

THE COALITION CALLED *ARTICLE 11*: MYTHS AND FACTS

1. What is Article 11 in the Federal Constitution?

It guarantees the freedom of religion. Article 11 reads as follows:

“11. Freedom of religion.

(1) Every person has the right to profess and practise his religion and, subject to Clause (4), to propagate it.

(2) No person shall be compelled to pay any tax the proceeds of which are specially allocated in whole or in part for the purposes of a religion other than his own.

(3) Every religious group has the right -

(a) to manage its own religious affairs;

(b) to establish and maintain institutions for religious or charitable purposes; and

(c) to acquire and own property and hold and administer it in accordance with law.

(4) State law and in respect of the Federal Territories of Kuala Lumpur, Labuan and Putrajaya, federal law may control or restrict the propagation of any religious doctrine or belief among persons professing the religion of Islam.

(5) This Article does not authorise any act contrary to any general law relating to public order, public health or morality.”

2. What is the *Article 11* coalition?

Article 11 is the name of a coalition of civil society groups from diverse backgrounds and interests.

3. Why was the coalition formed?

It was formed in response to cases which highlighted the problems, faced by some Malaysians, which involve the interpretation of some provisions of the Federal Constitution. Two examples are:

Shamala was a Hindu mother whose husband converted to Islam. He converted their two infant children to Islam without her knowledge or consent. The civil High Court refused to respect Shamala’s rights as a parent of the child, and ordered her to raise her children as Muslims and not expose them to her own Hindu faith. It said that since the children are now Muslims, the Syariah Court is the only qualified forum to determine their religious status, even though the judge acknowledged that the Syariah Court has no jurisdiction to hear Shamala’s case since she is not a Muslim. As a result, Shamala did not have any avenue to seek justice.

The Islamic religious authorities had obtained a Syariah Court order declaring Moorthy, the Malaysian hero who climbed Mount Everest, a Muslim at the time of death, in his widow Kaliammal’s absence. Kaliammal tried to have her deceased husband declared a Hindu at the time of his death, but the civil courts refused to hear

her case. She was therefore left with no remedy and no court that would hear her complaint.

4. What is the mission of the coalition?

Article 11's mission is to ensure a Malaysia that:

- upholds the supremacy of the Federal Constitution;
- protects every person equally, regardless of religion, race, descent, place of birth or gender; and
- is based on the rule of law.

5. What does *Article 11* hope to achieve?

We aim to promote awareness towards, advocate for and contribute to achieving a Malaysia where all Malaysians in our daily lives:

- affirm the Federal Constitution as the supreme law of the land;
- strive to build national unity;
- recognise that the Federal Constitution is the result of an agreement among the various communities;
- ensure that Malaysia does not become a theocratic state;
- respect the Constitutional guarantees of equal protection for every person in a multi-racial, multi-religious Malaysia;
- protect the fundamental liberties of all;
- respect the freedom of thought, conscience, belief and religion of every person; and
- recognise the need for a judiciary that is an impartial, independent and equal arm of the government.

6. What activities has the coalition engaged in?

Open letter

In June 2006, *Article 11* handed over to the Prime Minister an open letter entitled "Reaffirming the supremacy of the Federal Constitution", along with approximately 20,000 signatures. The letter calls upon the government/judiciary:

- to uphold the supremacy of the Federal Constitution;
- to ensure governance in accordance with the Federal Constitution and premised on the universal values of all Malaysian peoples;
- to reaffirm that Malaysia shall not become a theocratic state; and
- to recognise the proper position of the judiciary within the Constitutional framework, as an independent and equal arm of Government.

See <http://www.petitiononline.com/constsup/petition.html> for the open letter.

The coalition has repeatedly asked to meet with the Prime Minister to discuss the open letter and other issues of concern, but no reply has yet been received.

Public forums

Since 2004, *Article 11* has been involved in organising five public forums which have focused primarily on the rights that the Federal Constitution, as the supreme law of

Malaysia, guarantees to all persons living in Malaysia. The forums also highlighted the plight of various individuals who are unable to obtain justice from the courts.

Unfortunately, two of those forums were disrupted by protests organised by a group calling itself Badan Anti IFC (BADAI), which accused *Article 11* of attempting to revive the Interfaith Commission (IFC) and of insulting Syariah law and Islam. Although a Minister called the actions of the mob “stupid” (see <http://www.malaysiakini.com/news/51104>) and in spite of the increasing public support for the forums, the Government nevertheless bowed to mob rule and banned further discussions on interfaith issues.

Court and media advocacy

Coalition members have represented clients who require assistance to pursue legal remedies. We have also appointed lawyers to hold a watching brief in court cases relating to lack of access to justice and freedom of religion.

As part of the coalition’s media advocacy work, members have granted interviews and released press statements and letters to press editors. Since the Government’s gag order, *Article 11* forums have been banned and its statements are no longer carried by the press. On the other hand, the groups opposing *Article 11* have access to mosques, suraus and Government religious machinery to perpetuate disinformation about the coalition.

Public education

Article 11 has conducted briefings for groups and individuals who want to know more about their rights under the Constitution and about the coalition.

7. Was it a mistake for *Article 11* to discuss highly charged and “sensitive” issues in a public forum setting?

No. The public forums were closed-door sessions held in a controlled indoor setting and all attendees were required to register. The forums featured activists, academics, lawyers and politicians as speakers who discussed the Federal Constitution. The forums themselves proceeded smoothly and nothing happened during the meetings that caused problems. The only disruptions originated outside the forums, caused by a mob unwilling to engage in rational dialogue, and were unprovoked by the *Article 11* coalition.

The issues may be “sensitive” but we believe they have not been handled in a crude or offensive manner. At least half of the panel in each forum comprised Muslim speakers.

8. What does *Article 11* plan to do, in light of the protests against the forums?

We cannot be united if we do not talk to each other about what is troubling us. Suppression of debate will not resolve problematic issues nor cause them to fade away. It is important that we discuss and explore different viewpoints to facilitate solutions to the issues that jeopardise our national unity.

Article 11 hopes to engage in rational dialogue with all concerned to clarify the misconceptions about the coalition, and to continue with its public education activities. *Article 11* also hopes to meet with the Prime Minister and other decision-makers to discuss issues of concern.

9. Does *Article 11* aim to revive the effort to establish the IFC?

This is not one of *Article 11*'s objectives, but some of the individuals and groups that participated in the IFC initiative are also involved in *Article 11*.

The IFC was intended to be a statutory body of a conciliatory nature to promote the national unity of the people of multiple faiths in Malaysia. Despite the lies to the contrary, the proposed IFC was never intended to have adjudicatory functions. We, as a nation, should welcome this initiative as a non-confrontational and non-adversarial means of resolving disputes. Sadly, the Government has rejected the IFC proposal outright.

Article 11 is a separate initiative. There is no discussion about the IFC in *Article 11*'s public forums or other activities.

10. Does *Article 11* oppose the position of Islam in Malaysia?

No. *Article 11* respects Article 3(1) of the Federal Constitution which states that "Islam is the religion of the Federation; but other religions may be practised in peace and harmony in any part of the Federation." We also uphold Article 4(1), which provides that the Federal Constitution is the supreme law of Malaysia.

11. Do *Article 11* and its activities interfere with, or insult, Islam?

None of the forum speakers or *Article 11* coalition members questions the application of Syariah law to Muslims in the area of personal and family law.

The coalition, however, is concerned about the areas of conflict between Syariah law and civil law and the negative impact on the rights of all individuals. As we do not oppose Islam, this should not be seen as insulting or undermining Islam but as advocating for the protection of each individual's fundamental liberties.

12. Does *Article 11* aim to reduce the power of the Sultans and religious authorities?

Article 11 has the utmost respect for the Sultans as constitutional monarchs and for the religious authorities who are subject to the Federal Constitution and are bound to follow the law.

13. Does *Article 11* aim to reduce the status of Syariah Court?

No. What we advocate has been the position in Malaysia since independence and will not reduce the Syariah Court's scope within the Federal Constitution's existing restrictions.

Article 11 recommends that, in any case where one party to a dispute does not profess Islam, or where the State Legislative Assembly has not expressly legislated on the subject matter of the dispute, the civil courts must be the ultimate decision-maker. If all parties to a dispute profess Islam, and the subject matter of the dispute is one of purely Islamic personal law which has been legislated upon, then the civil courts can rightly decline to interfere with a dispute in the Syariah Court. The current situation is problematic because individuals who do not profess Islam are being told to go to the Syariah Court for redress.

14. What is *Article 11*'s stand on apostasy?

The coalition believes that the clear provision in Article 11(1) of the Constitution that “Every person has the right to freely profess and practise ... his religion” must be fully respected.

We do not encourage Muslims to renounce Islam, and we acknowledge that Article 11(4) restricts the propagation of any religious doctrine or belief among Muslims. However, our country has to address the reality of sincere religious conversions that are done of a person's own free will. Our concern is for individuals who suffer harm or injustice as a result of their conversion.

Laws can be put in place to ensure that persons who convert out of their religion do not evade any lawful obligations to their families and communities just by changing their religion. However, such laws must not prevent, punish or deter the conversion itself but must merely ensure that conversion does not provide an escape route from obligations already incurred.

15. Is *Article 11* seeking a repeal of Article 121(1A) of the Constitution?

No. Article 121(1A) states: “The [civil High Courts] shall have no jurisdiction in respect of any matter within the jurisdiction of the Syariah courts.”

This just means that if a matter is within the Syariah Courts' jurisdiction, the civil High Courts will not exercise jurisdiction in those matters. It does not add anything to the Syariah Courts' jurisdiction, nor take anything away from the civil High Courts' jurisdiction, as they stood before Article 121(1A) was added.

The jurisdictional conflict that has arisen is not due to the written law but to a distorted reading of Article 121(1A) and the failure of the judiciary to interpret and enforce the law. Some judges have interpreted it to preclude the civil High Courts from hearing any matters that they perceive as relating to Islam. Some judges also have the notion, though legally unfounded, that the Syariah Courts are of parallel jurisdiction with the civil High Courts.

16. What can I do to help?

- Endorse *Article 11*'s open letter (<http://www.petitiononline.com/constsup/petition.html>) and send a copy to your Member of Parliament (http://www.parlimen.gov.my/eng-DewRakyat_AhliDewan_2.php)
- Read the Federal Constitution and familiarise yourself with your constitutional rights
- Discuss these issues with your friends and family members
- Write to the press to express your viewpoint on these issues
- Organise discussions to which *Article 11* members are invited to speak
- Go to *Article 11*'s website (www.article11.org) to learn more, and contact us at feedback@article11.org for more information