religions. One is to appreciate the history of this land and the other to understand the true meaning of religion itself. The application of secularism - especially if this is understood in its true meaning - is simply flying in the face of this country's history and reality.

²⁰ Per William A Douglas in *Zorach v Clausen* 343 US 313 (1951)

²¹ A.J. Reichley, *Religion in American Public Life*, Washington DC: The Brookings Institution, 1985, pp. 146, 156-64

²² For more on this see, e.g. John McCormick, *The Global Environmental Movements*, London: Belhaven Press, 1989, pp. 1-24.

²³ S.H. Nasr, *Man and Nature*, Unwin Paperbacks, 1976, pp. 13-6. See also his *Religion and the Order of Nature* (Oxford University Press, 1996) pp. 191-234 for the religious response to environmental crisis.

²⁴ For an interesting argument against the adoption of full-scale secularism see, e.g., W.E. Connolly, *Why I am Not a Secularist*, Minneapolis & London: University of Minnesota Press, 1999

Thus, serious and continuous efforts towards dialogues²⁵ must be continued. Otherwise relations between religions would be determined by current events such as the Sept 11 bombing, something²⁶ that has unfortunately been used by certain quarters to demonise Islam and Muslims. Thank you.

CHARLES: Thank you, Dr Abul Aziz. The next speaker is Puan Mehrun Siraj. She was a former Professor of Law and Dean at the Law Faculty of Universiti Kebangsaan Malaysia. She was also a Commissioner with the Malaysian Human Rights Commission or SUHAKAM. She served on the National Advisory Council for the Integration of Women in Development and she was also a former President of the Women Lawyers Association and President of the UKM Women's Association. Puan Mehrun will present a paper on Islamic Laws in Malaysia, the Constitution and Human Rights.

²⁵ See, e.g., Osman Bakar & Cheng Gek Nai (eds), *Islam and Confucianism - A Civilisational Dialogue*, Kuala Lumpur : University of Malaya Press, 1997. See also Osman Bakar, *Islam and Civilisational Dialogue - The Quest for a Truly Universal Civilisation*, Kuala Lumpur : University of Malaya Press, 1997.

²⁶ But some observed that this was already in place long before September 11, 2002 L see S.H. Nasr, *Islam and the Challenge of the 21st Century*, supra, pp 22-28

Islamic Laws in Malaysia: The Constitution and Human Rights

By Haji Sulaiman Abdullah & Puan Mehrun Siraj

MEHRUN: Thank you Charles. YB Dato' Mustaffa, honoured guests, ladies and gentlemen. This paper was actually to be presented by my husband, but unfortunately he is ill and not able to come here. Since he and I have jointly presented papers on this topic before, I thought that I could come and do the presentation. This was a last minute thing. He fell ill just the day before and he sends his apologies. I hope that I will be able to do a decent job of the topic. As Dr Aziz said, he is the one who should be doing this topic because he is the expert in this field. If there are any shortcomings, perhaps Dr Aziz could add and correct it or clarify.

In the brief outline of the paper that I have distributed, I began by saying that Islamic laws have been in force in this country for a very long time. In fact, before the introduction of English law in 1808, Islamic law applied in just about every area of the law. It was the British who relegated Islamic law to just family matters.

The reason I mention this is because if you look at the legal history books, they always start with the inception of English law, so there is this belief that this country has been governed by English law and they totally forget the past, the period before that, when Islamic law was in force. Of course, the British criticism of Islamic criminal law as being inhumane, barbaric and so on led to the setting aside of Islamic law, except in family matters.

So now, if we say that we are trying to bring back certain provisions of Islamic law, it is nothing new. It is just a matter of bringing back into force something that was there before. Now, we do have Islamic banking, for example, and Takaful, or Islamic insurance. I don't think anybody here is going to say that Islamic banking or Islamic finance and insurance are no longer relevant in the modern day. They have been introduced, they work and I think that a lot of non-Muslims are beginning to accept Islamic banking and so on.

Similarly, I think that in other areas of the law, we can see that there is justification for trying to bring back certain of the provisions that governed all aspects of our life. As Muslims, we believe that the Quran is the guide for us and that it is meant for all people at all times. There are various verses in the Quran which stipulate this and if you believe in that, then you will say, "Look, this is going to work." It is not that it cannot work.

Article 3(1) of our Federal Constitution provides that Islam is the religion of the federation, *but* other religions may be practised in peace and harmony in any part of the federation.

One comment I want to make is that, and this is what my husband feels very strongly about. We should not have used the word “but”. We should have used the word “and”. Why? Because Islam has always recognised the right of other religions to be practised.

If you go back in history, whenever Islam has conquered any other country, the other existing religions have always been allowed to be practised in that country, and people have not been persecuted just for their religious beliefs. Therefore it is one of the underlying principles of Islam that even if Islamic law is in force, other religions can and will be allowed to be practised. So therefore the sentence should have read “and other religions may be practised ...”, because this is a consequence of Islamic practice.

Now, what exactly is the effect of this Article when you say that Islam is the religion of the federation? Does it mean that all laws have to be harmonised with Islamic laws? Now, Mr Ramdas, I believe, was the counsel in the case of Che Omar bin Che Soh which I have given in the outline. Now, I don’t know whether Mr Ramdas feels the same way, but at that time he argued that because of Article 3 and because Islam is the religion of the federation, all other laws should be made consistent with Islam. But the court rejected that argument. It was Tun Salleh Abas who gave the decision and he said that this clause in the Constitution merely means that Islam refers to rituals and ceremonies only. So, the law does not have to be considered. That was the decision in 1988. What it meant by rituals and ceremonies only is, for example, at the opening of a conference, you have the *do’a*, the Islamic prayer, that’s all. That was the decision given in 1988.

Now this Article 3 in the Federal Constitution is really nothing new, because if you look at the state constitutions, from as early as 1895, the Johor State Constitution had a clause saying that Islam is the religion of the state of Johor and in Terengganu, I believe the state constitution drawn up in 1911 also has a similar clause that Islam is the religion of the state.

So, when the Reed Commission was drafting the Federal Constitution, there was this question of whether a clause stating the religion of the federation should be put in and it was decided that it should be. It was pointed out by one of the members of the Reed Commission, from Pakistan, that a lot of Western countries have it in their constitutions, but of course this was in relation to Christianity, like in Ireland, Norway, Denmark, Spain, Argentina and all the other Latin American countries. In relation to Islam, of course you have Iran, Iraq, Saudi Arabia, and all the other Arab countries. So, putting it in the (then) Malayan Constitution is not going to bring about hardship because hardship was not seen in all the other countries. It won’t cause harm to the population.

Now, in the Constitution itself, you find that there is the division of legislative powers between the states and the federation and this division has resulted in the Islamic laws becoming the jurisdiction of the various states. As a result if this, there have been several state enactments, in fact there are 13 state enactments and one Act of Parliament for the

Federal Territory. Because Islam is a state matter, the state legislative body will enact the laws. We do have cases where, for example, the Terengganu case of *Mamat bin Daud vs the Government of Malaysia*, where the Federal Government attempted to enact a law which is in the Penal Code, but the court found that in pitch and substance, it was in fact relating to Islam and the Islamic religion and therefore the law should have either been enacted by the State Legislature or it should have been accepted by the State Legislature as part of Islamic law, even if it had been in the criminal law. So here you have a great division.

Now this is one of the issues that have also come up with the Hudud law, for example. Now, because it is criminal law, does it come under the jurisdiction of the Federal Government, or, does it, because it involves Islam, come under the jurisdiction of the State Government? I'm not going to touch on Hudud law because I don't consider myself an expert on that. I just mentioned this in terms of the difficulties of bringing into force Hudud law. For example, Kelantan has passed Hudud law, but cannot bring it into force because of whether it has the constitutional right to do so or not.

The other thing about the division of the state and federal powers in Islamic law is that the Islamic laws are administered by the syariah courts, which are state courts. So the state courts are set up by the state government, staffed by employees of the state government and this presents a problem in that there is a shortage of staff and there is the problem of reciprocal enforcement of orders.

In the case of maintenance, it is fine because we have an Act by the Federal Parliament which states that maintenance orders from a syariah court can be registered and reciprocated in any state. So, it can be enforced by any state, no matter which syariah court issued it. But we do not have the same provisions, for example, in the custody of children. So, a court in Penang can give custody to one parent and if the parent takes the child and runs off to Johor or somewhere else, unless that state is willing to enforce this order given by the other state, you find that there can be no enforcement of that order. So that custody order issued by the syariah court is not of much use, unless you can enforce it.

There have been efforts, in fact by JAKIM, which is under the Prime Minister's Department to try and unify the Islamic laws, to get all the states to agree to uniform laws and to agree to reciprocal enforcement so that you can avoid a situation where people actually try and circumvent Islamic laws by going from one state to another state.

You may recall that when there was a control on polygamy, for example, some states were very strict, for example the Federal Territory, which was very strict and applied all the conditions and usually ruled that one could not take a second wife. Then, that man runs off to another state and that state might say, "Muslim men have a right to four wives" and might allow him to take a second wife. So, to avoid that kind of situation, there are attempts to unify the Islamic law.

Another important point that I have to mention is the limited jurisdiction of the syariah court. In the Constitution, the syariah courts have jurisdiction only over Muslims. This is understandable because Islamic law can only apply to Muslims. Islam has never said that it will force non-Muslims to follow Islamic law. That has never been the case. Fears have sometimes been expressed about Islamic law, but non-Muslims can rest assured that they will not be forced to follow Islamic laws.

When you talk about discrimination, well, it is discrimination in that non-Muslims will not be subject to Islamic law. This is the kind of discrimination that is acceptable in constitutional law, under reasonable classification. Reasonable classification is where you classify groups that have a nexus to the purpose of the law. So, if you are not a Muslim, you cannot be made subject to Islamic law. That kind of discrimination is acceptable under the principles of constitutional law, where you cannot insist that everyone is subject to the same laws.

The trouble about giving limited jurisdiction to syariah courts is that in some cases, like in custody cases, if the parties were originally non-Muslims and subsequently one party converted to Islam, the question of custody arises. The syariah court cannot have jurisdiction because there is still one party that is not a Muslim. So the case has to go to the civil court. Obviously, even though Article 121(a) says that the civil court will not have jurisdiction where the syariah court has jurisdiction, in this case, because there is no jurisdiction over non-Muslims, clearly the syariah court will not have jurisdiction and therefore the civil courts must have jurisdiction.

However, those of you who practise in the civil courts will know that the civil courts will be very afraid to make decisions in such instances. The civil judges are very afraid to make judgments in these types of cases. Such cases have been going on for years, and the poor child from a little one is now going to school. The interim order is still in force, the decision has not been made because the judge does not know: Should Muslim law be applied or should he apply civil law? So, perhaps we need to clarify the situation. Either we let the syariah court decide or we let the civil court decide and we say, "Okay, but you apply some basic principles, whether it is the Islamic law or the civil law". In both sets of laws you will find values that are similar.

For example, if I look at custody again, there are values that look upon the welfare of the child as of paramount consideration. So, it really will not bring injustice to the non-Muslim if we say, "Look, you can apply Islamic law". It is just a matter of understanding what Islamic law actually provides for.

I now come to human rights. The question of human rights here are all those rights that are essential for man to live with dignity. One of the ideas is that human rights are universal. Yes, they are universal, in as much as any person in any part of the world needs the same kind of rights to live with dignity. But, human rights law itself recognises that you can

have derogations from human rights. Derogations, as opposed to violations.

Violations are when you totally oppose human rights. Derogations are when you impose restrictions, but these restrictions are justified. Because of certain circumstances, a legitimate objective has to be achieved and there are no other rules to achieving that objective. Therefore, you apply the law in a manner that is not arbitrary. If you can satisfy these four elements, then you can have what is acceptable as a derogation of the law.

In Malaysia, we have whole sets of laws that, although the Constitution says “this is your fundamental right”, there are other Acts of Parliament that take back these rights and in the end, you do not have much human rights left. The government justifies it by saying that “given the circumstances of the country, we need these laws”. Now, I mentioned derogations because when it comes to Islam, there are certain very basic principles in the Quran that are very clear and uncontroverted, which have to be applied and if this, to a certain extent, would derogate from the universal understanding of human rights, then it has to be so.

For example, I take the freedom of religion. If you look at the Universal Declaration of Human Rights, everyone has the right to freedom of thought, conscience and religion. Islam accepts that. There is no question of that. Then, the next part, “this right includes freedom to change his religion or belief”. Now this is where we have a conflict, in the sense that in Islam, once you have become a Muslim it is a grave sin to renounce Islam.

The Quran states that it is a grave sin to renounce Islam and to become a *murtad* (an apostate). I have pointed out that in the Islamic law enactments of all the states of Malaysia, there are provisions for converting into Islam. They tell you what the procedure is, for example, you have to report to the Islamic Religious Department and you have to get it recorded in the Register of Converts. However, there are no provisions for converting out of Islam. Some people looked at it and said, “Oh, there is an oversight here. They forgot to put in the provisions for conversion out of Islam”.

It was not an oversight. No government can put in clauses for a person to convert out of Islam, because to facilitate conversion out of Islam is tantamount to aiding and abetting the commission of a sin. For a Muslim, this is a very grave sin, a sin that God will not forgive. It is very difficult for a Muslim not to commit a sin. Islam requires the highest standard of behaviour from Muslims, so every now and then, we commit sins. For example, laughing at someone who is unfortunate or disabled, that is a sin.

In Islam, becoming a *murtad* is a very grave sin. It is a sin that even God will not forgive. And because it is a very grave sin, no government will facilitate conversion out of Islam. And in the case of Hudud laws, when Terengganu was trying to pass them, the UMNO representatives made a lot of noise. When it came to the vote, they abstained. They did not vote against the Hudud law. Deep down inside, they probably would have felt, “I better not vote against syariah law, because on the Day of Judgment, I will have to answer to

God why I voted against it". So that is a serious matter. If you are a Muslim, you are not going to sin on these matters, and no Muslim will.

I am glad that I am no longer a Human Rights Commissioner now, because I would not like to take the stand and say that Malaysians have the right to convert out of Islam, because I do not want to be guilty of that sin of suggesting to somebody that you can do it. I would go out of my way to say, "Look, you are a Muslim, no matter what you believed in before." I think the reason why people want to convert out of Islam is because we have failed them. We have not shown them what Islam is, particularly those people who converted and want to convert out.

If you convert someone into Islam, you as a Muslim have the duty to show that person what Islam is, so that person will always believe and not want to convert out. So we have failed and this is where we have to work, and try to win back the people. We must not be harsh on them and say "This is wrong" or something like that but to show them that they need not go out of Islam, because so long as you remain a Muslim, God will shower his blessings on you.

So, the reason that Malaysia does not have provisions allowing people to convert out of Islam - and here Malaysia is derogating from this particular right that one can change one's religion - is because Islam does not allow it. As Muslims, we would always encourage people to become Muslims. I would like to end at this point because of time constraints, but I believe we will have some more time later, during the question-and-answer session. Thank you very much.

CHARLES: Thank you Puan Mehrun. That was actually a very thought-provoking presentation, and all of us would have to consider as well the Day of Judgment. According to our schedule, we have a break right now. Can I suggest we promptly return at 10.45am to further discuss some of the issues that have been thought-provokingly put forward by Puan Mehrun and Dr Aziz Bari?

After the break

Question & Answer Session

CHARLES: We now continue with the second part of our session, from now to about 11.30am. This part of the programme is designed by large for participants to make comments, ask questions and raise issues pertaining to the issues that have been raised by both the speakers. This is the moment where participants can voice their concerns, comments, raise questions and raise issues, but please note that we have a time restraint.

You will have to keep your questions and your comments absolutely brief. As you come forward to pose your questions or make your comments, please identify yourself and state the organisation that you come from, so that all of us here will have a sense of your identity. With that, let me invite questions to both our panelists.

RAMDAS: Since Mehrun mentioned this case which I did, Che Omar vs the Public Prosecutor, a 1988 case, I will have to clarify certain points. Fortunately for me, I brought the case along. This case involved a person charged under the Firearms Increased Penalties Act, the punishment for which was the mandatory death sentence. I argued in court that although law and morality are not the same, so far as the taking of life is concerned, in any civilised nation, the law and the morality must merge. And because we have Article 3 in the Constitution which says Islam is the religion of the Federation, so far as capital offences are concerned in this country, the taking of life must be justified and must be in accordance with the principles of Islamic jurisprudence. And I asked the court whether, in Islamic jurisprudence, the mandatory death sentence would be justified for such an offence?

I argued that the judge must be given the discretion whether to hang this man or not. The argument I made was that the law must be imbued with the principles of Islam and Islamic religious precepts. I did not make the argument that Islamic law applies. And of course, no where was there an argument of the Islamic state.

Now, that argument was rejected by the Supreme Court on the grounds that our Constitution is secular, and because the law under the Constitution includes common law. Therefore, the court would not apply the principles of Islamic jurisprudence in this case. So that was the context in which the case was done. I would like to read the particular section: "It is the contention of Mr Ramdas that because Islam is the religion of the federation, the law passed by Parliament must be imbued with Islamic and religious principles." The law must be ethical. The law must be just. But that is not saying that Islamic law is the law of the land. Far from it, because the Constitution is the Merdeka Constitution which is the social contract, and that is the promise to all people at that time how society would be managed and organised, and what would be the basis of the laws of the land. The breach of that promise would be a breach of faith in any religion.

So I hold the view that the Constitution is secular, but any law must be imbued with ethical principles and if we go for ethical principles, we will find that there is no distinction between Islam, Hinduism, Buddhism, Confucianism and Sikhism and so on. That is my belief. In respect of the issue of Article 18 and apostasy, there was a suggestion that in Islam, the obligatory sentence for apostasy is death. My understanding is that there is no such thing in Islam. I have read some books on Islam, some written by renowned scholars such as Hashim Kamali. There in his text, he says that his understanding of the study of the Quran is that there is no mandatory death sentence for apostasy in Islam. The text which he quoted and which I read, states clearly that one has the option to opt out of Islam.

We also have the case of Joshua Jamaluddin, which is also a 1988 case. Joshua Jamaluddin, a Malay, converted to Christianity and he was arrested under the Internal Security Act (ISA). His habeas corpus motion was allowed by the High Court and affirmed by the Supreme Court on the grounds of freedom of religion.

Then, in respect of the issue of the Hereafter. In my faith, I am a Hindu, and there is also a Hereafter for us. I believe, just like Muslims, that we also, ultimately, will have to answer to the Lord. But my personal belief is that when we answer the Lord, the Lord does not have a report card that says whether you are a Muslim or a Hindu or a Jew or a Christian. Our report card is in the Cosmic records. It is our deeds and our misdeeds here, our thoughts, which are permanent Cosmic records and we are answerable. It is not according to man-made interpretations of what a religion is, but in the spirit. Thank you.

CHARLES: We will take all the questions now, and allow the speakers to respond afterwards. This I think will enable us to move faster, and so also avoid some repetitions.

ARUMUGAM, of CHILD: My question is on the same issue raised by Mr Ramdas, on whether ours is a secular or an Islamic country. If history is the prerequisite to stake a constitutional demand, then this can lead to greater chaos. What happens if Indians in India go back 500 or 600 years and since Islam was brought in by force, and the radicals - I don't call them Hindus because Hinduism is not that way - the radicals go about and destroy a beautiful, renowned mosque? So this kind of conflict can become inevitable. I would like Dr Aziz to respond to this, because he has used the word conflict several times in his talk.

My other question is this notion of Islamic state. I would be grateful if the speakers, or someone from the floor, could explain where in the Quran does it state that one must establish an Islamic state to run a country, so that the Islamic way of life can be established? Any religion, for that matter, is purely personal; it is between man and God. It is an issue that is totally intrinsic in a person's mind, his behaviour and his conduct. Can someone explain where in the Quran does it state that you need to establish an Islamic state? Thank you.

K. SHANMUGA, from the Malaysian Consultative Council on Buddhism, Christianity, Hinduism and Sikhism: Dato' Mustaffa said just now that there is no compulsion in Islam and that this is an injunction in the Quran itself. As I understand it, disobeying the Quran is a sin. Puan Mehrun said that aiding an abetting the commission of apostasy is a sin as well, an unforgivable sin. Is compelling the apostate to remain a Muslim a forgivable or unforgivable sin? That is my question.

CHARLES: All right. I would like the rest of you to please wait a while, to allow the speakers to respond first.

DR AZIZ BARI: I would like to respond to just some of the issues which probably were referred to me. The first thing was the point made by Mr Ramdas, on the points made by Hashim Kamalli. We know the position taken by Hashim Kamalli as far as *murtad* is concerned. I'm afraid that is not the only view. The problem is that Kamalli is the only one writing in English, so you feel that he is an authority. If you look at his own scholarly grounding, it is very strange because if it comes to *murtad* or apostasy, he is very legalistic, very textual.

However, if you look at his views and writings on *mas'lahah*, or public interest, and *istihsan*, you will find a different thing. Also, there have been arguments that he deliberately left out references to apostasy in some books that he referred to, for example those written by Muhammad Abu Zarah, one of the current prominent scholars. So, please, if you have the means, go beyond Kamalli. I know that Kamalli has been installed as the spokesman or the authority on the issue of apostasy. But I don't think that Kamalli is the only person who can speak on this. I also think that Kamalli also simply ignored the situation in Malaysia and being an academic, I can say that this is not correct. One of the points that should have been brought up is the statistics of these cases. I think as an academic he has ignored that. From the methodological point of view, this is something that is very important. With due respect, I think we should be critical and go beyond Kamalli.

With regard to question of history raised just now, I think it is not the question of allowing everybody to go back into history and then start claiming things based on history. To me personally, it is about being mindful about history. I don't think we can live peacefully, co-exist with one another without being mindful of history, mindful in knowing the character of the country. Any country in the world would have to go back to its roots, but of course, given the situation we live in today, we will have to do it properly, through democratic means and so on, through discussion and persuasion rather than through force.

You are right in pointing out the case in India, which to my mind is very bad and I don't think that we should go down that road. At the same time, we should also look at the issue in the broader perspective. I think that most countries of the world, in the United Kingdom, some countries in Europe and in the United States itself, they can't run away from history. Of course you will have to reconcile with the demands of human rights, the demands of

international standards and so on. The demands between competing considerations are one area in which it is difficult to strike a balance.

On the issue of the Islamic state, I'm personally am not an expert on this, but I agree with you that there is no definition of an Islamic state anywhere in the Islamic texts. What we have, I think, is just the obligation to implement the values, the rules of the Islamic faith. But again, you must remember that Islam is not a religion that is very much contained by the locality, the geography and so on. There are elements of local culture and so on in it, and there are valid reasons in Islam to allow this. I think that generally you can say there is no ready-made model for an Islamic state. Every generation, every period will have its own definition, its own implementation of an Islamic state.

In Malaysia, we have to be patient about this and I think the Muslims have to be really creative to explain the Islamic state. The problem with the Malaysian Muslims is that they are very much constrained with the notions of Hudud and so on. Yes, of course, this is religion and there are forms, there are rituals because without these there will be no religion. The problem is when you over-emphasise this thing, to the extent that you create animosity, you create uneasiness among the people. I accept the point that we've got to look at history, but now we live in a society where about half of the people are non-Muslims. Naturally, as taxpayers, they are not happy, they are apprehensive about discussions on the Islamic state. At the same time, the non-Muslims must be willing to be patient and not forget the points raised by Puan Mehrun about the early Islamic history of Terengganu and Johor.

In any case you should not look at Islam as something that is barbaric, something that is backward-looking. There are many positive things in Islam, such as the demands of transparency, the demands for accountability and the right of the citizenry to take part in public decision-making. These are the things that should also be made known to the non-Muslims, apart from Hudud and Islamic banking. In this respect, I think that the Muslims are also guilty of this misunderstanding because they tend to over-emphasise certain aspects and tend to forget about, say the environment, about sustainable development, about how to manage the natural resources and the economy, for example. I think these are the things about which Islam has a lot to say. Well, I don't know about the other religions, but I believe most religions talk about values, about morale precepts, but because Islam is a newer religion, being the youngest religion, I think that Muslims are more upfront and they probably ride more on these issues than on others. This is what I think and please correct me if I am wrong. This is one thing that is a challenge to all of us and I think in this respect, we should not view the suggestion of an Islamic state as something that is negative or something that is threatening and so on. Thank you.

MEHRUN: I would just like to refer to one point that was made about religion being a personal matter. Now, it may be with other religions, yes. You can divide the Church and the State, for example as is done in the Christian countries. However, in Islam, it is a

complete way of life. It is not possible to divide religion and other aspects of your life because in Islam, religion plays an important part in every aspect of your life, whether it is government, or whether it is family life. Every aspect of your life is governed by Islam, so it is not possible to say that this or that is a personal matter and therefore the state must not be involved in it.

As for the point about there being no compulsion in Islam, yes, there is no compulsion in the religion. That is correct. But that means Muslims do not compel non-Muslims to become Muslims. No one is to be compelled to become a Muslim. That is what is meant by there being no compulsion in the religion. But, Islam is a one way street. You come in, and there's no U-turn.

I would first like to read a verse to you. It's about those who turn back, that is, become apostates. It's a long verse, but it goes on to say what the punishment will be in the Hereafter. For a Muslim, belief in the Hereafter is a very important belief because for us, this life is just a passing phase. Everything we do here is meant as an investment for the next life. And that is what matters. So, we cannot say, "Well look, we are all going to die in the end, so we don't worry about what is going to happen then. There is a long time now, and we have to be concerned about what's happening today."

For us Muslims, we are concerned about what's to happen in the next life, in the Hereafter. So, as we say, we have to make sure that what we do is right for the next life. And we also have to make sure of this for our brother as well. Now, in Islam we cannot say, "I'm not my brother's keeper".

In Islam, each and every one of us has a responsibility to ensure that no one else commits a sin. I'm not saying that you mind your neighbour's business and say, "Oh, you shouldn't do this and that!" The point is, when it comes to matters like conversion out of Islam, you cannot facilitate it because, as I've said, you are saying, "Yeah, yeah, you can go ahead and do it". What I'm saying is you can go ahead and commit a wrong, but if you know that it is a wrong, it would be wrong for you to let other people do it.

Your next question is, is it is right to compel people who want out of Islam? Now, this is where I said that when we convert people, we have to show them what Islam really means. I think that what's happening now is that there are a lot of conversions taking place simply because people want to get married. So they say, "Let's just convert and get married". But whoever is converting the non-Muslim, whoever is marrying the non-Muslim who converts, has a responsibility to show that person what Islam is about, what Islam can offer you, what your hopes are and what will happen in the Hereafter for you.

When that person understands, and more important here I think is when Malaysian society understands, when Malaysian society gives support to that person when the marriage breaks down, for example. In a lot of cases, when the marriage breaks down, then the

person feels very disenchanted. He or she feels, "I converted and now the marriage has broken down, and he or she has gone off with another person. So, what am I going to do?"

Now, this is where Malaysian society has to be there to give the support and this where we have been lacking. It is because of this that you can't blame people when they suddenly say, "Well, you have nothing to offer me in your religion, so I'm going back to the Church because they are always there to support." This is where Muslims have to learn. We have to be there to give support to those who are in need of our support, those who are in trouble. We must not be judgmental. Sometimes, we tend to be judgmental.

I work with people living with HIV/AIDS, and there is this tendency to say, "Well, you must be a terrible sinner and you did all the wrong things. That's why you have AIDS." However, the Church, and the Buddhists, for example, they say, "Never mind what you did. But you have contracted AIDS and we are going to give you care and the support, now that you are ill". This is where we, the Muslims, have to learn to do that. We have to stop being judgmental. We have to stop saying, "Well, you did wrong". Yes, people do wrong. Islam is a forgiving religion. Allah is forgiving. If we *bertaubat*, God will forgive us. So, in the same way, man must forgive his fellow man. And men must say, "Right, I give you support in your hour of need". This is where Muslims have been lacking. We have to come up with the situation where even Muslims - never mind the converts, for with them you can understand, for they want to go out when they are disenchanted - but people who were born Muslims, who come from Muslim families, they want to convert out of Islam. Why? What is wrong with our society? What is wrong with those families? That they didn't bring up their children properly?

I work a lot with homosexuals, because of the AIDS programme, Pink Triangle and so on, and I come across a lot of Malay homosexuals who say to me, "Well, you know, if the Quran says it is wrong to be a homosexual, I might as well *murtad*." And I always say, "No, whatever you do, don't ever *murtad*, because God may forgive you for all your other sins, but you don't give up Islam. You just carry on being a Muslim and live your life as best as you can, follow all the other good deeds that you can do and if you cannot stop being a homosexual, then you just carry on. But, make sure that you don't cause harm to other people."

Now, some people have told me that I'm wrong in doing that, because, they say, that I'm also encouraging the homosexual. But I never encourage them, in the sense that I never say to them that homosexuality is right. I always start by saying that the Quran does not allow it and so you have to try to stop it. We always start by having one big seminar involving muftis and *mak nyahs* and all that. The muftis say to the *mak nyahs*: "You need to pray. You need to pray and you need to ask God to help you to stop being a *mak nyah*." You don't have to say, "Look, you have to accept it as a *mak nyah*".

We believe in the power of prayer. If you pray with sincerity, God will answer your prayer.

Whatever your difficulty, whatever your problem is, if you pray with sincerity, God will accept your prayer. And the problem about Islam is that it is too tied up with religion, so tied up with faith. You cannot separate God as one thing, faith as one thing, practices as one thing, your prayers as another thing, no, they are all tied up. And if you believe in the Quran as being the word of God, if you believe in what you are taught as the basic principles of Islam, and you believe that this is right, then you will want to make sure that this is applied to everyone.

Mr Ramdas said that Islamic values should be imbued. Now, if you believe that the values are just and fair and that they should be imbued in all the laws, then what is your objection to Islamic law itself?

RAMDAS: I have to respond to this immediately. Please allow me. I have very serious objections to Hudud law, because my faith teaches me that amputation is a sin. This is what I believe. Amputation as a punishment is against my core beliefs as a human being, and in spirit. I don't believe in it.

MEHRUN: Well, Islam actually also says that any kind of mutilation of the body is wrong. Even for the dead, even to the extent that if the body is dead, you do not mutilate it. So, what more for the living? And really, Islam believes in this. But, on the other hand, in the case of the Hudud laws, amputation is more of a deterrent to crime. If the people fear that their hands will be chopped off for committing a crime, then they don't commit the crime. So the Hudud law is actually a deterrent law.

If you look at all the conditions for applying the punishment itself, it is really very difficult to apply the punishment. Theft, for example. You don't just cut off anybody's hand. You have to look into what the circumstances of the theft were. The property itself, was it abandoned? The person who committed the theft, was he in need? Are you stealing because you are poor, because you are hungry? Now, all those conditions are there. If you satisfy those conditions, in other words you have no reason whatsoever, no excuse whatsoever to steal, then only you will have your hand cut off. So, this law is meant as a deterrent to crime. I think that it has been found, in many countries where they apply Hudud laws, that the crime rate is very low. Now, the other day in Parliament, they made a joke about it, right? They said in Terengganu the crime rate is very low, and of course the UMNO people made fun out of it, saying, "Yes, because everybody went off to KL". If the criminals are running off somewhere else, how do you see this? Now, aren't these people being deterred from committing a crime?

VIJAY SHANMUGAM of Yayasan Strategik Sosial: I am a clinical sociologist. Basically in my line of studies I have seen that Islam is a very complete religion. Along the way, there are people who have been misusing it. In Malaysia, the talk of uniformity in syariah laws has been going on for years, and still there has been no action. A lot of women have suffered. In the case of child custody, you can move from Taman Tun Dr Ismail to just

across the road to Bandar Utama and you escape the Islamic law in Kuala Lumpur. Nobody can touch you, as far as child custody is concerned, because the implementation of the Islamic law in Selangor is different. Now, my question is, what are we doing about this?

My second question touches on conversion out of Islam. Yes, it is a very big sin in Islam. But what about among Muslims, the allegations of *kafir-mengkafir* (infidels) among Muslims? Is this as good as telling a person that he is *murtad*, an apostate, as well?

My third question is to Dr Abdul Aziz. We all know what happened in Kampung Medan last year, where a lot of people misused certain religious issues. Being a non-Muslim, I was afraid. I was there pre-Kampung Medan, during the racial clashes and after the clashes. In one incident, I was surrounded by children, aged around 12 years to 16 years, about 20 of them. Most of them were carrying *parangs*, and they were all chanting *Allah-u-Akhbar*. I was totally afraid, but fortunate in that a Muslim friend of mine managed to protect me.

Now, in the context of all the *darul* this and *darul* that, and in the post-Sept 11 period, everyone will start looking at this as Islamic militancy. But before that, what have we been doing? Have we been educating our people about religion? So Dr Aziz, what do you say about Islam and development as well as unity, which concern all of us in Malaysia?

IRWAN MUSTAFFA of Kuala Terengganu: My question to Dr Abdul Aziz involves your presentation just now. Could you please state whether the Islamic enactment in Terengganu provides justice to women and non-Muslims, given that the new enactment does not apply to non-Muslims? Could you specify the standard of circumstantial evidence required (Qurinah) and also the standard of the witnesses, especially in the Hudud and Takzir and in respect of the so-called “purification of witnesses” that Islamic law requires? Could you please relate this to what was commented by Prof Dr Hashim Kamalli in his book *Punishment By Islamic Law*, with special reference to the Hudud Bill of Kelantan. This is because the Hudud Bill of Kelantan is a little different from the Hudud law passed by Terengganu.

COLIN NICHOLAS of the Centre for Orang Asli Concerns (COAC): It was said that there is no compulsion in Islam to convert. I disagree with that. Although it may be so at the very high principle level, but on the ground, compulsion to convert to Islam is happening. I work very closely with the Orang Asli communities and I know that it is happening. Islam is being taught to young children who are being converted, sometimes without the parents’ consent. There is a case where the child went home one day and the parents only then knew that she had been given Islamic education and converted to Islam when she brought home the prize she had won for reading the Quran. She had all along been told by her teacher not to talk about her conversion to Islam to her parents.

The point is that this is very worrying because it may be very nice in principle that Islam teaches freedom of religion, but in practice, it is not happening on the ground. I find it

worrying because laws are enacted, in Terengganu for example, but the very people who are supposed to have passed those laws give excuses like “I cannot comment on it because I am not well versed in the law”. How are we, the people on the ground, to know what the law is about if those who are supposed to pass the law do not know it themselves?

MOHAMED YUSRI from Angkatan Belia Islam Malaysia (ABIM), a lecturer at International Islamic University: I am here on my own and not representing any organisation. I would like to draw attention that we should not approach the issue of apostasy solely from the perspective of its legal status in the religion of Islam. We should also take into consideration public order, which is a valid factor recognised by our Constitution, when we talk about enforcing apostasy as a law. In Islam, to say that apostasy is not an offence at all is still a minority view. If we go by democracy, everyone is free to forward their argument that apostasy is not an offence. But then, you have to convince the people that your argument is correct.

The majority, mainstream point of view remains that apostasy is an offence, whether under Hudud or Takzir. I would support what Puan Mehrun said, that when you talk about Hudud you must not look at the legislation per se but also the enforcement of it, because syariah law is very concerned about avoiding the actual enforcement of the punishment. That must be fully taken into consideration, together with the punishment specified. I would agree that a sin shouldn't be equated with a legal wrong. However, this is a subject for which we will need a lot more time to discuss.

DR ABDUL AZIZ: With regard to the Kampung Medan issue, I agree that what happened in Kampung Medan is a good example of the vast difference between theory and what happens on the ground. I suppose it is very difficult to make sure that every Muslim understands the doctrine and as in any community, when difficulties come, they will go back to their religion and use religion to justify whatever wrong they are doing. There are many factors in Kampung Medan which have to be borne in mind, such as poverty, deprivation and so on. I think that though your fears are founded, you've got to look at it from the broader perspective. I understand the fear and apprehension among the non-Muslims with regard to the way the Muslims and the Malays over there responded.

As for the question of conversion among the Orang Asli, I understand the problem. With regard to the response of the government on the Islamic Hudud enactment, I think it is common for the politicians to say that. I am not trying to justify this, but I think it is unfair to insist that they should know everything. This is also happening with the other governments and I think that it is best to be honest, rather than to say things that you do not know. We can't expect every member of the government to know about something which is beyond their area of expertise. I think you have to be patient and accept that.

On the question of the details raised by Encik Irwan, I think I do not have the time and means to go into them. There is this question of *bayyinah* or circumstantial evidence and so on which are very specific questions and I don't think I have the expertise to provide

answers to that. We need to have a seminar on the enactment itself for this. On the book by Dr Hashim Kamalli, I think the book was written very much on the perspective of the sponsors of the book. I think that is an honest assessment of the book. I don't think Kamalli is honest and academic enough in coming out with the book. He just gave emphasis to certain points of view and overlooked the others and I think someone should come out with another book to refute some of the unfounded criticisms that Kamalli has made. I think this will be a healthy kind of intellectual engagement. That is all that I have to respond to the questions.

CHARLES: There is a request by YB Mustaffa Ali to respond to some of the questions raised, and with due respect, I would now like to invite Dato' Mustaffa to respond.

MUSTAFA: Thank you Mr Chairman. I particularly refer to the question raised by my brother Mr Colin, about the conversion to Islam by force, which happened in Kelantan. Well, to my knowledge, and as everyone else has said, there is no compulsion to convert in Islam. I do not know this specific case, but I think we should find out what happened on the ground. It is our duty to propagate Islam, to explain about Islam, but we cannot force people to submit to Islam.

I'm afraid the case might be that of a child who has come of age and would like to become a Muslim. In that case, it is our duty to accept. Not to force, but to accept. It is against the law in our country to force religion on anyone. A person below the age of 18, without the consent of the parents, cannot accept a religion other than that of his or her own. However, it is different from the Muslim point of view, because we believe that Islam is a way of life, that it is a religion for all people. If a person would like to be a Muslim and if he or she has come of age, he or she can decide to become a Muslim and it is our duty as Muslims to accept this person. But not by force.

On the other matter, Mr Colin probably referred to me when he said that I have not answered the questions on the implementation of Hudud in Terengganu. He said that if those people in government cannot explain the law, then how can we expect it to be implemented justly? Now, I'm just being humble, because I can see that there are experts who can explain about the implementation of the laws better than I do. But if there is nobody else, then *Insyallah*, I will accept and I will explain it to you. In Islam, it is better for a better man to explain a thing that he is good at. So this is my position. I think that Puan Mehrun and Dr Aziz Bari can better explain the implementation of the Hudud, or any laws, because they are legal people. I am not. Thank you very much.

CHARLES: Thank you, Yang Berhormat. I would now like to bring this panel discussion to the conclusion. Let me invite you to thank both our speakers for their presentations and some of their very thought-provoking comments and responses. Of course some of the issues that have been raised can be followed up in the subsequent panel discussions as well. Please join me in thanking them with a round of applause.

SESSION II

Panel Discussion: Role of Muslim Women in the Family and Society: Rights and Responsibilities

Moderator: Prof Mehrun Siraj

Speakers:

Dr Lo' Lo' Ghazali, PAS Central Executive Committee Member, and Puan Zaitun Kassim, Sisters in Islam.

MEHRUN: For this session we have two high powered ladies. The first speaker is Dr Lo' Lo' Haji Mohd Ghazali who is an elected PAS Central Committee member. You say that PAS is a male-dominated party, yet it voted in a woman to its Central Committee, a situation that you do not have in Umno. Dr Lo' Lo' is a medical doctor and director of a private maternity and general practice clinic in Kuala Lumpur. She is married with four children and she is also a member of the PAS Muslimat executive.

First Speaker: Dr Lo' Lo' Ghazali

To start my presentation, I would like to share with you why Allah or God created human beings and other creatures to be His servants. According to Islam, humankind and other creations were created to have total submission to Allah. So, in Islam the basis of submission is not whether a woman, since we are talking here today about the human rights of women in Islam, submits to men, but that men and women together submit to Allah.

In order to understand what Islam has established for women, we must refer to the Quran and the Hadith. This can be understood when the matter is studied in whole, in a comparative manner rather than partially. The rights and responsibilities of women in Islam are equal to those of men, but are not necessarily identical. Equality and sameness or identical are two quite different things. This difference is understandable because men and women are not identical - but they are created equal.

Never in the history of Islam has any Muslim doubted the human status of women, that a woman possesses a soul and other spiritual qualities. Unlike other people believe, Islam does not blame Eve alone for the first sin of humankind. The Quran makes it very clear that both Adam and Eve were tempted, they both sinned and that God's pardon was granted to both of them after their repentance and that God addressed them jointly. This is my introduction to this topic.

What Islam has established for women is that it enabled her to withstand her nature, give

her full security and protect her from disgraceful circumstances and uncertain channels of life. In Islam women are recognised as full and equal partners of men. He is the father and she is the mother, and both are essential for life. Her role is not less vital than his. By this partnership, she has an equal share in every respect. She is entitled to equal rights and she undertakes equal responsibilities in this equal partnership of the reproduction of humankind. As Allah says in the Quran, "Oh Mankind, we have created you from a single pair of a male and a female and made you into a nation, satisfied that you may know each other."

The quality of women in Islam is evidenced by the unprecedented legal rights given to them under the monotheistic religion as defined in the Quran. As one of many examples, consider the rights of women in marriage and divorce. Both men and women have equal rights to contract a marriage as well as to dissolve it. You can refer to the rights of *talaq* and *taklik* (a marriage contract under which divorce is effected if the husband fails to return home after a certain period of absence); *fasakh* (annulment or abrogation of marriage) and *khul'* (divorce at the insistence of the wife); for which I will need a lot more time if I am to explain them here.

A woman is equal to man in bearing personal and common responsibilities and will receive rewards for her deeds. She is acknowledged as an independent personality. Her human nature is neither inferior nor deviant from that of a man. Both are members of one another. Allah says, "The believers, men and women, are protectors of one another. They enjoy what is just and are forbidden what is evil. They observe regular prayers, pay *zakat* (tithes) and obey Allah and his Messenger. On them will Allah pour His mercy, for Allah is exalted in power."

So, women are also equal in the pursuit of education and knowledge. When Islam enjoins the seeking of knowledge by a Muslim, it makes no distinction between a man and a woman. Fourteen centuries ago, the Prophet Muhammad declared that the pursuit of knowledge is incumbent to every Muslim, male and female. The Hadith states that education is for everyone, for every Muslim male and female. The Muslim woman is also entitled to freedom of expression as much as the Muslim men. But, some opinions are taken into consideration and cannot be disregarded just because she happens to be a woman. It is reported in the Quran, and in history, that women not only expressed their opinions freely but also argued and participated in serious discussions with the Prophet himself, and with other Muslim leaders.

In one verse of the Quran, it states that Allah has indeed heard and accepted the statement of the woman who pleaded with him concerning her husband, and carried her complaint in prayer to Allah. That is the meaning of the verse concerned. Women are also encouraged in Islam to contribute their opinions and ideas. There are many traditions of the Prophet which indicate that women would pose questions direct to Him and offer their opinions on religion, economic and social matters.

Historical reports also show that women participated in public life, especially in times of emergencies. Women also used to accompany the Muslim armies engaged in battle to nurse the wounded, prepare supplies and serve the warriors and so on. Islam also grants women equal rights in contract, enterprise and to earn a living independently. Her life, her property and her honour are sacred as that of men. If she commits an offence, the penalty is no less, or more, than that for men. If she is wrong or harmed, she gets due compensation, equal to what a man in her position would get.

There is one verse in the Quran which means Allah has not bestowed his gifts more freely on some than on others. To men it is allotted what they earn and to women what they earn. But ask Allah for His bounty, for Allah has full knowledge of all things. Islam does not state these rights in statistical form and then relax. It has taken all measures to safeguard them and put them in practice as integral articles of faith. It never tolerates those who are inclined to prejudice or practice discrimination between men and women. One of the verses of the Quran states that Allah criticised people who present their daughters to God as a gift. This happened during the pagan times.

Apart from the position of women as independent human beings, acknowledged as equal and essential for the survival of humanity, Islam has given them a share of the inheritance. Before Islam, she was not only deprived of that share, but was herself considered as a property to be inherited by men. In Islam, whether she is the wife or mother or sister or daughter, she receives a proportion of the property of the deceased kin, a share which is dependent on the degree of her relationship with the deceased and the number of inheritors. No one can take away this share, or disinherit her. Even if the deceased wishes to deprive her of her due by making a will that favours relatives or others, the law will not allow him to do so.

In principle, both men and women are equally entitled to inherit the property of the deceased relative, but the portions they get may vary. In some instances, men get two shares, while the woman gets one only. This is not a sign of giving supremacy to men. Generally, Islam upholds that women are entrusted with the nurturing role while men are given the guardian role. Therefore, women are given the right of financial support. The Quran states that men are the maintainers of women. Because Allah has made some of them excel over others, because the men have to spend their wealth in support of women.

In some instances of bearing witness to certain civil contracts, two men are required or two women and one man. This is no indication that women are inferior to men. It is a measure of securing the rights of the contracting parties, because women as a rule are not so experienced in practical life as men. This is in reference to that period. This lack of experience may cause a loss to any party in a given contract. So, the law requires that at least two women should bear witness with one man, so that if the woman as a witness forgets something, the other one will remind her, or if she makes an error due to lack of experience, the other will help to correct her. Every human being lacks one thing or other,

yet no one questions their human status.

Women also enjoy certain privileges that men are deprived of. She is exempt from some religious duties, such as regular praying and fasting at times when she has her regular period and at times of confinement. As a mother, she enjoys more recognition and higher honour in the eyes of God. The Prophet acknowledged this honour when He declared that paradise is under the feet of the mother. Women have to stand behind men during prayers but this does not indicate in any sense that they are inferior to men. Women are exempted from attending congregational prayers which are obligatory for men. This is a regulation of discipline in prayers and not a classification of importance. This order of standing in lines was introduced to allow everyone to concentrate on their meditation. This is very important because Muslim prayers involve actions, motions, standing, bowing, prostrations and so on. So, if men mix with women in the same time line, it is possible that something disturbing or distracting may happen.

Moreover, no Muslim man or woman is allowed during the prayers to touch the body of another person of the opposite sex. If men and women stand side by side during prayers, they may accidentally touch each other. To fulfill the true purpose of prayers, Islam has ordained the organisation of rows, whereby men stand in the front lines and women behind the children. Anyone with some knowledge of the nature and purpose of Muslim prayers will be able to readily understand the wisdom of organising the lines of worshippers in this manner.

It is Islamic that a woman should cover herself with the cloak of honour, dignity and chastity. The cloth which she must put on is one that can save her soul from weakness, her mind from indulgence, her body from lustful looks and her personality from demoralisation. Islam is most concerned with the integrity of the woman, with the safeguarding of her morals and morale and with the protection of her character and personality. Both men and women are expected to dress in a way that is simple, modest and dignified.

The specific traditions of Muslim female dressing found in some Muslim countries are often the expressions of local customs rather than religious principles. By now, it is clear that the status of women in Islam is unprecedentedly high and realistically suitable to her nature. Her rights and duties are equal to those of men, but not necessarily or absolutely identical with them. If the Muslim woman is deprived of one thing in some aspect, she is fully compensated for it with more things in many other aspects. Her rights match with her duties and the whole status of women is given clearly in a verse of the Quran, which may be translated as: "And all women shall have rights similar as the rights given to men according to what is equitable, but men have a degree of advantage in some cases, such as inheritance, over them."

MEHRUN: Thank you, Dr Lo' Lo'. Our next speaker is Puan Zaitun Kassim, who has been an activist in social justice issues for the past 14 years, particularly in relation to

women's issues. She is a freelance consultant and a trainer for the International Labour Organisation and for regional NGOs. Zaitun also does a lot of local community training as well. She has been a manager with AWAM, the All-Women's Action Society of Malaysia. She contested in the 1999 general election, and for the constituency where the majority has always been more than 20,000, she reduced it to just a few thousand. She is active with the Women's Candidacy Initiative, Women's Aid Organisation (WAO) and with SUARAM.

The Second Speaker:

ZAITUN: I would like to start by thanking the organisers for inviting me today. I would also like to wish peace be upon every one of you here today. I am encouraged by this meeting, because everyone is saying "I'm not an expert", and so that allows me to say, "I'm not an expert, either". It is nice knowing that I am in the company of non-experts because, humility apart, the truth is that all of us need to be at the same table and dialoguing, because no one of us can claim to be the ultimate expert. In that spirit, I think that it is great that we are engaging in some form of dialogue at the moment.

However, I considered whether I should keep quiet for the next 20 minutes because there are laws in this country that actually say that any other opinion that you might propagate, disseminate or put forward, other than that which is in current force, is an offence. But, I wouldn't want to leave you with 20 minutes of silence, so let me put forward these different views and let's be brave about it. We don't like the ISA ... well, I hope all of us don't, and we say so. There are laws that say you can't speak on this or that, and we still do, because we so passionately believe that it is so unjust. We say it because we believe those laws are unjust.

In the same spirit, when you work in a women's organisation, you see all these women who come and tell about all those things that are worrying them, troubling them or paining them and yet at the same time, they are told that they cannot question this or that because that is Islam and therefore you cannot question it. This puts them in a locked position. They feel the pain, and are told that they cannot question because that's the law. That is so hard to believe, it is so incoherent, because if Allah is all merciful, all compassionate and full of justice, it is hard to believe that God will actually let injustice reign.

The laws that actually say that you can't come out and speak on this or that in the Syariah Criminal Offences Act, and now also in the State of Terengganu Syariah Criminal Offences, are subject to interpretation. It worries me that when we have laws such as these, dissent is stifled; it stifles debate, discourse and creates fear. I don't understand the purposes of creating this fear, because Muslims who are feeling the fear don't say it, Muslims who feel the fear and express it get persecuted. I have lost count of the number of times people have said, "Ah, the Sisters in Islam are a bunch of apostates!" I don't know how these people can say that, because only God decides who is an apostate.

Then, there are the non-Muslims who feel completely outside the circle. Sometimes, it is as though we are talking two different languages. It leaves us in some kind of disharmony in our own heads. All of us believe that we are *khalifahs*, all of us are stewards of this world, all of us are stewards of this essence of being human and yet, on the other hand, we have mortals who say, "No, some will be better stewards than others". We grow up reading about rigorous debates that took place during the time of the Prophet, where men and women were involved, like during the time of the Companions. Now, we find out that when you put forward different views, that's wrong!

I don't understand why this is so, because in countries such as Indonesia and even in some of the Arab states, they encourage dialogue. For example, there was a round-table discussion on whether there is any conflict between Islam and CEDAW (Convention on the Elimination of All Forms of Discrimination Against Women). They brought together many powerful Islamic scholars to discuss this. I think that it is only timely that seminars like this take place. I hope that this spirit is kept up and things like "Don't invite so-and-so to our seminar" do not take place.

I think that it is better to encourage more debate and discussion because ultimately, it is only God's words that are divine. Interpretations by mere mortals are not. We are human beings interpreting the words of God. Even before the imams, there were many schools of thought, but four were major schools of thought. None of the imams of the four major schools of thought said "I am the final, and this is it". All of them subjected themselves to scrutiny. They allowed broad debate. This is why Islam is unique, it allows each and every individual to think, to read, to understand, for a person to find out, to discuss, to debate, to discourse.

In the interpretation of Islam, you have the Quran, which is the divine source, the Hadith, which are the recorded sayings or tacit approvals or doings of the Prophet. Now these were recorded anything between 200 and 250 years later by people who were relating what the Prophet had done or said. Now, a lot of scholars put these things that we call Hadith into a very rigorous process of scrutiny. They must fulfill three major qualifications: they must describe what is possible for humankind, they must not contradict or abrogate the Quran and they must not be contrary to historical facts.

So, a lot of Islamic scholars around the world, whether contemporary scholars or scholars of the old, put the Hadith to a major process of wringing out. Even in our country we have those who say, "No don't take the Hadith, put it aside", and some who will say, "Take the Hadith, but leave out those that contradict". So there is a rigorous process to this. I'm explaining this only because some people may not be aware of the situation.

If we look at the Quran, and the Hadith which complements it, then we get the juristic views. Out of this we get juristic views and juristic opinions. That's not all. After juristic opinions there is the formulation of laws. And that's not all as well. After the formulation

of laws, we have the people who implement the laws. Out of these four or five steps, there is only one that is Divine, which is the Quran. Everything else has got human intervention. I think we should be humble enough to accept that we have faults, and we are going to need to talk to each other. As Dr Lo' Lo' explained earlier, in the whole issue of creation, in the issue of responsibilities and deeds, there is no difference. Men and women are protectors of each other. It does not say that men are superior or that men are the protectors of women.

There are several different interpretations even on the Surah that says men are *qawammah*,. Some say that men have one degree more superiority than women, some interpretations go that way. Some say no, it's the degree of responsibility, so that you make men responsible for their families, otherwise they will walk away. It does not imply that men are superior. I'm just giving you the multitudes of views that are around, whether in Malaysia or elsewhere. It also bestows women with full agency, which means that they can act on their own behalf; she has autonomy and the power to decide her future as well. There is also the right to speak, the right to privacy, the right to represent herself, the right to believe and the right to question.

When you start getting into this juristic opinions and laws, that's when there seems to be this big divergence, because then some people would have different opinions. Take for example the issue of the *wali*, the person who gives a woman away in marriage. It is said that women must have a wali. In the Maliki school of thought, women need not have a wali. For example in Kelantan, a father or a grandfather can give their children away in marriage, in certain circumstances even without their consent. While I can see what the reasons might be, it does take away the autonomy of the woman. There is nothing in the Quran that says that's how it must happen. These are juristic views, and therefore not unchangeable. There are many, many views.

We are all equal before God, but somehow, before human beings, we become unequal. It was mentioned before, in one of the examples, that if some part of a woman raises the passion of a man, then she is at fault. If a woman leaves the house without permission, then that's an offence. It says nothing about the boys. We've had cases before, like in one in Kedah in 1998 where two girls and a boy under 18 years were arrested. The boy was allowed to leave after paying a fine of RM1,000 but the girls were put in detention for three years! So, when we see all this happening, it is hard to believe that the justice that is there in Islam is being fairly implemented. There is something very wrong with the process. For all we say that we are trying to protect women and so on, I can't see that detaining women is protecting them. This is so similar to our Women and Girls Protection Act, which we call the *Women and Girls Detention Act*! There is nothing protective about this law. It goes against the will of women.

In Islam, men and women are given equal rights to contract a marriage, and to dissolve a marriage as well. Unfortunately, the cases that we see are so different. We have cases of

women who have to wait up to eight or nine years, traipsing up and down the syariah court and still not getting their divorce, even though their husbands have been in jail for years for drug addiction and what not. These are real cases. We've had a woman who was splashed with acid on her face and she's been wanting to apply for divorce, but the courts wouldn't let her. So she had to go and beg her husband, "Could you please pronounce the *talak*?" When you hear this you feel really hurt, you feel hurt for the woman, and certainly you feel hurt when other people say, "Oh God! Is Islam like that?" Actually, it is not Islam. It is the implementation by mere mortals that have put her in such a position and got everyone thinking that somehow this is an unfair religion. That hurts.

The issue of polygamy is another major source of discontent. We probably know by now that some countries in the world disallow it, or are in the process of disallowing it, because they take counsel from the verse in the Quran that says you cannot treat two women the same even if that's your ardent desire. This is Surah An-Nisa 4-129. But there are various discourses. Some would say "yes, you can", some would say "with conditions" and some would say, "no, you cannot. Times have changed; that was during the wars". So, whether it is right or wrong is up for debate. At least, let's create that vehicle for debate.

There are various things. Like even in our law, there used to be a fifth condition for polygamy; that if you marry a second wife, then the standard of living of the first one should not drop. But they removed that condition. So, now you have women who say, "He has married another now, but he now only sees me twice a month, and I don't get this or that or the other." These women are told to be *sabar* (patient) and to accept their situation. I think we should unequivocally say that it is unacceptable that women are put through this injustice. We should say this, rather than say that there must be some reason for this. This situation makes the religion incoherent, because Islam is so much about justice and compassion.

As far as women in public life are concerned, there are many other citations of women who have been great leaders. Bilqis, Queen of Sheba, for example is mentioned in the Quran as a brilliant leader. People like Salma were consulted when the Prophet wanted to draw up the Hudaibiya treaty, and took on her suggestions, even though the other Companions were doubtful. Another was Shifa Abdullah, who was the inspector of markets. These women were holding high powered positions in those days.

Of course, we know about Siti Ayesha, who was consulted on her knowledge of Islam and was known to have corrected one of the Companions, Abu Huraiyah. Women have been involved in the realm of religion. Hafsa, daughter of Umar Al-Khattab and wife of the Prophet, took charge of the Quran until it was reproduced elsewhere. The Prophet also appointed a woman, known as Ummu Warqah, to be an imam in a household where there were men. I just wonder why we don't hear these things today. It has taken a process of going back to the source ourselves to see what is there.

The issue of judges is also another issue, whether women can be judges. As I mentioned earlier, there was this conference of Islamic scholars in Jordan in 1999 which found that there was no reason that women could not be judges in the syariah courts. There is still discussion on whether they can preside over criminal cases, but there are juristic opinions that if a woman can give testimony in a particular area, then she can also be a judge in that area. These are juristic opinions, and this brings me to the issue of witnesses.

There are many jurists, many scholars who would say that this issue of one man and two women witnesses is very much restricted to matters of commerce only. However, a further opinion says that the second woman is to remind the first. Therefore, the first is the negotiator, the one who is actually making the bargaining, and the second one is just to remind her. This does not negate the fact that the first woman is the one who is negotiating. But why has this now come to mean that two women to one man, then four men to eight women? It doesn't quite translate that way.

Some of you may have heard before that the Prophet's wife, Khadijah, was much, much older than him when they were married. They were married for 25 years and he was monogamous all that time that he was married to her. Khadijah was a successful businesswoman, and she was very much in the realm of public life. So, women in the realm of public life are not a new thing in Islam. It's not like we are allowing women to do so now. They had always been there. So, whatever forces that are trying to push them back are a new thing. It is a modern interpretation, and I'm not sure why.

I would conclude by saying that there are varied opinions in juristic views and we have to create room for discussion. Discussion can also bring a stop to one of the issues raised earlier by a participant, the *kafir-mengkafir* issue. We can stop these things by bringing everybody to the table to discuss the different issues, the whys and the why-nots. It worries me when there is not enough debate and things are pushed through. With due respect to the Hudud laws in Terengganu and Kelantan, there was no consultation in the formulation of these laws. Maybe once it was already formulated, then there was a series of explanations and getting feedback.

However, *syura* (consultation) goes beyond this. *Syura* is an on-going process of finding out what the *ummah* thinks. So it is beyond just the formulation of law. It's about always having your finger on the pulse of what the people are saying, thinking and feeling. Certainly in the passing of these new Takzir laws in Terengganu, I don't know where the debate was. So, we now have laws such as the clothing of women, it is a fact that we cannot leave the house without permission, that it is an offence if one does not pray five times a day.

I totally believe that we have our duties to God, that is the *ibadah* and the *muamalah*. Again is a bit of a discord. On the one hand we are told that in Islam - and this is seen very much in the life of the Prophet and his Companions who valued privacy so much - that it is between mankind and God, that there is a social order in Islam, and then there is that

private Islam, between you and God. I'm not sure and I'm not convinced that the state should be legislating on private life.

There was one case where one of the Companions went and spied on a couple having sex and then he asked his friends what he should do about this. Rather than talk about the case, they told him that he shouldn't have looked. They said that the couple did a wrong and that they will answer for it. But to go and spy on them, that was wrong. So, it was shocking for me to read in the papers about the couple in Perak who took the syariah court to task for breaking down their doors. They have been married for 21 years and now they are being charged with *khalwat* (close proximity). May be this is not such a bad thing, because we are now starting to debate whether breaking down doors on a couple has a basis in Islam or not.

I'm not expecting that we come to any agreement here. It's just to say that there are so many juristic opinions and gender inequality is not an inherent part of a religion. It must never be condoned. We can't say that, "Ah, the Quran says women are less". We must never say that. If you see that happening, if it is manifested, it is the human intervention that has made it so. So I ask of those who see the injustices that are perpetrated on women, please don't think that this is the divine will of God in Islam. There has been so much human intervention between that and what we see.

QUESTION AND ANSWER

MONKEY (Unnamed): Based on the last seminar that I attended in KL on the Hudud laws organised by the Terengganu State Government and attended also by Sisters in Islam and WAO, which was represented by Ivy Josiah and Zainah Anwar, I was told by the two of them that the stoning of adulterers and the amputation of parts of the body for theft are barbaric and tyrant laws. I would like to know the position of Sisters in Islam and AWAM on these issues after they amended the sections in our new Islamic enactments on the Takzir and the Hudud in Terengganu.

Also, Zainah said at that seminar that the Islamic enactments of Terengganu do not do justice to women, especially in regard to rape cases. So I would like to ask, in reference to Section 376 of the Penal Code, regarding marital rape, the maximum sentence is 20 years and the offender is liable to be whipped as well. However, in Islamic law, we can punish the rapist, if the case is proven under Hudud law, with stoning. He is also liable under Takzir, under which the degree of punishment can be lower or even higher than Hudud law, because the Takzir punishment is under the discretion of the judges.

ZAITUN: I did not come here expecting this forum to get into the nuts and bolts of the details. It would be unfair on me, and it would be unfair on people who don't have the benefits of knowing the ins and outs of Islam as well. Also, I think it will end in just splitting hairs, rather than looking at the spirit of what the religion is about. Whether *rejam* is tyrannical - and I am not going to defend the words of others, I can only speak for myself, for what I am willing to uphold myself. The punishment of *rejam* is not mentioned in the Quran and I think we all know that. So, what could be more constructive is to come together to discuss the whys and wherefores of this, how did it come into Islam, should we still uphold it, how should we go about doing it? If you think that I'm not answering your question, it is because I think that it should be for another platform, where the finer details can be looked into.

On the issue of rape, I think whoever formulated the original draft of the Hudud didn't do a distinction between rape and consensual sex. There is a world of difference between rape and consensual sex. If people cannot understand this, then they should not be formulating laws, if I may be so bold as to say that. In rape, there is a clear victim, and in the other, there is no clear victim as such. If there are, they will have to answer to God, and answer to God they shall. So, the people who formulated the law then equated rape and consensual sex by stating that if a woman wants to prove rape, she had to bring four witnesses. I think that people got really upset. This was the utmost unbelievable. How can you possibly bring four witnesses, four upright Muslim men, never mind just one, four? To witness a rape? It is unthinkable. You would be lucky if you had any witnesses, let alone a man. What is the man doing watching a rape, anyway? I think they didn't do it a service by lumping it into one and the same, and ask for four witnesses. The people cannot

appreciate that such a law is fair. There already was rape, and the horse had bolted, so to speak. It is a harsh set of laws.

The law is meant to be soft, to invite victims and witnesses to come forward. I fail to see the rationale for the Hudud law because there is so much harshness. There is no explanation. If you break the law and you *bertaubat*, you repent and seek forgiveness, then you will be forgiven. All that is missing from the Terengganu law. All that you have is a set of laws that explain crime and punishment. If you have someone who may not know the ins and outs of it, of course he will panic.

So, whether or not it is a good law - again, I'm doing the job of not answering your question - or whether or not it is better than Section 376 I can't say because I have problems with 376. I have major problems with the rape laws. I know of men who have raped their wives just two days after their Caesarian section, and they say, "You're my wife. Under Islam, I can do whatever I like". That is the man saying this, and so he has very violent sex with her, which to me is rape, and the stitches gave way. So she had to hold her belly, take a taxi and go to the hospital. If anyone tells me that this is Islam, then sorry lah. We must be talking two different languages. I can't accept that. So, I have problems with Section 376 of the Penal Code.

We should talk more, for there is so much ground to cover. As far as Perak is concerned, it is not the nitty-gritty, but the spirit of the syariah officials barging into somebody's house on the presumption that something illicit is going on, and the presumption that the Islamic department officials have the right to dictate what the couple should be or should not be doing, the handcuffing and the degrading manner in which this couple, mind you, married for 21 years, were treated. I don't think that this is Islamic.

I find it hard to believe that you can humiliate someone in the name of Islam, just like those women in the beauty contest. There are laws being made and you don't know about these laws until you trip over them, that is, until some people come on stage and arrest the Muslim women in the beauty contest and handcuff them unceremoniously. For what? What example do you set? Do you make an example of the women? No! You made a mockery of the system. People will say, "Oh God, Islam is like this!" They just felt sorry for the women. So it is not so much the details of the issue, it's more about the spirit behind what we are doing. That's really what I am questioning.

DR LO' LO': I would like to respond to Ms. Zaitun's answer, just now, with regarding to rape law. In the Hudud Terengganu Enactment mentioned, about the need for four witnesses. Actually, that is not true and it has been explained in previous seminars. I didn't bring the laws here to be read, but there it requires the need for obvious and clear proves. Nothing is at all mentioned about the four witness. And this has been explained by YB Wan Mutalib Embong dan YB Ustaz Hamid Taib in a seminar held in Kuala Lumpur, some time ago. *(This response was in Malay and this is the translated version).*

MEHRUN: I think the Terengganu Government did give an assurance that it would withdraw that section of the Hudud law. What Zaitun was talking about is Section 9, which concerns the allegation of rape made by a woman. I believe that section has been withdrawn. The reason why it was withdrawn was that because that is a situation where she is accusing someone else of *zina* (illicit sex). And Section 8 is the section which deals with false accusations of *zina*. I think it was pointed out to the Terengganu Government that if it is concerned about the woman falsely accusing someone, then it can bring this under Section 8, which applies to both men and women, and there is no question of having four witnesses and so on. So, they agreed to withdraw Section 9. As YB Dato' Mustaffa said this morning, it is not a question of a change in principle, but it is a change in proceedings. So, the principle remains that false accusations come under Section 8 and Section 9 has been withdrawn. I think that was what the women's group was concerned about.

ZAITUN: I just want to clarify. I'm saying that the reason why this never got discussed fully was because people were already very upset about having to bring four witnesses for rape. So we never got to discuss it in a calm and cool manner, because it was already so fiery from the start. I am saying that the changes were actually in response to the debate that happened at that time. I am just encouraging debate.

MEHRUN: I think I have to reiterate a point that YB Dato' mentioned this morning concerning *syura* (consultation) and which Zaitun also mentioned. I think that *syura* should take place at every level of society. It should take place in the family, between the husband and wife, between parent and child. It should take place in the workplace, between employer and employee. In any kind of situation, where someone is going to make a ruling that affects the other party, it is incumbent on that person to consult the other party and seek their views.

So, in a husband and wife situation, a husband should never make decisions on his own. He is, as you say, the protector, but he has the responsibility to consult with his wife and they make a joint decision. And likewise, in the state, the government must consult the people, and preferably before a law is passed. As Zaitun pointed out, the Hudud law was enacted first, and then you have the seminar. That's what caused a lot of unhappiness among the people. Perhaps there should have been a *syura* before the law was passed. But we know that in this country, the people are never consulted.

A lot of laws are passed without any consultation at all. And then, even when it is brought to Parliament, Members of Parliament do not even get the draft before the sitting. They get it only on the day that it is tabled. So when Members of Parliament cannot comment, then what more the public? So I think a very important principle of Islam which should be introduced and which might help solve a lot of problems is the *syura*. If we can start ensuring that consultations and discussions take place all the time, then we can avoid problems, particularly in formulating laws. That is most important. If we can have this,

then perhaps we can iron out all the concerns or we can even explain the need for such a law and get some kind of understanding. Laws are not much good if people do not accept them. When people accept the laws, you don't have to worry much about enforcement and so forth. It is only when they don't accept the law that you have to be concerned with enforcement and so on.

WATCHALAH NAIDU from Women's Aid Organisation (WAO): Zaitun was reluctant to answer on behalf of Ivy Josiah, regarding her comment that the Hudud law is rather draconian and inhumane. I like to state WAO's point here, that we are against any form of corporal punishment, be it the mandatory death sentence, *rejam sampai mati* (stoning to death) and amputation. So if Hudud has all these provisions, then we are against it as inhumane, draconian and outdated. We should not be having laws like this being practised now. This is in response to the question posed earlier. Now my question is, which I pose to the panel, especially Dr Lo' Lo', who stated that women are equal partners, that women have equal rights to contract marriage and dissolve the marriage. But the WAO finds it very difficult, because we work with women and a lot of Muslim women come up to us and say that their husbands have pronounced *talak* (divorce according to Islam) outside of court. Now, that is illegal, yet, the husbands are allowed to pay a fine. And the pronouncement of *talak* is still accepted. It is still registered. Now, how does this apply to Muslim women, if you say they are equal in marriage, when they are not allowed to do the same thing?

That is just one point. Another thing which Puan Mehrun said earlier, that the crime rate in countries where Islamic laws have been put into effect has reduced. Sorry to say, but I have yet to see figures proving that statement and if it is true, are we looking at a society that is going to be facing a similar situation? That women are going to be stoned to death? This is very interesting, because this woman in Nigeria is going to be stoned to death for committing adultery. The interesting part is, where is the man who was also responsible? How come he is not being punished? This is not the only situation: There are countless other situations, for example the case of Zafran Beevi, who was punished. Yet, the person who raped her was not punished. Now, this is interesting because the fact that she got pregnant and delivered a baby is seen as proof of *zina*, or adultery. I find this funny, because I don't believe in Immaculate Conception any more. I think for a woman to have a baby, there must be a man involved as well. We are talking about equal treatment, equality between men and women. If we are talking about punishment being equally meted out to men and women, I have yet to see any result.

DR LO' LO': I would like to recall Brother Yusri's statement just now, with regards to *syariah* law in Malaysia, today. The law is not in accordance with the actual Islamic law. A man can pronounce *talak* outside the courtroom. Though it is illegal, and after the matter has been heard and the man has been punished, the *talak* is still acceptable. I think it is happening. In Islam, if it is proven that whatever said by the husband is truly meant to *talak* his wife or divorce her, so definitely the *talak* has befallen. This can't be ignored.

Only that, in Malaysia, today, the purpose of the *syariah* law in a number of states is to ensure the wife is not overly ill-treated, so it is compelled to pronounce *talak* in the courtroom. That is what, I understood.

If you are talking about equal rights, definitely, in the Islamic law, a woman cannot divorce her husband. But she has the right to *fasak*, where she can demand that her marriage be dissolved. There is also the *taligh*. In *taligh*, for example, when there is no agreement during the marriage, which means that if there are certain clauses missing or not valid, that would *cause talak*. So, the wife is entitled to it. Similarly, she has her right in *holok*, where she can for separation, if she resent the marriage, doesn't like the husband or for any other reason. That is what I understand about equal rights between a man and a woman in a marriage, when they want to get married and even when during the marriage is being dissolved. Thank you. *(The response was in Malay and this is the translated version)*

ARUTCHELVAM, of SUARAM: My questions are from the previous session and from this. One thing about Islam that we always hear is *Tuhan yang maha pengasih, maha penyayang*, that is most compassionate and all that. But the kind of Islam that we see or that we hear about is the *samseng* (gangster) part. I think that there is something wrong in how you look at it. We say that this is what we see and this is what we hear. This is the interpretation that we get. I was told by the police chief in the district that I live that most sex-related, incest cases are committed by Muslims. Then, there is this thing about deterrence. I don't see the connection, whether what is said and done are two different things.

When the issue of homosexuality, *mak nyah* and all that were brought up, we took a very simple, shortcut way out by asking them to pray. I think if prayers can resolve the problems, then we should all pack up, go back and keep praying and hope that things will be resolved. I think we have to seek the truth, we have to seek solutions. Some say that one good deed is equivalent to 40 times of prayer. I don't know whether this is true, but anyway, what I'm trying to say is that there are larger issues. You just cannot say, go and pray and you will get the solution. You cannot take shortcuts. I saw a very interesting poster when I was in India recently. It said that religion has divided mankind, but let us as human beings not kill ourselves.

ALICE LEE, Selangor Chinese Assembly Hall: This question has been in my mind for a long, long time. As a non-Muslim and a woman, and looking at Islamic law, even though you tell me that men and women are born to be equal, but for so long as a man can take four wives at a time, I think it is not equal at all. I am wondering why this law is still existing in Malaysia. I understand that this law was implemented in the ancient times, because there were many wars going on, and many men were killed, and the population of male and female in Islamic communities was unequal. So this thing was allowed in order to rectify the situation. But nowadays, we find that the numbers of men and women are

about the same. So why is marrying of four wives still allowed, why are these kinds of inequalities allowed to remain in Islamic law? I am just wondering how the Muslim women feel about this, but I myself find that this is not equality at all.

MOHAMED RAHIMI, of Angkatan Belia Islam Malaysia (ABIM): My question concerns a Muslim woman in a minority Muslim country, or a Muslim woman living in a state of non-Islamic law. We are talking about how Islam treats others, how Islam treats women, but I want to pose a question on the other side of the coin. How acceptable, and how open, are the ritual practices of a Muslim woman in a non-Muslim society? The covering of the head is one example. Why is it that the Government of Singapore, for example, does not allow even primary school children to wear head scarves when I don't think that it will be very harmful to the community, or to the integration of society. For example, why in Turkey are women denied their political rights in Parliament, simply because they cover their heads with scarves? What is the opinion of the panelists on this matter?

DR LO' LO': I would like to answer on the polygamy. Polygamy is stated in the *Al-Quran*. We, the Islamic people, believe that what is taught in *Al-Quran* came from Allah, from the God, who created us. So, we believe that every thing that has been explained or any decree in the *Al-Quran* is for the kindness of all our living things in the world. Because the Allah created, He knows what is best for His creations. Regarding polygamy, the *Al-Quran* says you can marry three or four times or have two or three wives, but if you can't perform fairly, then just marry one. There aren't any marriage regulation in there that says you can only practice polygamy during war or that if there is no war or that if the number of men and women are equal, than polygamy can't be practiced. We uphold the teachings of Islam because we believe that what *Al-Quran* teaches us in Islam is not for any one period alone, not just for the Prophet Mohammed's epoch alone or his friends but from the maiden day till the end of the world or when the world reaches its doomsday. That's our faith.

I forgot just now to answer about a case in Nigeria. First of all, I am not sure exactly what happened in Nigeria because whatever information we get from the media and we know that they always manipulate issues, especially issues concerning Islam. I am given to understand that *syariah* law in Nigeria varies significantly from that in Malaysia. If we say that only women are being punished and not the man, it's definitely unfair. But, because that I am not completely sure of what actually took place in Nigeria, and I still haven't got any information on what occurred there, I am still looking for the information as it would be a good reminder for us here.

ZAITUN: I think the case in Nigeria is abhorrent. I think it is terrible that laws can be made in this way and women will be stoned to death. Actually what happened to the man involved? He confessed to raping her and midstream in the trial, he revoked his confession and the process is that if you revoke your confession, then you are as good as forgiven. The problem is that the woman who was raped has a child, and that is held as proof of her

bad deed. I think it is totally discriminatory against women to have them bear this extra weight of proving that they have been wronged, that their pregnancy is held against them. I just cannot find the space in my heart to believe that this is just. I refuse to accept that this is just. I don't think that it is just the mass media manipulating stories, for we were also receiving alerts, urgent appeals that this woman is going to be stoned to death and could you please help, please say something about this issue? And so we did, because as responsible Muslims, when we see something that is not right, it is wrong for us not to do something. You can't justify watching pain in process and you don't say something. I can't find the space in my heart to accept that.

On Arul's point, asking why is it that you say Islam sounds all so good but then it also looks so mean. Unfortunately, I also have to agree with you. It is actually a very beautiful religion. At school, I just learn, studied, about Islam. I go to the religious classes. That's it. One doesn't even actually get a chance to appreciate the religion. It was only in my later life that I actually appreciated Islam a lot. There is a lot of wisdom, it is a beautiful religion. But, the practice by human beings is such that it makes Islam extremely unfair. So, I agree with Prof Mehrun that we Muslims have to ask ourselves, why is it that people think that we are so harsh? If they think that, may be there is something wrong with what we are doing, may be we have to revisit that and understand what we are doing.

The issue of polygamy is where there is a point of departure. There are several different views on polygamy. It fascinates me because a lot of people will say you can marry one, two or three, but they always forget the line just before it:

If you don't want to do injustice to the orphans, what can you do about their welfare? They didn't exist in a vacuum. The orphans were there because of the war. So I think that it is in the hermeneutics of the interpretation. None of these words that God brought down actually existed in a vacuum. There were incidents preceding it, there were incidents during it and there were incidents after. If you want to understand the real world view, you will need to understand the socio-cultural context, the historical context as well, for otherwise Islam will not be a religion for all time.

Specifically to address Alice Lee's query, the verse that states if you fear that you will cause the orphans injustice, then you marry two, three or four. But if you fear that you can't deal justly, then just one. That will more likely prevent you from doing injustice. Why this has been taken to mean a right is still being debated. Again, I maintain that there are many juristic views on this. It was specifically about the care of orphans, but even if you look at the practices of the Prophet, he married widows, women who were elderly, ailing women. So when you see what is happening now, like a person marrying virgin No 1, virgin No 2, virgin No 3, it's hard to believe that it has got anything to do with the care of orphans. Then, if you say that you want to follow the letter of the law, fine, then make it about orphans. But I don't think it is about that.

There is another Hadith about the Prophet who, when his son-in-law wanted to take a second wife, He said “No, I can’t allow it, unless and until you divorce my child, because what harms her harms me, what upsets her upsets me.” So, based on this, some opinions are that a man can take more than one wife, and some opinions are that this is not allowed. There is a clear injunction in the verse 4-129, which states that you are never able to do justice between wives even if that is your ardent desire. So scholars take counsel in that and say, “Okay, there is a reason for this.” Yes, it looks like there are two divergent points and I know that it causes discomfort for some people. However, unless we get into points of discomfort and we argue them out, or talk about them and bring other scholars in as well, we won’t become an intelligent community. We can’t prosper unless we are willing to take that risk of being uncomfortable.

The final point is about what is my opinion about what is happening in Singapore. I think that is unfair. Just as you do not force someone to wear, you do not force someone to not wear. I sincerely believe it is a choice and it is a choice that must be exercised freely. I feel very bad for women who would like to wear headscarves, who would choose to wear, who want to wear and are prevented by the state from wearing. Just as much as I would take exception to women who do not want to wear headscarves and then the state forces them to wear. I take exception to this because I think that these are matters of a contract between you and God. Let it remain a contract between you and God. Of course you are free to disagree, you are free to have your own opinion and that’s fine, but I feel that if we cannot debate these issues, we will lose.

MEHRUN: Now, for some further responses to some of the questions raised, we again have our keynote speaker, YB Dato’ Mustaffa Ali.

MUSTAFA: Thank you Puan Mehrun. I appreciate very much the lively discussions that we have had. I agree that we should have more discourse on this, more debates on the topics raised, and more exchanges of views between Muslims and non-Muslims. But for now, I would also like to share now some views on a few of the topics raised.

One is polygamy. Polygamy is one thing that is prescribed in the teachings of Islam, and is practised by society, the family and by man. For practical purposes, for example, if you take the Muslim family in Malaysia, I think almost 100% are monogamous. Very few people take the advantage of becoming polygamous just because it is allowed in the religion. We have such prescribed teachings on the law of polygamy because the intention is to have a stable family. A stable family is one that is harmonious. With the other societies, the other communities, I feel there are a lot of families among the non-Muslims who are polygamous illegally, by taking mistresses and so keeping out of the legal procedures that they have to follow.

In Islam, you have to be straightforward, you have to be fair and you have to be open. You are responsible to the family. I would agree that although there is this permissive allowance

for a man to have more than one wife, I think that the verse that was cited is clear enough. You can, unless you can do justice, otherwise you don't marry more than one. There are cases for example, where you are responsible, you are advised to take more than one wife. Who knows, one day there may be war again? Then there would be more women than men, and it would be the responsibility of the men to see that the women are protected, are safe from the hardships that they will have to suffer. I would agree there are some men may have abused what has been allowed. This is the exception, because what we need is the man who aspires, who follows what is prescribed in the teachings, not the one who digresses. Digression is something that you can find in all communities, all religions.

Another matter is the sentence of stoning to death a woman in Nigeria. For stoning to be handed down as a punishment, there are conditions. If both parties to the offence are not married, that is both the man and the woman have never married before, and they have sex illicitly and they are caught, then they are not stoned to death. It is only the punishment of caning, and this is not the same type of caning that is done here, in the prisons of Malaysia. For 100 lashes, it is not to inflict injury on the body, but it is to serve as a deterrent.

However, if the person involved is already married and commits adultery, then there must be something wrong. He or she is not faithful to the spouse, either the wife or the husband. Even then, you will need four witnesses to say that he is involved in adultery. And even if - and there have been a few cases even during the Prophet's time - the man in one case came willingly to the Prophet and admitted that he had committed adultery, the Prophet turned him away, and said, "You better go back and repent. Don't come to be and ask to be punished. God can forgive you if you repent and ask for forgiveness." This happened three times and the fourth time, because the man had committed sins and he wanted to cleanse himself, the punishment was meted out. But halfway through, he could not stand the punishment, and ran away. The Prophet did not ask the people to chase after him. It is wrong.

In the case of Nigeria, I really don't know what is happening there. I don't say that all Islamic laws that have been promulgated in the states of Malaysia are all the same. But I would say that the Majilis Agama or the Islamic religious departments in all the states do not enact laws based on the true teachings of Islam. In Terengganu and Kelantan, we are trying to do the best that we can. There might be shortcomings, and we can have differing opinions and views and so on in terms of procedural, technical matters which can be amended for the sake of the betterment of the people.

Again, there are some cases where injustices are meted out, for example in the case mentioned by Zaitun, who told of the woman who asked for separation from her husband, and waited for years and years without getting it. I agree that there are lots of weaknesses in the religious departments throughout Malaysia, in all the states. These weaknesses are not due to the inefficiency of the Islamic teachings or to the law itself. These are the

weaknesses of man, the actors who are biased against women. I myself do not agree with what is happening now. These are the issues that we have to address, to correct. We have to take these issues as our task to implement them in a better way, according to what is prescribed in the teachings of Islam. Thank you very much.

ZAITUN: I am still not very convinced that the number of polygamous marriages among Muslims is very small. The newspapers reported recently that the state of Perlis added on another five Islamic officers to register polygamous marriages. That's for tiny little Perlis, and that alerts me to the fact that there are actually a lot more polygamous marriages among Muslims than we know about. The reason they increased the number of officers is because they have found out that lots of polygamous marriages have not been registered.

I think we have to go beyond commenting on procedures and technicalities. I agree with Dato' Mustaffa that in whatever way we achieve it, justice is paramount. I think we have that in common. It's just the different opinions and juristic views. I also think that the way things are developing, that we are able to discuss and debate issues and problems, is a sign of maturity. This is extremely good. I sincerely hope that this is not the last time we meet. I think that this is the first time it is being done openly and I really think that it's good. I'm hoping that it won't just be a case of commenting on the technicalities, otherwise it might seem patronising. People might think that it's all empty talk and in substance, nothing is really taken up. So rather than procedures and technicalities, it would benefit all of us if we can have discussions on the substance of the issues as well. Thank you very much.

MEHRUN: Someone wants to say something again. All right, just a couple of minutes because we have to break for lunch. Watchalah, is it?

WATCHALAH: I beg to differ with Dato' Mustaffa Ali on a couple of statements made here regarding polygamy. I really, really think that it is insulting to our sisters by saying that polygamy will still be allowed because there may be war in the near future and women are still in need of protection. I think that it's about time that we move away from the protectionist attitude of protecting women because they are the nurturers, because they are the weaker sex. Women have proved, again and again, that they can take care of themselves. We have three women up there on the stage. Women contribute to more than 40% of the workforce. There is no need for men to maintain women anymore.

Another thing is, Dato' Mustaffa said that families from other religions have illicit relationships outside marriage, but that at least Islam recognises this kind of relationship and legalises it. Now, we have a law saying that drug abuse is illegal, but yet lots of people still take drugs. Does it mean that we have to legalise drugs? Now, I'm going on the pretext that Islam is a very just and progressive religion. If we look at history, slavery used to be allowed in Islam, yet it was later seen as no longer relevant, and thus it was abolished. So I don't see why, in this context, polygamy cannot be abolished as well, because we have to look at a larger picture of its relevance in our contemporary society. I

just cannot resist saying this.

MEHRUN: Okay, thank you. I allow everyone to speak because I'd rather have people go back satisfied that they got things off their chest rather than say, "Oh, I wanted to say this, but I wasn't allowed to". I would like to thank everybody for participating and making this session a very lively one, particularly I would like to thank the two panelists, Dr Lo' Lo' and Puan Zaitun. I think what has come out of this session today is the need for further discussions. There is need perhaps - and I don't know whether ERA Consumer, HAKAM or SUARAM will organise it, or AWAM maybe - for discussion on polygamy alone. We can discuss those issues and the problems and all that, and decide on what needs to be done for the future. Thank you very much.

Break for lunch

Final Panel Session

Moderator: Encik Zaid Kamaruddin

Encik Zaid Kamaruddin has been the Deputy President of Jemaah Islah Malaysia since 1999. He assists the president in running the organisation which has 12 state and 47 district branches, with more than 6,500 members. Zaid is responsible for human rights issues and developing JIM's participation in emergency response. Last year, he was Chairman of the Working Committee of Gerakan Mansuhkan ISA or the Abolish ISA Movement (AIM).

ZAID: We have four speakers to kick off our panel discussion for final session of the day, and they are Dr Dzulkifli Ahmad, Dr Mohd Hatta Ramli, Prof Dr Abdullah Al-Ahsan, and Mr K. Shanmuga. Our panel discussion is titled *Multiculturalism and Islam*.

Our first presenter, Dr Dzulkifli Ahmad, is Director of the PAS Research Centre, and was a contestant in the last general election. He holds a PhD in Toxicology from the University of London. Today, he will speak on *Islam and the Privatisation of Essential Services: Issues and Challenges*.

Islam and Privatisation of Essential Services: Issues and Challenges

By Dr Dzulkifli Ahmad
Director
PAS Research Centre
Kuala Lumpur

Mr Chairman, fellow panellists, distinguished participants, a very good afternoon to all of you. First of all, I praise Allah for allowing me to attend your programme. I would also like to register my gratitude to the organisers for allowing me and other participants from PAS to take part in this seminar.

Once upon a time, it would have been preposterous to invite PAS to such a forum and occasion. Certainly, things have changed. The political landscape of Malaysia has changed, and I think having arrived here late, I have the advantage of denying knowledge of what you have discussed so far, and therefore, I will just be oblivious to what has been discussed, so that I can take the liberty to express my opinion to the fullest.

Friends, brothers and sisters:

Over the last few decades, there has been a widespread change of opinion about the role of state and private enterprises in promoting economic growth. A strong consensus has emerged that the achievement of more dynamic economic growth requires an increasing role for the private sector. Underlying this consensus is the belief that resources will be used more efficiently if they are transferred to the private sector. A key element of this new market orthodoxy has been the privatisation of state-owned enterprises (SOEs).

Historically, this trend of privatisation started in the United Kingdom when the Conservative government came into office after the 1979 elections. Since the launch of the United Kingdom's privatisation programme in the early 1980s, the wave has swept the world, touching every continent, every political system and every sector. Its emphasis has moved gradually from industrial, commercial, and financial sectors to the infrastructure sectors and then to municipal services; it has only recently started to reach education, health and administrative activities like customs administration. Privatisation has reached many areas like public transportation, public schools, national parks, waterworks, fire departments, infrastructure (including airports, bridges, and turnpikes), social security pensions, medical-care, post office, public hospitals and social services.

Privatisation represents a reversal of the process of nationalisation begun early in this century. In addition, it is seen as one of the most effective means to both reduce state

spending and to enforce market discipline in the provision of key services, thereby securing a more efficient allocation and use of resources.

The trend of privatisation is now a worldwide phenomenon affecting both the traditional capitalist countries and the former communist bloc alike.

It is hard to find a country without a privatisation programme. Malaysia has sold its National Lottery, Buenos Aires its zoo, the Czech Republic the guest house of the Communist Party, while Indonesia has hired a foreign firm to undertake its customs inspections. In the US, in San Francisco, privatisation of golf courses has been taking place and in Argentina, the privatisation of nuclear power plants is being discussed. Today there are even discussions to privatise the privatisation.

Some definitions:

In Malaysia, the term privatisation is used rather loosely by the government and the media to refer to a broad range of measures from:

- a) partial divestment of ownership (of an activity or enterprise) from public to private sectors,
- b) the licensing of private competitors in an activity previously dominated by the public sector, or
- c) the private management of a public sector activity.

Whichever way the term is used, privatisation generally involves new control of economic activities as well as implications for the economic welfare of consumers and employers.

Essential services may arguably include water supply, electricity, health and education.

A little exposure to Islamic Jurisprudence

Privatisation in Islam is a precarious subject, not because it is very intriguing but rather for the lack of literature by scholars, both early and contemporary. This has certainly added to my anxiety and difficulty in presenting this topic. God willing, I nonetheless would take up the challenge. I am just going to go back to the basic rule; go back to the Al-Quran or the prophetic tradition, As-Sunnah.

One could find hardly anything close to privatisation in this. The Arabic term for privatisation is *ahliyah*. Being an innovation of the recent past, I am not totally surprised. Am I totally unguided, then? Certainly not! It would have vindicated the claim of many

sceptics that Islam is outmoded and antiquated! How could it face the challenges of time and space, of innovation and change, if it is unable to address a very relevant issue of economic governance and government?

This brings me to the subject of understanding the “Wisdom of Islamic Jurisprudence” or *Maqaasid Syar’iyyah* and the Islamic Legal Maxims or *Usulul Fiqh*.

To explain in very simple terms, the discipline of “Wisdom of Islamic Jurisprudence” would enable us to understand the underlying reasons, rationale and wisdom behind Divine Injunctions. This is eloquently captured by the famous saying of the great ulama Al-Imam Al-‘Iz Ibn Abdus Salaamin:

“The entire Islamic jurisprudence pertains to the maslahah (interest) of humanity, either in dispelling or eliminating harms (mafasid) or attaining the bigger interest (masoleh)”.

Hence, the entire Islamic jurisprudence is aimed at facilitating man to achieve a prosperous life, here and now, in this temporal life, and subsequently achieve eternal bliss in the Hereafter. In other words, Islamic jurisprudence at best facilitates endeavours for a blissful and prosperous life (*hayatan taiyyibah*), and at worst, will not in any way be an impediment to acquire this state of existence.

My second argument is along the lines of Usul Fiqh legal maxims as a discipline derived by fuqaha or legal scholars in the various schools of Islamic Fiqh, which are principles derived from observing various legal cases in the Islamic syariah or Islamic law.

Of the most fundamental principle in Usul Fiqh or Islamic legal maxims is the principle of “the doctrine of permissibility (al-Ibahah)” in the famous legal maxim of *Al-Aslu fi al-asyaai Ibahatun* or, *The Origin of Things that are Permissible*.

Very simply explained, Islam permits everything that pertains to the “worldly affairs” of human needs, social and economic interactions, save what have been categorically forbidden or prohibited. As an example, a Muslim is enjoined to practice trade and economic enterprise, but not to involve in *riba* (usury) and deception (*gharar*).

Incidentally, a Muslim is forbidden everything in the matter of religious practices, save what has been enjoined, as shown and practised by the Prophet Muhammad. As an example, a Muslim is made observe five obligatory prayers daily. He is forbidden to add an extra prayer, however over-zealous he may be. Any additional prayer must be regarded as supererogatory (*sunnat*).

This short introductory exposure to Islamic jurisprudence would hopefully enable us to appreciate the following treatise and propositions. I must admit that these are not entirely

my propositions, for I have discussed them with some scholars in the academia.

Privatisation in Essential Services: An Islamic perspective

The ultimate task of the Islamic government is to ensure the provisions of amenities and infrastructures so as to enable the Muslim *ummah*, nay the entire community, achieve the *raison d'être* of existence, *inter alia*:

- a. provision to worship God, albeit in the various religious settings;
- b. to enjoin goods and forbid evils and abominations;
- c. to establish a just, prosperous and equitable society; and
- d. to ensure basic amenities of health and education are provided for.

Hence, viewed from this perspective, provision of basic and essential services would surely lie in the domain and responsibility of the Islamic leadership. Arguably, from this perspective, privatisation, in whatever forms and modes, would simplistically be argued as 'unIslamic' or at best 'not encouraged' in Islam.

While this argument may sound 'logical' enough, it is not entirely right. As there are no explicit Islamic texts (*nusus*) from the Quran or Sunnah on this issue, it therefore lies in the domain of the Islamic leadership, *Ijtihad*, or in the discipline of *Siyasah Syariah* (Governance in the spirit and objective of *Syariah*, often referred to as *Maqasid* and *Usul Fiqh* or other sources of *Syariah*). The Imam or Khalifah or President or the Prime Minister has now to decide whether privatising and divesting these 'essential services' is in the best interest of the general public as these are originally and by *de facto* the responsibilities and roles of the government as stipulated in roles stated above.

It goes without saying that the issues would undergo a thorough deliberation of *syura* or consultation, embracing the entire interest group, viz: expert and technical groups, economists, industrialists, environmentalists, NGOs and not the least the general public.

Feedback would of course be looked into again by the cabinet and perhaps by the religious council if the issue warrants it, depending on nature of the problems, and finally decided by the *Majlis-asSyura* or the parliament, whichever is relevant in our situation.

Issues of Privatisation

Among the main considerations and parameters that would have to taken into serious account would be, *inetr alia*:

- i. existence of any islamic texts or nusus against the privatisation of the specific essential services in question, ie water, education, health or electricity that outrightly forbids the use of ijtiḥad.
- ii. improving services and efficiency to the rakyat (citizens)
- iii. reducing the financial burden of the government and improving efficiency
- iv. relieving the government's administrative burden (Federal or state).

Challenges of Privatisation

Barring prohibition of privatisation due to the presence of *nusus* or the Islamic texts, (which I do not think so), the decisive factors that would finally determine in which direction the policy of the Islamic government would take would subsequently rest on the establishment of real public need that must be evidence and research-based, rather than just imaginary or based on theoretical supposition.

The performances of public sectors in countries such as Singapore, Taiwan and South Korea have been cited as examples of efficiently managed public sectors. Hence, how should the issues be properly viewed and managed? Is privatisation a universal solution or a panacea to public sector inefficiencies? It has been suggested that with managerial reforms, greater public accountability and a more transparent public sector, greater efficiency could be achieved by curtailing public sector waste and borrowing.

The substitution of a private monopoly for a public one does not necessarily lead to greater efficiency or cheaper and better-quality services. The examples are too numerous to cite, especially when deals are not done through open tender but through direct negotiations. The challenge is to prove that within an Islamic context and undertaking, the practice of crony capitalism and 'institutionalised' corruption, nepotism and collusion could be eradicated, hence ensuring that the target beneficiaries, i.e. the *rakyat* (the citizens), are best served rather than adversely compromised. Whether the system of Hisbah and 'check and balance' that are in-built in the systems of an Islamic government are capable of containing the various malpractices are yet to seen and established.

With this, Mr Chairman, I rest my case for the time being, and I thank all of you for lending me your good ears. *Assalaimualaikum waratmatullahi wabarakatuh* and thank you.

ZAID: Thank you very much Dr Dzulkifli. Our next speaker will discuss the *Equitable Distribution of Wealth and Power with Relevance to Islam and Human Rights*. Dr Mohd Hatta Mohd Ramli was once a practising doctor. His current designation is PAS Central Executive Committee member and he is also the political secretary to the Leader of the Opposition in Parliament. He has had much international exposure, the latest being the Humanitarian Mission to Afghanistan in 2001.

Equitable Distribution of Wealth & Power: It's Relevance to Islam and Human Rights

***By Dr Mohd Hatta Ramli
PAS Central Executive Committee***

Thank you very much, Mr Chairman. Fellow panelists, ladies and gentlemen: I think that since Dr Dzul has taken up so much of time, I will take a shorter time so that there is time left for the other presenters. Also, he is my boss at the Research Centre, so I should *kow tow* (show deference) to him a bit. The topic too is not easy, for it is about the distribution of wealth in Islam, together with the human rights element.

I guess this is a very much awaited topic, and one on which a politician would be in a position to speak. Since I also consider myself a politician, so I guess I can fit into that role.

I begin with the suggestion that mankind are all brothers in the eyes of Islam. Allah says in the Quran, "Oh Mankind, We created you from one man and one woman, and then divided you into nations and tribes, so that you may recognise one another. Indeed, the most honourable among you, in the sight of Allah is he who is most pious of you. Surely, Allah is All-knowing, All-wise."

So, we start on that premise that we all originate from the same source. Over the period of time, we came to be divided into different races, colour, languages and religions too. Naturally, there will be differences among us, but these natural differences never demanded that the distinction of inequality of high and low, and noble and mean, should be established on the basis that one race should claim superiority over another. That is why in Islam we are really up in arms against the struggle of *Ah-Fabia*, or the tribal struggle of each tribe. This has been mentioned in the Quran and also in the Hadith or the Traditions of the Prophet.

The division of people by Allah was a natural way of cooperation and recognising one another to enable nations to combine and give birth to a common way of life. The only basis of superiority and excellence that is, or can be, between men is that of moral excellence. People who are more excellent in their morality would of course be on a higher status. Also, in the eyes of Islam, the superior among us are those who stand the highest in piety. *Taqwa* is the submission to the will of Allah. That is why we, in the case of leadership, will be looking for the most pious among us to lead, because, according to this *ayat*, they are the ones who are closest to Allah, meaning that they are knowledgeable, have good morality, good behaviour and so on.

The word equitable in this topic means fair, impartial and just, not just being equal. There are other considerations as well when we talk about equitability. It's not just being equal in numbers, but also in other aspects and values such as fairness, impartiality and justice. The syariah is founded to promote such justice and equitability. In the early beginnings of this way of life, when Islam was centred on the restructuring of society, not just of the Arabs but of the rest of mankind too, which were subjected to oppression and discrimination by autocrats and dictators alike. This is part of history. History is history. It's not theoretical, and not philosophical. It happened in the past. Some has been written and some has been forgotten, but history is something that has happened some time in the past of mankind.

I start from the premise of civil society, which is very much discussed nowadays. Civil society, like Islam, places its members under the influence of its laws, and thereby ensures peace, order and good governance, which is what Muslims equate to the Madinah Community set up by the Prophet. It would seem that such society would treat its citizens in an equitable manner. In the eyes of the society, everything is the same. Here too it means that every member of the society, the citizen, contributes personally and morally to the sum total of civil power, creating a climate of peace, trust and tolerance.

Most of us would be trying to look for this kind of situation. It is not Utopia, but something that we can achieve if we work really hard. The discourse on Islam and human rights and how they relate to each other has been going on for ages and is surely extensive. At the same time, the distribution of power and leadership in a society is a matter of great concern to Islam. A lot of questions have been raised after the issue of the "Islamic state" was discussed in public.

So, the people would ask, "What is the role of the Muslim, and what is the role of the non-Muslim, in leadership and in power?" I believe that while submitting to the will of Allah, the horizontal human relations call is for the total observance of one's rights by the fellow human beings, guided by the tenets of the faith. In this respect, the act of accumulating wealth, I would say, which is a propensity bestowed and allowed by the Islamic faith, is a right of the individual in one sense and even an obligation in another sense.

I hope I will be forgiven for saying that the discussion on equitable distribution of wealth is much simpler than the discussion on the equitable distribution of power. This sounds political, but given the circumstances, is an honest assertion on my part. While a lot of discourses are still being generated to clinch a current and most appropriate position on Muslims and non-Muslims vis-à-vis equality in the eyes of the contemporary Islamic state, some scholars have advanced and advocated equality between Muslims and non-Muslims with no restrictions, thereby allowing for the smooth implementation of Islamic administration with the support and involvement of the non-Muslims. Whether this is acceptable or not is for us to discuss.

There is historical precedent to show that non-Muslim citizens were employed in

government posts, sometimes in large numbers and in high government positions, even in ministerial positions. However, the No 1 post remains in the hands of the Muslim, for obvious reasons. This has been stressed many times, at least by our leader, the PAS leader, that the position of prime minister or president or *amir* or whatever, should be in the hands of the people who believe in Islam and who practise Islam. In Islam, power lies in the hands of the righteous. To sustain good governance, Islam does not compromise on the quality of those in power. This is another aspect that we have to be straight.

The failure of the people or the system to appoint a credible administration will spell doom. Allah said in the Quran that "God commands you to hand over the trust to whom it belongs. And when you judge among people, you judge with justice". This implies that those who do not bring any good to mankind or society should not be involved in managing a society. So, you need to have people in the know. This is further emphasised by the Prophet, who said that "Whoever employs a man to a task while knowing the existence of a more qualified person for the same task truly betrays God and His Messenger and the Believers".

So, we should always be on the lookout for the better ones in society, people who are more qualified, more honest. How that can be measured, I'm not sure, but you should look for better people to run the country. This is why the issue of meritocracy is very much acceptable to Islam. We, at least in PAS, have been promoting this issue of meritocracy in every aspect of our lives.

Even among the Muslims too, we should be choosing the best Muslims to lead the society. That has been categorically mentioned in several instances by the Menteri Besar of Terengganu and Acting President of PAS. Capable non-Muslims should assume the posts of ministers, or in a state, as State Executive Councillors, be involved in the formulation of policy, general or specific, pertaining to the day-to-day running of the nation. This has been an issue of late, and several quotes and misquotes have been flashed in the media and I think, again, this is one thing that we can discuss.

The only exception was on policy issues pertaining to Islamic matters. Issues on Islam should be left to the Muslims to decide and there should not be any contention about this. I can give examples. Kelantan has appointed non-Muslims to local government posts while Terengganu is contemplating appointing non-Muslims, and women too, as state legislators if none are elected in a democratic process. This praiseworthy action, though of a small scale, augurs well for the equitable distribution of power at all levels of society. I think that if you go by our democratic process, in the country you can have a position, like in Terengganu or Kelantan, where you will not get a non-Malay representation in the State Assembly because of the distribution of the population.

With power comes the demand for justice among the powers that be. A society means a mechanism of control to observe the rule of law, to chart the path and the future of the

ummah or citizens. On the question of equality before the law, Islam dictates that no one is above the law, and this has been exemplified by the traditions of the Prophet. In this context, the Prophet said, "If Fatimah was to steal, I would sever her hand". Now, this is a very strong edict and it shows that no one is above the law. Even the daughter of the Prophet is not above the law.

The well-known account of how Caliph Ali faced the law in his case of a Jew whom he alleged stole his steel armour explains the extent of the justice in Islamic law, that it is not be trampled upon by even the highest authority. Even the highest ruler at that time, Ali, could be summoned to court and be willing to stand trial, unlike compared with today when the No 1 will want all the questions released to him before he can be called to court. People in position of power, Muslim or non-Muslim, should be responsible in upholding justice.

With regard to the distribution of wealth, man is permitted to accumulate wealth and property and this is a right that should not be denied. Islam promotes hard work in order to change or improve one's economic position. One of the five priorities of Islamic social life is the care of properties and belongings. One of the elements of the popular Hudud law is severe punishment for theft or the illegal possession of properties belonging to others. This is to safeguard properties. So, we should be supporting such kind of law. It may look severe, but the philosophy behind the law is for man to be righteous. Again, I think that this has to be discussed further.

On another level, Islam forbids the monopolistic control of wealth. Confining such wealth to oneself and not recognising society, from where the wealth is derived, and denying society a share, is wrong. Allah said that is so "That wealth does not circulate in the hands only of the rich among you". So this is against what is happening now, like cronyism, monopoly in the market and so on. Syariah also recognises the principle of equality in meeting the people's welfare needs. History has it that the syariah is the earliest legal tradition in history to entitle every individual in the country to financial assistance from the public treasury, or the *Baitul'mal*. This has been recorded in the history of Islamic administration.

With the two scenarios above, it is expected that the citizens too play their part to enable a fair distribution of wealth. It is not just the function of the state but also the function of the citizens. Muslims have to pay *zakat*, which is a religious duty, and *sadakah*, and donation, and what not, while non-Muslims are expected to pay taxes and are expected to donate to society. This is an element of an egalitarian society depicted by Islam, a clear and non-contentious argument that equitable distribution of wealth is a profound characteristic of Islamic society. Of course, details of the various taxes should be dealt with at a separate discourse.

Probably, some of us may ask what the position of Islam is in regard to the events happening

now in the country, on the issue of bumiputra-non-bumiputra, special rights of the people and so on. I think basically, as has been discussed, the issue of preferences for a certain group of people, or race, in the country should not be tolerated. Everybody should be equal. If you want to help the poor, help the poor of all races, that is, those who need to be helped. Of course, there are other issues to be discussed in this matter, like why the so-called social contract of 1957 came up with all these kinds of things.

I have made the issue sound so simple and even thought the subject is so heavy, it is quite straight-forward. A lot has been discussed over time, but I think that there are many finer points that we will be discussing after this. Thank you very much.

ZAID: Thank you, Dr Hatta. Our next presenter is Prof Dr Abdullah Al-Ahsan, whose subject is *Is Parliamentary Democracy Inconsistent with Islam?* Prof Dr Abdullah is a professor with the Department of History and Civilisation at the International Islamic University Malaysia in Gombak. He obtained his PhD in History at the University of Michigan, Ann Arbor, and he has been a professor since June 1999.

Is Parliamentary Democracy Inconsistent with Islam?

***By Prof Dr Abdullah Al-Ahsan,
International Islamic University***

Thank you, Mr Chairman. Fellow panelists, brothers and sisters, Peace be upon you. I said in English just now is *Assalam mu-alaikum* in Arabic. Well, I was asked to be here by the Rector's office, and the invitation to the Rector's office came from ERA Consumer. They asked for an American citizen to speak on this subject, and I happen to be one. I really don't know why an American should speak on parliamentary democracy, because we do not have parliamentary democracy in the United States. America has the presidential system, but the philosophy behind the parliamentary system and the presidential system in the United States is similar, and I am going to concentrate on that.

The first question that came to my mind is, why should one look for consistency or inconsistency with Islam in certain ideas? I think it might occur to some people that parliamentary democracy is an ideal system. If that is the preconceived notion, then I challenge it. The parliamentary system is not a system. We have our neighbouring country where the Leader of the Opposition is declared bankrupt. Is that parliamentary democracy?

We have the report of the Transparency International that puts a democratic country at the top of its corruption list. We have the biggest democracy on earth, we are told, India, where the minority is persecuted. The point I wish to make is that parliamentary democracy is not a perfect system. At the same time, there are ideas behind the parliamentary system that need to be considered and perhaps, if they are good for society, to be adopted. The

problem with any idea at the level of thinking and the ideas at the level of practice may not be the same.

The father of modern democracy, Rousseau, gave this idea of social contract based on the general will. The problem is that within a few decades, this general will degenerated. After the French Revolution, the Jacobean leader Robespierre thought that he understood the general will of the people, and he also implemented in the French Constitution of 1793, under which, for the first time, all adult males became voters. But, the same Jacobians, within less than a year, created havoc in France and the French people became worried about democracy. They got rid of the Jacobians within a year.

It took time for Europe to come to the consensus. Even in the later part of the 19th Century, most of the philosophers in the successful democratic countries, including Britain, were not in favour of granting voting rights to everybody. There had been the opinion that perhaps university graduates and the philosophers have more say on the affairs of the state than the common people. But when democracy was practised in reality, the tragedy was that the most popular leader who came out of Europe was Adolf Hitler.

Therefore, democracy, the way we understand it, the way it has developed, is not necessarily the perfect system. Rousseau favoured the ancient Greek city-type democracy, where democracy was direct, and the people could participate. But then again, that is not ideal either, if you look at the Socratic criticism of Greek democracy. Without morality, democratic principles are not sufficient to bring peace to society.

Now, for the role of religion. It has been pointed out several times this morning that politics and religion should be separated, and it was also clarified from the panelists that it cannot be separated in Islam, while it can be in other religions. I will say as a student of history that it is not possible to separate religion and politics in any religion. All religions, when they came, when they were in the original form, were dealing with politics.

In the Hindu tradition, why was the quarrel between Ram and Ravana? I feel that it is possible for this battle to have happened in history - and the conflict was political, the Pope in Medieval Europe was involved in politics. The whole Renaissance and Enlightenment came out of the reaction of papal control of society. Therefore, it is a mistake to suggest that religion is separate from politics.

In Hinduism, we hear about *Om Shanti*. In Islam we hear about Salam. The word Islam comes from *Salam*. Shalom, in Judaism. All these words mean peace. To my understanding, all religions came with peace. It was the human beings, including Muslims, who deviated from the teachings of their religions.

One fundamental difference between Islam and other religions is that in Islam we have the Book, the Book of Guidance which has not changed from the time it was revealed to

now. The book of Guidance which was recited by the Prophet Muhammad is still intact, be they Sunnis or Shias, in different parts of the world. This you will not find in any other religious structure.

Therefore, keeping this in view, I have no hesitation to suggest that if we come to some point of agreement, then there should not be any major conflict. There will be conflict, but these conflicts can be resolved through discussion and through the process of parliamentary democracy that was envisioned during the Age of Enlightenment in Europe.

To me, rationalism should be debated. Of course, non-Muslims cannot agree on the Quran as the Book of Guidance, but we leave the Quran aside for a while and subscribe to the ideas of rationalism. Here, I appreciate the American Constitution, which gives priority to rationalism. If we subscribe to that, I don't find any problem in handling conflicts in society. Our problem is that we are not yet subscribing to rationalism. Say, for example, the Government of the United States agreed in Kyoto that gas emissions in the US will be minimised. After coming back, the government did not want to follow what it agreed to. My belief is that if the issue is put to a referendum in the United States, most people in the US will agree to minimise gas emissions. Those with vested interests will perhaps have objections. That is what is happening. Democracy has been hijacked by certain groups and interests. And that should be taken care of.

In Islam, the Quran guides Muslims "to take counsel with them (the people) in all matters of public concern (3:159)," and "to establish their rule on the basis of consultation (42:38)." The Quran also guides Muslims to follow those who have been put in the place of authority (4:59). But have the Muslims followed such guidelines throughout their history? No. However, early Muslims did try to put the Quranic guidance into practice. Immediately after the death of the Prophet, Abu Bakar was appointed the successor or leader of the community in consultation with all the people that were present during that occasion. The rest of the Muslims later expressed their support for Abu Bakar. On his part Abu Bakar said in a speech:

"O Muslims! I have been given authority over you and I am not the best of you. If I do well, help me; and if I do wrong, set me right. Loyalty is to tell the truth to a leader; treason is to hide it. The weak among you will be powerful in my eyes until I secure his rights, if Allah so wills. The strong among you shall be weak in my eyes until I get the right from him. If people do not follow the way of Allah, He will disgrace them. If people become wicked, Allah will bring punishment on us all. Obey me as long as I obey Allah and his Prophet, and if I disobey them you owe me no obedience. Let us now rise for prayer; may Allah have mercy on us all."

Abu Bakar nominated Umar as his successor. He delivered the following speech when he assumed the responsibility to lead the community:

“My dear fellow Muslims! Abu Bakar is no more with us. He has successfully run the affairs of the ummah for more than two years and successfully performed some of the incomplete tasks of the Prophet. I wish the responsibility of leading the ummah had fallen on someone else. I never desired such a position. However, I assure you that I shall not run away from this responsibility. I shall discharge my duty to the best of my ability. I shall seek guidance from the Quran, teachings of Allah and examples set by Abu Bakar in running the affairs of the government in this task. I shall also seek your participation and assistance. If I am right, follow me. If I deviate, correct me so that we do not go astray.”

If one analyses the Quranic guidance and the fundamental thrust of the above-mentioned speeches, and compares them with the principles of parliamentary democracy, one will find many common grounds. Here one must keep in mind that the method of election of Abu Bakar and Umar to the position of authority was very similar to those of the process of selection of leaders in the tribes in Arabia at that time.

The process was Islamised by introducing the Quranic guidance into it. Similarly, it should be perfectly all right to introduce various aspects of parliamentary democracy in an Islamic system of government. However, one should keep the Socratic criticism of Greek democracy in mind. There is a great deal of similarity between Socratic attempts to inject moral values into Greek democracy and the Quranic attempts of reforms of society.

Muslims scholars in the 20th Century have debated the question of sovereignty, on whether sovereignty in the Islamic political system belongs to God or to the people. Sayyid Mawdudi (1903-1979) resolved the question by subscribing to Pakistan's 1956 constitution which was formulated along the British parliamentary system. For Mawdudi the declaration of Pakistan being an Islamic republic was enough to express its commitment to follow the Quranic guidance.

Thank you.

ZAID: Thank you Prof Abdullah. Our next speaker is Mr K. Shanmuga. He is the legal secretary for the Think Tank of the National Consultative Council for Buddhism, Christianity, Hinduism and Sikhism. He is also an advocate and solicitor and a barrister at Lincoln's Inn. An interesting qualification that he also has is that he has done his post-graduate diploma in Syariah Law and Practice at the International Islamic University.

Minority Rights in Islam: A non-Muslim Perspective

By K. Shanmuga

***Secretary, Legal Think Tank,
Malaysian Consultative Council of
Buddhism, Christianity, Hinduism and Sikhism***

Thank you Mr Chairman. A good day to all of you, honoured guests, ladies and gentlemen. I would first like to say that I have two complaints to make. All the way to Terengganu and I came to this lovely hotel, with a marvelous beach out there, and then they put us in this small room for the whole day. I think at least a part of this should have been on the beach or under the trees outside, and we should all have been in shorts and sarongs to have the discussions.

Certainly I cannot cover all of the minority rights and I don't know enough about all of them. However, I have tried to set out the concerns that non-Muslims have, and I have done so by asking quite a few questions. I've made some commentary on the questions, but I've not meant them to be answers, because I don't really know the answers.

Islam and an Islamic State

I'll start by defining an Islamic state, for the purpose of my presentation, which is my own and not of the Council's. I do not want to start an argument about whether or not Malaysia is an Islamic state, but it's easier to get the definition straight. I define an Islamic state as a country where all laws must be consistent with the syariah, and any law that is inconsistent with the syariah shall be void to that extent.

In order to properly appreciate minority rights within Islam, one should analyse those rights within the context of a society in which Islamic law is the law of the land, and where all laws inconsistent with Islamic law are void to that extent. Therefore, for ease of reference, I use the term Islamic State whenever I mean a country where all laws must be based on, made in accordance with and implemented consistent with the syariah.

I understand the syariah, or Hukum Syarak, to be the law of Islam derived exclusively from the Holy Quran, the Sunnah of the Prophet Muhammad (being the traditions of His life and His teachings), *Ijma* (or consensus) reached by renowned scholars learned in Islamic law which has stood the test of time and the application of principles derived from these three sources through analogy to present day circumstances (*qias* and *ijtihad*).

My presentation of the non-Muslim perspective only concentrates on minority rights in Islam *vis-à-vis* the position of non-Muslims in an Islamic state. To put it another way, it is a non exhaustive examination of the rights, obligations and liabilities of persons who do not profess the religion of Islam under a country governed purely on the basis of the syariah and where all laws are exclusively based on the syariah. The position of other minorities (such as women, ethnic minorities, the disabled and so on) are not analysed in this paper.

Am I joining the Big Debate?

I do not wish to deal with the current political brouhaha on whether or not we are an Islamic state, however defined. My view on this is that the conditions of the Malaysian state are clearly set out in the Federal Constitution, and 45 years of peace and harmony have ensured that we are a unique country - a nation where a myriad of religions, races and cultures co-exist in peace and harmony. The debate on whether or not Malaysia is an 'Islamic State' is therefore unnecessary, unproductive and is potentially divisive.

All that I propose to do today is to ask questions in relation to the rights of non-Muslims under the syariah i.e. in an 'Islamic State'.

The commentaries on these questions are not the answers, for I do not know the answers. However, a non-Muslim perspective of the serious issues involved in this topic, and the thorny issue of minority rights in Islam, must necessarily set out the fears and apprehensions of non-Muslims regarding Islam. This is what I have endeavoured to do.

The books listed at the end of the paper as the bibliography contain a fuller version of this topic, dealt with by masters in Islamic law. The syariah, as with all laws, is subject to interpretation. However, the inconsistencies raised here are of concern, and should be adequately addressed. Otherwise, I feel that non-Muslims cannot even begin to contemplate the idea of being governed under the syariah.

Are Muslims and non-Muslims equal citizens in Islam?

Are non Muslims merely in a contractual relationship with the state? Are they true "citizens" of the State? I am very glad to hear, from YB Dato' Mustaffa and from all the other Muslim scholars present here, the reiteration of the concept that in Islam, all human beings have equal rights. But from the brief reading that I did, my understanding is that in an Islamic state, you have Muslims and you have non-Muslims.

Fight those who believe not in God nor the Last Day, nor hold that forbidden which hath been forbidden by God and His Apostle, nor acknowledge the religion of truth, (even if they are) of the people of the book, until they pay the jizyah with willing submission, and feel themselves subdued.

The above Quranic verse is often quoted as the basis for granting to non-Muslim citizens of an Islamic State recognition as *dhimmis*. It is widely lauded, for it recognises and guarantees that non-Muslims are protected and will be treated with respect in an Islamic state.

Nevertheless, it is important for two other things. Firstly, this verse shows that in an Islamic State, people are divided into categories on the basis of their religion; Muslims and non-Muslims (who are in turn divided into people of the book i.e. Christians and Jews, and others).

Unlike other systems of law, Islam takes a clear-cut position as to the division of people on account of their faith rather than on any other consideration. This attitude manifests itself in the Quran, where it is declared that:

It is He who created you; and of you are some that are unbelievers, and some that are believers; And God sees well all that ye do.

- Quran, 64:2

This verse and others indicate clearly that people are of two kinds: a man may be a Believer of Islam and hence a Muslim or may not be a believer of Islam, hence a non-Muslim. This division of human beings which is based on Islamic faith (*aqidah*) holds a paramount significance in man's life. As such, according to the Islamic legal point of view, this division is not merely theoretical in nature, having no effect on one's life; on the contrary, this division is a key factor that will determine one's destiny in this world and in the Hereafter. For it is on the basis of this division that one's legal status and position is determined in the Islamic State. (*emphasis my own*)

- Awang, p.15

Secondly, verse 9:29 of the Quran also seems to suggest that people who are not Muslims must subjugate themselves to Muslim rule before they are considered citizens of the Islamic State, and must pay the tax levied only on non-Muslims called *jizyah* (whilst Muslims pay the compulsory *zakat*).

Are non-Muslims therefore expected to feel themselves subdued by Muslims in the Islamic State (if they pay *jizyah*)? Does the theoretical and constitutional basis of the Islamic State enshrine the concept that one category of citizens is subdued by the other? Will non-Muslims no longer be considered *dhimmis* if they do not pay the *jizyah* tax?

It appears that a dhimmi is someone who is protected by the Islamic State because of a contract entered into between the non-Muslim dhimmi and the Muslim government. A part of this contract is the payment of the *jizyah*, which only able bodied men are obliged to pay. But a dhimmi is not obliged to defend the Islamic state - they can, if they so wish, at which point they no longer have to pay the *jizyah*.

The clear implication appears to be that the *dhimmis* stay and live in an Islamic State due to the largesse of the Islamic rulers and polity, and as the *dhimmis* accept that they are conquered and tacitly accept the rule over them by Muslims, they are protected.

To my mind, therefore, Malaysian non-Muslims - who consider Malaysia their home, who feel a sense of patriotism to the land itself as their "tanah air" and feel themselves equal partners with their Muslims brethren in the development and advancement of the nation - would be insulted to become *dhimmis* in an Islamic state. The appellation itself implies that non-Muslims have no right to be there, but are merely allowed to stay by leave and license revocable at will by non-payment of tax, and that those non-Muslims cannot really be trusted to ever have any sense of true loyalty to the Islamic state. This is deeply offensive to the Malaysian non-Muslims.

The political system

Can a non-Muslim vote? Can a non-Muslim be a Member of Parliament and assist in the making of policy? Can a non-Muslim be a member of the Cabinet? Can non-Muslims form political parties?

The following excerpts are from a Draft Constitution for an Islamic State, taken from the website of a radical organisation known as the *Hijb-ut-tahrir*:

Article 18

There are four positions of rulers in the State. They are:

1. The Khalifah
2. The delegated assistant (muaawin)
3. The governor (wali)
4. The mayor (amir)

*All other officials of the State are employees and not rulers.
All the above must be Muslims, and all judges must be Muslim."*

Article 20

Calling upon the rulers to account for their actions is both a right for the Muslims and a *fard kifayah* (collective duty) upon them. Non-Muslim subjects have the right to make known their complaints about the rulers' injustice and misapplication of the Islamic rules upon them."

Article 21

Muslims are entitled to establish political parties to question the rulers and to access the positions of ruling through the nation (ummah) on condition that the parties are based on the creed of Islam and their adopted rules are divine rules; the establishment of such a party does not require a licence by the State. Any party not established on the basis of Islam is prohibited.”

Article 103

Every citizen of the State has the right to become a member of the *Majlis as-Syura*, provided he or she is both mature and sane. This applies to Muslims and non-Muslims. However, membership to non-Muslims is confined to their voicing of complaints in respect to unjust acts performed by the rulers and/or the misapplication of Islam upon them.”

Article 104

Consultation (*Syura*) constitutes the seeking of view, while the *masyura* constitutes the seeking of binding views. Matters of legislation, definitions, expertise, science and technology are not to be considered *masyura*; all other matters are considered *masyura*.

Article 105

All citizens, Muslim or not, may express their views, but *syura* is a right for the Muslims only.

Article 161

The use of foreign capital and its investment within the State is forbidden. It is also prohibited to grant franchises to foreigners.

Article 190

The state is forbidden to belong to any organisation which is based on something other than Islam or which applies non-Islamic rules. This includes international organisations like the United Nations, the International Court of Justice, the International Monetary Fund and the World Bank, and regional organisations like the Arab League.”

I quote from their draft constitution as it was the most easily available reference source to me to see exactly what an Islamic state would entail, since they have taken over the website www.islamic-state.org. However, I must state that I do not believe this group represents mainstream Islam, and they themselves acknowledge that their followers have been imprisoned in many Islamic countries.

Nevertheless, though this version is clearly extreme, the underlying philosophy of this constitution appears to be essentially similar to other more moderate commentators. The general view appears to be that only Muslims in an Islamic state can make policy, whilst non-Muslims who are members of the governing or law-making body (be it known as a Cabinet, Legislative Assembly or a *Majlis as-Syura*) are only allowed to participate in the

execution of the policy made by Muslims, and to voice objections on the manner such policies and actions are implemented.

For example the moderate commentator and learned scholar ‘Abdur Rahman I. Doi, who once lectured at the International Islamic University of Malaysia, in concluding his discussion on the political representation of non-Muslims under the *Syarikah* in his seminal book *Non-Muslims Under Shariah*, implies that non-Muslims have a lesser right to take part in the governance of the country than Muslims. It seems that non-Muslims can only act as ‘lobby groups’ only, in order to suggest measures to the Islamic State to implement. These suggestions are not binding on the government.

“In all the matters relating to general problems of the country or to the interest of the non-Muslim minorities, the non-Muslims will have full political representation. They will have full freedom to propose any law or its amendment in connection with the Personal Law of the Minorities. In the matter of general administration of the government and decisions of Parliament, they will enjoy full freedom to protest, or submit representations, objections or suggestions. The Islamic State will have to consider them justly and sympathetically.”

- I. Doi, p.105

The Government of Malaysia, through the Special Affairs Department of the Ministry of Information, has also published a booklet entitled *Malaysia adalah Sebuah Negara Islam* (Malaysia is an Islamic Country). The booklet recounts a number of obligations on the part of rulers of an Islamic State and relies amongst others, on the teachings of a learned scholar of Islam from the *Mazhab Shafii*, Al-Mawardi. A material part dealing with the government of an Islamic State is as follows:

Setelah menyebut secara umum tanggungjawab pemerintah di dalam Islam, al-Mawardi menghuraikan secara terperinci tugas-tugas tersebut yang dapat dirumuskan seperti berikut:

2. *Metantik jemaah menteri bagi membantu Negara dalam menjalankan tugas-tugas pemerintahan. Menurut al-Mawardi: “Harus melantik orang kafir yang menjadi warganegara Islam (dhimmi) sebagai menteri untuk melaksanakan dasar-dasar yang dibuat oleh Pemerintah Islam (wazir tanfiz). (emphasis my own)*

- Wan Zahidi, p.5

As I understand it, the government of an Islamic State is firmly rooted in the syariah. In making laws and taking governmental actions, resort must always first be had to the Quran and Sunnah, and then Ijma and Qias. Interpretation of the provisions of the Syarikah (through the legal methodology known in

Islamic jurisprudence as ijtihad) can be done, but only on matters where there is no explicit provision in the Quran or Sunnah, and only by those who are deemed to be learned and wise in Islamic law. Only such men are capable of governing the country either as legislators or as members of the executive.

- I. Doi, p.5

This raises a host of concerns: Who decides that a person knows enough about Islamic law so as to qualify him to rule, or even to interpret the law? What happens if a non-Muslim is unhappy with a law that has been made by the Muslim government under the general administrative aspects of the syariah, and which is said to come directly from the Quran? If non-Muslims are not allowed to make or even to participate meaningfully (by which I mean that their vote counts equally with that of a Muslim legislator) in policy in an Islamic State, can they be really be said to be equal citizens in such a country?

The Justice System

Will Muslim and non-Muslim victims of crime, and criminals, be treated differently?

“In the event of a Muslim intentionally killing a dhimmi or musta'min [a non-Muslim visitor to an Islamic State], the jurists are split as to whether the law of qisas is applicable to him. Their opinions can be summarised into three groups:

- (i) The Muslim is not liable to qisas whether he kills a dhimmi or musta'min. This is the majority opinion of jurists including Maliki, Shafii, Hanbali, Zahari and others.
- (ii) The Muslim is liable to qisas. This is the view of the Hanafi school
- (iii) The Maliki school and al-Layth say that if a Muslim kills a dhimmi by way of deceit (ghilah), only then would the Muslim be killed. The punishment in this case is solely for his evil, not for qisas.”

- Awang, p.114-5

Thus, is the life of a non-Muslim, and of a stranger, of less value to that of a Muslim in an Islamic state?

Under the Hudud Bill passed by the Terengganu State Legislature earlier this year, this very scenario is being played out. In the event the Federal Court rules that this piece of legislation is constitutional, then the State of Terengganu will see a situation where Muslims and non-Muslims are subjected to very different punishments for committing the same offences.

Incidentally, the fact that a murderer is excused from his qisas punishment, and incidentally some jurists argue from any other punishment as well, by the forgiveness of the family of the deceased and the payment of a compound by the perpetrator may cause problems.

Can a non-Muslim be a witness?

In the Islamic law of evidence, it appears that the *iqrar*, or confession is always the best evidence of a fact, and this confession must be made before a judicial officer and repeated before the judge at trial in order to be binding evidence.

After *iqrar*, the next best evidence is *syahadah* - the oral testimony of an eye witness. However, there are several conditions to be met before such testimony can be admitted as evidence. The first, and most important, is that the witness must be a Muslim. *Syahadah* given by a non-Muslim witness in relation to a Muslim cannot be accepted as evidence, though some scholars are of the opinion that the evidence of a non-Muslim can be accepted during times of emergency, based on the verse in the Quran (5:106) where it is stated that the evidence of non-Muslims is acceptable if the Muslim is on a journey (which is generally applied only to witnesses to a will). [See Saedon, Ch.4].

(Perhaps, as an aside, it should be noted that under the syariah, strict rules in certain cases, such as the imposition of sentences of *hudud* or *qisas*, require a certain number of witnesses, generally all male, who actually saw the actual offence taking place. In civil cases, the general rule is that there should be two male witnesses or one male and two female witnesses.)

Whilst the testimony of a non-Muslim is inadmissible as *syahadah*, it does not completely go to waste. It is still treated as evidence - *bayyinah* - though it is not as weighty as the *syahadah* of a Muslim who fulfils all the other criteria for the giving of acceptable *syahadah*.

Can a non-Muslim be a judge?

It appears not. Professor 'Abdur Rahman I. Doi, who bases his opinion on Al-Mawardi's *Al' Ahkam al-Sultaniyyah* [I. Doi, p.111 n.27], emphatically states that if law administered in an Islamic State is the *Syarikah*, then judges must not only have the requisite knowledge of the syariah but must also believe in the tenets of the religion. He however makes a qualification that non-Muslims will be judged by their co-religionists in disputes concerning their personal laws.

Is there freedom of religion for non Muslims in Islam?

Theoretically and conceptually, it appears that there is.

The Holy Quran, and the traditions of the Prophet, are replete with examples and exhortations to Muslims to treat non-believers of Islam justly. By conferring on them the status of dhimmis, it is argued by some that in actual fact, Islam requires its believers to ensure that dhimmis are positively assisted to profess and practise their religion.

As such, there are numerous instances of the Prophet, and his successors the Caliphs, who treated Jews and Christians (individually and communally) with the greatest of respect, granting to them benefits, privileges and accommodations in order for them to live peacefully and according to their religious beliefs.

The Caliph Muawiyah (661-680), rebuilt the great church of Edessa at the intercession of his Christian subjects. In the case of the great Cathedral of St John in Damascus, it was divided between the Christians and the Muslims and for 80 years the adherents of the two religions worshipped under the same roof. Some Caliphs wanted to convert the whole structure into a mosque but abstained on finding the fact that the terms of agreement forbade it. It was not until about 90H when the Caliph Walid effected by force what others had sought to gain by fair deal and at times, by large sums of money. When Umar II took his office, he listened to the complaints of the Christians against the injustice that had been done and gave them, in exchange, those churches of the city and its suburbs that had been confiscated at the time of his predecessors.

From the examples given above of the tolerance towards the Christian Arabs by the victorious Muslims of the first century of the Hijrah were continued by succeeding generations, with the exception of particular period such as perhaps in the reign of Caliph al-Mutawakkil (232-237H/AD847-861). We may surely infer that those Christian tribes that did embrace Islam did so of their own choice and free will. The Christian Arabs of the present day, dwelling in the midst of Muslim population, are a living testimony of this toleration."

Furthermore, a proper interpretation of the syariah exhorts its believers to propagate Islam through debate and rational explanation. It categorically states that no person ought to be compelled to believe in Islam. In support, various Quranic injunctions are quoted, among them:

Let there be no compulsion in religion. Truth stands out clear from Error.
- Quran, 2:256

If it had been thy Lord's Will, they would all have believed, all who are on Earth. Will you then compel mankind against their will to believe?
- Quran, 10:99

*Say: O you that reject Faith!
I worship not that which you worship.
Nor will you worship that which I worship.
And I will not worship that which you have been wont to worship.
Nor will you worship that which I worship.
To you be your way and to me mine.*

- *Quran, 109:1-6*

Who decides who is a non-Muslim?

The Quranic injunction restraining the compulsion of persons to believe in Islam does not apply, according to many in Malaysia, to Muslims - those persons who are either born into Islam, or who convert to Islam at any point in their lives. If perchance a Muslim no longer has faith in Islam, he is put to death, after he is given a chance to repent. All his belongings are confiscated prior to his death and given to the State Treasury, thus punishing the dependants as well as the 'offender' [See the Terengganu Hudud Enactment 2002].

It must also be said, however, that there are also many in Malaysia who disagree that this penalty is actually lawful under Islamic law [See Professor Hashim Kamali, *Freedom of Expression in Islam*, chapter IX - excerpt from *Insaf*, Special Issue on "Freedom of Religion", June 2001].

What then happens if a person is mistakenly assumed to be a Muslim? This occurs, for example, if he is born to Muslim parents who abandon him to be raised by non-Muslims at a very young age. Or, in the case of a person who converts in haste at a young age (though after the age of maturity), whilst he is embraced in the cosy raptures of Lady Love, not really believing in Islam but believing in true love?

A person who does not himself believe in Islam any more (or did not believe in Islam ever) is a non-Muslim. If he decides to embrace another religion, he becomes a member of that religion, his new co-religionists do not consider him a Muslim, and that person himself does not consider himself a Muslim. Yet, he can never outwardly profess his true religion. He must live in a cloud of deception throughout his life, unable to freely exercise his true religion for fear of being put to death and that his dependants will suffer monetary harm.

Yet, in Malaysia today (and one would suppose in an Islamic State) these persons are all considered as Muslims. For example, the Administration of Islamic Law (Federal Territories) Act 1993 subjects 'Muslims' to Syariah law. The definition section in this Act is very similar to other definitions of Muslims in other State Syariah Enactments that exist in Malaysia today. In section 2(1), the Act defines a Muslim as follows:

“Muslim” means -

- (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 reputed to be a Muslim; or
- (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;”

- Section 2(1), *Administration of Islamic Law (Federal Territories) Act 1993*

Section 5 of the Islamic Family Law (Federal Territories) Act 1984 states that whether or not a person is a Muslim shall be decided according to the criterion of “general reputation” and no inquiry is to be held into that person’s beliefs.

Under Malaysian law as it now stands - with the decisions of the court of Appeal in *Daud bin Mamat vs Majlis Agama Islam dan Istiadat Melayu Kelantan & Kamariah binti Ali vs Kerajaan Negeri Kelantan* [2002] 3 AMR 3505 & 3512 - it appears that a person must get permission from the syariah court first before he can be considered a non-Muslim. Experience shows that a determination by the syariah court of ‘apostasy’ is usually accompanied with penal sanction of some sort.

This is not conjecture - it is reality. *Daud bin Mamat’s* case shows this is happening today in our country. There are people in jail, or who have been put in jail, and who are now in hiding either in Malaysia or abroad merely because they are considered as Muslims but no longer believe in Islam (or in some cases, never believed in Islam); or who wish to practice Islam in a manner different from that dictated by the powers that be but are not permitted to do so.

It is noteworthy that the Malaysian Federal Constitution guarantees the fundamental liberty to everyone to “profess and practice his religion”. Islamic personal law is enacted by State Legislature over “persons professing the religion of Islam”. I have found no mention in the Federal Constitution of the word “Muslim” - all references to believers of Islam are to persons professing the religion of Islam.

“Profess” has been judicially defined in *Re Mohamed Said Nabi, deceased* [1965] 1 MLJ 121, at 122 per Chua, J:

According to the Shorter Oxford English Dictionary, ‘profess’ means to affirm one’s faith in or allegiance to (a religion, principle, God or Saint, etc).

Most dictionaries reiterate the element of choice and self acknowledgement in the meaning of the word ‘profess’. The most appropriate dictionary definition of “profess” in these circumstances must mean “self acknowledged” or “affirm one’s faith or allegiance”. In its ordinary meaning, therefore, a person professing the religion of Islam must mean a person who himself says and acknowledges himself as a believer of Islam.

Thus, if the current definitions of a “Muslim” in the various State Enactments are in line with the syariah, then there will be a significant number of people who will be denied their basic freedom of religion because they will be wrongfully considered as Muslims, even though they themselves profess themselves to be believers of other religions, or non-believers of any religion.

Are non-Muslim religions truly to be free?

Unfortunately, nowadays most non-Muslims take as their example of an Islamic state the repressive regime of the now deposed Taliban in Afghanistan. All moderate Muslims have condemned the Taliban’s interpretation of Islam, their demolition of the ancient Buddhist statues in Afghanistan and their alleged requirement for non-Muslims to wear a yellow star. However, the fact is the Taliban reigned supreme in Afghanistan for many years, and would have continued to do so if not for 9-11 - the tragic events that occurred in New York and Washington in the year 2001.

Further back in history, the oft-quoted differences between Akbar (benevolent and tolerant of non-Muslims) and Aurangzeb (cruelly intolerant to his non-Muslim subjects) in their rule of the Moghul Empire in India are cited as examples of how the syariah cannot ensure that a country is ruled justly all the time.

No matter what system of laws and norms are put in place, justice and good governance can only be achieved if the person appointed to lead the State is just (though not necessarily pious), and the mechanisms put in place to ensure that such a ruler does not succumb to the temptations of power.

Merely because the syariah is in place does not ensure and guarantee that there will not be abuses - the biggest abusers of Islam (like the Taliban) have claimed that they were the most pious devotees of Islam and were acting according to Islam.

Let us assume that Malaysian law is amended so that the syariah shall be the fountainhead of all laws, and any law or act done inconsistent with the syariah shall be void.

- a) Will Sikhs then still be banned from using the word 'Allah' in their own language when praying according to their custom, as is the case in Selangor?
- b) Will Christians learning the Bible then be able to read it in Bahasa Malaysia (since the Al-Kitab, the Bible in Bahasa Indonesia, is now banned in Malaysia)? Will Christian youngsters discussing their religion in the Malay language be arrested for using the words *Nabi*, *Allah* and *Injil* in relation to their own religion?

[These questions are asked because of legislation in some states that ban the use of words that are Islamic by members of non-Muslim religions in relation to their own religion. Eg. Section 9 of, and the Schedule to the Selangor Non-Islamic Religions (Control of Propagation Amongst Muslims) Enactment 1988].

- c) Will Chinese and Indian restaurant keepers then be penalised for selling food to Muslims during Ramadan, even though it is not consumed on the premises?
- d) Will national television and radio then broadcast propagation of Islam in the vernacular in the best time slots and broadcast other religious programmes rarely, with great difficulty and in the most inconvenient of time slots?
- e) Will Catholics then be able to build a church in Shah Alam (which to date they have not been able to do, and have had their planning approvals revoked twice)?
- f) Will Hindu temples then still be demolished in an insensitive manner after being relocated, as happened recently in Selangor (as reported in the Star, Sept 17, 2002)?

Are fundamental liberties of non-Muslims protected?

Freedom of expression

Can non-Muslims complain about the law? For example, can non-Muslims say that the cutting off of a person's hands, or the stoning to death of someone, is not a proper punishment in a modern world? Can non-Muslims complain that they do not wish to be subjected to criminal sanction merely for having pre-marital sexual relations?

From the discussion above on the role of non-Muslims in the political system under the syariah, it appears that non-Muslims cannot effect change in the law on these matters. In fact, it appears that no one can, for these matters are considered beyond question.

Under current Islamic law as it stands in most states in Malaysia, there is an offence, the substance of which is the questioning of any duly issued *fatwa*.

The Menteri Besar of Kelantan, Datuk Nik Abdul Aziz Nik Mat, is reported to have said (*Eksklusif*, Monday, May 9, 1999) in relation to the death sentence for an apostate: “*Ini adalah satu ketetapan yang tidak boleh disoalkan, sepertimana hukuman ke atas pesalah lain, seperti penzina.*” (*emphasis my own*).

The recent complaint by the Persatuan Ulama Malaysia against several Muslims, and a non-Muslim commentator, complaining that they had derided the religion of Islam because they had made critical comments on the interpretation of Islamic laws as implemented in Malaysia, is also noteworthy in this connection.

Right to property

Will monies received by the Treasury be spent equally on Muslims and non-Muslims alike?

Will the exclusion of non-Muslims from meaningful participation in legislative bodies affect the manner in which the State's funds are to be spent?

If a non-Muslim converts to Islam, will his non-Muslim wife and children receive maintenance from him thereafter?

It is clear that in Malaysia, a Muslim man cannot marry non-Muslim woman unless she is a Kitabbayah. In Malaysia, a Kitabbayah is defined as a person from the Bani Yaqub, or a person whose ancestors were Jews before the prophethood (in Islam) of Jesus Christ or a Christian whose ancestors were Jews before the prophethood of the Prophet Muhammad. [see, for example, Section 2 of the Islamic Family Law (Federal Territories) Act 1984].

In other countries, it is not so circumscribed and a Kitabbayah is any Jewess or Christian lady. See generally *U. Viswalingam* [1980] 1 MLJ 10 for an interesting case and discussion on the law on this point by the English court of Appeal deciding a divorce matter between a Sri Lankan Tamil couple with Malaysian connections, where the husband had converted to Islam.

In Malaysia at the moment, section 51 of the Law Reform (Marriage and Divorce) Act 1972 provides an avenue for parties to divorce by reason of one party's change of religion to Islam.

Conversion to Islam by either party to the marriage is made a ground for divorce by the

non-converting party only, and only after three months of that conversion if that party does not also convert to Islam.

Even though Islamic law considers the marriage at an end automatically, the civil law considers it as still subsisting and a divorce must be applied for to the civil High Court, where provisions for ancillary relief can be applied for against the convert husband. [See generally the Supreme Court decision of *Tan Sung Mooi (f) v Too Miew Kim* [1994] 2 AMR (35) 1799 and cases following it].

The general view under the syariah, however, seems to be that after the conversion of the husband to Islam, the marriage automatically ends *ipso facto*. There is no longer any obligation on the converted husband to maintain his former wife who does not enter Islam, though there is an argument as to when that obligation ceases, with some commentators arguing that this obligation too ends immediately, whilst others argue that such an obligation ends after a period of three months as well. [Awang, p.52-55].

Can the dependants of a non-Muslim who converts to Islam and dies inherit his estate?

The non-Muslim relatives of a convert to Islam lose their rights pursuant to the Distribution Act 1955 to the convert's estate upon his death: *Majlis Agama Islam Wilayah Persekutuan v Lim Ee Seng & Yg Lain* [2002]2MLJ 572.

This is also in accord with the general principles of the syariah.

The consensus of jurists also maintained that a non-Muslim cannot inherit from a Muslim. The consensus is derived because the Quran and the Sunnah speak clearly to that effect. The Quran says "... and God will not give the disbelievers any way (of access) against the Believers." [Quran, 4:141].

As for the Tradition, the Prophet was reported to have said quite explicitly: "The Muslim does not inherit from the unbeliever, nor does the unbeliever inherit from the Muslim."

- Awang, p.155-6

Though Professor I. Doi states that a Muslim does not inherit from the estate of his non-Muslim relatives [I. Doi, p.53], there is apparently some juristic dispute on this issue

[Awang , p.155-158].

Right to life and to live peacefully in a family

Can a non-Muslim and a Muslim marry each other? As seen above, the answer, generally, is no.

Must non-Muslim women wear a *tudung* (headscarf) whenever they go out? At the International Islamic University in Gombak currently, all students, be they Muslim or non-Muslim, must comply with what has been prescribed by the university authorities as an Islamic dress code.

Who has guardianship rights over a child where both parents are originally not Muslim, but one converts to Islam?

Article 118 [*Hizb-ut-tahrir's* Draft Islamic State Constitution] states that:

The custody of children is both a right and duty of the mother, whether Muslim or not, so long as the child is in need of this care. When children, girls or boys, are no longer in need of care, they are to choose which parent they wish to live with. This applies if both parents are Muslim. If one of the parents or guardians is Muslim, there is no choice in the matter; the child is to join the Muslim faith.

There are many cases where a non-Muslim spouse converts to Islam, either sincerely or otherwise and thereby gets out of a marriage. Due to several lacunae in Malaysian law as it is currently interpreted and administered, the other spouse is often left in the lurch.

A person who converts to Islam will be given custody of his young children by the syariah court. The child will be Islamised and taken away from the convert's wife with very limited or no visitation rights by the syariah court - the non Muslim wife has no recourse to a court of justice because the High Court will decline jurisdiction and the syariah court has no jurisdiction to hear any application by the non-Muslim wife for custody, access and so on.

The facts and the High Court decision in *Genga Devi a/p Chelliah lwn Santanam a/l Damodaram* [2001] 1 MLJ 526, are particularly descriptive of the problems faced in this situation. In this case, it appears that the syariah court made a custody/guardianship order favouring the Muslim convert husband in the absence of the non-Muslim wife, and despite a High Court order giving custody/guardianship to the wife.

Sections 82(a) and 83 of the Islamic Family Law (Federal Territories) Act 1984 clearly state that a non-Muslim mother is not entitled to the right of custody (*hadhanah*) of her children.

The provisions governing conversion to Islam between the various states and the effect this has on children of the convert also differ. In some states, all his children are considered as having converted to Islam along with the convert. In others, they are given the opportunity to choose their religion for themselves when they come of age. The coming of age is considered the age at which the child can discern. This is usually between the ages of 9 and 12 years. However, if the non-Muslim is barred from custody of her child, and in the case of *Genga Devi*, apparently denied visitation rights as well, there is little hope of a meaningful knowledge and training in both religions so as to enable the child to make an informed decision.

Conclusion

The issues and concerns raised in this paper are only a brief survey of some of the major concerns of non-Muslims. It is not exhaustive.

It is in no way meant to criticise or denigrate Islam or proponents of an Islamic state. It is an expression of concerns which I sincerely hope will be alleviated in the near future, with clear answers to these concerns. The myriad of interpretations of Islam, just as there are numerous interpretations of all religions, raises these concerns.

The concern is all the more because followers of other religions, by and large, have fully accepted the division between spiritual and temporal matters, and the principle of a secular democratic government "of [all] the people, by [all] the people, for [all] the people" and its consequent respect for self-determination.

The task ahead for those who advocate an Islamic State in Malaysia is to alleviate these worries by demonstrating that with the syariah in force in Malaysia, the fundamentals of the social contract that came into force on Aug 31, 1957 between the various religions and races in Malaysia and respect for universally acceptable values can be continued in our country without material amendments or variations.

Bibliography and abbreviations

<u>Abbreviations</u>	<u>Source</u>
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ZAID: Thank you, Mr Shanmuga. It looks like you have already started the question and answer session by posing all those questions. Nevertheless, Mr Shanmuga has put on paper many of the concerns that non-Muslims have about living in an Islamic state. I now open to session to questions from the floor. We have very limited time and let's see by show of hands who really wants to speak. All right, let's have these three people first.

DR AZIZ BARI: Thank you Mr Chairman. I just have three questions, one for Dr Dzul, Mr Shanmuga and Prof Abdullah. For Mr Shanmuga, I think you have raised a number of very interesting questions. The only thing about the views quoted by you is that most of the views are taken from books written by people relying on old sources, old views. I think that there are a number of recent thinkers such as Rashid Ghanussi of Tunisia, who have come out with a lot of interesting and thought-provoking ideas, including the quality between a non-Muslim and a Muslim state in modern times. I think these views are worthy of consideration. Then, just to add to some of the points that you have made. In the Malay states, the provision is that the Menteri Besar and the State Secretary must be appointed from among the Malays who are Muslim.

As for Dr Dzul, I think that you missed some major points. I don't understand why you spent so much time on Islamic jurisprudence when you admitted yourself that privatisation is very much an economic factor. I think that it is not relevant to talk about *fiat* over here, because it is very much a philosophy. I think it would have been better for you to go into areas such as the rights of workers, because these are the groups that are most affected when a service or department is privatised. I think what is relevant here are moral values, such as prudence, good management and so on. In the Malaysian context, we should also address the question of how this privatisation came about, especially in the early days of the statutory bodies, like the 1951 Rural Industry Development Authority (RIDA) experiment with the British. I think YB Dato' Mustaffa has a lot of experience dealing with these bodies at the state level.

As for Prof Abdullah, I think there are major points that are missing from your presentation, that is the question whether it is Islamic. Some scholars, like Kurdi for example, said that the presidential system is crucial to the Islamic system because to him this is the caliph of the community. At the same time, I think Malaysia is a good case and I don't understand why you left out this issue. This is one of the places where you have the parliamentary system, the Westminster system, and powers over the religion of Islam have been given to the rulers. Whether this is good or not is something else, but structurally speaking, I think that this is a good case to study. So, I don't understand why you left this out. When you talk about the ideas having emerged in Rousseau's writings, I don't quite agree with you because I do not agree that the Westminster system arose out of French or Greek philosophy. Under the Westminster system of parliamentary democracy, the two offices of head of state and head of government are separated, unlike in the United States, where one man holds these two offices.

WATCHALAH: I've been meaning to bring this up this morning, actually. I fall under the category of non-Muslims, and it really perturbs me to be known as a "non-something". Does that mean that if you're not a Muslim, then your religion is not as good a calibre as Muslims? I wonder why the phrase or term such as "people of other beliefs or faiths" is not used instead of a non-something? That's something I've been thinking about since this morning. I also just need a clarification here from Dr Hatta Ramli, who mentioned that under Islam, everyone will be treated equally. Does that mean in terms of special measures which are being taken to improve the lot of the underprivileged? Does that mean the New Economic Policy (NEP) will be abolished? Just a clarification, please. Thank you.

ARUMUGAM, of CHILD: I address my question to Dr Hatta. I like this concept of equitable distribution of power. I'm just a bit curious about righteous and pious people in politics. If I were righteous and pious, I would never go into politics. Assuming that I actually go into politics, and I want to stand against a Barisan Nasional candidate where the majority of the voters are members of PAS, do you think that I would have a chance of winning? This is in an area of PAS members, who are knowledgeable about equitable distribution of power, would they want to vote in a non-Malay, non-Muslim candidate?

My other question is with regard to Prof Dr Abdullah's views. I believe that religion is a personal thing and a way of life. As a way of life, religion forms an inalienable right of the individual. And religion and politics cannot be separated. I totally agree with you on this. But when it comes to the establishment of an Islamic state, then it becomes full of conflict. That point is very difficult to digest. How do you reconcile a situation in which Muslims live as minorities and another community establishes a Hindu state, or a Jewish state, for example? How do you look at the minorities in that state?

Will you, in that position, tell the Muslims that there is a majority and because that majority determines how you should live, therefore you should follow what they say? Or would you say that Muslims, wherever they are, have their basic and very fundamental right to live the way they want to live as the Quran prescribes? Similarly, in Malaysia, if we talk about an Islamic state, people like me, why should I agree to an Islamic state? It makes no sense to me. On one hand you say that Islam talks about equality and about freedom of everything, but on the other hand, you strongly advocate that Islam has to be the religion that dominates over the lives of everybody else.

I feel that there is a clear contradiction with regard to the concept of the Islamic state. Unless this debate can be brought about - I've told the organisers already that one day is not enough for today's subject matters and in fact as of now, as I have tried to understand some things, I have become confused over as many things as I have understood. Anyway, religion and politics cannot be separated, and about this we are clear. But that is not a principle upon which people have a right to establish states. Thank you.

ZAID: Well, those are the questions from the three participants first. Let's hear the responses from the speakers before we go on to more questions.

DR HATTA: Let me try to begin with the dissatisfaction among some of us on the division of the people as Muslims and non-Muslims. I think it is not the intention to downgrade anybody; it is just the convenience for discussion, for we are talking here about an Islamic state. On one side are the Muslims, and on the other concerned side are the non-Muslims. Of course, we can spend time enumerating points from all the other religions, but the idea is not to downgrade or anything. It is just for convenience.

As far as the NEP is concerned, I did mention a little about the economic distribution in this country. This is a practical aspect. Not only are the non-Malays dissatisfied with the NEP, but I believe that among the Malays as well, we are very dissatisfied. Among the Malays who are also called bumiputra, there are also what we call the UMNOputra and the non-UMNOputra. And these two groups are treated differently, so the dissatisfaction goes down that far.

What we are suggesting, that is if we really want to go into meritocracy and so on, is that due recognition should be given to those who really need help, from whatever race they come from. I think that we have, in the Barisan Alternatif for example, addressed this issue. In fact, in the Budget that the Opposition presented to Parliament, alongside with Dr Mahathir Mohamad's Budget, we called for scholarships for those with merit to be applicable to people of all races. These scholarships should be given to those who are really in need of support for their studies. Then, treading gently on the issue of the rights of the Malays, we called for scholarships for the bumiputra in which the Orang Asli and the Orang Asal should be included. This is the more reasonable steps that we can move towards adjusting what has already been entrenched in our society to a better one.

With regard to righteous and pious people in politics, yes, I do agree that this is going to be difficult. But of course, among the Muslims, we will know who the righteous and pious are. We have a certain definition on this. For example, for people to even become a witness, they must not have committed any big sin, or be perpetually carrying out small sins. These are observable things which we may not be able to quantify, but which we can observe and make conclusions. We know that it is difficult, but I strongly disagree that righteous and pious people should not be in politics. Those in politics now are not righteous and pious, and if you go by the current definition where people say that politics is a dirty game and so on, I guess you are right. We believe that in our kind of politics, we have certain things to bring forward, certain changes that we want to make.

On the third question, that an Islamic state makes no sense to the non-Muslim I can understand that. Similarly, to a Muslim like me, I feel that there is no sense in the current state that we received at Independence, which is an advantage to the minorities, to the non-Muslims, whereas we, the Muslims, cannot get our Islamic state. And we are the

majority. So, where is the democracy there? I think that as far as the democratic process is concerned, the majority should be given the choice. So the Muslims should have already an Islamic state from Day One of Independence. But we are despised. We are despised! So now, we are trying to get back our right.

ZAID: Okay, that has been a thought-provoking comment. Prof Abdullah, please.

ABDULLAH: The question about whether the parliamentary system or the presidential system is closer to Islam or not is irrelevant to me. I think Islam gives some guidelines and if those guidelines can be followed in the parliamentary system, then fine. If they can be followed under the presidential system, then it is also fine. I have pointed out in my paper the way Abu Bakar was elected. It was not democracy, it was not selection. It was by a process that was continuing before in Arabia by *syura* (consultation), and then everybody else followed this method. So this continued.

The term “non-Muslim” does not appear in the Quran. The Quran uses the word *kaffarah*. Literally, this means “to hide something, to keep something hiding”. To hide the concept of unity of God in someone who is *kafir* (infidel). In Islamic literature, the word *kafir* became so widely condemned that it has now become offensive to Indian Hindus. If a Hindu in India is called *kafir*, he becomes furious, although literally when you use it on someone, you mean that he does not believe in the unity of God. I don’t know which term to use, but in the Quran, neither the word “non-believer” nor the word “non-Muslim” appear.

On the other matter of religion and the Islamic state, well, my understanding of religion is guidance. Since human beings need guidance in every aspect of life, and politics is part of human life, therefore, guidance exists for political systems as well. However, if you come to the Islamic state, which is supposed to be guided by the Quran and the Sunnah, well, throughout the 1,400 years of Islamic history, there have been many cases where Muslims have also deviated from their teachings. My understanding of history is that under Muslim rule, Muslims have suffered much more than non-Muslims. After the defeat of the Muslims in Spain, the Jews, who had been living together with the Muslims, had to migrate with the Muslims because they could not live in a Catholic state. And where did they migrate? Most of them migrated to the Ottoman territories, including Sarajevo and Istanbul.

Therefore, the record of Muslims respecting the rights of non-Muslims is very good. Look at history. The name that comes to my mind is Yvonne Wrigley, the British journalist who was captured by the Taliban in October 2001. And looked at her interview a few months later. She said, “I wish I had known about Islam what I know now, so that I could ask these questions to the Taliban”. She meant that as a journalist, when she went there she thought that she knew everything about Islam. But when she saw their behaviour, I mean, whatever you call the Taliban - I don’t agree with them - but certain aspects of their behaviour inspired this lady to look at the religion and she came out with positive ideas

about Islam. I would encourage you to look more thoroughly, please.

The difference between the Quran and the other Books is the link with history. Islam was born in the full light of history, in the sense that the Prophet Muhammad was a historical figure. A figure like Bertrand Russell said in the 20th Century that he is not sure whether Jesus Christ existed in history, meaning that he had so much of doubt about it. Look at the Bible, there is a great difference between the Bible and the Quran. The Bible contains stories about prophets over a period of more than 1,000 years. Moses was born around the 13th Century BC, Abraham was born about 2000 BC and Jesus was born on 25th December in Year Zero or around that time.

The earliest copy of the Bible that we have is the so-called Dead Sea Scrolls. These are historically very difficult to establish, on whether the sources are correct. This does not apply to the Quran. The Quran is the saying that was recited by the Prophet at that time, and it is still recited today. Therefore, a Book of Guidance should be beyond doubt, and that is what the Quran establishes from the very beginning. Thank you.

ZAID: Okay. Thank you.

BISHAN SINGH: Prof Abdullah, you spoke about recorded history and the committing of the Quran into writing. Could you please tell me, when was the Holy Quran put into writing? I mean, how long was it, from the time Islam was revealed to the Prophet, to the time it was put into the Quran?

ZAID: Okay, I will allow that question.

ABDULLAH: That's a very interesting question, and it will need a great deal of time to explain. There are books on the subject. The Quran, as it came, was written down immediately. The Prophet had secretaries. They used to write it down immediately. Also, at that time, they made a distinction between what the Quran contained and what the Hadith contained. But, because of the fact that the Quran was what the prophet said, and the Hadith also was what the Prophet said. But from the very beginning, they kept different pages, what they called *mushak*, immediately, for the Quran and the Hadith. It was given book form when many memorisers died in one of the wars some years later. And, as it was mentioned by Puan Zaitun, Habsah, the Prophet's wife, kept custody of the copy of the Quran for several years. That was the official copy of the Quran.

ZAID: Thank you. So, Dr Dzulkifli?

DZULKIFLI: Yes, thank you. I have a few comments to make. It is always a forum like this that will, at the end, give you the impression that we are in opposite courts, non-Muslims on one side and Muslims on the other. I've always personally advocated the need for a new Muslim scholarship in the light of relating to the new circumstances and

the new realities. I hope to see for the future, that languages used by Muslims are inclusive in nature, rather than exclusive. This has always been our problem. Given the truly plural, multiracial and multicultural society like ours in Malaysia, I think that Muslims particularly, and especially those religious people, must be more sensitive to the sensitivities of usage of terms and terminologies. That's my first response.

In so far as principles are concerned, when Islam pronounces the unity of brotherhood, unity of man and equality of man, from that point of view we in the Islamic party have never admitted this idea of a second class. What we propose is that if ever there is a need for affirmative action, or positive discrimination, it must be across the board, across racial, cultural and religious boundaries. And truly, in an Islamic state, there is no such thing as special privileges that are incoherent and inconsistent with the quality of man. And, as has been stated earlier, the only distinction between men is based on righteousness. That has been clearly stated in the Quran.

Thirdly, going back to the Prophet, and if I may just touch on the first written Madinah Constitution, the *Shaifah Madinah*. The language used by the Prophet was an inclusive language, calling the Muslims, the People of the Book, the other races, the entire citizens of Madinah as one brotherhood, as *Un Mahwah Hida*. And that, I think, is a special reference for Muslims to understand that perhaps, given the long lull of non-interaction with other civilizations, it is high time that we propose a new kind of Muslim scholarship that will be attuned to and be in consonance with the realities of our world today.

And, lastly, on the issue of *qisas* mentioned earlier: If the jurists are saying that Muslims and non-Muslims are, in their lives and in honour and nobility, not equal, that is also wrong. That verse is *Kutibah alaikum*, I think. In the Quran, it is meant for whosoever permits the taking of a life for a life, an eye for an eye. I think this is stated very clearly in the Quran, and is meant to embrace Muslims and non-Muslims, and they should - and this is special in the Quran - because in the case of *qisas*, the family of the victim has the right to absolve the sins of the perpetrator. Whether they are Muslim or non-Muslim, they have the right. The jurists have no right, whether they pay *diyat* or not. *Diyat* is compensation to the victim or his family, and they also call it blood money, whatever way you want to translate it.

And finally, I refer to Dr Abdul Aziz's comment on what I said about the liberalisation of privatisation. I wished in so doing, to present an alternative view by looking at the issues from the Islamic perspective, rather than looking at it from a legalistic view, that is, by always asking, halal? Haram? Is this halal? Is that halal? I was coming forward with the new methodology, to bring back the importance of the wisdom of Islamic jurisprudence, the importance of Usul-ul-Fiqh, or Islamic legal maxims, as the basis to understand Hudud, to understand *qisas*, to understand the entire jurisprudence of Islam. I think that we are always too legalistic; too quickly we are always in the paradigm of being judgmental, and so not able to see things from the macro perspective. That's all, thank you.

ZAID: Mr K. Shanmuga does not wish to say anything. So, I think I will allow one last question. There. Yes you.

YONG KAI PENG: Dear panelists, I am the editor of the alternative Chinese magazine, *Perspektif Pedas*. I think that the questions raised today were basically based on how we interpret the Holy Quran. I feel that a lot of definitions have come out, and hermeneutics is a very broad study. I think that if we go back to the principle that the Holy Book is revealing Truth, then, can we take the text literally to understand it, if it is sacred and holy? What I mean is that the paradox of hermeneutics is that because it is holy, and it is sacred, no one can really understand the text. The text has so many metaphors and things like that, and so, it is subject to a lot of interpretations.

The interpretation, I feel, should be open, and be open to scrutiny. But the problem is that today when we talk about these things, we are actually talking about the racial polarisation in Malaysia, and race system in Malaysia goes along with the identity of religion.

If you look at Indonesia, who is a Muslim? A Javanese? Anybody can be a Muslim, or of any other religion. In Malaysia, because of the social contract - I do not regard this as a social contract, which in the real sense means equal, one to one, not between race and race - so, basically going back to the history of our political structure in Malaysia, it is based on race. Now, we have not settled the questions of identity, but now we are going back to the trap, we are using race, and religion, although we try to broaden up the sphere by saying PAS is not based on race but on religion,. But we have to face the facts. This is still the reality.

So, are we prepared to open up the discussion, to have an inclusive kind of state, where the state and the citizens have equal rights? I think that this is a simple question. However, nowadays, we keep on going "bumiputra-non-bumiputra" and moving on to "Muslim-non-Muslim".

ZAID: Can you please conclude?

KHOO: Yes. When Malaysia was formed, there existed in the country Malay nationalism, Indian nationalism and Chinese nationalism. This is how the state was formed. I think a lot of people here would have read Ian Harper's book on the making of Malaya. All the Cold War structure is there. So I think now, what we should do is to open up the discussion to try to move away from the racial situation, and then not to go into the other trap of dividing people according to their race, their religion. This is how we should look at things now.

I think that from the other point of view, a lot of people are now asking what PAS is doing. The current situation has come about because of the 1998 *Reformasi* movement, and now it has suddenly changed course to the issue of an Islamic state. If you ask the layman, who

would probably have been supporting the Opposition in 1999, he would pose a lot of questions, and the biggest question would be, "Is PAS hijacking the issues?" I don't mean to be harsh, but this is an important question. Is what PAS is doing an attempt to revive nationalism in a bid to change the system of the state, the flag of the state?

ZAID: Can you please really conclude?

KHOO: Yes. This same situation happened between Taiwan and China. My Taiwanese friend, after reading about what PAS has been doing, said that Taiwan tried to be independent from China, and the result is a great deal of tension, with a lot of soldiers and weapons coming into the picture. And the issue is still not settled. My thinking is that Dr Mahathir is also working out a new plan, trying to contain and roll back - and this is again a Cold War term - contain and roll back the Islamic movement in Malaysia through the issues of the new Malay dilemma, the issues of language change and things like that. The situation is very dangerous now, because the civil society groups are the groups in the middle. Either you choose the Pope or the Devil. What kind of stand do you make?

ZAID: Any other comments. Very briefly, please.

MONKEY (Unnamed): I would like to address this question to Mr Shanmuga. I am very impressed by the paper he has presented. Indeed, he has done good research on minority rights ...

ZAID: Can you get to the point please?

MONKEY: Okay. I refer to page 4 of your paper, with regard to the political system of the *Hizb-ut-tahrir*. Pertaining to this constitution, has any reference been made to the contributions of our local scholars, especially our late Prof Tan Sri Ahmad Ibrahim, who suggested the assimilation of the Constitution of Malaysia and the constitution of the Islamic state? That is my first one.

Also, the book written by the Abdul Munir Yaacob of IKIM on the concept of *Masyarakat Majmur Dalam Pemerintahan Islam*. My third question is on the book by Hamidullah Khan, the first written constitution which enumerated the *Piagam Madinah* or the *Shaifah Madinah*, which is the Charter of Madina. The fourth one, the book written by Lokman Taib, *The Notion of the Islamic State*, also enumerates the principle of *Qurriah*, or the Freedom of Expression, as also the concept of *musahwah*, or the equality between minority rights in an Islamic state.

As far as I am concerned, all the *Hizb-ut-tahrir*, as was commented by Dr Abdul Aziz just now, is that these books are too remote and not authoritative in this context for the opportunity to be put into your paper. I don't know which ... could you please tell me the source of your research?

ZAID: Thank you. I think that we are really hard pressed for time now ... yes, would you like to respond?

PROF ABDULLAH: I would like to take on the question of who can interpret the Quran, whether the people can really understand the Quran. Well, one position that the Quran takes is that the Quran has been revealed in the language of the people. The Quran also mentions that all the earlier Prophets were selected from among the people themselves, so that they spoke the language of the people. The Quranic position is that God's intention is that the people understand what is expected of them. Therefore, if they cannot understand, the purpose is lost. The Quran is an understandable book.

As to who can interpret the Quran, well, of course there are some criteria. One has to know the language; one has to know the circumstances when it was revealed. At the same time, what the Quran emphasises is that one has to have one's mind open. An open mind and open heart. Both have been emphasised in the Quran. You come with an open mind and an open heart and this is the Book of Guidance for you. And there are certain conditions, of course. You have to believe in the Unseen. These beliefs are not very difficult to understand, belief in the sense that God exists, that He has guided mankind from Day One, these kinds of ideas. To my mind, these things do not provide any problem for the interpretation of the Quran. Of course, people have different intentions. Over the last 1,400 years, they have been people, Muslims as well, who tried to manipulate. There has been and is manipulation of the Quran, even now.

ZAID: Thank you. Now, this has really got to be the last comment from the panel, from Mr K. Shanmuga.

SHANMUGA: It's about whether I was wise to quote the *Hizb-ut-tahrir* Constitution. I had some concerns about doing this because when I first looked at it, I thought that was rubbish, which was put in by somebody as a joke. However, I thought about it and then I looked at two other books, one by Prof I. Doi and the other by the Information Ministry of Malaysia, that general principle of the division between executive power to non-Muslims and legislative power to Muslims seemed to be present in both these commentaries. I have been reprimanded by Dr Abdul Aziz and Prof Abdullah, who said that there are lots of other books, and now by you as well. I look forward to getting a complete list of all these books from the three of you after this. I will look into it.

Nevertheless, the third reason is not about these two books. The third reason is what I have read before. Allow me a bit of latitude on this, for I have to expand on my thoughts and I will need some time. You have laws based on the syariah. The way I understand it, the calls by people, for example Tan Sri Harun Hashim writing in *Benchmark* (in the *New Straits Times*), suggested that the Malaysian Constitution should be amended to put in a provision that the syariah should be the prevailing law. Now, if you do that, who interprets the syariah? As I understand it, the manner of interpreting it is restricted to those who

have knowledge about it, and who believe in the syariah. This is confirmed by the several criminal offences in all the states, where if you hold an opinion contrary to the *fatwa*, you commit an offence.

So, there are certain people who are entrusted, because they have the knowledge of Islamic law, to interpret Islamic law. Non-Muslims do not have the faith in the Quran. They may know about it, but they won't have the full knowledge because they do not believe in it. Therefore, they cannot interpret the Quran, and so cannot make law based on the syariah. Therefore, they cannot be legislators. This is how I understand it. I am told that I am wrong about this because there are other commentators who say that non-Muslims can make policy. I look forward to reading these books.

The other point is about the Malay states and how the Menteri Besar must be a Malay and a Muslim. I presume that it is because under our Constitution, the Menteri Besar governs certain state matters, most of which are restricted to Malay matters, such as land and Islamic affairs. So, that doesn't really compare with the prime ministership of the whole country. That's all that I have to say. Thank you.

ZAID: Thank you. Unfortunately, I will have to close this very lively discussion now. It probably created a lot of tension in some of us who have questions that remain unanswered and so on. It also created some tension for the Chairman, who had always to look at his watch. So without much ado, I call this panel session to a close and return the Chair to the organisers. Thank you.

Synthesis of the Day's Presentations and Concluding Remarks

By Zaid Kamaruddin

In the name of Allah, the Most Beneficent, Most Merciful. The first thing that comes to my mind is, do I dare try to give the concluding remarks about this meeting? I think it should remain open; we should not arrive at any conclusions because the discussions should continue.

Nonetheless, I consider the sessions that we've had today to be part of a continuous learning process to try to mutually understand each other's points of view. Besides learning about the views held on human rights in Islam, we also had opportunities to look at human rights from other perspectives, besides the Universal Declaration of Human Rights, and may be also from other perspectives such as cultural and from the point of view of the other religions.

So far as human rights and Islam is concerned, I think the negative thing that has happened to us is that these issues were introduced to us in a negative way, in crises, in conflicts, and we are scared that something is going to become law, and that sort of thing. So we do not have the opportunity of rationale and quiet contemplation of Islam, of the entity and of the comprehensiveness of Islam before we get to the sort of cutting-edge problematic areas that we find difficulty in negotiating as a result of our already existing stand.

In so far as Islam and the Muslims are concerned, our understanding of human rights must come from the original source, which is the Quran, and the Sunnah. I must say that this has been a learning process for both the Muslims as well, to understand human rights from the Islamic perspective, and it is even more difficult to try to confer it with justice to everybody else. We also hope that our non-Muslim friends will be able to bear with us and understand Islam in a like manner.

With regard to the Islamic stand and the Universal Declaration of Human Rights, I think Prof Mehrun has pointed out one inconsistency, even though generally I find that most of the provisions in the UDHR have been consistent with Islam. May be the problem is with regard to the extent of the rights. How to we define the rights? In the UDHR, the rights are limited only when they impinge upon the rights of others. In so far as Islam is concerned, the definition of where the rights begin, and where they end, is with the Quran and the Sunnah. So, while we will support for example one section of the UDHR with regard to marriages and so on, we in Islam, and well as people who follow other revealed religions, will have problems with cross-cultural, cross-religious issues and things like marriages between people of the same sex.

So, there are still a lot of things to understand, but from today's discussions, if there is a byword that we should keep, that term is *syura*, or consultation and dialogue together. Let's consult one another. The best consultation is under less-threatening situations, where it takes place at the early stage - long before the event, long before the law is enacted, long before we may say or do something that may impinge on the rights of others, or which may make other people afraid and so on. You would have noticed that this is a tradition now among non-governmental organisations and also those in the Opposition. The government in Parliament does not consult the Opposition, it does not allot enough time or enough room for various other opinions with regard to the laws it passes or the decisions it makes.

There are still a lot of outstanding issues, such as Hudud, harsh punishments, the participation of non-Muslims in full public life, the situation of women, justice to women, and the issues of polygamy, apostasy or *murtad* and so on. These are all outstanding issues and probably there are many more that we would have to discuss at future forums.

The only thing that I would like to conclude here is that, if it is possible, let us not repeat whatever we have done here. If we can, we should move on to other discussions, started from where we ended here or starting from what we have done, because we don't want such concerns to be voiced again. Rather, let us start looking into them and tackling them. May be ERA Consumer, or may be some other NGOs, would like to continue this effort.

Lastly, I would like to record a great thank you and say, on behalf of all participants, to ERA Consumer that it has done this job well. Congratulations. Thank you for bringing us here for the discussions which were good natured. I don't think that anyone of us here was overcome by our emotions. I now call for a round of applause for ERA Consumer.

Thank you very much.

Universal Islamic Declaration of Human Rights

21 Dhul Qaidah 1401 / 19 September 1981

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*This is a declaration for mankind, a guidance and instruction to those who fear God
(Al Qur'an, Al-Imran 3:138)*

Foreword

Islam gave to mankind an ideal code of human rights fourteen centuries ago. These rights aim at conferring honour and dignity on mankind and eliminating exploitation, oppression and injustice.

Human rights in Islam are firmly rooted in the belief that God, and God alone, is the Law Giver and the Source of all human rights. Due to their Divine origin, no ruler, government, assembly or authority can curtail or violate in any way the human rights conferred by God, nor can they be surrendered.

Human rights in Islam are an integral part of the overall Islamic order and it is obligatory on all Muslim governments and organs of society to implement them in letter and in spirit within the framework of that order.

It is unfortunate that human rights are being trampled upon with impunity in many countries of the world, including some Muslim countries. Such violations are a matter of serious concern and are arousing the conscience of more and more people throughout the world.

I sincerely hope that this *Declaration of Human Rights* will give a powerful impetus to the Muslim peoples to stand firm and defend resolutely and courageously the rights conferred on them by God.

This *Declaration of Human Rights* is the second fundamental document proclaimed by the Islamic Council to mark the beginning of the 15th Century of the Islamic era, the first being the *Universal Islamic Declaration* announced at the International Conference on The Prophet Muhammad (peace and blessings be upon him) and his Message, held in London from 12 to 15 April 1980.

The *Universal Islamic Declaration of Human Rights* is based on the Qur'an and the Sunnah and has been compiled by eminent Muslim scholars, jurists and representatives of Islamic movements and thought. May God reward them all for their efforts and guide us along the right path.

Paris 21 Dhul Qaidah 1401 Salem Azzam
19th September 1981 Secretary General

O men! Behold, We have created you all out of a male and a female, and have made you into nations and tribes, so that you might come to know one another. Verily, the noblest of you in the sight of God is the one who is most deeply conscious of Him.

Behold, God is all-knowing, all aware.

(Al Qur'an, Al-Hujurat 49:13)

Preamble

WHEREAS the age-old human aspiration for a just world order wherein people could live develop and prosper in an environment free from fear, oppression, exploitation and deprivation, remains largely unfulfilled;

WHEREAS the Divine Mercy unto mankind reflected in its having been endowed with super-abundant economic sustenance is being wasted, or unfairly or unjustly withheld from the inhabitants of the earth;

WHEREAS Allah (God) has given mankind through His revelations in the Holy Qur'an and the Sunnah of His Blessed Prophet Muhammad an abiding legal and moral framework within which to establish and regulate human institutions and relationships;

WHEREAS the human rights decreed by the Divine Law aim at conferring dignity and honour on mankind and are designed to eliminate oppression and injustice;

WHEREAS by virtue of their Divine source and sanction these rights can neither be curtailed, abrogated or disregarded by authorities, assemblies or other institutions, nor can they be surrendered or alienated;

Therefore we, as Muslims, who believe

- a) in God, the Beneficent and Merciful, the Creator, the Sustainer, the Sovereign, the sole Guide of mankind and the Source of all Law-;
- b) in the Vicegerency (Khilafah) of man who has been created to fulfill the Will of God on earth;
- c) in the wisdom of Divine guidance brought by the Prophets, whose mission found its culmination in the final Divine message that was conveyed by the Prophet Muhammad (Peace be upon him) to all mankind;
- d) that rationality by itself without the light of revelation from GOD can neither be a sure guide in the affairs of mankind nor provide spiritual nourishment to the human soul, and knowing that the teachings of Islam represent the quintessence of Divine guidance in its final and perfect form, feel duty bound to remind man of the high sight and dignity bestowed on him by God;
- e) in inviting all mankind to the message of Islam;
- f) that by the terms of our primeval covenant with God our duties and obligations have priority over our rights, and that each one of us is under a bounden duty to

spread the teachings of Islam by word, deed, and indeed in all gentle ways, and to make them effective not only in our individual lives but also in the society around us;

- g) in our obligation to establish an Islamic order:
- i) wherein all human beings shall be equal and none shall enjoy a privilege or suffer a disadvantage or discrimination by reason of race, colour, sex, origin or language;
 - ii) wherein all human beings are born free;
 - iii) wherein slavery and forced labour are abhorred;
 - iv) wherein conditions shall be established such that the institution of family shall be preserved, protected and honoured as the basis of all social life;
 - v) wherein the rulers and the ruled alike are subject to, and equal before, the Law;
 - vi) wherein obedience shall be rendered only to those commands that are in consonance with the Law;
 - vii) wherein all worldly power shall be considered as a sacred trust, to be exercised within the limits prescribed by the Law and in a manner approved by it, and with due regard for the priorities fixed by it;
 - viii) wherein all economic resources shall be treated as Divine blessings bestowed upon mankind, to be enjoyed by all in accordance with the rules and the values set out in the Qur'an and the Sunnah;
 - ix) wherein all public affairs shall be determined and conducted, and the authority to administer them shall be exercised after mutual consultation (*Shura*) between the believers qualified to contribute to a decision which would accord well with the Law and the public good;
 - x) wherein everyone shall undertake obligations proportionate to his capacity and shall be held responsible pro rata for his deeds;
 - xi) wherein everyone shall, in case of an infringement of his rights, be assured of appropriate remedial measures in accordance with the Law;
 - xii) wherein no one shall be deprived of the rights assured to him by the Law

except by its authority and to the extent permitted by it;

- xiii) wherein every individual shall have the right to bring legal action against anyone who commits a crime against society as a whole or against any of its members;
- xiv) wherein every effort shall be made to
 - (a) secure unto mankind deliverance from every type of exploitation, injustice and oppression,
 - (b) ensure to everyone security, dignity and liberty in terms set out and by methods approved and within the limits set by the Law;

About ERA Consumer

The Education and Research Association for Consumers, Malaysia (ERA Consumer, Malaysia) is a voluntary, non-profit and non-political organisation that was founded in Ipoh, Perak in 1985. ERA Consumer is a registered membership organisation under the Malaysian Societies Act of 1966. It was set-up to undertake and promote the task of developing critical consciousness on public-related issues out of the larger socio-economic issues.

ERA Consumer is a dynamic institution that is constantly responding to and developing its services according to the needs and demands of the people. It aims to create awareness among the public on issues that are effecting their lives, through research and educational programmes by undertaking independent, authoritative, balanced research on public issues; carrying out public education projects; making policy recommendations to the government & international institutions; building solidarity and understanding among NGOs in Malaysia and society at large, and to increase South-South relations and North-South understanding. ERA Consumer's components and main programmes are consumer issues; human rights education; food, trade and economics.

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