



**The Status
of Women's
Human Rights:
24 years
of CEDAW
in Malaysia**

The Status of Women's Human Rights: 24 Years of CEDAW in
Malaysia

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“Achieving gender equality requires the engagement of women and men, girls and boys. It is everyone’s responsibility.”

— Ban Ki-moon

01.

Executive Summary

This Shadow Report contains in-depth information related to the implementation of Malaysia's commitments under the CEDAW Convention. This report should be read together with the 2005 Shadow Report and the 2012 Alternative Report in order to gain a complete picture of the status of women's human rights in Malaysia.

Provided after the Introduction is the formal NGO shadow report which was submitted to the CEDAW Committee in anticipation of Malaysia's review during the Committee's 69th session in Geneva in February 2018. This formal shadow report highlighted the critical issues related to women's human rights and Malaysia's implementation of its obligations, and made corresponding recommendations.

The subsequent sections of the report discuss the status of Malaysia's implementation of the CEDAW Committee's recommendations made during Malaysia's 2006 review, the Malaysian government's statements of intent made on recommendations related to women's rights during Malaysia's examinations at the Universal Periodic Review in 2009 and 2013, and Malaysia's commitments under the Sustainable Development Goals. The remaining sections of the report go into substantive discussions of violations of women's human rights under each article of the CEDAW Convention, as well as select General Recommendations of the CEDAW Committee, and make recommendations to the Malaysian government as to how to remedy these violations and ensure Malaysia's full implementation of CEDAW.

The information and concrete policy recommendations made in this report should be used for the purpose of raising awareness and lobbying policymakers to adopt appropriate legislation to address the violations and current gaps in the upholding of women's human rights in Malaysia

“I raise up my voice—not so I can shout, but so that those without a voice can be heard...we cannot succeed when half of us are held back.”

— Malala Yousafzai

02.

Introduction

“I raise up my voice—not so I can shout, but so that those without a voice can be heard...we cannot succeed when half of us are held back.”

— Malala Yousafzai¹

Malaysia and CEDAW

As part of its obligation under the Convention on the Elimination of All Forms of Discrimination Against Women (“CEDAW”), which Malaysia ratified in 1995, the Malaysian government must report to the CEDAW Committee (“the Committee”) (which oversees the implementation of the treaty) every four years. This reporting is intended to promote progressive implementation of the convention, so that each time the government reports, the country is closer to comprehensively implementing its commitments under the convention, and to fulfilling gender equality.

Malaysian government’s first report, and 2005 Shadow Report

The Malaysian government belatedly submitted its combined initial and second report to the Committee in 2004 and was reviewed by the Committee at its 35th session in 2006.²

1 Pakistani activist for female education and recipient of the 2014 Nobel Peace Prize.

2 The Malaysian government’s combined initial and second report to the CEDAW Committee

In parallel to this process, Malaysian non-government organisations (“NGOs”) prepared the 2005 *NGO Shadow Report on the Initial and Second Periodic Report of the Government of Malaysia* (“2005 Shadow Report”) Shadow Report for the 2006 review session in order to highlight gaps in the government’s report and supplement information around critical women’s human rights issues where it was lacking.³

Malaysia’s third, fourth, and fifth reporting deadlines, and 2012 Alternative Report

Malaysia’s third report to the CEDAW Committee was due in August 2004 and the fourth periodic report was due in August 2008. Upon the delay of the third report, the CEDAW Committee requested that a combined third and fourth report be submitted by the Malaysian government in August 2008.

However, the government failed to submit another report, and so in 2012 Malaysian NGOs prepared the *2012 Malaysian Non-Government Organisations’ Alternative Report* (“2012 Alternative Report”) to assess the state of women’s human rights in Malaysia and to raise awareness in the absence of a government report.

Malaysian government’s second report, and this 2018 Shadow Report

In September 2016, the government submitted its combined third through fifth periodic report to the CEDAW Committee and was reviewed by the CEDAW Committee in February 2018.

Unfortunately, many of the issues highlighted in the 2005 NGO Shadow Report and the 2012 Alternative Report remain relevant, as do the majority of the CEDAW Committee’s 2006 Concluding Observations to Malaysia. This second NGO Shadow Report (“2018 Shadow Report”) does not attempt to replicate the 2005 Shadow Report or the 2012 Alternative Report, or to provide an exhaustive picture of gender-based discrimination in Malaysia.

Rather, this report provides updated information and highlights some of the concerns that have developed since the 2005 Shadow Report and the 2012 Alternative Report, and should be read together with those reports. The recommendations for the Malaysian government at the end of each chapter include many of the still relevant recommendations from both previous reports, as well as new recommendations, which are reflective of the CEDAW Committee’s 2006 and 2018 Concluding Observations to Malaysia.

is available on the website of the Office of the UN High Commissioner for Human Rights: <http://www2.ohchr.org/english/bodies/cedaw/cedaws35.htm>

3 The 2005 Malaysian NGO Shadow Report is available on IWRAW Asia Pacific’s website: http://www.iwraw-ap.org/resources/35_ngocedaw_resources.htm

Overview of Women's Human Rights Since Malaysia's 2006 Review

Malaysia's 14th General Election, held on 9th May 2018, was unprecedented in bringing about a change in the status quo and seeing the first time an opposition coalition (Pakatan Harapan) elected into power. With the change in government comes a cautious optimism on the part of civil society and the community-at-large about the direction of women's human rights in Malaysia.

Since the first review of the Malaysian government by the CEDAW Committee in 2006, women's human rights in Malaysia have progressed in a few areas, regressed in others, and stagnated in many. Although there have been some positive changes in law and policy, there has been no substantive shift in the status of women and the enjoyment of human rights to which they are entitled.

Some of the positive measures taken by the Malaysian government since its 2006 review by the CEDAW Committee include:

- Amendments to the Penal Code to increase the penalties for offences relating to rape and incest, in 2006;
- Introduction of the Anti-Trafficking in Persons Act of 2007, and subsequent amendments (as the Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act of 2007) in 2010 and 2015;
- Amendments to the Domestic Violence Act of 1994 to widen the definition of domestic violence to include emotional, mental and psychological forms of violence, in 2011, and amendments to improve protection for survivors of abuse, in 2017;
- Amendments to the Employment Act of 1955 to prohibit sexual harassment in the workplace and to extend maternity leave benefits for all women employees, in 2012.
- Ratification of the Convention on the Rights of Persons with Disabilities, in 2010; the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, in 2012; and the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, in 2012.⁴

At the international level, Malaysia was a member of the UN Human Rights Council from 2006-2009 and again from 2010-2013.⁵ Despite this, it did little to improve its human rights record during this period. At the regional level, the Malaysian government is represented in two Association of Southeast Asian Nations (ASEAN) human rights mechanisms: the ASEAN Commission on the Promotion and Protection of the Rights

4 CEDAW Concluding Observations 2018, para 5 (CEDAW/MYS/CO/3-5).

5 "UN Human Rights Council." Global Bersih: Malaysians Across Borders. Available at: <https://www.globalbersih.org/human-rights/un-human-rights-council/>

of Women and Children (ACWC) and the ASEAN Intergovernmental Commission on Human Rights (AICHR). The efficacy of these ASEAN mechanisms—which are grounded in the principles of state sovereignty and non-interference—is limited. Domestically, in March 2018 the Malaysian government launched a national human rights action plan which includes 294 action plans across 83 priority areas, categorised under five pillars. While parts of the plan are comprehensive, it falls short in terms of addressing systemic human rights violations, the root causes of inequality, and the enjoyment of human rights for all individuals in Malaysia. The plan also lacks a gender perspective.⁶

In other aspects of women's rights, the country has regressed, or remained stagnant at best. Perhaps most concerning since Malaysia's last review by the CEDAW Committee is a palpable shrinking of space for civil society, human rights activism, democratic processes, and dissenting voices. This has been seen in the unprecedented use of the Sedition Act over the past few years to silence those who are critical of the government. In 2015 alone, at least 91 individuals were arrested, charged, or investigated for sedition, equivalent to five times the number of individuals charged in the first 50 years of the law's existence.⁷ The Security Offences (Special Measures) Act (SOSMA) and the Communications and Multimedia Act have also been used to quash activism and dissent.

This crackdown by the government on diverse and dissenting voices has also been directed at women human rights defenders, from the arbitrary arrest and solitary confinement of human rights activist and Bersih 5 rally leader Maria Chin Abdullah under SOSMA,⁸ to the sedition investigation launched on G25 representative Noor Farida Affrin, after she was threatened with rape for discussing G25's call for a review of Syariah laws on *khalwat* (being in 'close proximity');⁹ to the *fatwa* issued against the women's human rights NGO Sisters in Islam (SIS), declaring that SIS subscribed to liberalism and religious pluralism, and thus deviated from the teachings of Islam.¹⁰

With the change of government, we are hopeful these trends will be reversed.

Other manifestations of this oppression have been more insidious, from the JAKIM

6 "NHRAP falls short of addressing systemic inequalities in Malaysia – Comango." Malay Mail. 6 March 2018. Available at: <https://www.malaymail.com/s/1591911/nhrap-falls-short-of-addressing-systemic-inequalities-in-malaysia-comango#00Tgtehq550CBTr6.97>

7 "Malaysia Must End Unprecedented Crackdown On Hundreds Of Critics Through Sedition Act." Amnesty International. 25 January 2016. Available at: <https://www.amnestyusa.org/press-releases/malaysia-must-end-unprecedented-crackdown-on-hundreds-of-critics-through-sedition-act/>

8 "US 'troubled' over Malaysia's detention of activist and Najib critic." The Guardian. 24 November 2016. Available at: <https://www.theguardian.com/world/2016/nov/24/us-malaysia-detention-activist-maria-chin-abdullah>

9 "Threatened with rape, G25's Noor Farida now under sedition probe for *khalwat* criticism." Malay Mail Online. 18 December 2015. Available at: <http://www.themalaymailonline.com/malaysia/article/threatened-with-rape-g25s-noor-farida-now-under-sedition-probe-for-khalwat#sthash.zn9rgBuU.dpuf>

10 "Sisters in Islam's case against *fatwa* goes back to High Court." The Star Online. 2 March 2017. Available at: <http://www.thestar.com.my/news/nation/2017/03/02/sisters-in-islam-allowed-appeal-against-deviasion-ruling/#YTXKL3loqgiRTQap.99>

spiritual camps geared at ‘rehabilitation’ of transgender women;¹¹ to a statement made by a State Assemblyman during an assembly sitting comparing the Goods and Services Tax (GST) to a woman, saying: “When a woman’s features are beautiful, she’s bound to have shortcomings and there are bound to be others who will be jealous of her and not like her. This is just like the GST.”¹² In addition to acts of discrimination by state actors, there has also been a rise of third-party acts of discrimination or violence against women that have escaped legal repercussions and government rebuke.

In March 2012, for the first time in the herstory of the UN Commission on the Status of Women, there was a failure to adopt agreed conclusions at the 56th session. Alarming, governments failed to reach a consensus on the basis of safeguarding ‘traditional values’, at the expense of the human rights and fundamental freedoms of women.

This scenario is also being played out at the national level in Malaysia, whereby convenient cultural and religious excuses are offered to explain the lack of acceptance of the principle of the universality of women’s human rights. There have been only a few government policy changes on paper. Notably, in July 2010 the government removed its reservations to CEDAW Articles 5(a), 7(b) and 16(2). However reservations still remain on five CEDAW Articles: 9(2), 16(1)(a), 16(1)(c), 16(1)(f) and 16(1)(g). In its Third through Fifth Periodic Report, the government continues to justify the reservations as contextual and falling within the scope of Islamic Law.

The central issue is that the Malaysian government has not incorporated the CEDAW Convention into national law. There is no gender equality legislation in place providing for the comprehensive realisation of substantive equality of women with men in both public and private spheres of life. However, in 2016, there was renewed interest from the Ministry of Women, Family and Community Development with the Minister herself declaring that her ministry was, “...currently enacting a Gender Equality Act,” and has “...been doing a lot of engagement to solidify our aim to draft the Act.”¹³ Following the change of government, the new Minister has also committed to introducing the Gender Equality Act.¹⁴

The overarching concerns expressed by the CEDAW Committee at the Malaysian government’s 2006 review session continue to be relevant. These include the lack of

11 “Jakim’s ‘spiritual camp’ tried to ‘change’ us, lament Muslim transgenders.” Malay Mail Online. 23 November 2014. Available at: <http://www.themalaymailonline.com/malaysia/article/jakims-spiritual-camp-tried-to-change-us-lament-muslim-transgenders#sthash.s7MU3Tr5.dpuf>

12 “GST like a gorgeous woman.” The Star Online. 11 May 2015. Available at: <http://www.thestar.com.my/news/nation/2015/05/11/gst-like-a-gorgeous-woman-bn-rep-shes-bound-to-be-surrounded-by-enviuous-people/>

13 “Minister Now Says Gender Equality Acts in the Works.” Malay Mail Online. 2 November 2016. Available at: <http://www.themalaymailonline.com/malaysia/article/minister-now-says-gender-equality-act-in-the-works>

14 “DPM: Putrajaya to form parliamentary panel on gender equality.” Malay Mail. 16 August 2018. Available at: <https://www.malaymail.com/s/1663049/dpm-putrajaya-to-form-parliamentary-panel-on-gender-equality>

clarity on the meaning of equality and non-discrimination; the lack of a legal framework for equality and non-discrimination; the lack of data disaggregated by gender; and the neutrality of the Malaysian government's current five-year overarching policy document – the Eleventh Malaysia Plan 2016 – 2020.

The Malaysian government has stated its commitment to implementing the United Nations' Sustainable Development Goals (SDGs). At the core of the SDGs is the belief that sustainable development cannot occur without social, political, and economic equality, and gender equality is articulated as Goal 5. While it is a positive step that the government plans to implement the SDGs—which have the potential to be a positive driver of change—the government must simultaneously take measures to ensure that progress is not hindered by patriarchy, close-mindedness, intolerance, and discrimination, which continue to manifest in appalling and reprehensible ways on a daily basis.

For example, the progress of law reform on some issues, such as Islamic family law, is slow—there is a seemingly deliberate hesitation on the part of lawmakers to reform legislation—yet law reform in other areas is undertaken at lightning speed. The Peaceful Assembly Bill, for example, which severely restricts the right to peaceful assembly and bans street protests, was drafted without meaningful public consultation and hastily tabled in Parliament in 2011, where it was passed within a few weeks.

Although we have in place a designated government ministry for women, women's rights issues fall under many ministries, and must be addressed through a holistic, multi-stakeholder, and multi-dimensional approach spearheaded by the Ministry of Women, Family, and Community Development. We encourage the Ministry to take a strong stand as an advocate for women and an active promoter of women's human rights in Malaysia.

It is at the core the lack of a framework for equality and non-discrimination in Malaysia that continues to impact negatively on women's lives. This NGO Shadow Report highlights these material effects, which include:

- Continued under-representation of women in politics and decision-making positions and the lack of success of plans attempting to address this
- Low women's labour force participation rate
- Lack of labour rights afforded to migrant domestic workers and their continued vulnerability to abuse
- Non-recognition of refugees' legal status
- Legal permissibility of child marriage
- Moral policing;
- Lack of comprehensive, rights-based sex education

- Difficulty women face in accessing their reproductive right to decide to have a child and to access high quality health services;
- Continued non-recognition of marital rape;
- Ongoing arrests, harassment, and violence against trans women; and
- Lack of uniform implementation of laws protecting against violence against women, both offline and online

In compiling this report, the focus has been on national issues, which are the basis of the CEDAW Committee's review. However, in the Malaysian context, any national review needs to be cognisant of the differences as well as the similarities between the Peninsular and the East Malaysian states of Sabah and Sarawak. These states, which joined Malaya—and, at the time, Singapore—to form Malaysia in 1963, have their own distinct cultures, ethnic compositions, and distribution of population and administrative structures, while sharing a similar terrain that adversely affects accessibility to services. Their state governments, especially that of Sarawak, also have more autonomy over various matters compared to those in West Malaysia. For instance, Sarawak maintains control over its immigration policy and in certain fields of legislation, e.g labour laws, can decide whether or not to adopt laws pertaining to those areas passed in Malaysia's Parliament.

In addition to its other extensive recommendations made to the Malaysian government pursuant to its February 2018 review, **the CEDAW Committee specifically requested Malaysia to provide, within two years, an update on the steps it had taken to implement certain key recommendations.** These recommendations included:

- Adopting a concrete timeframe for the adoption of a Gender Equality Act that defines and prohibits all forms of discrimination against women, encompassing direct and indirect discrimination in the private and public spheres, as well as intersecting forms of discrimination against women, in line with Article 1 of the Convention and Target 5.1 of the Sustainable Development Goals (SDGs);
- Engaging in constructive dialogue with religious authorities, women's non-governmental organisations and the public to convey the point that female genital mutilation cannot be justified by religion;
- Adopting national asylum and refugee legislation and procedures, in conformity with international standards, which ensure that the specific needs of women and girls are addressed and codify the principle of non-refoulement;
- Providing safeguards against violations of women's human rights in all family and marriage matters by enabling review by State courts or administrative bodies of all decisions and provisions of the Syariah law system, including actions of Islamic authorities, in accordance with the Federal Court's judgment of 29 January 2018 in the case of Indira Gandhi and the Committee's general recommendations No. 33 (2015) on women's access to justice and No. 29 (2013) on article 16 of the Convention (economic consequences of marriage, family

relations and their dissolution).¹⁵

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- Alana Kearns (Asylum Access Malaysia) for her contribution to the section on General Recommendation 32.

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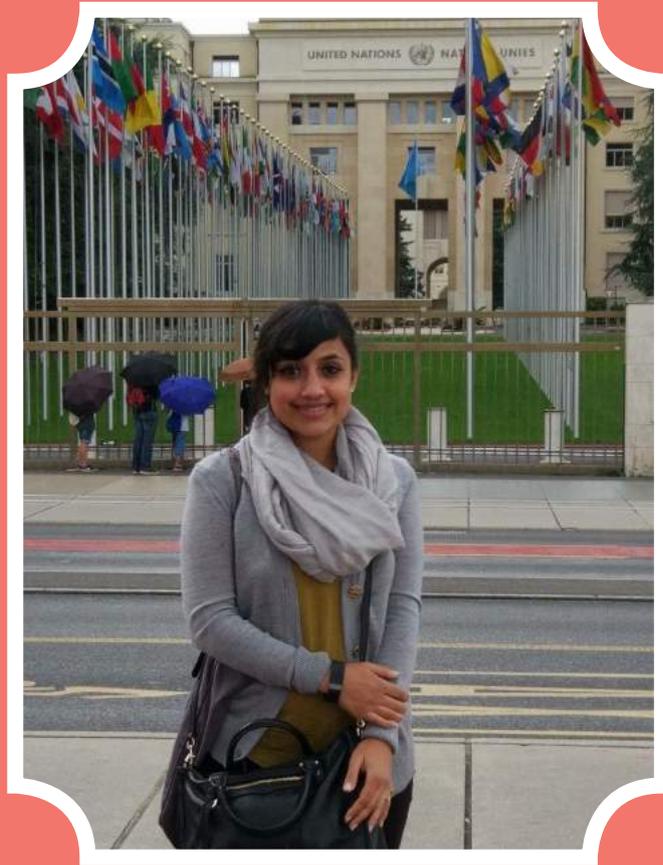
We hope you find this report to be a helpful resource for understanding the state of women’s human rights in Malaysia today.

Natasha Dandavati, Senior Research and Advocacy Officer, Women’s Aid Organisation (WAO)

Stella Tan Pei Zin, Research and Advocacy Officer, Women’s Aid Organisation (WAO)

Editors and coordinators of the *The Status of Women’s Human Rights: 24 Years of CEDAW in Malaysia*

Petaling Jaya, January 2019



03.

Contributing Organisations

All Women's Action Society (AWAM)

Asian-Pacific Resource and Research Centre for Women (ARROW)

Association of Women Lawyers (AWL)

Asylum Access Malaysia

Bersih 2.0

Center for Orang Asli Concerns (COAC)

Development of Human Resources for Rural Areas (DHRRA)

Persatuan Kesedaran Komuniti Selangor (EMPOWER)

Federation of Reproductive Health Associations, Malaysia (FRHAM)

Foreign Spouses Support Group (FSSG)

International Community of Women Living with HIV (ICW)

Jaringan Orang Asal SeMalaysia (JOAS)

Justice for Sisters

Malaysian Aids Council

Majlis Kebajikan Kanak-Kanak Malaysia (MKKM)
Malaysian Trades Union Congress (MTUC)
Migration Working Group (MWG)
National Council of Women's Organisations (NCWO)
National Human Rights Society Malaysia (HAKAM)
North South Initiative
National Union of Bank Employees Malaysia (NUBE)
Pelangi
Perak Women for Women (PWW)
Persatuan Sahabat Wanita Selangor (PSWS)
Positive Living Women Malaysia (Pewahim)
Pusat Kebajikan Good Shepherd
Pusat Komus
Reproductive Rights Advocacy Alliance Malaysia (RRAAM)
Sabah Family Planning Association
Sabah Women's Action-Resource Group (SAWO)
Serantau Malaysia
Sisters in Islam (SIS)
Sarawak Women for Women Society (SWWS)
Sharon Bong (Associate Professor in Gender and Religious Studies)
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Tenaganita
Women's Aid Organisation (WAO)
Women's Centre for Change (WCC) Penang

04.

NGO Shadow Report

**For the Malaysian Government's Review by the
CEDAW Committee, at the 69th CEDAW Session in
February 2018**

Submitted on 29 January 2018

Joint NGO Submission¹⁶

16 Contributing organisations include the following 37 NGOs: All Women's Action Society (AWAM), Asian-Pacific Resource and Research Centre for Women (ARROW), Association of Women Lawyers, Asylum Access, Bersih 2.0, Center for Orang Asli Concerns, Development of Human Resources for Rural Areas, Persatuan Kesedaran Komuniti Selangor (EMPOWER), Federation of Reproductive Health Associations, Malaysia (FRHAM), Foreign Spouses Support Group, International Community of Women Living with HIV, Jaringan Orang Asal SeMalaysia (JOAS), Justice for Sisters, Malaysian Aids Council, Majlis Kebajikan Kanak-Kanak Malaysia, Malaysian Trades Union Congress (MTUC), Migration Working Group (MWG), National Council of Women's Organisations (NCWO), National Human Rights Society Malaysia (HAKAM), North South Initiative, National Union of Bank Employees Malaysia (NUBE), Pelangi, Perak Women for Women, Persatuan Sahabat Wanita Selangor, Positive Living Women Malaysia (Pewahim), Pusat Kebajikan Good Shepherd, Pusat Komang, Reproductive Rights Advocacy Alliance Malaysia (RRAAM), Sabah Family Planning Association, Sabah Women's Action-Resource Group (SAWO), Serantau Malaysia, Sisters in Islam, Sarawak Women for Women Society, Suara Rakyat Malaysia (SUARAM), Tenaganita, Women's Aid Organisation (WAO), and Women's Centre for Change (WCC) Penang. Additionally, Sharon Bong (Associate Professor in Gender and Religious Studies) contributed in her individual capacity.

Coordinated by Women's Aid Organisation (WAO) and the Joint Action Group for Gender Equality (JAG)¹⁷

Introduction

This Shadow Report is based on the Malaysian government's Third through Fifth Periodic Report to the CEDAW Committee ("Report"), as well as the Government's Replies to the List of Critical Issues.¹⁸ Unfortunately, many of the issues highlighted in the Initial and Second Periodic Report of the Government of Malaysia and the 2012 NGO Alternative Report¹⁹ remain relevant, as do the majority of the CEDAW Committee's 2006 Concluding Observations to Malaysia.

While the supreme law of Malaysia is the Federal Constitution, many developments during the period under review have weakened the independence and effectiveness of institutions like the Legislature and the Judiciary, resulting in a powerful Executive. Additionally, intense and divisive identity politics pitches Malays against non-Malays, and Muslims against non-Muslims. This backdrop has fuelled and enabled increasing religious conservatism and repression of those who speak out against human rights violations.

Patriarchal interpretations of Islamic laws and public policies continue to be enforced, which block progressive legislative amendments aimed at upholding the rights of women and minorities. Collaboration between state and non-state actors pushing for conservative public policies have affected Muslims and non-Muslims alike.

While the ruling coalition no longer has two-thirds majority – needed to amend the Federal Constitution – it still can pass laws very quickly, with minimal debate. Attacks against human rights defenders, especially women human rights defenders, are often framed within a purportedly religious perspective. For

17 The Joint Action Group for Gender Equality (JAG) is a coalition of NGOs consisting: All Women's Action Society (AWAM), Association of Women Lawyers, Justice For Sisters, Perak Women for Women, Persatuan Kesedaran Komuniti Selangor (EMPOWER), Persatuan Sahabat Wanita Selangor, Sabah Women's Action-Resource Group (SAWO), Sarawak Women for Women Society, Sisters in Islam, Tena-ganita, Women's Aid Organisation (WAO), and Women's Centre for Change (WCC) Penang. For information, contact womensaidorg@gmail.com.

18 The Government's Replies to the List of issues and questions in relation to the combined third to fifth periodic reports of Malaysia (submitted on 16th November 2017).

19 The Malaysian Non-Government Organisations' Alternative Report was published in 2012 to assess the state of women's human rights in Malaysia, and to raise awareness in the absence of a government report.

example, members of the NGO Sisters In Islam constantly have to defend their freedom of association, speech, and expression. Their publications have been banned, and a fatwa was issued against them alleging that they have deviated from Islam's teachings.

This report, which highlights obstacles to the full enjoyment of women's rights in Malaysia, should be viewed in this broader context.

Reservations

- a) We commend the government on **lifting its reservations to CEDAW Articles 5(a), 7(b), and 16(2)**. However, little has been done to achieve the intent of these Articles.
- b) The government **has not removed its reservations to CEDAW Articles: 9(2), 16(1)(a), 16(1)(c), 16(1)(f), and 16(1)(g)**. The government has not given any indication it intends to remove these reservations. In its Report, the government continues to justify the reservations as contextual and falling within the scope of Islamic Law.

Article 1: Definition of discrimination

- 1.1 The CEDAW Committee recommended in 2006 that Malaysia incorporate the definition of both direct and indirect discrimination into the Federal Constitution (FC) and/or other appropriate national legislation. However, while discrimination has been defined in common law (see 2.1), the government has not defined discrimination in the FC or in legislation.

Recommendations

1. Incorporate definition of discrimination under Article 1 of CEDAW in the body of the Federal Constitution or through gender equality legislation.

Article 2: Eliminating discrimination in the law

- 2.1 Article 8(2) of the Federal Constitution prohibits discrimination on the basis of gender. In the 2012 case, *Noorfadilla binti Ahmad Saikin v Chayed bin Basirun and Ors (Noorfadilla)*, the court accepted the definition of

‘discrimination against women’ in Article 1 of CEDAW. It also held that CEDAW has the force of law in Malaysia.

However, in the 2014 case, *AirAsia Berhad v Rafizah Shima binti Mohamed Aris (Air Asia)*, where an airline terminated a trainee due to her pregnancy, the Court found that Article 8(2) had not been violated. *Air Asia* **reversed the finding in Noorfadilla that CEDAW had the force of law in Malaysia, but the definition of ‘discrimination against women’ as defined in Noorfadilla, remains intact.**

2.1.1 Despite this, the efficacy of Article 8(2) in protecting against gender discrimination has been limited by **the courts’ interpretation that 8(2) does not apply to discrimination by private actors.**²⁰ This distinction between state and private actors hampers the full enjoyment of women’s rights. The government must fully implement its duty of due diligence when it comes to acts and omissions of private actors.

2.1.2 The government in its Report stated that there is no ‘cogent reason to review the definition of discrimination in the FC,’ nor a need for specific national legislation to provide such definition.

2.1.3 Positively, the Ministry of Women, Family, and Community Development has taken steps to formulate a Gender Equality Act.^{21, 22}

2.2 **The Attorney General’s Chambers (AGC) has pursued actions contrary to the fulfilment of women’s rights.** In *Noorfadilla*,²³ where a public

20 In the cases of Beatrice and Air Asia, the discriminating parties were public listed companies whereas it was the Education Department (a public authority) that discriminated against Noorfadilla. “The High Court erred in law and facts in not following the Federal Court’s decision in Beatrice’s case. It was clear the agreement between the appellant and the respondent was a lawful contract between private parties. Beatrice’s case essentially stipulated that constitutional law, as a branch of public law, only addressed the contravention of an individual’s right by a public authority.” *Malayan Law Journal Reports/2014/Volume 5/AirAsia Bhd v Rafizah Shima bt Mohamed Aris- [2014] 5 MLJ318 – 3 July 2014.* The Court of Appeal in *AirAsia Berhad v Rafizah Shima binti Mohamed Aris* relied on the Federal Court’s decision in *Beatrice AT Fernandez v Sistem Penerbangan Malaysia & Anor [2005] 2 CLJ 713*

21 The Minister of Women, Family and Community Development announced in Parliament that her Ministry was formulating a Gender Equality Act. (See “Minister now says Gender Equality Act in the works.” *Malay Mail Online.* 2 November 2016. Available at: <http://www.themalaymailonline.com/malaysia/article/minister-now-says-gender-equality-act-in-the-works>)

22 According to the Government’s Replies to the List of Issues, the Ministry is working on drafting the gender equality bill, with plans for further consultative workshops with other government agencies and stakeholders. (See Government’s Replies to List of Issues, page 2)

23 *Noorfadilla binti Ahmad Saikin v Chayed bin Basirun and Ors (2012)*

school teacher trainee's contract was revoked because she was pregnant, the AGC argued that there was no discrimination. The AGC also defended state-administered Syariah laws prohibiting 'cross-dressing,' arguing that moral policing by authorities must continue and that transgenders are not legally recognised in the country.²⁴

- 2.3 Even the positive impact of *Noorfadilla*—in which the Court found that the termination of Noorfadilla's employment based on pregnancy constituted discrimination—was diminished when the government appealed, and the Court's initial award of RM300,000 was subsequently reduced to RM30,000.**²⁵ The government's appeal and the court's reduction of the damages award to 'prevent profiteering' undermined what appeared to be the judiciary's commitment to implement CEDAW and eliminate discrimination.
- 2.4 Although Article 8(2) of the FC was amended in 2001 to include gender as a prohibited ground for discrimination, **this was not accompanied by a comprehensive review of all laws**, including provisions within the FC which continue to be discriminatory.
- 2.5 The **Penal Code contains several discriminatory provisions**, including: Sections: 498, which criminalises the act of enticing a married woman; 375, which includes an exception that permits marital rape; and 377CA, which considers rape with a body part other than the penis, or rape with an object, to be sex "against the order of nature" rather than rape.²⁶ **It was the narrow definition of rape that led to an absurd and unjust outcome in the case of *Bunya Anak Julong v PP* (the 'finger rape case').**²⁷

24 Statement by the Senior Federal Counsel, Attorney General's Chambers, *In the High Court in Malaya at Seremban, In Negeri Sembilan Darul Khusus, Malaysia, Application for Judicial Review No. 13-1-2011. In the matter of section 66 of the Syariah Criminal (Negeri Sembilan) Enactment 1992*. 8 April 2011. paragraph 4.21.

25 "To prevent profiteering, court slashes woman's gender equality case award by 90pc." The Malay Mail Online. 17 February 2016. Available at: <http://www.themalaymailonline.com/malaysia/article/to-prevent-profiteering-court-slashes-womans-gender-equality-case-award-by#sthash.ybwtHQMB.dpuf>

26 In the amendments to the Penal Code that were tabled in April 2017, the definition of rape remained the same and it was only Section 377CA, on "Sexual connection by object" that was amended to include "or any part of the body, except the penis". (See Act A1536 Penal Code (Amendment) Act 2017. Available at: http://www.federalgazette.agc.gov.my/outputaktap/aktaBI_20170602_ActA1536BI.pdf)

27 In this case, a 60 year-old man was acquitted of four counts of rape of a child in the state of Sarawak. Despite the fact that the child became pregnant as a result of the rape, the defence was raised—and accepted by the Court—that the man had impregnated the girl with his fingers, and not through sexual intercourse, and so it was not rape. (See Criminal Appeal No. Q-09-212-08/2014. Available at: <http://www.kehakiman.gov.my/directory/judgment/file/Q-09-212-08-2014.pdf>)

- 2.6 Transgender women are at constant risk of arrest based on gender identity and expression. All states and the Federal Territories in Malaysia prohibit male persons ‘posing as a woman’ via their respective Syariah criminal laws.^{28,29} **In a landmark decision in 2014, the Court of Appeal unanimously held that a state law which prohibited men from dressing as women was unconstitutional, and therefore void.³⁰ However, the victory was short-lived** as the government was granted leave to appeal, and the ruling was subsequently overturned on a procedural technicality.³¹
- 2.7 Syariah laws in states and Federal Territories³² **criminalise same-sex sexual relations for women (*musahaqah*)³³ and men (*liwat*).**³⁴ 13 cases of *musahaqah* were reported between 2009-2012.³⁵ In 2014, a couple was arrested in a hotel raid and investigated under Section 26 of Johor’s Syariah Criminal Offences Enactment 1997.³⁶

Recommendations

2. Ensure that **CEDAW and related domestic legislation are made an integral part of legal education and the training** of judicial officers, including judges, lawyers and prosecutors.

3. Review and repeal laws that discriminate against women, and laws that

28 Between 2008-2012, 794 cases of arrest in relation to ‘posing as a woman’ were reported by the state Islamic departments and JAKIM.

29 There are two iterations of this law: nine out of the 14 states prohibit male persons posing as a woman in public spaces ‘for immoral purposes,’ while five other states do not include immoral purposes. In four states in Malaysia, a woman posing as a man is an offence.

30 “The Transgender Case: A Summary.” Loyar Burok. 9 October 2015. Available at: <http://www.loyarburok.com/2015/10/09/transgender-case-summary/>

31 On 8 October 2015, the Federal Court overturned the landmark Court of Appeal ruling on a procedural technicality, stating that the three trans women should have brought their case directly to the country’s highest court because it involved the Constitution. (See Lavers, Michael. “Top Malaysia court overturns landmark trans rights ruling.” Washington Blade. 8 October 2015. Available at: <http://www.washingtonblade.com/2015/10/08/malaysia-high-court-overturns-landmark-trans-rights-ruling/>)

32 For example, see Act 599 Syariah Criminal Offences (Federal Territories Act). Available at: [http://www.agc.gov.my/agcportal/uploads/files/Publications/LOM/EN/Act%20559%20-%20Syariah%20Criminal%20Offences%20\(Federal%20Territories\)%20Act%201997.pdf](http://www.agc.gov.my/agcportal/uploads/files/Publications/LOM/EN/Act%20559%20-%20Syariah%20Criminal%20Offences%20(Federal%20Territories)%20Act%201997.pdf)

33 12 Malaysian states and the Federal Territories criminalise *musahaqah*. Only Pahang does not.

34 10 states and the Federal Territory criminalise *liwat*.

35 JAKIM Strategic Plan for 2015-2019, page 23. Available at: <https://www.islam.gov.my/mengenai-jakim/profil-jakim/pelan-strategik>

36 “Malaysia Religious Police Raid Hotel, Arrest Two Women Sharing Room.” The Rainbow Hub. 8 September 2014. Available at: <http://www.rainbowhub.com/malaysia-religious-police-raid-hotel-arrest-two-women-sharing-room/>

criminalise persons based on gender identity, gender expression and sexual orientation.

4. Ensure government actors do not actively breach the rights of trans women through arbitrary arrests, detention, violence, and other forms of discrimination.

Article 3: Measures to promote equality

- 3.1 There is a National Policy on Women, and associated National Action Plan; however, many of the goals have not been achieved.^{37,38}
- 3.2 The Government committed to implement the Sustainable Development Goals (SDG), including Goal 5 on gender equality. Ministries, departments, agencies, CSO coalitions, UN bodies, and professional unions were brought together to form Malaysia's SDG Steering Committee. The Government also participated in a Voluntary National Review at the High-Level Political Forum in July 2017. However, the result of this effort is unclear. A key output of the process, "Malaysia's Roadmap to implement the 2030 Agenda" has not been finalised and shared with the public or civil society.
- 3.3 A pilot project launched in 2003 to incorporate **gender-sensitive budgets into the national budgeting system has yet to be implemented** as a government policy.³⁹
- 3.4 Malaysia has **not ratified the optional protocol** to CEDAW.

Recommendations

5. There must be a clear timeframe to **enact a Gender Equality Act** that follows CEDAW standards. The Act should:

37 The National Policy was formulated in 1989, and the subsequent action plan developed in 1997. In 2008, feedback was provided to the Ministry of Women, Family and Community Development about the Policy by a coalition of women's groups, including that the policy and action plan do not link targets with specific and comprehensive strategies, methods, timeframes and responsible agencies.

38 The Government noted in its Replies to the List of Issues that the policy is currently being reviewed with the United Nations Development Programme.

39 The gender-sensitive budget pilot project launched in 2003 has failed to be implemented within the identified 5 pilot Ministries and beyond into the overall institutional structure. This is despite the various Treasury Call Circulars indicating the importance of gender mainstreaming.

- Prohibit gender discrimination, including intersectional discrimination, and help achieve gender equality
 - Incorporate CEDAW into domestic law
 - Mainstream gender equality into public policies and state machinery
 - Establish institutions to facilitate fulfilment of gender equality
6. Ensure **gender-responsive budgeting** is implemented, and is monitored and evaluated for impact on gender equality.
7. Ensure systematic **monitoring and evaluation of the National Policy on Women and National Action Plan for the Advancement of Women**; strengthen institutional mechanisms through training, monitoring, and evaluating gender mainstreaming programmes in government agencies.

Article 4: Temporary special measures

- 4.1 The government has made limited use of temporary special measures, and where it has used them, has not developed specific guidelines or concrete plans for their implementation, monitoring, and evaluation.⁴⁰

Recommendations

8. Use temporary special measures to increase not only the percentage of women participating in the labour force, but to facilitate increase representation of women in management and decision-making positions in the private sector.

Article 5: Gender stereotypes and discriminatory customs and

40 For example, the 10th Malaysia Plan is vague about the government's efforts to increase the participation of women in decision-making positions to at least 30%. In the 11th Malaysia Plan (2016-2020), the PM announced strategies being set to increase women's participation in the labour force by 59% by the year 2020; in the political arena however, more special measures are still in dire need. (See "Women must be accepted as equal partners and drivers of nation's growth, says Najib." NST. 4 December 2017. Available at: <https://www.nst.com.my/news/nation/2017/12/310596/women-must-be-accepted-equal-partners-and-drivers-nations-growth-says>)

practices

- 5.1 Government rhetoric often reinforces gender stereotypes and women's role as the primary caregivers. While encouraging employers to offer part-time work and flexible arrangements is welcomed, the government rarely encourages fathers to take on childcare and housework more equally.⁴¹
- 5.2 The National Fatwa Council declared a series of fatwas limiting the rights of women to bodily integrity. There is a fatwa making circumcision for girls obligatory, a fatwa against pengkids (persons assigned female at birth who exist along the trans masculine and gender fluid spectrum) and a fatwa against women who shave their heads, and a fatwa that prohibits gender affirmation surgeries for trans people. Although these fatwas have not been gazetted, and are therefore not legally binding, the attempt to control Muslim women's bodily integrity is concerning.
- 5.3 A fatwa was issued against the women's human rights NGO Sisters in Islam (SIS), declaring that SIS subscribed to liberalism and religious pluralism, and thus deviated from the teachings of Islam.^{42 43}
- 5.4 Moral policing, by religious enforcement officers and the police, on the basis of religious values attempts to regulate the private lives of citizens and open them up to abuse, selective prosecution, and victimisation, especially for marginalised groups.
- 5.5 In 2016 and 2017, the state Islamic departments organised several seminars in Kuala Lumpur, Selangor, and Penang on LGBT identities and issues with targeted stakeholders, including parents, counsellors, students, and

41 In speaking about maternity leave during his Budget 2011 speech, Prime Minister Najib stated that, "The Government is concerned with the career prospects and welfare of female civil servants as they need to take care of their families." (See "Female civil servants can take up to 90 days maternity leave.," The Star. 16 October 2010.)

42 "Sisters in Islam's case against fatwa goes back to High Court." The Star Online. 2 March 2017. Available at: <http://www.thestar.com.my/news/nation/2017/03/02/sisters-in-islam-allowed-appeal-against-deviasion-ruling/#YTXKL3loqgiRTQap.99>

43 On 31 October 2014, SIS filed a judicial review application arguing that the contested fatwa allows for any publications deemed to be 'liberal and plural' to be banned and seized, and further calls for any form of social media that promotes such content to be monitored and restricted by the Malaysian Communications and Multimedia Commission (MCMC). A preliminary objection was brought citing Article 121(1A) of the Federal Constitution, which articulates that the civil courts have no authority on matters that are within the jurisdiction of the Syariah court, and the High Court upheld this objection on 24 June 2016. However, the Court of Appeal subsequently disagreed with the High Court's ruling, and SIS will be allowed to challenge the fatwa in civil court.

the public.^{44, 45}

- 5.6 Gender segregation has been undertaken in states such as Kelantan and Terengganu, attempting to regulate activities like seating at movie theatres to men and women riding together on motorcycles.^{46,47}
- 5.7 Individuals of non-heteronormative sexual orientations or diverse gender identities face persecution through the law and by government authorities, including harassment, assault, and sexual abuse by religious enforcement officers and the police.⁴⁸
- 5.8 Gender stereotypes are perpetuated in the media. Film censorship guidelines require gay, lesbian, and transgender characters to either repent, die or be punished at the end of any film.⁴⁹ Media portrayals of gender and sexual diversity often use disparaging words. In advertising, women are often portrayed in submissive roles.
- 5.9 Events that aim to raise awareness regarding sexual orientation and gender identity and create safe spaces are often targeted, **by state and**

44 “Golongan LGBT boleh diubah.” BH Online. 25 December 2016. Available at: <https://www.bharian.com.my/node/227009>

45 “Seminar Pemahaman Ummah; LGBT: Apa Yang Anda Tahu.” PUSPANITA Negeri Selangor. 7 November 2016. Available at: <http://puspanita.selangor.gov.my/?p=667>

46 “Going to the cinema in Kelantan remains just a dream.” The Star Online. 1 June 2016. Available at: <http://www.thestar.com.my/news/nation/2016/06/01/going-to-the-cinema-in-kelantan-remains-just-a-dream/#Z7gCO3rU6VfpTxO9.99>

47 “Terengganu eyes gender-segregated lines at government offices.” Malay Mail Online. 21 October 2016. Available at: <http://www.themalaymailonline.com/malaysia/article/terengganu-eyes-gender-segregated-lines-at-government-offices#sthash.xrxrLucz.dpuf>

48 In December 2017, transgender sex workers were subjects of a media expose, anxiety of raids and arrest as a result of Terengganu’s cleaning up effort in preparation for its Visit Beautiful Terengganu 2018 tourism project. The Terengganu state also revealed plans to approach the transgender persons and communities, provide job opportunities, and bring them back to the right path (read rehabilitation).

49 “Beauty and the Beast: Malaysian film censors back down in ‘gay moment’ row.” The Guardian. 21 March 2017. Available at: <https://www.theguardian.com/film/2017/mar/21/beauty-and-the-beast-malaysian-film-censors-back-down-in-gay-moment-row>

non-state actors.50,51,52,53,54

5.10 **Attempts to police women’s bodies and attire remain pervasive, from restrictions on women’s entry into government offices based on clothing,55 to scrutiny by private citizens and religious authorities of their attire at sporting events56,57 to warnings by religious authorities to women against dressing ‘provocatively’ during the month of Ramadan,58,59 to threats made by a private group against Hindu women wearing sarees for the festival of Thaipusam that they would be sprayed with paint.60** While

50 In 2011, Seksualiti Merdeka, a human rights festival on SOGIESC was banned by the Malaysian police, claiming that the festival is attempting to promote ‘animal’ culture and the then Deputy Prime Minister alleged that it is ‘deviationist’. (See “‘Seksualiti Merdeka’ programme a deviationist activity – Muhyiddin.” New Straits Times. 3 November 2011.)

51 In 2014, Penang Pink Dot was called off “due to concerns over the personal security and safety of the organisers and participants ...” following protest by groups like PERKASA and ABIM. (See “Penang organiser calls off Pink Dot over Muslim fire.” Malay Mail Online. 14 March 2014. Available at: <http://www.themalaymailonline.com/malaysia/article/penang-organiser-calls-off-pink-dot-over-muslim-fire>)

52 In May 2015, a beauty pageant in Sarawak was cancelled after threats of arrest, and calls for a ban on the use, promotion, and integration of Iban culture in transgender beauty pageants by the Mayor and the Dayak Miri Association. (See “Transvestite pageant in Miri banned.” Telus & Tulus Sinar Online. 9 May 2015. Available at: <http://www.sinarharian.com.my/edisi/sabah-sarawak/pertandingan-ratu-pondan-di-miri-diharamkan-1.388382>)

53 In 2016, a charity dinner organized by trans women was raided in a hotel in Kuala Lumpur, and the organiser was investigated under Section 9 for obstruction of duty of the religious officers and Section 35 on encouraging vice of the Syariah Criminal Offences Enactment (Wilayah-Wilayah Persekutuan) 1997. (See “Video: JAWI Raids Malaysian Trans Beauty Pageant During Fund Raising Charity Event For Breaking Fatwa.” The Coverage. 5 April 2016. Available at: <https://thecoverage.my/news/video-jawi-raids-malaysian-trans-beauty-pageant-during-fund-raising-charity-event-for-breaking-fatwa/>)

54 A three-day lesbian, gay, bisexual, and transgender (LGBT) public awareness campaign, including a pride march, that was planned by Taylor’s University was cancelled pursuant to protests by pro-Islamist blogs. (See “LGBT pride march in Taylor’s University cancelled after Islamist pressure.” Malay Mail Online. 18 May 2017. Available at: <http://www.themalaymailonline.com/malaysia/article/lgbt-pride-march-in-taylors-university-cancelled-after-islamist-pressure>)

55 Press Release I Rein In Overzealous Dress Code Enforcement and Reject Clothing or Moral Policing. The Malaysian Bar. 4 July 2015. Available at: http://www.malaysianbar.org.my/press_statements/press_release_%7C_rein_in_overzealous_dress_code_enforcement_and_reject_clothing_or_moral_policing.html

56 “Muslim gymnast criticized for ‘revealing’ leotard as she wins double-gold.” The Telegraph. 18 June 2015. Available at: <http://www.telegraph.co.uk/women/womens-life/11683079/Muslim-gymnast-criticised-for-revealing-leotard-as-she-wins-gold.html>

57 This subsequently led to an announcement by the minister in charge of Islamic affairs that the federal government would conduct an in-depth study on Islamic compliance of sports clothing. (See “Malaysia To Review Sports Attire For National Athletes After Gymnast Incident.” All Singapore Stuff. 16 June 2015. Available at: <https://www.allsingaporestuff.com>)

58 “Muslim women in Pahang told to dress ‘decently’ during Ramadan.” Today. 25 June 2015. Available at: <http://www.todayonline.com/world/asia/muslim-women-pahang-told-dress-decently-during-ramadan>

59 “Respecting the month of Ramadan.” The Star Malaysia. 18 June 2016. Available at: <http://www.pressreader.com/malaysia/the-star-malaysia/20160618/281775628445794>

60 “Group warned against spray-painting women on Thaipusam.” Free Malaysia Today. 9 January 2017. Available at: <http://www.freemalaysiatoday.com/category/nation/2017/01/09/group-warned-against->

this latter threat was condemned by police, there have been little to no consequences for other such acts.

- 5.11 Change of name, gender, and last digit of the Identification Card's serial number, which was initially allowed for trans people based on operative status, has become more challenging.⁶¹ To date, only one 2005 case has been successful. A 2016 decision by the High Court allowing a trans man to change his details was overturned in 2017, following an appeal by the National Registration Department.
- 5.12 The Mukhayyam Programme is a spiritual camp by JAKIM that aims to rehabilitate and bring trans women back to the 'right path' or 'original state'.^{62,63} JAKIM reported that between 2010 and 2014, it had 'rehabilitated' 1,000 transgender women through the programme.^{64,65}

Recommendations

9. Amend government rhetoric and policy to focus on encouraging employers to adopt **flexible work arrangements for parents**, not only mothers; **adopt adequate paternity leave** for both public and private sectors.
10. End all efforts that aim to 'correct' a person's gender identity, gender expression and sexual orientation given its lack of evidence and harmful impact.

spray-painting-women-on-thaipusam/

61 The courts in Malaysia require the applicants to fulfil four criteria, including chromosomal factor in order to make the changes despite the fact that chromosome is not a determining factor for gender identity. Between 2004 and 2017, at least seven such known applications were filed in the High Court.

62 "Jakim's 'spiritual camp' tried to 'change' us, lament Muslim transgenders." Malay Mail Online. 23 November 2014. Available at: <http://www.themalaymailonline.com/malaysia/article/jakims-spiritual-camp-tried-to-change-us-lament-muslim-transgenders#sthash.s7MU3Tr5.dpuf>

63 The programme also offers microcredit assistance as well as information on HIV and Islam.

64 The Federal Territories Islamic Religious Department (Jawi) also claimed later that nearly 2,000 from the LGBT community have been "cured" by its own similar programmes since 2005. (See "Jakim's 'spiritual camp' tried to 'change' us, lament Muslim transgenders." Malay Mail Online. 23 November 2014. Available at <http://www.themalaymailonline.com/malaysia/article/jakims-spiritual-camp-tried-to-change-us-lament-muslim-transgenders#sthash.V5wwqQvc.dpuf>)

65 The Global AIDS Response Progress Report 2016 noted that "Many who attended this program have reported change in behaviour to less risky or risk free but there has been no data to support this claim." (See Global AIDS Response Progress Report 2016, page 17. Available at: http://www.aidsdatahub.org/sites/default/files/publication/Malaysia_Annual_Report_2016.pdf)

11. Repeal all legal enforcement of moral policing of women's bodies and freedom of expression.

Article 6: Trafficking of women

- 6.1 The May 2015 discovery of mass graves and human trafficking camps along the Malaysia-Thailand border highlighted the deadly human smuggling and trafficking trade in Malaysia.⁶⁶ Despite initial arrests made, all Malaysian officials were released and none were prosecuted for crimes related to the "death camps" or human trafficking.^{67,68}
- 6.2 Although convictions for trafficking crimes have increased, enforcement authorities and social service providers lack awareness and sensitisation on human trafficking, especially with regards to women trafficking survivors. There is no comprehensive system in place to ensure financial compensation for trafficking survivors, who may have years of unpaid wages.
- 6.3 It is a challenge for CSOs to be closely involved with trafficking cases once an investigation has begun. Although Malaysia's National Action Plan on Anti-Trafficking in Persons 2016-2020 stated that CSOs will be responsible for sheltering trafficking survivors by 2020, the Plan does not include a detailed framework for how CSOs will take over sheltering activities.⁶⁹

Recommendations

12. **Prosecute officials for crimes** related to the mass graves and abandoned human trafficking camps along the Malaysia-Thailand border, in accordance with the ATIPSOM 2007 and Section 372 of the Penal Code, and form a **commission of inquiry** to fully investigate the matter.
13. Collaborate with service providers and community organisations in all areas of human trafficking work, including implementing the National Action Plan. An **integrated team, including government authorities**

66 "Asia migrant crisis: New mass graves on Malaysia-Thai border." *BBC News*, 23 August 2015.

67 "Malaysians likely behind Thailand's Songkhla human trafficking camp, says NGO." *The Straits Times*. 6 May 2015. Available at: <http://www.straitstimes.com/asia/se-asia/malaysians-likely-behind-thai-lands-songkhla-human-trafficking-camp-says-ngo>

68 "[Exclusive] The Secrets of Wang Kelian Exposed". *NST Online*. 20 December 2017. Available at: <https://www1.nst.com.my/news/exclusive/2017/12/316339/exclusive-secrets-wang-kelian-exposed>

69 A framework is being developed, with input from CSOs. This process must be prioritised and carried through.

and CSOs, should be set up to holistically work on trafficking survivors' cases from identification of victims, investigation, to safe repatriation.

Article 7: Participation in public life and decision-making

- 7.1 The political environment is hostile to women. Members of Parliament (MPs) regularly make sexist comments,^{70,71,72} creating an antagonistic environment for women. Sexist remarks have been banned in Parliament through an amendment to the rules of conduct,⁷³ but continue to be made, indicating the broader acceptance of sexist mind-sets.^{74,75}
- 7.2 Numerous attacks have been directed at women leaders, including those currently or formerly in government, opposition parties, and civil society.⁷⁶ Human rights activist and Bersih 2.0 leader Maria Chin Abdullah was arbitrarily arrested and detained in solitary confinement under Malaysia's Security Offences (Special Measures) Act (SOSMA).^{77,78}

70 "Time for Parliament to clean up its act." Free Malaysia Today. 27 November 2016. Available at: <http://www.freemalaysiatoday.com/category/opinion/2016/11/27/time-for-parliament-to-clean-up-its-act/>

71 "When Malaysian MPs' remarks in Parliament shocked Malaysians." Today. 7 April 2017. Available at: <http://www.todayonline.com/world/asia/when-malaysian-mps-remarks-parliament-shocked-malaysians>

72 "Time for Parliament to clean up its act." Free Malaysia Today. 27 November 2016. Available at: <http://www.freemalaysiatoday.com/category/opinion/2016/11/27/time-for-parliament-to-clean-up-its-act/>

73 "Malaysia bans sexist remarks in Parliament." The Indian Express. 27 November 2012. Available at: <http://archive.indianexpress.com/news/malaysia-bans-sexist-remarks-in-parliament/1036991/>

74 "When Malaysian MPs' remarks in Parliament shocked Malaysians." Today. 7 April 2017. Available at: <http://www.todayonline.com/world/asia/when-malaysian-mps-remarks-parliament-shocked-malaysians>

75 The Government's Replies to List of Issues mentions the standing order 36(4) that was put in place to curb the use of sexist remarks. However, there was no mention on how to penalise or reprimand MP's who use these comments.

76 Many women leaders have been victims of vicious attacks, including personal threats, media blasts, or social media trolling. Examples include the BFM journalist Aisyah Tajuddin receiving death and rape threats over a video of her questioning if implementing hudud law can fix the economy, the physical attack on transgender woman activist Nisha Ayub, and the sexist remarks against MP Teresa Kok. G25 spokesperson Noor Farida Afrin was threatened with rape via Facebook by Animal Action Group president Sharul Nizam Ab Rahim as a result of G25's call for a review of Syariah laws on khalwat. Maria Chin Abdullah and Ambiga Sreenevasan, leaders of Bersih 2.0, a civil society movement for free and fair elections, have been vilified in the media and received death threats.

77 "US 'troubled' over Malaysia's detention of activist and Najib critic." The Guardian. 24 November 2016. Available at: <https://www.theguardian.com/world/2016/nov/24/us-malaysia-detention-activist-maria-chin-abdullah>

78 Maria Chin was also arbitrarily arrested the month prior to her arrest under SOSMA under the Printing Presses and Publications Act (PPPA) for a purported issue related to the flyers for the Bersih 5 rally. Lawyers referred to the arrest as being in bad faith and selective. (See "Lawyers: Maria's arrest over Bersih flyers 'selective', form of harassment." Malay Mail Online. 30 October 2016. Available at: <http://www.themalaymailonline.com/malaysia/article/lawyers-marias-arrest-over-bersih-flyers-selective-form-of-harassment#sthash.KFU4UKT3.dpuf>)

Such treatment is a disincentive for women to participate in the public sphere.

- 7.3 The Prime Minister announced in his Budget 2018 speech that 30% of board directors in government-linked companies (GLCs), government-linked investment companies (GLICs) and statutory bodies must consist of women.⁷⁹ In its Report, the government states that women held 32.5% of decision-making positions in the public sector; however, whether the target has actually been reached depends on what positions constitute decision-making positions.⁸⁰
- 7.4 Women's representation in Parliament and Cabinet remains low. Only 24 of 222 seats (10.8%) in Parliament are held by women. In State assemblies across 13 states, women hold 66 out of 587 (11.2%) positions.⁸¹ The government's Report highlights an increased percentage since 2004, but does not mention the lack of improvement since 2008. ^{82,83} Only three out of 34 cabinet ministers⁸⁴ (8.8%) and six out of 34 deputy ministers (17.6%) are women.⁸⁵
- 7.5 Women judges in the Federal Court number three out of 11 (27.3%)⁸⁶; in the Court of Appeal, women make up 15 of the 29 judges (51.7%)⁸⁷, signifying

79 "Budget 2018: A celebration for women in the high tech sector". The Malaysian Times. 31 October 2017. Available at: <http://www.themalaysiantimes.com.my/budget-2018-celebration-women-high-tech-sector/>

80 In 2016, there were six women Ministry Secretary Generals out of a total of 24 (25%), 12 women Ministry Deputy Secretary Generals out of 58 (20.7%), five women Directors General, Directors and General Managers of Statutory Bodies, out of 38 (13.2%), and 19 women Director Generals in Federal Departments, out of 111 (17.1%), in total amounting to only 18.1% of decision-making positions in the public sector. (See Ministry of Women, Family and Community Development, *Statistics on Women, Family and Community 2016*. Page 86.)

81 People's Development Justice Report (unpublished draft). Persatuan Kesedaran Komuniti Selangor (EMPOWER). 2017.

82 In 2013 this percentage was 10.4% and in 2008 it was also 10.4%.

83 In 2016, 13 out of a total of 64 (20.3%) appointed Senators in the Dewan Negara were women. In 2014, this percentage was 25.8%.

84 Since 1957, there have never been more than three women Ministers in Cabinet at one time.

85 *Ministry of Women, Family and Community Development, Statistics on Women, Family and Community 2016*, page 102

86 12 out of 26 (46%) Court of Appeal judges are women, while 27 out of 63 (43%) High Court judges are women (See "Official Website of the Office of the Chief Registrar Federal Court of Malaysia." Available at: <http://www.kehakiman.gov.my/node/1637>)

87 "Judiciary makes history, four women judges elevated to appellate court". The Sun Daily. 25 September 2017. Available at: <http://www.thesundaily.my/news/2017/09/25/judiciary-makes-history-four-women-judges-elevated-appellate-courts>

a positive development in the Malaysian judiciary.

- 7.6 The parties of the ruling coalition do not have quotas to increase the level of women's participation in Parliament. Only two opposition political parties have a quota in place to ensure women's political participation.^{88,89}
- 7.7 Political participation of marginalised women is even lower than the overall average. For example, no trans women or Orang Asli women have ever been presented as candidates or elected to office. A few indigenous women from east Malaysia have been elected into office.⁹⁰

Recommendations

14. Develop and implement plans **to increase the number of women in political positions**, particularly in high-level decision making roles, by establishing a transparent framework that includes, but is not limited to, reserved seat quotas in office, funding, and promoting local women in political parties.

Article 8: Participation at the international level

- 8.1 Representation of women at the **international level**, for example as Malaysian ambassadors and high commissioners, remains low. Furthermore, only 3.4% of women officers in the Malaysian Foreign Service hold positions at top decision-making levels.⁹¹

88 "PKR – Clearer policy needed on gender representation." The Nut Graph. 16 June 2009. Available at: <http://www.thenutgraph.com/pkr-clearer-policy-needed-on-gender-representation/>

89 Why I support the women quota and more." DAP Malaysia. 23 December 2014. Available at: <https://dapmalaysia.org/en/statements/2014/12/23/19807/>

90 In 2017, statistics show 7/82 women in Sarawak's state legislative assembly, of which 4 are indigenous. There are no female senators in Sarawak; 4/27 of political secretaries are women, of which 3 of the 4 are indigenous women.

91 Although the number of women officers in the Malaysian Foreign Service has increased over the years (in June 2012, 38% (176 out of 467) of officers in the Malaysian Foreign Service were women as compared to 15.4% (42 out of 273) in 1999), only 3.4% (6 out of 176) of these women hold positions at decision-making levels (Permanent Representative to international organisations, Ambassadors, High Commissioners and Heads of Mission) indicating a decline since 2010 (13.6%). These figures are available from the Ministry of Women, Family and Community Development, *Statistics on Women, Family and Community 2010*. Page 71.

Article 9: Citizenship

- 9.1 Malaysia maintains its reservation to Article 9(2) of CEDAW. Provisions of the FC on transmitting citizenship to children from Malaysian mothers to children born overseas remain discriminatory. **Only Malaysian fathers can confer their citizenship to their children via a streamlined process;⁹² mothers must go through a more arduous process.**^{93,94,95,96} The waiting time for the approval of such citizenship applications is two years, and grounds for rejections are not provided, which reduces the success rate of appeals and necessitates another two-year wait.
- 9.2 **Non-citizen wives married to Malaysian husbands are completely dependent on their husbands to maintain their legal status in the country.**⁹⁷ The Malaysian spouse is required to be present for every application for the Long Term Social Visit Pass and its frequent renewals, along with applications for Permanent Residence and Citizenship; they also

92 Application to confirm the status of a person born outside Malaysia on or after Malaysia Day (16 September 1963) based on the status of the father. (See: <http://www.jpn.gov.my/en/maklumat-warganegara/permohonan-taraf-kewarganegaraan-di-bawah-perkara-14-perlembagaan-persekutuan-pengesahan-taraf-kewarganegaraan-kelahiran-luar-negara/>)

93 “Sex and the citizenry: the global laws that leave women and children in limbo.” *The Guardian*. 11 February 2016. Available at: <https://www.theguardian.com/global-development/2016/feb/11/sex-citizenry-malaysian-law-women-children-limbo-nationality-citizenship>

94 In April 2010, the government announced that Malaysian women married to foreigners could apply for citizenship for their children born abroad, and that citizenship applications for children can be submitted to Malaysian embassies or high commissions. The state in Paragraph 68 of its Report cites this supposed change in policy, saying, “*A Malaysian woman can apply for her child to be registered as a citizen under Article 15(2) of the Federal Constitution. In this regard, the Government has enhanced the implementation of Article 15(2) by way of an interim administrative procedure that was implemented on 1 June 2010 and applies to children born overseas after 1 January 2010 to Malaysian women who are married to foreigners.*” However, although this may not have been previously practiced, this was always possible in law, as Section 15(2) of the Federal Constitution is worded such that applications for citizenship are allowed when one parent is Malaysian, therefore implying that women are able to apply for their children to become citizens.

95 “Malaysian women can register children born abroad.” *The Star*. 12 April 2010.

96 Despite the government’s purported change in policy, in practice, the process for registration of children born overseas to Malaysian fathers differs significantly from the process for children born overseas to Malaysian mothers. Malaysian fathers can register their children under Article 14 of the Federal Constitution and complete Form D for the application of citizenship, a fairly streamlined process which may be completed in a few days. In contrast, Malaysian mothers must register their children under Article 15(2) and complete Form B for the application of citizenship. (Application to confirm the status of a person born outside Malaysia on or after Malaysia Day (16 September 1963) based on the status of the father. See: <http://www.jpn.gov.my/en/maklumat-warganegara/permohonan-taraf-kewarganegaraan-di-bawah-perkara-14-perlembagaan-persekutuan-pengesahan-taraf-kewarganegaraan-kelahiran-luar-negara/>)

97 The Malaysian spouse is required to be present for every application for the Long Term Social Visit Pass (LTSVP) and its frequent renewals, endorsement to work, Permanent Residence, and citizenship; in total, this can equate to decades of dependence on the Malaysian spouse. (See: [https://aliran.com/civil-society-voices/2016-civil-society-voices/survival-manual-foreign-spouses-malaysian-citizens/\(Paragraph 6\)](https://aliran.com/civil-society-voices/2016-civil-society-voices/survival-manual-foreign-spouses-malaysian-citizens/(Paragraph%206)))

must provide endorsement to work. Should a husband refuse to be present at the Immigration Department office, the non-citizen's wife's immigration status in the country may be at risk, **leaving women vulnerable in cases of domestic violence, estrangement, abandonment, or death of the husband.**⁹⁸

- 9.3 The application criteria, approval process, and duration for obtaining the Long Term Social Visit Pass and Permanent Residence⁹⁹ vary at the discretion of Immigration Officers, with practices such as giving shorter-term visas to couples without children.¹⁰⁰ **There is a lack of transparency and consistency in the process, with no explanations provided for a shorter duration of visa granted, delays in approval of Permanent Residence, or grounds for rejection of such applications.**

Recommendations

15. Withdraw **reservation to CEDAW Article 9(2)**. Amend the language of Schedule II of the FC to allow Malaysian women to **confer their citizenship on their children born overseas**, on equal basis as men, and clear the backlog for children awaiting citizenship.
16. Simplify the Long Term Social Visit Pass process and provide the 5-year visas to spouses that fulfil stipulated conditions, without discriminating on the basis of nationality, ethnicity, gender or income. Allow for automatic conversion to Permanent Residence after 5 years.

98 Spouses must be present at every visa renewal. This is also the case when a non-citizen spouse wishes to apply for Permanent Residence, as the Malaysian spouse must be present at the Immigration Department office to endorse the application. Upon separation, divorce or even death of the Malaysian spouse, the Permanent Residence application is withdrawn and the visa provided is a short term visa of 1 year without the right to work. Granted that the Immigration website indicates that Residence Pass is made available to widows, not many have been granted the same, perhaps because they do not meet the high eligibility criteria.

99 Although tougher rules are imposed on non-citizen husbands, the social, economic and psychological impact, affects the Malaysian wife tremendously.

100 Anecdotal evidence points towards visas for childless couples being granted only for the duration of six months or one year, whereas couples with children are able to get two to five years, at the discretion of the immigration officers.

Article 10: Education

- 10.1** There is a **gender gap in technical courses** in universities, where more men are enrolled than women in vocational and technical subjects such as Engineering, Mathematics, and Physics.¹⁰¹
- 10.2** **Transgender and gender diverse students ('effeminate' boys,¹⁰² 'masculine' girls¹⁰³) face discrimination in both public schools and higher learning institutions based on gender identity and expression.** They are sometimes forced to attend camps to 'convert' them to conform to gender stereotypes.¹⁰⁴ Schools regard homosexuality and 'gender confusion' as an offence and students can be punished.^{105,106}
- 10.3** There is a continued lack of comprehensive **sex education** in all schools that is rights-based.
- 10.4** Women teachers outnumber male teachers; however, **men dominate decision-making positions** in primary and secondary public schools, and public universities.¹⁰⁷
- 10.5** There is no publicly available data on the educational attainment of girls who have been married below the age of 18, nor on the percentage of teenage girls who continue their education after pregnancy.

Recommendation

- 17.** The Ministry of Education to **establish comprehensive, rights-based, and informed choice sexuality education** as part of the school syllabus.

101 Ismail, Latifah. "Gender Gap In Higher Education: Perspective On Factors Influencing Enrolment In Malaysian Universities: A University of Malaya Sample." The Online Journal Of Quality In Higher Education. October 2015. Available at: https://umexpert.um.edu.my/file/publication/00000380_125559.Pdf

102 "'Effeminate' boys in Malaysia sent to 'anti-gay' camp." BBC News. 19 April 2011. Available at: <http://www.bbc.com/news/world-asia-pacific-13133589>

103 "I'm Scared to Be a Woman: Human Rights Abuses Against Transgender People in Malaysia." Human Rights Watch. 24 September 2014. Available at: <https://www.hrw.org/report/2014/09/24/im-scared-be-woman/human-rights-abuses-against-transgender-people-malaysia>

104 "'Effeminate' boys in Malaysia sent to 'anti-gay' camp." BBC News. 19 April 2011. Available at: <http://www.bbc.com/news/world-asia-pacific-13133589>

105 Translated excerpt from "Buku Peraturan Disiplin: Sekolah Menengah, Wilayah Persekutuan Kuala Lumpur" (Disciplinary Rule Book: Secondary School, Federal Territory of Kuala Lumpur), Jabatan Pelajaran Wilayah Persekutuan Kuala Lumpur (Department of Education), 2008. Page 74.

106 Some university administrations are also initiating 'research' which involves asking students to identify other students of diverse sexual orientations and gender identities.

107 In primary and secondary public schools, women consist of 37.7% of headmasters/headmistresses and 38% of principals; in public universities, female consists of 20% of Vice Chancellors and 12% of Deputy Vice Chancellors. (See Government Replies to List of Issues, Annex 4)

Article II: Employment

- II.1 In 2016, the labour force participation rate for women, which has remained consistently low for many years, was 54.3%^{108,109} (the rate for men was at 80.2%). This does not reflect the disparity in the type of work women are engaged in, which tends to be lower-wage,^{110,111} and the fact that women have less opportunities for advancement.^{112,113}
- II.2 In 2015, 60% of women outside the labour force gave ‘housework’ as the reason for not seeking work, while 2.4% of men out of the workforce provided the same reason.¹¹⁴ These women may feel that they are not able to go out to work owing to family pressures.
- II.3 In 1999, a voluntary Code of Practice on the Prevention and Eradication of Sexual Harassment in the Workplace was launched; however this has not been implemented widely.¹¹⁵ In 2011, employment legislation was amended to include provisions on sexual harassment; however there are critical shortcomings: in the definition of sexual harassment, who is protected,¹¹⁶ and the complaint mechanism.¹¹⁷ The landmark ruling of the Federal Court in the case of *Mohd Ridzwan Bin Abdul Razak*.

108 “Labour Force Survey report, Malaysia 2016.” Department of Statistics Malaysia. 28 April 2017. Available at: <https://www.dosm.gov.my/v1/index.php?r=column/pdfPrev&id=SGZCNnMrWW9ZTEdpYy-s4YW0yRlhoQT09>

109 “Statistics on Women Empowerment on Selected Domains, Malaysia, 2017.” Department of Statistics Malaysia. 6 December 2017. Available at: <https://www.dosm.gov.my/v1/index.php?r=column/pdfPrev&id=dHNTVHV0My9QK1MxNHBtSnRucVJqZz09>

110 “Report: More women joining workforce, but have low wages.” *Malay Mail Online*. 9 October 2016. Available at: <http://www.themalaymailonline.com/malaysia/article/report-more-women-joining-workforce-but-have-low-wages>

111 “Salaries & Wages Survey Report, Malaysia, 2016.” Department of Statistics Malaysia. 5 May 2017. Available at: <https://www.dosm.gov.my/v1/index.php?r=column/pdfPrev&id=U3JoKzFiekE5WFFK-K0VMRWQ0a2FDQT09>

112 Ibid.

113 Women follow a unimodal employment participation rate, rather than a bimodal participation rate often seen in high-income countries, in which they join the formal labour market after their education but before having children and then remain out of the labour market after bearing children.

114 Ministry of Women, Family and Community Development, *Statistics on Women, Family and Community 2016*, page 43

115 “Legislate against sexual harassment.” *The Malaysian Bar*. 6 November 2009. Available at: http://www.malaysianbar.org.my/letters_others/legislate_against_sexual_harassment.html

116 For example, the provisions of the Employment Act 1955 do not apply to migrant domestic workers, and are not applicable in states in east Malaysia, which to date have not amended their labour ordinances to address sexual harassment.

117 Alagappan, Ponmalar N. and Sabitha Marican. “The Issue of Sexual Harassment Legislation in a Mainstream Newspaper in Malaysia.” 2014. Available at: <http://repo.uum.edu.my/13056/1/pro52.pdf>

Appellant and Asmah Binti Hj. Mohd Nor,¹¹⁸ recognised and defined the tort of sexual harassment, paving the way for victims to seek redress in civil court. However, there is **still a need for a comprehensive law on sexual harassment**,¹¹⁹ to allow complainants to seek redress without the time, expense, and public nature of going to court.

- 11.4 The visa Long Term Social Visit Pass for non-citizen spouses comes with a statement that **“any form of employment is strictly prohibited.”**¹²⁰ Combined with the mandatory requirement of getting permission to work from the Malaysian spouse, it limits employment opportunities until the non-citizen spouse obtains Permanent Residence (PR), a process which itself is mired in bureaucratic delays.¹²¹ Additionally, the Malaysian employer’s contribution of 12-13% of the salary to the social security fund (EPF) is not mandatory for foreign spouses,¹²² nor do foreign spouses receive social security protection under SOCSO, which provides benefits to employees who suffer from employment-related injuries, or invalidity pension.

Recommendations

18. Engage various government ministries and agencies to provide skills-training programmes, including Technical and Vocational Education and Training (TVET), to stay-at-home wives and mothers, enabling them to engage in flexible employment.

118 *Mohd Ridzwan Bin Abdul Razak. Appellant and Asmah Binti Hj. Mohd Nor.* In The Federal Court Of Malaysia (Appellate Jurisdiction) Civil Appeal No: 01(F)-13-06/2013 (W). 2 June 2016. Available at: [http://www.foongchingleong.com/judgements/Mohd%20Ridzwan%20bin%20Abdul%20Razak%20v%20Asmah%20Binti%20Hj%20Mohd%20Nor%20\(FC\).pdf](http://www.foongchingleong.com/judgements/Mohd%20Ridzwan%20bin%20Abdul%20Razak%20v%20Asmah%20Binti%20Hj%20Mohd%20Nor%20(FC).pdf)

119 The primary reason for this need is that seeking redress through the tort of sexual harassment still requires an individual to go through the court process to access justice, which means going through a public, costly, and potentially lengthy procedure. An independent Sexual Harassment Act and tribunal would allow complainants to seek redress without going to court, and would reduce other barriers to accessing justice, including the time and expense involved in pursuing a court action.

120 “Ease the burden of foreign spouses.” The Star Online. 1 April 2016. Available at: <http://www.thestar.com.my/opinion/letters/2016/04/01/ease-the-burden-of-foreign-spouses/>

121 The Long Term Social Visit Pass given to non-citizen spouses states “any form of employment is strictly prohibited.” This is a serious impediment to employment, as employers are reluctant to hire non-citizen spouses upon seeing this statement on their visas, and this may further jeopardise the financial security of non-citizen wives, once again putting them in vulnerable situations. Even with the ability to work under the LTSVP, non-citizen spouses can only seek employment in the state they reside and where their Immigration file is located, and certain sectors, such as banking, finance and other licensed and professional sectors, remain inaccessible until the non-citizen spouse obtains PR. The endorsement to work is tied to the visa duration, so couples without children are forced to make repeated visits for submission with the added burden of collection of copious documents from the employer and spouse for renewal of visas. In the state of Sabah, it has been garnered that getting the endorsement to work takes three to six months, whereas in Peninsula Malaysia, unless there is a house visit by officers, the approval takes 3 days.

122 “Ease the burden of foreign spouses.” The Star Online. 1 April 2016. Available at: <http://www.thestar.com.my/opinion/letters/2016/04/01/ease-the-burden-of-foreign-spouses/>

19. Amend laws and policies to **provide foreign spouses the right to work; remove the statement of prohibition from employment on the visa** and requirement to obtain permission to work from their Malaysian husbands, and make employers' contribution to EPF and SOCSO for non-citizen spouses mandatory.

Article 12: Health

- 12.1 Gender disaggregated health data is not publicly available; more gender sensitive research and data should be promulgated to provide a complete picture on how gender impacts health.
- 12.2 The continued **privatisation of healthcare** in Malaysia is threatening to make affordability one of the factors that will reduce women's accessibility to health care services.¹²³
- 12.3 Many women have **difficulty exercising their reproductive right to decide to have children and to access high quality services**, which can be seen by the following:
- The use of contraception has remained stagnant at 52% since 1984.^{124,125} The use of modern methods of contraception is lower, at 34%.¹²⁶
 - The law allows for abortion to protect the physical and mental health of the mother, but abortion is stigmatised and costly and government hospitals often do not provide the service. In January 2015, Nirmala Thapa, a Nepali migrant worker, **was the first woman in Malaysia charged and convicted for having an abortion**. As a migrant worker, Thapa was prohibited from getting pregnant in Malaysia. She

123 "The Malaysian health system in transition: The ambiguity of public and private." Chee-Koon Chan. 2014. Available at: http://www.municipalservicesproject.org/sites/municipalservicesproject.org/files/publications/OccasionalPaper26_Chan_Malaysian_health_system_in_transition_Aug2014.pdf

124 "Country Profile on Universal Access to Sexual and Reproductive Health: Malaysia." ARROW and The Federation of Reproductive Health Association (FRHAM). 2015. Available at: <http://arrow.org.my/wp-content/uploads/2015/04/Country-Profile-SRH-Malaysia.pdf>

125 "2014 Family Planning Survey in Malaysia." LPPKN. 2014. Available at: <http://www.lppkn.gov.my/index.php/pusat-sumber/2016-02-26-02-25-15/2016-03-04-00-42-00/file>

126 Ibid.

was subsequently acquitted.^{127,128}

- Information and counselling from government hospitals are often provided within a religious framework, rather than a reproductive health rights framework.
- For sterilisation procedures, women need the consent of their husbands.

12.4 Female genital mutilation (FGM) is still a common practice in Malaysia. The Malaysian National Council of Islamic Religious Affairs (JAKIM) introduced a fatwa in 2009 declaring that female circumcision is obligatory for all Muslim women.^{129,130}

12.5 Women are the **fastest growing part of the population being infected with HIV.**¹³¹

12.6 **Mandatory HIV testing is in place for all Muslim couples intending to marry.** The findings of the test do not impede the ability of couples to get married.

12.7 **Sex education is inadequate** and based on religious morals rather than a rights-based approach to bodily integrity.¹³² The sex education curriculum

127 “In second shot at abortion case, Nepali woman pleads not guilty.” Malay Mail Online. 29 January 2015. Available at: <http://www.themalaymailonline.com/malaysia/article/in-second-shot-at-abortion-case-nepali-woman-pleads-not-guilty#sthash.zH1ne55i.dpuf>

128 Based on information provided by Nirmala’s lawyer, V. Parthipan, the government filed a notice of appeal subsequent to Nirmala’s acquittal, but the appeal was later dropped. Although the reasons for this cannot be confirmed, it may have been due to Nirmala leaving the country.

129 “Female circumcision: A common practice in Malaysia and Singapore”. MIMS Today. 18 Oct 2016. Available at: <https://today.mims.com/female-circumcision--a-common-practice-in-malaysia-and-singapore>

130 The MOH monitors all states submission of the inspection of the genitalia of Muslim baby girl, aged 18 month who visits the clinic to obtain their DTAP booster vaccination. 83-85% of Muslim baby girls have been circumcised by medical professionals in private clinics without any complications. In other words, 15-17% of baby girls have had complications. (See Government Replies to List of Issues. Page 5)

131 While persons living with HIV are predominantly men, female infections over the years have increased, with the male-female ratio of cases declining from 9.6 in 2000, to 4.5 in 2010, to 4.0 in 2014. 92.4% of women with HIV acquired it through heterosexual transmission. (See “National Strategic Plan – Ending AIDS 2016 – 2030”. Ministry of Health Malaysia.”. 2015. Available at: http://www.aidsdatahub.org/sites/default/files/publication/Malaysia_National_strategic_plan_2016-2030.pdf)

132 The Minister for Women, Family and Community Development recently recommended a review of the school syllabus to incorporate sex education be taught under the subjects of Moral Education and

for schools was approved by Cabinet in 2006 but has yet to be fully implemented.¹³³

12.8 Raids on entertainment venues are common. **The presence of condoms can be used as evidence against an individual and works against ensuring and protecting public health.**¹³⁴ This hinders people from practising safe sex.

12.8 **Access to health care is limited for some groups of women, including refugee women, indigenous women, migrant women, transgender women, and female prisoners – including pregnant women¹³⁵ and transgender women.**¹³⁶

Recommendations

20. Prohibit the practice of **all forms of Female Genital Mutilation (FGM)**, given that it has no basis in core Islamic law or any of its partial provisions, but carries significant health risks and compromises the autonomy of girls.

Islamic Studies. Research done in the United States has found that abstinence-only sex education is ineffective and harmful to young people. (See “Don’t mix sex education with Islamic and moral studies, advocates tell Putrajaya.” Malay Mail Online. 25 October 2017. Available at: <http://www.themalaymailonline.com/malaysia/article/dont-mix-sex-education-with-islamic-and-moral-studies-advocates-tell-putraj#Om-vObCRG8WKc0loS.97>)

I33 The 2015 Malaysian Youth Sexual and Reproductive Health survey conducted found that 62% out of 1,071 young Malaysian respondents said they felt they have not received sufficient information on sexual and reproductive health (SRH). (See “Malaysian Youth Sexual and Reproductive Health Survey”. Durex. 2015. Available at: [http://www.perspective.com.my/sitecontent/The%20Malaysian%20Youth%20Sexual%20and%20Reproductive%20Health%20Survey%20\(E-Booklet\).pdf](http://www.perspective.com.my/sitecontent/The%20Malaysian%20Youth%20Sexual%20and%20Reproductive%20Health%20Survey%20(E-Booklet).pdf))

I34 “Health-Malaysia: Condom Taboo Hampers Fight Against HIV.” Inter Press Service News Agency. 24 May 2007. Available At: <http://www.Ipsnews.Net/2007/05/Health-Malaysia-Condom-Taboo-Hampers-Fight-Against-Hiv/>

I35 The Human Rights Commission of Malaysia, SUHAKAM, conducted a nationwide survey on the right to health in prison. Among the survey’s findings was that there is a need to provide prenatal and postpartum care and treatment for female prisoners. (See “Suhakam: Give mothers in prison proper healthcare, child support.” Free Malaysia Today. 30 May 2017. Available at: <http://www.freemalaysiatoday.com/category/nation/2017/05/30/suhakam-give-mothers-in-prison-proper-healthcare-child-support/>)

I36 The Human Rights Commission of Malaysia (SUHAKAM) conducted a nationwide survey on the right to health in prison, and observed that there is no standardised policy concerning the placement of transgender persons in prisons. SUHAKAM noted that although the number of transgender prisoners in Malaysia is low, these individuals are at a substantially elevated risk of suffering from assault or self-harm. (See “Suhakam calls for SOP on transgender prisoners.” Free Malaysia Today. 30 May 2017. Available at: <http://www.freemalaysiatoday.com/category/nation/2017/05/30/suhakam-calls-for-sop-on-transgender-prisoners/>)

21. Provide **access to healthcare** on a non-discriminatory basis; ensure that women are able to access public health care, in particular critically important family planning and reproductive health care services.

Article 13: Social and economic rights

- 13.1 The government spends insufficiently on welfare benefits^{137,138} and disadvantaged women often cannot access welfare assistance from the state as they are unaware of such aid or they are deemed ineligible based on current unrealistic poverty line income levels.¹³⁹
- 13.2 The vast majority of women enter the workforce when they are young and before their children are born, in which they receive the same pension plans as all Malaysian citizens. However, after children are born women tend to leave the workforce early, in which their pensions are foregone.¹⁴⁰
- 13.3 The number of declared women bankruptcies from January to October 2017 amounted to almost 5,000 and from 2013 to October 2017, this number amounted to more than 30,000 women. This is largely due to an inability to repay debt along with other factors including loan procedures lacking safe-guards and low female participation rates in the workforce.¹⁴¹
- 13.4 Non-citizen wives of Malaysian husbands face difficulty in opening individual bank accounts, leaving them economically dependent on their husbands.
- 13.5 Non-citizen spouses of Malaysians who wish to purchase housing/property are subjected to foreign investment directives and to limitations on property purchase or ownership, which currently is at a floor of RM1 million and in some states up to RM2 million and RM3 million, which is cost-prohibitive for middle and lower-income families and also results in many non-citizen wives not having the ability to purchase or own property.

137 “Welfare will not bankrupt Malaysia.” Free Malaysia Today. 17 July 2013. Available at: <http://www.freemalaysiatoday.com/category/opinion/2013/07/17/welfare-will-not-bankrupt-malaysia/>

138 “RM1.4bil allocation for elderly, disabled and single mothers.” New Straits Times. 24 March 2012.

139 Unpublished paper by Prema Devaraj, Women’s Centre for Change (WCC), Penang, 2010.

140 “Boosting women’s participation in workforce”. New Straits Times. 11 December 2017. Available at: <https://www.nst.com.my/opinion/columnists/2017/12/313174/boosting-womens-participation-workforce>

141 “Ignorance, loan ‘culture’ leading to young bankrupts in Malaysia”. Today. 16 December 2017. Available at: <http://www.todayonline.com/world/ignorance-loan-culture-leading-young-bankrupts-malaysia>

Recommendations

22. Reinstate **pension benefits** to women who leave the workforce when they bear children but return to the workforce at a later stage in life, to incentivise mothers to re-join the labour force.
23. Work with major GLC banks to lower **interest rates and provide skills-training programmes** (see Article 11: Employment), particularly for low-income and single mothers, to ensure that women can continue borrowing for economic opportunities while managing debt obligations.
24. Create exceptions for foreign spouses of Malaysians from overarching policy and regulations governing foreigners, in the interest of their Malaysian families and their social and economic well-being.

Article 14: Rural women

- 14.1 Due to **poor infrastructure such as roads, many settlements/villages/longhouses are not easily accessible in rural parts of peninsular and east Malaysia**. This poses many negative consequences including reduced employment opportunities, women and children left behind when men seek work away from home, poor access to services and irregular school attendance. The alternative transport arrangements can put girls at risk of sexual abuse and other forms of violence, which can result in a higher school dropout for girls.¹⁴²
- 14.2 Penan communities in Sarawak experience a denial of their rights to land and access to services. Many are dependent on the logging companies to provide basic services, such as transport. Women and girls are particularly vulnerable and have experienced abuse. A National Task Force was formed and a report produced with some economic remedies proposed, but redress for the abuse is limited.¹⁴³
- 14.3 The representation of women in village committees is very low.¹⁴⁴

142 “Orang asli issues: Access to education still difficult.” The Star Online. 24 March 2015. Available at: <http://www.thestar.com.my/lifestyle/family/features/2015/03/24/orang-asli-issues-access-to-education-still-difficult/#RbMf6ErIYeUkj2e4.99>

143 “What has been done for the Penan women since the National Task Force report?” Penan Support Group. 26 June 2013. Available at: http://www.wao.org.my/news_details.php?nid=298&ntitle=What+has+been+done+for+the+Penan+women+since+the+National+Task+Force+report

144 In 2009, out of the 15,460 committees throughout the country, only 161 committees had a wom-

- 14.4 Women are not represented in decision-making with regard to rural projects.
- 14.5 There is a lack of consistent and planned skills training for rural women.

Recommendations

- 25. Ensure accessibility of rural women to new modern farming technologies, financial supports and production, digital and entrepreneurial training; encourage establishment of social enterprises among rural women and their household members.

Article 15: Equality before the law

- 15.1 The Penal Code and state Syariah laws criminalise “enticing a married woman,” perpetuating a view that women are the property of their husbands.
- 15.2 Most states have Syariah evidence laws **equating the testimony of two female witness’ to that of one male witness**.¹⁴⁵
- 15.3 Laws discriminate against women on the basis of their gender identity, gender expression, and sexual orientation.
- 15.4 Malaysian mothers to children born overseas do not have the same rights to confer their citizenship to their children as fathers.

Article 16: Marriage and family relations

- 16.1 In 2005, Parliament passed the Islamic Family Law (Federal Territories) (Amendment) Act 2005, which contained several provisions discriminatory to women. The then Prime Minister noted the concerns of women’s groups and stated that further amendments may be made to the law to remove the discriminatory elements.¹⁴⁶ To date, these amendments have not been tabled in Parliament.

- 16.2 **A dual legal system governs Muslim and non-Muslim personal laws**

an chairperson, which equates to 1 per cent. (Data from the Malaysian National Council of Women’s Organisations (NCWO))

145 Section 86 of the Syariah Court Evidence (Federal Territories) Act 1997.

146 A committee was established to amend the legislation, and consensus was reached on the removal of the discriminatory elements. These amendments were then sent to the Malaysian Council of Rulers for review by religious authorities. These amended laws are now with the Department of Islamic Development Malaysia (*Jabatan Kemajuan Islam Malaysia* (JAKIM)).

separately and Article 121(1A) of the FC excludes the civil courts from hearing matters relevant to the Syariah Courts or involving Muslim parties (and vice versa). The conflicting jurisdictions have far reaching effects on guardianship and custody of children, maintenance, the religious conversion of children, inheritance, and funerary rights of the deceased spouse.¹⁴⁷

- 16.3 Women and men in Malaysia do not share the same rights in marriage. **Polygamy is still permitted for Muslim men.** Women are discriminated against with regard to guardianship of children and may lose maintenance when deemed disobedient to their husbands.
- 16.4 **Child marriage is still legally permitted in Malaysia**, despite the fact that the government has removed its reservation to Article 16(2) of CEDAW.¹⁴⁸
- 16.5 Children born within six months of the date of marriage are considered **'illegitimate'** and are not allowed to carry the name of the father. In such cases, custody and maintenance of the child appertains exclusively to the mother and her relations, while the father has no rights to the child and vice versa.¹⁴⁹
- 16.6 The Cabinet decided in 2009, where one parent converts to Islam, children of the marriage cannot be unilaterally converted to Islam.¹⁵⁰ Conversion is often permanent and has major legal implications – for example, it can be used by the converting spouse to obtain an advantage in gaining custody. The Law Reform (Marriage and Divorce) (Amendment) Bill 2017 aimed to address unilateral conversion, but Clause 88A that dealt with the issue, was removed.¹⁵¹ Positively, the Federal court recently nullified the unilateral

147 The Federal Court's decision in the case of *Viran Nagapan v Deepa Subramaniam* confirmed that regardless of such conversion, all issues arising out of a civil marriage must be settled according to civil law, and not state Islamic law enactments, since the marriage was solemnised or registered under civil law. Legislation should be amended and adopted as needed so that all relevant laws are made consistent with the Federal Court's decision in *Viran Nagapan v Deepa Subramaniam*, which is based on the separate jurisdictions set out in our Federal Constitution.

148 Family law for non-Muslims permits the marriage of girls aged 16 years with the consent of the state government's Chief Minister. For Muslim girls, marriage below 16 (without any minimum) is permitted with the consent of a court.

149 Sections 80 and 85 of the Islamic Family Law (Federal Territories) (Amendment) Act 2005.

150 "Uphold 2009 cabinet decision prohibiting unilateral conversion of minors, Putrajaya told." Malay Mail Online. 12 January 2016. Available at: <http://www.themalaymailonline.com/malaysia/article/uphold-2009-cabinet-decision-prohibiting-unilateral-conversions-of-minors-p#9dvKfbJGSslph1hF.97>

151 "Parliament passes LRA, sans clause 88A, after marathon debate." New Straits Times. 10 August 2017. Available at: <https://www.nst.com.my/news/nation/2017/08/265983/parliament-passes-lra-sans-clause-88a-after-marathon-debate>

conversion of Indira Gandhi's three children in a landmark decision.^{152,153}

Recommendations

26. **Raise the minimum age for marriage of all girls to eighteen**, regardless of religion, without exceptions.
27. Set up a register to **document underage marriage** at the chief minister's office (for non-Muslim marriages) and the Marriage Registration Office (for Muslim marriages) to monitor its prevalence and justification of these marriages.
29. Ensure the Federal Court's decision in the Indira Gandhi case is enforced by frontline officers. Amend the Law Reform (Marriage & Divorce) Act and all relevant legislations to reflect the Federal Court's judgment.

General Recommendation 19: Violence against women

19.1 The **Domestic Violence Act 1994 (DVA)** has been in operation since 1996 and amended twice (in 2011 and 2017) to improve protection for survivors. Nonetheless, implementation of this law has been inconsistent. **For example:**

- 19.1.1 Obtaining an Interim Protection Order against a perpetrator of domestic violence may take anywhere between 24 hours and 3 months.
- 19.1.2 The implementation of the legislation is inconsistent across states and case outcomes are largely dependent on the discretion of the police, the welfare department, and courts.

19.1.3 Protection orders under the DVA are requested by DPPs less than

152 In 2015, the Court of Appeal in a majority ruling held that the validity of the conversion of Indira Gandhi's three children by their Muslim father could only be determined by the Syariah Court. In determining that only the Syariah courts have jurisdiction to hear cases of conversion, the courts have left the non-Muslim parent without a remedy. It was only in 2018, after an eight year-long battle, that the unilateral conversion of Indira Gandhi's children is nullified by the Federal Court.

153 "Federal Court: Unilateral conversion of Indira Gandhi's 3 children null and void (updated)." The Star Online. 29 January 2018. Available at: <https://www.thestar.com.my/news/nation/2018/01/29/federal-court-unilateral-conversion-of-indira-gandhis-3-children-is-null-and-void/>

30% of the time.¹⁵⁴

- 19.2 The DVA also has major gaps. The Act does not extend protection to **non-married intimate partners**, including engaged persons.
- 19.3 Ensuring access to justice and upholding the rights of victims, especially in cases of sexual crimes, remains inconsistent, with existing procedures being poorly utilised.¹⁵⁵
- 19.4 **Stalking** has not been criminalised in Malaysia.¹⁵⁶
- 19.5 **Cases have emerged introducing a disturbing notion that victims of statutory rape can be married off to their rapists, subjecting them to a lifetime of rape, while the rapists are subsequently exonerated of any crime.**¹⁵⁷ An MP and former Syariah judge went as far as to suggest that child victims of rape *should* marry their rapists to avoid social problems and lead a better life.^{158,159}

154 This suggests that DPPs are not adequately versed in the DVA and the protections available for the victims they represent. (See “Consultation Proceedings: National Consultation on the Rights of Vulnerable Witnesses in Court.” Women’s Centre for Change. 10 September 2015. Page 38)

155 A survey conducted in five states of watching brief lawyers representing crime survivors, prosecutors, and the lower courts indicated that Victim Impact Statements, provided for in Section 183A of the Criminal Procedure Code, are used in only 40% of cases, while compensation for victims is only given in 25% of cases. (See “Consultation Proceedings: National Consultation on the Rights of Vulnerable Witnesses in Court.” Women’s Centre for Change. 10 September 2015.)

156 The principle of stalking is already recognised in the Domestic Violence Act through protection orders; however, a person should not need to obtain a protection order to be protected from stalking. Furthermore, the DVA does not cover violence between intimate partners, these individuals would not be able to access even the limited protections of the DVA.

157 In one such case, Nor Fazira Saad (12 years old) was raped by Mohd Fahmi Mohamed Alias (19 years old). Fazira was married to Fahmi after being raped by him. Initially, the public prosecutor had retracted the charge of statutory rape on the basis that the victim was married to the perpetrator. However, after a public outcry, led by women and child rights organisations, the charge was reinstated. The perpetrator was found guilty of statutory rape. Nevertheless the status of their marriage remained intact. (See “Activists slam marriage of 12-year-old.” Free Malaysia Today. 23 November 2012. Available at: <http://www.freemalaysiatoday.com/category/nation/2012/11/23/activists-slam-marriage-of-12-year-old-in-malaysia/> and “Marriage cannot drop rape charges.” The Malaysian Times. 29 November 2013. Available at: <http://www.themalaysiantimes.com.my/marriage-cannot-drop-rape-charges/>)

158 “Rape victims should marry their rapists, Malaysian MP tells parliament.” The Guardian. 5 April 2017. Available at: <https://www.theguardian.com/world/2017/apr/05/victims-should-marry-their-rape-victims-malaysian-mp-tells-parliament>

159 “Women’s group: A life of rape for victims who marry rapists.” Malay Mail Online. 5 April 2017. Available at: <http://www.themalaymailonline.com/malaysia/article/womens-group-a-life-of-rape-for-victims-who-marry-rape-victims>

- 19.6 **Marital rape is not a criminal offence.** An exception remains in Section 375 of the Penal Code, which states “Sexual intercourse by a man with his own wife by a marriage which is valid under any written law for the time being in force, or is recognized in Malaysia as valid, is not rape.”¹⁶⁰
- 19.7 According to Section 377C of the Penal Code, **rape with an object is not considered rape** – it is considered sex “against the order of nature.
- 19.8 **The State carries out violence against women as punishment for crimes under *Syariah* law.**¹⁶¹ For example, women found guilty of *musahaqah* (lesbianism) can be punished by whipping.¹⁶²
- 19.9 **Trans women report high levels of violence, including harassment, hate crimes, and murder.** Violence and harassment towards trans women are carried out by state (police, state Islamic departments) and non-state actors alike. Between 2007-2017, at least 12 murders of trans women were reported in the media, including two in 2017.¹⁶³
- 19.10 **Online gender-based violence is a growing area of concern.** Although there is little data, reported instances include distribution of intimate photos or videos without consent; harassment (women receiving insulting messages via text or social media);¹⁶⁴ stalking; dissemination of private information; identity theft; hate speech; and rape and death threats.^{165,166}

160 In 2006, a new offence, 375A in the Penal Code was introduced. However, this amendment is problematic as the offence criminalises the harm or fear of harm to the wife in the lead up to sex, rather than the act of rape itself, and carries a much lower sentence compared to rape.

161 In 2009, Kartika Sari Dewi Shukarno was sentenced by the Pahang *Syariah* Court to six strokes of the *rotan* for drinking beer in a hotel nightclub two years previously (the caning sentence was later commuted to a community service order). In 2010, three women were caned for engaging in illicit sex.

162 Six states in Malaysia impose maximum fines of RM 3,000, three years of imprisonment, and six strokes for *musahaqah*,

163 “Justice For Sameera – Ensure Thorough Investigation & Hold Perpetrators Accountable.” Justice For Sisters. 3 March 2017. Available At: <https://Justiceforsisters.Wordpress.Com/2017/03/03/Justice-For-Sameera-Ensure-Thorough-Investigation-Hold-Perpetrators-Accountable/>

164 Participants of #WomensMarchKL, held in conjunction to International Women’s Day on 11 March 2017 were under attack on Twitter as they share comments and contents online. These ‘troll’ messages are harmful and constitute gender-based violence, more so when they occur in mass quantity; they include anything from sending constant derogatory and belittling messages, and threats.

165 In January 2017, a Facebook page titled “Thaipusam Spraying Group” posted threats to spray paint on women purported to be “inappropriately dressed” at Thaipusam event. Pictures depicting the back of women donning different sarees with a comment: “Advance warning to Hindu female patrons coming to Thaipusam festival, beware of being sprayed with aerosol paint if found inappropriately dressed.” (See “Group warned against spraying women on Thaipusam.” Free Malaysia Today. 9 January 2017. Available at: <http://www.freemalaysiatoday.com/category/nation/2017/01/09/group-warned-against-spray-painting-women-on-thaipusam/>)

166 In March 2015, Malaysian radio BFM posted a video called “Does hudud fill our rice bowls?” In the video, reporter Aisyah Tajuddin questioned the proposal by Pan-Malaysian Islamic Party (PAS) to

Recommendations

28. Expand the DVA to **include violence perpetrated in unmarried intimate partnerships** and enact laws to protect against **stalking**.
29. Remove the exception to subsection 375 of the Penal Code, which explicitly states that sexual intercourse within marriage can never be considered as rape.
30. **Conduct gender sensitisation trainings** with state agencies, including law enforcement agencies and within the criminal justice process to broaden understanding of gender and reduce discrimination.

General Recommendation 26: Migrant women workers

- 26.1 Migrant domestic workers are denied the same rights afforded to all other workers under Malaysia's Employment Act 1955, including rest days, maternity benefits, and regular hours of work. In 2014, the Ministry of Human Resources drafted 'Regulations (Terms & Conditions of Employment) of Domestic Servants 2014.' However, the Regulations did not adequately protect the rights of domestic workers, who are uniquely vulnerable to abuse and labour rights violations. In May 2014, the Domestic Workers Campaign Coalition provided detailed recommendations to address gaps in the Regulations; however the government put these regulations on hold.¹⁶⁷

implement hudud law in the state of Kelantan. Some Internet users made rape and murder threats against Aisyah. "Burn her alive," wrote a Facebook user called Hairul Azzua. Facebook user called Inche Oleh wrote: "Wait till I rape you, woman." A YouTube user called Khairul Azri said: "If I see you in front of me, I'll shoot you in the head." ("BFM journalist gets rape threats over video questioning hudud." Malay Mail Online. 20 March 2015. Available at: <http://www.themalaymailonline.com/malaysia/article/bfm-journalist-gets-death-rape-threats-over-video-questioning-hudud>)

167 In May 2017, the Ministry of Human Resources launched Guidelines and Tips for Employers of Foreign Domestic Helpers, which was devised with the ILO and contains information on laws and best practices related to recruitment and employment of foreign domestic workers. Although select NGOs were initially consulted on the Guidelines, there was no opportunity for NGO input into the final draft. (See "Guidelines, Tips for Employers Of Foreign Domestic Workers Launched." Malaysiandigest.com. 25 May 2017. Available at: <http://malaysiandigest.com/news/677387-guidelines-tips-for-employers-of-foreign-domestic-workers-launched.html>)

Recommendations

31. Sign on to the Domestic Workers Convention (C189). Include domestic workers as workers in the Employment Act 1955 and accord all benefits of the Act to domestic workers.

General Recommendation 28: State obligation to eliminate all forms of discrimination against all women

28.1 The CEDAW framework of equality and non-discrimination has not been implemented into domestic legislation, which in turn has implicitly condoned continued discrimination in many areas of women's lives.¹⁶⁸ For example:

- The judiciary, legal professionals, the police, Islamic religious affairs department officers, and State authorities **do not have adequate knowledge on the right to equality and non-discrimination** so that women's rights are respected, protected, promoted, and fulfilled.
- There is **no avenue for redress for victims of discrimination and violence on the basis of sexual orientation and gender identity.**¹⁶⁹
- Section 21 of the Minor Offences Act 1955 allows for women and trans people to be charged for **indecent behaviour.**
- The Penal Code **criminalises consensual sex “against the order of nature.”**
- State *Syariah* laws **criminalise consensual sexual relations between women and ‘cross-dressing.’**^{170 171}

168 The impact of this discrimination is greater on some areas of women's human rights, such as women's sexuality rights, and the right to sexual identity and relationships. Women who are transgender, or who identify as lesbian or bisexual, face discrimination in many areas of their lives based on their sexual orientation or gender identity, which challenges the heteronormative and gender binary ideology of the state.

169 This is supported by research conducted by the Human Rights Watch which found that the police and the state Religious Department officials regularly arrest transgender women, who are then subjected to gross abuses. These acts of abuse have extended beyond the arrest as these women end up facing assault in custody and also while being imprisoned. The ongoing abuse and violation of their rights suggest that there is no avenue for redress. (See “Malaysia: Transgender People Under Threat: Eliminate Discriminatory Laws, Practices; End Violence.” Human Rights Watch. 24 September 2014.

170 Article 377A of the Penal Code serves to criminalise same-sex activity between men while other *Syariah* laws prohibit sexual relations between women and men. This demonstrates how Malaysia's court system works against the interests of the LGBT community in Malaysia. (See “Human Rights Watch Country Profiles: Sexual Orientation and Gender Identity.” Human Rights Watch. 23 June 2017)

171 In 2015, Malaysia's highest court has also upheld the ban on cross-dressing by transgender

General Recommendation 32: On the gender-related dimensions of refugee status, asylum, nationality and statelessness of women

- 32.1 The government continues to detain women and children asylum seekers and refugees in poor conditions. **Female detainees are subject to sexual and GBV,¹⁷² other forms of abuse, poor sanitation, and a lack of adequate food, water,¹⁷³ and medical care.¹⁷⁴** Even pregnant and lactating women are detained and lack access to facilities and services appropriate to their needs.¹⁷⁵ Of particular concern is the arrest and detention of undocumented asylum-seeker and refugee women who have just given birth, and the detention of girls, either unaccompanied or with their family members.
- 32.2 Asylum seeker and refugee women continue to be denied legal status in Malaysia.^{176,177,178}
- 32.3 Formal legal aid continues to be unavailable to asylum seekers and refugee women who are over the age of 18 and wish to access the justice system for SGBV or other crimes committed against them.

Muslim, after the Appeals court declared the ban to be unconstitutional, dealing a major setback in transgender rights. “Malaysia court upholds ban on crossdressing by transgender Muslim.” Reuters. 8 October 2015. Available at: <https://www.reuters.com/article/us-malaysia-verdict-crossdressing/malaysia-court-upholds-ban-on-cross-dressing-by-transgender-muslims-idUSKCN0S21CE20151008>

172 Sexual and Gender-Based Violence (SGBV) Factsheet, Malaysia. UNHCR. October 2017.

173 Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Dainius Pūras; Addendum; Visit to Malaysia. 19 November-2 November 2014 [A/HRC/29/33/Add.1]. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/087/06/PDF/G1508706.pdf?OpenElement>

174 Ibid.

175 Ibid.

176 Malaysia, as Member State of the Asian-African Legal Consultative Organisation (AALCO), should be guided by the Final Text of the AALCO’s 1966 Bangkok Principles on the Status and Treatment of Refugees as adopted on 24 June 2001 at the AALCO’s 40th Session in New Delhi, India. The Bangkok Principles set out to inspire Member States to enact national legislation for the Status and Treatment of Refugees and provide a guide to deal with refugee matters.

177 Asia-African Legal Consultative Organization (AALCO), *Bangkok Principles on the Status and Treatment of Refugees* (“*Bangkok Principles*”). 31 December 1966. Available at: <http://www.refworld.org/docid/3de5f2d52.html>

Nb: The Revised Bangkok Principles are declaratory and non-binding in character and aim inter alia at inspiring Member States for enacting national legislation for the Status and Treatment of Refugees and as a guide to deal with the refugee problems (see “*Bangkok Principles*”, pg. 6, emphasis own).

178 This lack of legal status exacerbates the vulnerability of these women in many ways, including by limiting their ability to access justice and treatment for SGBV; precluding lawful access to the labour market, which forces these women into the informal labour market and makes them more susceptible to SGBV, withheld wages, and unsafe working conditions; restricting their access to healthcare as a result of being charged at the foreigner’s rate or due to fear of arrest and detention when travelling to treatment centres; and curbing access to formal education through the public-school system.

Recommendations

32. Adopt effective policies to improve the protection of refugee women,¹⁷⁹ including **granting legal status**, which would alleviate many vulnerabilities and risks.
33. Implement a policy to allow for an **alternative to immigration detention** for these groups, given the vulnerabilities of asylum-seeker, refugee girls and pregnant and lactating women.

General Recommendation 33: Access to justice

- 33.1 Victims of violence still face significant barriers in accessing justice. Many victims face **secondary victimization** by agencies and the personnel involved in the criminal justice system.¹⁸⁰ This is often attributed to the lack of support services for victims and the complexity in navigating the criminal justice process.^{181,182}
- 33.2 The lack of a comprehensive gender sensitisation policy and training within the criminal justice system has resulted in survivors of gender-based violence facing additional obstacles throughout the stages of the criminal justice process including harmful stereotypes and gender bias.¹⁸³ This includes **the requirement of corroboration in cases of sexual violence**, which does not have any statutory basis.¹⁸⁴
- 33.3 Women who are victims of violence have limited access to monetary aid, shelters, and counselling services, with much of the service provision being shouldered by NGOs.

179 Pursuant to Article IV of the Final Text of the AALCO's 1966 Bangkok Principles on the Status and Treatment of Refugees as adopted on 24 June 2001 at the AALCO's 40th Session in New Delhi, India

180 *Gender Lens and Secondary Victimization through the Interagency process*. Presentation by Prema Devaraj at the 2016 National One Stop Crisis Centre Seminar, 13-15 July 2016, Penang, Malaysia

181 *Seeking Justice for Victims of Sexual Crime* by James Lochhead and Tan Pek Leng, 2009

182 *The Child and The Law: Through the eyes of WCC*. Presentation by Prema Devaraj Course on Managing Sexual Offences Against Children 11-13 May 2017, Judicial and Legal Training Institute (ILKAP), Malaysia

183 "Perspectives on Domestic Violence: A Community Response to a Community Issue." Women's Aid Organisation. Available at: http://www.wao.org.my/Perspectives+on+Domestic+Violence+2017+Report+by+WAO_131_6_1.htm

184 "Seeking Justice" Public Prosecutor v Mohd Ridzwan Bin Md Borhan (2004) 5 MLJ 300, 302. Page 55.

- 33.4 Legal aid assistance and legal aid programs do not specifically focus on women's rights nor take into account the specific vulnerabilities of women from marginalised communities.
- 33.5 Amendments to the Legal Aid Act 1971 now expressly preclude non-Malaysians from having access to legal aid services governed by the Legal Aid Act 1971.¹⁸⁵

Recommendations

34. **Legal aid assistance be made available to all** regardless of nationality and not just limited to capital punishment cases. In particular, asylum seeking women, refugee women and stateless women and migrant women should be given effective legal protection throughout the asylum process.
35. Provide **victim support services** for victims/survivors of SGBV, including the provision of special measures for witnesses.

185 New Section 2A inserted through Legal Aid (Amendment) Act 2017 which states that legal aid provided under the act may be given to citizens of Malaysia only. (See Act A1548 Legal Aid (Amendment) Act 2017. Available at: http://www.jbg.gov.my/images/doc/Akta/20171017_A1548_BI_Act%20A1548%20BI.pdf)

05.

Status Report

ON THE MALAYSIAN GOVERNMENT'S OBLIGATIONS DECLARED IN THE INTERNATIONAL ARENA

Status report on the implementation of the CEDAW Committee's recommendations from 2006

In May 2006, the CEDAW Committee released recommendations for the Malaysian government through the CEDAW Committee's Concluding Comments.¹⁸⁶

Laid out below are the 2006 recommendations of the CEDAW Committee and an assessment by NGOs as to what extent the government has or has not implemented these recommendations. Most of the concerns raised by the CEDAW Committee have not been addressed by the government and, if action has been taken, often it has been limited.

As noted in the 2005 NGO CEDAW Shadow Report, the Malaysian government often takes a piecemeal approach and does not follow through with an assessment of outcomes when implementing measures to eliminate discrimination against women. The result is

186 CEDAW Committee Concluding Comments: Malaysia, 2006 (CEDAW/C/MYS/CO/2).

unfortunately continued gaps and inconsistencies with the principles of CEDAW and Malaysia's obligations under the convention.

Paragraph 8 of the 2006 Concluding Comments

The Committee calls on the State party to take immediate measures to ensure that the Convention and its provisions are incorporated into national law and become fully applicable in the domestic legal system.

The government has not incorporated the CEDAW Convention into national law.

Paragraph 8 of the 2006 Concluding Comments *cont'd*

The Committee urges the State party to incorporate in its Constitution and/or other appropriate national legislation, the definition of discrimination, encompassing both direct and indirect discrimination, in line with article 1 of the Convention.

"Discrimination" has not been defined in either the Federal Constitution or in legislation and it has been left up to the courts to interpret what constitutes discrimination. In the 2012 case of *Noorfadilla binti Ahmad Saikin v Chayed bin Basirun and Ors (Noorfadilla)*, the court accepted the definition of "**discrimination against women**" as defined by Article 1 of CEDAW. It also went on to hold that CEDAW has the force of law in Malaysia.

However, in the 2014 case of *AirAsia Berhad v Rafizah Shima binti Mohamed Aris (Air Asia)*, where an airline terminated a trainee due to her pregnancy, the Court found that Article 8(2) had not been violated. *Air Asia* reversed the finding in *Noorfadilla* that CEDAW has the force of law in Malaysia, but the definition of 'discrimination against women' in Malaysia, as defined in *Noorfadilla*, remains intact.

Despite this, the efficacy of Article 8(2) in protecting against gender discrimination has been limited by the courts' interpretation that 8(2) does not apply to discrimination by private actors.¹⁸⁷ This unjustifiable distinction between state and private actors

187 In the cases of *Beatrice* and *Air Asia*, the discriminating parties were public listed companies whereas it was the Education Department (a public authority) that discriminated against *Noorfadilla*. "The High Court erred in law and facts in not following the Federal Court's decision in *Beatrice*'s case. It was clear the agreement between the appellant and the respondent was a lawful contract between private parties. *Beatrice*'s case essentially stipulated that constitutional law, as a branch of public law, only addressed the contravention of an individual's right by a public authority." *Malayan Law Journal Reports/2014/Volume 5/AirAsia Bhd v Rafizah Shima bt Mohamed Aris-* [2014] 5 MLJ318 – 3 July 2014. The Court of Appeal in *AirAsia Berhad v Rafizah Shima binti Mohamed Aris* relied on the Federal Court's decision in *Beatrice AT Fernandez v Sistem Penerbangan Malaysia & Anor* [2005] 2 CLJ 713

continues to hamper the full enjoyment of women's rights in all areas of their lives. The government needs to fully understand and implement its duty of due diligence when it comes to acts and omissions of private actors. Additionally, the state applies a binary lens in defining gender, and often tries to limit the scope of the term to cisgender men and women. As a result, many people are left without access to justice and protection.

Paragraph 8 of the 2006 Concluding Comments *cont'd*

The Committee further recommends that the State party enact and implement a comprehensive law reflecting substantive equality of women with men in both public and private spheres of life.

There is no gender-equality legislation in place providing the comprehensive realisation of substantive equality of women in both public and private spheres of life.

According to government news agency Bernama, in 2010:

“The Women, Family and Community Development Ministry is currently studying the necessity to enact a Gender Equality Act... Datuk Seri Shahrizat Abdul Jalil said the rationale for the proposed act was the lack of punitive measures against discrimination towards women.”¹⁸⁸

The first draft of this bill was reportedly due to be tabled in Parliament in July 2010. However, this did not occur.

A meeting was held in September 2010 to discuss the necessity of a Gender Equality Act with representatives from government agencies and NGOs. At the conclusion of the meeting, a representative from the Ministry of Women, Family and Community Development noted that “something concrete” would be produced by November 2010 related to a Gender Equality Act. This did not occur.

Laws in Malaysia continue to discriminate against women, even though the Federal Constitution was amended in 2001 to include gender as a prohibited ground for discrimination. Section 8(2) of the Federal Constitution states that,

“Except as expressly authorized by this Constitution, there shall be no discrimination against citizens on the ground only of religion, race, descent, place of birth or gender in any law or in the appointment to any office or employment

under a public authority or in the administration of any law relating to the acquisition, holding or disposition of property or the establishing or carrying on of any trade, business, profession, vocation or employment.”

As outlined in the first Malaysian NGO CEDAW Shadow Report,¹⁸⁹ this provision of the Federal Constitution is problematic for several reasons:

- The Federal Constitution contains many provisions that are discriminatory to women which continue to be valid owing to the phrase “except as expressly authorized by this Constitution” in Article 8(2).¹⁹⁰
- The term “discrimination” in Article 8(2) of the Federal Constitution has been left up to the courts to interpret. Judicial interpretations of this provision have narrowly focused on discrimination relating to “employment under a public authority,” finding that discrimination in the private sector is not covered by this constitutional provision.

The Penal Code and state-level *Syariah* laws also continue to contain gender discriminatory provisions.¹⁹¹

From 2010 through 2015, there were no developments in relation to the adoption of a Gender Equality Act. The government, in its Third through Fifth Periodic Report, continues to state that there is no “cogent reason to review the definition of discrimination in the FC,” nor a need for specific national legislation to provide such definition.

189 Malaysian NGO Shadow Report Group, *NGO Shadow Report on the Initial and Second Periodic Report of the Government of Malaysia: Reviewing the Government’s Implementation of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)*, 2005, page 11, available at http://www.iwraw-ap.org/resources/35_ngocedaw_resources.htm

190 Such discriminatory constitutional provisions include, but are not limited to, the following:

- i. Section 8(5)(a) states that the equality clauses of the Constitution do not invalidate or prohibit “any provision regulating personal law”, effectively leaving Muslim personal law unaffected by the amendment.
- ii. Section 8(5)(b) states that the equality clauses of the Constitution do not invalidate or prohibit “any provision or practice restricting office or employment connected with the affairs of any religion, or of an institution managed by a group professing any religion, to persons professing that religion.”
- iii. Section 12(1) states that “there shall be no discrimination against any citizen on the grounds only of religion, race, descent or place of birth” with respect to access to education.
- iv. There are numerous provisions in the Federal Constitution which discriminate against women’s rights to citizenship and to confer citizenship on their children, including Articles 14, 15, 24(4) and 26(2) and the Second Schedule of the Federal Constitution. More information about discrimination against women with regard to citizenship is in the chapter on Article 9 of CEDAW in this report.

191 See the chapters on CEDAW Articles 1-4 and 15 for information on the discriminatory provisions in these laws.

However, in 2016, there was renewed interest from the Ministry of Women, Family and Community Development with the Minister herself declaring that her ministry was, "... currently enacting a Gender Equality Act," and has "...been doing a lot of engagement to solidify our aim to draft the Act."¹⁹² The Joint Action Group on Gender Equality (JAG) is working with the Ministry towards the adoption of a Gender Equality Act, and looks forward to the government following through on this commitment.

Paragraph 8 of the 2006 Concluding Comments cont'd

[The Committee] also recommends that the State party include adequate sanctions for acts of discrimination against women and ensure that effective remedies are available to women whose rights have been violated.

There are limited avenues for redress that women can pursue for acts of discrimination that violate their rights.

For example, in cases of sexual harassment, there is often no possibility for seeking redress unless the perpetrator is charged under the Penal Code for insulting or outraging modesty. The Code of Practice on the Prevention and Handling of Sexual Harassment in the Workplace, which was established in 1999, is only voluntary for employers.¹⁹³ As of 2011, only 1,671 employers nationwide had implemented the Code.¹⁹⁴ There are 6.375 million registered businesses in Malaysia.¹⁹⁵ Furthermore, since 1999, the labour department has "received and investigated" only 300 cases of sexual harassment.¹⁹⁶ In 2011, the Employment Act was amended to include provisions on sexual harassment in the workplace. These amendments are not adequate.¹⁹⁷

The landmark ruling of the Federal Court in the case of *Mohd Ridzwan Bin Abdul Razak. Appellant v Asmah Binti Hj. Mohd Nor*,¹⁹⁸ which recognised and defined the tort of sexual harassment, has paved the way for victims to seek redress in civil court. However, there is still a need for a comprehensive law to define, address, and provide additional remedies

192 "Minister Now Says Gender Equality Acts in the Works." Malay Mail Online. 2 November 2016. Available at: <http://www.themalaymailonline.com/malaysia/article/minister-now-says-gender-equality-act-in-the-works>

193 Ministry of Human Resources (1999) *Code of Practice on the Prevention and Eradication of Sexual Harassment in the Workplace*. [Location of Publication, Malaysia]

194 "Sexual harassment cases on the rise." New Straits Times. 8 July 2011.

195 Suruhanjaya Syarikat Malaysia (2018). *Company and Business Statistics for Year 2018*. Available at: <http://www.ssm.com.my/en/statistic-total-business-companies>

196 "Sexual harassment cases on the rise." New Straits Times. 8 July 2011.

197 See the chapter in this report on Article 11 of CEDAW for details on the amendments to the Employment Act.

198 *Mohd Ridzwan Bin Abdul Razak. Appellant and Asmah Binti Hj. Mohd Nor*. In The Federal Court Of Malaysia (Appellate Jurisdiction) Civil Appeal No: 01(F)-13-06/2013 (W). 2 June 2016. Available at: [http://www.foongchingleong.com/judgements/Mohd%20Ridzwan%20bin%20Abdul%20Razak%20v%20Asmah%20Binti%20Hj%20Mohd%20Nor%20\(FC\).pdf](http://www.foongchingleong.com/judgements/Mohd%20Ridzwan%20bin%20Abdul%20Razak%20v%20Asmah%20Binti%20Hj%20Mohd%20Nor%20(FC).pdf)

for sexual harassment¹⁹⁹ including allowing complainants to seek redress without the time, expense, and public nature of going to court, and without proving harm as an element of their claim.

Paragraph 10 of the 2006 Concluding Comments

The Committee urges the State party to review all its remaining reservations with a view to withdrawing them, and especially reservations to article 16, which are contrary to the object and purpose of the Convention.

On 6 July 2010, the Malaysian government announced that it was planning to remove its reservations to three CEDAW Articles. On 19 July 2010, the United Nations Secretary-General officially announced the Malaysian government's removal of reservations to:

- **Article 5 (a):** *To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women;*
- **Article 7 (b):** *To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government; and*
- **Article 16 (2):** *The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.*

Article 5 (a)

Although the government's reservation to Article 5 (a) has been lifted, polygamous marriages continue to be permitted. The CEDAW Committee has noted in its General Recommendation 21 that the continuation of the practice of polygamy breaches the provisions of Article 5 (a).

Also, in breach of Article 5 (a) is a national *fatwa* decided upon in April 2009. This *fatwa* on female circumcision states that it is obligatory for Muslim women to undergo circumcision unless it will result in some form of harm to the woman.²⁰⁰

199 The primary reason for this need is that seeking redress through the tort of sexual harassment still requires an individual to go through the court process to access justice, which means going through a public, costly, and potentially lengthy procedure. An independent Sexual Harassment Act and tribunal would allow complainants to seek redress without going to court, and would reduce other barriers to accessing justice, including the time and expense involved in pursuing a court action.

200 The *fatwa* states, "Sehubungan itu, selaras dengan pandangan Juhur Ulama', Muzakarah bersetuju memutuskan bahawa hukum berkhatan bagi wanita adalah wajib. Walau bagaimanapun,

Also, in breach of Article 5 (a) are the state-level *Syariah* laws criminalising women in same-sex relationships, transgender people, and 'cross-dressing'. The laws perpetuate the idea of stereotyped masculinity and harmful gender-binary and heteronormative ideas, and views gender diversity and relationships outside of the heterosexual construct as criminal.

Article 16 (2)

Although the reservation has been lifted on Article 16 (2), **child marriage is still legally permitted in Malaysia**. The Minister for Women, Family and Community Development stated that there would be no change in laws relating to the minimum age of marriage to reflect the removal of the reservation.²⁰¹

Currently, non-Muslim females between the ages of 16 and 18 can marry with the authorisation of the Chief Minister. For Muslims, the minimum age of marriage is 16 years for females and 18 for males, with an exception that permits Muslim girls and boys below these ages to marry with the *Syariah* Court's consent.

Even more concerning are the cases that have emerged introducing a disturbing notion that victims of statutory rape can be married off to their rapists, subjecting them to a lifetime of rape, while the rapists are subsequently exonerated of any crime. In one such case, Nor Fazira Saad (12 years old) was raped by Mohd Fahmi Mohamed Alias (19 years old). Fazira was married to Fahmi after being raped by him. Initially, the public prosecutor had retracted the charge of statutory rape on the basis that the victim was married to the perpetrator. However, after public outcry, led by women and child rights organisations, the charge was reinstated. The perpetrator was found guilty of statutory rape. Nevertheless, the status of their marriage remained intact.^{202, 203}

Member of Parliament and former *Syariah* judge Shabudin Yahaya went as far as to suggest that child victims of rape *should* marry their rapists to avoid social problems and lead a better life.^{204, 205}

sekiranya ia boleh membawa kemudharatan pada diri, maka ia perlu dielakkan." Available at: <http://www.e-fatwa.gov.my/fatwa-kebangsaan/hukum-pemotongan-genitalia-wanita-female-genital-mutilation>

201 "Not enough is being done to discourage child marriages," New Straits Times. 4 July 2010.

202 "Activists slam marriage of 12-year-old." Free Malaysia Today. 23 November 2012. Available at: <http://www.freemalaysiatoday.com/category/nation/2012/11/23/activists-slam-marriage-of-12-year-old-in-malaysia/>

203 "Marriage cannot drop rape charges." The Malaysian Times. 29 November 2013. Available at: <http://www.themalaysiantimes.com.my/marriage-cannot-drop-rape-charges/>

204 "Rape victims should marry their rapists, Malaysian MP tells parliament." The Guardian. 5 April 2017. Available at: <https://www.theguardian.com/world/2017/apr/05/victims-should-marry-their-rapists-malaysian-mp-tells-parliament>

205 "Women's group: A life of rape for victims who marry rapists." Malay Mail Online. 5 April 2017.

Article 7 (b)

A few days before the announcement of the removal of its reservation to Article 7 (b) in July 2010, the government announced the appointment of the first two female Syariah Court judges for the Federal Territories of Putrajaya and Kuala Lumpur.²⁰⁶

However, since the announcement of the appointment, it was reported that there might be limitations placed on the purview of the female judges. Government-owned news agency Bernama reported that,

“Syariah Appeals Court judge Datuk Md Yusup Che Teh said this was because there were certain cases that they could not preside over, such as divorce and *wali hakim* [solemnizing a marriage] cases... Md Yusup said the demarcation of duties for the women judges was not gender discrimination but was based on Islamic rulings that could not be disputed.”²⁰⁷

Subsequently, on 5 August 2010, it was reported that the female judges would, in fact, be able to hear all cases.²⁰⁸

However, on 8 December 2010, newspapers reported that the government was still “mulling” over permitting women judges to hear marriage and divorce cases, as different states had different regulations and constraints.²⁰⁹

In 2016, Noor Huda Roslan and Nenny Shuhaidah Shamsuddin became the first female judges to be appointed to the Syariah High Court. At the same time, seven other women were appointed as Syariah Lower Court judges.²¹⁰ Nevertheless, there is still a significant lack of representation of women as judges, both in the *Syariah* and civil courts.

A recent ruling by the Federal Court found that an Islamic council’s ruling that bars non-Muslims from practicing as *Syariah* lawyers is constitutional, thus preventing non-

Available at: <http://www.themalaymailonline.com/malaysia/article/womens-group-a-life-of-rape-for-victims-who-marry-rapists>

206 In 2006 a national fatwa was declared on the right of women to be appointed as judges.

207 “Area of jurisdiction of two women Syariah judges to be decided.” Bernama. 14 July 2010

208 “Female Syariah judges get full powers,” The Malaysian Insider. 5 August 2010

209 “Govt mulls over female Syariah judge for marriage, divorce cases.” Sun2Surf. 8 December 2010.

210 “Two women appointed as Syariah Court judges in a landmark move.” The Star Online. 28 June 2016. Available at: <http://www.thestar.com.my/news/nation/2016/06/28/a-first-for-syariah-court-two-women-appointed-as-judges-in-a-landmark-move/>

Muslim women from practising *Syariah* law in the Federal Territories. Despite holding the relevant academic qualifications, Victoria Jayaseele Martin, a Christian, was barred from becoming a *Syariah* court lawyer. The Federal Court's decision was based on Rule 10 of the Shariah Lawyers Rules 1993 which says only Muslims can become *Syariah* lawyers.²¹¹ Such a restriction is in itself discriminatory, as the qualifications earned by Victoria Jayaseele Martin are valid, and suggests that having the right religious beliefs, rather than knowledge of the law, is the preferred professional criteria. It also effectively discourages existing women lawyers who are non-Muslims from expanding their knowledge, skills and practice into *Syariah* law. By restricting those who can practice *Syariah* law to only Muslims, this further reduces the number of potential women who may become *Syariah* lawyers and judges.

Numerous attacks have been directed at women leaders, including those currently or formerly in government, political candidates belonging to opposition political parties, and civil society activists.²¹² Human rights activist and Bersih 5 rally leader Maria Chin Abdullah was arbitrarily arrested and detained in solitary confinement under Malaysia's Security Offences (Special Measures) Act (SOSMA), and continues to face threats.^{213,214} **Such treatment is a disincentive for women to participate in the public sphere.**

Remaining reservations

The Malaysian government still has reservations to the following CEDAW Articles:

- **Article 9 (2):** *States Parties shall grant women equal rights with men with respect to the nationality of their children.*

211 "Federal Court: Discriminatory rule barring non-Muslims as Shariah lawyers if constitutional." Malay Mail Online. 24 March 2016. Available at: <http://www.themalaymailonline.com/malaysia/article/federal-court-discriminatory-rule-barring-non-muslims-as-shariah-lawyers-is>

212 Many women leaders have been victims of vicious attacks, including personal threats, media blasts, or social media trolling. Examples include the BFM journalist Aisyah Tajuddin receiving death and rape threats over a video of her questioning if implementing *hudud* law can fix the economy, the physical attack on transgender woman activist Nisha Ayub, and the sexist remarks against MP Teresa Kok. G25 spokesperson Noor Farida Afrin was threatened with rape via Facebook by Animal Action Group president Sharul Nizam Ab Rahim as a result of G25's call for a review of *Syariah* laws on *khalwat*. Maria Chin Abdullah and Ambiga Sreenevasan, leaders of Bersih 2.0, a civil society movement for free and fair elections, have been vilified in the media and received death threats.

213 "US 'troubled' over Malaysia's detention of activist and Najib critic." The Guardian. 24 November 2016. Available at: <https://www.theguardian.com/world/2016/nov/24/us-malaysia-detention-activist-maria-chin-abdullah>

214 Maria Chin was also arbitrarily arrested the month prior to her arrest under SOSMA under the Printing Presses and Publications Act (PPPA) for a purported issue related to the flyers for the Bersih 5 rally. Lawyers referred to the arrest as being in bad faith and selective. (See "Lawyers: Maria's arrest over Bersih flyers 'selective', form of harassment." Malay Mail Online. Available at: <http://www.themalaymailonline.com/malaysia/article/lawyers-marias-arrest-over-bersih-flyers-selective-form-of-harassment#sthash.KFU4UKT3.dpuf>)

- **Article 16 (1):** *States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:*
 - (a) *The same right to enter into marriage;*
 - (c) *The same rights and responsibilities during marriage and at its dissolution;*
 - (f) *The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount; and*
 - (g) *The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation.*

In its combined initial and second report to the CEDAW Committee, the Malaysian government stated that the reservations were in place as the Articles are in conflict with *Syariah* law and the Federal Constitution. However, according to Article 27 of the UN Vienna Convention on the Law of Treaties (1969), a State cannot use the excuse of the existence of a national law to not fulfil the objective of a treaty. Article 27 states that “A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty.”

Of interest is an exchange during the Malaysian government’s appearance before the CEDAW Committee in 2006:

“60. Ms. Belmihoub-Zerdani said that the reservation to article 9 (2) regarding equality between men and women in conferring nationality upon their children was a case of glaring discrimination. There was no religious obstacle in Islam to acceptance of that measure. Many Islamic countries had lifted reservations to that provision and changed domestic law in order to comply with it.

61. Ms. Azailiza Mohd Ahad (Malaysia) agreed with Ms. Belmihoub-Zerdani that **there was no religious hindrance to acceptance of the clause. Reservations should be reviewed in order to ensure equal treatment.**²¹⁵

In its Third through Fifth Periodic Report, the government continues to justify the reservations as falling within the scope of Islamic Law and defends the consideration of these reservations within its context.

215 Committee on the Elimination of Discrimination against Women, *Summary Record of the 731st Meeting held on 24 May 2006 at 10am, 20 June 2006*, para 60 and 61 (CEDAW/C/SR.731)

Paragraph 12 of the 2006 Concluding Comments

The Committee calls on the State party to ensure that the Convention and related domestic legislation are made an integral part of legal education and the training of judicial officers, including judges, lawyers and prosecutors, so as to establish firmly in the country a legal culture supportive of women's equality and non-discrimination.

During the Malaysian government's Universal Periodic Review session in 2009, Thailand recommended that the Malaysian government "Continue to focus its efforts on ensuring full protection of human rights for all vulnerable groups, one such avenue is through the ongoing rigorous capacity-building programmes that Malaysia has initiated in this area, particularly for public officers."²¹⁶ Malaysia supported this recommendation.

In October 2009, the Human Rights Commission of Malaysia, SUHAKAM, held a colloquium for the judiciary. Among the objectives of this meeting was to provide examples to the members present about applying international human rights principles and standards within the Malaysian legal system.²¹⁷ However this colloquium is not part of legal curriculum and the extent to which the meeting focussed on gender discrimination is unknown.

The National Judicial and Legal Training Institute (ILKAP), which is part of the Prime Minister's Department, held a course in 2010 entitled "Course on Compliance with the Obligations under the Convention on the Rights of the Child (CRC), Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and Persons with Disabilities Convention (PWDC)."²¹⁸

In 2016 and 2017, the government worked with NGOs to incorporate CEDAW principles and gender sensitivity as part of a domestic violence training for the first time at ILKAP. GR19, GR28, and due diligence principles were part of the practical program, which was targeted at Lower Court judges, magistrates, and prosecutors from all over Malaysia. Thus far in 2018, the CEDAW components of the trainings have not been continued.

Paragraph 14 of the 2006 Concluding Comments

The Committee urges the State party to undertake a process of law reform to remove inconsistencies between civil law and *Syariah* law, including by ensuring that any conflict of law with regard to women's rights to

216 Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Malaysia 2009*, para 104, recommendation 8 (A/HRC/11/30*)

217 SUHAKAM *Annual Report 2009*, page 24

218 Judicial and Legal Training Institute. *Course Program 2010*. Accessed at: <http://www.ilkap.gov.my/download/bukulatihan/BPL2011.pdf>

equality and non-discrimination is resolved in full compliance with the Constitution and the provisions of the Convention and the Committee's general recommendations, particularly general recommendation 21 on equality in marriage and family relations. In this regard, it encourages the State party to obtain information on comparative jurisprudence and legislation, where more progressive interpretations of Islamic law have been codified in legislative reforms.

It also encourages the State party to take all necessary steps to increase support for law reform, including through partnerships and collaboration with Islamic jurisprudence research organizations, civil society organizations, women's nongovernmental organizations and community leaders.

The Committee further recommends that a strong federal mechanism be put in place to harmonize and ensure consistency of application of Syariah laws across all States.

The federal government has made attempts to have uniform Islamic family law across all states, however, these efforts have afforded fewer rights to women. Several states have adopted these laws since 2003, with the Federal Territories the last to adopt in 2005.

In January 2006, the Islamic Family Law (Federal Territories) (Amendment) Act 2006 was passed in Parliament. At the time of its passing, the then Prime Minister acknowledged the concerns of women's rights groups that women's rights may be curtailed under the amendments and stated that further amendments may be made to the law to remove the discriminatory elements.

In the 2009 Universal Periodic Review process, the Malaysian government stated that:

“Malaysia is ... undertaking a comprehensive review of national legal framework to ensure compatibility with the principles and provisions of the CRC and CEDAW. In that regard, a Committee has been established to study the issues relating to dissolution of marriage, maintenance, custody, inheritance and determination of the religion of the child of a civil marriage during conflict situation resulting from one of the spouse converting to Islam. Simultaneously, a Committee was also established to review laws relating to women's rights under the Islamic family law.”²¹⁹

219 *Malaysian Government Report to the Working Group on the Universal Periodic Review 2008*, para 21 (A/HRC/WG.6/4/MYS/1/Rev.1)

This committee was set up by former Prime Minister Tun Abdullah Ahmad Badawi after there was public outcry over the 2006 amendments to the Islamic family law. This committee was chaired by the Attorney General's Chambers and the NGO Sisters in Islam and other members of the Joint Action Group for Gender Equality were represented. Agreement was reached to amend the discriminatory 2006 Islamic family law.

The government submitted the amendments to Malaysian Council of Rulers, together with amendments to the Law Reform (Marriage and Divorce) Act 1976 (on the rights of non-converting spouses (Section 51)). The Malaysian Council of Rulers said that they needed more time to consult with their state religious authorities and the amendments were not submitted to parliament. Despite consistently advocating for the amendments to be tabled in parliament, the NGOs involved in the process have not received an explanation regarding the delay. The government has demonstrated an utter lack of political will to push these changes through.

The Malaysian government has, in the past, stated that it is difficult to standardise *Syariah* laws as they fall under state, not federal, jurisdiction. However, as the CEDAW Committee has noted in General Recommendation 28,

“The decentralization of power, through devolution and delegation of government powers in both unitary and federal States, does not in any way negate or reduce the direct responsibility of the State party’s national or federal Government to fulfil its obligations to all women within its jurisdiction. In all circumstances, the State party that ratified or acceded to the Convention remains responsible for ensuring full implementation throughout the territories under its jurisdiction.”²²⁰

A case that demonstrated clearly the problems raised by the inconsistencies between civil law and *Syariah* law was that of Shamala Sathiyaseelan, which was discussed in the 2005 Malaysian NGO CEDAW Shadow Report. In 2010, Shamala’s case was again brought before the Federal Court. In 2002, Shamala’s husband had converted to Islam and had also converted their two children without Shamala’s knowledge, let alone her consent. Since then there have been numerous court cases in both the civil and *Syariah* courts. In November 2010, the Federal Court shirked its responsibility to execute justice by declining to answer constitutional questions relating to the validity of the unilateral conversion of children to Islam by a father. The Federal Court cited Shamala’s absence as the rationale for neglecting to answer the constitutional questions.²²¹

220 CEDAW Committee General Recommendation 28, paragraph 39.

221 The constitutional questions which were referred to the Federal Court but were not answered are:

- a. **Question 1:** Whether Section 95 (b) of the Administration of Islamic Law (Federal Territories) Act 1993 (Act 505) is ultra vires Article 12 (4) and Article 8 of the Federal Constitution, read in their proper context?
- a. **Question 2:** Whether Section 95 (b) of the Administration of Islamic Law (Federal Territories) Act 1993 (Act 505), as State law, is by reason of Article 75 of the Federal Constitution, inconsistent with a Federal law, namely, Section 5(1) of the Guardianship of Infants Act 1961 (as amended) and is therefore invalid?

In past court decisions, Shamala's equal rights as a parent were denied and she was told to raise her children in a religion that was not her own. She fled the country with her children. The recent decision by the Federal Court, which was, in effect, a decision to not make any decision, leaves Shamala and others, mainly women, in similar situations without clarity to their legal rights.

The Federal Court's decision in the 2016 case of *Viran Nagapan v Deepa Subramaniam* confirmed that regardless of such conversion, all issues arising out of a civil marriage must be settled according to civil law, and not state Islamic law enactments,²²² since the marriage was solemnised or registered under civil law. However, legislation must be amended and adopted as needed so that all relevant laws are made consistent with the Federal Court's decision in *Viran Nagapan v Deepa Subramaniam*, which is based on the separate jurisdictions set out in our Federal Constitution.

Paragraph 16 of the 2006 Concluding Comments

The Committee calls upon the State party to implement comprehensive measures to bring about change in the widely accepted stereotypical roles of men and women. Such measures should include awareness-raising and educational campaigns addressing women and men, girls and boys, and religious leaders with a view to eliminating stereotypes associated with traditional gender roles in the family and in society, in accordance with articles 2 (f) and 5 (a) of the Convention.

There have been no awareness raising or educational campaigns to bring about change in the widely accepted and expected stereotypical gender roles. These gender stereotypes have a significant impact on the lives of women in Malaysia, including transgender people and women of diverse sexual orientations.

Government rhetoric about women reinforces stereotypes, and often focuses on women's 'family duties.' In 2010, former Prime Minister Najib Tun Razak was reported in a national newspaper to have said while speaking about employment for women, "We

- b. **Question 3:** In the context of Article 121 (1A) of the Federal Constitution, where a custody order is made by the Syariah Court or the High Court, on the basis that it has jurisdiction to do so, whether there is jurisdiction for the other court to make a conflicting order?
- c. **Question 4:** Where there has been a conversion of the children of a civil marriage into Islam by one parent without the consent of the other parent, whether the right of remedy under Part II of the Federal Constitution of the non-Muslim parent is vested in the High Court?
- d. **Question 5:** Whether in the context of Articles 8, 11, 12 (4) and 121 (1A) of the Federal Constitution, the Syariah Court has exclusive jurisdiction to determine the validity of conversion of a minor into Islam once the minor has been registered by the Registrar of Muallafs (Majlis Agama Islam)?

222 We note that "Islamic law" is in fact *fiqh*, i.e. human interpretations of the *Syariah*. It has constantly changed over centuries and has never been permanent. The fact that each Muslim nation has a different law demonstrates that these laws are not sacred and immutable revealed *Syariah*, but are *fiqh* as interpreted and codified by humans. To reflect this, we use the term "state Islamic law enactments" in this memorandum instead of "Syariah law".

need to use a more flexible and creative approach. Flexi-hours will encourage women to find jobs, and at the same time enable them to fulfil their responsibilities as mothers.”²²³ In speaking about maternity leave during his Budget 2011 speech, the former Prime Minister stated, “The Government is concerned with the career prospects and welfare of female civil servants as they need to take care of their families.”²²⁴ The government has yet to make any statements encouraging fathers to seek flexible working arrangements so that care of families can be shared by both parents. The government has not mentioned low wages either, which make it impossible for women or men to work part time, and in fact necessitating that many work over time.

Unfortunately, there have been many instances in which Malaysian politicians have made highly derogatory comments about women, both inside and outside of Parliament. Although it may be seen that these sexist comments are made by wayward individuals, the lack of reprimand after such comments indicates a broader systemic sexist mindset, and creates a hostile political environment for women.²²⁵

In the case of Malaysia, women who are transgender, or who identify as lesbian or bisexual, face discrimination in many areas of their lives based on their sexual orientation and gender identity. As an example of such discrimination, in November 2011, the Malaysian police banned a festival called Seksualiti Merdeka (sexuality independence). Until the ban, Seksualiti Merdeka was held annually since 2008 and it provided a safe space for all people of diverse sexual orientations and gender identities to come together to share knowledge about human rights. Government Ministers made comments inciting hatred, including claiming that the festival was attempting to promote “animal” culture²²⁶ and the then deputy Prime Minister alleged that it was “deviationist”.²²⁷ Subsequently, a Member of Parliament called for the creation of homosexual rehabilitation centres.²²⁸

State-level *Syariah* laws continue to reinforce gender stereotypes. *Syariah* laws criminalise women in same-sex relationships and also criminalises ‘cross-dressing,’ and these provisions are used to arrest and harass transgender people.

223 “Flexi-hours will encourage more women to contribute, says Najib.” The Star. 26 August 2010.

224 “Female civil servants can take up to 90 days maternity leave.” The Star. 16 October 2010.

225 See the chapter in this report on Article 5 of CEDAW for more details.

226 “Seksualiti Merdeka 2011 cuba promosi budaya ‘binatang’ – Ibrahim Ali.” Utusan Malaysia. 3 November 2011.

227 “‘Seksualiti Merdeka’ programme a deviationist activity – Muhyiddin.” New Straits Times. 3 November 2011.

228 “Call to establish homosexual rehab centre.” The Sun. 22 March 2012.

Paragraph 18 of the 2006 Concluding Comments

The Committee encourages the State party to take sustained measures, including temporary special measures in accordance with article 4, paragraph 1, of the Convention and the Committee's general recommendation 25, and to establish concrete goals and timetables so as to accelerate the increase in the representation of women, in elected and appointed bodies in all areas of public life, including at the international level.

Women's representation **in Parliament and Cabinet remains low**. In 2016, 24 out of 222 seats (10.8%) in the House of Representatives (Dewan Rakyat) were filled by women.^{229,230} In 2016, only three out of 34 cabinet ministers²³¹ (8.8%) and six out of 34 deputy ministers (17.6%) were women.²³² The number of women judges in the Federal Court remains low at three out of 11 (27%).²³³

The Tenth Malaysia Plan (for 2011-2015) was vague about the government's efforts to increase the participation of women in decision-making positions, stating that the government would "increase its efforts to achieve a quota of at least 30% of decision-making positions to be held by women during the Plan period."²³⁴

In the Eleventh Malaysia Plan, the 30% target was extended to 2020.²³⁵ Strategy B3 of the Plan provides for "Back to work" programmes expanded through collaboration with the private sector, the improvement of the collection of gender disaggregated data by various ministries and agencies. Ultimately, however, the issue only comes up very briefly in one short section in the Plan.²³⁶

In its Report, the government states that women held 32.5% of decision-making positions in the public sector; however, whether the target has actually been reached

229 In 2013 this percentage was 10.4% and in 2008 it was also 10.4%.

230 In 2016, 13 out of a total of 64 (20.3%) appointed Senators in the Dewan Negara were women. In 2014, this percentage was 25.8%.

231 Since 1957, there have never been more than three women Ministers in Cabinet at one time.

232 Ministry of Women, Family and Community Development, *Statistics on Women, Family and Community 2016*, page 102

233 12 out of 26 (46%) Court of Appeal judges are women, while 27 out of 63 (43%) High Court judges are women (See Official Website of the Office of the Chief Registrar Federal Court of Malaysia. Available at: <http://www.kehakiman.gov.my/node/1637>)

234 *Tenth Malaysia Plan 2011-2015*, page 181.

235 "We're on track." The Star. 20 Nov 2016. Available at: <https://www.pressreader.com/malaysia/the-star-malaysia/20161120/281797103586072>

236 *Eleventh Malaysia Plan 2016-2020*, page 89

depends on what positions constitute decision-making positions.²³⁷ In 2016, there were six women Ministry Secretary Generals out of a total of 24 (25%), 12 women Ministry Deputy Secretary Generals out of 58 (20.7%), five women Directors General, Directors and General Managers of Statutory Bodies, out of 38 (13.2%), and 19 women Director Generals in Federal Departments, out of 111 (17.1%), in total amounting to only 18.1% of decision-making positions in the public sector.²³⁸

Paragraph 18 of the 2006 Concluding Comments cont'd

The Committee invites the State party to also encourage political parties to use quotas.

The Malaysian government has not encouraged political parties to use quotas. Only two political parties have inserted into their constitutions a commitment to having 30% of decision making positions to be filled by women. This commitment was made, in June 2009, by opposition party, Parti Keadilan Rakyat (PKR),²³⁹ and, in 2014, by opposition party, Democratic Action Party (DAP).²⁴⁰

The Selangor State Government, which is currently governed by the opposition coalition, has also committed in 2017 to constantly moving towards 30% women as policy-makers at all levels. Currently, 41% of the Senior Officers in the State Government are women.²⁴¹

Paragraph 18 of the 2006 Concluding Comments cont'd

[The Committee] recommends that the State party conduct training programmes on leadership and negotiation skills for current and future women leaders.

It also encourages the State party to take measures that will lead to an increase in the number of women at the decision-making level in private

237 In 2016, there were six women Ministry Secretary Generals out of a total of 24 (25%), 12 women Ministry Deputy Secretary Generals out of 58 (20.7%), five women Directors General, Directors and General Managers of Statutory Bodies, out of 38 (13.2%), and 19 women Director Generals in Federal Departments, out of 111 (17.1%), in total amounting to only 18.1% of decision-making positions in the public sector. (See Ministry of Women, Family and Community Development, *Statistics on Women, Family and Community 2016*, page 86.)

238 Ministry of Women, Family and Community Development, *Statistics on Women, Family and Community 2016*, page 86.

239 "PKR: Clearer policy needed on gender representation." The Nut Graph. 16 June 2009.

240 "Why I support the women quota and more." DAPMalaysia.org. 23 December 2014. Available at: <https://dapmalaysia.org/en/statements/2014/12/23/19807/>

241 "Selangor leads in appreciation of women." Selangorkini. March 8 2017. Available at: <https://selangorkini.my/en/2017/03/selangor-leads-in-appreciation-of-women/>

sector organizations.

It further urges the State party to undertake awareness-raising about the importance of women's participation in decision-making processes at all levels of society.

The Tenth Malaysia Plan recognises women's low level of representation in the private sphere and states that, "in the private sector, women accounted for only 6.1% of Malaysia's corporate directors and 7.0% of CEOs in Bursa Malaysia's largest 100 companies in 2008. From 2005 to 2009, female board representation in GLCs has maintained between 11.0-14.0%."²⁴²

On 27 June 2011, the then Prime Minister announced that within five years, at least 30% of decision making positions in the private sector (on the boards of companies) should comprise women.²⁴³ However, this was followed by a clarification by the then Prime Minister, who said in response to critics of the plan, "This is not a quota but a target."²⁴⁴ In a positive move, however, the Malaysian Securities Commission subsequently announced that public-listed companies, as well as businesses seeking public listing, would have to declare how they would achieve the 30% quota of women in boardrooms.

In 2015, the then Prime Minister announced the launch of the Malaysian chapter of the 30% Club to achieve its target of tripling the percentage of women on companies' boards to 30% by 2016.²⁴⁵ As of 31 March 2016, 15% of the board of directors of Malaysia's top 100 companies were estimated to be women.²⁴⁶

Paragraph 20 of the 2006 Concluding Comments

The Committee urges the State party to intensify its efforts towards accelerating the achievement of de facto equal opportunities for women with men in the area of employment through, inter alia, the use of temporary special measures in accordance with article 4, paragraph 1, of the Convention, and general recommendation 25.

242 *Tenth Malaysia Plan 2011-2015*, page 179.

243 "PM: 30% of corporate decision-makers must be women." *The Star*. 27 June 2011.

244 "Women smart partners." *The Star*. 26 August 2011.

245 "PM launches '30% Club' in bid to triple number of women on boards." *Malay Mail Online*. 8 May 2015. Available at: <http://www.themalaymailonline.com/malaysia/article/pm-launches-30-club-in-bid-to-triple-number-of-women-in-boards#sthash.d1lgrWu.dpuf>

246 "15% of board directors on Malaysia's top 100 companies are women." *The Star Online*. 14 May 2016. Available at: <http://www.thestar.com.my/business/business-news/2016/05/14/15pct-of-board-directors-on-malaysia-top-100-companies-are-women/#MyvftxDCHSAzHQe1.99>

The Committee recommends that monitoring measures be introduced to ensure effective implementation of efforts to promote change concerning the stereotypical expectations of women’s roles and the equal sharing of domestic and family responsibilities between women and men, including by making the flexible work arrangements envisaged in the Ninth Malaysia Plan equally available to women and men.

As noted above, the government has made announcements about establishing quotas of 30% for women in decision making positions in public and private sectors. With regards to the field of employment, and again as noted above, government rhetoric surrounding women in the workforce reinforces the stereotypical expectations of women as homemakers and care-givers for children. In August 2010, the then Prime Minister commented that employers should have more flexible options for women wishing to work, including allowing working from home.²⁴⁷ In December 2010, then Deputy Prime Minister Muhyiddin Yassin said, “There are plans to introduce part-time work regulations under the Employment Act 1955 while we are also looking into arrangements to enable women to work from home and engage in part-time or flexi-time options.” He also said women worldwide are “still occupying low-productivity, low-paid and vulnerable jobs” and he did not want Malaysian women to fall into this category.²⁴⁸

Although promoting part-time work may increase women’s participation in the workforce, it would be preferable to promote flexible working options for parents, rather than just mothers, so that men and women can share the responsibilities of child-raising. Promoting part-time and home-based work for women only maintains the stereotype of women being the primary care-givers and homemakers, and also poses the risk of women being stuck in low-paid and vulnerable jobs.

In 2007, subsidies for childcare were provided to public servants whose household income was less than RM2,000 per month. The subsidies came to RM180 per child. In 2009, this policy was extended and public servants whose household income was under RM3,000 were also included in the subsidy program.²⁴⁹ It was reported that, in 2009, tax relief was offered by the government as an incentive for companies to set up centres.²⁵⁰ Some corporations have established childcare centres at the workplace, however recent reports have indicated that they are few in number.²⁵¹

Much of the government rhetoric about childcare centres focuses on the function of the

247 “Flexi-hours will encourage more women to contribute, says Najib.” The Star. 26 August 2010.

248 “Govt targeting bigger women workforce by 2015, says DPM.” The Star. 9 December 2010.

249 Cecilia Ng (2011) *Gender and Rights: Analysis for Action*. Good Governance and Gender Equality Society, Penang (3Gs) and Women’s Development Research Centre (KANITA) Universiti Sains Malaysia, page 24.

250 “Set up childcare support system fast.” New Straits Times. 10 March 2012.

251 “Childcare centres at workplaces find few takers.” The Star. 6 February 2012.

centres as supporting *mothers*, rather than working *parents*.

The number of registered childcare centres has declined since 2012, from 1,099 new and renewal registrations in 2012, to 1,077 in 2013, to 460 as of October 2014.²⁵²

In 2015, the Ministry of Women, Family, and Community Development announced its plan to assist day-care centres in registering and obtaining licences, as some centres face difficulties due to the extensive documentation required and high costs of registration.²⁵³

Paragraph 22 of the 2006 Concluding Comments

The Committee requests the State party to enact legislation criminalizing marital rape, defining such rape on the basis of lack of consent of the wife.

The Penal Code does not recognise rape within marriage as a crime. The Penal Code explicitly permits husbands to rape their wives, with an exception to section 375:

“Exception—Sexual intercourse by a man with his own wife by a marriage which is valid under any written law for the time being in force, or is recognized in Malaysia as valid, is not rape.”

In 2006, the Penal Code was amended and the concept of causing potential or actual harm in order to have sexual intercourse within marriage was introduced into the legislation. This amendment is problematic as the definition of this crime is based on hurt or fear of hurt, rather than the act of rape. However, rape can occur without hurt or fear of hurt, for example through intoxication and other forms of coercion. The new section 375A of the Penal Code states,

“Any man who during the subsistence of a valid marriage causes hurt or fear of death or hurt to his wife or any other person in order to have sexual intercourse with his wife shall be punished with imprisonment for a term which may extend to five years.”

The penalty for causing “hurt or fear of death or hurt” within marriage (maximum of five years’ jail) is much less than the penalty for rape (between five and 20 years’ jail and whipping). Section 376 of the Penal Code gives the penalty for rape:

252 KPWKM (2014). *Buku Statistik 2014*. Available at: <http://www.kpwkm.gov.my/kpwkm/uploads/files/Penerbitan/Buku%20statistik/BUKU%20STATISTIK%202014%20KPWKM.pdf>

253 “KPWKM aims to increase number of registered childcare centers.” The Sun Daily. 21 March 2015. Available at: <http://www.thesundaily.my/news/1361240>

“Whoever commits rape shall be punished with imprisonment for a term of not less than five years and not more than twenty years, and shall also be liable to whipping.”

In its 2006 appearance before the CEDAW Committee, a Malaysian government representative stated that,

“the Parliamentary Select Committee had concluded that marital rape could not be made an offence, as that would be inconsistent with *Syariah* law. As a compromise, the Select Committee had proposed that hurting or threatening to hurt a wife in order to compel her to have relations would constitute an offence.”²⁵⁴

Paragraph 24 of the 2006 Concluding Comments

The Committee urges the State party to consider ratifying the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children Supplementary to the United Nations Convention against Transnational Organized Crime and to intensify its efforts to combat all forms of trafficking in women and girls, including by enacting specific and comprehensive legislation on the phenomenon.

The Committee further calls upon the State party to increase its efforts at international, regional and bilateral cooperation with countries of origin and transit so as to address more effectively the causes of trafficking, and improve prevention of trafficking through information exchange.

In February 2009, Malaysia acceded to the “Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime” with a reservation.

In July 2007, the Anti-Trafficking in Persons Act was gazetted and came into force in February 2008. This law stipulates penalties for trafficking, outlines the functions of the Council for Anti-Trafficking in Persons, and the way in which victims of trafficking are to be protected.

In 2010, amendments were made to the Anti-Trafficking in Persons Act. The main change in the law was the inclusion of ‘smuggled migrants,’ and so the act subsequently became

254 *Committee on the Elimination of Discrimination against Women, Summary Record of the 731st Meeting held on 24 May 2006 at 3pm, para 54 (CEDAW/C/SR.732)*

the Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007 (ATIPSOM). This move received much criticism, including by the national human rights institution, SUHAKAM, which noted its concern over the conflation of smuggled migrants and trafficked persons.²⁵⁵

Refugees can fall into the category of ‘smuggled migrants’ so, under the ATIPSOM, may be deported. Human Rights Watch noted its concern about these amendments and stated that they “reduce protections for both groups [trafficking victims and migrants].”²⁵⁶

Civil society groups have further significant concerns with the ATIPSOM, including but not limited to the following:

- The 2010 amendments **narrowed the definition of trafficking in the ATIPSOM.**²⁵⁷ The new definition of trafficking in persons, which focuses on coercion, is inconsistent with the definition provided in the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.²⁵⁸ The definition in the protocol is extensive and includes the irrelevance of the consent of the victim.

- Section 51 of the ATIPSOM provides that a foreign victim of trafficking will be placed in a place of refuge for up to three months before being handed over to the immigration department for “necessary action”, i.e. repatriation. In practice, the

255 SUHAKAM Annual Report 2010, page 14.

256 Human Rights Watch, *World Report 2011: Events of 2010*, page 332.

257 Original definition in 2007: “‘trafficked person’ means any person who is the victim or object of an act of trafficking in persons”
Amended definition in 2010: “‘trafficking in persons’ means all actions involved in acquiring or maintaining the labour or services of a person through coercion, and includes the act of recruiting, conveying, transferring, harbouring, providing or receiving a person for the purposes of this Act.”

258 Article 3 of the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime states:

(a) “Trafficking in persons” shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;

(b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;

(c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered “trafficking in persons” even if this does not involve any of the means set forth in subparagraph (a) of this article;

(d) “Child” shall mean any person under eighteen years of age.

shelters in which trafficking victims are housed resemble detention centres.²⁵⁹

- The inclusion of smuggled migrants into the law originally enacted to deal with trafficking conflates two distinct problems, the human rights abuse of human trafficking and the immigration law breach of 'illegal' migrants.

The Act set up a council on trafficking – the Council for Anti-Trafficking in Persons and Anti-Smuggling of Migrants (MAPO). Criticisms of MAPO includes that it does not contain enough people of sufficient expertise, lacks understanding of the issues, lacks effective coordination between agencies, and lacks resources and funding, which is indicative of a lack of political will.

Further amendments to the ATIPSOM were passed in July 2015. These amendments ensure that labour trafficking survivors are able to move freely and work while their trial is ongoing, and allow courts to order convicted traffickers to pay financial compensation to trafficking survivors. The amendments allow trafficking survivors to remain in Malaysia if they are employed and have valid documents.

Since 2010, Malaysia has been on the Tier 2 Watch List in the US State Department's Trafficking in Persons Report. Malaysia dropped to Tier 3 in 2014, as it was "not making significant efforts to comply with minimum standards."²⁶⁰ In 2015, Malaysia was again placed on the Tier 2 Watch List, as it did not meet the minimum standards to end trafficking, but was "making significant efforts to do so." These efforts included the Government of Malaysia and civil society organizations jointly drafting and proposing amendments to strengthen Malaysia's trafficking in persons legislation.²⁶¹ However, civil society organisations such as SUARAM (Suara Rakyat Malaysia) questioned why Malaysia was not again downgraded to Tier 3, given the 2015 discovery of mass graves along the Malaysia-Thailand border and the lack of convictions of traffickers or enforcement officials.²⁶²

According to the US State Department's 2016 Trafficking in Persons Report, Malaysia remains on the Tier 2 Watch List as "the government did not demonstrate overall increasing anti-trafficking efforts compared to the previous reporting period."²⁶³ Despite the fact that additional anti-trafficking police officers and deputy public prosecutors specialised in human trafficking were added, corruption by enforcement authorities is still a problem and has not been adequately addressed. The government has reported no prosecutions or convictions of Malaysian authorities involved in trafficking related

259 Human Rights Watch, *World Report 2011: Events of 2010*, page 332.

260 US Department of State, *Trafficking in Persons Report 2014*, page 260.

261 US Department of State, *Trafficking in Persons Report 2015*, page 234.

262 SUARAM, "Malaysia Human Rights Report: Civil & Political Rights 2016," 2016, page 39-40.

263 US Department of State, *Trafficking in Persons Report 2016*, page 255.

to the 2015 discovery of mass graves and trafficking camps near the Thai border.²⁶⁴ All police officers initially arrested have been released.²⁶⁵

Government immigration fees continue to be deducted from migrant workers' salaries as this is legally allowed in Malaysia. Passport retention by employers, both authorised and unauthorised, remains a problem.²⁶⁶

Paragraph 24 of the 2006 Concluding Comments cont'd

The Committee urges the State party to collect and analyse data from the police and international sources, prosecute and punish traffickers, and ensure the protection of the human rights of trafficked women and girls.

The Committee urges the State party to ensure that trafficked women and girls are not punished for violations of immigration laws and have adequate support to be in a position to provide testimony against their traffickers.

The publicly available statistics on trafficking are:

- In 2016, there were 33 individuals convicted under the ATIPSOM, which is an increase in trafficking convictions compared to previous years.²⁶⁷ In 2014, only three individuals were convicted for trafficking crimes. In 2015, seven individuals were convicted, five for sex trafficking and two for labour trafficking.²⁶⁸
- Between January and December 2016, 1,130 trafficking victims were provided protection at shelters in Malaysia. According to then Deputy Prime Minister and Home Minister Dr. Ahmad Zahid, most trafficking victims were women. 16 trafficking victims were allowed to travel freely in Malaysia and ten victims were allowed to work while their trials were ongoing.²⁶⁹
- Eighteen employers were convicted during 2016 for illegally withholding workers' passports under the Passport Act.²⁷⁰

In 2016, there were 403 cases of human trafficking prosecuted in court, according to a

264 Ibid.

265 "12 cops held over Wang Kelian human trafficking case freed." Free Malaysia Today. 20 March 2017.

266 US Department of State, *Trafficking in Persons Report 2016*, page 255.

267 "Malaysia committed to combating human trafficking." The Star Online. 9 February 2017.

268 US Department of State, *Trafficking in Persons Report 2016*, page 256.

269 "Malaysia committed to combating human trafficking." The Star Online. 9 February 2017.

270 Ibid.

statement made by Khalid Abu Bakar, the Malaysian Inspector General of Police.²⁷¹ Abu Bakar reported that,

“Last year, our Department of Labour conducted almost 24,000 inspections related to trafficked persons, leading to 3,994 recorded violations of human trafficking laws. Of those, 19,463 were referred to Labour Court, and there was USD 4.5 million in employer paybacks for illegal labor activities.”²⁷²

He claimed that 41 immigration officers and one police officer were “arrested, reprimanded, or facing disciplinary action for involvement in human trafficking activities.”²⁷³ However, the government did not disclose how many enforcement officers have been prosecuted for trafficking offenses. The large number of prosecutions, but low number of convictions indicates that many human traffickers and authorities complicit in trafficking crimes are not being held to justice.

The reporting of trafficking in government-controlled media displays a concerning level of ignorance about the issue. A news report from August 2010 stated that “Many of the foreigners rescued in Malaysia on suspicion of being victims of human trafficking turned out to be people who came to work as prostitutes.”²⁷⁴ Often, it is the case that women are brought to Malaysia under false pretences and, after they arrive, are forced into prostitution. The 2010 US Department of State Report on trafficking in persons notes that,

“A significant number of young women are recruited for work in Malaysian restaurants and hotels, some of whom migrate through the use of “Guest Relations Officer” visas, but subsequently are coerced into Malaysia’s commercial sex trade.”²⁷⁵

During the course of investigations, identified victims of trafficking are forcibly placed in shelters run by the Ministry of Women, Family and Community Development until they are repatriated to their country of origin.

Trafficking survivors have informed the NGO Tenaganita that overcrowding and the protracted length of trafficking cases are issues in the government shelters, and lead to a lack of resources, such as medical and mental health care, for trafficking survivors.

271 Khalid Abu Bakar, “Fighting Human Trafficking in Malaysia.” *The Hill*. 5 March 2017. Available at: <http://thehill.com/blogs/congress-blog/foreign-policy/322307-fighting-human-trafficking-in-malaysia>

272 Ibid.

273 Ibid.

274 “Bulk of those trafficked are sex workers.” *New Straits Times*. 8 August 2010.

275 US Department of State, *Trafficking in Persons Report 2010*, page 223.

Observers have noted that in these shelters, basic rights and freedoms are denied and some victims are “isolated, unable to work or earn income, and have little or no access to legal or psychological assistance provided by the government or NGOs...and these facilities did not employ medical officers or trained psychologists.”²⁷⁶

Tenaganita has been informed that, in Sarawak, victims of trafficking are handcuffed and housed in prisons and treated as the other prisoners.

The then Deputy Home Minister Wira Abu Seman Yusop was reported to have said, “Victims are fully protected in the shelter homes, where they receive counselling services and basic vocational training, such as sewing and craft- making... Foreign nationals will then be repatriated to their home country.”²⁷⁷

The US Department of State Trafficking in Persons Report 2011 noted its concern that,

“Poor investigation procedures did not take into account the best interests of victims, as under the current system, victims could be asked to recount their trafficking experience on up to seven different occasions to different officials. During trial proceedings, authorities did not make adequate efforts to separate victims from their traffickers or recruitment agents, which may have resulted in threats or pressure exerted on victims and their families if they cooperated with police and prosecutors.”²⁷⁸

Paragraph 26 of the 2006 Concluding Comments

The Committee urges the State party to enact comprehensive laws and establish procedures to safeguard the rights of migrant workers, including migrant domestic workers.

The Malaysian government does not recognise domestic work as work.

At the 99th Session of the International Labour Conference (ILC) in Geneva in 2010, in relation to the Convention concerning decent work for domestic workers (C189),²⁷⁹ the Malaysian Government was amongst the minority of voters and governments who would only support a Recommendation and not a Convention. Malaysia’s response to the proposed Convention was reported in ILO’s Report IV(2A) Decent Work for Domestic

276 US Department of State, *Trafficking in Persons Report 2011*, page 245.

277 “Turning the corner.” The Star. 11 July 2010.

278 US Department of State, *Trafficking in Persons Report 2011*, page 245.

279 ILO, *Domestic Worker’s Convention 2011*. Available at: http://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100_ILO_CODE:C189

Workers, in which the Malaysian government observed that “Domestic work is not seen as ordinary employment,”²⁸⁰ and that in relation to the proposed Article 10(3) concerning hours of work, “Domestic workers cannot be equated to other workers in general.”²⁸¹ Despite intense lobbying in Malaysia and at the 100th Session of the ILC by civil society organisations, held in Geneva in 2011, Malaysia abstained from voting to adopt the Convention.²⁸²

Migrant domestic workers do not receive the legal protection afforded to other workers. Malaysia’s Employment Act 1955 explicitly denies domestic workers the same rights as other workers. The Employment Act contains specific labour protections concerning leave and entitlements, however, the First Schedule of the Employment Act specifically excludes domestic workers from being covered by the following provisions:

- Maternity protections, including leave and allowance entitlements²⁸³ (furthermore, employment contracts prohibit pregnancy),
- One rest day per week,²⁸⁴
- Provisions limiting hours of work, including specifying that employees should not work more than five consecutive hours without a period of leisure of not less than thirty minutes and employees should not work for more than 48 hours in one week,²⁸⁵
- Paid public holidays,²⁸⁶
- Annual leave entitlements,²⁸⁷
- Sick leave,²⁸⁸ and
- Termination, lay-off and retirement benefits.²⁸⁹

280 ILO, *Report IV(2A) Decent Work for Domestic Workers*, page 6 Available at: http://www.ilo.org/ilc/ILCSessions/100thSession/reports/reports-submitted/WCMS_151864/lang-en/index.htm

281 ILO *Report IV(2A) Decent Work for Domestic Workers*, page 40 Available at: <http://www.ilo.org>

282 Migration Working Groups issued a press statement urging the Malaysian government to adopt the C189 Convention at the 100th ILC. (See: “We must vote for migrant workers’ rights at UN.” Malaysiakini. 31 May 2011. Available at: <https://www.malaysiakini.com/letters/165594>) -

283 Maternity protections are covered under Part IX of the Employment Act 1955. Domestic workers are explicitly excluded.

284 Rest days are covered in Section 59, Part XII of the Employment Act 1955. Domestic workers are explicitly excluded.

285 Hours of work are covered in Section 60A, Part XII of the Employment Act 1955. Domestic workers are explicitly excluded.

286 Holidays are covered in Section 60D, Part XII of the Employment Act 1955. Domestic workers are explicitly excluded.

287 Annual leave is covered in Section 60E, Part XII of the Employment Act 1955. Domestic workers are explicitly excluded.

288 Sick leave is covered in Section 60F, Part XII of the Employment Act 1955. Domestic workers are explicitly excluded.

289 Termination, lay-off and retirement benefits are covered under Part XIIA of the Employment Act 1955. Domestic workers are explicitly excluded.

Notice of contract termination for employees under the Employment Act takes into account the length of time in service and can extend from four to eight weeks.²⁹⁰ Domestic workers are excluded from these notice periods and for them, there is a blanket 14-day period of notice of termination, regardless of length of employment.²⁹¹

Malaysia's Workmen's Compensation Act 1952 also excludes "domestic servants" from the list of occupations which fall under the category "workman", therefore leaving domestic workers without recourse to compensation for injury suffered in the course of their employment.

In May 2014, the Domestic Workers Campaign Coalition, made up of eight civil society organisations, submitted recommendations to the Ministry of Human Resources regarding the Regulations.²⁹² The Coalition's recommendations directly responded to the labour rights violations and physical and mental abuse faced by many domestic workers. Among other abuses, the Coalition reported:

- "Many domestic workers have experienced unimaginable physical and mental ill-treatments, from scalding with hot water and beatings with electrical wires, to harassment, psychological abuse, and sexual assault.
- Most domestic workers are never granted a day off and many are requested to be at the beck and call of their employers 24 hours a day.
- They are also frequently prevented from communicating with family and friends, from associating and unionizing, as well as from moving freely outside their working hours. In far too many cases, they are also completely locked in the household for days, months, or years.
- Withholding of passports, withholding of wages, and denial of communication with the outside world significantly heightens the vulnerability of domestic workers. As abusive employers cancel, or threaten to cancel work permits, the risk of being arrested, detained and eventually deported for being

290 Length of notice required for terminations of contracts is covered under Section 12 of the Employment Act 1955.

291 Section 57 of the Employment Act has a separate section outlining the length of notice to terminate a contract specifically for "domestic servants": "*Subject to any express provision to the contrary contained therein, a contract to employ and to serve as a domestic servant may be terminated either by the person employing the domestic servant or by the domestic servant giving the other party fourteen days' notice of his intention to terminate the contract, or by the paying of an indemnity equivalent to the wages which the domestic servant would have earned in fourteen days: Provided that any such contract may be terminated by either party without notice and without the paying of an indemnity on the ground of conduct by the other party inconsistent with the terms and conditions of the contract.*"

292 Domestic Workers Campaign Coalition, *Response and Recommendations to the Draft 'Regulations (Terms & Conditions of Employment) of Domestic Servants 2014,'* 20 May 2014.

‘undocumented’/‘illegal’, keeps domestic workers from seeking help.”²⁹³

In 2006, Malaysia and Indonesia signed a Memorandum of Understanding (MoU) to formalise the recruitment of domestic workers from Indonesia to Malaysia. However in 2009, due to a string of horrific abuse cases of Indonesian domestic workers, the Indonesia government imposed a ban on the recruitment of its nationals as domestic workers. Bans are ineffective and counter-productive, as the demand for domestic workers remains high due to the need of Malaysian women to work to supplement the family income, due to increasing costs of living. Further, there are very few or no alternative arrangements for child care in work places and informal childcare is very costly. Recruiters and employers then resort to bringing in Indonesian women (and other nationalities) on JP visas (Journey Performed), wherein a recruiter or an employer goes to the source country to bring an Indonesian woman into Malaysia on a social visa and, thereafter, converts the visa to a worker permit. This practice leaves employers and domestic workers vulnerable to high costs, long waiting periods for the conversion of the permit, and, often, fraud by agents.²⁹⁴

While the MoU with Indonesia was revisited and amended in 2011, employers are still able to hold domestic workers’ passports with their consent “for safekeeping.” In practice, domestic workers do not have adequate knowledge of the law to prevent employers or agents from taking their passports, which is still common practice.

The Migration Working Group (MWG), a civil society coalition, recorded cases of women from Indonesia, Sri Lanka, and India being brought into Malaysia as domestic workers with social visas, which expire within 30 days of the date of arrival. The domestic workers are made to work long hours with little or no pay to purportedly pay the agents to convert the visas to work permits, which most of the time they are unsuccessful in doing.

In the Malaysian government’s Universal Periodic Review session in 2009, the government supported both Nepal’s recommendation to “Continue its efforts for the protection of the rights of foreign workers, and enhance their safety and welfare through institutional arrangements,”²⁹⁵ and Bangladesh’s recommendation to “Continue its effort to protect the rights and interests of foreign workers.”²⁹⁶ The Malaysian government did not support South Africa’s recommendation “That comprehensive protection is accorded to all migrant workers, including access to essential services like education, health and housing.”²⁹⁷

293 Domestic Workers Campaign Coalition, *Response and Recommendations to the Draft ‘Regulations (Terms & Conditions of Employment) of Domestic Servants 2014,’* 20 May 2014, page 2-3.

294 “Papa: Don’t hire maids brought in using JP visa.” The Star Online. 15 Jan 2014/ Available at: <http://www.thestar.com.my/news/nation/2014/01/15/papa-dont-hire-maids-brought-in-using-jp-visa/>

295 Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Malaysia*, 5 October 2009, para 104, recommendation 50 (A/HRC/11/30*)

296 Ibid.

297 Ibid, para 84 (b).

Paragraph 26 of the 2006 Concluding Comments *cont'd*

The Committee calls upon the State party to provide migrant workers viable avenues of redress against abuse by employers and permit them to stay in the country while seeking redress. The Committee further urges the State party to make migrant workers aware of such rights.

Domestic workers are placed in an extremely difficult position if they become involved in a dispute with their former employer. Migrant domestic workers are only eligible for monthly visas which require a payment of RM100 per renewal during the dispute, which may drag on for an extended period. They are also not permitted to work while they are in the dispute to seek redress.

Migrant domestic workers are often contractually obliged to leave their jobs when they become pregnant. They also cannot marry during the course of their employment. Employment visas are usually connected to the employer, which means that an Indonesian worker would need to return to Indonesia before changing employers in Malaysia.

Paragraph 28 of the 2006 Concluding Comments

The Committee recommends that the State party adopt laws and regulations relating to the status of asylum-seekers and refugees in Malaysia, in line with international standards, in order to ensure protection for asylum-seekers and refugee women and their children.

The Committee further recommends that the State party fully integrate a gender-sensitive approach throughout the process of granting asylum/refugee status, in close cooperation with appropriate international agencies in the field of refugee protection, in particular the Office of the High Commissioner for Refugees.

The Malaysian government has not signed the UN Refugee Convention and there are no laws protecting the rights of refugees and asylum seekers in the country. Refugees and asylum seekers are considered to be the same as any other migrant. There is no procedure through which individuals may seek asylum from the Malaysian government. Refugees are able to enter Malaysia on tourist visas, which vary in length of validity, but which often last for up to three months. Refugees without documentation or those who overstay these tourist visas are treated as undocumented migrants and are at risk of being placed in immigration detention centres. The Malaysian government permits the UNHCR to register asylum seekers in Malaysia and to carry out a process of refugee status determination. Individuals who meet the definition of “refugee” under the Convention Relating to the Status of Refugees 1951 are recognised as refugees by the UNHCR and provided with a UNHCR card. This card provides limited protection from arrest and

enables card-holders to receive a 50% discount in public hospitals.

News reports have stated that the Deputy Foreign Minister explicitly “said as there were no special laws for refugees in this country, issues involving them came under the Immigration Act 1959/63 and that refugees were considered as illegal immigrants.”²⁹⁸

Government rhetoric about refugees is often disturbing and points to a deep lack of understanding of basic human rights principles. The Deputy Foreign Minister A. Kohilan Pillay is reported to have said that Malaysia works with other agencies to “repatriate refugees to their countries of origin” or relocate them to a third country.²⁹⁹ Refugees are individuals unable to return to their countries of origin owing to a well-founded fear of persecution.

According to the principle of *non-refoulement* in customary international law, Malaysia has an obligation to not send refugees back to a country in which they are likely to be persecuted even though it has not signed the Refugee Convention. Malaysia has failed to comply with the principle of *non-refoulement* despite assertions to the contrary in their Responses to the CEDAW Committee’s Concluding Comments on Malaysia’s Initial and Second Periodic Report.³⁰⁰ Refugee and asylum seeker women have been deported as recently as 2017, many from immigration detention centres.³⁰¹

At the end of January 2017, there were 150,430 refugees and asylum-seekers registered with the United Nations High Commissioner for Refugees (UNHCR) in Malaysia. Approximately 32% of these are women.³⁰²

As noted by the UNHCR, refugee women face “specific forms of abuse and violence which impact on them more severely than on men. They face harassment, offers of assistance in exchange for sex.”

298 “Over 90,000 refugees in Malaysia.” Malay Mail. 11 November 2010

299 “More than 90,000 refugees in Malaysia.” New Straits Times. 11 November 2010.

300 CEDAW, : *Responses to the CEDAW Committee’s Concluding Comments on Malaysia’s Initial and Second Periodic Report*, 17 October 2016, page 20 (CEDAW/C/MYS/3-5). Available at: http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/MYS/INT_CEDAW_ADR_MYS_25048_E.pdf

301 Asylum Access, an NGO working in Malaysia has received reports from the Arakan Refugee Relief Centre (ARRC) which evidence *refoulement* of individuals from Myanmar. One report was of a woman registered with ARRC who gave birth in a public hospital and was reported to immigration authorities by hospital staff in April 2017. She was detained in immigration detention centre until June 2017 when she and her newborn child were deported to Myanmar. AAM also received reports from the Kachin Refugee Community (KRC) of approximately 15 individuals deported from immigration detention centres between 2014 and 2016. Reports also indicate that refugee and asylum seeker women have been deported from a range of communities including Kachin, Mon, Shan, Karen and Pakistani Ahmadi communities. Many were deported from immigration detention centres and some were pregnant or had just given birth.

302 UNHCR. *Figures at a glance in Malaysia*. Available at: <http://www.unhcr.org/en-my/figures-at-a-glance-in-malaysia.html>

Fear of arrest and maltreatment by the police and RELA (The People's Volunteer Corps) leads to difficulties for refugees and asylum seekers as their freedom of movement is curbed, making obtaining healthcare and education difficult.

The Malaysian Government continues to detain vulnerable groups within the asylum seeker and refugee populations, including women and children, as well as pregnant and lactating women.³⁰³ According to the Ministry of Home Affairs, from 1 January 2015 to 30 September 2015, there were 14,924 women detained in 13 detention centres across the country.³⁰⁴ A report by the Migration Working Group notes that the average period in detention can range from two months to two years.³⁰⁵ There is currently no publicly available disaggregated data on the number of refugee and asylum-seeker women who are in immigration detention centres.

In February 2010, the Malaysian government announced that it was considering allowing refugees and asylum seekers to work legally. This move was reportedly an attempt to deal with worker shortages and boost Malaysia's reputation as a "humane" nation. However, the work which refugees would have been permitted to do only included "odd jobs."³⁰⁶ The Malaysian government has recently launched a pilot labour migration project, to allow 300 Rohingya refugees to legally take up employment opportunities in certain sectors.^{307, 308} No action has been taken since the announcement to confirm whether permitting refugees to work will become government policy.

Paragraph 30 of the 2006 Concluding Comments

The Committee urges the State party to include in its next report, data disaggregated by sex and ethnicity in all areas covered by the Convention and current sex-disaggregated data and information on the de facto position of rural women in all sectors.

There is a continued lack of data disaggregated by gender in Malaysia in areas ranging

303 General Assembly *Human Rights Council, 16th Session: Report of the Working Group on Arbitrary Detention*, 19 January 2011 (A/HRC/16/47/Add.2). Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G11/106/38/PDF/G1110638.pdf?OpenElement>

304 Out of a total of 71,362 irregular migrants detained across this period – Source: Parliamentary reply by the Ministry of Home Affairs to a question posed by MP Ong Kian Ming, Third Parliamentary Session 2015, 20 October 2015. Available at: <http://pardocs.sinarproject.org/documents/2015-october-november-parliamentary-session/oral-questions-soalan-lisan/2015-10-20-parliamentary-replies/soalan-24.pdf>.

305 Migration Working Group, *Recommendations for the National Human Rights Action Plan 2016* (2016), MWG Submission (Refugees).

306 "Government May Allow Refugees to Work." *The Star*. 22 February 2010.

307 "Malaysia mulls opening job market to Rohingya refugees." *World Bulletin*. 17 November 2015. Available at <http://www.worldbulletin.net/todaynews/166421/malaysia-mulls-opening-job-market-to-rohingya-refugees>

308 UNHCR, *UNHCR Lauds Government Work Scheme for Refugees* (2017), available at: https://www.unhcr.org/my/News_Views-@-UNHCR_Lauds_Government_Work_Scheme_For_Refugees.aspx

from prevalence of certain diseases, to the use of contraception, to the incidence of poverty.³⁰⁹

Of note here is the way in which the most recent census was conducted in 2010. Anecdotal evidence suggested that the process involved serious inconsistencies and methodological flaws.³¹⁰ Reports have highlighted that census officers did not ask all of the questions on the form and left blank sections that required codes, as the officers had no knowledge of what these codes were. For accurate and useful data to be collected, so that it can be used for gender analysis and give a true picture of the position of women in the country, these methodological problems need to be addressed.

Paragraph 31 of the 2006 Concluding Comments

The Committee encourages the State party to ratify the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women and to accept, as soon as possible, the amendment to article 20, paragraph 1, of the Convention concerning the meeting time of the Committee.

Malaysia has not ratified the Optional Protocol to CEDAW.

During the Universal Periodic Review of Malaysia in 2009, both Turkey³¹¹ and Lithuania³¹² recommended to the Malaysian government that it ratify the Optional Protocol. The Malaysian government did not support this recommendation.

Malaysia's national human rights institution, SUHAKAM, stated in its 2009 annual report that it was in the process of formulating a proposal to submit to the government about ratifying the Optional Protocol.³¹³ In 2010, SUHAKAM noted that it was "still in discussion with the Ministry to promote and stress the importance of ratifying the Optional Protocol (OP) to CEDAW."³¹⁴

309 Ministry of Women, Family and Community Development, *Statistics on Women, Family and Community 2011*, page 45.

310 "Census: Why wasn't I asked all 51 questions?" New Straits Times. 23 July 2010.

311 Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Malaysia*, 5 October 2009, para 64 (b) (A/HRC/11/30*)

312 Ibid, para 94 (c).

313 SUHAKAM Annual Report 2009, page 50.

314 SUHAKAM Annual Report 2010, page 49.

Paragraph 32 of the 2006 Concluding Comments

The Committee requests the State party to ensure the wide participation of all ministries and public bodies in, and to continue to consult with nongovernmental organizations during, the preparation of its next report. It encourages the State party to involve Parliament in a discussion of the report before its submission to the Committee.

Women's human rights groups attended a meeting in 2009 chaired by the former Secretary General of the Ministry of Women, Family and Community Development about the CEDAW government report. Subsequent to this, there was no further substantive contact with women's groups about the CEDAW government report.

Paragraph 33 of the 2006 Concluding Comments

The Committee urges the State party to utilize fully in its implementation of the obligations under the Convention, the Beijing Declaration and Platform for Action which reinforce the provisions of the Convention, and requests the State party to include information thereon in its next periodic report.

The government's incorporation of this recommendation in its Report is limited to its citation of the Beijing Platform for Action as its basis for its withdrawal of reservations to Articles 2 (f), 9 (1), 16 (1)(b), 16 (1)(d), 16 (1)(e), and 16 (1)(h) in February 1998, and as the basis for the government's emphasis on accelerating the agenda of equality between men and women under Article 4.

Paragraph 34 of the 2006 Concluding Comments

The Committee also emphasizes that a full and effective implementation of the Convention is indispensable for achieving the Millennium Development Goals. It calls for the integration of a gender perspective and the explicit reflection of the provisions of the Convention in all efforts aimed at the achievement of the Millennium Development Goals and requests the State party to include information thereon in its next periodic report.

The government's Report includes only one reference to its MDG 6 target of reduction of malaria from 54.6 cases per 100,000 population (2000) to 10 cases per 100,000 population (2014), a reduction of 82%. The Report does not mention the government's commitment under the Sustainable Development Goals.

Paragraph 35 of the 2006 Concluding Comments

The Committee notes that States' adherence to the seven major international human rights instruments enhances the enjoyment by women of their human rights and fundamental freedom in all aspects of life. Therefore, the Committee encourages the Government of Malaysia to consider ratifying the treaties to which it is not yet a party, namely, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

Malaysia has not ratified these international conventions. The government has not given any indication that ratification is on its agenda. The Malaysian government has only ratified two international conventions in addition to CEDAW: The Convention on the Rights of the Child and the Convention on the Rights of Persons with Disabilities.

Paragraph 36 of the 2006 Concluding Comments

The Committee requests the wide dissemination in Malaysia of the present concluding comments in order to make the people of Malaysia, including government officials, politicians, parliamentarians and women's and human rights organizations, aware of the steps that have been taken to ensure de jure and de facto equality of women, as well as the further steps that are required in that regard.

The Committee requests the State party to continue to disseminate widely, in particular to women's and human-rights organizations, the Convention, the Optional Protocol thereto, the Committee's general recommendations, the Beijing Declaration and Platform for Action and the outcome of the twenty-third special session of the General Assembly, entitled 'Women 2000: gender equality, development and peace for the twenty-first century'.

There has been no significant effort made by the government to disseminate the Convention or the CEDAW Committee's Concluding Comments. However, selected recommendations from the CEDAW Committee are quoted in some government documents, for example the *Measuring and Monitoring Gender Equality: Malaysia's Gender Gap Index* report developed by the UNDP and the Ministry of Women, Family and Community Development. This report is, however, technical in nature and not aimed at public consumption.

CEDAW was mentioned only once in passing in the Tenth Malaysia Plan, which was released in 2010. Without providing further detail, the Tenth Malaysia Plan states that, “The Government will incorporate principles and initiatives on combating gender discrimination as outlined by the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Beijing Platform for Action, Millennium Development Goals (MDGs) and National Women Policy 2009.”³¹⁵ CEDAW is not mentioned in the Eleventh Malaysia Plan.

Paragraph 37 of the 2006 Concluding Comments

The Committee requests the State party to respond to the concerns expressed in the present concluding comments in its next periodic report under article 18 of the Convention. The Committee invites the State party to submit its third periodic report, which was due in August 2004 and its fourth periodic report, which is due in August 2008, in a combined report in 2008.

After a period of 10 years wherein the government did not report to the CEDAW Committee, the government submitted its Third through Fifth Periodic report in September 2016. The report makes no specific mention of the CEDAW Committee’s 2006 Concluding Comments, but only makes mention of its dialogue with the CEDAW Committee in May 2006 which resulted in the removal of Malaysia’s reservations to Articles 5 (a), 7 (b) and 16 (2) of the Convention.

Statements of intent made on recommendations related to women’s rights during the Malaysian government’s examination at the Universal Periodic Review in Cycle 1 (2009) and in Cycle 2 (2013)

Introduction

Malaysia was examined in a Universal Periodic Review (UPR) session in 2009 and 2013. During the two cycles of this peer-review process, Malaysia has received 335 recommendations. Malaysia accepted 212 of these and rejected 104. 19 recommendations were “noted.”

Summary of 2009 review:

In 2009, Malaysia received 103 recommendations and accepted 62 of these. Malaysia “noted” 19 recommendations and rejected outright a further 22. Malaysia reported on

the accepted recommendations in 2013.

Of note is that the recommendations accepted by the Malaysian government were unspecific and vaguely worded. The recommendations rejected by the Malaysian government were either from countries with which diplomatic links are limited, or which are specific and able to be more easily monitored. The following page has selected relevant recommendations pertaining to women's human rights, CEDAW, migrant workers, and refugees given to the Malaysian government during the UPR session.

Summary of 2013 review:

"In 2013, Malaysia accepted 150 recommendations in full, in part and in principle during its second cycle of the Universal Periodic Review, while rejecting 82.

While this may appear impressive, representing 64.66% of the recommendations that were made by UN member states, many of these recommendations were not specific, measurable, attainable, realistic, and time-bound (SMART). Only 64 of the accepted recommendations could actually be described as somewhat measurable, with only 17 of these actually calling for specific actions to be taken by the Government of Malaysia."

2009: Recommendations which enjoy the support of the Malaysian government:

Although in 2009 the Malaysian government noted its support of the following recommendations related to women's rights, during its 2013 UPR review, the government did not elaborate on the steps it had taken, if any, to implement these recommendations.

2009 UPR recommendation which enjoy the support of the Malaysian government - Malaysian government response follows recommendation

- **Algeria:** *Continue to spearhead progress towards gender equality and development for women, in particular by giving due consideration to the recommendations of the Inter-agency Committee coordinated by the Ministry of Women, Family and Development regarding the compliance of Malaysia with the Convention on the Rights of the Child and the Convention on the Elimination of Discrimination Against Women and the withdrawal of its reservations to both conventions.*³¹⁶ No comment made.
- **Ukraine:** *Continue to implement the comments and recommendations*

316 Human Rights Council, Report of the Working Group on the Universal Periodic Review: Malaysia, 5 October 2009, para 104, recommendation 3 (A/HRC/11/30*)

of the Committee on the Elimination of Discrimination against Women and the Committee on the Rights of the Child.³¹⁷ No comment made.

- **Thailand:** *Continue to focus its efforts on ensuring full protection of human rights for all vulnerable groups, one such avenue is through the ongoing rigorous capacity-building programmes that Malaysia has initiated in this area, particularly for public officers.*³¹⁸ “The Government of Malaysia underscores its commitment to continue ensuring the promotion and protection of all human rights in the country, taking into account the needs of the most vulnerable and disadvantaged segments as well as society’s readiness particularly with regard to certain sensitive issues such as religion, race and rights of refugees or undocumented migrants, among others.”

- **Belarus:** *Continue to take measures to protect the rights of women, children and people with disabilities.*³¹⁹ “In line with the CRPD, the Government has in place a National Policy and Plan of Action on PWDs which provides guidance for partners and stakeholders in efforts to further mainstream PWDs. Policy implementation and enforcement of the Persons with Disabilities Act 2008 is spearheaded by the Department for PWDs under MWFCD. A National PWD Council chaired by the Minister for Women, Family and Community Development monitors the implementation of PWD related policies and programmes”.

- **Oman:** *Take all necessary measures and implement all necessary programmes to overcome the obstacles that prevent women’s status from progressing further.*³²⁰ “The Government believes that empowerment of women is closely linked to their ability to earn a decent income and that the independence afforded by income/employment increases women’s ability to assert their rights. In this regard, childcare issues have been identified as among the primary obstacles that hamper women from achieving such independence.”

“Aimed at easing the childcare burden which disproportionately and negatively affects women, the Government has taken significant steps including by: (i) encouraging employers particularly in the public and private sectors to set up more childcare centres; (ii) providing subsidies for child care costs; and (iii) fostering the practice of family-friendly working environment to enhance work-life balance.”

317 Ibid, para 104, recommendation 4.

318 Ibid, para 104, recommendation 8.

319 Ibid, para, recommendation 14.

320 Ibid, para 104, recommendation 17.

- **Kazakhstan:** *Continue to enhance efforts to further improve the status of women to enable them to reach their full potential and contribute towards the social and economic development of the country.*³²¹ “The Government has also executed long-term strategies and programmes since 1989 beginning with the first National Policy on Women which was last updated in 2009. In essence, the policy seeks to ensure women’s equitable share in the acquisition of resources, information, opportunities and in the benefits of development. The policy also emphasises equality and justice in the implementation of development policies so that women can contribute to and realise their potential to the optimum; and the integration of women in all sectors of development in accordance with their capabilities and needs. The Government’s continuous effort in providing maternal and child healthcare, access to family planning services as well as educational opportunities have enabled women to participate and contribute significantly to the nation’s socioeconomic development.”

- **Bangladesh:** *Step up its efforts to enhance women’s participation at the decision making level in both public and private sectors in line with the progress made in women’s education.*³²² “The policy of having women occupy 30 per cent of decision-making positions in the public sector was announced by the Government in 2004. Proactive implementation of this policy has seen the percentage of women holding decision-making positions in the public sector increased to 31.7 per cent in 2012 from 18.8 per cent in 2004. In 2011, the Government announced the policy of at least 30 per cent women in decision-making positions in the corporate sector. The policy aims to increase the number of women holding executive and non-executive director positions (excluding alternate director positions) in companies listed in the Malaysia Stock Exchange to 30 per cent so that by 2016, women will comprise 30% of those holding board positions in these companies.”

- **Viet Nam:** *Continue its positive engagement with neighbouring countries in combating trafficking in persons and explore further ways and means aimed at improving and enhancing protection of victims of domestic violence.*³²³ No comment made.

- **Palestine:** *Continue raising awareness of trafficking in persons and migrant workers, particularly women and children, who are a vulnerable group in the society and deserve all possible help.*³²⁴

- **Nepal:** *Continue its efforts for the protection of the rights of foreign workers, and enhance their safety and welfare through institutional arrangements.*³²⁵ No comment made.

- **Bangladesh:** *Continue its effort to protect the rights and interests of foreign*

321 Ibid, para 104, recommendation 18.

322 Ibid, para 104, recommendation 19.

323 Ibid, para 104, recommendation 29.

324 Ibid, para 104, recommendation 30.

325 Ibid, para 104, recommendation 50.

workers.³²⁶ No comment made.

2013: Recommendations which enjoy the support of the Malaysian government:

2013 UPR recommendation which enjoy the support of the Malaysian government - Malaysian government response follows recommendation

- Lebanon:** *Continue all efforts to promote the rights of women at all levels.*³²⁷ n/a
- Senegal:** *Continue efforts in enhancing the autonomy of women.*³²⁸ n/a
- Ethiopia:** *Continue efforts to empower women and underprivileged segments of the society.*³²⁹ n/a
- Kuwait:** *Launch awareness raising programmes on a national level regarding women.*³³⁰ n/a
- Ethiopia:** *Take necessary measures to increase the percentage of women in decision making positions in private and corporate sectors.*³³¹ n/a
- Bahrain:** *Strengthen and intensify efforts to promote the role of women in society and provide them with equal opportunities in contributing and cooperating in all aspects of life, including policies and national development programmes.*³³² n/a
- Brunei Darussalam:** *Continue strengthening its efforts in safeguarding the rights of women and children.*³³³ n/a
- Singapore:** *Continue to promote gender equality and the empowerment of women.*³³⁴ n/a
- Maldives:** *Continue with its efforts to strengthen the enforcement of law on violence against women and protect the rights of women.*³³⁵ n/a
- Qatar:** *Continue its efforts to implement programmes for the integration of women in*

326 Ibid.

327 Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Malaysia*, 4 December 2013, para 146, recommendation 65 (A/HRC/25/10)

328 Ibid, para 146, recommendation 66.

329 Ibid, para 146, recommendation 67.

330 Ibid, para 146, recommendation 68.

331 Ibid, para 146, recommendation 69.

332 Ibid, para 146, recommendation 70.

333 Ibid, para 146, recommendation 71.

334 Ibid, para 146, recommendation 95.

335 Ibid, para 146, recommendation 128.

*development, and the provision of maternal and child health care.*³³⁶ n/a

- **Cuba:** *Step up its efforts to reduce maternal mortality, including through an increased access to quality family planning*³³⁷.n/a
- **Nigeria:** *Take necessary steps to ensure the accessibility of the sexual and reproductive health services in Government facilities.*³³⁸ n/a
- **Timor-Leste:** *Implement a gender perspective in education at all levels, especially by providing gender-trainings for teachers.*³³⁹ n/a
- **State of Palestine:** *Take necessary measures to implement a gender prospective in education at all levels, including by training teachers.*³⁴⁰ n/a
- **Kyrgyzstan:** *Take the necessary measures to take into account gender aspects at all levels of the educational system, including teachers' training.*³⁴¹ n/a
- **Viet Nam:** *Share its best practices in education and promote the gender perspective at all levels in education and teacher trainings with appropriate measures.*³⁴² n/a
- **Myanmar:** *Share with others its good practices in easing childcare burden which disproportionately affects women.*³⁴³ n/a
- **Benin:** *Take the necessary measures to ensure equal access for all to basic social ser-*

336 Ibid, para 146, recommendation 175.

337 Ibid, para 146, recommendation 181.

338 Ibid, para 146, recommendation 182.

339 Ibid, para 146, recommendation 192.

340 Ibid, para 146, recommendation 194.

341 Ibid, para 146, recommendation 195.

342 Ibid para 146, recommendation 196.

343 Ibid, para 146, recommendation 229.

vices.³⁴⁴ n/a

- **Djibouti:** *Continue the significant progress made in fighting trafficking.*³⁴⁵ n/a
- **Islamic Republic of Iran:** *Enhance its efforts on Anti-trafficking in persons measures.*³⁴⁶ n/a
- **Kazakhstan:** *Continue taking measures on combating trafficking in persons.*³⁴⁷ n/a
- **Egypt:** *Further its national efforts to eradicate trafficking in persons, especially women and children.*³⁴⁸ n/a
- **Belarus:** *Continue with efforts to combat human trafficking, inter alia, consider inviting the Special Rapporteur on trafficking in persons, especially women and children, to the country.*³⁴⁹ n/a
- **Cambodia:** *Continue the efforts and cooperation in combatting trafficking in persons in regional frameworks along with the share of the country's positive experience in this field.*³⁵⁰ n/a
- **Senegal:** *Strengthen methods for combatting trafficking.*³⁵¹ n/a
- **Philippines:** *Enhance measures to implement the CRC and CEDAW, and to combat trafficking in persons, especially women and children, including strengthening cooperation with NGOs in the area of protection of victims of trafficking in persons.*³⁵² n/a
- **United Arab Emirates:** *Continue its efforts to combat trafficking in persons, especially women and children.*³⁵³ n/a
- **Bhutan:** *Continue its efforts in fostering cooperation with its neighbours to address the problem of trafficking in women and children.*³⁵⁴ n/a
- **Algeria:** *Continue its efforts to fight against trafficking in persons and protect the rights of migrants.*³⁵⁵ n/a
- **Mozambique:** *Allocate more resources to ensure the effective implementation of the Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act.*³⁵⁶ n/a
- **United Arab Emirates:** *Provide support and assistance to victims of trafficking in*

344 Ibid, para 146, recommendation 171.

345 Ibid, para 146, recommendation 131.

346 Ibid, para 146, recommendation 132.

347 Ibid, para 146, recommendation 133.

348 Ibid para 146, recommendation 134.

349 Ibid, para 146, recommendation 135.

350 Ibid, para 146, recommendation 136.

351 Ibid, para 146, recommendation 137.

352 Ibid, para 146, recommendation 138.

353 Ibid, para 146, recommendation 139.

354 Ibid, para 146, recommendation 140.

355 Ibid, para 146, recommendation 141.

356 Ibid, para 146, recommendation 142.

persons, especially women and children, and fully implement the Anti-Trafficking in Persons Act amended in 2010.³⁵⁷ n/a

- **United States of America:** *Cease the practice of detaining trafficking victims, and allow them to travel, work and reside outside government facilities.*³⁵⁸ Recommendation 146.144: Malaysia does not detain victims of trafficking in persons. However, such victims are required to reside in shelters provided for and gazetted by the Government with a view to afford them better protection and safety. The Government provides income-generating facilities and programmes in such shelters in order to further assist such victims.

Recommendations made by other countries which do not enjoy the support of the Malaysian government: 2009:

Among the recommendations that the Malaysian government did not accept were the recommendations to ratify the Optional Protocol to CEDAW, recognise the human rights of migrant workers, and de-criminalise homosexuality and transgenderism.

2009 UPR recommendations that did not enjoy the support of the Malaysian government - Malaysian government response follows recommendation

Trafficked women

- **Israel:** *Develop and adopt national legislation and practices granting formerly trafficked and exploited women and children remaining in Malaysia immunity from penalties under national immigration laws.*³⁵⁹ No comment made.

OP-CEDAW

- **Turkey:** *Ratify the Optional Protocol to CEDAW.*³⁶⁰ No comment made.
- **Lithuania:** *Ratify the OP-CEDAW.*³⁶¹ No comment made.

Discrimination on sexual orientation

- **Chile:** *The elimination from the Penal Code of standards which allow for discrimination against people on the grounds of their sexual orientation.*³⁶² No comment made.

357 Ibid, para 146, recommendation 143.

358 Ibid, para 146, recommendation 144.

359 Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Malaysia*, 5 October 2009, para 21 (f) (A/HRC/11/30*)

360 Ibid, para 64 (b).

361 Ibid, para 94 (c).

362 Ibid, para 76 (f).

- **France:** *To respect the human rights of all individuals, including homosexuals, by de-penalizing homosexuality.*³⁶³ No comment made.

Migrant workers and refugees

- **Canada:** *Take steps to ensure that all migrant workers, refugees, and asylum seekers are treated in accordance with international human rights standards and that it sign and ratify the 1951 Convention relating to the Status of Refugees and its 1967 Protocol and adopt and implement refugee protection legislation.*³⁶⁴ No comment made.
- **South Africa:** *That comprehensive protection is accorded to all migrant workers, including access to essential services like education, health and housing.*³⁶⁵ No comment made.

2013 UPR recommendations that did not enjoy the support of the Malaysian government - Malaysian government response follows recommendation

- **Norway:** *Withdraw all reservations to CEDAW and abandon discriminatory laws against all women regardless of their ethnic or religious background.*³⁶⁶ Recommendations 146.29, 146.30, 146.31, 146.32, 146.33 and 146.35: Presently, Malaysia has no plans to lift its reservations to the Convention on the Rights of the Child (CRC), Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and Convention on the Rights of Persons with Disabilities (CRPD). The Government underscores that such reservations do not run counter to the intent and purpose of those instruments and were made taking into account relevant constitutional provisions and the Islamic (*Syariah*) law which together form an integral part of the country's legal framework.
- **Albania:** *Withdraw all reservations with regard to CEDAW and CRC.*³⁶⁷ Recommendations 146.29, 146.30, 146.31, 146.32, 146.33 and 146.35: Presently, Malaysia has no plans to lift its reservations to the Convention on the Rights of the Child (CRC), Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and Convention on the Rights of Persons with Disabilities (CRPD). The Government underscores that such reservations do not run counter to the intent and purpose of those instruments and were made taking into account relevant constitutional provisions and the Islamic (*Syariah*) law which together form an integral part of the country's legal framework.
- **Canada:** *Ensure the right to equal protection under the law by criminalizing marital rape through the removal of the exception in Section 375 of the Penal Code.*³⁶⁸ n/a

363 Ibid, para 88 (a).

364 Ibid, para 81 (f).

365 Ibid para 84 (b).

366 Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Malaysia*, 4 December 2013, para 146, recommendation 31 (A/HRC/25/10).

367 Ibid, para 146, recommendation 32.

368 Ibid, para 146, recommendation 129.

Recommendations “noted” or “accepted in part” by the Malaysian government

The following 2009 recommendations were “noted” by the Malaysian government, and the government later provided a written response to these recommendations. These responses are below.

2009 UPR recommendation that were ‘noted’ by the Malaysian government

- **Finland:** *Withdraw all of its reservations to CEDAW and CRC as soon as possible;*³⁶⁹
- **Mexico:** *Promote gender equality and protection of childhood and give favourable consideration to withdrawing the reservation on CRC and CEDAW;*³⁷⁰ and
- **France:** *Withdraw the reservations made to CEDAW, as an extension of measures already taken in 1998.*³⁷¹

Malaysian government’s response:

“Malaysia is progressively reviewing the reservations to CEDAW with a view to lifting them, taking into consideration the constitutional provisions, laws, and national interests. Malaysia has undertaken the necessary policy and legislative amendments and conducted awareness programmes targeted at all sections of society on gender equality and children’s rights. These activities were carried out with substantive involvement of NGOs and civil society.”³⁷²

Malaysian NGO Alternative Report Group comment:

The government is to be commended on lifting its reservations to three CEDAW Articles: 5 (a), 7 (b) and 16 (2). However, little has been done to achieve the practical realisation of the intent of these articles, as there has been no change in law or policy and the status quo remains. The government has not removed its reservations to five CEDAW Articles: 9 (2), 16 (1)(a), 16 (1)(c), 16 (1)(f) and 16 (1)(g). The government has not given any indication of an intention to remove its reservations to these articles.

369 Ibid, para 106, recommendation 1.

370 Ibid.

371 Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Malaysia*, 5 October 2009, para 106, recommendation 1 (A/HRC/11/30*).

372 Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Malaysia – Addendum: Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review*, “Response of the Government of Malaysia to the Recommendations listed under Paragraph 106 of the Outcome Report of the Universal Periodic Review”, 3 June 2009, para 1 (A/HRC/11/30/Add.1).

- **Chile:** *Bring domestic legislation into conformity with CEDAW.*³⁷³
Malaysian government's response:

“Malaysia is undertaking appropriate measures including strengthening existing legislation and is currently engaging relevant stakeholders especially civil society to translate the provisions of CEDAW into domestic laws.”³⁷⁴

Malaysian NGO Alternative Report Group comment:

The government has not incorporated the Convention into national law. There is no gender-equality legislation in place providing for the comprehensive realisation of substantive equality of women with men in both public and private spheres of life.

- **Germany:** *Outlaw corporal punishment at home; and provide victims of domestic violence with access to legal remedies and protection from potential perpetrators; Set in place effective campaigns to inform and sensitize the population on this matter.*³⁷⁵

Malaysian government's response:

“Protection against domestic violence is enshrined in existing legislation including the Domestic Violence Act 1994, the Penal Code and the Child Act 2001... Victims of domestic violence are afforded protection and avenues for remedies under existing legislative and administrative frameworks. Awareness and sensitisation campaigns are being consistently carried out by the Government.”³⁷⁶

Malaysian NGO Alternative Report Group comment:

There is not a standardised implementation of the Domestic Violence Act across the country and, in some cases, knowledge of the law by frontline service providers is poor.

- **Canada:** *Strengthen efforts to combat violence against women, including by ensuring that rape within marriage, defined as being when one of the spouses does not consent, is a criminal offence.*³⁷⁷
Malaysian government's response:

373 Ibid, para 106, recommendation 3.

374 Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Malaysia – Addendum: Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review*, “Response of the Government of Malaysia to the Recommendations listed under Paragraph 106 of the Outcome Report of the Universal Periodic Review”, 3 June 2009, para 3 (A/HRC/11/30/Add.1).

375 Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Malaysia*, 5 October 2009, para 106, recommendation 11 (A/HRC/11/30*).

376 Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Malaysia – Addendum: Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review*, “Response of the Government of Malaysia to the Recommendations listed under Paragraph 106 of the Outcome Report of the Universal Periodic Review”, 3 June 2009, para 11 (A/HRC/11/30/Add.1).

377 Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Malaysia*, 5 October 2009, para 106, recommendation 12 (A/HRC/11/30*).

“The Government has undertaken necessary measures to address this issue, including by amending the Domestic Violence Act, the Criminal Procedure Code, the Penal Code and the enactment of the Anti-Trafficking in Persons Act of 2007, all of which are aimed at strengthening protection for victims of domestic violence. The Domestic Violence Act was amended³⁷⁸ to expand the definition of ‘domestic violence’ to include emotional, mental and psychological forms of domestic violence; to extend the duration of interim protection and to introduce a new provision on the right to compensation to the victim. The Penal Code was amended to provide that ‘any man who during the subsistence of a valid marriage causes hurt or fear of death to his wife or any other person in order to have sexual intercourse with his wife shall be punished with imprisonment for a term which may extend to 5 years.’”^{379, 380}

Malaysian NGO Alternative Report Group comment:

Rape within marriage is still not considered a crime, as the definition of marital rape is based on potential or actual physical harm, rather than the rape itself. Also, an exception to subsection 375A of the Penal Code remains which states: “Exception—Sexual intercourse by a man with his own wife by a marriage which is valid under any written law for the time being in force, or is recognized in Malaysia as valid, is not rape.”

- **Chile:** *Adopt the necessary measures to prevent abuses against migrant workers and respect for their rights;*
- **Germany:** *Allow migrant domestic workers full access to legal remedies in case of abuse and duly investigate all cases of abuse and bring perpetrators to justice; take effective steps to protect migrant workers from attacks from militia groups; ensure that the pre-departure training centres are operated to meet the basic needs of the workers and do not encourage any form of abuse;*
- **Belarus:** *Continue to take measures to ensure that the rights of migrants are observed and not to allow any negative phenomena related to migration, including trafficking in persons.*³⁸¹

378 At the time of the UPR session in 2009, the amendments to the Domestic Violence Act had not been tabled in parliament. It was only in 2011 that the amendments to the law were tabled.

379 Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Malaysia – Addendum: Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review*, “Response of the Government of Malaysia to the Recommendations listed under Paragraph 106 of the Outcome Report of the Universal Periodic Review”, 3 June 2009, para 12 (A/HRC/11/30/Add.1)

380 It must be noted here that ____ THIS SENTENCE IS INCOMPLETE ____

381 Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Malaysia*, 5 October 2009, A/HRC/11/30*, paragraph 106, recommendation 14.

Malaysian government's response:

“Foreign workers are protected by local labour laws including the Employment Act 1955; the Industrial Relations Act 1967; the Trade Union Act 1959; the Workmen’s Compensation Act 1952; and the Occupational Safety and Health Act 1994. Foreign workers also have access to legal remedies. The Government regularly reviews labour policies, laws and regulations to meet current needs. New provisions are being introduced to deal with cases of sexual harassment involving foreign workers and to protect the wages and condition of work for foreign domestic workers and to control exploitative employment of foreign workers. The Government has also introduced guidelines on the requirements for employers for the recruitment of foreign domestic workers on the treatment and protection of the rights of foreign domestic workers.”³⁸²

Malaysian NGO Alternative Report Group comment:

*This statement from the government is misleading. Migrant domestic workers are **explicitly excluded** from enjoying the same rights and labour protections as other workers under the Employment Act 1955 and the Workmen’s Compensation Act 1952.*

The following 2013 recommendations were “accepted in part with clarification” by the Malaysian government, and the government later provided a written response to some of these recommendations. These responses are below.

**2013 UPR recommendation accepted in part / with clarification
Malaysian government response follows recommendation**

Women’s rights

- Colombia:** *Launch a comprehensive national policy on gender equality and non-discrimination.*³⁸³
- Argentina:** *Continue with the measures aimed at eradicating gender discrimination, particularly in relation to migrant women.*³⁸⁴ n/a
- Chile:** *Further strengthen the legal provisions to effectively protect women who are victims of domestic violence, including marital rape.*³⁸⁵ “ Recommendation

382 Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Malaysia – Addendum: Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review*, “Response of the Government of Malaysia to the Recommendations listed under Paragraph 106 of the Outcome Report of the Universal Periodic Review”, 3 June 2009, A/HRC/11/30/Add.1, paragraph 19.

383 Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Malaysia*, 4 December 2013, A/HRC/25/10, paragraph 146, recommendation 94.

384 Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Malaysia*, 4 December 2013, para 146, recommendation 96 (A/HRC/25/10)

385 *Ibid*, para 146, recommendation 102.

146.130: The Domestic Violence Act 1994 [Act 521] was enacted to curb the use of violence by a person against his/her spouse as well as provides a platform for victims to seek protection and justice. Act 521 was amended in 2011 to widen the definition of “domestic violence” to cover emotional, mental and psychological abuses. The concept of marital rape is not recognised in Malaysia’s legal system. That notwithstanding, Section 375A of the Penal Code was enacted to prevent husbands from causing hurt or the fear of death to his wife in order to have sexual intercourse with her.”

- **Bulgaria:** *Implement a gender perspective in education at all levels, including teacher training, as well as establish a policy and appropriate measures for including children of all backgrounds in the national education system.*³⁸⁶ “ R e c o m m e n d a t i o n 146.193: Malaysia provides education to children in the country in accordance with the present national legal framework and policies.”

Malaysian government’s commitments under the Sustainable Development Goals (SDGs)

Malaysia was one of the more than 150 countries to adopt the 2030 Agenda for Sustainable Development, including the Sustainable Development Goals (SDGs), at the United Nations Sustainable Development Summit on 25 September 2015. Malaysia has reiterated its commitment to the SDGs in various fora, and has cited its 11th Malaysia Plan, which is in place from 2016-2020, as mirroring the SDGs.³⁸⁷

Gender equality is Goal 5 of the SDGs, and has been incorporated in the 11th Malaysia Plan. Malaysia is one of 43 countries set to carry out a Voluntary National Review at the High-Level Political Forum in July 2017.³⁸⁸ The theme for HLPF 2017 is “Eradicating Poverty and Promoting Prosperity in a changing World,” with a focus on Goal 1, Goal 2, Goal 3, Goal 5, Goal 9, Goal 14, and Goal 17. As part of their SDG follow-up and review mechanisms, member states are encouraged to “conduct regular and inclusive reviews of progress at the national and sub-national levels, which are country-led and country-driven.”

As part of the Malaysian government’s commitment towards implementing the SDGs, government ministries, departments, agencies, CSO coalitions, UN bodies, and professional unions have been brought together to form Malaysia’s SDG Steering Committee, spearheaded by the Economic Planning Unit (EPU). The Government also

386 Ibid, para 146, recommendation 193.

387 “Integrating the 2030 Agenda: SDG Roadmap Malaysia.” Presentation by Hidar Misran. Economic Planning Unit, Prime Minister’s Department, Malaysia. 24 October 2016. Available at: <http://www.asia-pacific.undp.org/content/dam/rbap/docs/meetTheSDGs/Session%201A%20National%20-%20Malaysia%20Integrating%20the%202030%20Agenda.pdf>

388 To view Malaysia’s recent report at the Asia Pacific Forum on Sustainable Development on its SDGs implementation, see: <http://www.unescap.org/events/apfsd4>

participated in a Voluntary National Review at the High-Level Political Forum in July 2017. However, the result of this effort is unclear. A key output of the process, “Malaysia’s Roadmap to implement the 2030 Agenda” has not been finalised and shared with the public or civil society.

For detailed planning and implementation, the SDGs were grouped into clusters,³⁸⁹ with Goal 5 being grouped in the Inclusivity cluster, along with Goals 1, 2, and 10. Each cluster has its own taskforce, consisting of the private sector, NGOs, CSOs, and academia. One of the core tasks of the taskforce is to draft Malaysia’s Roadmap to implement the 2030 Agenda. However, segregating these goals by cluster has resulted in a siloed approach to implementation. There is also resistance by the other taskforces to applying gender-sensitive analysis. The Steering Committee, which sits above the clusters and taskforces, has initiated discussions on interlinking the Goals. However, it has not reached any viable solution.

While women’s rights CSOs are well represented in the Inclusivity cluster, the involvement of CSOs is scarce in the remaining clusters.

389 Cluster 1 Inclusivity - Goal 1, 2, 5 and 10; Cluster 2 Well-Being - Goal 3 and 16; Cluster 3 Human Capital - Goal 4; Cluster 4 Environment & Natural Resources - Goal 6, 7, 12, 13, 14 and 15; and Cluster 5 Economic Growth - Goal 8, 9, 11, and 17.

06.

Articles 1 ~ 4

Definition of Discrimination, Law, Policy, and Measures to Implement the Convention

Article 1

For the purposes of the present Convention, the term “discrimination against women” shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

Article 2

States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

- (a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;
- (b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;
- (c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;
- (d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public

authorities and institutions shall act in conformity with this obligation;

(e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;

(f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;

(g) To repeal all national penal provisions which constitute discrimination against women.

Article 3

States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.

Article 4

1. Adoption by States Parties of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved.

2. Adoption by States Parties of special measures, including those measures contained in the present Convention, aimed at protecting maternity shall not be considered discriminatory.

Key issues in this chapter:

- The government has not incorporated the CEDAW Convention into national law. There is **no gender equality legislation** in place providing for the comprehensive realisation of substantive equality of women with men in both public and private spheres of life.
- The term **discrimination in the Federal Constitution has been left up to the courts and the government to interpret**. In the case of *AirAsia Berhad v Rafizah Shima binti Mohamed Aris (AirAsia)*, the Court found that there had not been discrimination against a trainee who was terminated due to her pregnancy, and moreover, that CEDAW does not have the binding force of law in Malaysia as it has not been incorporated into domestic law.
- The **Attorney General's Chambers does not fulfil its role to promote and protect public wellbeing**. In *AirAsia* the Attorney General's Chambers sought to obstruct justice by arguing that preventing a pregnant woman from working does not constitute discrimination. The Attorney General's Chambers has also attempted

to obstruct justice by defending state laws on cross-dressing which discriminate against transgender people.

- **The government has impeded progressive judgments by pursuing appeals.** In one case, the government appealed a court ruling that section 66 of the *Syariah* Criminal (Negeri Sembilan) Enactment 1992, which prohibits men posing as women, was unconstitutional, and another ruling allowing a transgender man to change his gender marker on his IC.
- Although Article 8 (2) of the Federal Constitution was amended to include gender as a prohibited ground for discrimination, **this was not accompanied by a comprehensive review of all laws**, including provisions within the Federal Constitution itself which continue to be discriminatory.
- **The Penal Code contains several discriminatory provisions**, including: Section 498, which perpetuates the anachronistic idea that women are the property of their husbands; Section 375, which does not recognise marital rape as a crime; and 377CA which considers rape with an object to be sex against the order or nature, rather than rape.
- Transgender people are at constant risk of arrest based on their gender identity and expression. States of Malaysia have their own *Syariah* criminal offence legislation, many of which **criminalise acts such as a man dressing as a woman and being in a public place for immoral purposes**. Transgender people can be charged for wearing clothes and/or accessories deemed inappropriate for them.
- There has been a **rise in the policing of women's freedom of expression**, including what they say, think, believe, and what they wear.
- *Syariah* laws **criminalise sexual relations between women** in Malaysia.
- **The National Policy on Women and the National Action Plan for Women are not comprehensive**. Although actions were intended to start in 2009, the plan was not released until 2010.
- A pilot project launched in 2003 to incorporate **gender-sensitive budgets into the national budgeting system has yet to be implemented** as a policy by the government.

- The Malaysian government has **not ratified the optional protocol** to CEDAW.
- The **grouping of women, children, family, and community together under the Ministry of Women, Family and Community Development maintains patriarchal norms**. The merging of family affairs and gender equality in a single Ministry may effectively reinforce patriarchal norms and be detrimental to the achievement of gender equality.
- Although there have been allusions in government rhetoric to the use of **temporary special measures**, limited action has been undertaken to carry out that which is necessary to achieve de facto equality.

Much of the chapter on Articles 1 – 4 from the first Malaysian NGO CEDAW Shadow Report of 2006 and the Malaysian NGO CEDAW Alternative Report of 2012 are, unfortunately, still relevant in 2018.

This chapter will revisit some of the key issues highlighted in 2006 and 2012 which have not been addressed by the government, highlighting some further important issues. The chapter will also reiterate the recommendations from the 2018 NGO CEDAW Shadow Report and outline some additional recommendations.

Article 1: Definition of discrimination lacking in legislation

The CEDAW Committee recommended in 2006 that Malaysia incorporate the definition of both direct and indirect discrimination into the Federal Constitution and/or other appropriate national legislation.³⁹⁰ However, while discrimination has been defined in common law, the government has not inserted a definition into the Federal Constitution or in legislation.

In the 2012 case of *Noorfadilla binti Ahmad Saikin v Chayed bin Basirun and Ors (Noorfadilla)*, the court accepted the definition of discrimination against women as defined by Article 1 of CEDAW.³⁹¹

390 CEDAW Concluding Observations to Malaysia 2006, para 7 (CEDAW/C/MYS/CO/2).

391 *Noorfadilla binti Ahmad Saikin v Chayed bin Basirun and Ors (2012)*.

Article 2: Eliminating Discrimination in the Law

2018 Concluding Observations to Malaysia

In the 2018 Concluding Observations to Malaysia, the Committee reiterated its previous concern that the CEDAW Convention is not yet part of the domestic legal system.³⁹² The Committee also restated concerns regarding the continued absence of a definition of discrimination against women in the legislation, and the narrow interpretation by the courts of the prohibition of gender-based discrimination under Article 8 (2) of the Federal Constitution, restricting it to acts by public authorities.³⁹³

Further concerns expressed by the Committee include the lack of progress in implementing a Gender Equality Act, the existence of a plural legal system of civil laws and multiple versions of *Syariah* law, and the lack of measures taken to ratify the Optional Protocol of the Convention.³⁹⁴

The Committee recommended that the State party:

- a) Take immediate measures to ensure that the Convention and its provisions are incorporated into national law and become fully enforceable in the domestic legal system;
- b) Adopt a concrete timeframe for the adoption of the Gender Equality Act, which defines and prohibits all forms of discrimination against women, encompassing direct and indirect discrimination in the private and public spheres, as well as intersecting forms of discrimination against women, in line with article 1 of the Convention and target 5.1 of the Sustainable Development Goals (SDGs);
- c) Take effective measures to ensure that civil law and *Syariah* law are in full compliance with the provisions of the Convention at local, state and federal levels so as to ensure that the rights of all women are legally guaranteed on an equal footing throughout the State party. The Committee reminds the State party that provisions of its internal law cannot be used as justification for its failure to abide by its obligations under the Convention;
- d) Adopt a concrete timeframe for the ratification of the Optional Protocol to the Convention.³⁹⁵

392 CEDAW Concluding Observations to Malaysia 2018, para 11 (CEDAW/C/MYS/CO/3-5).

393 Ibid.

394 Ibid.

395 Ibid, para 12.

The wording of the anti-discrimination provision in the Federal Constitution is limited

The Federal Constitution was amended in 2001 to include a provision that there shall be no discrimination based on gender. Article 8 (2) of the Federal Constitution states that:

“Except as expressly authorized by this Constitution, there shall be no discrimination against citizens on the ground only of religion, race, descent, place of birth or gender in any law or in the appointment to any office or employment under a public authority or in the administration of any law relating to the acquisition, holding or disposition of property or the establishing or carrying on of any trade, business, profession, vocation or employment.”³⁹⁶

This provision of the Federal Constitution remains problematic for several reasons:

- The Federal Constitution contains many provisions that are discriminatory to women which continue to be valid, owing to the phrase “except as expressly authorized by this Constitution” in Article 8 (2).³⁹⁷
- The term discrimination in Article 8 (2) of the Federal Constitution has been left up to the courts to interpret. Judicial interpretations of this provision have narrowly focused on discrimination relating to employment under a public authority, finding that discrimination in the private sector is not covered.³⁹⁸
- The understanding of gender in Article 8 (2) of the Federal Constitution has been limited to men and women in a biological sense. The term gender should be understood in a broader, non-binary sense, encompassing gender identity and gender expression, including those of transgender and gender-diverse persons.

In the case of *Beatrice Fernandez v Sistem Penerbangan Malaysia & Anor (Beatrice Fernandez)*,³⁹⁹ a flight attendant’s employment was terminated from Malaysia Airlines System in 1991 when she fell pregnant and refused to resign, as was required under Malaysia Airlines’ collective agreement.⁴⁰⁰ The 2004 judgement found that the collective agreement was lawful, effectively allowing discrimination based on gender on the following grounds:

- i. Individuals are only protected under the Federal Constitution from violations of their rights by the state and public authorities, not private enterprises;
- ii. Collective agreements are not considered law and, therefore, the constitutional

396 *Malaysian Federal Constitution as at 1 November 2010*, Art 8 (2).

397 *Ibid.* See paragraph below for discriminatory provisions within the Federal Constitution.

398 *AirAsia Berhad v Rafizah Shima binti Mohamed Aris (2014)*.

399 *Beatrice Fernandez v Sistem Penerbangan Malaysia & Anor (2004)*.

400 For more information, refer to *NGO CEDAW Shadow Report 2006*, page 11.

- provisions do not apply to them;
- iii. The term gender was included in Article 8 (2) after 1991, so cannot be applied retrospectively to the collective agreement;
 - iv. Equal protection granted by Article 8 (2) of the Federal Constitution extends only to people in the same class. If all women flight attendants are treated the same, no discrimination is taking place.⁴⁰¹

The CEDAW Committee, in its latest review of the government of Malaysia, reiterated its concern regarding the “continued absence of a definition of discrimination against women ...in accordance with Article 1 of the Convention as well as the narrow interpretation by the courts of the prohibition of gender-based discrimination”.⁴⁰²

The CEDAW Committee’s General Recommendation No. 28 stresses that State parties are “obliged to ensure that private actors do not engage in discrimination against women as defined in the Convention.”⁴⁰³ Further, State parties “must ensure that women can invoke the principle of equality in support of complaints of acts of discrimination contrary to the Convention, committed by public officials or by private actors.”⁴⁰⁴

Discriminatory provisions in the Federal Constitution

In addition to Article 8 (2) being ineffective in protecting women from gender-based discrimination, several other articles within the Constitution itself discriminate against women.⁴⁰⁵

- i. Article 8 (5)(a) states that the equality clauses of the Constitution do not invalidate or prohibit “any provision regulating personal law”, effectively leaving Muslim personal law unaffected by the amendment.⁴⁰⁶
- ii. Article 8 (5)(b) states that the equality clauses of the Constitution do not invalidate or prohibit “any provision or practice restricting office or employment connected with the affairs of any religion, or of an institution managed by a group professing any religion, to persons professing that religion.”⁴⁰⁷
- iii. Article 12 (1) states that “there shall be no discrimination against any citizen

401 *Beatrice Fernandez vF Sistem Penerbangan Malaysia & Anor (2004).*

402 *CEDAW Concluding Observation 2018*, para 11 (CEDAW/C/MYS/CO/3-5).

403 *CEDAW General Recommendation 28*, para 13 (CEDAW/C/GC/28).

404 *Ibid*, para 34 (CEDAW/C/GC/28).

405 For more information, refer to *NGO Shadow Report CEDAW Alternative Report 2012*, page 58.

406 *Malaysian Federal Constitution as at 1 November 2010*, Art 8 (5)(a).

407 *Ibid*, Art 8 (2) (5)(b).

on the grounds **only** of religion, race, descent or place of birth” with respect to access to education.⁴⁰⁸

- iv. Articles 15, 24 (4), and 26 (2) on citizenship continue to discriminate against women. Refer to the chapter on Article 16 in this report for further details.⁴⁰⁹
- v. Additionally, Article 121 (1)(a) on the powers of the *Syariah* Court dilutes the non-discrimination policy of Article 8, as the *Syariah* judicial system is discriminatory against women.⁴¹⁰ For example, under the *Syariah* Court Evidence (Federal Territories) Act 1997, evidence of a Muslim woman holds half the evidentiary weight of Muslim man.⁴¹¹

Courts’ interpretation of the binding nature of CEDAW

In July 2011, the High Court decided that CEDAW’s definition of discrimination has the force of law in Malaysia in the case of *Noorfadilla*.⁴¹² It was held that, in revoking a teaching job offer owing to pregnancy, the Ministry of Education’s (MOE) actions constituted gender discrimination as per Article 1 of CEDAW, and hence violated Article 8 (2) of the Federal Constitution.⁴¹³ In 2014, however, the Court of Appeal reverted to a restrictive interpretation of discrimination under the Federal Constitution in the case of *AirAsia Berhad v Rafizah Shima binti Mohamed Aris (AirAsia)*.⁴¹⁴

In *AirAsia*, the respondent had executed a training agreement to undergo an engineering training programme for a period of four years with AirAsia.⁴¹⁵ A term in the training agreement stated that, should a female engineering trainee fall pregnant during the course of the training programme, the agreement would be repudiated and the training programme terminated.⁴¹⁶ In June 2010, during the course of the training period, the respondent informed AirAsia that she was pregnant but wished to continue her training as she was due to deliver at the end of 2010.⁴¹⁷ Subsequently, AirAsia terminated the training agreement and the respondent’s employment on 1 July 2010.⁴¹⁸

AirAsia filed a civil suit at the Sessions Court for breach of the training agreement,

408 Ibid, Art 12 (1).

409 Ibid.

410 Ibid, Art 121 (1)(a).

411 *Act 561 Syariah Court Evidence (Federal Territories) Act 1997*, s86(5).

412 *Noorfadilla binti Ahmad Saikin v Chayed bin Basirun and Ors (2012)*.

413 Ibid.

414 *AirAsia Berhad v Rafizah Shima binti Mohamed Aris (2014)*.

415 “The pregnant pause.” Skrine. Undated. Available at: <http://www.skrine.com/publications/legal-insights/640-the-pregnant-pause>

416 *AirAsia Berhad v Rafizah Shima binti Mohamed Aris (2014)*, [8].

417 “The pregnant pause.” Skrine. Undated. Available at: <http://www.skrine.com/publications/legal-insights/640-the-pregnant-pause>

418 Ibid.

claiming the sum of RM 92,000 as agreed liquidated damages from the respondent.⁴¹⁹ A summary judgement by the Sessions Court in 2012 found for AirAsia.⁴²⁰

On appeal to the High Court, the respondent sought a declaration that the pregnancy provision in the training agreement was illegal, null, and void on the basis that it contravened Article 8 of the Federal Constitution and Malaysia's obligations under CEDAW.⁴²¹ The High Court granted the declaration sought by the respondent in late 2012.⁴²²

This High Court decision, however, was reversed on appeal in 2014.⁴²³ The Court of Appeal held that the clause did not discriminate against the rights of women and, in particular, opined that "CEDAW does not have the force of law in Malaysia because the same is not enacted into any local legislation."⁴²⁴

The *AirAsia* case shows a regression from the more progressive approach on the applicability of CEDAW to domestic law pronounced by the Court in *Noorfadilla*. Furthermore, *AirAsia* illustrates the inadequacy of Article 8(2) of the Federal Constitution in addressing gender discrimination, as discrimination by private actors has been excluded from the Court of Appeal's interpretation.⁴²⁵

Even the impact of the progressive judgment of *Noorfadilla* was lessened, when the Court's initial 2014 award to Noorfadilla of RM 300,000 was reduced in 2016 upon the government's appeal.⁴²⁶ Judicial commissioner Azimah Omar of the Shah Alam High Court wrote that, "considering the complainant's position as an untrained trainee teacher who has not yet served the country for many years, damages of RM 300,000 go beyond being punitive, vindictive, exemplary or retributory and has transcended to be a thoroughly handsome profit to the benefit of the plaintiff."⁴²⁷ The Court's reduction of the damages awarded to prevent the "profiteering" of Noorfadilla undermined what had appeared to be the government's commitment to implementing CEDAW and eliminating

419 *AirAsia Berhad v Rafizah Shima binti Mohamed Aris (2014)*, [12].

420 "The pregnant pause." Skrine. Undated. Available at: <http://www.skrine.com/publications/legal-insights/640-the-pregnant-pause>

421 Ibid.

422 *AirAsia Berhad v Rafizah Shima binti Mohamed Aris (2014)*, [16].

423 Ibid.

424 Ibid, [37].

425 Ibid, [48].

426 "Judge decision a breach of Noorfadilla's constitutional rights (19 February 2016)." Joint Action Group for Gender Equality. 22 February 2016. Available at: <http://www.sistersinislam.org.my/print.php?news.1401>

427 "To prevent profiteering, court slashes woman's gender equality case award by 90pc." Malay Mail Online. 17 February 2016. Available at: <http://www.themalaymailonline.com/malaysia/article/to-prevent-profiteering-court-slashes-womans-gender-equality-case-award-by#sthash.ybwtHQMB.dpuf>

discrimination, diluting a ground-breaking judgment.⁴²⁸

The CEDAW Committee's 2018 Concluding Observations reiterate the Committee's concern that the Convention has not been domesticated and that it remains unenforceable in domestic courts, calling for "immediate measures to ensure that the Convention and its provisions are incorporated into national law and become fully enforceable in the domestic legal system."^{429,430}

Gender Equality Act

The CEDAW Committee, in its 2006 Concluding Comments, recommended that the government "enact and implement a comprehensive law reflecting substantive equality of women and men".⁴³¹ This is important because:

- (i) It will help bridge the de-facto gap between women and men in many fields and pre-empt continuation of their unequal status;
- (ii) It will impose positive duties on the State to accommodate difference and disadvantage experienced by women to bring about equality of results or substantive equality;
- (iii) It will fulfil the purpose of incorporating the principles of CEDAW into domestic law and policy and enable the norms and standards of CEDAW for equality and non-discrimination to become applicable at the domestic level.

⁴³²

There is renewed interest in a potential Gender Equality Act from the Ministry of Women, Family and Community Development (MWFCD), with the then-Minister herself declaring that the MWFCD was "currently enacting a Gender Equality Act" and has "been doing a lot of engagement to solidify our aim to draft the Act."⁴³³ The Joint Action Group for Gender Equality (JAG) is working with the Ministry towards the adoption of a Gender Equality Act, and has called for a clear timeline towards the enactment of this law.⁴³⁴

428 "Judge decision a breach of Noorfadilla's constitutional rights (19 February 2016)." Joint Action Group for Gender Equality. 22 February 2016. Available at: <http://www.sistersinislam.org.my/print.php?news.1401>

429 *CEDAW Concluding Observations to Malaysia 2018*, para 11 (CEDAW/C/MYS/CO/3-5).

430 *Ibid*, para 12(a) (CEDAW/C/MYS/CO/3-5).

431 *CEDAW Concluding Observations to Malaysia 2006*, para 8 (CEDAW/C/MYS/CO/2).

432 Shanthi Dairiam. (2017). "Rationale for a Gender Equality Law". Presented at the Gender Equality Act Workshop in August 2017.

433 "Minister now says Gender Equality Act in the works." Malay Mail Online. 2 November 2016. Available at: <http://www.themalaymailonline.com/malaysia/article/minister-now-says-gender-equality-act-in-the-works>

434 "Set timeline for Gender Equality Act." The Sun Daily. 9 March 2018. Available at: <http://www.thesundaily.my/news/2018/03/09/set-timeline-gender-equality-act-wao>

The CEDAW Committee highlighted the “lack of any progress” in terms of a Malaysian Gender Equality Act and called for a “concrete timeframe” towards its enactment in the 2018 Concluding Observations.^{435,436}

Laws that discriminate on the basis of gender identity

Muslim transgender people are at constant risk of arrest in Malaysia, due to a general lack of understanding with regards to sex and gender fluidity. Transgender people are merely viewed as the sex assigned at birth, regardless of their gender identity. Both transgender men and transgender women are susceptible to gender-based discrimination and experience violations of their human rights.⁴³⁷

All states of Malaysia have their own *Syariah* Criminal Offences Acts, which criminalise acts such as a man dressing as a woman.⁴³⁸ An example of such a law is section 28 of the *Syariah* Criminal Offences (Federal Territories) Act 1997 states that:

“Any male person who, in any public place, wears a woman’s attire and poses as a woman for immoral purposes shall be guilty of an offence and shall on conviction be liable to a fine not exceeding one thousand ringgit or to imprisonment for a term not exceeding one year or to both.”⁴³⁹

In the state of Sabah, section 92 of the *Syariah* Criminal Offences Enactment 1995 criminalises a “male posing as woman or vice versa”.⁴⁴⁰

In February 2011, three Muslim transgender women filed a case in the Seremban High Court challenging section 66 of the *Syariah* Criminal (Negeri Sembilan) Enactment 1992, which replicates section 28 of the *Syariah* Criminal Offences (Federal Territories) Act 1997 stated above.⁴⁴¹ In a landmark decision on 7 November 2014, the Court of Appeal unanimously held that section 66 was inconsistent with Articles 5 (1), 8 (1)–(2), 9 (2), and 10 (1)(a) of the Federal Constitution, and was therefore void.⁴⁴² However, on 8 October 2015, the Federal Court overturned this ruling on a procedural technicality, stating that

435 CEDAW Concluding Observations to Malaysia 2018, para 11 (CEDAW/C/MYS/CO/3-5).

436 Ibid, 12(b).

437 Kuga Thas & Angela M. (2012). “CEDAW in defending the human rights of lesbians, bisexual women and transgenders in Malaysia”. In *Equality Under Construction: Malaysian Women’s Human Rights Report 2010/11*. Petaling Jaya, Selangor: EMPOWER, page 259.

438 Human Rights Watch. (2014). “*I’m Scared to be a Woman*”: Human rights abuses against transgender people in Malaysia. Available at: <https://www.hrw.org/report/2014/09/24/im-scared-be-woman/human-rights-abuses-against-transgender-people-malaysia>

439 Act 559 *Syariah Criminal Offences (Federal Territories) Act 1997*, s28.

440 Sabah *Syariah Criminal Offences Enactment 1995*, s92.

441 “The transgender case: A summary.” Loyar Burok. 9 October 2015. Available at: <http://www.loyarburok.com/2015/10/09/transgender-case-summary>

442 Ibid.

the three transgender women should have brought their case directly to the country's highest court because it involved the Constitution.⁴⁴³

Laws that discriminate on the basis of women's sexual orientation

Women of diverse sexual orientations are discriminated against, as they do not fit within the binary social and relationship construct of cisgender woman and cisgender man.⁴⁴⁴ Both civil and *Syariah* laws criminalise non-heteronormative sexual practices between consenting adults in Malaysia.

The following states of Malaysia have enacted *Syariah* legislation which criminalise *musahaqah* (sexual relationships between women): Perlis, Kedah, Pulau Pinang, Perak, Wilayah-Wilayah Persekutuan, Selangor, Negeri Sembilan, Melaka, Johor, Terengganu, Kelantan, Sabah, and Sarawak.⁴⁴⁵ An example of a state law against *musahaqah* is section 26 of the *Syariah Criminal Offences (Federal Territories) Act 1997*:

“Any female person who commits *musahaqah* shall be guilty of an offence and shall on conviction be liable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding three years or to whipping not exceeding six strokes or to any combination thereof.”⁴⁴⁶

The civil law Penal Code, which covers persons in all states of Malaysia, continues to criminalise carnal intercourse “against the order of nature” and “outrages on decency” even if these are sex acts between two consenting adults.^{447,448} The punishment for committing carnal intercourse against the order of nature can extend to 20 years imprisonment and whipping.⁴⁴⁹

The CEDAW Committee has expressed concern, calling for all such discriminatory laws to be amended, and for a policy of zero-tolerance for discrimination and violence against lesbian, bisexual, transgender, and intersex women.^{450,451}

443 “Top Malaysia court overturns landmark trans rights ruling.” Washington Blade. 8 October 2015. Available at: <http://www.washingtonblade.com/2015/10/08/malaysia-high-court-overturns-landmark-trans-rights-ruling/>

444 Kuga Thas, Angela M. (2012). “CEDAW in defending the human rights of lesbians, bisexual women and transgenders in Malaysia”. In *Equality Under Construction: Malaysian Women's Human Rights Report 2010/11*. Petaling Jaya, Selangor: EMPOWER.

445 Ibid, pages 337-342.

446 *Act 559 Syariah Criminal Offences (Federal Territories) Act 1997*, s26.

447 *Act 574 Penal Code as at 1 February 2018*, s377A.

448 Ibid, s377D.

449 Ibid, s377B.

450 *CEDAW Concluding Observations to Malaysia 2018*, para 47 (CEDAW/C/MYS/CO/3-5).

451 Ibid, para 48.

Discriminatory laws in the Penal Code

Section 498

Section 498 of the Penal Code reads:

“Whoever takes or entices away any woman who is and whom he knows, or has reason to believe, to be the wife of any other man, from that man, or from any person having the care of her on behalf of that man, with intent that she may have illicit intercourse with any person, or conceals, or detains with that intent any such woman, shall be punished with imprisonment for a term which may extend to two years, or with fine, or with both.”⁴⁵²

Section 498 of the Penal Code is discriminatory **not** in failing to give women the same rights to sue other women who entice their husbands, but in failing to recognise that neither husbands nor wives have ownership over their spouses.⁴⁵³

The provision was adopted from the Indian Penal Code, drafted at a time when women were perceived as the property of their husbands and subordinated to their husbands on the assumption that they were under their husbands’ protection.⁴⁵⁴ Section 498 privileges men by giving a husband the right to sue another man for the enticement of his wife.⁴⁵⁵ This law is outmoded, discriminatory, and irrelevant in contemporary Malaysia. Consensual intimate relationships between adults should not be the government’s concern.

Some state-level *Syariah* criminal offences laws also contain provisions on “enticing a married woman” with the proviso that the court can “order the said wife to return to her husband.”⁴⁵⁶

In 2009, a high-profile case on section 498 was filed by a husband accusing another man of enticing away his wife while aware that she was married.⁴⁵⁷ The drawn-out case concluded in 2011 with the accused apologising to the husband and his family.⁴⁵⁸

452 Act 574 Penal Code as at 1 February 2018, s498.

453 For more information, refer to *NGO CEDAW Alternative Report 2012*, page 62.

454 “Law on enticing wife under the spotlight again.” Astro Awani. 9 July 2017. Available at: <http://english.astroawani.com/malaysia-news/law-enticing-wife-under-spotlight-again-148756>

455 Ibid.

456 See the chapter in this report on Article 15 of CEDAW for more information.

457 “Darren Choy acquitted of enticing Daphne Iking.” The Star Online. 7 March 2011. Available at: <https://www.thestar.com.my/news/nation/2011/03/07/darren-choy-acquitted-of-enticing-daphne-iking-updated/>

458 “Choy says his apology was not an admission of guilt.” The Star Online. 13 March 2011. Available at: <https://www.thestar.com.my/news/nation/2011/03/13/choy-says-his-apology-was-not-an-admission-of-guilt/>

Other similar cases reported in the media reflect the ongoing acceptance of entitlement of a husband within marriage, with little to no acknowledgement of a woman's rights and agency as a wife.^{459,460}

The repeal of this provision is long overdue. Other jurisdictions with similar legal provisions, such as Singapore, have repealed the outdated law.⁴⁶¹

Exception to Section 375 – Marital Rape

The Penal Code **does not recognise rape within marriage as a crime**. The exception to section 375 of the Penal Code states:

“Exception—Sexual intercourse by a man with his own wife by a marriage which is valid under any written law for the time being in force, or is recognized in Malaysia as valid, is not rape.”⁴⁶²

An amendment to the Penal Code was made in 2006, introducing section 375A and the concept of causing potential or actual harm in order to have sexual intercourse within marriage.⁴⁶³ This section is problematic as the definition of this crime makes no mention of the term rape and is based on potential or actual physical harm, rather than the rape itself. Section 375A of the Penal Code states:

“Any man who during the subsistence of a valid marriage causes hurt or fear of death or hurt to his wife or any other person in order to have sexual intercourse with his wife shall be punished with imprisonment for a term which may extend to five years.”⁴⁶⁴

Notwithstanding the government's assertions in its Third to Fifth Periodic Report to the CEDAW Committee that section 375A is sufficient to address the crime of marital rape,⁴⁶⁵ section 375A is insufficient and leaves married women vulnerable to sexual violence within the marriage. This vulnerability remains despite the fact that the Domestic

459 “IGP confirms MACC man's alleged extramarital affair being probed.” The Malaysian Insight. 17 October 2017. Available at: <https://www.themalaysianinsight.com/s/18923/>

460 “Law on enticing wife under the spotlight again.” Astro Awani. 9 July 2017. Available at: <http://english.astroawani.com/malaysia-news/law-enticing-wife-under-spotlight-again-148756>

461 Eleventh Singapore Parliament. (2007). *Singapore Parliamentary Debates, Official Report*. Available at: [https://www.parliament.gov.sg/parliamentary-business/official-reports-\(parl-debates\)](https://www.parliament.gov.sg/parliamentary-business/official-reports-(parl-debates))

462 *Act 574 Penal Code as at 1 February 2018*, s375.

463 For more information, refer to *NGO CEDAW Alternative Report 2012*, page 63.

464 *Act 574 Penal Code as at 1 February 2018*, s375A.

465 *CEDAW Combined Third to Fifth Periodic Reports of Malaysia 2016*, para 9-11 (CEDAW/C/MYS/3-5).

Violence Act defines domestic violence as inclusive of spousal sexual abuse.⁴⁶⁶ Further, the penalty for causing hurt in order to have sexual intercourse within marriage is much less than the penalty for rape under the Penal Code.⁴⁶⁷

A question posed by Member of Parliament, Yang Berhormat Azalina Othman Said, to the then-Law Minister, Nancy Shukri, on the removal of the exception and criminalisation of all forms of marital rape was met with the response that marital rape is not a crime.⁴⁶⁸

The issue of marital rape will be discussed further in the chapter of this report on the CEDAW Committee's General Recommendation 19 regarding gender-based violence against women.

Section 375 – Rape with an object is not considered rape

The narrow definition of rape in section 375 of the Penal Code, which does not include rape with an object,⁴⁶⁹ has led to an absurd and unjust outcome in the case of *Bunya Anak Julong v PP (Digital Rape Case)*.⁴⁷⁰ In this case, a 60 year-old man was acquitted on four counts of rape of a child in the state of Sarawak. Despite the fact that the child became pregnant as a result of the rape, the defence was raised—and accepted by the Court—that, as the man had impregnated the girl with his fingers and not through sexual intercourse, there was no rape.⁴⁷¹ The Court alluded to the urgent need to review the definition of rape as the current definition was too restrictive to include rape by objects or appendages.⁴⁷²

It is worrying that the prosecution in the *Digital Rape Case* did not pursue an alternative charge under the Penal Code – for instance, under section 377CA for sexual connection by an object or under section 377D for outrages against decency. Furthermore, although the Court of Appeal is empowered under the Courts of Judicature Act 1964 to put forward another charge, the Court chose not to use its discretion to prevent this injustice.⁴⁷³ This case became the subject of much scrutiny and public pressure, leading the government to make assurances that the definition of rape in the Penal Code would be amended

466 Act 521 Domestic Violence Act 1994, s2.

467 Act 574 Penal Code as at 1 February 2018, s375A.

468 “Govt maintains marital rape not rape.” The Star Online. 10 June 2015. Available at: <http://www.thestar.com.my/news/nation/2015/06/10/govt-maintains-marital-rape-not-crime/>

469 Act 574 Penal Code as at 1 February 2018, s375.

470 “Digital rape’ acquittal a mind-boggling decision.” Malaysiakini. 20 May 2015. Available at: <https://www.malaysiakini.com/letters/299003>

471 Ibid.

472 Ibid.

473 “AG Chambers will not pursue action on acquittal of man charged with raping minor.” Borneo Post Online. 3 June 2015. Available at: <http://www.theborneopost.com/2015/06/03/ag-chambers-will-not-pursue-action-on-acquittal-of-man-charged-with-rape-minor/>

to prevent such an injustice from reoccurring.^{474,475,476} However, in amendments to the Penal Code tabled in April 2017, the definition of rape remained the same. It was only section 377CA on sexual connection by object that was amended to include “any part of the body, except the penis.”⁴⁷⁷

Section 372B - Prostitution

Section 372B of the Penal Code relates to soliciting for purpose of prostitution. It states:

“Whoever solicits or importunes for the purpose of prostitution or any immoral purpose in any place shall be punished with imprisonment for a term not exceeding one year, or with fine, or with both.”⁴⁷⁸

This section should be amended to criminalise the exploitation of one person by another, rather than its current focus on immoral purposes. Both women and transgender women sex workers who freely engage in sex work (in situations where they are not exploited by others) and/or because they cannot find any other reasonably waged work, are currently harassed under this law.⁴⁷⁹

The law does not take into consideration the circumstances of the sex worker and the factors, such as a lack of formal education and, consequently, lack of employment opportunities in the formal sector, which may have led to sex work.⁴⁸⁰ For many transgender people, sex work is the only work they see as available to them.⁴⁸¹

Sex workers have lack of access to redress, remedy, and justice in general. For example, sex workers regularly experience:

474 “Definition of rape to be amended.” The Sun Daily. 2 July 2015. Available at: <http://www.thesundaily.my/news/1478860>

475 “New rape definition likely tabled during next parliament session, law minister says.” Malay Mail Online. 2 July 2015. Available at: <http://www.themalaymailonline.com/malaysia/article/new-rape-definition-likely-tabled-during-next-parliament-session-law-minist>

476 “Up to Azalina now to see rape law revision through, says Nancy after portfolio change.” Malay Mail Online. 6 August 2016. Available at: <http://www.themalaymailonline.com/malaysia/article/up-to-azalina-now-to-see-rape-law-revision-through-says-nancy-after-portfolio>

477 *Act A1536 Penal Code (Amendment) Act 2017*, s9.

478 *Act 574 Penal Code as at 1 February 2018*, s372B.

479 For more information, refer to *NGO CEDAW Alternative Report 2012*, page 64.

480 Ibid.

481 Kuga Thas & Angela M. (2012). “CEDAW in defending the human rights of lesbians, bisexual women and transgenders in Malaysia”. In *Equality Under Construction: Malaysian Women’s Human Rights Report 2010/11*. Petaling Jaya, Selangor: EMPOWER, page 268.

- Harassment by personnel from varied law enforcement bodies (i.e. police vice squad, immigration department, anti-drugs agency, and the religious police). Based on accounts provided by sex workers, extensive corruption among these bodies may be present;
- The threat of detention by law enforcement officers if sex workers are found to possess condoms (exceeding three). Used condoms are taken and used as evidence of sex work activity, thus, countering HIV prevention interventions, i.e. condom promotion and safe sex behaviour;
- Pervasive abuse (e.g. by pimps, clients, partners, and law enforcement personnel);
- Disempowerment, as there are impediments to complaints and recourse against violations by law enforcement personnel (both civil and religious).⁴⁸²

Proposed Discriminatory Law: RUU 355

RUU 355, a bill introduced in Parliament in April 2017, proposes to increase the punishment for *Syariah* offences in the *Syariah* Courts (Criminal Jurisdiction) Act 1965 to 30 years imprisonment, a RM 100,000 fine, and 100 lashes of the cane, from the present limit of three years imprisonment, a RM 5,000 fine, and six lashes of the cane.^{483, 484}

The NGO Sisters in Islam (SIS) has pointed out that, “under the existing *Syariah* Criminal Offences (Federal Territories) Act 1997, there were over 40 offences ranging from possession of religious publication contrary to Islamic law to moral crimes such as *khalwat* (close proximity), both of which carry the maximum sentence of two years imprisonment or RM 3,000 fine or both.”⁴⁸⁵ SIS has raised the concern that, with punishments as severe as 30 years imprisonment, RM 100,000 fine, and 100 lashes as proposed, the punishments meted out may be disproportionate to the crime.⁴⁸⁶ The proposed amendment comes at a time when the existing *Syariah* Criminal Offences Enactment of each state are being implemented in a discriminatory fashion, often targeting minority groups and lower-income groups.⁴⁸⁷

The introduction of RUU 355 is seen as part of the progressive implementation of *hudud* laws (laws set by Allah as stated in the Koran) in Kelantan and Terengganu, and it paves

482 United Nations Malaysia. (2014). *Review and Consultation on the Policy and Legal Environments Related to HIV Services in Malaysia*. Damansara Heights, KL: United Nations, page 15.

483 “Hadi tables bill to amend RUU 355 in Parliament.” *New Straits Times*. 6 April 2017. Available at: <https://www.nst.com.my/news/2017/04/227758/hadi-tables-bill-amend-ruu-355-parliament>

484 *Act 355 Syariah Court (Criminal Jurisdiction) Act 1965*.

485 “Masing: Act 355 amendment violates Federal Constitution.” *Borneo Post Online*. 28 November 2016. Available at: <http://www.theborneopost.com/2016/11/28/masing-act-355-amendment-violates-federal-constitution/>

486 *Ibid.*

487 *Ibid.*

the way for other states to impose similarly restrictive laws.^{488,489} As an example, under the Kelantan *hudud* laws, non-Muslims and women are not allowed to act as witnesses in a *zina* (unlawful sexual intercourse) trial.⁴⁹⁰ Statements from a woman accused of *zina* are not accepted by the *Syariah* court and a woman cannot accuse her husband of *zina*.⁴⁹¹

Differentiation between Muslim and non-Muslim women's rights

Under Malaysia's plural legal system, civil law reform has sometimes advanced the rights of non-Muslim women, while Muslim women continue to hold unequal rights in marriage, divorce, guardianship of their children, and inheritance.⁴⁹² CEDAW's General Recommendation 33 highlights State parties' obligation to ensure that "women's rights are equally respected and that women are protected against violations of their human rights by all components of plural justice systems".⁴⁹³

The CEDAW Committee, in its 2018 Concluding Observations to Malaysia, highlighted its concern regarding the "lack of legal clarity and inconsistent application of the Convention" which is "compounded by the federal structure of the State party, as well as the existence of a parallel legal system of civil law and multiple versions of *Syariah* law, which have not been harmonized in accordance with the Convention."⁴⁹⁴ The Committee has called for Malaysia to ensure that the rights of all women are legally guaranteed on an equal footing throughout the State party and reiterated that "internal law cannot be used as justification for its failure to abide by its obligation under the Convention".⁴⁹⁵

Optional Protocol to CEDAW

The CEDAW Committee called for the ratification of the Optional Protocol to CEDAW in its 2006 Concluding Observations on Malaysia.⁴⁹⁶ The State party, in its response, stated that "there is no huge impediment for Malaysia to accede to the OP. However, there is a policy consideration that needs to be determined before Malaysia finally decides to

488 'hudud, n' (*OED Online*). Available at: <https://ms.oxforddictionaries.com/translate/malay-english/hudud>

489 Joint Action Group for Gender Equality & G25. (2016). *Memorandum: Protest against amendments to the Syariah Court (Criminal Jurisdiction) Act 1965*. Petaling Jaya, PJ: Joint Action Group for Gender Equality.

490 Ibid.

491 Ibid.

492 "Musawah interventions at 69 CEDAW." Musawah. Undated. Available at: <http://www.musawah.org/CEDAW69>

493 CEDAW General Recommendation 33, para 61.

494 CEDAW Concluding Observations to Malaysia 2018, para 11 (CEDAW/C/MYS/CO/3-5).

495 Ibid, para 12(c).

496 CEDAW Concluding Observations to Malaysia 2006, para 31 (CEDAW/C/MYS/CO/2).

accede to the OP.”⁴⁹⁷ It the last CEDAW review, the CEDAW Committee expressed its regret for the lack of measures taken by the State party on this issue and called for “a concrete timeframe” for its ratification.⁴⁹⁸

Article 3: Measures to promote equality

2018 Concluding Observations to Malaysia

In the 2018 Concluding Observations to Malaysia, the CEDAW Committee stated concern regarding the limited effectiveness of efforts made by the government aimed at the advancement of women due to lack of political will, lack of understanding of gender equality, and lack of institutional mechanisms.⁴⁹⁹ The absence of available gender-disaggregated data, in which areas where women lack substantive equality can be identified, was also of concern.⁵⁰⁰

The Committee recommended that the State Party:

- a) Ensure that all policies, strategies and action plans aimed at the advancement of women, such as the National Women’s Policy and Plan of Action, gender mainstreaming and gender responsive budgeting, are accompanied by clear targets, indicators, time frame as well as effective coordination, monitoring and evaluation mechanisms;
- b) Undertake systematic and regular training of officials who are responsible for the planning and implementation of policies, strategies and action plans aimed at the advancement of women to increase their awareness, knowledge and capacity not only with regard to technical knowledge and expertise but also with regard to gender equality;
- c) Ensure that gender mainstreaming is applied consistently in the development and implementation of all laws, policies and programmes in all ministries and legislative structures, including by strengthening gender training programmes and the Gender Focal Point system, and establishing a coordinating committee across agencies;

497 Malaysian Government. (Undated). *Consideration of Reports Submitted by State Parties Under Article 18 of the CEDAW Convention*. Available at: http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/MYS/INT_CEDAW_ADR_MY25048_E.pdf

498 CEDAW Concluding Observations to Malaysia 2018, para 12(d) (CEDAW/C/CMYS/CO/3-5).

499 Ibid, para 15.

500 Ibid, para 16.

- d) Ensure that gender responsive budgeting, integrated into outcome-based budgeting, is effectively institutionalized through a comprehensive roadmap in all Government agencies at the federal, state and local council levels;
- e) Develop a comprehensive system to collect, analyse and publish data on all areas covered by the Convention, disaggregated by sex, age, disability, ethnic origin, religion and other relevant factors, so that such data and analyses can be used for the formulation, monitoring and evaluation of laws, policies and plans, as well as the SDGs.⁵⁰¹

National Policy on Women, Government Structures, and Gender Focal Points in Government Ministries

There is a National Policy on Women and associated National Action Plan, however, many of the stated goals of these instruments have not been achieved. The National Policy and Action Plan do not link targets with specific and comprehensive strategies, methods, timeframes, or responsible agencies. There is also a lack of indicators for the monitoring of specific actions.

Gender mainstreaming and gender responsive budgeting

The MWFCDC undertook an initiative in 2011 to introduce gender-sensitive budgeting. As a result, the MWFCDC and the Ministry of Finance jointly conducted a capacity-building initiative in 2013 on mainstreaming gender in planning and budgeting systems using results-based approaches.⁵⁰²

The Government stated in its Third to Fifth Periodic Report to the CEDAW Committee that the 2006 Gender Budgeting Analysis is currently being updated based on the new Outcome Based Budgeting System introduced in 2012.⁵⁰³ However, no information has been made available as to how this is being operationalised across ministries, or whether it is at all.

In the government's Replies to List of Issues 2017, it was stated that the MWFCDC and the United Nations Development Program (UNDP) had undertaken a joint project to strengthen the implementation and monitoring gender mainstreaming under the

501 CEDAW Concluding Observations to Malaysia 2018, para 16 (CEDAW/C/MYS/CO/3-5).

502 Asia Pacific Community of Practice on Managing for Development Results & Asia Development Bank. (2013). *Delivering Results and Gender: Promoting Women's Empowerment through Gender Responsive Budgeting in Malaysia*. Available at: <https://bit.ly/2jz1gKI>

503 CEDAW Combined Third to Fifth Periodic Reports of Malaysia 2016, para 47 (CEDAW/C/MYS/3-5).

Eleventh Malaysian Plan, by reviewing the effectiveness of the National Policy on Women and National Action Plan on the Advancement of Women.⁵⁰⁴

Ministry of Women, Family and Community Development

The Ministry of Women, Family and Community (MWFCD) has very wide purview which may effectively perpetuate patriarchal norms by keeping women, families, and children under the one banner. As the CEDAW Committee noted in its Concluding Observations to Korea in 2011, the merging of “family affairs and gender equality in a single mandate may directly or indirectly reinforce traditional patriarchal norms and be detrimental to the achievement of gender equality.”⁵⁰⁵

Gender Focal Points in Government Ministries

Gender Focal Points (GFPs) have been established in all government ministries to ensure that gender is incorporated into policies and programs.⁵⁰⁶ Academic Cecilia Ng has noted that the terms of reference for the GFPs were not made clear from the outset.⁵⁰⁷ Interviews undertaken with government officials indicate that there is a lack of understanding about gender, and many responded that government policies are “gender neutral.”⁵⁰⁸

The Human Rights Commission of Malaysia (SUHAKAM) noted in its 2010 Annual Report that, “due to certain problems within the GFPs...the Commission was unable to conduct training programmes during the year.”⁵⁰⁹

In 2011, in a highly positive move, ministries began to receive training from two highly qualified experts, Shanthi Dairiam and Shanthi Thambiah, regarding the GFPs.⁵¹⁰ However, the training has since been discontinued.

Parliamentary Select Committee on Rights and Gender Equality Announced

In August 2018, Dr. Wan Azizah Wan Ismail (Deputy Prime Minister and Minister of Women, Family, and Community Development) announced that the government will

504 *List of Issues and Questions in Relation to the Combined Third to Fifth Periodic Reports of Malaysia: Replies of Malaysia 2017*, para 14 (CEDAW/C/MYS/Q/3-5/Add.1).

505 CEDAW Concluding Observations to the Republic of Korea 2011, para 16 (CEDAW/W/C/KOR/CO/7).

506 *NGO CEDAW Alternative Report 2012*, page 65.

507 Cecilia Ng. (2011). *Gender and Rights: Analysis for Action*. Gelugor, Penang: Centre for Research on Women and Gender (KANITA), page 10.

508 Ibid.

509 SUHAKAM. (2010). *Annual Report 2010 Human Rights Commission of Malaysia*. Available at: <https://mail.google.com/mail/u/1/#search/standar/1622da2443d7ac2e>

510 *NGO CEDAW Alternative Report 2012*, page 65.

create a parliamentary select committee to examine issues related to human rights and gender equality.⁵¹¹

In 2005, a Cabinet Committee on Gender Equality was established, however, this Committee was downgraded in 2009.⁵¹²

In the previous Parliament, a Women's Parliamentary Caucus existed, but it did not have adequate influence in Parliament, and its activity is dependent on the chairperson's initiative. During continued law reform advocacy efforts between NGOs and the government in 2013, eventually spurring on a slew of amendments to the Penal Code, a team from JAG mobilised, meeting with ministers and members of parliament to raise concerns over a poorly-worded amendment relating to domestic violence.⁵¹³ Although responses from politicians to the concerns were mixed, the Women's Parliamentary Caucus, in particular Azalina Othman Said and Fuziah Salleh, were supportive.

Working Committee to Review Laws on Violence Against Women

In 2014, the then-Attorney General, Abdul Gani Patail, aided the formation of the Working Committee to Review Laws on Violence against Women, which was set up to comprehensively review laws on violence against women.⁵¹⁴ Both JAG and the National Council of Women's Organisations Malaysia (NCWO) were members of this Working Committee.⁵¹⁵ Although the Attorney General's Chambers began to prepare a proposal bill to amend laws on domestic violence, stalking, and rape, Gani was removed from his post as Attorney General in July 2015.⁵¹⁶

Throughout 2016, JAG supported the MWFC to improve and push forward the bill. Eventually, the *Domestic Violence (Amendment) Bill 2017* was tabled in parliament by the MWFC then-Minister, Yang Berhormat Rohani Abdul Karim.⁵¹⁷ The Bill was passed on 24 July 2017 after two days of parliamentary debate.⁵¹⁸

511 "DPM: Putrajaya to form parliamentary panel on gender equality." Malay Mail Online. 16 August 2018. Available at: <https://www.malaymail.com/s/1663049/dpm-putrajaya-to-form-parliamentary-panel-on-gender-equality>

512 Cecilia Ng. (2011). *Gender and Rights: Analysis for Action*. Gelugor, Penang: Centre for Research on Women and Gender (KANITA), page 10.

513 "Enforce the amendments." The Star Online. 6 April 2017. Available at: <https://www.thestar.com.my/opinion/letters/2017/04/06/enforce-the-amendments/>

514 Speech By Ybhg Tan Sri Abdul Gani Patail, Attorney General Of Malaysia On The Occasion Of The Opening Of The Legal Year 2014. (2014). Available at: <http://www.kehakiman.gov.my/sites/default/files/document3/Teks%20Ucapan/Tan%20Sri%20Abdul%20Gani%20Patail.pdf>

515 "Rights and law reform." National Council of Women's Organisations Malaysia. 7 June 2016. Available at: https://ncwomalaysia.org/ncwo_wp/causes/rightsandlawreform/

516 "Bar Council: Removal of Gani Patail as A-G Unconstitutional." The Star Online. 28 July 2015. Available at: <https://www.thestar.com.my/news/nation/2015/07/28/bar-council-removal-ag-unconstitutional/>

517 "Domestic violence law improved. Now what?" Women's Aid Organisation. 26 July 2017. Available at: http://www.wao.org.my/news_details.php?nid=413&ntitle=Domestic+violence+law+improved+Now+what

518 Ibid.

SENADA

After the 2008 General Elections, the government set up the Secretariat of Defence and Empowerment of Islamic Women (SENADA) for issues related to Muslim women.⁵¹⁹ SENADA, which is now under the MWFC, only serves to perpetuate a false divide between Muslim and non-Muslim women.

Institutionalising National Strategic Partnerships

In April 2016, a strategic planning Memorandum of Understanding was signed between the NCWO and the MWFC, institutionalising their working relationship and ensuring a seat at the table for women's groups to help shape the Ministry's policy development, implementation, monitoring, and evaluation.⁵²⁰

Sustainable Development Goals 2030 Roadmap

Gender equality is a specific goal under the Sustainable Development Goals (SDGs), on which the government has sought input from NGOs. NCWO has drafted and submitted a Framework of the SDG Roadmap 2016-2020 addressing Goal Five on gender equality with recommendations made to the government.⁵²¹

The framework is formed based on these two fundamental principles:

1. Adequate and targeted resources (including sourcing of resources) are made to meet financial obligations to ensure investments on gender mainstreaming activities and women's empowerment are made;
2. A gender roadmap and strategy be explicitly designed to facilitate a gender in-development implementation with aligned monitoring mechanisms.⁵²²

Goal Five is grouped under the Strategic Thrust One, regarding enhancing inclusiveness and moving towards an equitable society in the Eleventh Malaysian Plan. The key

519 NGO CEDAW Alternative Report 2012, page 65.

520 "Gender equality: Malaysia on track to reach target of 59pc of women in the workforce, says minister." New Straits Times. 23 August 2016. Available at: <https://www.pressreader.com/malaysia/new-straits-times/20160823/281921657461150>

521 "Sustainable development goals (SDGs)." National Council of Women's Organisations Malaysia. 4 November 2017. Available at: https://ncwomalaysia.org/ncwo_wp/causes/sdgs/

522 Omna-Sreeni Ong. (Unpublished). *Framework of the SDG Roadmap 2016-2020: Goal 5. National Council of Women's Organisations Malaysia.*

focus of Strategic Thrust One is inclusivity, to ensure that all Malaysians benefit from economic growth regardless of gender, ethnicity, socio-economic status, or geographic location.⁵²³ However, a gendered approach should be integrated into all sectors and not just confined to a single cluster.

Goal Five was not listed as one of the priority SDGs or prioritised in the Economic Planning Unit's SDG Roadmap.⁵²⁴

Mechanisms, Monitoring, and Training Under the Law

There is no comprehensive gender sensitivity monitoring or training undertaken by the government for service providers of government officers. Rather, responsibility for carrying out this training has fallen largely on NGOs.

In 2016 and 2017, the government worked with NGOs to incorporate CEDAW principles and gender sensitivity as part of a domestic violence training for the first time at the National Judicial and Legal Training Institute (ILKAP).⁵²⁵ GR19, GR28, and due diligence principles were part of the practical program, which was targeted at Lower Court judges, magistrates, and prosecutors from all over Malaysia. Thus far in 2018, the CEDAW components of the trainings have not been continued.

The Royal Malaysia Police organise yearly trainings for frontline officers, on domestic violence, crimes against children, and sexual crimes. However, these trainings only reach around 50 officers, a fraction of officers nationwide.

Article 4: Temporary special measures in Malaysia

2018 Concluding Observations to Malaysia

In its 2018 Concluding Observations to Malaysia, the CEDAW Committee expressed its concern with the limited use of temporary special measures, highlighting that the measures adopted thus far lack specific guidelines and mechanisms for their implementation, monitoring, and evaluation.⁵²⁶

523 Hiday Misran. (2016). *Integrating the 2030 agenda: SDG roadmap Malaysia*. Available at: <http://www.asia-pacific.undp.org/content/dam/rbap/docs/meetTheSDGs/Session%20IA%20National%20-%20Malaysia%20Integrating%20the%202030%20Agenda.pdf>

524 Ibid.

525 Women's Centre for Change. (2017). *2016 Annual Review*. Available at: http://wccpenang.org/wp-content/uploads/2017/08/AR_2016-Low-Res.pdf

526 CEDAW *Concluding Observations to Malaysia 2018*, para 17 (CEDAW/C/MYS/CO/3-5).

The Committee recommended that the State party:

- a) Ensure that temporary special measures are accompanied by specific guidelines and mechanisms to ensure their effective implementation, monitoring and evaluation, in accordance with Article 4 (1) of the Convention and the Committee's general recommendation No. 25 (2004) on temporary special measures;
- b) Expand the use of temporary special measures, such as outreach or support programmes, allocation and/or reallocation of resources, targeted recruitment, hiring and promotion, numerical goals connected with time frames, and quota systems, to accelerate the realization of women's substantive equality with men in all areas where women continue to be underrepresented or disadvantaged, and in particular targeting women who face multiple and intersecting forms of discrimination.⁵²⁷

Although announcements were made by the government about establishing quotas or targets for women in public and private sector decision-making positions, these quotas have not been accompanied by clearly articulated plans of action.⁵²⁸ Results have not been achieved at the highest levels of either public or private sector participation.

There appears to be an overall lack of understanding of the purpose of temporary special measures.

30% quota in public sector decision-making positions

The Eleventh Malaysia Plan states that a higher proportion of women occupied top management positions in 2014 (32.5%) compared to 2010 (30%).⁵²⁹ There is no clear definition of top management positions. However, the government does mention that only 10.2% of directors of publicly-listed companies were women in 2014, while the target was 30% by 2016.

According to 2016 government statistics released by the MWFC:

- Of the 24 Ministry Secretaries General, only 6 were women (25%);
- Of the 58 Deputy Secretaries General, 12 were women (20.7%);
- Of the 38 Directors General, Directors, and General Managers of Statutory Bodies, 5 were women (13.2%);

527 Ibid, para 18.

528 For an example of such an announcement, refer to "PM: No women directors in your company? We're watching you!" The Star Online. 23 January 2018. Available at: <https://www.thestar.com.my/news/nation/2018/01/23/pm-no-women-directors-in-your-company-were-watching-you/>

529 Economic Planning Unit. (2015). *Eleventh Malaysia Plan: 2016-2020*. Available at: https://www.talentcorp.com.my/clients/TalentCorp_2016_7A6571AE-D9D0-4175-B35D-99EC514F2D24/contentms/img/publication/RMKe-11%20Book.pdf

- Of the 111 Directors General in the Federal Departments, only 19 were women (17.1%).⁵³⁰

This equates to women filling just **18.1% of decision-making positions in the public sector.**

The former Prime Minister announced in his Budget 2018 speech that 30% of board directors in government-linked companies, government-linked investment companies and statutory bodies must be women.⁵³¹ In the government's 2017 Replies to List of Issues to CEDAW, the government stated that women held 32.8% of decision-making positions in the public sector; however, whether the target has actually been reached depends on what positions constitute decision-making positions.⁵³²

In the new 2018 Pakatan Harapan government cabinet, there are only 5 women out of 27 ministers (18.5%), and only 4 women out of the 24 deputy ministers (16.7%). Pakatan Harapan has pledged to ensure that at least 30% of policy makers are women during their election campaign, and the low women representation in the 2018 cabinet has shown their lacking in fulfilling their promises.⁵³³

30% quota in private sector decision-making positions

On 27 June 2011, the former Prime Minister announced that within five years, at least 30% of decision making positions in the private sector (that is, positions on the boards of companies) should comprise of women.⁵³⁴ However, this was followed by a clarification when the former Prime Minister said, in response to critics of the plan, "This is not a quota but a target."⁵³⁵

This statement and the downgrading of the language is indicative of the government's lack of commitment to temporary special measures and their role, as articulated in CEDAW General Recommendation 25, in giving women "an equal start" so that they can

530 Ministry of Women, Family and Community Development. (2015). *Statistics on Women, Family and Community 2016*. Available at: <https://www.kpwkm.gov.my/kpwkm/uploads/files/Penerbitan/Buku%20Perangkaan/Perangkaan%202016.pdf>

531 "PM: 30% of corporate decision-makers must be women". The Star Online. 27 June 2011. Available at: <https://www.thestar.com.my/news/nation/2011/06/27/pm-30-of-corporate-decisionmakers-must-be-women/>

532 *List of Issues and Questions in Relation to the Combined Third to Fifth Periodic Reports of Malaysia: Replies of Malaysia 2017*, para 13 (CEDAW/C/MYS/Q/3-5/Add.1).

533 "28 ministers, 24 deputies in Dr. Mahathir's cabinet." The Malaysian Insight. 26 June 2018. Available at: <https://www.themalaysianinsight.com/s/56980>

534 "PM: 30% of corporate decision-makers must be women". The Star Online. 27 June 2011. Available at: <https://www.thestar.com.my/news/nation/2011/06/27/pm-30-of-corporate-decisionmakers-must-be-women/>

535 "Women smart partners". The Star Online. 26 August 2011. Available at: <https://www.thestar.com.my/news/nation/2011/08/26/women-smart-partners/>

“be empowered by an enabling environment to achieve equality of results.”⁵³⁶

In a positive move, however, the Malaysian Securities Commission subsequently announced that publicly listed companies as well as businesses seeking public listing will have to declare how they will achieve the 30% quota of women in boardrooms.⁵³⁷ In 2012, annual reports were required to contain information about policies and targets relating to increasing the representation of women. The chairperson of the Securities Commission is reported to have said, “This is something we will do in phases. The first step is to allow companies to set their own year-on-year target and by the end of five years, they have to reach 30%.”⁵³⁸

According to the Government’s Replies to List of Issues 2017, statistics from the Malaysian stock exchange, Bursa Malaysia, show the number of women on the board of directors in the Top 100 Public Listed Companies by market capitalisation as of third quarter 2017 is 19.1%.⁵³⁹ This exceeds the 18% target set for 2017.

Women’s participation in the labour force

The female participation rate in the labour force is relatively low in Malaysia at, 54.3% in 2016 and 54.7% in 2017.⁵⁴⁰ Statistics from the Labour Force Survey Report shows that more than 55% of the female labour participation rate comes from the age group 25 to 54 years old, and the highest age group of women in the workforce is between 25 and 34 years old.⁵⁴¹ A significant portion of women workers leave their jobs when they start a family, and do not return to the workforce thereafter. Special measures are necessary to provide a clear framework for more flexibility and longer maternity leave, as well as measures to facilitate return to work for mothers.⁵⁴²

In the Eleventh Malaysia Plan, the former Prime Minister announced strategies being

536 CEDAW General Recommendation 25, para 8.

537 “Securities Commission: Firms must fulfil women quota for top positions to be listed”. The Star Online. 15 September 2011. Available at: <https://www.thestar.com.my/news/nation/2011/06/27/pm-30-of-corporate-decisionmakers-must-be-women/>

538 “Securities Commission: Firms must fulfil women quota for top positions to be listed”. The Star Online. 15 September 2011. Available at: <https://www.thestar.com.my/news/nation/2011/09/15/securities-commission-firms-must-fulfill-women-quota-for-top-positions-to-be-listed/>

539 *List of Issues and Questions in Relation to the Combined Third to Fifth Periodic Reports of Malaysia: Replies of Malaysia 2017*, para 13 (CEDAW/C/MYS/Q/3-5/Add.1).

540 Department of Statistics Malaysia. (2018). *Labour Force Survey Report, Malaysia, 2017*. Available at: <https://www.dosm.gov.my/v1/index.php?r=column/pdfPrev&id=aEdlelhlVTBtOHhjOUxqcXhyc2p-CUT09>

541 Ibid.

542 “Focus on retaining women in workforce.” The Edge Financial Daily. 27 November 2017. Available at: <http://www.theedgemarkets.com/article/focus-retaining-women-workforce>

set to increase women's participation in the labour force to 59% by the year 2020.⁵⁴³

In 2017, women's participation in the labour force has increased from 46% last year to 54.3%, which translates to 700,000 more women in the workforce. However, according to the World Bank, the estimated number of "absent women" (women who can be expected to be in the labour market given Malaysia's level of development but are not) ranges from 500,000 to 2.3 million.⁵⁴⁴

In the Budget 2018 announcement by the Barisan Nasional (BN) government, it was proposed that the private sector increase the mandatory maternity leave from the current provision of 60 days to 90 days, in line with the public sector.⁵⁴⁵ Objections around the cost of implementing such provisions have been raised by some parties. The Malaysian Employers Federation estimated a RM747 million increase in cost per year to employers with this provision.⁵⁴⁶ The government can consider looking into cost-sharing solutions to support the implementation of these changes.

In the 2015 Budget, the Career Comeback programme under TalentCorp was announced to incentivise employers to recruit and retain women who have been on career breaks. Together with the MWFCF, two grants were introduced in the programme – the Resourcing grant and the Retention grant. These grants were aimed at attracting and retaining women who have been on career breaks for more than 6 months.⁵⁴⁷ More than 630 women professionals have returned to the workforce since 2015,⁵⁴⁸ however this figure is far from the 500,000 to 2.3 million absent women in the labour market as estimated by the World Bank.

Recommendations to the Malaysian Government regarding

Articles 1 – 4 of CEDAW

543 "Women must be accepted as equal partners and drivers of nation's growth, says Najib." New Straits Times. 4 December 2017. Available at: <https://www.nst.com.my/news/nation/2017/12/310596/women-must-be-accepted-equal-partners-and-drivers-nations-growth-says>

544 Ibid.

545 "Malaysia budget 2018 – Leave days." HRSiFU. 28 October 2017. Available at: <https://www.hrsifu.com/malaysia-budget-2018-leave-days/>

546 Ibid.

547 "Government's initiatives to increase women in the workforce make headway." TalentCorp. 27 June 2016. Available at: <https://www.talentcorp.com.my/resources/press-releases/governments-initiatives-to-increase-women-in-the-workforce-make-headway>

548 "Career Comeback Programme For Women Who Want to Return to Work: Facts & Figures." TalentCorp. Undated. Available at: <https://www.talentcorp.com.my/initiatives/career-comeback-programme>

Article 1

- Discrimination as provided under Article 1 of the CEDAW Convention must be defined in both the body of the Federal Constitution and in legislation. This definition should be comprehensive to address all forms of possible discrimination, including both direct and indirect, as well as discrimination in both the public and private spheres, and inter-sectional discrimination.

Article 2

- Incorporate the CEDAW convention into domestic legislation through the enactment of a gender equality law, which should include provisions for the establishment of a gender equality commission vested with powers to advise the government, hear complaints and deliver decisions and guidelines on gender equality.
- Develop a national CEDAW implementation plan which should be embedded into the National Policy on Women.
- Amend the discriminatory provisions within the Federal Constitution.
- Amend Penal Code provisions that continue to discriminate against women:
 - Repeal section 498 of the Penal Code, as it perpetuates the anachronistic idea that women are the property of their husbands;
 - Remove the exception to section 375A of the Penal Code, which explicitly states that sexual intercourse within marriage cannot be considered rape;
 - Review laws that criminalise sex work and sex workers and strengthen the legal framework to protect the human rights of sex workers. In this regard, amend section 372B of the Penal Code relating to prostitution to criminalise the *exploitation* of one person by another, rather than its current focus on immoral purposes;
 - Amend section 377CA of the Penal Code which regards rape with an object as sex “against the order of nature”, rather than rape. Rape with an object should be moved to the section of the Penal Code which deals with rape.
- Reform laws that perpetuate discrimination against women who have same-sex relationships and transgender people:
 - Amend the state *Syariah* Criminal Offences Acts to decriminalise same-sex consensual sexual relations;
 - Amend the state *Syaria* Criminal Offences Acts to decriminalise cross dressing, which is used to harass and arrest transgender people.
- Remove the remaining reservations to CEDAW Articles 9 (2) and 16 (1)(a), (c), (f) and (g).

Article 3

- Gender should be mainstreamed into all sectors and policies in the five-year de-

velopment plans of the government and on the basis of equality between women and men as required by CEDAW.

- Data disaggregated by sex and other socio-economic factors must be gathered to facilitate planning and implementation of initiatives aimed at integrating women's interests into national development plans.
- The Ministry of Women, Family and Community Development has to adopt a more proactive role as an advocate (and not only as a facilitator) to detect, monitor and eliminate discrimination against women within the public and private sector.
- The Gender Focal Points of each of the ministries should have their roles and functions clearly defined, with proper guidelines on strategies and actions to be taken, to ensure that gender mainstreaming is effectively implemented within each government ministry.
- Gender budgeting should be implemented to ensure appropriate allocation of the budget and resources within each sector for programmes that promote women's rights and gender equality.
- Undertake comprehensive mapping and assessment of poverty in the country and subject this data to gender disaggregation.
- Ratify the Optional Protocol to CEDAW.

Article 4

- Identify areas for application of temporary special measures and develop specific guidelines and concrete plans for their implementation, monitoring, and evaluation to ensure effectiveness.

07.

Article 5

SEX ROLES AND STEREOTYPING

Article 5

States Parties shall take all appropriate measures:

- (a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women;
- (b) To ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children, it being understood that the interest of the children is the primordial consideration in all cases.

Key issues in this chapter:

- Government rhetoric often reinforces gender stereotypes** and women's role in the home as primary care-givers. Although the government has previously called for employers to offer part-time and flexible work arrangements, the rhetoric surrounding these announcements places the obligation on women to undertake the 'double burden' of working at home, taking care of children, and seeking paid employment. **Government rhetoric never encourages fathers or 'parents' to seek flexible work arrangements** so that care for children and housework can be shared.
- Elected Members of Parliament routinely make **sexist comments** in and outside of

parliament and are not rebuked by their peers. Although it may be understood that the sexist remarks are merely made by wayward individuals, the lack of reprimand from peers indicates the broad acceptance of a systemic sexist mindset.

- There have been efforts to **segregate the sexes in public transport**. This does not tackle the root causes of sexual harassment.
- The National Fatwa Council has declared a series of **fatwas limiting the rights of women to bodily integrity**. There is a *fatwa* making it obligatory for girls to undergo circumcision, a *fatwa* against *pengkids* (a Malay term referring to a person born female whose gender identity and gender expression are androgynous or masculine), and a *fatwa* against women who shave their heads. Although the *fatwas* do not carry the weight of the law, the sentiment and attempts to control Muslim women's bodily integrity is of significant concern.
- The **policing of morality** on the basis of religious values has serious implications for all members of society. Laws that attempt to regulate the private lives of citizens leave much scope for abuse, selective prosecution, and victimisation. Individuals hailing from marginalised social groups are particularly vulnerable. The policing of morality is government backed and undertaken by both State Islamic Departments and the Royal Malaysian Police.
- **Women's freedom of expression is routinely policed**. This has affected what women say, think, believe, and wear, including the attire of professional athletes. Women regularly face harassment and threats of violence for simply voicing their opinions.
- **Individuals of non-heteronormative sexual orientations or diverse gender identities face governmental persecution**. *Syariah* laws in each state explicitly criminalise acts such as 'cross-dressing' and expressing characteristics of another gender **in public**, as well as sexual relations between women. These laws have been abused and used against women and transgender people in private spaces. There have been many instances of religious enforcement officers and the police **harassing, assaulting, and sexually abusing transgender people**.
- **LGBT themed events and organisers of such events are often criticised, intimidated, and harassed by state and non-state actors**. Reports have emerged of LGBT pride events and transgender beauty pageants being subject to raids by the Federal Territory Islamic Department (JAWI), leading to arrests. This has raised concerns over the personal and collective safety and well-being of LGBT persons.
- **Gender stereotypes are perpetuated in the media**. In advertising, women are of-

ten portrayed in submissive roles. Film censorship guidelines require homosexual and transgender characters to either repent, die, or be punished at the end of any film. Newspaper portrayals of sexual diversity often use disparaging words.

In the Malaysian government's appearance before the CEDAW Committee in 2018, the Committee reiterated its previous concerns about the persistence of patriarchal attitudes and deep-rooted stereotypes regarding the roles of women and men in the family and society. These are the predominant causes for women being held in subordinate positions in several areas and impede the implementation of the Convention. The Committee also expressed its concern for the 'moral policing' of women by private citizens and religious authorities.⁵⁴⁹

Unfortunately, much of the government's attitude, indicated by its rhetoric during the CEDAW review session in February 2018, remains steeped in stereotyped views of the distinct roles of women and men.

The *Malaysian NGO CEDAW Alternative Reports* of 2006 and 2012 highlighted many issues of concern that remain relevant. This chapter will focus on new developments since 2006. Although the government has lifted its reservation to Article 5(a) of CEDAW, little has been done to ensure that the intent of the article is realised.

2018 Concluding Observations to Malaysia

In its 2018 Concluding Observations to Malaysia, the Committee reiterates its previous concerns with regards to the persistence of patriarchal attitudes and deep-rooted gender stereotypes:

"The Committee recommends that the State party:

- a) Adopt a comprehensive strategy with proactive and sustained measures that target women and men at all levels of society, including religious and traditional leaders, to eliminate discriminatory stereotypes and patriarchal attitudes concerning the roles and responsibilities of women and men in the family and society;
- b) Adopt measures to encourage men to share child-rearing and housework responsibilities equally, including by introducing paternity leave in both the public and private sectors and by introducing flexible work arrangements for fathers as well as mothers;
- c) Adopt innovative measures targeting the media to strengthen the

549 CEDAW *Concluding Observations to Malaysia 2018*, para 19 (CEDAW/C/MYS/CO/3-5).

understanding of substantive equality of women and men and use the education system to enhance positive and non-stereotypical portrayals of women;

- d) Ensure that members of Parliament are held accountable for sexist or condescending remarks about women through the effective application of Standing Order 36 (4) as amended in 2012;
- e) Monitor and review the measures taken to combat stereotypes in order to assess their impact and revise them as appropriate.”⁵⁵⁰

Removal of reservation to Article 5(a)

Although the government’s reservation to Article 5(a) was lifted in 2010, and the government should be commended for this step, little has been done to practically realise the intent of the Article.

In contravention of Article 5(a), polygamous marriage continues to be permitted for Muslim men in Malaysia. Moreover, state-level *Syariah* laws criminalise women in same-sex relationships, transgender people, and cross-dressing, all of which reinforces stereotypes as between men and women. These laws not only perpetuate a binary understanding of gender, but also express the power relations inherent to it. There is also a national *fatwa*, declared in 2009, which states that it is obligatory for Muslim women to undergo female circumcision. Additionally, though the division of property (*Hukum Faraid*) in the state *Syariah* laws was cited by the government as a reason for the reservation being placed on Article 5(a),⁵⁵¹ these laws remain unchanged.

Government policy and political rhetoric reinforces women’s stereotypical roles

Women regarded as primary care-givers in families

Government rhetoric often reinforces gender stereotypes and women’s role as primary caregivers. While encouraging employers to offer part-time work and flexible arrangements is welcomed, the government rarely encourages fathers to take on childcare and housework.⁵⁵² The rhetoric surrounding these announcements places the obligation on mothers to undertake the ‘double burden’ of working in the home and

550 CEDAW Concluding Observations to Malaysia 2018, para 20 (CEDAW/C/MYS/CO/3-5).

551 Malaysian NGO CEDAW Alternative Report 2006, page 26.

552 “Female civil servants can take up to 90 days maternity leave.” The Star. 16 October 2010. Available at: <https://www.thestar.com.my/news/nation/2010/10/16/female-civil-servants-can-take-up-to-90-days-maternity-leave/>

seeking paid employment. In speaking about maternity leave during his “Budget 2011” speech, former Prime Minister Najib stated that, “The Government is concerned with the career prospects and welfare of female civil servants as they need to take care of their families.”⁵⁵³ It is never fathers who are encouraged to seek flexible work arrangements so that they can share the child care responsibilities.

Modesty during childbirth

In June 2016, the Ministry of Health announced its plan to allow only female doctors assist with childbirth. The plan was introduced in response to a 2013 petition signed by 6,880 persons concerned with the exposure of women’s *aurat*, those parts of the body that should be covered according to Islamic teachings.⁵⁵⁴ The plan is currently on hold due to a lack of female gynaecologists and obstetricians.⁵⁵⁵

Dress code at government agencies

Despite a statement made by Azalina Othman Said, former Minister of Law in the Prime Minister’s Department, that dress codes would not be enforced on members of the public visiting government departments,⁵⁵⁶ such enforcement has continued to take place.

In June 2015, the Road Transport Department (JPJ) uploaded new guidelines to their website on appropriate attire for individuals attending driving lessons or driving examinations.⁵⁵⁷ The guidelines specify that female candidates should not wear sleeveless shirts and that skirts must be below knee level.⁵⁵⁸

In July 2015, the Malaysian Bar Council released a compilation of cases in relation to gender policing and denial of government services based solely on attire as between May and June 2015. In this period alone, nine women were barred from entering government

553 For more information, refer to *Malaysian NGO CEDAW Alternative Report 2012*, pages 75-76.

554 ‘aurat, n’ (*OED Online*). Available at: <https://ms.oxforddictionaries.com/translate/malay-english/aurat>

555 “Gov’t plans to allow only female doctors to assist in childbirth.” *Malaysiakini*. 28 June 2016. Available at: <http://www.malaysiakini.com/news/346875>

556 “Azalina: No dress code for public at all government offices.” *Malay Mail Online*. 5 November 2015. Available at: <http://www.themalaymailonline.com/malaysia/article/azalina-no-dress-code-for-public-at-all-government-offices#u2LOJXfmAgD1wWlf.99>

557 “JPJ outlines detailed dress code guidelines.” *The Sun Daily*. 10 June 2015. Available at: <http://www.thesundaily.my/news/1454407>

558 “Candidate dress code.” *JPJ*. 10 July 2016. Available at: <https://www.jpjlink.com/home/2016/07/candidate-dress-code/>

agencies and departments because of their attire.^{559,560,561,562}

In April 2017, two female human rights activists were stopped at the entrance to Parliament by security guards who examined the hemline of their skirts, to check whether they adhered to the Parliament's dress code.⁵⁶³ The women were wearing knee-length skirts.⁵⁶⁴

The imposition of dress codes that deny women access to government premises and/or services amounts to an abuse of power. The President of the Malaysian Bar found that the measures breach Articles 5 and 10 of the Federal Constitution, which guarantee the right to live with dignity and earn a livelihood, as they impede the freedom of movement and expression.^{565,566}

Dress code at the workplace

In July 2016, Abdul Fattah Mahmood, the Kelantan State Local Government Housing, Youth and Sports Committee Chairman, announced that it would become compulsory for Muslim women working at fast-food outlets and hypermarkets in the state to cover their *aurat* effective from 2017.⁵⁶⁷ Muslim workers would be required to wear long-sleeved uniforms, while non-Muslims were asked to dress "decently."⁵⁶⁸ He added that

559 "Skirts and pants become issue again in Parliament." Malay Mail Online. 7 April 2017. Available at: <http://www.themalaymailonline.com/malaysia/article/skirts-and-pants-become-issue-again-in-parliament>

560 "Lawyer tells off Parliament security guards turned moral police." Free Malaysia Today. 7 April 2017. Available at: <http://www.freemalaysiatoday.com/category/nation/2017/04/07/lawyer-tells-off-parliament-security-guards-turned-moral-police/>

561 "No entry due to dress." The Star Online. 28 April 2016. Available at: <http://www.thestar.com.my/news/nation/2016/04/28/no-entry-due-to-dress-womans-skirt-falls-short-of-guards-expectations/>

562 "JPJ outlines detailed dress code guidelines." The Sun Daily. 10 June 2015. Available at: <http://www.thesundaily.my/news/1454407>

563 "Skirts and pants become issue again in Parliament." Malay Mail Online. 7 April 2017. Available at: <http://www.themalaymailonline.com/malaysia/article/skirts-and-pants-become-issue-again-in-parliament>

564 "Lawyer tells off Parliament security guards turned moral police." Free Malaysia Today. 7 April 2017. Available at: <http://www.freemalaysiatoday.com/category/nation/2017/04/07/lawyer-tells-off-parliament-security-guards-turned-moral-police/>

565 "Press Release: Rein In Overzealous Dress Code Enforcement and Reject Clothing or Moral Policing." The Malaysian Bar. 4 July 2015. Available at: http://www.malaysianbar.org.my/press_statements/press_release_%7C_rein_in_overzealous_dress_code_enforcement_and_reject_clothing_or_moral_policing.html

566 "Dress code restrictions abuse of power, unconstitutional, says Bar." The Malaysian Bar. 4 July 2015. Available at: http://www.malaysianbar.org.my/legal/general_news/dress_code_restrictions_abuse_of_power_unconstitutional_says_bar.html

567 "Female Muslim workers in Kelantan must cover 'aurat'." New Straits Times. 11 July 2016. Available at: <https://www.nst.com.my/news/2016/07/157587/female-muslim-workers-kelantan-must-cover-aurat>

568 Ibid.

some business operators were in support of the proposal, and the committee viewed the proposal as a strategy to promote hygiene, the image of the business, and tourism in Kelantan.⁵⁶⁹

Sports attire

In June 2015, Farah Ann Abdul Hadi, a gymnast who won two gold medals at the South East Asia Games in Singapore, was criticized for her choice of sportswear during the games, igniting debate about Muslim women's attire in sports.⁵⁷⁰

Harussani Zakaria, the *Mufti* of Perak, argued that gymnastics is not an ideal sport for Muslim women, as it exposes women's *aurat* and the shape of their bodies.⁵⁷¹ Jamil Khir Baharom stated in Parliament that the federal government would carry out an in-depth study on Islamic compliance for clothing worn in sports and other fields.⁵⁷² In response, former Youth and Sports Minister Khairy Jamaluddin defended the freedom of athletes to choose their attire.⁵⁷³

In a Parliament sitting in November 2015, an opposition Member of Parliament, First Admiral (r) Mohd Imran Abdul Hamid, cautioned that indecent attire worn by female athletes could lead to adultery. Khairy Jamaludin, rejected the unsubstantiated claims. Kasthuri Patto, an opposition member of Parliament, also rejected the notion, holding that:

“Islamic values don't revolve around misogyny and bigotry but on equality, freedom and most importantly treating each other with civility and respect... MPs have a moral obligation to wage war on patriarchy, bigotry, misogyny and sexism, instead of waging war on women.”⁵⁷⁴

569 “Cover-up’, female Muslim workers in Kelantan told.” Free Malaysia Today. 11 July 2016. Available at: <http://www.freemalaysiatoday.com/category/nation/2016/07/11/cover-up-female-muslim-workers-in-kelantan-told/>

570 “Muslim gymnast criticized for ‘revealing’ leotard as she wins double-gold.” The Telegraph. 18 June 2015. Available at: <http://www.telegraph.co.uk/women/womens-life/11683079/Muslim-gymnast-criticised-for-revealing-leotard-as-she-wins-gold.html>

571 “Gymnastics not for Muslim women, says mufti.” Malaysiakini. 13 June 2015. Available at: <https://www.malaysiakini.com/news/301724>

572 “Malaysia To Review Sports Attire For National Athletes After Gymnast Incident.” All Singapore Stuff. 16 June 2015. Available at: <https://www.allsingaporestuff.com/article/malaysia-review-sports-attire-national-athletes-after-gymnast-incident>

573 “Athletes don't have to obey Jakim guidelines, says Khairy.” The Star Online. 17 June 2015. Available at: <https://www.thestar.com.my/news/nation/2015/06/17/athletes-dont-have-to-obey-jakim-guidelines-says-khairy/>

574 “Kasthuri slams those linking sexy sportswear with adultery.” Free Malaysia Today. 17 November 2015. Available at: <http://www.freemalaysiatoday.com/category/nation/2015/11/17/kasthuri-slams-those-linking-sexy-sportswear-with-adultery/>

Stereotyping of masculinity and promotion of gender binary

Gender policing based on the binary conception of gender, and the stereotypes that stem therefrom, are strengthened by government rhetoric that reinforces toxic masculinity, and imparts and reflects patriarchal notions, such as the need for men to control women.

In March 2016, Zamri Hashim, Deputy *Mufti* of Perak, urged Muslim men to “be more manly and firm in protecting and guiding their wives and daughters against committing sins.”⁵⁷⁵ Men who allow “their women” to commit sins, such as going out in public without “covering their bodies properly,”⁵⁷⁶ neglecting compulsory prayers, participating in beauty pageants, or having traditionally male-dominated jobs, are dubbed: *dayus*. *Dayus* men are categorized as one of three groups of people who will not be allowed to enter paradise.⁵⁷⁷

Sexist and patriarchal policies, positions, and practices in political parties

The political parties UMNO and PAS, continued to make headlines for their deeply patriarchal positions and practices in 2014 and 2015. While men in the parties predominately made problematic statements regarding women, it is important to note that some women in the parties supported these patriarchal stances and the reproduction of patriarchal, segregationist, and essentialist views in the name of religion, culture, and party loyalty.

In July 2014, in the midst of the Kajang by-election and nomination of the new chief minister in Selangor, both UMNO and PAS stated their opposition to Dr Wan Azizah’s nomination as the chief minister of Selangor. An UMNO lawyer stated that menstruation will affect women’s presence in some religious ceremonies, and that they are therefore not suitable for the job.⁵⁷⁸

In July 2015, reports surfaced that Kelantan PAS lawmakers are allegedly required to take an oath that they will swear to divorce their wives with the “third talaq” should they join another political party.⁵⁷⁹

575 “Muslim men who let women commit sins won’t enter paradise.” Free Malaysia Today. 25 March 2016. Available at: <http://www.freemalaysiatoday.com/category/nation/2016/03/25/muslim-men-who-let-women-commit-sins-wont-enter-paradise/>

576 Ibid.

577 Ibid.

578 “Lawyer slammed over Wan Azizah’s ‘menstrual’ remark.” The Star Online. 15 July 2014. Available at: <https://www.thestar.com.my/news/nation/2014/07/15/lawyers-activists-criticise-lawyer-over-wan-azizah-as-mb-remark/>

579 “Automatic’ divorce from wife for Kelantan PAS lawmakers who exit party, MB says.” Malay Mail Online. 23 July 2015. Available at: <https://www.malaymail.com/s/938533/automatic-divorce-from->

Women in government policy plans

Every five years, the government releases a Malaysia Plan which outlines the overarching policy directions of the government for the following five years. The Eleventh Malaysia Plan states that a higher proportion of women occupied top management positions in the public sector in 2014 (32.5%) compared to 2010 (30%).⁵⁸⁰ Though no clear definition of what constitutes a “top management position” is given, the report notes that only 10.2% of public listed companies had female directors in 2014, while a 30% target was set for 2016.⁵⁸¹ Former Prime Minister Najib Razak also announced strategies to increase women’s participation in the labour force to 59% by 2020 in the Eleventh Malaysia plan.⁵⁸² The plan however does not discuss CEDAW.

Sexist remarks by politicians

Regrettably, there have been many instances in which Malaysian politicians have made highly derogatory comments about women. Some female members of Parliament have become consistent targets of sexism and patriarchal attitudes. It is important to note that the same individuals repeatedly make sexist remarks, as there is a lack of disciplinary action towards members of Parliament and state assemblypersons who make offensive remarks based on gender, ethnicity, and other intersecting identities. Fellow politicians from the same political party rarely speak out against sexist remarks and it is left to opposition politicians to condemn the comments, which in turn politicises the issue.⁵⁸³

Tone policing and reinforcing traditional gender roles

When a member of Wanita UMNO criticised former Prime Minister and President of UMNO Najib Razak for his handling of the 1MDB scandal, the UMNO Supreme Council member Rosnah Abdul Rashid Shirlin reminded its female members to mind their manners, religion, and culture when criticizing the party leaders:

“Our culture and religion also do not encourage us to use inappropriate words, more so as we are women, we have to observe our manners.”⁵⁸⁴

wife-for-kelantan-pas-lawmakers-who-exit-party-mb-sa

580 Economic Planning Unit. (2015). *Eleventh Malaysia Plan 2016–2020: Anchoring Growth on People*. Available at: <http://www.epu.gov.my/en/rmk/eleventh-malaysia-plan-2016-2020>

581 Economic Planning Unit. (2015). *Eleventh Malaysia Plan 2016–2020: Anchoring Growth on People*. 3(7). Available at: <http://www.epu.gov.my/en/rmk/eleventh-malaysia-plan-2016-2020>

582 Ibid, page 3-15.

583 For more information, refer to *Malaysian NGO CEDAW Alternative Report 2012*, pages 78-79.

584 “Mind your manners, Umno members told.” The Star Online. 14 August 2015. Available at: <https://www.thestar.com.my/news/nation/2015/08/14/umno-rosnah-langkawi/>

Linking tragedies with women's attire

In the wake of the MH370 and MH17 tragedies, Siti Zailah, a member of Parliament from PAS, blamed the downing of MAS flight MH17 on the “indecent uniform” of flight attendants at an emergency sitting of Parliament.⁵⁸⁵ She added that the government must focus on Islamic teaching to prevent people from “dying in sin.”⁵⁸⁶

In September 2014, PAS members again blamed Malaysia Airlines flight attendants' attire for the airline's twin disasters and recommended modest attire for the air stewardesses to receive Allah's continued protection.⁵⁸⁷

Silencing women

In March 2016, Ahmad Said, the former Chief Minister of Terengganu and state assemblyperson, stated that Azalina Othman Said, Minister in the Prime Minister's Department, could not discuss the issue of divorce as she was not married and knew nothing about a “man's right” to get a divorce. This came in response to Azalina calling Ahmad Said's persistent efforts to be reappointed Chief Minister of Terengganu “divorce crazy.”⁵⁸⁸

Sexist remarks by Parliamentarian Bung Mokhtar Radin

Bung Mokhtar Radin has repeatedly made sexist remarks in his capacity as a Member of Parliament for Barisan Nasional (BN) but has not been subject to formal disciplinary action in parliament.

In July 2014, Bung Mokhtar took advantage of a road bullying case involving a woman, taking to twitter to defend remarks made in 2011 regarding women drivers being hot headed.⁵⁸⁹ Later in the year he expressed his personal discomfort in relation to pat downs at airport security checks, adding that he was, however, “okay if airport security wanted

585 “No forgiveness for MH17 culprits, only justice.” Malaysiakini. 23 July 2014. Available at: <https://www.malaysiakini.com/news/269619>

586 Ibid.

587 “MH17 tragedy was Allah's punishment for alcohol on planes, says Malaysian youth leader.” News.com.au. 23 July 2014. Available at: <https://www.news.com.au/travel/travel-updates/incidents/mh17-tragedy-was-allahs-punishment-for-alcohol-on-planes-says-malaysian-youth-leader/news-story/4208175674bed6825506d50f29f00f04>

588 “Azalina ticked off for making ‘divorce crazy’ claim.” Free Malaysia Today. 9 March 2016. Available at: <http://www.freemalaysiatoday.com/category/nation/2016/03/09/azalina-ticked-off-for-making-divorce-crazy-claim/>

589 “Angry woman driver proves me right, tweets Bung Mokhtar.” Asto Awani. 17 July 2014. Available at: <http://english.astroawani.com/malaysia-news/angry-woman-driver-proves-me-right-tweets-bung-mokhtar-40036>

to touch Kok,” taking a jibe at parliamentarian Teresa Kok’s name.⁵⁹⁰

In June 2015, Bung Mokhtar stated that he “pitied” the husband of opposition parliament member, Zuraida, for having such an aggressive wife. The comment came in response to Zuraida’s questions regarding the alleged mismanagement of Permata, a child-care centre for gifted kids, helmed by Rosmah Mansor.⁵⁹¹ The Speaker of Parliament, Dr. Ronald Kiandee, allowed the comments, as in his opinion Bung’s intentions were not malicious.

In a resulting press conference at the Parliament lobby, Zuraida called for disciplinary actions against Bung Mokhtar for violating the Parliament’s Standing Order 37(4) by touching on private matters and uttering sexist remarks.⁵⁹² A protest against Bung was staged and joined by members of Parliament, largely from the opposition parties. Outraged by the protest, Bung Mokhtar “reacted furiously” in Parliament, threatening the protesters, and lashing out at other members of Parliament who defended Zuraida⁵⁹³

For a list of sexist remarks made by Bung Mokhtar prior to 2012 refer to the *Malaysian NGO CEDAW Alternative Report 2012*.⁵⁹⁴

Sexist remarks by state assemblyperson Syed Sis A. Rahman

During a Johor state assembly sitting in May 2015, Syed Sis A. Rahman of the Tanjung Surat constituency compared GST to a “gorgeous” woman, saying:

“When a woman’s features are beautiful, she’s bound to have shortcomings and there are bound to be others who will be jealous of her and not like her. This is just like the GST.”⁵⁹⁵

590 “Bung: Airport body checks okay for Kok, not me.” Malaysiakini. 27 November 2014. Available at: <https://www.malaysiakini.com/news/281770>

591 “In Parliament, irate Bung says ‘someone would be dead’ if he was home during protest.” Malay Mail Online. 17 June 2015. Available at: <http://www.themalaymailonline.com/malaysia/article/in-parliament-irate-bung-says-someone-would-be-dead-if-he-was-home-during-p>

592 Ibid.

593 “After Making Sexist Remarks, Bung Mokhtar Issues Death Threats To Protestors In Parliament.” SAYS. 18 June 2015. Available at: <http://says.com/my/news/bung-mokhtar-issues-death-threats-to-protestors>

594 For more information, refer to *Malaysian NGO CEDAW Alternative Report 2012*, pages 78-79.

595 “GST like a gorgeous woman.” The Star Online. 11 May 2015. Available at: <http://www.thestar.com.my/news/nation/2015/05/11/gst-like-a-gorgeous-woman-bn-rep-shes-bound-to-be-surrounded-by-jealous-people/>

Sexist remarks by Minister of International Trade and Industry Mustapa Mohamed

At a public dialogue on the Trans-Pacific Partnership Agreement (TPPA) in December 2015, Mustapa Mohamed compared his Ministry's move to a new building to dumping one's wife after a long marriage. He also likened the new building to an "inexperienced virgin."⁵⁹⁶ He later apologized for his remarks.⁵⁹⁷

Sexist remarks by Deputy Agriculture and Agro-based Industry Minister Tajuddin Abdul Rahman

In a parliamentary sitting in November 2016, the Deputy Agriculture and Agro-based Industry Minister Tajuddin Abdul Rahman took a jibe at Teresa Kok: "[Seputeh is] the only woman with a 'Kok' in the Dewan."⁵⁹⁸ Tajuddin's comments sparked protest from Teresa Kok and other Members of Parliament, who demanded a retraction of the words. The Deputy Dewan Rakyat Speaker, Ronald Kiandee, overlooked the implied meaning and allowed the use of the word 'Kok' as it refers to a family name. Two Members of Parliament, M. Kulasegaran and Khalid Samad, spoke out against the comment, eventually leading to Tajuddin supporters physically attacking Samad in front of the Parliament three days later.⁵⁹⁹

Sexist remarks by Federal Territories Minister Tengku Adnan Tengku Mansor

At the National Transformation Forum 2015 (TN50) Federal Territories Minister Tengku Adnan Tengku Mansor responded to a question from a female audience member raising concerns about lack of safety for women in public spaces by stating, "The next time you go out, wear more *comot* [shabby] clothes."⁶⁰⁰

596 "Mustapa Mohamed's joke enjoyed by some, panned by others." Malay Mail Online. 1 December 2015. Available at: <http://www.themalaymailonline.com/malaysia/article/mustapa-mohameds-joke-enjoyed-by-some-panned-by-others>

597 "Lesson learned' – minister apologises for 'virgin' remark." Malaysiakini. 1 December 2015. Available at: <https://www.malaysiakini.com/news/321800>

598 "Ruckus in Parliament after deputy minister makes 'Kok' comment." The Star Online. 21 November 2016. Available at: <http://www.thestar.com.my/news/nation/2016/11/21/woman-mp-yellow-jacket-causes-ruckus-in-parliament/>

599 "Khalid Samad attacked outside Parliament." The Star Online. 24 November 2016. Available at: <https://www.thestar.com.my/news/nation/2016/11/24/khalid-samad-attacked-outside-parliament/>

600 "'Dress shabby' remark was just a joke, Tengku Adnan says." Malay Mail Online. 24 May 2017. Available at: <https://www.malaymail.com/s/1384131/dress-shabby-just-a-joke-tengku-adnan-says>

Sexist remarks by MP Che Mohamad Zulkifly Jusoh

During a July 2017 Parliamentary debate on amendments to the Domestic Violence Act (1994), MP Che Mohamad Zulkifly Jusoh remarked that women who refuse to have sex with their husbands are guilty of emotional and psychological abuse.⁶⁰¹

Ban on child marriage will see the increase of “lustful girls”

During a parliamentary debate on the Child (Amendment) Bill in 2016, PAS parliamentarian Nik Mazlan Nik Mohamad claimed that a ban on child marriage will lead to an increase in casual sex involving young girls.⁶⁰² Nik Mazlan’s unsubstantiated claims were supported by fellow party member Khairuddin Aman Razali, and Noor Ehsanuddin Mohd Harun Narrashid, a member of Parliament from BN. Noor Ehsanuddin questioned Malaysia for signing the United Nation Human Rights Council’s resolution to end child marriage and called for the cultural sensitivity of child marriage to be respected.⁶⁰³ The Ministry of Women, Development and Community, and women MPs countered the responses.⁶⁰⁴

In April 2017, during a debate on the Sexual Offences Against Children Bill 2017, former *Syariah* court judge and Barisan Nasional MP Shabudin Yahaya defended marriage as remedy for rape victims. According to Yahaya, girls as young as 12 might be “spiritually and physically ready” for marriage.⁶⁰⁵

“When we discuss the 12 and 15-year-old, we don’t see their physical bodies because some children aged 12 or 15 have bodies like 18-year-old women ... Perhaps through marriage they can lead a healthier, better life. And the person who was raped does not necessarily have a bleak future. She will have a husband, at least, and this could serve as a remedy to growing social problems”⁶⁰⁶

601 “Withholding sex from husbands is ‘psychological abuse’, claims Malaysian MP.” The Independent. 28th July 2017. Available at: <http://www.independent.co.uk/news/world/asia/withholding-sex-husbands-psychological-abuse-malaysia-mp-a7865546.html>

602 “MP: Banning child marriages will see lustful girls engaging in casual sex.” Malaysiakini. 6 April 2016. Available at: <http://www.malaysiakini.com/news/336796>

603 Ibid.

604 “PAS MP Says “Lustful Girls” Would Seek Casual Sex If Child Marriages Are Banned.” SAYS. 7 April 2016. Available at: <http://says.com/my/news/pas-mp-says-banning-child-marriages-would-lead-to-girls-seeking-casual-sex>

605 “Rape victims should marry their rapists, Malaysian MP tells parliament.” The Guardian. 5 April 2017. Available at: <https://www.theguardian.com/world/2017/apr/05/victims-should-marry-their-rapists-malaysian-mp-tells-parliament>

606 “MP says it’s okay for rapists to marry child victims and sparks outrage.” The Star Online. 5 April 2017. Available at: <http://www.thestar.com.my/news/nation/2017/04/05/mp-says-its-okay-for-rapists-to-marry-child-victims-and-sparks-outrage/>

The comments drew strong criticism and the bill was passed nonetheless.

Discriminatory remarks by Abdul Azeez Rahim

In November 2015, Abdul Azeez Rahim described Kasthuriraani Patto, an opposition member, as “worse than a *pondan*”, a pejorative term used to refer to effeminate gay men and transgender women. Despite protests and call for reprimands, Azeez was spared disciplinary action as the Dewan Rakyat Speaker was satisfied with the excuse that Azeez’s sexist remark was not aimed specifically at Kasthuri.⁶⁰⁷

UMNO General Assembly statements regarding LGBTI persons

In November 2014, following the Court of Appeal’s landmark decision on the unconstitutionality of section 66 of the Negeri Sembilan state *Syariah* law (used to persecute transgender women), UMNO ramped up its anti-LGBT and misogynistic rhetoric.

Siti Aisyah Mahmood, the Bukit Katil Puteri UMNO Division Chief, positioned transgender women as a threat to cisgender women and played up cisgender women’s insecurities in a speech:

“Today sisters, transsexuals have won! After this, when we want to use toilets, we have to look left and right. We have to look at the other users’ Adam’s apple. That is for the free-haired ones, but if they are the type who wears a headscarf like us, what then? I propose that the government looks into forming a mechanism, which will apply not only to *Syariah* law but also civil law, by enacting a special Act to prevent changing the gender of individuals.”⁶⁰⁸

Ismail Kijo, from the Selangor UMNO branch, expressed that Putrajaya must not succumb to the pressure to elevate the human rights of LGBTI persons. His speech made multiple references women’s breasts; he warned the audience that mothers would have to face the harsh reality of their daughters’ partners having bigger breasts than theirs.⁶⁰⁹ The suggestive remarks sexualized women’s breasts and had unsettling undertones of sexual fantasy about lesbians. This reinforces heteronormative views and suggested that

607 “BN MP escapes censure for ‘worse than pondan’ jibe.” Malaysiakini. 4 November 2015. Available at: <https://www.malaysiakini.com/news/318390>

608 “Transsexuals have won, claims Bukit Katil Puteri head.” The Rakyat Post. 26 November 2014. Available at: <http://www.therakyatpost.com/news/2014/11/26/transsexuals-won-claims-bukit-katil-puteri-head/>

609 “Cheap anti-gay, sexist jibes echo at Umno assembly.” Malay Mail Online. 29 November 2014. Available at: <http://www.themalaymailonline.com/malaysia/article/cheap-anti-gay-sexist-jibes-echo-at-umno-assembly>

only heterosexual relationships are legitimate.

In the same assembly, Norhayati Yaacob, Wanita UMNO Ketereh vice-chief, called on JAKIM to combat apostasy and influence from LGBTI persons.

Stereotypes of women political candidates

In June 2016, Izat Bukhary Ismail Bukhary, an independent candidate who ran in the Kuala Kangsar by-election, claimed that women are unqualified to be elected as state assemblypersons.⁶¹⁰ This echoed statements he had already made during the September 2014 by-election, where he claimed that women should not hold political positions as they are not only incapable of leading, but that Islam prohibits women from being leaders of the household and, by extension, the country.⁶¹¹

In October 2016, Dyana Sofya Mohd Daud, a candidate for the Democratic Action Party (DAP) received sexist comments from Baljit Singh, a Gerakan party leader in the Barisan Nasional (BN). In a social media post, Baljit commented that BN should emulate DAP's move by fielding "young, sexy and beautiful women" to boost Gerakan's chances in the future election, allegedly describing Dyana Sofya as a young Malay girl. Baljit later claimed that the media had misquoted him amidst the criticism.⁶¹² According to Baljit, the "young, sexy" comments were in reference to a Gerakan lifetime party member, Kak Azmar,⁶¹³ completely misunderstanding that his comments were sexist.

Internet and feminism 'altering' women

At a press conference for an Ikatan Muslim Malaysia (ISMA) women's forum, ISM president Abdullah Zaik Abd Rahman claimed that the unregulated use of the Internet has caused women to neglect their household duties.⁶¹⁴ According to Abd Rahman, this has led to increased divorce rates and irreparable damage to children. He also blamed feminism for giving too much 'space' to women and robbing men of theirs.⁶¹⁵

610 "Kuala Kangsar telah lama iktiraf kepimpinan wanita." Sinar Online. 7 June 2016. Available at: <http://www.sinarharian.com.my/politik/kuala-kangsar-telah-lama-iktiraf-kepimpinan-wanita-1.529673>

611 "Masalah timbul jika wanita diberi mandat memimpin - Izat Bukhary." Astro Awani. 16 September 2014. Available at: <http://www.astroawani.com/berita-politik/masalah-timbul-jika-wanita-diberi-mandat-memimpin-izat-bukhary-44063>

612 "Treat women with respect, Dyana Sofya tells Gerakan leader." Malay Mail Online. 10 October 2016. Available at: <http://www.themalaymailonline.com/malaysia/article/treat-women-with-respect-dyana-sofya-tells-gerakan-leader>

613 "Gerakan leader says misquoted over sexist remarks." Malay Mail Online. 9 October 2016. Available at: <http://www.themalaymailonline.com/malaysia/article/gerakan-leader-says-misquoted-over-sexist-remarks>

614 "Isma: Feminism making women forget their place as homemakers." Malay Mail Online. 26 April 2016. Available at: <http://www.themalaymailonline.com/malaysia/article/isma-feminism-making-women-forget-their-place-as-homemakers>

615 Ibid.

He urged women not to be overwhelmed by feminism and the Internet, and to focus on the family instead:

“We need affirmation from Muslim women that they won’t swallow whole the concept of feminism and prevent themselves from drowning in the online world, as well as to reaffirm their main commitment to their households.”⁶¹⁶

The ideas about women espoused by the ISMA President underscore patriarchal anxieties over autonomy exercised by women and changing gender roles and norms.

Lonely women join ISIS

In April 2015, Jamil Khir Baharom, Minister in the Prime Minister’s Department, claimed that lonely women are prone to join ISIS. Syerleena Abdul Rashid, a DAP youth leader called out the oversimplification and generalization of the issue, which did not benefit the state’s strategies to curb threats by ISIS.⁶¹⁷

Save the ‘golden virgins’

In August 2016, Mohd. Rawi Abd. Hamid, the Chairperson of the Kedah Religious Committee, stated that single women who are professionals or are in stable financial positions - dubbed as *anak dara emas*, golden virgins - have difficulty finding husbands because they are too shy to approach men. He stated that women do not want to be labelled as *perigi mencari timba*, a cynical Malay proverb used to describe a single woman who initiates a marriage proposal.⁶¹⁸

Later in the same month, Jamil Khir Baharom, Minister in the Prime Minister’s Department, commented on the same matter and urged family members to assist their children who are too preoccupied with their careers to find partners.^{619,620}

616 “Women’s unfettered Internet use creating household problems, Islamist group says.” Malay Mail Online. 26 April 2016. Available at: <http://www.themalaymailonline.com/malaysia/article/womens-unfettered-internet-use-creating-household-problems-islamist-group-s>

617 “DAP Youth leader calls Jamil Khir a chauvinist over lonely women comment.” The Edge Markets. 17 April 2015. Available at: <http://www.theedgemarkets.com/article/dap-youth-leader-calls-jamil-khir-chauvinist-over-lonely-women-comment>

618 “Selesai isu ‘anak dara emas’ belum kahwin.” Utusan Online. 19 August 2016. Available at: <http://www.utusan.com.my/berita/wilayah/kedah/selesai-isu-8216-anak-dara-emas-8217-belum-kahwin-1.372238>

619 “Family members should help single women find partners - Jamil Khir.” Astro Awani. 28 August 2016. Available at: <http://english.astroawani.com/malaysia-news/family-members-should-help-single-women-find-partners-jamil-khir-115279>

620 “Bantu ‘anak dara emas’, kata menteri agama.” Malaysiakini. 27 August 2016. Available at: <http://www.malaysiakini.com/news/353836>

Gender roles and divorce

Reinforcing gender roles by limiting women's activities to the private sphere are consistently offered as solutions issues faced by women. On 8 March 2016, Dr Mohd Khairuddin Aman Razali at-Takiri, information chief of the PAS Ulama Central Committee, stated that women should fulfil their "true functions as wife and mother" in response to the increasing rates of divorce.⁶²¹

Gender stereotypes reinforced in schools and universities

University imposing dress code and fines for graduation for students

In November 2016, University Malaysia Sarawak (UNIMAS) released a dress code for students for the university's graduation ceremony. It stipulated that female graduates should only wear clothes that cover their bodies from the neck to the ankles. Traditional Malay costumes, *baju kurung*, were deemed acceptable, as were long dresses, long skirts, and long-sleeved and high-necked blouses. A fine of RM50 was imposed on those who failed to adhere to the dress code, resulting in five students being fined because of their shoes.⁶²² Deputy chancellor of UNIMAW claimed that the purpose of the fine was to "educate" students on proper attire for formal functions, adding that students that had previously failed to "dress decently ... have caused uneasiness".⁶²³

Dress code in educational institutions

School uniforms based on biological sex at birth cause transgender and gender non-conforming students anxiety and stress, adversely impacting their performance in school. 51-year-old transgender man Lam Cheong went on the record to explain his experience:

"Obviously I was in a girl school. I basically could not really relate to my classmates because I knew that I was like very different because they started talking about girlish (teenage) things ... I was born woman [sic] but I certainly did not feel comfortable wearing a skirt or a dress. Because of that, I basically did not want to improve myself in school ... in my young mind, I always thought that if I were to come out to work, I would have to live a life as a woman, dress in women's clothes to go to work."⁶²⁴

621 "PAS Ulama: Woman's role is at home." The Star Online. 8 March 2016. Available at: <http://www.thestar.com.my/news/nation/2016/03/08/pas-ulama-on-womans-functions/>

622 "Unimas bars revealing clothes for female graduates." Malaysiakini. 16 November 2016. <http://www.malaysiakini.com/news/363042>

623 Ibid.

624 KRYSS & Outright International. (2014). *On the Record: Violence against lesbian, bisexual*

The Equal Rights Trust Report records the experience of a transgender woman who dropped out of college because of rigid gender policies:

“I found it incredibly difficult to study at the college as a trans-woman. Firstly, I had no other trans-women friends on the campus. Secondly, I was forced to share a room (as were all of the other students) with a member of the same sex as me. Because my identify card says that I am male, I was made to share a room with a guy. [...] I also found the studying very difficult as there was a tendency to separate the college classes according to gender. This did not work out at all for me, and I found being forced to study alongside only men very uncomfortable. I also faced dilemmas every day, such as which toilet I should use on campus. Eventually, the campus environment became so uncomfortable for me that I was no longer able to continue with my studies.”⁶²⁵

Taylor’s University LGBT awareness campaign cancelled

A three-day lesbian, gay, bisexual, and transgender (LGBT) public awareness campaign that was planned by Taylor’s University in 2017 was cancelled pursuant to protests from pro-Islamist blogs.⁶²⁶

Gender segregation

Gender segregation in public transport

Although measures such as women-only train carriages and bus services rolled out in 2010 may temporarily make women feel safer, such measures do not tackle the root problem of sexual harassment and lack of respect for women. These measures may increase the level of fear in women who are surrounded by reminders that they are not safe from potential perpetrators.⁶²⁷

Gender segregation in businesses

In Kelantan, gender segregation is already in place at hair salons, cinemas and payment

and trans people in Malaysia. Available at: https://www.outrightinternational.org/sites/default/files/MalaysiaCC_0.pdf

625 Equal Rights Trust. (2011). *The Mak Nyahs of Malaysia: Testimony of Four Transgender Women*. Available at: http://www.equalrightstrust.org/ertdocumentbank/ERR7_testimony.pdf

626 “LGBT pride march in Taylor’s University cancelled after Islamist pressure.” Malay Mail Online. 18 May 2017. Available at: <http://www.themalaymailonline.com/malaysia/article/lgbt-pride-march-in-taylors-university-cancelled-after-islamist-pressure>

627 For more information, refer to *Malaysian NGO CEDAW Alternative Report 2012*, page 80.

counters. On 26 September 2013 the Perak Tengah district council issued a directive that prohibits the sale of couple-seats in cinemas to unmarried Muslim couples.⁶²⁸

Gender segregation policies, rooted in patriarchal protectionism, are non-evidence-based approaches to preventing sexual harassment or other gendered issues. These policies create division, reinforcing gender binaries and toxic gender stereotypes. Additionally, gender segregation in the name of religion reinforces a skewed perception of Islam.⁶²⁹

Gender segregation in sports

In November 2014, PAS announced a same-gender-only directive at government-organised sporting events, in line with the government's tagline "Membangun Bersama Islam" or "Developing with Islam." The ruling entailed a ban on men watching women's sporting events, and vice versa.⁶³⁰ The same-gender rule also applies to officials. Those taking part in the competitions and all spectators must adhere to a dress code that covers *aurat*—women must wear long-sleeved t-shirts and loose-fitting track pants throughout the tournament. This ruling was heavily criticised by opposition parties.⁶³¹

Media portrayals of women

Media portrayals of gender and sexual diversity in Malaysia are restrictive and often use disparaging words. In advertising, women are often portrayed in submissive roles and gendered stereotypes are maintained.⁶³²

Film censorship guidelines

In 2010 film censorship guidelines in Malaysia ceased banning films with LGBTI characters, but still require homosexual and transgender characters to either repent, be punished, or die at the end of any film.⁶³³

628 "Mah: Cinema told not to sell couple seats to unmarried couples." The Star Online. 23 July 2015. Available at: <http://www.thestar.com.my/news/nation/2015/07/23/not-for-unwed-muslims-mah-cinema-told-not-to-sell-couple-seats-to-unmarried-couples/>

629 "Gender Segregation in Muslim Societies: From Jahiliyya to Muhammed to Fatwa Chaos." Huffpost. 20 July 2010. Available at:

630 "Pushing for 'God's Law'". The Star Online. 2 November 2014. Available at: <https://www.thestar.com.my/opinion/columnists/analysis/2014/11/02/pushing-for-gods-law/>

631 "Netball ruling a prelude for other sports." The Star Online. 22 August 2014. Available at: <https://www.thestar.com.my/news/nation/2014/08/22/netball-ruling-a-prelude-for-other-sports-exco-man-defends-move-as-being-good-for-the-public/>

632 For more information, refer to *Malaysian NGO CEDAW Alternative Report 2012*, page 80.

633 Lee, Julian C. H. (2011). *Policing Sexuality: Sex, Society and the State*. London, GLD: Zed Books. p108.

Sexist Firefly advertisement

In March 2016, women's rights groups and online users criticised Firefly, a subsidiary of Malaysian Airlines, for using women's bottoms in an advertisement campaign for discount airfares.⁶³⁴ The campaign released two photos on social media platforms, featuring women in orange and black pencil skirts with discount deals imprinted across their bottoms. The taglines read: "Firefly sticks to you," "Oooppps... We Did It Again," and "Come grab it real fast."⁶³⁵ Firefly later issued an apology and withdrew the campaign, following the backlash from online users and human rights groups.⁶³⁶

Siti Zailah Mohd Yusoff, a member of Parliament from PAS, took her criticism further, demanding that the Women, Family and Community Development Ministry ban all forms of advertisements featuring women's body parts.⁶³⁷

Censorship of advertisements

In July 2016, the Kota Baru Municipal Council (MPKB) summoned a local watch retailer for displaying two "sexy" advertisements his shop – a Longines' advertisement featuring Aishwarya Rai and a Guess advertisement featuring a couple.⁶³⁸ The retailer was fined RM 2,000 for the offence, which he had apparently committed "more than 10 times" since the 1990s, though the fine was eventually reduced to RM 400. The retailer however only learned of the fines while applying for a permit for a new outlet,⁶³⁹ and even had one of his outlets raided by the city council.

In August 2016 a skincare business in Aeon Mall, in Kota Bharu, was fined RM150 for displaying a poster featuring a model without a *tudung*, a headscarf.⁶⁴⁰

634 "Firefly roasted on Facebook over ads featuring women's bottoms." Malay Mail Online. 12 March 2016. Available at: <http://www.themalaymailonline.com/malaysia/article/firefly-roasted-on-facebook-over-ads-featuring-womens-bottoms>

635 "Women's groups roast Firefly over 'cheap' female buttocks ad." Malay Mail Online. 13 March 2016. Available at: <http://www.themalaymailonline.com/malaysia/article/womens-groups-roast-firefly-over-cheap-female-buttocks-ad>

636 "Firefly apologises over female-buttocks ad." Malay Mail Online. 14 March 2016. Available at: <http://www.themalaymailonline.com/malaysia/article/firefly-apologises-over-female-buttocks-ad>

637 "After Firefly ad, PAS MP wants to ban use of women's bodies for promo material." Malay Mail Online. 14 March 2016. Available at: <http://www.themalaymailonline.com/malaysia/article/after-firefly-ad-pas-mp-wants-to-ban-use-of-womens-bodies-for-promo-material>

638 "Shop fined for 'sexy' watch ads." The Star Online. 27 July 2016. Available at: <http://www.thestar.com.my/news/nation/2016/07/27/shop-fined-for-sexy-watch-ads-hudud-laws-being-imposed-on-nonmuslims-says-mca-man/>

639 Ibid.

640 "Shop fined for displaying 'indecent' posters." The Star Online. 9 August 2016. Available at: <http://www.thestar.com.my/news/nation/2016/08/09/shop-fined-for-displaying-non-syariah-compliant-posters/>

Polygamy

Although the government's reservation to Article 5(a) has been lifted, polygamous marriages continue to be permitted. The CEDAW Committee has noted in General Recommendation No. 21 that the continuation of the practice of polygamy breaches the provisions of Article 5(a).⁶⁴¹

Polygamy in Malaysia will be discussed in more detail in the chapter on Article 16 of CEDAW in this report.

National fatwas discriminatory to women

A *fatwa* is a ruling on an aspect of Islamic law given by a recognised authority.⁶⁴² It is the National Fatwa Council's role to proclaim *fatwas*, these are however not legally binding until they are adopted into law by the individual states of Malaysia.

Though most of the *fatwas* below have not been gazetted in the Malaysian states, the prevalent sentiment and attempts to control Muslim women's bodily integrity is of significant concern.⁶⁴³

Fatwa on female circumcision

In 2009, a *fatwa* was issued holding that it is obligatory for Muslim women to undergo circumcision unless it will result in some form of "harm" to the woman.⁶⁴⁴ Female circumcision violates a number of human rights and principles of international human rights law, including "the principles of equality and non-discrimination on the basis of sex, the right to life when the procedure results in death, and the right to freedom from torture or cruel, inhuman or degrading treatment."⁶⁴⁵ The CEDAW Committee has issued General Recommendation No. 14 condemning female circumcision and calling on states

641 CEDAW General Recommendation No. 21, para 14 (A/49/38).

642 'fatwa, n' (*OED Online*). Available at: <https://en.oxforddictionaries.com/definition/fatwa>

643 For more information, refer to *Malaysian NGO CEDAW Alternative Report 2012*, pages 81-83.

644 Decision at the 86th Muzakarah (Conference) of the Fatwa Committee National Council of Islamic Religious Affairs Malaysia held on 21 – 23 April 2009. Available at: <http://www.e-fatwa.gov.my/fatwa-kebangsaan/hukum-pemotongan-genitalia-wanita-female-genital-mutilation>

645 World Health Organisation. (2008). *Eliminating Female genital mutilation: An interagency statement*. Available at: http://www.un.org/womenwatch/daw/csw/csw52/statements_missions/Interagency_Statement_on_Eliminating_FGM.pdf

to take effective steps to eradicate the practice.⁶⁴⁶ The Malaysian *fatwa* on circumcision was issued 19 years after this recommendation was issued (in 1990).

Fatwa ruling on “women imitating men”

In October 2008, the National Fatwa Council ruled that, “*pengkids*, women whose appearance, behaviour and sexual inclination are like men, is forbidden in Islam.”⁶⁴⁷ Among the reasons given for this *fatwa* was that *pengkids* are more likely to become lesbians. In Perlis, Sabah, and Pahang, *Syariah* law criminalises women impersonating or dressing like men.

Fatwa against transgender people seeking sex reassignment surgery

In 1982, the National Fatwa Council decided that gender-confirmation surgery is prohibited by Islamic law.⁶⁴⁸ Any male or female who has undergone gender-confirmation surgery will remain the sex that they were at birth according to this *fatwa*, though an exception was made for people born intersex (the most “functional” organs should be kept).⁶⁴⁹

Fatwa on women who shave their heads

In 2008, the National Fatwa Council announced the prohibition on women shaving their heads and having “strange make-ups [sic]” and/or “strange... body piercing [sic].”⁶⁵⁰

Fatwa against NGO Sisters in Islam

In July 2014, a *fatwa* was issued by the Selangor Fatwa Committee against the women’s human rights NGO Sisters in Islam (SIS). The gazetted *fatwa* declared that SIS subscribed to liberalism and religious pluralism, and thus deviated from the teachings of Islam.⁶⁵¹

646 CEDAW General Recommendation No. 14 (A/45/38).

647 Decision at the 83rd Muzakarah (Conference) of the National Committee of the Fatwa Council (22 – 24 October 2008). Available at: <http://www.e-fatwa.gov.my/fatwa-kebangsaan/hukum-wanita-menyerupai-lelaki-pengkid>

648 Decision at the 4th Muzakarah (Conference) of the Fatwa Committee National Council (13-14 April 1982). Available at: https://features.hrw.org/features/HRW_reports_2014/Im_Scared_to_Be_a_Woman/appendix_2.html

649 Ibid.

650 Decision at the 80th Muzakarah (Conference) National Committee of the Fatwa Council (1 – 3 February 2008). Available at: <http://www.e-fatwa.gov.my/fatwa-kebangsaan/hukum-wanita-membotakan-kepala-dan-berhias-secara-aneh>

651 “Sisters in Islam’s case against fatwa goes back to High Court.” The Star Online. 2 March 2017. Available at: <http://www.thestar.com.my/news/nation/2017/03/02/sisters-in-islam-allowed-ap>

SIS has been targeted and silenced by government and religious leaders as a result of their efforts to promote women's rights within the framework of a just and inclusive Islam.

SIS filed a judicial review application contesting the *fatwa*, however a preliminary objection to the judicial review was brought. The objection cited Article 121 (1A) of the Federal Constitution, which holds that civil courts have no authority on matters that fall within the jurisdiction of the *Syariah* court. Nonetheless, the Court of Appeal allowed SIS to challenge the *fatwa* in civil court.

Moral policing

State sanctioned moral policing in Malaysia has mostly been undertaken against Muslims for indecency, *liwat* (sexual relations between men), *musahaqah* (sexual relations between women), drinking alcohol, *khalwat* (close proximity of unmarried couples), *zina* (sexual intercourse out of wedlock) and not fasting during the fasting month of Ramadan. This also impacts married non-Muslims and non-Muslims who simply look like Malays – the Federal Constitution defines a “Malay” as a person who, among other things, “professes the religion of Islam.”⁶⁵²

K-Pop, hugging, and moral policing

In January 2015, three young women became subjects of a JAWI (The Federal Territory Islamic Affairs Department) investigation after a video of them being hugged and kissed by members of a K-Pop band during a concert went viral online. The three-minute video was titled “Perempuan melayu dicabul atas pentas oleh mat kpop semalam” or “Malay girls molested on stage by K-Pop artists last night”.⁶⁵³

Paimuzi Yahya, director of JAWI, claimed that the women and band's actions were against Islamic teachings and offended the sensitivities of the Muslim community. The JAWI enforcement division opened an investigation under section 29 of the *Syariah Criminal Offences (Federal Territories) Act 1977 (Act 599 Indecent Acts in Public Places)*, which imposes a fine of up to RM1,000 and/or six months jail time.⁶⁵⁴ JAWI gave the girls one week to come forward to assist them in their investigations, announcing via a media statement that arrest warrants would be issued against the girls should they fail to report themselves.⁶⁵⁵ The Communications and Multimedia Minister, Ahmad Shabery

peal-against-deviasion-ruling/#YTXKL3loqgiRTQap.99

652 *Malaysian Federal Constitution as at 1 November 2010*, Art 160 (2).

653 “JAWI to seek arrest warrant if no-show from Malay girls in K-pop ‘molest’ probe.” Malay Mail Online. 14 January 2015. Available at: <http://www.themalaymailonline.com/malaysia/article/jawi-to-seek-arrest-warrant-if-no-show-from-malay-girls-in-k-pop-molest-pro>

654 *Act 599 Syariah Criminal Offences (Federal Territories) Act 1997*, s29.

655 “JAWI wants ‘hugged-and-kissed’ K-pop fans to come forward.” The Star Online. 12 January 2015. Available at: <http://www.thestar.com.my/news/nation/2015/01/12/jawi-wants-three-k-pop-women-fans-to-help-in-probe/>

Cheek, urged religious authorities to educate the girls instead of punishing them.⁶⁵⁶

Raids by religious officers

Raids are relatively commonplace in Malaysia. Officers from state religious departments sometimes act on tip-offs.

Khalwat Raids

Khalwat raids and resulting press reports are common in Malaysia. Such raids attempt to catch unmarried couples in “close proximity.” In several cases, people have fallen to their deaths from apartment blocks or hotel windows attempting to escape the enforcement officers.⁶⁵⁷

Raids on transgender beauty pageants and events

Events organized by transgender women, beauty pageants in particular, are often targeted by state Islamic departments. Transgender women have also been condemned for participating in international beauty pageants, and their participation has been described as “humiliating.”⁶⁵⁸ These events provide a safe space for trans women to socialise, disseminate information, and celebrate themselves and each other.

In May 2015, the mayor of Miri discouraged the organisation of and participation in beauty pageants by transgender women. He stated that the Miri local council would not approve any application to hold such an event to protect religious and local sensitivities. He further noted that transgender women who are Muslim are vulnerable to arrest should they participate.

The Human Rights Watch report *I’m Scared to be a Woman* includes the following account of a transgender woman attending a beauty pageant that was raided by the state religious department:

656 “Don’t punish K-Pop fans, minister tells JAWI.” Portalkini. 15 January 2015. Available at: <http://www.portalkini.net/2015/01/15/dont-punish-k-pop-fans-minister-tells-jawi/>

657 For more information, refer to *Malaysian NGO CEDAW Alternative Report 2012*, page 83-84.

658 “Memalukan.” Harian Metro. 15 November 2014. Available at: <http://www.hmetro.com.my/node/9174>

“Everyone was dressed in ball gowns, tuxedos. We [decided to] proceed with the dinner but would not have loud music or dancing.... It was at a private location at a golf course resort. Not just anyone can enter.

[Then] we saw someone signaling to us to disperse. My God, I got goose bumps. About 20 religious authorities came in. They came in their white vans with the name of the Religious Department. I was in shock—I did not expect the event to be raided by them. People started running helter-skelter through the golf course to escape and jump over the fence.

The religious authorities [used] the golf carts to chase after them. It was like we were criminals! I was asking myself, “What have we done? Did we kill someone?” About eight people were caught and accused of being cross-dressers.”⁶⁵⁹

In April 2016, JAWI officers raided a transgender community fundraising dinner held in a hotel in Kuala Lumpur. The main organiser was investigated under sections 9 and 35 of the *Syariah* Criminal Offences Enactment (Wilayah-Wilayah Persekutuan) 1997, on obstruction of the duty of religious officers and encouraging vice.⁶⁶⁰ Human Rights lawyer Siti Kasim, who was also in attendance, was arrested on grounds of “obstructing the duty of religious authorities.”⁶⁶¹ The organiser was detained for almost 24 hours by the state Islamic department following the raid.

Transgender women who are arrested at these raids are sometimes paraded in front of the media, leading to further stigma, discrimination, and violence.⁶⁶² *I’m Scared to be a Woman* records the experience of a transgender woman who lost her job due to the media attention her arrest garnered:

“Because of that I lost my job. [My arrest] was published in the newspaper, with a blur on my face, but my statement was there. ... My colleagues at work spread around the story. My manager got the newspaper, and he said, ‘I don’t agree with that.’ My manager knew I was a *mak nyah*, but he was upset that I was in the paper, so he fired me.”⁶⁶³

659 Human Rights Watch. (2014). *“I’m Scared to be a Woman”: Human rights abuses against transgender people in Malaysia*. Available at: http://features.hrw.org/features/HRW_reports_2014/Im_Scared_to_Be_a_Woman/index.html

660 “Lawyer under police probe for defending transgenders during Jawi raid.” Malay Mail Online. 8 April 2016. Available at: <https://www.malaymail.com/s/1096357/lawyer-under-police-probe-for-defending-transgenders-during-jawi-raid>

661 “First award to M’sian transwoman overshadowed by Jawi raid.” Malaysiakini. 4 April 2016. Available at: <https://www.malaysiakini.com/news/336490>

662 “Guru ratu ‘mak nyah’ dicekup.” Kosmo! Online. Undated. Available at: http://www.kosmo.com.my/kosmo/content.asp?y=2008&dt=0727&pub=Kosmo&sec=Negara&pg=ne_02.htm

663 Human Rights Watch. (2014). *“I’m Scared to be a Woman” Human rights abuses against transgender people in Malaysia*. Available at: http://features.hrw.org/features/HRW_reports_2014/Im_Scared_to_Be_a_Woman/index.html

Sex out of wedlock

Sex out of wedlock is considered an offence for Muslims under *Syariah* law.⁶⁶⁴ Children born to Muslim parents within six months of their parents' marriage are deemed to have been conceived out of wedlock and are therefore illegitimate.⁶⁶⁵ The National Registration Department records the child's illegitimacy on the birth certificate. The National Registration Department Director General, Jariah Mohd Said, stated that this practice is based on a *fatwa* which does not allow a child conceived out of wedlock to inherit from its father. Though the Court of Appeal ruling in *Bin Abdullah* has overturned this precedent,^{666,667} an appeal to the decision at the Federal Court has been granted,⁶⁶⁸ and the Director-General of the National Registration Department has indicated that the current implementation of genealogy of illegitimate Muslim children will go on as usual.⁶⁶⁹

The following statistics were recorded in JAKIM's 2015-2019 Action Plan (*Pelan Tindakan*):⁶⁷⁰

Type of offence	2009	2010	2011	2012
<i>Hamil luar nikah</i>	91	105	85	331
Pregnant out of wedlock				

Source: *Pelan Strategik JAKIM 2015-2019*

Corporal punishment

Syariah law permits corporal punishment to be carried out on women. Caning, for instance, is a punishment for engaging in "illicit sex".^{671,672} For more information on corporal punishment, refer to the section dedicated to Article 19 CEDAW of this report.

664 Act 599 *Syariah Criminal Offences (Federal Territories) Act 1997*, s23(1-2).

665 Act 599 *Syariah Criminal Offences (Federal Territories) Act 1997*, s23(4).

666 *A Child, MEMK, NAW v NRD, NRD D-G, Government of Malaysia (2015)*

667 "Court: NRD chief not bound by fatwa on child conceived out of wedlock." The Star Online. 28 July 2017. Available at: <http://www.thestar.com.my/news/nation/2017/07/28/muslim-kid-can-take-dads-surname-court-nrd-chief-not-bound-by-fatwa-on-child-conceived-out-of-wedloc/#gbGYaHBH05MF-3Wz4.99>

668 Ibid.

669 "Genealogy Of Muslim Illegitimate Children To Continue As Current Practice – JPN." Bernama. 29 July 2017. Available at: <http://www.bernama.com/bernama/v8/ge/newsgeneral.php?id=1377045>

670 Department of Islamic Development (JAKIM). (2016). *Pelan Strategik Jakim 2015-2019*. Available at: <http://www.islam.gov.my/mengenai-jakim/profil-jakim/93-mengenai-jakim/pelan-strategik-jakim>

671 Act 599 *Syariah Criminal Offences (Federal Territories) Act 1997*, s23(2).

672 For more information, refer to *Malaysian NGO CEDAW Alternative Report 2012*, page 84.

Gender binary reinforced through government programmes and activities

Ministry of Health video competition on “preventing gender confusion”

In June 2017, the Ministry of Health launched a video competition known as the National Creative Video Competition on Adolescent Sexual and Reproductive Health. 13 to 24-year-old contestants were encouraged to submit videos geared towards tackling “gender confusion.” The original guidelines for the competition cited gay, lesbian, transgender individuals, as well as “tomboys” as examples of people who suffer from gender confusion. Prizes of up to \$1,000 (USD) would be awarded to the “best” entries, which explore “prevention and control; issues and consequences; and ways to get help.”⁶⁷³

Following backlash from the media and civil society, the Ministry of Health held a consultation with stakeholders including the Malaysian Aids Council and representatives from LGBTI groups to review the terms of the competition and the language used in the publicity materials. Pursuant to this, the Ministry issued a statement emphasising the intent of the video competition as enhancing understanding on sexual and reproductive health among adolescents, and clarified that the scope of the competition was restricted to a discussion on gender and sexuality, reproductive health, and cybersex.⁶⁷⁴

Ministry of Health guidelines on gender

Guidelines on gender-related health issues published by the Ministry of Health for government clinics include a legal definition of gender, which is purportedly in line with the Federal Constitution.⁶⁷⁵ The Constitution, however, does not provide a definition for gender. According to the guidelines:

“Within the context of the Constitution and laws of Malaysia, sex or gender refers to biological status of man or woman that consists of physical characteristics

673 “Malaysia gay ‘prevention’ competition seeks videos.” BBC News. 3 June 2017. Available at: <http://www.bbc.com/news/world-asia-40142300>

674 “Press Release: National Creative Video Competition on Adolescent Sexual and Reproductive Health 2017.” The Ministry of Health Malaysia. 8 June 2017. Available at: www.moh.gov.my/english.php/database_stores/attach_download/337/474

675 Dr. Hj. Faridah bt. Abu Bakar, Dr. Zakiah bt Mohd Said and En. Jamal Abdul Nasir (eds.). (2017).

Garis panduan Pengendalian Masalah Kesihatan Gender Di Klinik Kesihatan. Putrajaya, Putrajaya: Bahagian Pembangunan Kesihatan Keluarga. Available at: http://irep.iium.edu.my/55219/1/BOOK_GENDER%20IDENTITY%20DISORDER_LAYOUT_FA2pdf.pdf

such as sex chromosomes, gonad, hormones, internal and external reproductive structures.”⁶⁷⁶

The guidelines acknowledge that gender and sex are two different elements of the self and that gender identity exists on a spectrum, yet categorise people into three groups:

- *Lelaki*: male with XY chromosomes, who is “naturally” sexually attracted to women;
- *Perempuan*: female with XX chromosomes, who is “naturally” sexually attracted to men;
- *Ragu*: ambiguous, with ambiguous genitals at birth, during childhood, or during adulthood due to biologically “abnormal” status.

The definitions offered by these guidelines on sex and gender are restrictive and presumptive. They can therefore be damaging to those who do not conform to traditional gender or sex paradigms. Such paradigms do not promote understanding of sex and gender fluidity within the health sector, but instead exclude and marginalise those who do not fit neatly into prescribed categories.

Government attempts to ‘cure’ LBTI persons

Initiatives by Religious Departments

In July 2016, JAKIM launched an action plan that aims to “correct” or “rehabilitate” LBTI persons, involving 22 government agencies as strategic partners, including the Ministry of Health and the Ministry of Women, Development and Community. The misconception that LBTI persons can be rehabilitated or cured is reinforced via videos, seminars, *mukhayyam* (camps), and the publication of manuals among other materials.

In November 2016, the *Dakwah* Division of the Selangor State Islamic Department (JAIS) hosted a seminar titled, *Seminar Pemahaman Ummah; LGBT: Apa Yang Anda Perlu Tahu?* (Seminar for the Muslim community; LGBT: What do you need to know?).⁶⁷⁷ According to media reports, the seminar attributed lack of a father figure, dominant or overprotective mothers, pornography, tensions in the family, and bullying as contributing factors for someone “becoming or turning gay, lesbian, bisexual, transgender” – all of which are

676 (Translated from Bahasa Malaysia) Ibid.

677 “Seminar Pemahaman Ummah; LGBT: Apa Yang Anda Perlu Tahu?” Jabatan Agama Islam Selangor. 31 October 2016. Available at: <http://puspanita.selangor.gov.my/wp-content/uploads/2016/11/SURAT-JEMPUTAN-SEMINAR-PEMAHAMAN-UMMAH-LGBT.pdf>

unsubstantiated claims.⁶⁷⁸ Speakers expressed that children who are involved in LGBTI activities should not be abandoned and isolated, but assisted by experts and through religious teaching. In addition, the speakers emphasized the role of society in bringing “wayward” people back to the right path by showing them love and openness.⁶⁷⁹

In February 2017, JAKIM released a three-minute video in which it emphasised that sexual orientation can be cured or changed through guidance. The video prescribed marriage as a solution, and advised Muslims to be patient and assist their LGBTI friends to return to the “right path.”⁶⁸⁰ The video also promoted an app, *Hijrah Diri – Homoseksualiti* (Self Journey – Homosexuality), which functions as an e-book on *hijrah* (leaving a bad way of life for a good or righteous way) in terms of sexual orientation.⁶⁸¹

The Mukhayyam training programme is an ongoing JAKIM and MAC strategy aimed at reducing the prevalence of HIV/AIDS among the Muslim transgender community.⁶⁸² The programme consists of a three-day camp that offers basic HIV/AIDS education, religious and spiritual lessons, and professional skills development training through a series of interactive talks and workshops. Much of the content of the camps comes from JAKIM’s *Islam and Mak Nyah manual*.⁶⁸³ The manual includes a module that provides tips and strategies for reaching out to “rehabilitated” transgender people.⁶⁸⁴ The Mukhayyam programme has been recognised as a rehabilitation programme by state agencies – including JAKIM, who claimed that it has managed to rehabilitate 1,000 transgender women through the programme.⁶⁸⁵ JAKIM’s focus still lies on ‘curing’ transgender women.

Sermons by religious departments reinforce the gender binary, gender stereotypes, and patriarchal notions

Two sermons issued in February and September 2015 by JAIS and JAWI respectively

678 “Kekang LGBT secara berhema.” Utusan Online. 24 November 2016. Available at: <http://www.utusan.com.my/rencana/agama/kekang-lgbt-secara-berhemah-1.411644>

679 Ibid.

680 “Sexual orientation can be changed, Jakim says in new LGBT video.” Malay Mail Online. 13 February 2017. Available at: <http://www.themalaymailonline.com/malaysia/article/sexual-orientation-can-be-changed-jakim-says-in-new-lgbt-video>

681 “Malaysian government openly endorses gay conversion therapy.” The Independent. 14 February 2017. Available at: <https://www.independent.co.uk/news/world/malaysia-gay-conversion-therapy-endorses-lgbt-rights-islam-a7578666.html>

682 “Jabatan Kemajuan Islam Malaysia.” Malaysian Aids Council. Undated. Available at: <http://www.mac.org.my/v3/partners-donors/government/>

683 Jabatan Kemajuan Islam Malaysia. (2016). *Manual Islam & Mak Nyah*. Available at: <http://www.islam.gov.my/e-penerbitan/59-buku/403-manual-islam-dan-mak-nyah>

684 Ibid.

685 “Lebih 1,000 golongan transgender berjaya dipulihkan menerusi program Mukhayam.” BH Online. 10 November 2014. Available at: <http://www.bharian.com.my/node/16804>

justified rape on grounds of women's failure to cover their *aurat* (or modesty).^{686,687} The sermons compared women's *aurat* to uncovered food that attracts flies. The sermon in September called for women and men to cover their *aurat* to prevent social ills and punishment in hell.

In January 2017, in a state-wide Friday sermon, JAIS claimed that transgender persons are not allowed in paradise. The sermon also urged parents and members of the public to help provide guidance and support to transgender persons or people who are described as "trapped in the wrong body" to return them to the "right path."⁶⁸⁸

MP's support for de-transitioning

In April 2016, a young and successful transgender woman publicly "de-transitioned," changed her gender expression, and re-identified as a man. Her decision received wide coverage in the media, and she became the poster child for the "repented trans women".^{689,690}

Jamil Khir Baharom, Minister in the Prime Minister's Department, advised other transgender persons to follow this de-transition and "return to the right path", as they have strayed from the teachings of Islam.⁶⁹¹

In September 2016, five months after the public announcement, the individual announced that she identifies as a transgender woman after all, as she felt "calmer, at ease, and less burdened living as a woman."⁶⁹²

686 "Jais sermon perpetuates rape myths – EMPOWER." Malay Mail Online. 9 February 2015. Available at: <https://www.malaymail.com/s/837489/jais-sermon-perpetuates-rape-myths-empower>

687 "Aurat Safeguarded, Our Life Protected." JAWI. 4 September 2015. Available at: http://www.jawi.gov.my/my/?option=com_jdownloads&Itemid=0&view=finish&catid=31&cid=1323

688 "Help transgenders 'return to right path', Jais says in Friday sermon." Malay Mail Online. 20 January 2017. Available at: <http://www.themalaymailonline.com/malaysia/article/help-transgenders-return-to-right-path-jais-says-in-friday-sermon>

689 "Former 'mak nyah' shares why he wants to be a man again: 'It's a jihad to fight lust'." Astro Awani. 17 April 2016. Available at: <http://english.astroawani.com/lifestyle/former-mak-nyah-shares-why-he-wants-be-man-again-its-jihad-fight-lust-102764>

690 "I want to help other mak nyah change' – Safiey Ilias." Astro Awani. 21 April 2016. Available at: <http://english.astroawani.com/lifestyle/i-want-help-other-mak-nyah-change-safiey-iliyas-103294>

691 "The ego involved in trying to 'fix' transgenders." Malay Mail Online. 18 September 2016. Available at: <https://www.malaymail.com/s/1207789/the-ego-involved-in-trying-to-fix-transgenders>

692 "Safiey: Saya lebih tenang jadi mak nyah kembali." Malaysiakini. 6 September 2016. Available at: <http://www.malaysiakini.com/news/354849>

Contrary court decisions on gender and name change for transgender people

The process to change one's name and gender marker on the national identification card (IC) is costly, complex, time-consuming, and dehumanising.⁶⁹³ To have a gender marker on an IC card changed, a transgender person is expected to obtain a court order by providing the court with a supporting letter from a government doctor, a medical certificate from a government local hospital confirming gender affirmation surgery, and their birth certificate. The court may then instruct the National Registration Department to change the requested details in the court order.⁶⁹⁴

Between 2004 and 2016, at least seven applications have been filed at the High Court in relation to a change of details in the IC and other legal documents, as listed in the table below. Only two of these cases were successful – and one of those successful cases was later over-ruled on appeal. In three cases the applicant was also required to pay court costs, compounding the already prohibitive expense of making such an application.⁶⁹⁵

In 2005, a transgender woman's application to change the details on her legal documents was granted. This precedent set by Justice James Foong has, however, not been relied on in subsequent cases. In 2006, the Fatwa Committee for the State of Selangor released a *fatwa*, which prohibits change of sex in the IC for transgender persons.

In July 2016, an application filed by a transgender man to change his name, gender marker, and last digit of the serial number in his IC was granted by the Kuala Lumpur High Court.⁶⁹⁶ Justice Nantha Balan, presiding over the case, decided to do away with the 'chromosomal' factor in determining whether gender markers can be changed, stating:

“The male XY and female XX chromosome will remain static throughout the individual's natural life. To insist on the 'chromosomal requirement is to ask for the impossible.’”⁶⁹⁷

693 Asia Pacific Transgender Network. (2017). *Legal Gender Recognition in Malaysia: A Legal & Policy Review in the Context of Human Rights*, page 35. Available at: http://www.asia-pacific.undp.org/content/dam/rbap/docs/Research%20%26%20Publications/hiv_aids/Malaysia

694 Ibid, page 34-40.

695 Ibid, page 35.

696 “She is a he – even on paper.” The Star. 21 August 2016. Available at: <http://www.thestar.com.my/news/nation/2016/08/21/she-is-a-he-even-on-paper-posters-for-transgender-rights-often-read-some-men-are-born-in-their-bodi/>

697 “Media release: Uphold right to identity of transgender persons.” Justice for Sisters. 11 January 2017. Available at: <https://justiceforsisters.wordpress.com/2017/01/11/media-release-uphold-right-to-identity-of-transgender-persons/>

The progressive decision was, however, overturned by the Court of Appeal in January 2017 following an appeal by the National Registration Department.⁶⁹⁸

Year	Cases	Outcome
Nov 2004	<p><i>Wong Chiou Yong vs NRD</i> (transgender man)</p> <ul style="list-style-type: none"> - Case was heard before Ipoh High Court - <i>Change name & gender on birth certificate and national identification card</i> 	Application dismissed
Nov 2005	<p><i>JG vs NRD</i> (transgender woman)</p> <ul style="list-style-type: none"> • Case was heard in KL high court before Justice James Foong • Change name & gender on birth certificate and national identification card 	Successful. Allowed to change name, gender marker, and last digit on IC
2011	<p><i>Aleesha Farhana vs NRD</i> (transgender woman)</p> <ul style="list-style-type: none"> • Case was heard at the Terengganu High Court before Justice Mohd Yazid Mustafa 	Application dismissed
Jan 2011	<p><i>Kristie Chan vs NRD</i> (transgender woman)</p> <ul style="list-style-type: none"> • Case was heard before Judicial Commissioner Ridwan Ibrahim in Ipoh High Court. Ruling was made in chambers. 	Dismissed with costs (high court)
Oct 2015	<p><i>Kristie Chan vs NRD</i> (transgender woman)</p> <ul style="list-style-type: none"> • Case was heard before Judicial Commissioner Ridwan Ibrahim in Ipoh High Court. Ruling was made in chambers. 	Dismissed, no costs (court of appeal)

698 “NRD wins appeal bid to stop transgender from changing IC details.” Malay Mail Online. 5 January 2017. Available at: <http://www.themalaymailonline.com/malaysia/article/nrd-wins-appeal-bid-to-stop-transgender-from-changing-ic-details>

Sept 2014	<i>Kelvin Fau vs NRD</i> (transgender man) <ul style="list-style-type: none"> • Case was heard in KL high court before Justice Zaleha Yusof • Change name, gender & last digit in national identification card • To quash the rejected application 	Application dismissed with cost
June 2015	<i>Maha Laksmi Rajoo vs NRD</i> (transgender woman) <ul style="list-style-type: none"> • Case was heard in KL high court before Justice Asmabi Mohamad 	Application dismissed with cost
July 2016	<i>Tan vs NRD</i> (transgender man) <ul style="list-style-type: none"> • Case was heard in Kuala Lumpur High Court before Justice Nathan Balan • Change of name, gender marker and last digit of the serial number in IC 	<p>Successful.</p> <p>Decision was overturned in January 2017 following an appeal by the National Registration Department</p>

Government's position on gender change

In 2012, the then Deputy Minister at the Prime Minister's Department, Dr. Mashitah Ibrahim, stated that transgender persons, regardless of operational status, would not be allowed to change their gender marker in legal documents or Identification Card (IC) due to the 1983 *fatwa* which declares gender affirmation surgery *haram*.⁶⁹⁹

Arbitrary arrests based on gender identity and violence by state actors

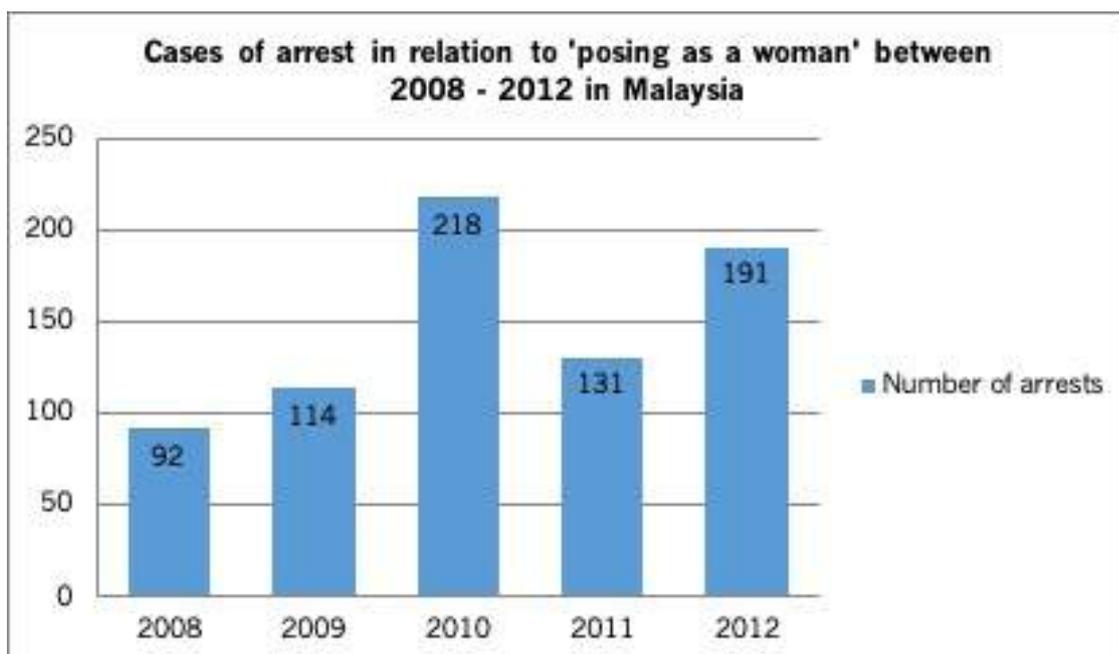
Transgender people have often been the victims of arbitrary arrests and violent attacks by Islamic Department officers. Amnesty International has previously reported that a transgender woman was beaten by Islamic Department officers in Meleka until she had to be hospitalised.⁷⁰⁰ In other cases, transgender women reported being forced to strip

699 Parliamen Kedua Belas. (2012). Dewan Rakyat Parlimen Kedua Belas Penggal Kelima Mesyuarat Kedua, Bil 28. Available at: <http://www.parlimen.gov.my/images/webuser/jkuasa%20lamp/DR-19062012.pdf>

700 Amnesty International. (2008). *Amnesty International Report 2008 – Malaysia*. Available at: <https://www.amnesty.org/download/Documents/52000/asa280032008en.pdf>

and being assaulted by officers.⁷⁰¹

Further information about violence against transgender women can be found in the chapter on the CEDAW Committee's General Recommendation No. 19.



Source: Pelan Strategik JAKIM 2015-2019 & Manual Islam dan Mak Nyah

Number of transgender women arrested by the authorities, namely police and state religious departments according to states in Malaysia between January and May 2016

State/Month	January	February	March	April	May	Total
Penang	-	-	13	-	3	16
Kuala Lumpur	4	6	5	11	9	35
Malacca	-	-	-	-	4	4
Kedah	-	-	-	1	-	1
Pahang	-	-	-	-	7	7
Total	4	6	18	12	23	63

Source: <https://justiceforsisters.wordpress.com/2016/06/03/justice-for-sisters-calls-for-dialogues-to-dispel-myths-end-violence-against-transgender-persons/>

⁷⁰¹ Human Rights Watch. (2014). "I'm Scared to be a Woman": Human rights abuses against transgender people in Malaysia. Available at: http://features.hrw.org/features/HRW_reports_2014/Im_Scared_to_Be_a_Woman/index.html

Response of SUHAKAM to discrimination based on sexuality and gender identity

The Human Rights Commission of Malaysia (SUHAKAM) has noted its concern over the violation of rights of people of diverse sexual orientations and gender identities. However, the language used by SUHAKAM seems to keep such communities at arms-length and does not appear to challenge status quo discriminatory positions against diverse sexuality and gender identities.⁷⁰²⁷⁰³

Banning of sexuality rights arts festival

On 3 November 2011, the Malaysian police banned a festival called Seksualiti Merdeka (sexuality independence). Seksualiti Merdeka has been held annually since 2008 and it provides a safe space for all people of diverse sexual orientations and gender identities to come together to share knowledge about human rights.⁷⁰⁴

Malaysia's Home Minister is reported to have said that the festival, which included art exhibitions, theatre and music performances, workshops and a book launch, is a threat to national stability. An elected member of parliament, Ibrahim Ali MP, was reported to have claimed that the festival is attempting to promote "animal" culture,⁷⁰⁵ while the deputy PM alleged that it is "immoral".⁷⁰⁶

After the ban, in November 2011, the states of Pahang and Melaka indicated that they would be increasing the penalties for homosexuality so that Muslims could be charged under both state and federal laws, thereby increasing their jail sentences. The Chief Minister of Melaka, Mohd Ali Rustam, stated that the act of supporting homosexuality should also be criminalised.⁷⁰⁷

In 2014, Penang Pink Dot was called off "due to concerns over the personal security and safety of the organisers and participants", following protest by groups like PERKASA and ABIM.⁷⁰⁸

702 SUHAKAM. (2010). *Annual Report 2010*. Available at: <http://www.suhakam.org.my/wp-content/uploads/2013/11/AR2010-BI.pdf>

703 *Suhakam chief: 'We're an independent entity.'* The Nut Graph. 30 August 2010. Available at: <http://www.thenutgraph.com/suhakam-chief-%E2%80%9Cwere-an-independent-entity%E2%80%9D/>

704 For more information, refer to Malaysian NGO CEDAW Alternative Report 2012, pages 88-89.

705 *Seksualiti Merdeka 2011 cuba promosi budaya 'binatang' – Ibrahim Ali.* Utusan Malaysia. 3 November 2011. Available at: http://www.utusan.com.my/utusan/info.asp?y=2011&dt=1103&pub=Utusan_Malaysia&sec=Muka_Hadapan&pg=mh_04.htm.

706 "Muhyiddin: Seksualiti Merdeka is 'immoral'." Free Malaysia Today. 3 November 2011. Available at: <http://www.freemalaysiatoday.com/category/nation/2011/11/03/muhyiddin-seksualiti-merdeka-is-immoral/>

707 "States eye harsher laws for Muslim gays." The Malaysian Insider. 11 November 2011. Available at: <https://www.reuters.com/article/uk-malaysia-gays-idUSLNE7AA01L20111111>

708 "LGBT event in Penang cancelled." Free Malaysia Today. 14 March 2014. Available at: <http://www.freemalaysiatoday.com/category/nation/2014/03/14/lgbt-event-in-penang-cancelled/>

Film screening cancelled for featuring homosexuality

In July 2017, a screening of the Vietnamese film *Lost in Paradise* was cancelled following online protest and criticism over the screening, and upon advice from the Home Ministry, as the film depicts homosexuality.⁷⁰⁹ It was also reported that the state councillor sent an official letter to the organisers questioning why the screening had been proposed in the first place.⁷¹⁰ Despite the cancellation, a small protest by the Jaringan Muslimin Pulau Pinang and Gabungan Perwakilan Melayu Pulau Pinang took place at the venue on the night the screening was planned.⁷¹¹

Media portrayals of sexual diversity

The media commonly portrays lesbians as *songsang* (deviant), *lucah* (lewd), and *jiik* (disgusting). Discriminatory reporting has not been made an issue of concern by government representatives or human rights bodies such as SUHAKAM.⁷¹²

Recommendations to the Malaysian Government regarding

Articles 5

- Amend government rhetoric and policy to focus on encouraging employers to adopt flexible work arrangements for both parents, not only mothers.
- Undertake public education campaigns to combat stereotypes such as those surrounding housework, women's dress, and victim-blaming, as well as promoting women's freedom of expression, thought, and belief.
- Sexist comments by elected representatives both inside and outside of parliament must not be tolerated. The code of conduct (standing orders) of parliamentarians must be amended to include provisions on sexual harassment.

709 "Gay movie screening insults Islam, Penang Muslim group says." *The Malaysian Insight*. 11 July 2017. Available at: <https://www.themalaysianinsight.com/s/7276/>

710 *Gay movie: Penang government to meet theatre management*, *Free Malaysia Today*. 11 July 2017. Available at: <http://www.freemalaysiatoday.com/category/nation/2017/07/11/gay-movie-screening-penang-government-to-meet-theatre-management/>

711 *Poor turnout for protest against penangpac 'gay movie' screening*, *Free Malaysia Today*. 12 July 2017. Available at: <http://www.freemalaysiatoday.com/category/nation/2017/07/12/poor-turnout-for-protest-against-penangpac-gay-movie-screening/>

712 For more information, refer to Malaysian NGO CEDAW Alternative Report 2012, page 89.

- The government must rebuke the discriminatory comments of its representatives as well as non-State actors inciting hatred against people of diverse sexual orientations and gender identities.
- Conduct gender sensitisation trainings with media agents (editors, journalists, photographers etc) on equal and fair representation of women, lesbians, bisexuals and transgender people.
- Allow transgender people to change their name and gender on their identity cards without onerous legal and administrative procedures.
- Recognise domestic work as work in labour laws.
- Review national policies to address aspects of culture and religion, as well as gender stereotyping that perpetuate discriminatory practices against women and transgender people. Ensure sufficient representation of women in bodies and departments which have authority over the interpretation and construction of religion and religious laws.
- Review marriage counselling modules and programmes to ensure an understanding of equality and women's rights within marriage are incorporated.
- Continue to review school textbooks and remove elements that perpetuate gender stereotyping and gender roles.
- Ensure that schools do not punish students for their sexual orientation or gender identity. Homes and schools must be nurturing and supportive places for children.

**I am not free while any woman is
unfree, even when her shackles are
very different from my own.**

-Audre Lorde

08.

Article 6

TRAFFICKING AND EXPLOITATION OF PROSTITUTION OF WOMEN

Article 6

States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.

Key issues in this chapter:

- The May 2015 discovery of mass graves and abandoned human trafficking camps along the Malaysia-Thailand border highlighted the deadly human smuggling and trafficking trade in Malaysia. Despite initial arrests being made, all the Malaysian officials involved have been released and none have been prosecuted for crimes related to the “death camps” or human trafficking across the Thai border.
- Although convictions for trafficking crimes have increased, enforcement authorities and social service providers lack awareness and sensitization on hu-

man trafficking, especially with regard to female trafficking survivors. No financial compensation or reparations are given to trafficking survivors, who may have accumulated years of unpaid wages.

- Civil society organizations are not allowed to be closely involved with trafficking cases once an investigation has begun.

2018 Concluding Observations to Malaysia

In the 2018 Concluding Observations to Malaysia, the CEDAW Committee expressed its concern that Malaysia remains a destination country for the trafficking of women and girls, for the purposes of sexual exploitation, begging, forced labour, or forced marriage.⁷¹³

The recommendations the Committee offered Malaysia are as follows:

- a) “Establish a formal victim identification procedure, which is applied uniformly throughout the State party, to promptly identify and refer victims of trafficking to appropriate services and protection, including assessment of their needs for international protection, and systematically train all relevant law enforcement officials on gender-sensitive procedures for dealing with trafficking victims;
- b) Ensure that victims of trafficking are not punished for violations of immigration laws and that they obtain effective protection, such as temporary residence permits irrespective of their ability or willingness to cooperate with law enforcement authorities, as well as redress, including rehabilitation and compensation;
- c) Investigate, prosecute and punish all cases of trafficking in persons, especially women and girls, including those involving law enforcement officials, and ensure that the sentences imposed on perpetrators are commensurate with the gravity of the crime, to combat impunity;
- d) Allocate adequate resources for the effective and sustainable implementation of existing services and assistance offered to victims of trafficking, and remove all bureaucratic barriers to guarantee in practice their right to freedom of movement and the right to work;
- e) Reinforce international, regional and bilateral cooperation with countries of origin, transit and destination to prevent trafficking, including by exchanging information and harmonizing legal procedures to prosecute traffickers with countries of origin, transit and destination, in particular with countries in the region.”⁷¹⁴

713 CEDAW Concluding Observations to Malaysia 2018, para 25 (CEDAW/C/MYS/CO/3-5).

714 CEDAW Concluding Observations to Malaysia 2018, para 26 (CEDAW/C/MYS/CO/3-5)

In addition, the Committee reiterated its concern with the lack of information provided by the Government regarding the prevalence of exploitation of women and girls in prostitution, as well as the absence of policies and measures taken to combat the phenomenon.⁷¹⁵ It therefore issued further recommendations:

- a) “Collect and analyse data on the exploitation of women and girls in prostitution;
- b) Adopt targeted measures to provide assistance, rehabilitation and reintegration programmes for victims of exploitation of prostitution;
- c) Provide exit programmes for women and girls wishing to leave prostitution, including by providing alternative income-generating opportunities.”⁷¹⁶

Malaysia acceded to UN human trafficking protocol

In February 2009, Malaysia acceded to the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*,⁷¹⁷ with a reservation to Article 15(2). The latter holds that disputes among State Parties surrounding the interpretation or application of the Protocol must be settled through arbitration in the first instance, while Malaysia asserted its right to choose the method of dispute settlement it deems necessary and appropriate.⁷¹⁸

Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007 (ATIPSOM)

The CEDAW Committee noted its concern with trafficking in Malaysia also in its 2006 Concluding Comments, in which it urged the government to enact “specific and comprehensive legislation on the phenomenon,” in addition to ratifying the *Protocol to Prevent, Suppress and Punish Trafficking in Persons*.⁷¹⁹ In 2007, Parliament passed the Anti-Trafficking in Persons Act (ATIP),⁷²⁰ which came into force in 2008.

The Act was amended in 2010, where it was extended to cover the category of “smuggled migrants” alongside trafficking in persons. It was subsequently renamed as the Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007 (ATIPSOM). The Act

715 Ibid, para 27.

716 Ibid, para 28.

717 UNGA, *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime*, 25 December 2003 (A/55/383).

718 UN Treaty Series, *Reservations and Declarations: Protocol to Prevent, Suppress, and Punish Trafficking in Persons*. Available at: https://treaties.un.org/Pages/ShowMTDSGDetails.aspx?src=UNTS-ONLINE&tabid=3&mtdsg_no=XVIII-12-a&chapter=18&lang=en#EndDec

719 CEDAW *Concluding Comments to Malaysia 2006*, para 24 (CEDAW/C/MYS/CO/2).

720 Act 670 *Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007*.

now covers offences that fall under human trafficking and the smuggling of migrants;⁷²¹ the protection of trafficked persons;⁷²² enforcement and investigation procedures;⁷²³ and the establishment of the Council for Anti-Trafficking in Persons (MAPO).⁷²⁴

The addition of smuggled migrants to the Act has been heavily criticised.⁷²⁵ The national Human Rights Commission (SUHAKAM) noted its concern over the conflation of smuggled migrants and trafficked persons; identifying trafficked persons as smuggled migrants could lead to serious human rights violations, such as wrongful deportations.^{726,727} The Human Rights Watch also expressed its concern with the amendments, finding that they “reduce protections for both groups, and make it less likely that trafficking victims will be able to cooperate in identifying and prosecuting perpetrators.”⁷²⁸ Refugees can for instance fall into the category of smuggled migrants, potentially leading to deportations under ATIPSOM.

Civil society groups have further concerns with ATIPSOM, including:

- The 2010 amendments narrowed the definition of trafficking under the Act. The old definition considered trafficked, “any person who is the victim or object of an act of trafficking in persons.” The new definition is framed around actions “involved in acquiring or maintaining the labour or service of a person,” focusing on coercion – which is inconsistent with the definition provided in the *UN Protocol to Prevent, Suppress and Punish Trafficking in Persons*.⁷²⁹ Recruiting, conveying, transferring, harbouring, providing, and receiving persons within this context falls under the definition. The definition in the latter protocol is extensive and covers the irrelevance of the consent of the victim.
- Section 51 of ATIPSOM provides that a foreign victim of trafficking will be placed in a refuge for up to three months before being handed over to the immigration department for “necessary action”, i.e. repatriation. In practice, the shelters in which trafficking victims are housed resemble detention centres.⁷³⁰
- The inclusion of smuggled migrants into the law – originally enacted to deal with trafficking, conflates two distinct problems; the human rights abuse of human

721 Ibid, s12 – 26A.

722 Ibid, s41A – 57.

723 Ibid, s27 – 41.

724 Ibid, s6 – 11.

725 Lyons, L., Ford, M. (2014). *Trafficking Versus Smuggling: Anti-Trafficking in Persons Act. Human Trafficking in Asia: Forcing Issues*, 35-48.

726 Human Rights Commission of Malaysia (SUHAKAM). *Annual Report 2010*, page 14. Available at: <http://www.suhakam.org.my/wp-content/uploads/2013/11/AR2010-BI.pdf>

727 US Department of State. (2018). *Trafficking in Persons Report: June 2018*, page 288. Available at: <https://www.state.gov/documents/organization/282798.pdf>

728 Human Rights Watch. *World Report 2011: Events of 2010*, page 332. Available at: https://www.hrw.org/sites/default/files/world_report_download/wr2011_book_complete.pdf

729 UNGA, *Protocol to Prevent, Suppress and punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime*, 25 December 2003, art 3 (A/55/383).

730 Human Rights Watch. *World Report 2011: Events of 2010*, page 332. Available at: https://www.hrw.org/sites/default/files/world_report_download/wr2011_book_complete.pdf

trafficking and the immigration law breach of illegal migration.

The Council for Anti-Trafficking (MAPO) has also become the subject of criticism. Areas of concern include employees with insufficient expertise, and a lack of understanding of the actual issues; effective coordination between agencies; as well as resources and funding. This further indicates of a lack of political will to support MAPO.⁷³¹

Further amendments to the ATIPSOM were passed in July 2015.⁷³² These ensure that labour trafficking survivors are able to move freely and work while their trial is ongoing,⁷³³ and allow courts to order convicted traffickers to pay financial compensation to trafficking survivors. The amendments also allow trafficking survivors to remain in Malaysia if they are employed and possess the required documents.⁷³⁴

The amendments also allow staff from civil society organizations to be appointed as protection officers, so that the organisations' shelters may house trafficking survivors.⁷³⁵ Staff from the NGO Tenaganita in Penang are currently undergoing protection training, as their shelter has been deemed suitable to house trafficking survivors.

Additionally, the 2015 amendments lengthened the applicability of interim protection orders (IPOs) for trafficking survivors from 14 to 21 days,⁷³⁶ which can help facilitate more thorough investigations. Protection orders (POs) for both foreign and Malaysian trafficking survivors are now issued for a period of three to six months,⁷³⁷ to ensure that cases are handled promptly. During the course of IPOs and POs, trafficking survivors are housed in government shelters. However, after an IPO or PO has been placed, civil society organizations lose access to trafficking survivors – this comes at a time when survivors are still very vulnerable and may require counselling.

Government shelters also often lack interpreters, making it difficult for survivors to communicate their needs. Interpreters are also necessary to assist in taking statements from survivors and ensuring that survivors can be given effective counselling. Trafficking survivors typically do not have access to their own legal counsel.⁷³⁸

Additionally, information sharing with the trafficking survivor is typically limited

731 “A long and winding road.” The Star Online. 20 October 2013. Available at: <https://www.thestar.com.my/news/nation/2013/10/20/a-long-and-winding-road/>

732 *Act A1500 Anti-Trafficking in Persons and Anti-Smuggling of Migrants (Amendment) Act 2015*

733 *Ibid.*, s11.

734 *Act A1500 Anti-Trafficking in Persons and Anti-Smuggling of Migrants (Amendment) Act 2015.*

735 *Ibid.*, s8(b).

736 *Ibid.*, s10.

737 *Ibid.*

738 US Department of State. (2018). *Trafficking in Persons Report: June 2018*, page 286. Available at: <https://www.state.gov/documents/organization/282798.pdf>

during the trial phase, with survivors having little to no knowledge about their own cases.⁷³⁹ Although the 2015 ATIPSOM amendments allow for courts to order convicted traffickers to pay restitution to trafficking victims, many survivors are left with limited funds after working for years without receiving wages.

Statistics on trafficking

Publicly available statistics on trafficking include the following:

- In 2017, the government identified 2,224 potential trafficking victims across Malaysia, of which 721 were confirmed. This number has declined since 2016, where 3,411 potential trafficking victims were identified and 1,558 confirmed. In 2015, only 305 were confirmed.⁷⁴⁰
- Of the 721 confirmed victims, 91 received special immigration passes that allowed them to move freely and seek employment within Malaysia. Only 12 such passes were handed out in 2016.⁷⁴¹
- 556 trafficking investigations were conducted in 2017, compared to 581 undertaken in 2016, and 158 in 2015. The government began prosecutions against only 80 alleged traffickers in 2017, which is a significant decrease from the 175 initiations in 2016, but still exceeds the mere 38 started in 2015. Nonetheless, 2017 brought about the highest number of trafficking convictions to date, with 45 traffickers convicted under ATIPSOM, compared to 35 in 2016 and seven in 2015.⁷⁴²
- Labour courts resolved 12,498 disputes in 2017, which resulted in employers having to provide exploited workers with wages amounting to RM 64 million. Additionally, fines to the amount of RM 979,000 were levied on non-compliant employers.⁷⁴³

While the Malaysian government is making significant efforts in trying to eliminate trafficking in persons, “[it] does not fully meet the minimum standards for the elimination of trafficking.”⁷⁴⁴ More traffickers are being convicted, criminal enforcement of unauthorised passport retention has increased, and the government has tripled its funding for NGOs, including NGO-run shelters. Nonetheless, the US Department of State in its 2018 *Trafficking in Persons Report*, finds that the government did not demonstrate increasing efforts overall, and that its “victim protection efforts remained largely

739 Ibid, page 287.

740 Ibid, page 288.

741 US Department of State. (2018). *Trafficking in Persons Report: June 2018*, page 288. Available at: <https://www.state.gov/documents/organization/282798.pdf>.

742 Ibid, page 287.

743 Ibid, page 289.

744 Ibid, page 286.

inadequate.”⁷⁴⁵ Culpable officials escaping prosecution also remains an issue.^{746,747,748} The 2018 report recommends that Malaysia significantly expand the freedom of movement of trafficking victims in shelters, as well as facilitate their ability to seek employment; to increase the number of trafficking prosecutions and convictions, including those of national officials; to improve case management and communication with trafficking victims; and fully implement the 2016-2020 national plan to combat trafficking.⁷⁴⁹

According to the US Department of State report, “sentences for convicted traffickers varied, but some were insufficiently stringent.”⁷⁵⁰ The 2016 report specifies that “the majority of sentences were weak and incommensurate with those prescribed for other serious offenses, including a trafficker who was administered one day in prison plus a fine of RM 20,000 (\$5,000), and three others who were given sentences of one to three-and-one-half years’ imprisonment.”⁷⁵¹ Similarly, the 2018 report found that of the 45 convicted traffickers in 2017, 25 were given imprisonment sentences ranging between 15 months and 12 years, while 11 received sentences between one day and six months. The remaining traffickers only received fines.⁷⁵²

Finally, intra-country trafficking between east Malaysia and the peninsula is an area requiring further investigation, as this does not appear in trafficking statistics.

Malaysia Remains on the Tier 2 Watch List in the US State Department’s 2016 Trafficking in Persons Report

Malaysia has been on the Tier 2 Watch List of the US State Department’s *Trafficking in Persons Report* quite consistently, though it dropped to Tier 3 in 2014, as it was “not making significant efforts to comply with minimum standards.”⁷⁵³ In 2015 Malaysia was again placed on the Tier 2 Watch List, as it did not meet the minimum standards to end trafficking but was “making significant efforts to do so.” These efforts included government and civil society organizations joint effort in drafting and proposing amendments to strengthen Malaysia’s human trafficking legislation. Organizations

745 Ibid.

746 US Department of State. (2016). *Trafficking in Persons Report: June 2016*, page 256. Available at: <https://www.state.gov/documents/organization/258876.pdf>

747 US Department of State. (2017). *Trafficking in Persons Report: June 2017*, page 264. Available at: <https://www.state.gov/documents/organization/271339.pdf>

748 US Department of State. (2018). *Trafficking in Persons Report: June 2018*, page 286. Available at: <https://www.state.gov/documents/organization/282798.pdf>.

749 Ibid, page 287.

750 US Department of State. (2016). *Trafficking in Persons Report: June 2016*, page 256. Available at: <https://www.state.gov/documents/organization/258876.pdf>

751 Ibid.

752 US Department of State. (2018). *Trafficking in Persons Report: June 2018*, page 287. Available at: <https://www.state.gov/documents/organization/282798.pdf>.

753 US Department of State. (2014). *Trafficking in Persons Report: June 2014*, page 260. Available at: <https://www.state.gov/documents/organization/226847.pdf>

such as SUARAM, however, questioned why Malaysia was not again downgraded to Tier 3, given the 2015 discovery of mass graves along the Malaysia-Thailand border, as well as the lack of convictions of traffickers or enforcement officials.⁷⁵⁴ According to the report, Malaysia remained on the Tier 2 Watch List as “the government did not demonstrate overall increasing anti-trafficking efforts compared to the previous reporting period.”⁷⁵⁵ Despite the fact that additional anti-trafficking police officers and deputy public prosecutors specialized in human trafficking were added, corruption by enforcement authorities remained a problem that had not been adequately addressed. And yet, Malaysia was upgraded to a Tier 2 ranking in 2017, as the government had “demonstrated increasing efforts compared to the previous reporting period.”⁷⁵⁶ Given the above statistics, Malaysia was subsequently given a Tier 2 Watch List ranking again in 2018, primarily because it had failed to prosecute as many traffickers as it had the year before.⁷⁵⁷ Government immigration fees being deducted from migrant workers’ salaries, as well as passport retention by employers, both authorized and unauthorized, remain a problem.⁷⁵⁸

In 2016, there were 403 cases of human trafficking prosecuted in court according to Khalid Abu Bakar, the Malaysian Inspector General of Police.⁷⁵⁹ Abu Bakar reported that, “[the] Department of Labour conducted almost 24,000 inspections related to trafficked persons, leading to 3,994 recorded violations of human trafficking laws. Of those, 19,463 were referred to the Labour Court, and there was USD 4.5 million in employer paybacks for illegal labour activities.”⁷⁶⁰ He claimed that 41 immigration officers and 1 police officer were “arrested, reprimanded or facing disciplinary action for involvement in human trafficking activities.”⁷⁶¹ However, the government did not disclose how many enforcement officers had been prosecuted for trafficking offenses.

National Action Plan on Anti-Trafficking in Persons 2016-2020

In August 2016, Malaysia launched the *National Action Plan on Anti-Trafficking in Persons 2016-2020*, “in an effort to reach a Tier 1 ranking in the US State Department’s *Trafficking in Persons Report*” by 2020,⁷⁶² and to make combating forced labour a priority for 2016-

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- 754** SUARAM. (2016). *Malaysia Human Rights Report: Civil & Political Rights 2016*, page 39.
- 755** US Department of State. (2016). *Trafficking in Persons Report: June 2016*, page 255. Available at: <https://www.state.gov/documents/organization/258876.pdf>
- 756** US Department of State. (2017). *Trafficking in Persons Report: June 2017*, page 264. Available at: <https://www.state.gov/documents/organization/271339.pdf>
- 757** US Department of State. (2018). *Trafficking in Persons Report: June 2018*, page 287. Available at: <https://www.state.gov/documents/organization/282798.pdf>.
- 758** US Department of State. (2016). *Trafficking in Persons Report: June 2016*, page 255. Available at: <https://www.state.gov/documents/organization/258876.pdf>
- 759** “Fighting Human Trafficking in Malaysia.” The Hill. 5 March 2017. Available at: <http://thehill.com/blogs/congress-blog/foreign-policy/322307-fighting-human-trafficking-in-malaysia>
- 760** Ibid.
- 761** Ibid.
- 762** “Malaysia aims to improve anti-human trafficking ranking to Tier 1 by 2020: Zahid.” New Straits Times. 15 August 2016. Available at: <https://www.nst.com.my/news/2016/08/165699/malaysia-aims-im>

2020. The plan aims to increase civil society participation and improve the treatment of trafficking victims in accordance with the 2015 amendments to ATIPSOM.⁷⁶³ The plan guides civil society organizations in the investigation of trafficking cases, as well as the protection and rehabilitation of trafficking survivors.

According to the plan, civil society organizations will have full responsibility for sheltering all trafficking survivors by 2020. However, the plan does not include a detailed framework for *how* these organizations are expected to take over all sheltering activities. The plan also does not consider the safety of trafficking survivors after they leave Malaysia and return to their country of origin; survivors may face retribution or social stigmatization upon their return, and agents who brought trafficking survivors to Malaysia may target them for trafficking again.

Various human trafficking schemes

The NGO Tenaganita has identified various trafficking schemes that prevail in Malaysia. Beyond forced labour and sex trafficking, marriage trafficking, “baby factories” or “baby selling,” forced begging, organ harvesting, child prostitution, and child marriage cases have been brought to its attention.⁷⁶⁴ In 2015, the NGO recorded 61 cases of women who had been trafficked using tourist visas, 16 women who had been given forged documents by agents, and 34 sex trafficking cases.

Mass graves discovered in 2015 along the Malaysia-Thai border

In May 2015, Malaysian Police found 28 human trafficking camps and 139 graves in Wang Kelian, Perlis, near the border with Thailand.⁷⁶⁵ The mass graves contained 106 human skeletal remains, believed to belong to Burmese, Rohingya, and Bangladeshi migrants and asylum seekers being smuggled into Malaysia. It is believed that the abandoned camps were used to hold victims while traffickers demanded money from their families to secure their release.^{766,767} Survivors have alleged that they were tortured and raped if they were unable to pay the traffickers.⁷⁶⁸

prove-anti-human-trafficking-ranking-tier-1-2020-zahid

763 Ibid.

764 “Sold into marriage - how Rohingya girls become child brides in Malaysia.” Reuters. 15 February 2017. Available at: <https://www.reuters.com/article/uk-myanmar-rohingya-childbrides-insight/sold-into-marriage-how-rohingya-girls-become-child-brides-in-malaysia-idUSKBN15U009>

765 “Malaysia migrant mass graves: police reveal 139 sites, some with multiple corpses.” The Guardian. 25 May 2015. Available at: <https://www.theguardian.com/world/2015/may/25/malaysia-migrant-mass-graves-police-reveal-139-sites-some-with-multiple-corpse>

766 “Thailand convicts traffickers after 2015 mass graves discovery.” The Guardian. 19 July 2017. Available at: <https://www.theguardian.com/world/2017/jul/19/thailand-convicts-dozens-of-traffickers-after-mass-graves-discovery>

767 Human Rights Commission of Malaysia (SUHAKAM). (2015). *Annual Report 2015*, page 99. Available at: <http://www.suhakam.org.my/pusat-media/sumber/laporan-tahunan/>

768 “Asia migrant crisis: New mass graves on Malaysia-Thai border.” BBC News. 23 August 2015.

Refugees and migrants from Myanmar and Bangladesh have claimed that, upon release from detention in Malaysia, they were sent to camps along the Malaysia-Thailand border and sold to human traffickers.⁷⁶⁹ Twelve Malaysian policemen were arrested on grounds of alleged links to the “death camps” and grave sites. They were soon released due to a lack of evidence.^{770,771} Bangladeshi, Burmese, and Thai nationals have been convicted.⁷⁷²

Refugees and asylum-seekers are acutely vulnerable to trafficking

Refugees and asylum seekers are highly vulnerable to trafficking, as their legal status is not recognized in Malaysia; asylum seekers are considered undocumented migrants. Many refugees are smuggled into Malaysia across the border with Thailand, where they face exploitation and abuse.⁷⁷³ Refugees often incur smuggling debts to enter Malaysia illegally, which makes them vulnerable to debt bondage.⁷⁷⁴

According to the 2017 Human Rights Watch report, “Female refugees are particularly vulnerable to abuse, and there is evidence of large numbers of coerced and forced marriages of ethnic Rohingya women and girls from Burma.”⁷⁷⁵ Begging syndicates force some women and children refugees and asylum-seekers to beg on the street.⁷⁷⁶ Refugees are not legally allowed to work in Malaysia and their lack of access to employment, basic amenities, and healthcare makes them increasingly vulnerable to trafficking schemes.⁷⁷⁷ Additionally, as asylum seekers are considered undocumented migrants, many face the possibility of forced repatriation upon the conclusion of the court trials of their traffickers.

Mental health needs of trafficking survivors

Trafficking survivors continue to suffer from a range of mental health issues well after

Available at: <https://www.bbc.com/news/world-asia-34033474>

769 “Malaysians likely behind Thailand’s Songkhla human trafficking camp, says NGO.” The Straits Times. 6 May 2015. Available at: <https://www.straitstimes.com/asia/se-asia/malaysians-likely-behind-thai-lands-songkhla-human-trafficking-camp-says-ngo>

770 “12 cops held over Wang Kelian human trafficking case freed.” Free Malaysia Today. 20 March 2017. Available at: <http://www.freemalaysiatoday.com/category/nation/2017/03/20/12-cops-held-over-wang-kelian-human-trafficking-case-freed/>

771 US Department of State. (2018). *Trafficking in Persons Report: June 2018*, page 287. Available at: <https://www.state.gov/documents/organization/282798.pdf>

772 Ibid, page 286.

773 Tenaganita. (2008). *The Revolving Door: Modern Day Slavery – Refugees*.

774 US Department of State. (2016). *Trafficking in Persons Report: June 2016*, page 255. Available at: <https://www.state.gov/documents/organization/258876.pdf>

775 Human Rights Watch. *World Report 2017: Events of 2016*, page 416. Available at: <https://www.hrw.org/world-report/2017>

776 “A new generation comes out to beg.” The Star Online. 23 November 2015. Available at: <https://www.thestar.com.my/metro/community/2015/11/23/a-new-generation-comes-out-to-beg-children-of-beggars-in-klang-are-unable-to-quit-the-cycle-of-pover/>

777 SUARAM. (2016). *Malaysia Human Rights Report: Civil and Political Rights*, page 39.

their release, including post-traumatic stress, severe depression, and anxiety.^{778,779} Domestic workers who have experienced sexual violence or harassment often show similar symptoms.⁷⁸⁰ Many symptoms become apparent after survivors spend time in a shelter. Women report that they still suffer from mental health issues after escaping trafficking, and many express that they are still in need of mental health support after repatriation.⁷⁸¹

778 UK Department of Health. (2017). *Modern slavery and public health*. Available at: <https://www.gov.uk/government/publications/modern-slavery-and-public-health/modern-slavery-and-public-health#fn:15>

779 Levine, JA. (2017). Mental health issues in survivors of sex trafficking. *Journal of Cogent Medicine*, 4(1), 1278841.

780 “Human trafficking report: Victims reveal devastating impact of abuse with 80 percent suffering mental health problems.” The Independent. 14 April 2016. Available at: <https://www.independent.co.uk/news/uk/crime/human-trafficking-mental-health-kings-college-london-ptsd-prostitution-modern-slavery-london-school-a6984456.html>

781 Aberdein, C., Zimmerman, C. (2015). Access to mental health and psychosocial services in Cambodia by survivors of trafficking and exploitation. *International Journal of Mental Health Systems*, 9, 16.

Lack of awareness by authorities and social service providers

Authorities fail to recognize that many trafficking survivors come to Malaysia of their own accord but become trapped in trafficking schemes upon their arrival. Due to a lack of sensitization, authorities assume that because women made the conscious choice to come to Malaysia, it is their fault for becoming victims of labour and sex trafficking.⁷⁸² Trafficking survivors of certain nationalities are harmfully stereotyped and presumed to have come to Malaysia for sex work. This victim-blaming approach and sheer ignorance of trafficking dynamics by the authorities can harm the trafficking survivors' cases further.

Additionally, enforcement authorities are not properly sensitized about handling sensitive sexual and gender-based violence cases. Authorities also lack sensitization regarding child trafficking cases. Both enforcement authorities and social service providers at public institutions – such as hospitals and clinics – would benefit from increased sensitization about human trafficking and the identification of trafficked women.

Poor treatment of trafficking victims

During the course of investigations, identified victims of trafficking are forcibly placed in shelters run by the Ministry of Women, Family and Community Development until they are repatriated to their country of origin. Trafficking survivors have informed Tenaganita that overcrowding and protracted length of trafficking cases are common issues in these shelters, which leads to a lack in medical and mental health care resources available for trafficking survivors.

Observers have noted that victims are denied basic rights and freedoms; they are “isolated, unable to work or earn an income, and have little or no access to legal or psychological assistance provided by the government or NGOs...and these facilities did not employ medical officers or trained psychologists.”⁷⁸³

Tenaganita has been informed that in Sarawak, victims of trafficking are handcuffed and housed in prisons.

782 US Department of State. (2018). *Trafficking in Persons Report: June 2018*, page 288. Available at: <https://www.state.gov/documents/organization/282798.pdf>

783 US Department of State. (2011). *Trafficking in Persons Report: June 2011*, page 245. Available at: <https://www.state.gov/documents/organization/164455.pdf>

Degrading and humiliating treatment of women prostitutes

In June 2011, a police raid on a Penang nightclub found 38 women detained for alleged prostitution – 30 of them were not Malaysian citizens. The women were marked with an X on their foreheads or chests and chained together. It has been reported that a week prior to the raid, officers had attended the club undercover.⁷⁸⁴ Although it is unknown whether these women were trafficking victims, they were humiliated and degraded by the police. China Press published photos of the women during the raid.

Case Study - *Bithi's Story*⁷⁸⁵

Within 11 days, the life of a 20-year-old Bangladeshi woman was destroyed. Bithi, a former factory worker, was promised better employment opportunities and a salary of RM 1,100 per month in Malaysia. To pay the brokers RM 8,300 in supposed migration costs, the young woman's mother resorted to selling her jewellery and land.

Upon arriving in Kuala Lumpur, Bithi was taken to a hotel where she met several men, including the two Bangladeshi men who had trafficked her. The first night at the hotel, the men repeatedly raped and sodomized her. She believes one man even filmed parts of the traumatic ordeal. Bithi had no access to any form of communication with the outside world. Over the next few days, she was moved from hotel to hotel but was always confined. She was told she had been sold to a Chinese man and would be required to service his clients.

Bithi eventually fell ill and was taken to a clinic. She was told to say that one of the traffickers was her husband, but instead she screamed, causing the man to flee. She was brought to a shelter run by Tenaganita and provided with financial assistance to purchase a ticket to return to Bangladesh. An organization is currently assisting Bithi to file a court case against the men who trafficked her.

Case Study - *Salimah's story*⁷⁸⁶

Salimah arrived in Malaysia from Bangladesh in January 2012. She was 14 years old. Salimah had two passports; one genuine passport and one that had been altered by her agent that stated she was 11 years old, as the agent claimed that it would be easier to bring her to Malaysia if she were younger. The agent pretended that Salimah was his younger

784 "X-marks and chains for suspects rile rights groups." Malaysiakini, 3 June 2011. Available at: <https://www.malaysiakini.com/news/165943>

785 Bithi is not her real name; it has been changed to protect her identity.

786 Salimah is not her real name; it has been changed to protect her identity.

sister and that they were entering Malaysia as tourists.

Salimah was aware that she was under the age limit for employment. She however wanted to help her parents, who were elderly and could not work to support her large family. Upon arriving in Malaysia, Salimah saw money being exchanged between her agent and the employer. The agent then left without saying anything to her.

Salimah was expected to do household chores and care for her employers' two infant children. The first time Salimah was beaten was after she spoke to her parents on the phone. Her employers accused her of using up all the phone credit, but when Salimah denied the accusation, they beat her with a stick. She was in a great deal of pain but had to continue working the next day. She was often scolded and beaten for small issues, such as forgetting to wipe the television set or not being able to stop the employers' infants from crying. Her employers slapped her across the face and beat her using bamboo sticks that were taped together. On many occasions, they also poured hot water on her body and vagina. The employers often blended chilies and forced her to eat them for their own amusement. One day, she vomited after eating the chilies and was made to drink her own vomit.

One day, Salimah bathed the employers' infants but used regular soap instead of a special medicated soap. This angered her employers, who beat her. As she was crying in pain, her employers pushed her onto a bed. The male employer sat on her chest lifting her legs up while the female employer used a thick bamboo and forcefully penetrated her vagina and anus with it. They continuously did so until Salimah became unconscious. When she awoke, she found that her employers had left and she was covered in a pool of her own blood. She was later given diapers to wear so that her blood wouldn't continue dripping and 'dirtying' the floor.

Salimah knew that if she stayed at her employer's house, she would die. She summoned a great amount of courage and managed to escape with only the clothes on her back. She limped to a nearby restaurant where she was assisted by a woman who helped her lodge a police report. The police immediately called for an ambulance and sent her to a government hospital. A week after the incident, Salimah slipped into a coma. She had to undergo multiple surgeries and was in the hospital for three months as she recovered. During that period, her employers threatened her and pressured her to withdraw the police report. Salimah's case was classified as a clear case of human trafficking. During her time at the hospital, Tenaganita met with Salimah and encouraged her to pursue a case against her employer.

After Salimah was discharged from the hospital, Tenaganita sheltered her and assisted her in filing a police report under ATIPSOM. After the report was filed, she was transferred to a government shelter, where she was not provided with proper medical follow-up and treatment. The government shelter staff insisted that Salimah withdraw the case against her employer if she wanted to receive medical attention. After repeated harassment by the shelter staff, Salimah finally relented, and she was taken to the police station to withdraw her first report against her employers. However, medical treatment

was not provided to Salimah even after she withdrew the police report. Throughout her stay at the government shelter, Tenaganita was not allowed to have contact with Salimah.

Upon seeing Salimah, a concerned officer refused to repatriate her until she received proper medical treatment. This officer referred her back to Tenaganita's shelter, where she resided while awaiting funding for her surgery, which was eventually provided by the Swiss government. Salimah was given specialized counselling support, legal support, as well as psychosocial and developmental support. She also participated in educational tutoring and skills building classes. She has expressed desire to pursue her legal case, and Tenaganita is in the midst of reopening her case in court. The office of the Attorney General has investigated and agreed to take up Salimah's case. Meanwhile, Salimah has returned to Bangladesh to visit her ailing father. She plans to return to Malaysia to pursue both her education and her case in court. Tenaganita will assist Salimah to enroll in further education.

Case Study - *Binh's story*⁷⁸⁷

Tenaganita rescued Binh, a Vietnamese sex trafficking survivor. She had a fractured backbone and was physically impaired, possibly due to an assault. Binh was mentally unstable and was unable to communicate. Her ability to socially engage with others was also impaired. Binh was only able to say the word "Vietnam," which facilitated her subsequent repatriation to her home country. The trauma Binh experienced as a survivor of sex trafficking resulted in severe mental health issues and social impairment.

Lack of authorities and infrastructure to support trafficking victims and coordinate response in East Malaysia

Sarawak lacks a centre to hold trafficked women while investigations are undergoing and traffickers are brought to trial. This deficiency makes it more complicated to provide women with appropriate protection. The Government is aware of the shortfall and is attempting to rectify it.⁷⁸⁸

The authority to administer and implement the protective provisions in ATIPSOM, including the power to gazette shelters pursuant to Section 42 of the Act, lies with the Ministry of Home Affairs. The Ministry, however, does not have a presence in Sarawak, so it remains unclear with whom the responsibility to coordinate responses at the state-level falls. The NGO Sarawak Women for Women Society approached the state government of Sarawak when the ATIPSOM was first passed. Engagement has however not continued – with the exception of informal networking. It is furthermore unknown

787 Binh is not her real name; it has been changed to protect her identity.

788 US Department of State. (2018). *Trafficking in Persons Report: June 2018*, page 288. Available at: <https://www.state.gov/documents/organization/282798.pdf>.

whether there are Standard Operating Procedures (SOPs) across departments, including key state responders such as the regular police and the marine police.

Recommendations to the Malaysian Government regarding Article 6 of CEDAW

- Amend ATIPSOM to remove the inclusion of smuggled migrants. The smuggling of migrants and the trafficking of persons are two distinct issues and should not be conflated.
- Expand the definition of human trafficking in ATIPSOM, so that it complies with the definition provided in the *Protocol to Prevent, Suppress and punish Trafficking in Persons*.
- Conduct comprehensive and in-depth research on the extent and trends of trafficking in women in Malaysia, both in terms of trafficking victims and trafficking syndicates, so as to formulate more effective responses.
- Raise awareness about the different types of trafficking in women, beyond labour and sex trafficking.
- Make trafficking statistics publicly available on an annual basis, rather than the current ad hoc approach to releasing statistics.
- Make greater efforts to educate migrant workers on their rights, legal recourses available, and how to seek remedies against traffickers or employers who fail to meet their legally mandated obligations.
- Sensitise enforcement authorities and social service providers to better understand human trafficking as a human rights violation and emphasise their duty to identify and protect trafficking survivors. Ensure all authorities and social service providers understand the traumatic experiences survivors are subject to and are sensitive in their treatment and interaction with survivors.
- Ensure all trafficking survivors, including foreign survivors, are able to move freely and work while staying at government shelters in accordance with the 2015 ATIPSOM amendments.

- Provide trafficking survivors with legal assistance and counselling throughout the duration of their court cases; guarantee that civil society organizations have access to trafficking survivors throughout the judicial process; ensure survivors have adequate psychological and physical care.
- Ensure trafficking survivors are able to access health care facilities, including mental health care. Medical and mental health services should be affordable and accessible to survivors, regardless of their legal status in Malaysia. If there is a lack of public mental health professionals, the government should employ private mental health professionals to care for trafficking survivors.
- Allow trafficking survivors to remain in Malaysia if they are seeking asylum. Trafficking survivors wishing to remain in Malaysia should be provided with assistance in finding suitable employment opportunities.
- Guarantee safe repatriation of trafficking survivors who wish to return to their country of origin. Protection must continue after survivors are repatriated. Civil society organizations and governments across ASEAN should closely work together to ensure trafficking survivors are not re-trafficked.
- Make compensation or other reparations available to victims of trafficking in accordance with the 2015 ATIPSOM amendments.
- Monitor government shelters serving trafficking survivors to ensure that standards for living conditions, medical care, and psychological counselling are met. The shelters should be equipped to provide care for survivors experiencing mental health issues.
- Ensure that civil society organisations are able to gain access to victims of trafficking via a recognised role to provide support, and that their expertise is drawn upon by government-run shelters
- Ensure public officials and enforcement officers who are involved in trafficking or exploit trafficking survivors are prosecuted and convicted. Crimes committed by Malaysian authorities at the mass graves and trafficking camps in Wang Kelian, Perlis, must be investigated and prosecuted.
- Investigations, prosecutions, and convictions for trafficking crimes should be increased through increased cooperation between law enforcement agencies

and prosecutors as well as increased familiarity about trafficking crimes across enforcement agencies and the judiciary.

- Provide guidelines for the non-discriminatory portrayal of trafficked women in the media and introduce sensitisation programmes for the media to appreciate the social implications of their reports. Encourage the media to treat traffickers as criminals instead of framing trafficking victims as such.
- Strengthen networks among civil society organizations working in ASEAN countries. This will facilitate information sharing and cooperation on anti-trafficking campaigns.
- Incorporate in the *National Action Plan on Anti-Trafficking in Persons 2016-2020* a detailed framework for civil society organizations which are to assume responsibility for sheltering trafficking survivors.
- Seek collaboration with civil society organisations in all areas of human trafficking work. Instead of asking civil society organisations to “assist” the government, the *National Action Plan* should work in partnership with organisations knowledgeable about trafficking cases and the resulting dynamics. Civil society organisations should be part of an integrated team, including government authorities and social service providers, which holistically works on the trafficking survivor’s case, from the investigation to safe repatriation. Civil society organisations should be involved in all aspects of survivors’ cases, not just the provision of shelter.
- Establish an effective system which enables collaboration and coordination between all relevant government bodies, civil society, and the state governments in the east Malaysian states, and ensures that there is effective two-way communication with MAPO.

09.

Article 7 ~ 8

PARTICIPATION IN POLITICAL AND PUBLIC LIFE

Article 7

States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right:

- (a) To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies;
- (b) To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government;
- (c) To participate in non-governmental organizations and associations concerned with the public and political life of the country.

Article 8

States Parties shall take all appropriate measures to ensure to women, on equal terms with men and without any discrimination, the opportunity to represent their Governments at the international level and to participate in the work of international organizations.

Key issues in this chapter:

- The government has not developed concrete plans for increasing the number of women standing as candidates in local elections, as elected representatives, as public officers, or in decision-making positions. In December 2017, former Prime Minister Najib announced plans to adopt a 30% quota for women representatives in the Senate, this target has not been met.
- The **number of women in Parliament remains low**. In 2016, there were only three female cabinet ministers out of a total 34 (8.8%), and six women deputy ministers out of 34 (17.6%). In the same year, 13 out of 64 (20.3%) appointed Senators in the Dewan Negara were women, and only 24 out of a total of 222 (10.8%) seats in the House of Representatives (Dewan Rakyat) were filled by women. Following the 2018 election, the number of seats held by women in the Dewan Rakyat increased to 32 out of 222 (13.4%), which is still far too low.
- **Only two political parties have a quota** in place in their constitutions to ensure women's political participation.
- **The political environment is hostile towards women**. Elected Members of Parliament routinely make sexist remarks in and outside of Parliament which go unrebuked and which create an antagonistic and intimidating environment for women.
- **Human rights activists are subject to online and offline threats, as well as arbitrary arrests and detainment**. Such treatment is a great disincentive for women to participate in the public sphere.
- Representation of women at the **international level**, for example as Malaysian ambassadors and high commissioners, remains low.

Malaysia performed poorly in the World Economic Forum's 2017 *Global Gender Gap Report*, being ranked at 104 out of 144 countries overall.⁷⁸⁹ On the measure of political empowerment, Malaysia was ranked at 133 out of 144 countries.⁷⁹⁰ worsening since 2010, where it was ranked at 110 out of the 134 countries.⁷⁹¹

When Malaysia appeared before the CEDAW Committee in 2018, the latter welcomed former Prime Minister Najib's intention to adopt a minimum quota of 30% for women in the Senate.⁷⁹² However, the Committee reiterated its concern that women in Malaysia continue to be underrepresented in all areas of political and public life – including in parliament, the cabinet, local government, the judiciary, and the diplomatic service. This

789 World Economic Forum. (2017). *Insight Report: The Global Gender Gap Report 2017*, page 11. Available at: http://www3.weforum.org/docs/WEF_GGGR_2017.pdf

790 Ibid, page 13.

791 For more information, refer to *Malaysian NGO CEDAW Alternative Report 2012*, page 101.

792 CEDAW *Concluding Observations to Malaysia 2018*, para 29 (CEDAW/C/MYS/CO/3-5).

is particularly prevalent in high-ranking, decision-making positions. The Committee also voiced its concern at the lack of representation of women from marginalised groups, such as women with disabilities, indigenous women, and ethnic minority women.

2018 Concluding Observations to Malaysia

In its 2018 Concluding Observations to Malaysia, the CEDAW Committee recommends that Malaysia:

- a) “Adopt measures, including temporary special measures, in accordance with article 4 (1) of the Convention and in line with the Committee’s general recommendation No. 23 (1997) on women in political and public life and general recommendation No. 25 (2004) on temporary special measures, in order to guarantee and accelerate the full and equal participation of women at all levels, including in legislative bodies, ministerial posts and local government, the judiciary, and the diplomatic service;
- b) Provide information in the next periodic report on specific measures implemented, such as quotas, to increase the representation of women, including women with disabilities, indigenous women and ethnic minority women, in decision-making positions in political and public spheres.”⁷⁹³

Removal of reservation to Article 7(b) of CEDAW

In July 2010, the Malaysian government announced that it was lifting its reservation to Article 7(b) of CEDAW. Despite this, much more needs to be done to fulfil the intent of the Article in a meaningful way.

Appointment of female judges

A few days prior to the official removal of the reservation to Article 7(b) CEDAW, the government announced the appointment of the first two female *Syariah* Court judges for the Federal Territories of Putrajaya and Kuala Lumpur. However, on 8 December 2010, newspapers reported that the government was still “mulling over” permitting female judges to hear marriage and divorce cases.⁷⁹⁴

793 Ibid, para 30.

794 “Govt mulls over female Syariah judges for marriage, divorce cases.” The Star Online. 8 December 2010. Available at: <https://www.thestar.com.my/news/nation/2010/12/08/govt-mulls-female-syari->

In 2016, Noor Huda Roslan and Nenny Shuhaidah Shamsuddin became the first female judges to be appointed to the *Syariah* High Court.⁷⁹⁵ In 2017, four female judges were simultaneously elevated to positions within the civil Appellate Courts,⁷⁹⁶ while eight women were appointed as *Syariah* Lower Court judges.⁷⁹⁷

Nevertheless, there is still a significant lack of representation of women in the judiciary, in both *Syariah* and civil courts. At the Federal Court level, only three out of 11 judges are women. At lower judiciary levels there is greater gender-equality, with women representing 15 out of 29 Court of Appeal judges,⁷⁹⁸ and 29 out of 58 High Court judges.⁷⁹⁹

Prohibition of non-Muslim women from practising in *Syariah* courts

The recent ruling of the Federal Court in *Majlis Agama Islam Wilayah Persekutuan v Victoria Jayaseele Martin & Anor* found that the Islamic council's ruling that bars non-Muslims from practicing as *Syariah* lawyers is constitutional, thus preventing non-Muslim women from practicing *Syariah* law in the Federal Territories.⁸⁰⁰

In that case, despite holding the relevant academic qualifications, Victoria Jayaseele Martin, a Christian, was barred from becoming a *Syariah* court lawyer. The Federal Court recognised that the Administration of Islamic Law (Federal Territories) Act 1993 clothed the Islamic council with powers to make rules pertaining to qualifications for the admission of a *Syariah* lawyer. Therefore, the Islamic council was allowed to impose the conditions in Rule 10 of the *Syariah* Lawyers Rules 1993 which allows only Muslims to become *Syariah* lawyers.⁸⁰¹

ah-judges-for-marriage-divorce-cases/

795 “Two women appointed as *Syariah* Court judges in landmark move.” The Star Online. 28 June 2016. Available at: <http://www.thestar.com.my/news/nation/2016/06/28/a-first-for-syariah-court-two-women-appointed-as-judges-in-a-landmark-move/>

796 “Judiciary makes history, four women judges elevated to appellate courts.” The Sun Daily. 25 September 2017. Available at: <http://www.thesundaily.my/news/2017/09/25/judiciary-makes-history-four-women-judges-elevated-appellate-courts>

797 Kementerian Pembangunan Wanita, Keluarga, dan Masyarakat. (2016). *Perangkaan Wanita, Keluarga dan Masyarakat*. Available at: <https://www.kpwkm.gov.my/kpwkm/uploads/files/Penerbitan/Buku%20Perangkaan/Perangkaan%202016.pdf>

798 “Judiciary makes history, four women judges elevated to appellate courts.” The Sun Daily. 25 September 2017. Available at: <http://www.thesundaily.my/news/2017/09/25/judiciary-makes-history-four-women-judges-elevated-appellate-courts>

799 Kementerian Pembangunan Wanita, Keluarga, dan Masyarakat. (2016). *Perangkaan Wanita, Keluarga dan Masyarakat*. Available at: <https://www.kpwkm.gov.my/kpwkm/uploads/files/Penerbitan/Buku%20Perangkaan/Perangkaan%202016.pdf>

800 *Majlis Agama Islam Wilayah Persekutuan v Victoria Jayaseele Martin & Anor* (2016).

801 “Federal Court: Discriminatory rule barring non-Muslims as *Shariah* lawyers is constitutional.” Malay Mail Online. 24 March 2016. Available at: <http://www.themalaymailonline.com/malaysia/article/federal-court-discriminatory-rule-barring-non-muslims-as-shariah-lawyers-is>

Such a restriction effectively discourages existing women lawyers who are non-Muslim from expanding their knowledge, skills, and practice into *Syariah* law. Furthermore, by restricting those who can practice *Syariah* law to Muslims, the number of potential women who may become *Syariah* lawyers and judges is restricted.

Women's low representation in politics

Women's participation in politics is hampered by the existence of laws and social restrictions which limit the number of female candidates fielded, making it significantly more difficult for women to become involved in the public sphere.

A total of 168 female candidates ran for Parliamentary and DUN seats during the General Elections in 2013. This number is often used to claim an increase of 40% compared to the 120 female candidates who ran during the General Elections in 2008. What remains conveniently disregarded, however, is that the total number of candidates that ran also increased, and that, therefore, the percentage of women who ran for seats remained almost the same at 8%.⁸⁰²

Attitudes that place the blame for low levels of political participation on women, and disregard the systemic discrimination that women face, only serve to undermine the issue. For example, according to Dr. Jeniri Amir, a political analyst from Universiti Malaysia Sarawak, women should improve their knowledge, expertise, skills, and experience through various strategies. Their sense of approach would also need improvement to build credibility and allow them to win the trust of the voters during the next general election.⁸⁰³

Quotas

The parties of the previous ruling coalition do not have quotas to increase the level of women's participation in Parliament. Only two political parties have inserted into their constitutions a commitment to having a minimum of 30% of decision-making positions filled by women. This commitment was made in June 2009 by the Parti Keadilan Rakyat (PKR), and in 2014 by the Democratic Action Party (DAP).^{804,805}

802 "More women policymakers in Najib's administration." Free Malaysia Today. 31 March 2016. Available at: <http://www.freemalaysiatoday.com/category/nation/2016/03/31/more-women-policymakers-in-najibs-administration/>

803 "GE13: Women candidates performed better?" Astro Awani. 13 May 2013. Available at: <http://english.astroawani.com/malaysia-news/ge13-women-candidates-performed-better-14024>

804 "PKR: Clearer policy needed on gender representation." The Nut Graph. 16 June 2009. Available at: <http://www.thenutgraph.com/pkr-clearer-policy-needed-on-gender-representation/>

805 "Why I support the women quota and more." DAP Malaysia. 23 December 2014. Available at: <https://dapmalaysia.org/en/statements/2014/12/23/19807/>

In 2017, the Selangor State Government, pledged its commitment to constantly moving towards a 30% quota of women as policy-makers at all levels. As of 2017, 41% of the Senior Officers in the State Government were women.⁸⁰⁶

The high cost of election deposits

In Malaysia, candidates must pay an election deposit of RM 15,000 to contest for a seat in the federal-level Dewan Rakyat (House of Representatives) and RM 8,000 for a seat in the State Legislative Assemblies. Federal-level candidates must pay a deposit of RM 10,000 plus an additional RM 5,000 for the cost of clearing up campaign materials. Candidates for the state-level assemblies must pay a RM 5,000 deposit plus an additional RM 3,000 for clearing up campaign materials.

The deposit is sometimes cited as a key factor behind the low level of women's political participation. The Election Commission, however, still deemed it necessary to collect deposits from candidates to ensure that only those who were serious would run in the 2018 General Election.⁸⁰⁷

Hostile political environment for women

As discussed in the chapter on Article 5 CEDAW, government rhetoric continually reinforces women's role as the primary caretakers in the family home. The chapter also includes examples of the sexist comments and ideologies that are frequently espoused by Members of Parliament, as well as the lack of reprimand these incite from peers, indicating a tacit acceptance of such behaviour.⁸⁰⁸

The experience of Dyana Sofya Mohd Daud, the Democratic Action Party's (DAP) candidate for the Teluk Intan by-election, is reflective of the layers of discrimination that female candidates must overcome to run for political office, let alone to serve. Photos allegedly of Dyana Sofya in a bikini were circulated online, prompting a slew of commentary by male DAP supporters and constant references to Dyana Sofya's attractiveness during political discussions. The physical appearance of female politicians seemingly attracts more attention than their capacity to contribute to the political life of Malaysia.⁸⁰⁹ Previously, Dyana Sofya cited the reason behind her

806 "Selangor leads in appreciation of women." Selangor Kini. 8 March 2017. Available at: <https://selangorkini.my/en/2017/03/selangor-leads-in-appreciation-of-women/>

807 "GE13: Spending limits for campaigns stay the same, says Election Commission." The Star Online. 17 March 2013. Available at: <http://www.thestar.com.my/news/nation/2013/03/17/ge13-spending-limits-for-campaigns-stay-the-same-says-election-commission/>

808 For more information, also refer to *Malaysian NGO CEDAW Alternative Report 2012*, page 103.

809 "Taking stock of the state of women in Malaysia." Malaysiakini. 8 March 2016. Available at: <http://www.malaysiakini.com/letters/333162>

decision to run with DAP was the patriarchal structure of the ruling party, UMNO.⁸¹⁰

In April 2017, a Facebook post was circulated picturing Azalina Othman, the Minister of Law in the Prime Minister's Department, overlaid with the caption '*Tiada seorang pun sanggup nak rogol saya*' (nobody is willing to rape me).⁸¹¹ A report was lodged with the police and the Communications and Multimedia Commission on Azalina's behalf, though it is unknown what the outcome of these investigations were.

Statistics on women's participation in politics

The Ministry of Women, Family and Community Development produces an annual statistics booklet. Below are the statistics relating to women's political representation in Malaysia, which have remained quite stagnant over the past decade.⁸¹²

In 2016, there were only 3 female cabinet ministers out of a total of 34 (8.8%) and 6 women deputy ministers out of 34 (17.6%).⁸¹³ These statistics are problematic due to the lack of transparency in the criteria on which women who get appointed are assessed, including their dependency on patronage.

In 2016, 13 out of a total of 64 (20.3%) appointed Senators in the Dewan Negara were women. In 2014, women held 25.8% of seats in the Senate, and in 2008 the rate was at 26.7%.⁸¹⁴ These numbers imply a steady decline.

In 2016, 24 out of a total of 222 (10.8%) seats in the Dewan Rakyat (House of Representatives) were filled by women, which is a slight increase from 2013 and 2008 levels where women representation in the Dewan Rakyat remained stagnant at 10.4%. Following the 2018 General Election, women hold 32 seats out of 222 (13.4%) in the Dewan Rakyat, a number that is still exceedingly low.

In the 13 State Legislative Assemblies, only 63 out of the 587 members are women. The state with the highest representation of women (since 2008) is Selangor. The number

810 "I would not be where I am today if I chose your way, Dyana Sofya tells Shahrizat." Malay Mail Online. 18 May 2014. Available at: <http://www.themalaymailonline.com/malaysia/article/i-would-not-be-where-i-am-today-if-i-chose-your-way-dyana-sofya-tells-shahr#sthash.SyGUMgpQ.dpuf>

811 "Azalina's aide files complaint over 'rape' post." Malay Mail Online. 25 April 2017. Available at: <http://www.themalaymailonline.com/malaysia/article/azalinas-aide-files-complaint-over-rape-post#0cjlO-EptvPieg7ZF.97>

812 For more information, refer to *Malaysian NGO CEDAW Alternative Report 2012*, page 103-104.

813 Ministry of Women, Family and Community Development. (2016). *Ministry of Women, Family and Community Development, Statistics on Women, Family and Community 2016*. Available at: http://www.data.gov.my/data/en_US/organization/ministry-of-women-family-and-community-development

814 Ibid.

of women in the State Legislative Assembly of Selangor increased to 25%, however the percentage of women in the Executive Committees dropped from 40% in 2012 to 18.2% in 2016.⁸¹⁵ In half of the states, representation of women remains below 10%.⁸¹⁶ In Terengganu there are no women representatives.

Of the 146 Local Council Presidents in Malaysia, only ten are women (6.8%). The women Local Council Presidents are from the following constituencies:⁸¹⁷

Kedah (1 out of 11):	Majlis Daerah Sik (District Council of Sik)
Pahang (1 out of 11):	Majlis Daerah Jerantut (District Council of Jerantut)
Pulau Pinang (2 out of 2):	Majlis Perbandaran Pulau Pinang (Municipal Council of Pulau Pinang)
	Majlis Perbandaran Seberang Perai (Municipal Council of Seberang Perai)
Perak (1 out of 15):	Majlis Daerah Batu Gajah (District Council of Batu Gajah)
Selangor (2 out of 12):	Majlis Daerah Kuala Selangor (District Council of Kuala Selangor)
	Majlis Daerah Sabak Bernam (District Council of Sabak Bernam)
Sabah (1 out of 24):	Majlis Daerah Penampang (District Council of Penampang)
Sarawak (2 out of 26):	Lembaga Kemajuan Bintulu (Bintulu Development Board)
	Majlis Daerah Subis (District Council of Subis)

As of 16 July 2017, there were no women local council Presidents from the states of Johor (15), Kelantan (12), Malacca (4), Negeri Sembilan (8), Perlis (1), Terengganu (7), and Wilayah Persekutuan (1).

Women's participation in the *Jawatankuasa Kemajuan dan Keselamatan Kampung* (Village Development and Security Committees) is low throughout the country, though these committees are not local government bodies. In 2009, out of the 15,460 committees throughout the country, only 161 committees had a woman chairperson (1%).⁸¹⁸ In 2017

815 Ministry of Women, Family and Community Development. (2016). *Ministry of Women, Family and Community Development, Statistics on Women, Family and Community 2016*. Available at: http://www.data.gov.my/data/en_US/organization/ministry-of-women-family-and-community-development

816 Ibid.

817 "Pihak Berkuasa Tempatan." Jabatan Kerajaan Tempatan. Undated. Available at: http://www.epbt.gov.my/osc/PBT2_info.cfm?Name=80

there were a total of 16,459 committees throughout the country, but the number of women chairpersons is unknown.

Low political representation of Orang Asli women

The Department of Orang Asli Development, Jabatan Kemajuan Orang Asli, only appoints male *Tok Batins* (village heads) in Orang Asli villages, despite that historically there had always been female *Tok Batins* when appointments were not made by the government. As a result, many development decisions that affect the entire community's resources and land rights are made without the substantive participation of Orang Asli women.

Orang Asli women have never been put forward as candidates or elected to office. Only indigenous women from East Malaysia have been elected into office.⁸¹⁹

Representation of women at the international level

Participation in the Malaysian Foreign Service

The number of women officers in the Malaysian Foreign Service has increased over the years. In June 2012, 176 out of 467 (37.7%) officers in the Malaysian Foreign Service were women, as compared to 42 out of 273 (15.4%) in 1999.

Nevertheless, only 3.4% of positions at decision-making levels (for example, permanent representatives to international organisations, ambassadors, High Commissioners, and Heads of Mission) are held by women, which is a large decline from 13.6% in 2010.^{820,821}

Participation in regional processes

The level of women's participation in regional processes, such as the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children, is unclear. Since

818 For more information, refer to *Malaysian NGO CEDAW Alternative Report 2012*, page 104.

819 "International Women's Day 2017: Being bold for systematic change – Janarthani Aramugam." Malay Mail Online. 8 March 2017. Available at: <https://www.malaymail.com/s/1330721/international-womens-day-2017-being-bold-for-systemic-change>

820 CEDAW Committee. (2016). *Consideration of reports submitted by States parties under article 18 of the Convention 2016*, page 14. Available at: <http://www.refworld.org/country,,CEDAW,,MYS,,5880c92e4,0.html>

821 Ministry of Women, Family and Community Development. (2010). *Ministry of Women, Family and Community Development, Statistics on Women, Family and Community 2010*. Putrajaya, Putrajaya: KPWK, page 71.

its inception in 2009, the Malaysian ASEAN Intergovernmental Commission on Human Rights representatives have always been men.

Women in decision-making positions in the public sector

In 2016, there were:

- 6 women Ministry Secretary Generals out of 24 (25%);
- 12 women Ministry Deputy Secretary Generals out of 58 (20.7%);
- 5 women Directors General, Directors and General Managers of Statutory Bodies, out of 38 (13.2%);
- 19 women Director Generals in Federal Departments, out of 111 (17.1%).⁸²²

30% quota of women in decision-making positions in the public sector not met

The Tenth Malaysia Plan remained vague about government action to escalate the participation of women in decision-making positions, stating the government would merely “increase its efforts to achieve a quota of at least 30% of decision-making positions to be held by women during the Plan period.”⁸²³

In the Eleventh Malaysia Plan, the 30% target was extended to 2020.⁸²⁴ Strategy B3 of the Plan provides for “Back to Work” programmes to be expanded through collaboration with the private sector and the improvement of the collection of gender disaggregated data by ministries and agencies. Ultimately, however, the 30% quota is mentioned briefly in only one short section of the 370-page long statement.⁸²⁵

In June 2016, the Deputy Minister of the Ministry of Women, Family and Community Development stated that 36% of decision-making positions in the public sector were made up of women.⁸²⁶ However, this figure derives from a chart titled “Percentage of Top Management in Public Sector,” which does not define the actual positions which are considered “Top Management” positions. This means it is unknown whether the

822 Ministry of Women, Family and Community Development. (2016). *Ministry of Women, Family and Community Development, Statistics on Women, Family and Community 2016*. Available at: http://www.data.gov.my/data/en_US/organization/ministry-of-women-family-and-community-development

823 For more information, refer to *Malaysian NGO CEDAW Alternative Report 2012*, page 105.

824 “We’re on track.” The Star Online. 20 November 2016. Available at: <https://www.thestar.com.my/news/nation/2016/11/20/were-on-track/>

825 Economic Planning Unit. (2015). *Eleventh Malaysia Plan 2016-2020*. Available at: https://www.talentcorp.com.my/clients/TalentCorp_2016_7A6571AE-D9D0-4175-B35D-99EC514F2D24/contentms/img/publication/RMKe-11%20Book.pdf

826 “We’re on track.” The Star Online. 20 November 2016. Available at: <https://www.thestar.com.my/news/nation/2016/11/20/were-on-track/>

positions included in this statistic are genuinely decision-making positions.

Women's participation in the public sphere

Threats against women leaders of civil society movement

Attacks on women leaders and activists within civil society are ongoing, both online and offline. Women members of civil society have been victims of vicious attacks, including personal threats, media blasts, and social media trolling. As discussed in the chapter on Article 5, this includes journalist Aisyah Tajuddin receiving death and rape threats over a video of her questioning if implementing *hudud* law could fix the economy.⁸²⁷ Other examples include the physical attack on transgender woman activist Nisha Ayub,⁸²⁸ and the sexist remarks made towards Teresa Kok.⁸²⁹

A pertinent example of government crackdowns on women activists is the raid on BERSIH's office and detainment of BERSIH president, Maria Chin Abdullah, the day before a peaceful BERSIH 5 rally was scheduled to take place.⁸³⁰ BERSIH calls for clean and fair elections in Malaysia (*bersih* means clean in Bahasa Malaysia).⁸³¹ Even after being released from detention, Maria Chin was subject to ongoing violent threats.^{832, 833}

The arbitrary arrest of women activists has become commonplace in Malaysia in the past decade. Maria Chin's case echoes the arrest and detention without trial of female grassroots activist Sarasyathy Muthu, vice-president of Socialist Party of Malaysia (Parti Sosialis Malaysia), in 2011. During her detention, Sarasyathy Muthu was forced to take a polygraph test and was compelled to sign a 62-page document against her will – a compilation of statements taken from 20 days of interrogation.⁸³⁴

827 “BFM journalist gets death, rape threats over video questioning hudud.” Malay Mail Online. 20 March 2015. Available at: <http://www.themalaymailonline.com/malaysia/article/bfm-journalist-gets-death-rape-threats-over-video-questioning-hudud>

828 “Battered and bruised, award-winning transgender activist fears assault complaint may be ignored.” Malay Mail Online. 15 September 2015. Available at: <http://www.themalaymailonline.com/malaysia/article/battered-and-bruised-award-winning-transgender-activist-fears-assault-compl>

829 “MCA's sexist billboards anger Teresa Kok.” The Sun. 4 March 2008. Available at: <https://www.bersih.org/mcas-sexist-billboards-anger-teresa-kok/>

830 “US ‘troubled’ over Malaysia's detention of activist and Najib critic.” The Guardian. 24 November 2016. Available at: <https://www.theguardian.com/world/2016/nov/24/us-malaysia-detention-activist-maria-chin-abdullah>

831 For more information, refer to *Malaysian NGO CEDAW Alternative Report 2012*, page 105.

832 “Maria Chin Abdullah receives death threats after being released from detention.” Front Line Defenders. 29 November 2016. Available at: <https://www.frontlinedefenders.org/en/case/maria-chin-abdullah-detained-following-office-raid>

833 “Second horrific death threat made to ‘Yellow Lady’ Maria Chin, sons.” Borneo Today. 11 November 2016. Available at: <https://www.borneotoday.net/second-horrific-death-threat-made-to-yellow-lady-maria-chin-sons/>

834 For more information, refer to *Malaysian NGO CEDAW Alternative Report 2012*, page 105.

These examples are representative of the government's efforts to silence women civil society leaders who demand accountability and transparency in governance.⁸³⁵ Such treatment is a huge disincentive for women to participate in the public sphere.

Recommendations to the Malaysian Government regarding Articles 7 and 8 of CEDAW

- Encourage all political parties and the Election Commission to implement a temporary special measure to reserve at least 30% of nominations to party positions, municipal council seats, state, and parliamentary elections for women.
- Develop a concrete timeline for the achievement of at least a 30% quota of women in decision-making positions in the public sector and at the international level, which specifies what "decision-making" positions are included.
- Develop a concrete timeline for the achievement of at least a 30% quota of women in all state-level religious institutions.
- Establish a fund to support women candidates and increase women's political participation.
- Lower the election deposits needed to run as a candidate.
- Ensure that the political environment is no longer hostile towards women by rebuking sexist and discriminatory comments made by elected representatives both inside and outside of Parliament.
- Reintroduce municipal council elections to enable Malaysians to participate actively in local government.
- Repeal laws that prevent freedom of information, including those that hamper the freedom of the press.

835 "Who is the woman at the heart of Malaysia's anti-corruption protests?" Time. 23 November 2016. Available at: <http://time.com/4579854/malaysia-bersih-protests-leader-maria-chin-abdullah/>

10.

Article 9

CITIZENSHIP

Article 9

1. States Parties shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband.
2. States Parties shall grant women equal rights with men with respect to the nationality of their children.

Key issues in this chapter:

- Although the immigration policy treats both male and female non-citizen spouses in transnational marriages similarly, it has severe **negative impact on non-citizen wives with Malaysian husbands as well as Malaysian wives married to non-citizen husbands**. The policy creates a situation of complete dependence of non-citizen wives for years until they receive permanent residence or citizenship. Non-citizen wives have to repeatedly renew their visas, are required to open individual bank accounts when unemployed, and are limited in their rights to work, all of which makes them legally bound to their Malaysian husbands.

- **Non-citizen women married to Malaysian husbands, who hold Long Term Social Visit Passes (LTSVP), are entirely dependent on their husbands to maintain their legal status in the country.** Malaysian spouses must be present for every visa application and its repeated renewal, work endorsements, and applications for permanent residence and citizenship. The entire process can last decades.

- The LTSVP comes with a strict prohibition on employment for the holder.⁸³⁶ This leads to difficulties in securing jobs, as employers are reluctant to recruit non-citizens.⁸³⁷ The latter must even obtain written permission from their Malaysian spouses to work, **which makes especially non-citizen wives vulnerable to situations of domestic abuse.**

- Even with the ability to work under the LTSVP, non-citizen spouses can only seek employment in the state they reside and where their immigration file is located. Certain sectors, such as banking, finance, and other licensed and professional fields remain inaccessible until the non-citizen spouse obtains permanent residence.

- Should a husband refuse to be present at the Immigration Department office, the non-citizen's wife's immigration status in the country may be at risk, leaving women **vulnerable in cases of domestic violence, estrangement, or the death of their husband.**

- Provisions of the Federal Constitution relating to the transmission of citizenship to children from Malaysian mothers to children born overseas remain discriminatory. **Only Malaysian fathers are able to confer their citizenship to their children via a streamlined process; mothers must go through a more arduous process.**

Since the publication of the first Malaysian NGO CEDAW Alternative Report, some headway has been made in improving the living situation of non-citizen wives of Malaysians and Malaysian wives of foreigners. The Ministry of Health for instance now excludes spouses of Malaysians from paying the rates imposed on foreigners in government hospitals.⁸³⁸ Similarly, some of the policy changes relating to foreign spouses must be commended, as they have ensured the faster approval of applications for spousal visas and endorsements to work. However, the law, policy, and practice

836 "Ease the burden of foreign spouses." The Star Online. 1 April 2016. Available at: <http://www.thestar.com.my/opinion/letters/2016/04/01/ease-the-burden-of-foreign-spouses/>

837 "Consider other segments of migrants for employment." Aliran. 21 February 2016. Available at: <http://aliran.com/thinking-allowed-online/2016-ta-online/consider-other-segments-of-migrants-for-employment/>

838 "Foreign residents to pay higher fees." The Star Online. 8 April 2017. Available at: <http://www.thestar.com.my/news/nation/2017/04/08/foreign-residents-to-pay-higher-fees/>

related to transnational marriage, among other areas, must be thoroughly reviewed to help prevent the economic marginalisation of women in these marriages.

2018 Concluding Observations to Malaysia

In the 2018 Concluding Observations to Malaysia, the CEDAW Committee reiterated its concerns about the discriminatory provisions of the Federal Constitution with regard to nationality,⁸³⁹ including the inability of Malaysian women married to foreigners to transfer their nationality to children born abroad, as well as their inability to confer nationality to their spouses on equal basis with Malaysian men.

The Committee recommended the government amend all the provisions of the Federal Constitution which deny women equal rights with respect to the conferral of their nationality to their children and foreign spouses. It also recommends that Malaysia ratify the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.⁸⁴⁰

Different constitutional provisions on citizenship for men and women

The provisions in the Federal Constitution that apply to non-citizen wives and non-citizen husbands of Malaysians wishing to apply for citizenship differ in substance.

Discrimination against non-citizen wives who become Malaysian citizens

Article 15 (1) of the Federal Constitution entitles non-citizen wives of Malaysian citizens the right to apply for Malaysian citizenship, so long as “she has resided in the Federation throughout the two years preceding the date of the application and ... that she is of good character.”⁸⁴¹ However, NGOs have reported that in practice non-citizens will only be able to apply for citizenship after they have received permanent residence, which requires that the non-citizen has lived in Malaysia for five years prior to applying. Administrative delays in the approval of permanent residence are commonplace.

839 CEDAW *Concluding Observations to Malaysia 2018*, para 33 (CEDAW/C/MYS/CO/3-5).

840 *Ibid*, para 34.

841 *Malaysian Federal Constitution as at 1 November 2010*, Art 15(1).

Article 24 (4) of the Federal Constitution contravenes Article 9 (1) of CEDAW as it does not grant women equal rights with men to retain their nationality. Article 24 (4) of the Federal Constitution reads:

“If the Federal Government is satisfied that any woman who is a citizen by registration under Clause (1) of Article 15 has acquired the citizenship of any country outside the Federation by virtue of her marriage to a person who is not a citizen, the Federal Government may by order deprive her of her citizenship.”

Article 26 (2) of the Federal Constitution is equally incompatible with Article 9 (1) CEDAW:

“The Federal Government may order to deprive of her citizenship any woman who is a citizen by registration under Clause (1) of Article 15 if satisfied that the marriage by virtue of which she was registered has been dissolved, otherwise than by death, within the period of two years beginning with the date of the marriage.”

Discrimination against Malaysian women whose non-citizen husbands apply for citizenship

Non-citizen husbands of Malaysian women are required to seek citizenship by naturalisation,⁸⁴² while non-citizen wives may acquire citizenship by registration if the marriage is still subsisting, she has resided (with Permanent Residence status) in Malaysia for two years, and she is of “good character.”⁸⁴³ Application for citizenship by naturalisation, as non-citizen husbands have to do, requires 10 years of residence in Malaysia with permanent residence status.⁸⁴⁴

This disparate treatment of foreign husbands and foreign wives has been openly acknowledged by the government. The then Deputy Minister of Home Affairs Dr. Haji Wan Junaidi Tuanku Jaafar responded to a question on the matter in Senate in April 2015,⁸⁴⁵ saying that a significant percentage of the Malaysian citizenship awards granted to foreigners between 2004 and 2014 (16,702) went to non-citizen wives, as under Article 15 (1) in the Federal Constitution. The number of citizenships awards granted to foreign husbands was not provided.

842 Ibid, Art 19(1).

843 Ibid, Art 15(1).

844 Ibid, Art 19.

845 “More than 16k foreigners granted Malaysian citizenship.” New Straits Times. 21 April 2015. Available at: <https://sir.nst.com.my/news/2015/09/more-16k-foreigners-granted-malaysian-citizenship>

Although foreign spouses who have lived in Malaysia continuously for five years on an LTSVP are eligible to apply for permanent residence, approvals for foreign wives can take from two to four years from the time of application, and anecdotal evidence suggests that foreign husbands' approval for permanent residence can take even longer.

Discrimination against stateless women

The NGO Development of Human Resources for Rural Aras (DHRAA Malaysia) assists stateless individuals in registering in Malaysia. Out of DHRAA Malaysia's applicants, 57% are stateless women, while 43% are stateless men. What is more, 25% of all of DHRAA's registered applicants are stateless women above the age of 60, while 12% are men in the same age group.⁸⁴⁶

Based on DHRAA Malaysia's assessment of these women, the elderly are less likely to obtain citizenship although they may be entitled to it under Article 14(1)(a) of the Federal Constitution.⁸⁴⁷ This is likely due to them being born within the Federation before it became independent, and thus due to a lack of documentary evidence, awareness, and access to the necessary facilities.

Discrimination against rural stateless women

Rural women and especially former plantation workers have historically been discriminated against when attempting to ensure their children obtain Malaysian citizenship. This is due to many of them being stateless themselves, usually as a result of not having registered or obtained the relevant documentation despite being born and raised in Malaysia. Women may also be married in customary ceremonies and thus not legally register their marriages either. Accordingly, their children will be considered to have been born out of wedlock, and also remain stateless. Such women are furthermore marginalised within their own communities, as they are blamed for their children not having citizenship and having limited access to education and health services as a result. This remains a reality for women who are unable to provide birth certificates and other such documents.⁸⁴⁸

846 DHRAA Malaysia. (2016). *A Journey to Belong*. Available at: <http://dhrmalaysia.org.my/wp-content/uploads/2016/04/DHRAA-Malaysia-April-Monthly-Bulletin.pdf>

847 DHRAA Malaysia. (2018). *Recommendation on Statelessness & Documentation Issues*. Available at: <http://dhrmalaysia.org.my/wp-content/uploads/2018/06/Policy-Paper-on-Statelessness-DHR-RAMY.pdf>

848 See for example, "I want my child to have full rights." The Star Online. 7 March 2017. Available at: <https://www.thestar.com.my/news/nation/2017/03/07/i-want-my-child-to-have-full-rights-stateless-woman-in-bid-to-ensure-her-soontobe-born-baby-gets-cit/>

Discriminatory constitutional provisions regarding the citizenship of children born overseas to Malaysian mothers

Malaysia maintains its reservation to Article 9 (2) of CEDAW. Current provisions in the Federal Constitution on the conferral of citizenship by operation of law to children born outside of Malaysia stipulate that fathers can confer their Malaysian citizenship to their children, but remain silent on mothers conferring theirs. “Every person born outside the Federation whose father is at the time of the birth a citizen and either was born in the Federation or is at the time of the birth in the service of the Federation or of a State,” will be a Malaysian citizen.⁸⁴⁹

In April 2010, Malaysian Home Minister Hishammuddin Tun Hussein announced that Malaysian women married to foreigners could apply for citizenship for their children born abroad by submitting their applications to Malaysian embassies or high commissions in the foreign country.⁸⁵⁰ Though it was not practiced, this option has always existed in law under Article 15(2) of the Federal Constitution:

“...the Federal Government may cause any person under the age of twenty-one years of whose parents one at least is (or was at death) a citizen to be registered as a citizen upon application made to the Federal Government by his parent or guardian.”

Despite the purported change in policy, the process for registering children born overseas to Malaysian fathers differs significantly from that Malaysian mothers must go through. Malaysian fathers can register their children under Article 14 of the Federal Constitution and complete “Form D” to apply for citizenship, which is a fairly streamlined process that can be completed in a few days. In contrast, Malaysian mothers must register their children under Article 15 (2) of the Constitution and complete “Form B” to apply for citizenship. In essence, then, fathers simply have to declare their children to have them receive citizenship, while women must apply to have their children recognised, and have no guarantee of them receiving Malaysian citizenship.

Moreover, the application process for children born overseas to Malaysian mothers is fraught with delays and rejections,⁸⁵¹ where many women have to return to Malaysia to submit the documents at the National Registration Department in Putrajaya. They often wait for two or more years to receive an answer on their application, which

849 *Malaysian Federal Constitution as at 1 November 2010*, Sch. 2, Part II, Art 1 (b).

850 “Malaysian women can register children born abroad.” The Star Online. 12 April 2010. Available at: <https://www.thestar.com.my/news/nation/2010/04/12/malaysian-women-can-register-children-born-abroad/>

851 “Sex and the citizenry: the global laws that leave women and children in limbo.” The Guardian. 11 February 2016. Available at: https://www.theguardian.com/global-development/2016/feb/11/sex-citizenry-malaysian-law-women-children-limbo-nationality-citizenship?CMP=share_btn_fb

usually also fail to provide grounds for rejections.⁸⁵² The latter reduces the success rate of appeals and necessitates another two-year wait. As such, mothers may resubmit the same documents only to receive another rejection. Cases have been reported where the children in question grow older and cannot be admitted into public education facilities because they are not citizens.

In some cases, out of frustration and an unwillingness to have their children be stateless in a foreign country or remain without travel documents, Malaysian mothers will opt for having their children take on the citizenship of their father. Consequently, if the marriage breaks down and the mother decides to bring a child back to Malaysia, she must deal with a host of other issues, including an inability to access public schools and affordable public health care.

Case Study – Noor’s Story

Noor is a Malaysian woman with a foreign husband. Her daughter was born in Zambia, where there was no Malaysian embassy, so Noor could only apply for her daughter’s citizenship when they came back to Malaysia.

When Noor brought her daughter to Malaysia she was five months old, and Noor submitted her daughter’s application to JPN in April 2014. Recently, Noor received a letter from KDN rejecting her daughter’s application, without providing a reason for doing so. Noor called KDN and was told that they could not explain the reasoning to her; she should simply re-apply and wait for another two years.

Noor’s daughter is now using a Zambian passport, and her visa is categorised as *Anak warganegara* (children of citizens).

Children born out of wedlock in Malaysia

Malaysian law does not allow a father to pass on his citizenship to a child born out of wedlock.⁸⁵³ An “illegitimate” child would therefore derive their citizenship from the mother, and will be registered as *Bukan Warganegara* (non-citizen).⁸⁵⁴ If the mother is

852 “Many Children Born Overseas are in Limbo over their Malaysian Citizenship Status.” Malay-sian Digest. 13 April 2017. Available at: <http://malaysiandigest.com/frontpage/282-main-tile/669222-ma-ny-children-born-overseas-are-in-limbo-over-their-m-sian-citizenship-status.html>

853 *Malaysian Federal Constitution as at 1 November 2010*, Sch. 2, Part III, s17.

854 “Minister: illegitimate Malaysia-born kids must get ID from foreign mother’s country.” Malay Mail Online. 29 March 2017. Available at: <https://www.malaymail.com/s/1345419/minister-illegitimate-malaysi-a-born-kids-must-get-id-from-foreign-mothers-c>

stateless, the child will inherit the mother's status, despite being born in Malaysia to a Malaysian father, and even though a legal safeguard against statelessness is inscribed in Article 14 (1) (e) of the Constitution. The official figures indicate that between 2012 and 2017, 15,394 children born in Malaysia were denied citizenship, despite having Malaysian fathers.⁸⁵⁵ Furthermore, in attempting to secure citizenship with registration under Article 15 of the Constitution, individuals are under the discretion of the Home Ministry and the National Registration Department – the proceedings are long-winded and lead to a significant number of rejections with no reasons or justification for the decision given.⁸⁵⁶

The court interprets “parents” in the Federal Constitution to mean a father and mother who were married at the time of birth of their child. If a child is born out of wedlock, any reference to “parents” in the Constitution is interpreted as referring to the mother only.⁸⁵⁷ If the mother is stateless, it often happens that the marriage ceremony between the parents was a customary and not legally registered. The law is not likely to recognise customary marriages as valid. As such, children born of these marriages will be considered illegitimate and cannot inherit their father's Malaysian nationality. In contrast, children born in Malaysia to a non-citizen father and a Malaysian mother can inherit the citizenship of their Malaysian mother.

Case Study

Kannagi grew up on an estate in Slim River. She was told that her mother had passed away when she was born and that her father, whom she had also never met, could not be found. Kannagi has a birth certificate, but her nationality is recorded as *Bukan Warganegara*; non-citizen.

At the age of 18, Kannagi met Subramanian, a Malaysian citizen, and they solemnised their marriage in an estate temple. They were unable to legalise their marriage as Kannagi was not a citizen. Kannagi and her husband had six children, all of whom carry the same categorisation as their mother on their birth certificates, *Bukan Warganegara*.

855 “The state of statelessness.” The Star Online. 1 April 2018. Available at: <https://www.thestar.com.my/news/nation/2018/04/01/the-state-of-statelessness-for-those-born-in-malaysia-but-without-a-citizenship-their-life-is-left-i/>

856 Ibid.

857 *Malaysian Federal Constitution as at 1 November 2010*, Sch. 2, Part III, s17.

Right of Residence

Entry permits and permanent residence for non-citizen spouses

Although the Federal Constitution permits non-citizens to apply for citizenship after living in Malaysia for two years,⁸⁵⁸ in practice, it is expected that non-citizen spouses first obtain permanent residence. To be eligible to apply for permanent residence, an applicant must have lived in the country on an LTSVP for a period of five years.

Unpredictable validity of LTSVPs

Non-citizen spouses reside in Malaysia on an LTSVP. The validity of this visa can vary from three months to five years. The repeated visa renewals, requiring the presence of the Malaysian spouse, are approved at the discretion of the attending Immigration Department officer. They are therefore unpredictable.

Although receiving a pass for five years is possible in theory, anecdotal evidence suggests that applicants receive a six-month pass upon initial application, and subsequently receive one-year and two to three-year visas. This is particularly evident when the applicant is of Asian or African descent. This necessitates repeated visits to the Immigration Department with the Malaysian spouse.⁸⁵⁹ Some couples have reported that they received the six-month pass two to three times before they were given a one-year pass. Significantly, a six-month pass does not allow the holder to work.

With the term of the visa left to the discretion of immigration officers and no clear guidelines, policies, or explanations made available by the Immigration Department around the issue of different visa terms being granted, there is a lack of transparency and consistency in the process of issuing LTSVPs.

Anecdotal evidence suggests further concerning trends:

- Newly married spouses can only apply for their visa six months after marriage.

- To apply for an LTSVP, proof of residence in the issuing state, the landlord's certified IC, and proof of having a sponsor who earns more than RM 2,000 must be provided.⁸⁶⁰ The sponsor is required to be present when the documents are submitted. The first approved visa is typically only valid for six months, during

858 Malaysian Federal Constitution as at 1 November 2010, Art 15(1).

859 "The long wait to be Malaysian." The Nut Graph. 4 August 2010. Available at: <http://www.thenutgraph.com/the-long-wait-to-be-malaysian-the-foreign-spouse-experience/>

860 Immigration Department of Malaysia. *Long Term Social Visit Pass*. Available at: <http://www.imi.gov.my/index.php/en/main-services/pass/33-perkhidmatan-utama/artikel-untuk-menu-pas/294-long-term-social-visit-pass.html>

which holders do not have the right to seek employment.

- Couples that do not have children have reported to only receiving six-month visas, despite being married for a number of years.
- Couples are subject to house visits by immigration officers. Women have reported that they were asked to show officers their bedrooms, where their wardrobes were searched and photographed.
- There are no provisions on how to secure an LTSVP for non-citizen spouses working overseas– on a project-basis for instance. Malaysian wives have reported that applications for LTSVPs for their foreign husbands working overseas were rejected, and that they instead had to repeatedly seek tourist visas to visit their families in Malaysia.
- Spouses from Nigeria and China are required to apply and renew their visa and endorsement to work in Putrajaya, necessitating frequent travel if they live in other states.
- Nigerian spouses have reported that they require special permission from the Chief Minister’s Department to enter Sabah, even when accompanied by their Sabahan spouse.
- Non-citizen wives and their Malaysian husbands who have worked overseas reported that, when they wanted to deliver their children in Malaysia, they were refused an LTSVP and had to enter Malaysia on a shorter-term medical tourist visa (*Pass Rawatan*) or a one-month tourist visa. This required them to travel to immigration offices during the traditional confinement period.

Case Study

From a report by the Malaysian wife of a non-citizen:

“My husband has to renew his visa on Friday. Both the baby and I have unfortunately contracted hand, foot and mouth disease. I thought if I provided Immigration with a medical certificate they would allow him to renew it without me there. However, when I called, they informed me that I have to be present regardless. It is so heart-breaking to be living like this sometimes. The immigration officer said that I have to be present, and to wait in the car if I feel sick. I asked, if we could wait till Friday to see if I felt better – the answer was no. They say they’ll stop accepting applications at 10 AM and that their system might be down. I never knew such heartlessness existed.”

The Malaysian wife subsequently reported that her husband received a one-year visa at the State Immigration Department. “We managed to renew his visa. Another measly year given. I’m hoping to try and apply for permanent residence. This is such a drain.”

The visa renewals her husband has secured are: six months, three years, one year (three times until 2018). The couple has been married for six years and have one child together.

Lengthy waiting time for the approval of permanent residence for non-citizen spouses

Receiving permanent residence in Malaysia is a long and arduous process. Stringent documentation requirements – such as providing all one’s previous passport – and unspecified waiting periods are the norm. The system creates uncertainty for non-citizen spouses, especially in the case of divorce or death of their Malaysian counterpart, in which case the permanent residence application is withdrawn. It also results in the loss of employment opportunities, as many professions require employees to possess permanent residence for a license to practice.

Although the website of the Immigration Department states that a foreign spouse must have been married to a Malaysian citizen while continuously residing in Malaysia for a period of five years on an LTSVP before a permanent residence application can be made,⁸⁶¹ the process for obtaining the status in practice is even more cumbersome and can take years. Two referees need to be present during the submission of the required documents, the couple has to be interviewed by the State Immigration Department, and a police check is conducted before the file is even sent to the Immigration headquarters in Putrajaya. Anecdotal evidence suggests that non-citizen husbands wait longer than non-citizen wives to hear of the outcome of their permanent residence applications.⁸⁶² While waiting for the approval of their permanent resident status, spouses are kept indefinitely on an LTSVP. This has resulted in many families relocating to the home country of the non-citizen spouse, deterred by the long wait in Malaysia.⁸⁶³

Finally, there exists no provision in the law that accommodates couples in a long-term partnership, where one person is not a citizen, and who do not wish to marry. Neither is there a provision for widowed or divorced spouses with Malaysian children to secure permanent residence.

Case Study – Francois’ Story (reproduced from the Malaysian Digest)⁸⁶⁴

861 Immigration Department of Malaysia. *Expatriate and Dependent’s Permanent Residency Status*. Available at: <http://www.imi.gov.my/index.php/en/main-services/pass.html?id=289>

862 “Unsettled by gender biased laws.” The Star Online. 14 March 2010. Available at: <https://www.thestar.com.my/opinion/letters/2010/03/14/unsettled-by-genderbiased-laws/>

863 “Foreign spouses and the brain drain.” The Nut Graph. 23 July 2010. Available at: <http://www.thenutgraph.com/foreign-spouses-and-the-brain-drain/>

864 “Are You a Malaysian Planning to Marry a Foreigner? Then Read This.” Malaysian Digest. 19

Francois married his wife from Penang in 1997 and registered with the Malaysian immigration authorities. He moved to Malaysia in 2005 and has been living here since.

“They granted me the 6 months visa, which required a sponsor, my wife, with a RM 2,000 minimum income. We came here and started our life from scratch, without any job, as we left everything behind.

At the time my wife couldn't sponsor me, so I had to get my in-laws to renew my Long Term Social Visit Pass. If they refuse to sponsor me, that'd be a problem.

We have a 4-year-old son who has to go to school. My wife finally found a job - but I was not allowed to work and was a stay-at-home dad until 2008, when they revised the laws and allowed me to work. To be allowed to work before the amendments, we needed a lot of documentation; a work permit, at least RM 2,000, etc. It was a lot of hassle. A lot of employers would also just prefer to hire locals.”

During Hishamuddin's time as the Home Minister (now Defence Minister Hishammuddin Hussein), things improved for the foreign spouses.

Requirements were simplified by requiring merely an employment offer and for the Malaysian spouse to also appear before the immigration office, where the director would stamp their passports.

“Still, the problem is that there's no employer that would give us a job when only have a visa; they always ask if you have permanent residence status. It's still hard to get a job here for me. I'm a professional engineer with 21 years of experience in different fields in telecommunications and no company ever took me on.

We can contribute to the country with our qualifications, but because of these ridiculous laws they cannot be utilized.

It's more difficult for men. We have to wait a longer time to get permanent residence than women. It's purely up to the government to decide how long it will take. I applied in 2012, and now in 2015, I'm still waiting. When we asked at immigration they said it's still being processed. In the UK they grant you citizenship within 5 years and permanent residence within one year. Here, there's no time frame at all.

We spouses are considered foreigners, and we get charged as such. In entertainment parks for, example, we pay the tourist price. We also cannot invest in Amanah Saham,

June 2015. Available at: <http://malaysiandigest.com/features/558325-are-you-a-malaysian-planning-to-marry-a-foreigner-then-read-this.html>

apply for the Tabung Haji [the Malaysian hajj pilgrim board], or buy property unless it costs above RM 1 million or RM 2 million in some areas.⁸⁶⁵

We are married to Malaysians and have Malaysian kids, we should have equal rights as citizens.

We are not tourists. Giving us recognition can give Malaysia a better workforce.”

Vulnerability of non-citizen wives who are widowed or estranged from their husbands

It is mandatory for Malaysian spouses to be physically present when their non-citizen spouses are renewing their LTSVPs and applying for permanent residence. This becomes a great inconvenience in the event that the Malaysian spouses are unable to be present owing to work commitments, illness or disability. It has also been reported that husbands have unilaterally cancelled their wives' visas or sent them and their child[ren] home on a one-way ticket.

Case Study – Mary’s Story

“I am a foreign spouse, married to my Malaysian husband for over 15 years. I am now in the process of getting a divorce.

“However, without my knowledge my husband went to Immigration and cancelled my spousal visa. I have no children from this marriage. Is this even legal?”

“I have applied for a work permit, since I need to work while matters are pending in court.

However, my company received a letter from ESD, that the applicant (me) has issues with immigration. Looks like I’m in for big trouble. Is there any hope for me?”

The situation becomes even more complicated in the event that the marriage is estranged, a spouse is subject to domestic abuse, or the non-citizen spouse is widowed. Although there is a policy dictating that an estranged or widowed spouses can stay in the country upon obtaining a sponsor who earns at least RM 2,000,⁸⁶⁶ these individuals remain vulnerable as their dependency is merely transferred from their spouse to their sponsor.

865 PW Tan & Associates. (2017). Guide to Acquisition of Real Estate in Malaysia by Foreigners. Available at: <http://www.pwta.com.my/wp-content/uploads/2017/08/Guide-to-Acquisition-of-Real-Estate-In-Malaysia-by-Foreigners-Updated-as-of-2-August-2017.pdf>

866 Official Portal of Immigration Department of Malaysia. Available at: www.imi.gov.my

They also do not have the right to work.

Although the Immigration Department's website claims that divorcees and widows could be granted a residence pass, not many of these disadvantaged spouses are actually awarded it. Furthermore, their application for permanent residence is withdrawn in the event of divorce and demise of the Malaysian spouse, without consideration of the potential Malaysian children involved.

The CEDAW Committee's General Recommendation No. 26 notes the importance of independent residency status and the need to enact provisions for migrant women who have been abused to stay in the country:

“When residency permits of women migrant workers are premised on the sponsorship of an employer or spouse, States Parties should enact provisions relating to independent residency status. Regulations should be made to allow for the legal stay of a woman who flees her abusive employer or spouse or is fired for complaining about abuse.”⁸⁶⁷

Case Study – Jenny's Story

Jenny has been living in Malaysia with her Malaysian husband for the past 20 years. Although she still lives with her husband and daughter, her husband often stays with another woman and Jenny sees him very infrequently. Jenny's husband has not given permission for Jenny to work so she does not have an employment visa and has no choice but to work in the informal sector as a cleaner.

Jenny wishes to apply for permanent residence so that she can become independent and seek employment. However, in order to apply for permanent residence, she requires her husband's presence at the Immigration Department office.

Jenny lives in fear of her husband and he is unwilling to assist her in applying for permanent residence. Owing to the strict Immigration Department regulations, Jenny is in a difficult situation and remains dependent on her husband.⁸⁶⁸

867 CEDAW General Recommendation No. 26, para 26(f) (CEDAW/C/2009/W.P.1/R) .

868 Anonymous case study from the Foreign Spouse Support Group

Citizenship issues specific to east Malaysia

Children born in Malaysia to parents who wed in native customary ceremonies

In Sarawak, native customary marriage is still commonly practiced. Prior to 2006, such marriages were commonplace also between locals and a cross-border spouse; these unions have since become illegal. A letter penned by the National Registration Department declared that all such cross-border customary marriages were invalid retroactively. This has led to some children being refused ICs, even if they had Malaysian birth certificates and their parents were married before 2006.

Case Study

Two Bidayus, a man from Sarawak and his wife from across the border with Kalimantan, were married by customary law in 1998 by the man's tribe's headman. Although the paperwork by the headman was not done in the usual format, the documentation was accepted when they later applied for birth certificates for their children in 1998 and 2002. The couple, on the advice of the headman, were also married under civil law in 2005. In 2013, their daughter applied for her IC, but was refused and had her birth certificate torn up and replaced with one stating that she was not a citizen. Her father asked the official if the same would happen to his son when he was old enough to apply, and he was told that no, as he was a boy, he would be given an IC. The son was subsequently issued an IC when the time came. The daughter still does not have an IC, and is pursuing her case with the assistance of a lawyer. Without an IC, she is not able to take national school exams or apply for work.

Children whose foreign mother entered into a partnership after 2006, and who failed to register it under civil or Syariah law, are considered non-citizens. It is not known if this can be reversed should DNA testing prove that a child's father is Malaysian. DNA tests costs around RM 1,000, which is above the minimum monthly wage in Sarawak and is therefore beyond the means of most rural residents. Finally, even with proof of their father's identity and name on their birth certificate, this would not be enough for such children to be conferred citizenship.

Malaysian citizens without access to formal documentation

Difficulties also occur for natives married to others through customary law, or single Malaysian mothers. Not all citizens born in Sarawak have birth certificates or ICs, as access to formal systems and collating all the required information is problematic given the terrain, expenses involved, and previous practices.

Case Study

In 2016, the Borneo Post reported on a mother who was pleading for her 12-year-old daughter, who had a Malaysian birth certificate,⁸⁶⁹ to be issued an IC so that she could continue her schooling. The mother, like both her parents, had been born in a Malaysian village close to the border with Brunei. She discovered that she herself did not have a birth certificate when she was an adult, and so her application for an IC was rejected. She believes that this is the reason for her daughter also being refused an IC, although she does have the required birth certificate.

The Malaysian Government is aware of the problem of delayed issuance of birth certificates and ICs and has set up a taskforce to address the issue at the end of 2017.^{870,871} It is unclear whether this will prove to be a systematic approach that ensures such problems do not occur in the future, and NGOs find it unlikely that those currently affected will have their affairs settled within the lifetime of the current task force. It is therefore recommended that the Ministry of Education work with the National Registration Department (JPN), especially in rural areas, to ensure that all children who do not have a birth certificate can attend school.

If this is done at primary level, children will receive an uninterrupted education, and the issuance of their IC at age 12 should be straightforward. Both the Ministry of Education and JPN are federal Ministries and, as a result, officers from peninsular Malaysia tend to be unfamiliar with the situation in East Malaysia. It is therefore also recommended that all new head-teachers and JPN officers be informed of the local procedures as part of their orientation when posted to Sarawak.

Recommendations to the Malaysian Government regarding Article 9 of CEDAW

- Lift Malaysia's reservation to Article 9(2) CEDAW.

- Amend Article 15 of the Federal Constitution to grant women the same rights as men with regard to the citizenship status of their spouses.

869 "Single Mum Wants IC for Daughter." Borneo Post Online. 6 July 2016. Available at: <http://www.theborneopost.com/2016/07/05/single-mum-wants-ic-for-daughter/>

870 "Special task force to help stateless pupils in Sarawak: Fatimah." New Straits Times. 4 March 2017. Available at: <https://www.nst.com.my/news/2017/03/217504/special-task-force-help-stateless-pupils-sarawak-fatimah>

871 "Sorting out stateless students." The Star Online. 27 April 2017. Available at: <http://www.thestar.com.my/metro/community/2017/04/27/sorting-out-stateless-students-state-targets-two-years-to-identify-and-assist-undocumented-schoolgoi/>

- Amend Schedule II of the Federal Constitution to explicitly allow both men and women to confer their citizenship on their children born outside of Malaysia through the same process.
- Automatically confer a permanent resident status on non-citizen spouses of Malaysians, irrespective of gender and nationality, upon a two year stay in Malaysia.
- Grant non-citizen wives of Malaysians who are estranged or separated, abused, divorced or widowed the right to apply for permanent residence and to work.
- Remove the prohibition on employment and mandatory written consent requirement to work from the visas of non-citizens spouses of Malaysians.
- Allow spouses of Malaysians to pursue their studies on an LTSVP visa, so that they do not lose their eligibility for permanent residence when forced to switch to a study visa.
- Provide regular training on procedures and policies and to cultivate sensitivity on challenges faced by non-citizen spouses of Malaysians and their children in the management of their cases.
- Revoke the requirement that Malaysian spouses must accompany non-citizen spouses to the Immigration Office to renew their LTSVP.
- Regularly update the Immigration Department's website to clearly state all the rules, regulations, policies, time frames, and payments associated with visas and permanent residence for spouses of Malaysian Citizens.
- Expedite the approval of permanent residence applications for foreign spouses whose applications have been pending for over two years.
- Amend the current administrative practices of the Malaysian National Registration Department to be in line with the Federal Constitution, which provides a safeguard for statelessness, as there are no administrative guidelines or procedures regarding the implementation of the relevant constitutional provisions.

**”The most courageous act is to think
for yourself. Aloud.”**

—Coco Chanel

011.

Article 10

EDUCATION

Article 10

States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women:

- (a) The same conditions for career and vocational guidance, for access to studies and for the achievement of diplomas in educational establishments of all categories in rural as well as in urban areas; this equality shall be ensured in pre-school, general, technical, professional and higher technical education, as well as in all types of vocational training;
- (b) Access to the same curricula, the same examinations, teaching staff with qualifications of the same standard and school premises and equipment of the same quality;
- (c) The elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education by encouraging coeducation and other types of education which will help to achieve this aim and, in particular, by the revision of textbooks and school programmes and the adaptation of teaching methods;
- (d) The same opportunities to benefit from scholarships and other study grants;
- (e) The same opportunities for access to programmes of continuing education, including adult and functional literacy programmes, particularly those aimed at reducing, at the earliest possible time, any gap in education existing between men and women;
- (f) The reduction of female student drop-out rates and the organization of programmes for girls and women who have left school prematurely;
- (g) The same Opportunities to participate actively in sports and physical education;
- (h) Access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning.

Key issues in this chapter:

- There is a **gender gap in technical courses** at universities and at the postgraduate degree level, in which there are more men enrolled than women.

- **Boys perceived as effeminate, girls perceived as masculine, and transgender students have suffered discrimination in both public schools and higher learning institutions.** They are stigmatised and, because of the lack of an enabling environment, often drop out of school or are forced to leave the institution.

- **Some educational institutions regard homosexuality as an offence** and students can be punished.

- There is a continued **lack of comprehensive sex education** in all schools that is rights-based.

- The high incidence of teenage pregnancy and child marriage in Malaysia results in girls **prematurely discontinuing their education.**

- Poor infrastructure and long-distance travel to school leads to **poor school attendance and greater rates of school dropouts in rural areas.**

When the Malaysian government appeared before the CEDAW Committee in 2018, the government was commended for progress made in ensuring access to education for girls and women.⁸⁷² However, the Committee raised concerns about the underrepresentation of women in traditionally male-dominated areas of study at a tertiary level, and in leadership positions within higher educational institutions. The Committee expressed further concern regarding the influence of religious morals on sex education in public Malaysian schools, and that the bullying of students, especially LGBTI students, persists.

Additionally, many of the same issues canvassed in the Malaysian NGO CEDAW Shadow Report of 2006 and the Malaysian NGO CEDAW Alternative Report of 2012 remain relevant. These include accessibility of schools in rural areas and the quality of facilities.

Up to date information is needed from the government on the educational attainment of girls who are married before 18 and those who continued to pursue education during or after pregnancy. More information is also required from the government about its

872 CEDAW Concluding Observations to Malaysia 2018, para 35 (CEDAW/C/MYS/CO/3-5).

efforts to challenge traditional gender stereotypes and bullying in schools.

2018 Concluding Observations to Malaysia

In the Committee's 2018 Concluding Observations to Malaysia, the Committee recalled General Recommendation 36 on the right of girls and women to education.⁸⁷³

The Committee recommended to the State party to:

- a) Take measures to encourage girls to choose non-traditional fields of study and career paths such as engineering, mathematics and physics, as well as to eliminate traditional stereotypes and structural barriers that may deter girls' enrolment in such fields;
- b) Identify the underlying causes of underrepresentation of women in leadership positions in higher educational institutions and use temporary special measures and other specific measures to address such disparity;
- c) Introduce comprehensive age-appropriate and human rights-based sexuality education as part of the school curricula, which includes information on sexual and reproductive health and responsible sexual behaviour and the importance of concepts such as consent and gender-based violence;
- d) Collect and publish data on the educational attainment of girls who have married before 18 years of age as well as the number and percentage of girls who have continued to pursue education during and after pregnancy, and provide such information in its next periodic report;
- e) Adopt anti-bullying policies based on alternative strategies to address bullying, such as counselling services and positive discipline, and undertake awareness-raising measures to foster equal rights for LGBTI students.⁸⁷⁴

873 CEDAW *Concluding Observations to Malaysia 2018*, para 36 (CEDAW/C/MYS/CO/3-5).

874 Ibid.

Continued gender gaps in technical courses and higher education degrees

The 2012 Malaysian NGO CEDAW Alternative Report highlighted the gender gap in technical and engineering courses at a tertiary level in Malaysia and noted that women's participation in study at a PHD level was significantly lower than men's.⁸⁷⁵ This is an ongoing issue. Women remain underrepresented in traditionally male-dominated areas of study at the tertiary level, such as engineering, mathematics, and physics.⁸⁷⁶ For example, despite females making up a significantly larger proportion of Malaysian tertiary students than males across all courses, there are almost three times as many males than females in engineering, manufacturing, and construction courses.⁸⁷⁷

Gender stereotypes reinforced in educational institutions

The 2012 Malaysian NGO CEDAW Alternative Report outlines many cases of schools in Malaysia reinforcing gender stereotypes by punishing students who do not fit traditional gender roles.⁸⁷⁸ For instance, in 2011 Universiti Teknologi Mara (UiTM) in Sabah requested that students provide information about other students who were "gender confused", effectively beginning a witch hunt for gender non-conforming students.⁸⁷⁹ Mistreatment of students who do not fit gender norms or heterosexual ideals is a continuing issue in Malaysia.

Physical, verbal, and sexual violence against LGBTI students and bullying in school

LBTI students face multiple forms of bullying and violence in school, including name-calling, isolation, public humiliation, and disciplinary action. Below are excerpts from a publication by the Malaysian NGO KRYSS, outlining incidences of physical, sexual, and emotional harassment experienced by LGBTI Malaysians at school:

"I [as a transgender woman] was beaten up by a group of seniors when I was 13,

875 For more information refer to *Malaysian NGO CEDAW Alternative Report 2012*, page 117.

876 *CEDAW Concluding Observations to Malaysia 2018*, para 35 (CEDAW/C/MYS/CO/3-5).

877 "Global gender gap report 2017: Malaysia." World Economic Forum. Undated. Available at: <http://reports.weforum.org/global-gender-gap-report-2017/dataexplorer/#economy=MYS>

878 For more information refer to *Malaysian NGO CEDAW Alternative Report 2012*, pages 229-227.

879 *Ibid*, page 228.

for saying that one of the seniors was hot.”^{880,881}

“Jess [a transgender woman] was forced her to give her classmates oral sex in the school toilet after physical education.”^{882,883}

“Stacy, a bisexual Malay woman in her early twenties, discovered her bisexuality when she was about 15 years old after having a crush on a girl in school. Although nothing sexual happened between the two, her friends in school felt obligated to ‘bring her to the right path.’ When their interventions to ‘save’ her failed, Stacy’s friends isolated her.”⁸⁸⁴

As a result of ongoing bullying and violence, LGBTI students often lose interest in their education, drop out, or feel unsafe when attending school. A 2014 Human Rights Watch report includes the experience of a transgender woman who dropped out of school, due to the bullying she had experienced:

“I quit school at age 11 because people around me were always bullying me. I was stressed. I felt like I was going to explode.”⁸⁸⁵

In extreme cases, bullying experienced by LGBTI students has resulted in suicide and even murder.^{886,887} In June 2015, T. Nhaveen, a 19 year old from Penang, died of brain damage after being physically assaulted by a group of former schoolmates, who called him *pondan* (literally translating to transvestite and used as a slur) during the attacks.⁸⁸⁸ The bullying, due to T. Nhaveen’s perceived effeminate gender expression, started when he

880 KRYSS & Outright International. (2014). *On the Record: Violence against lesbian, bisexual and trans people in Malaysia*. Available at: https://www.outrightinternational.org/sites/default/files/MalaysiaCC_0.pdf

881 Incident occurred in 1997.

882 KRYSS & Outright International. (2014). *On the Record: Violence against lesbian, bisexual and trans people in Malaysia*. Available at: https://www.outrightinternational.org/sites/default/files/MalaysiaCC_0.pdf

883 Incident occurred in 2000.

884 Ibid.

885 Human Rights Watch. (2014). *“I’m Scared to be a Woman”: Human rights abuses against transgender people in Malaysia*. Available at: <https://www.hrw.org/report/2014/09/24/im-scared-be-woman/human-rights-abuses-against-transgender-people-malaysia>

886 “Intolerance of LGBT can be detrimental to young people.” The Star Online. 7 October 2012. Available at: <https://www.thestar.com.my/news/nation/2012/10/07/intolerance-of-lgbt-can-be-detrimental-to-young-people/>

887 “Teen brain dead after savage attack by bullies.” Malay Mail Online. 13 June 2017. Available at: <http://www.themalaymailonline.com/malaysia/article/teen-brain-dead-after-savage-attack-by-bullies>

888 “Rape and murder of teen shows lack of justice for LGBT Malaysians.” Advocate. 6 July 2017. Available at: <https://www.advocate.com/world/2017/7/06/rape-and-murder-teen-shows-lack-justice-lgbt-malaysians>

was in school. The five perpetrators will be facing murder charges.⁸⁸⁹

Expulsion due to sexuality

A 2014 report by the Malaysian NGO KRYSS includes an experience of a lesbian who was expelled from her secondary school when she was 16, after her girlfriend's parents outed her to the teachers at her school.⁸⁹⁰ Her school principle stated that the school was trying to “weed out lesbianism” at the time.⁸⁹¹ Below is a case study regarding the 16 year old's expulsion:

Case Study – Expelled from school for a lesbian relationship

B was expelled from her secondary school when she was 16 after the school had discovered that she had been in a relationship with a fellow female classmate. The parents of B's girlfriend found out about the relationship and brought the relationship to the attention of the school's administration. B was initially suspended from boarding accommodation and was asked to leave the school at the end of that schooling year. B was not allowed to finish her final examinations (SPM) in the school. B was told by the principle that she had a disease and that, by staying at the boarding accommodation, B would spread her disease to other students.

B's parents begged the school administration to allow B to stay and to complete her studies. The principle had one condition – B needed to see a psychiatrist and provide a report to prove that she was alright to stay at the school. B complied, however B never saw the psychologists report, and her name was not included in the list of students to be attending the school the following year.

B later found out that the report never was passed on to the principle. B went to the hospital to get a copy of the report and begged the principle to allow her to finish her studies. The principle didn't budge. She told B that the school was trying to weed out lesbianism.^{892,893}

889 “Suhakam: ‘Severe criminal prosecution’ won't address root cause of bullying.” Malay Mail Online. 17 June 2017. Available at: <http://www.themalaymailonline.com/malaysia/article/suhakam-severe-criminal-prosecution-wont-address-root-cause-of-bullying>

890 KRYSS & Outright International. (2014). *On the Record: Violence against lesbian, bisexual and trans people in Malaysia*. Available at: https://www.outrightinternational.org/sites/default/files/MalaysiaCC_0.pdf

891 Ibid.

892 Ibid.

893 Incident occurred in 2002.

Sex education in schools

In December 2006, Cabinet approved sex education to be taught in schools. After a delay of five years, the subject of Social and Reproductive Health Education was introduced into the National Service Training Programme in 2011.⁸⁹⁴ However, the content of Social and Reproductive Health Education is heavily influenced by religious morals and promotes abstinence rather than a rights-based approach to sex and sexuality.⁸⁹⁵

For a discussion regarding comprehensive, rights-based sex education refer to the chapter on CEDAW Article 12 of this report.

Pregnant girls more likely to drop out of school

It is often the case that pregnant teenagers drop out of school and cease their studies. For example, in 2015 in Sarawak, 95% of teenaged mothers dropped out of school either during their pregnancy or after the birth of their child.⁸⁹⁶

Previously, attempts to help pregnant teenagers continue with their education have been steeped in moralistic value judgements. In 2010, the Melaka Islamic Religious Council actively encouraged Muslim teenagers to get married so they would not engage in sex out of wedlock - this was viewed as a solution to babies being dumped or abandoned after unintended pregnancies.⁸⁹⁷

The Sarawak State Education Department is involved in the One Stop Teenage Pregnancy Committee (OSTPC), an initiative of the State Minister for Welfare, Women and Community Wellbeing (WWCW) to strengthen cooperation between various agencies in providing sexual health information to teenagers and holistic assistance to those who are pregnant.⁸⁹⁸ The government cites this for a reduction in instances of teenage pregnancy among girls in Sarawak, which declined by 14.7% between 2014 and 2015 and has continued to drop.⁸⁹⁹

894 For more information refer to *Malaysian NGO CEDAW Alternative Report 2012*, page 119.

895 CEDAW Concluding Observations 2018, para 35 (CEDAW/C/MYS/CO/3-5).

896 "A holistic approach to fight teen pregnancy." The Star Online. 17 June 2015. Available at: <https://www.thestar.com.my/metro/community/2015/06/17/a-holistic-approach-to-fight-teen-pregnancy-onestop-centres-planned-to-find-holistic-and-proactive-s/>

897 For more information refer to *Malaysian NGO CEDAW Alternative Report 2012*, page 119.

898 "Teenage pregnancy in Sarawak down 14.7 pct." Borneo Post Online. 4 March 2017. Available at: <http://www.theborneopost.com/2017/03/04/teenage-pregnancy-in-sarawak-down-14-7-pct/>

899 "Fatimah: Sarawak determined to reduce teen pregnancy." The Sun Daily. 10 March 2017. Available at: <http://www.thesundaily.my/news/2189927>

As previously discussed, comprehensive sex education needs to be accessible to all Malaysian students so that they may make informed decisions regarding their sexual health and experiences. This will, in turn, reduce rates of unwanted teenaged pregnancies.

Access to schooling in remote areas

In rural areas of Malaysia, settlements, villages, and longhouses are not easily accessible due to poor infrastructure – hence attendance at school by rural children is irregular.⁹⁰⁰ Along with teenage pregnancy, discussed above, limited access to schools is one reason behind the alarmingly high rate of school drop-outs in rural and remote areas of Malaysia.

Distances between school and the home, and the unavailability of proper transport and infrastructure, means that some rural students are dependent on logging vehicles and may even stay overnight at logging camps in order to reach school. For girl students in particular, this greatly increases the likelihood of experiencing sexual abuse.⁹⁰¹

Difficulty in accessing education institutions contributes to the low literacy rate in East Malaysia. At 72% and 79% respectively, the literacy rates for Sabah and Sarawak are significantly lower than the nationwide average of 97.3%.⁹⁰² It is critical to have literacy training available to all women, but especially those in rural areas, to ensure the ability to access all available essential services, such as legal, health, and welfare services.

Education for children with special needs

Schools in Malaysia are generally ill-equipped to deal with students who have special needs. Though the Ministry of Education (MOE) has stated its aim to provide disabled facilities in all schools nation-wide by 2020, this seems “unrealistic”.⁹⁰³ According to Francis Johen, a commissioner of the Human Rights Commission of Malaysia (SUHAKAM), the progress of installing wheelchair accessible toilets, ramps, and other disability facilities at schools has been very slow so far.⁹⁰⁴ This includes those schools who specifically run special education programmes and have significant numbers of students

900 “Orang Asli Issues: Access to education still difficult.” The Star Online. 24 March 2015. Available at: <http://www.thestar.com.my/lifestyle/family/features/2015/03/24/orang-asli-issues-access-to-education-still-difficult/>

901 For more information on this issue, refer to the chapter of this report on CEDAW Article 14 regarding rural women.

902 “Literacy rate in Sabah and Sarawak lower.” Borneo Post. 16 May 2017. Available at: <http://www.theborneopost.com/2017/05/16/literacy-rate-in-sabah-and-sarawak-lower/>

903 “Disabled facilities for schools by 2020 unrealistic, says Suhakam commissioner.” Borneo Post Online. 26 February 2017. Available at: <http://www.theborneopost.com/2017/02/26/disabled-facilities-for-schools-by-2020-unrealistic-says-suhakam-commissioner/>

904 Ibid.

with disabilities. John suggested that the State Education Department identify one or two schools in various districts where facilities for disabled students of all categories could be provided.⁹⁰⁵ This would enable parents to enrol their children who are disabled in those selected schools.

Non-citizen spouses of Malaysian citizens

Foreign spouses of Malaysians are required to give up their Long Term Social Visit Pass (LTSVP) and apply for a student visa in order to study in a public or private university. On a student visa, non-citizen spouses are not able to be employed and are required to reapply for a LTSVP once they are no longer a student. This means restarting the eligibility process for permanent residency on the LTSVP – so not being eligible for permanent residence for a further five years once going back on the LTSVP. This policy has a negative impact on the non-citizen wife as it means she must give up her employment and delay the approval of her permanent residence if she wishes to pursue higher education.

Recommendations to the Malaysian Government regarding Article 10 of CEDAW

- Ensure that all school-age children have access to high quality schools and infrastructure, particularly in rural areas, on plantation estates, and in indigenous communities.
- Ensure that all school-age children who claim to have a Malaysian parent are given uninterrupted access to state-provided education, while their birth certificate and paperwork is checked and processed.
- Compile gender disaggregated data on the access of disabled students to education and review the suitability of schools to cater to the needs of different disabilities.
- Develop initiatives to reduce dropout rates, including more accessible schools or enhanced transportation options, in rural areas.
- Develop an encouraging environment to enable pregnant girls to continue and complete their education.
- Ensure that comprehensive sex education in schools is taught in all schools. The syl-

905 Ibid.

labus must adopt a rights-based approach and include content on unintended pregnancies, contraception, abortion, healthy relationships, sexualities, gender identities, puberty, body image and STIs.

- Provide gender disaggregated data on the recipients of government scholarships and loans.
- Introduce temporary special measures to enable women to hold key decision-making positions within the education system and educational institutions.
- Provide gender disaggregated data on involvement in sporting activities and programmes run by the state to identify any disparities that might exist.
- Eradicate gender stereotyping in schools. No student should be punished, discriminated against or stigmatised on the basis of their gender identity or sexual orientation.
- Allow spouses to study on their LTSVP so as to enable them to continue employment and avoid interruption to their permanent residency application.

12.

Article 11

EMPLOYMENT

Article 11

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular:

(a) The right to work as an inalienable right of all human beings;

(b) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment;

(c) The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training;

(d) The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work;

(e) The right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave;

(f) The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.

2. In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States Parties shall take appropriate measures:

- (a) To prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status;
 - (b) To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances;
 - (c) To encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities;
 - (d) To provide special protection to women during pregnancy in types of work proved to be harmful to them.
3. Protective legislation relating to matters covered in this article shall be reviewed periodically in the light of scientific and technological knowledge and shall be revised, repealed or extended as necessary.

Key issues in this chapter:

- In 2015, the **labour force participation rate for women was 54.1%**, compared to 80.6% for men, and has remained consistently low.
- **60% of women outside of the labour force cited housework as the main reason for their unemployment** in 2015, compared with only 2.4% of men outside of the labour force citing the same reason.
- Women tend to be engaged in jobs that are **lower wage with less opportunity for advancement**.
- **Women in Malaysia are generally under-employed**, settling for jobs that they are over-qualified for in terms of educational attainment.
- In 2016 the Federal Court recognised and defined the tort of sexual harassment. However **sexual harassment in the workplace is not clearly and comprehensively addressed in Malaysian legislation**.
- **Non-citizen spouses living in Malaysia on a Long Term Social Visit Pass (LTSVP) can only work if they are granted an employment pass**. The employment pass can only be obtained with the permission of the Malaysian spouse, which can leave non-citizen wives in domestic violence or financial abuse situations especially vulnerable.
- **Migrant domestic workers in Malaysia are not recognised as employees under Malaysian laws**. They are not afforded the same labour rights and protections that are available to other workers in Malaysia, and therefore remain extremely vulnerable to their employers.

Since Malaysia's last review by the CEDAW Committee in 2006, the government has made efforts to increase the labour participation and representation of women in decision making positions. However, representation in the private sector is gravely lacking, despite the high educational and professional qualifications of women in this sphere. The issue of a gender wage gap is persistent across most occupational categories in Malaysia, and termination of employment on the basis of pregnancy still persists. Additionally, the lack of a comprehensive sexual harassment law remains a major concern.

2018 Concluding Observations to Malaysia

In the CEDAW Committee's 2018 Concluding Observations to Malaysia, the Committee welcomed the efforts of the government to increase the labour participation of women. However, the Committee remained concerned about the low representation of women in decision making positions in the private sector, the persistent gender wage gap, and the lack of legislation and appropriate sanctions dealing with sexual harassment and pregnancy discrimination.⁹⁰⁶

The Committee recommended that the State party:

- a) Systematically review obstacles to women's access to decision-making positions in the private sector and adopt holistic measures to remove such barriers, including discriminatory stereotypes and gender bias in the workplace as well as family pressure on women to assume responsibilities in the home;
- b) Ensure that targets and initiatives aimed at increasing the representation of women in decision-making positions in the private sector are accompanied by specific guidelines and mechanisms to ensure their effective implementation, monitoring and evaluation;
- c) Reduce the gender wage gap by regularly reviewing wages in sectors in which women are concentrated, and establishing effective monitoring and regulatory mechanisms for employment and recruitment practices to ensure that the principle of equal pay for work of equal value is guaranteed in national legislation and adhered to in all sectors;
- d) Ensure that there are adequate sanctions in law and in practice for the termination of employment on the basis of pregnancy;
- e) Adopt a comprehensive law on sexual harassment, which enables complainants to seek redress without the time, cost and public nature of going to court.⁹⁰⁷

906 CEDAW Concluding Observations to Malaysia 2018, para 37 (CEDAW/C/MYS/CO/3-5).

907 Ibid, para 38.

Participation of women in the workforce

In 2015, the labour force participation rate for women was 54.1%, compared to 80.6% for men, and has remained consistently low for many years.⁹⁰⁸ Additionally, the available information on work force participation for women does not reflect the type of work that women are engaged in, which tends to be lower wage with less opportunities for advancement.^{909,910} Statistics on employment are not disaggregated based on ethnicity, which ignores the way in which women from marginalised ethnic groups may face specific barriers to employment.

Underemployment of women

The 2013 United Nations Development Programme (UNDP) Malaysian Human Development Report highlights the phenomena of underemployment of Malaysian women.⁹¹¹ Although more women are in the workforce, many women take on jobs that are not considered “decent work” – that is, jobs that are less productive and less economically rewarding.⁹¹² Women continue to occupy jobs in the informal sector, settle for low to mid-level paying jobs, or stay home as unpaid workers and mothers. Many women with sufficient education and professional training tend to occupy clerical or other low-level positions in the labour force and are therefore paid lower wages.⁹¹³

Between 1990 and 2010, there has been an increase in the number of women who hold tertiary qualifications leaving the workforce.⁹¹⁴ This may be as a result of gender discrimination in the work place and frustrations in relation to finding a meaningful career path.⁹¹⁵ Women who do obtain highly-skilled professional employment are often overlooked for promotion to decision-making managerial positions, with only 22.5% of these roles being occupied by women in 2015.⁹¹⁶

908 Ministry of Women, Family and Community Development. (2016). *Statistics on Women, Family and Community 2016*. Available at: <https://www.kpwkm.gov.my/kpwkm/uploads/files/Penerbitan/Buku%20Perangkaan/Perangkaan%202016.pdf>

909 “Report: More women joining workforce, but have low wages.” Malay Mail Online. 9 October 2016. Available at: <http://www.themalaymailonline.com/malaysia/article/report-more-women-joining-workforce-but-have-low-wages>

910 Ibid.

911 UNDP. (2014). *Malaysian Human Rights Development Report 2013*. Available at: http://hdr.undp.org/sites/default/files/mhdr_2013.pdf

912 UNDP. (2014). *Malaysian Human Rights Development Report 2013*. Available at: http://hdr.undp.org/sites/default/files/mhdr_2013.pdf

913 Ibid.

914 Ibid.

915 Cecilia Ng. (2016). *Towards 2030: Localising Gender Equality and Women’s Empowerment in Malaysia*. Available at: http://onlineapps.epu.gov.my/sdg/images/sdg_document_november/presentation/Day_1_Session_3_4_Cecilia_Ng.pdf

916 UNDP. (2014). *Malaysian Human Rights Development Report 2013*. Available at: http://hdr.undp.org/sites/default/files/mhdr_2013.pdf

“Housework” cited as the main reason women don’t enter workforce

In 2015, 60% of women outside the labour force gave “housework” as their main reason for not seeking employment, while only 2.4% of men outside of the labour force gave the same reason.⁹¹⁷

It is unclear what this statistic indicates. Potentially, many women may be working in the informal sector or working for a family business. Alternatively, women may feel that they are not able to seek employment owing to family pressures.

Parental consent to employment required for females

It remains common practice within Malay ethnic groups for women to seek parental consent – often specifically patriarchal consent – before accepting employment. The fathers or uncles of young female jobseekers have the social authority to allow or disallow the young women in their care to join the workforce.

Pregnancy discrimination

Malaysian law does not currently provide women with adequate protection against pregnancy discrimination, which impinges on women’s ability to obtain or maintain employment.

In 2016, Women’s Aid Organisation (WAO) conducted a survey of 222 women from across Malaysia, finding that more than 40% of the women surveyed had experienced pregnancy discrimination.⁹¹⁸ The survey found that 30% of women will delay their pregnancy plans because they fear losing their job, and 40% of women had been asked about their pregnancy or plans to become pregnant in a job interview.⁹¹⁹ Further, 20% of women had their job offers revoked or were laid off after revealing that they were pregnant – but only 1 in 8 of these women actually lodged a formal complaint against their employer regarding this discrimination.⁹²⁰ In one pertinent case, a Malaysian

undp.org/sites/default/files/mhdr_2013.pdf

917 Ministry of Women, Family and Community Development. (2016). *Statistics on Women, Family and Community 2016*. Available at: <https://www.kpwkm.gov.my/kpwkm/uploads/files/Penerbitan/Buku%20Perangkaan/Perangkaan%202016.pdf>

918 “Discrimination towards pregnant women remains relevant in the Malaysian workplace.” WAO. 9 August 2016. Available at: http://www.wao.org.my/news_details.php?nid=383&ntitle=Discrimination+Towards+Wom

919 Ibid.

920 Ibid.

woman's employer withdrew a job offer—despite her having signed an employment contract—after finding out that she was six weeks pregnant.⁹²¹

In the Federal Constitution and legislation there is no definition for discrimination against women, and the Federal Court has narrowly interpreted the scope of discrimination provided for in the Constitution as being limited to discrimination within the public sector.⁹²² As such, women in Malaysia who are subject to pregnancy discrimination are afforded very limited options for redress.

Parental leave

Under section 37 of the Employment Act 1955, female employees in Malaysia are entitled to a maternity leave allowance of 60 days.⁹²³ This is not in line with the 18-week maternity leave period recommended by the International Labour Organization (ILO).⁹²⁴

Numerous cases have been reported to NGOs, including WAO and Sarawak Women for Women Society (SWWS), regarding employers refusing to grant paid maternity leave to women or not allowing pregnant women and new mothers to take the medical leave prescribed by their doctors. In one such case, a woman returned from her maternity leave only to find out that she had been redesignated from managing clients to handling administrative duties.⁹²⁵

In October 2010, the former Prime Minister announced that public servants were to have access to up to 90 days of paid maternity leave, granted upon consultation between the employer and the employee.⁹²⁶ However, the maximum amount of maternity leave per employee is 300 days, placing a restriction on those public servants who give birth to more than three children.⁹²⁷ Further, these allowances were only made for those in the public sector, and still place the burden on women to negotiate their maternity leave with their employer.

In March 2017, Malayan Banking Bhd (Maybank) announced that it was extending its

921 “More than 40% of women in the workforce experience pregnancy discrimination.” The Star Online. 9 August 2016. Available at: <http://www.thestar.com.my/news/nation/2016/08/09/more-than-40-of-women-have-experienced-pregnancy-discrimination-survey-reveals/#BwQOyO3SrsXh-PY8d.99>

922 *AirAsia Berhad v Rafizah Shima binti Mohamed Aris* (2014).

923 *Act 265 Employment Act 1995*, s37.

924 ILO. (2000). *Maternity Protection Recommendation*. Available at: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312529

925 “In Malaysia, if you are pregnant, you’re more likely to get fired.” Star2.com. 15 August 2016. Available at: <http://www.star2.com/people/2016/08/15/in-malaysia-if-youre-pregnant-youre-more-likely-to-get-fired/#5pxPkGaJkkUdRUd8.99>

926 For more information refer to *Malaysian NGO CEDAW Alternative Report 2012*, page 125.

927 *Ibid.*

maternity leave policy from 90 days to 365 days.⁹²⁸ The first 90 days of maternity leave for Maybank employees were to be fully paid, with the next three months at half-pay, and the final six months unpaid.⁹²⁹ It is commendable that Maybank is the first bank in Malaysia to offer such a long leave period to female employees, however it must be noted that company policies like these are the exception in Malaysia, not the norm. Further, a continued focus on maternity leave only, and not parental leave, places the entire burden of childcare upon mothers while failing to provide opportunities to fathers to share in childcare.⁹³⁰

In a positive move, the company AXA Malaysia introduced 16-week paid maternity leave for female employees and four-week paid paternity leave for male employees in 2017, despite there being no minimum requirement for paternity leave prescribed by Malaysian law.⁹³¹

Childcare centres

The provision of available and affordable childcare is essential if the workforce participation rate of mothers is to be increased in Malaysia. However, the number of newly registered childcare centres rapidly declined from 1,099 in 2012, to 460 in 2014, setting a worrying trend.⁹³²

In 2015, the Ministry of Women, Family and Community Development (MWFC) announced a plan to assist childcare centres in registering and obtaining licences.⁹³³ This plan was intended to increase the number of registered childcare centres in operation throughout Malaysia. However, as of 2016 there still remained 938 nurseries and 747 childcare centres operating unregistered and unregulated by MWFC.⁹³⁴

928 “Maybank offers extended maternity leave of up to one year.” The Star Online. 8 March 2017. Available at: <http://www.thestar.com.my/news/nation/2017/03/08/maybank-offers-extended-maternity-leave-of-up-to-one-year/#kgzgzUCf3L2CRCUVV.99>

929 Ibid.

930 Ibid.

931 “16-weeks paid maternity – plus paternity – leave for AXA Malaysia staff.” The Rakyat Post. 11 January 2017. Available at: <http://www.therakyatpost.com/business/2017/01/11/16-weeks-paid-maternity-and-paternity-leave-for-axa-malaysia-staff/>

932 MWFC. (2014). *Statistics on Women, Family and Community Malaysia 2014*. Available at: <http://www.kpwkm.gov.my/kpwkm/uploads/files/Penerbitan/Buku%20statistik/BUKU%20STATISTIK%202014%20KPWKM.pdf>

933 “KPWKM aims to increase number of registered childcare centres.” The Sun Daily. 21 March 2015. Available at: <http://www.thesundaily.my/news/1361240>

934 “938 nurseries, 747 childcare centres not registered nationwide.” New Straits Times. 2 August 2016. Available at: <https://www.nst.com.my/news/2016/08/162519/938-nurseries-747-childcare-centres-not-registered-nationwide>

Sexual harassment

Progressive court judgment establishes the tort of sexual harassment

In 2016, the Federal Court handed down a landmark ruling in the case of *Mohd Ridzwan Bin Abdul Razak v Asmah Binti Hj. Mohd Nor (Mohd Ridzwan)*, which recognised and defined the tort of sexual harassment.⁹³⁵ This decision has paved the way for victims to seek redress in Malaysian civil courts for workplace sexual harassment beyond the restrictive means in the Employment Act 1995.

In the case of *Mohd Ridzwan*, a female employee of the company Lembaga Tabung Haji lodged a sexual harassment complaint against her manager to the CEO of the company.⁹³⁶ An internal inquiry committee was established within the company to investigate the claim and, though no disciplinary action was taken, the managers contract with Lembaga Tabung Haji was not renewed.⁹³⁷

Subsequently, the manager began a civil suit against his former colleague, claiming that the sexual harassment complaint she made within Lembaga Tabung Haji was defamatory.⁹³⁸ The employee counter-claimed seeking damages for the sexual harassment.⁹³⁹ Ultimately, the manager's defamation claim was dismissed by the High Court, and the employee was awarded RM 120,000 for emotional and mental stress and trauma due to the sexual harassment.⁹⁴⁰

The Federal Court affirmed the High Court's decision on appeal and established the tort of sexual harassment in a rare case of judicial activism.⁹⁴¹

935 *Mohd Ridzwan Bin Abdul Razak and Asmah Binti Hj. Mohd Nor (2016)*.

936 "Turning the tables on perpetrators of sexual harassment." Skrine. Undated. Available at: <http://skrine.com/publications/legal-insights/1732-turning-the-tables-on-perpetrators-of-sexual-harassment>

937 Ibid.

938 "Bread & kaya: Cyberbullying, stalking and sexual harassment." Foong Cheng Leong. 28 June 2016. Available at: <http://foongchingleong.com/tag/mohd-ridzwan-bin-abdul-razak-v-asmah-binti-hj-mohd-nor/>

939 Ibid.

940 "Turning the tables on perpetrators of sexual harassment." Skrine. Undated. Available at: <http://skrine.com/publications/legal-insights/1732-turning-the-tables-on-perpetrators-of-sexual-harassment>

941 "Bread & kaya: Cyberbullying, stalking and sexual harassment." Foong Cheng Leong. 28 June 2016. Available at: <http://foongchingleong.com/tag/mohd-ridzwan-bin-abdul-razak-v-asmah-binti-hj-mohd-nor/>

There is still a need for comprehensive legislation on sexual harassment

The judiciary's progressive decision in *Mohd Ridzwan* is significant in recognising and addressing the harm that sexual harassment in the workplace causes. However, there is still a need for comprehensive legislation to ensure access to remedies and justice, expand the scope and coverage of sexual harassment law, and define sexual harassment.

Seeking redress through the civil tort of sexual harassment requires individuals to go through public, costly, and timely court processes in order to obtain justice. An independent Sexual Harassment Act and Tribunal would allow complainants to seek redress outside of the court system, reducing barriers to victims of sexual assault in seeking redress. Additionally, the tort of sexual harassment requires victims to show proof of, and quantify monetarily, the harm that they have suffered as a result of the sexual harassment. This type of quantification of harm may not be possible in all cases.

Though sexual harassment provisions have been included in Malaysia's Employment Act 1955,⁹⁴² the Act places too much power and discretion with employers, who are given ultimate say in sexual harassment investigations. Additionally, the Employment Act does not extend to Sabah and Sarawak, which instead have separate labour ordinances. Neither state's labour ordinance address sexual harassment.⁹⁴³

In 1999 a Code of Practice on the Prevention and Eradication of Sexual Harassment in the Workplace was launched, aiming to "encourage the development and implementation of policies and practices which will ensure a safe and healthy working environment".⁹⁴⁴ However, this code is voluntary for employers to follow and its implementation has been ad hoc.⁹⁴⁵ In fact, the overwhelming majority of Malaysian employers have not adopted the Sexual Harassment Code of Practice – as of August 2010, only 400 of 450,000 registered and active companies in Malaysia had adopted and implemented the code.⁹⁴⁶

The lack of appropriate legislation dealing with sexual harassment contravenes Article 11 (f) of CEDAW, which states that women must have the "right to protection of health and to safety in working conditions." Article 2 (b) of CEDAW, which encourages states to "adopt appropriate legislative and other measures, including sanctions where

942 Act 265 Employment Act 1955, Part XVA.

943 Ibid.

944 Ministry of Human Resource. (1999). *Code of Practice on the Prevention and Eradication of Sexual Harassment in the Workplace*. Available at: <http://www.ilo.org/dyn/travail/docs/1627/CODE%20OF%20PRACTICE%20ON%20THE%20PREVENTION%20AND%20ERADICATION%20OF%20SEXUAL%20HARASSMENT%20IN%20THE%20WORKPLACE.pdf>

945 "Legislate against sexual harassment." The Malaysian Bar. 6 November 2009. Available at: http://www.malaysianbar.org.my/letters_others/legislate_against_sexual_harassment.html

946 "Time for a sexual harassment act?" New Straits Times. 13 July 2017. Available at: <https://www.nst.com.my/opinion/columnists/2017/07/256939/time-sexual-harassment-act>

appropriate, prohibiting all discrimination against women,” is also contravened. The government must enact comprehensive sexual harassment legislation, which includes the creation of an independent tribunal to examine sexual harassment claims inside and outside the workplace.

Retirement age for women

Previously, certain industries had a lower mandatory retirement age for women than men, effectively robbing female employees of years of salary and benefits that male employees were entitled to.⁹⁴⁷ On 1 July 2013, the Minimum Retirement Age Act 2012 came into effect, instituting a minimum retirement age of 60 years for employees in Malaysia, regardless of whether they are a man or a woman.⁹⁴⁸

While the standardisation of the minimum retirement age is a positive step, there are certain notable exceptions in the Minimum Retirement Age Act – it does not apply to non-citizen employees, contract employees, or domestic workers.⁹⁴⁹ The government must take measures to make minimum retirement age and other workplace entitlements applicable across all types of employment, whether formal, informal, or contract based, and to all employees, whether citizen or non-citizen. Without this protection, women employees in some jobs may be forced to retire at a younger age than men.

For more information on this topic, refer to the chapter on CEDAW Article 15 of this report.

Minimum wage

In July 2016, the minimum wage was increased from RM 900 to RM 1,000 per month for Peninsular Malaysia, and from RM 800 to RM 920 per month for Sabah, Sarawak, and Labuan.⁹⁵⁰ Under the Minimum Wages Order 2016, these minimum wage limits will be reviewed every two years.⁹⁵¹

947 “The retirement conundrum.” The Star Online. 18 November 2018. Available at: <https://www.thestar.com.my/business/business-news/2017/11/18/the-retirement-conundrum/>

948 *Act 753 Minimum Retirement Age Act 2012.*

949 “Key information: Minimum Retirement Age Act 2012.” Ministry of Human Resources. Undated. Available at: <http://minretirementage.mohr.gov.my/>

950 “Minimum wage, maximum delay.” The Star Online. 6 May 2016. Available at: <http://www.thestar.com.my/metro/views/2016/05/06/minimum-wage-maximum-delay-the-long-overdue-legislation-is-better-late-than-never/>

951 *Ibid.*

Though the minimum wage applies to all Malaysian and foreign employees - except for foreign domestic workers who are specifically excluded - implementation of the law is lacking.⁹⁵² For example, women palm oil plantation workers in Peninsular Malaysia earn a wage of approximately RM 40 per working day, equivalent to approximately RM 880 per month.⁹⁵³ This is below minimum wage. On top of this, excessive deductions from plantation worker's salaries are often made for inflated company electricity and water costs – sometimes up to RM 150 per month.⁹⁵⁴

Foreign workers continue to be subject to abuse in Malaysia due to a lack of applicable labour rights legislation.^{955,956} Women foreign workers are also especially vulnerable to gender-based violence, but have limited access to legal redress.^{957,958} Employers of foreign migrant workers are required to pay a levy to the government, which discourages employers from seeking foreign workers as employees and makes it difficult for non-citizens to obtain work.⁹⁵⁹

Non-citizen spouses' right to employment

Non-citizen spouses must have written permission from their Malaysian spouse and an offer for employment to obtain an endorsement to work

Non-citizen spouses continue to face discrimination in employment. Previously, non-citizens were barred from employment altogether. However, in 2008 changes to immigration policy meant that non-citizen spouses could obtain an endorsement to work from the Immigration Department, while remaining on a long term social visit pass (LTSVP).⁹⁶⁰ The change comes with the caveat that non-citizen spouses are required

952 See the chapter on CEDAW General Recommendation 26 of this report for more information on the lack of labour rights for foreign domestic workers.

953 "Women workers in palm oil plantations." Malaysiakini. 1 May 2018. Available at: <https://www.malaysiakini.com/news/422451>

954 Ibid.

955 "Samsung and Panasonic accused over supply chain labour abuses in Malaysia." The Guardian. 21 November 2016. Available at: <https://www.theguardian.com/global-development/2016/nov/21/samsung-panasonic-accused-over-supply-chain-labour-abuses-malaysia>

956 "IOI Group suspected of serious labour rights violations." Finnwatch. 16 September 2014. Available at: <https://www.finnwatch.org/en/news/213-ioi-group-suspected-of-serious-labour-rights-violations>

957 Help Wanted: Abuses against Female Migrant Domestic Workers in Indonesia and Malaysia." Human Rights Watch. 22 July 2014. Available at: <https://www.hrw.org/news/2004/07/22/indonesia/malaysia-household-workers-rights-trampled>

958 "Malaysia urged to strengthen protection for foreign workers. Malay Mail Online. 28 May 2017. Available at: <http://www.themalaymailonline.com/malaysia/article/malaysia-urged-to-strengthen-protection-for-foreign-workers#pGrY8VQXlq45tcOS.97>

959 "Foreign Workers Levy." Ministry of Human Resources. 26 December 2017. Available at: <http://www.mohr.gov.my/index.php/en/resource/foreign-workers-levy>

960 "Working permit for spouse of Malaysian citizen." Immigration Department. 20 July 2018. Avail

to produce a letter from their Malaysian spouse to the Immigration Department granting them permission to work,⁹⁶¹ along with an offer of employment from a would-be employer.⁹⁶²

The requirement for non-citizen spouses to obtain written permission from their husbands in order to work in Malaysia places them in a severe position of disadvantage and dependence. By having their financial stability made reliant on the permission of their Malaysian husbands, non-citizen wives may be more vulnerable to situations of control and domestic violence, including physical, emotional, financial, and social abuse.

Further, given the reluctance of most employers to pay a monthly fee to the Employees Provident Fund (EPF) for employing someone on a LTSVP, the requirement that foreign citizens obtain an employment offer can be very prohibitive to non-citizen spouses trying to obtain an endorsement to work.⁹⁶³

One year of state-enforced unemployment for newly married non-citizen spouses

A non-citizen spouse is only eligible for a LTSVP after six months of marriage.⁹⁶⁴ Once issued an LTSVP, non-citizen spouses are not permitted to obtain an endorsement for employment for the first six months of being on the visa.⁹⁶⁵ Altogether, the non-citizen spouse is required to remain unemployed for at least one year after their marriage to a Malaysian, but this can be a much longer period depending on administrative delays and impropriety. For instance, non-citizens holding Vietnamese or Pakistani citizenship have reported being repeatedly put on the initial six-month visas without the right to employment by the Immigration Department for a number of years.

Issuances of endorsements to work are often delayed, further compounding the year long wait for non-citizen spouses to obtain permission for employment.⁹⁶⁶ In the state of Sabah, there have been inordinate delays of many months, with some spouses having

able at: <http://www.imi.gov.my/index.php/en/main-services/33-perkhidmatan-utama/artikel-untuk-menu-pas/292-working-permit-for-spouse-of-malaysian-citizen.html>

961 “Survival manual for foreign spouses of Malaysian citizens.” Aliran. 23 March 2016. Available at: <https://aliran.com/civil-society-voices/2016-civil-society-voices/survival-manual-foreign-spouses-malaysian-citizens/>

962 Ibid.

963 Ibid.

964 “Ease the burden of foreign spouses.” The Star Online. 1 April 2016. Available at: <https://www.thestar.com.my/opinion/letters/2016/04/01/ease-the-burden-of-foreign-spouses/>

965 “Survival manual for foreign spouses of Malaysian citizens.” Aliran. 23 March 2016. Available at: <https://aliran.com/civil-society-voices/2016-civil-society-voices/survival-manual-foreign-spouses-malaysian-citizens/>

966 “Foreign spouses right to work.” New Straits Times. 23 May 2018. Available at: <https://www.nst.com.my/opinion/letters/2018/05/372198/foreign-spouses-right-work>

to leave the country and seek employment overseas.

Statement of prohibition from employment on non-citizen spouse visa

The LTSVP given to non-citizen spouses states that “any form of employment is strictly prohibited.”⁹⁶⁷ This is despite the fact that persons on the LTSVP are eligible to procure employment if they obtain an endorsement from the Immigration Department. The statement of prohibition of employment on the LTSVP is a serious impediment to non-citizen spouses gaining work. Widespread lack of understanding of current visa requirements means that employers are reluctant to hire non-citizen spouses upon seeing this absolute statement on their visas - even where the non-citizen has an endorsement to work from the Immigration Department.⁹⁶⁸

Restrictions to employment without Permanent Residency

Non-citizen spouses are not able to obtain employment in certain sectors, such as banking, finance, and other licensed professional sectors, until permanent residency is obtained.⁹⁶⁹ This once again limits the employment opportunities available to non-citizen wives. A prerequisite for obtaining permanent residency is being on the LTSVP for a minimum of five years, but permanent residency is by no means guaranteed at the end of this time frame.⁹⁷⁰

Employer’s contribution to EPF for non-citizens is optional, and non-citizens are ineligible for SOCSO

The Employees Provident Fund (EPF) is Malaysia’s national superannuation scheme, and many are reliant on it upon retirement. The Employees Provident Fund Act 1991 stipulates that employers of foreigners, including non-citizen spouses, are only required to contribute RM 5 per month to the EPF regardless of the employees’ salary.⁹⁷¹ Conversely, employers of Malaysian citizens and permanent residents are required to make a mandatory EPF contribution of 12% of the employee’s salary.⁹⁷² EPF constitutes

967 “Ease the burden of foreign spouses.” The Star Online. 1 April 2016. Available at: <https://www.thestar.com.my/opinion/letters/2016/04/01/ease-the-burden-of-foreign-spouses/>

968 “Survival manual for foreign spouses of Malaysian citizens.” Aliran. 23 March 2016. Available at: <https://aliran.com/civil-society-voices/2016-civil-society-voices/survival-manual-foreign-spouses-malaysian-citizens/>

969 “Are you a Malaysian planning to marry a foreigner.” Malaysian Digest. 19 June 2015. Available at: <http://www.malaysiandigest.com/features/558325-are-you-a-malaysian-planning-to-marry-a-foreigner-then-read-this.html>

970 “Spouse visa Malaysia: Entry permit.” Malaysia Work Visa. Undated. Available at: <http://malaysiaworkvisa.com/long-term-social-visit-pass/>

971 *Employees Provident Fund Act 1991*, Sch 3, Part IX.

972 “EPF contributions can stay at 11%.” The Star Online. 29 January 2016. Available at: <https://>

the only retirement savings scheme accessible to many employees in Malaysia, and also allows withdrawals for housing and children's education.⁹⁷³ A lack of payment to this fund severely disadvantages non-citizen workers, who are deprived of the benefit of contributing towards, and obtaining, a financially secure retirement.

As foreigners, non-citizen workers are also not entitled to benefits under the Social Security Organisation (SOCSO), which provides protection to employees who suffer from employment-related injuries.⁹⁷⁴

Job security

Non-citizen's jobs are less secure than those of Malaysian citizens. In fact, under the Employment Act 1955, an employer is forced to make all non-citizen workers redundant before any local employees are laid off:

“Where an employer is required to reduce his workforce by reason of redundancy necessitating the retrenchment of any number of employees, the employer shall not terminate the services of a local employee unless he has first terminated the services of all foreign employees employed by him in a capacity similar to that of the local employee.”⁹⁷⁵

The following is an unpublished case study provided by the Malaysian NGO, Foreign Spouse Support Group:

Case Study – Rachel's Story

For seventeen years, Rachel worked with a college in Malaysia. She was always on a yearly contract, due to the conditions of her LTSVP and endorsement to work. Rachel's company asked her to leave in 2014, without compensation, saying that it was unable to renew her contract. Rachel was in her fifties and close to retirement. She has been searching but unable to find full-time employment for the last three years, although she now has permanent residence.

www.thestar.com.my/news/nation/2016/01/29/epf-contributions-can-stay-at-11-employees-have-the-option-to-maintain-their-current-cut/

973 “Settling PTPTN debts and other things you can do with your EPF money.” Says. 4 July 2017. Available at: <http://says.com/my/lifestyle/epf-withdrawal-what-you-can-do-with-your-savings>

974 “Employer and employee eligibility.” Social Security Organisation. 30 July 2018. Available at: <https://www.perkeso.gov.my/index.php/en/social-security-protection/employer-employee-eligibility>

975 *Act 265 Employment Act 1955*, Part XII B, s60N.

Divorced and widowed non-citizen spouses

Divorced and widowed non-citizen spouses are primarily given short-term visas without the right to work. Although the Immigration Department's website claims that the Resident Pass may be given to divorcees and widows,⁹⁷⁶ very few are given this pass in practice. It is unclear how the government expects these individuals to provide for themselves and their children, who are often Malaysian citizens.

Discrimination of diverse sexual orientations and gender identities in employment

As in other aspects of their lives, people with diverse sexual orientations and gender identities in Malaysia are subject to much discrimination in finding and maintaining employment.

Transgender men and *pengkids* (women whose appearance is masculine) face difficulties in obtaining well-paid employment owing to stigma and discrimination due to their gender non-conformance.⁹⁷⁷ People from these groups will commonly be denied employment if they do not “dress and behave like a woman.”⁹⁷⁸ In some instances, women labelled *pengkid* have been directly told that lesbians are not hired for the job because they are “trouble.”⁹⁷⁹

Research published in 2002 on transgender women in Malaysia indicated that over 60% of the 507 respondents earned less than RM 500 per month.⁹⁸⁰ Respondents in the survey found it difficult to obtain well-paid employment owing to the stigma and discrimination levelled against them. Three of the women surveyed had been refused employment opportunities even after the transgender women agreed to change their appearance or gender expression.⁹⁸¹ Further, some transgender people surveyed who transitioned on the job, or transitioned after being employed, were forced to resign from their jobs.

976 “Residence Pass.” Immigration Department of Malaysia. 27 July 2018. Available at: <http://www.imi.gov.my/index.php/en/pass.html?id=284>

977 Angela M Kuga Thas. (2012). “CEDAW in Defending the Human Rights of Lesbians, Bisexual Women and Transgenders in Malaysia” in *Equality Under Construction: Malaysian Women's Human Rights Report 2010/11*. Petaling Jaya, PJ: EMPOWER, page 270.

978 Ibid.

979 KRYSS & Outright International. (2014). *On the Record: Violence against lesbian, bisexual and trans people in Malaysia*. Available at: https://www.outrightinternational.org/sites/default/files/MalaysiaCC_0.pdf

980 Angela M Kuga Thas. (2012). “CEDAW in Defending the Human Rights of Lesbians, Bisexual Women and Transgenders in Malaysia” in *Equality Under Construction: Malaysian Women's Human Rights Report 2010/11*. Petaling Jaya, PJ: EMPOWER, page 268.

981 For more information refer to *Malaysian NGO CEDAW Alternative Report 2012*, page 229.

Transgender people looking for work are often asked intrusive questions regarding their bodies and genitals, as well as their personal lives.⁹⁸² However, there are lack of laws and institutions to protect transgender people from this kind of sexual harassment during interviews and throughout job application processes - employment laws in Malaysia only prohibit sexual harassment against employees, but not prospective employees.⁹⁸³

More information and case studies regarding discrimination based on sexual orientation and gender identity can be found in the chapters of this report on CEDAW Article 5 and the CEDAW Committee's General Recommendation 28.

Refugee women

Refugee women's access to employment is limited to the informal sector. As academic Cecilia Ng has noted, "Issues associated with their illegal status are low wages, informal and irregular work, unpaid/delayed wages, termination without notice, and sexual abuse."⁹⁸⁴

For more information on refugee women in Malaysia refer to the chapter of this report on CEDAW General Recommendation 32.

Recommendations to the Malaysian Government regarding Article II of CEDAW

- Collect gender disaggregated data on employment in the formal and informal sectors, on unemployment, and on under-employment.

- Develop strategies to increase greater participation of women in the workforce.
- Formulate monitoring mechanisms and laws to enforce equality of wages between men and women in the private sector.

982 KRYSS & Outright International. (2014). *On the Record: Violence against lesbian, bisexual and trans people in Malaysia*. Available at: https://www.outrightinternational.org/sites/default/files/MalaysiaCC_0.pdf

983 Human Rights Watch. (2014). *"I'm Scared to be a Woman": Human rights abuses against transgender people in Malaysia*. Available at: <https://www.hrw.org/report/2014/09/24/im-scared-be-woman/human-rights-abuses-against-transgender-people-malaysia>

984 Cecilia Ng. (2011). *Gender and Rights: Analysis for Action*. Penang, Malaysia: Good Governance and Gender Equality Society Penang and Women's Development Research Centre Universiti Sains Malaysia, page 41.

- Establish a decent and realistic living wage.
- Enact comprehensive sexual harassment legislation, which includes the creation of an independent tribunal to examine sexual harassment claims. Such legislation must be enacted in Sabah and Sarawak in addition to Peninsular Malaysia.
- Extend the application of the Minimum Retirement Age Act to all industries and to all employees, including contract employees, non-citizen spouses, and domestic workers.
- Enable more women to occupy positions of leadership in public and private sectors and unions.
- Increase maternity leave from 60 days to 90 days throughout the private and public sector without a cap on the total number of days women are permitted to take.
- Extend paternity leave to fathers in both the public and private sector to 14 days.
- Pass family leave legislation to cover men and women in heterosexual or same-sex partnerships for leave upon the adoption of a child and for caring for children or family members who are seriously ill.
- Provide community based childcare facilities that are affordable and accessible to all parents.
- Ensure that people who experience discrimination in the workplace based on gender identity, sexual orientation, or pregnancy are afforded the right to redress.
- Grant non-citizen spouses the right to work immediately upon being granted a LTSVP. Remove restrictions that limit non-citizen spouses to working only in their state of residence for the duration of the visa.
- Remove the statement on the prohibition of employment on the LTSVP.
- Abolish the requirement that non-citizen spouses must obtain the written permission of their Malaysian spouse in order to work.

- Simplify the process of obtaining permanent residence and provide a time frame for the approval of permanent residency after an application is submitted, to prevent hardship faced by non-citizen spouses and their Malaysian families.
- Make employer contributions to EPF and SESCO mandatory for employers of non-citizens on equal terms with Malaysian employees.
- Grant divorced and widowed non-citizen spouses the right to employment on a permanent basis.
- Afford refugees the right to work legally.
- Recognise domestic workers as employees, not servants, under employment legislation to afford them labour rights equal to other employees in Malaysia.
- Ensure that migrant workers who fall pregnant are permitted to continue working and may be eligible for full maternity benefits.

13.

Article 12

HEALTH

Article 12

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.
2. Notwithstanding the provisions of paragraph 1 of this article, States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.

Key issues in this chapter:

- There is a critical need for **data on health to be disaggregated by gender** in order to understand how and why diseases affect women and men differently.
- The continued **privatisation of health care** in Malaysia is threatening to make affordability one of the main factors that will reduce the accessibility to health care services.

- It is difficult for women to **exercise their reproductive rights in family planning and access to quality reproductive health care services.**
- Women are the **fastest growing demographic being infected with HIV.** The male to female ratio of people living with HIV has declined from 9.6 in 2000 to 4.0 in 2014. 92.4% of women with HIV have contracted it through heterosexual transmission.
- **HIV testing is mandatory for all Muslim couples intending to marry.** The findings of the test do not impede the ability of couples to get married.
- **Sex education is inadequate** and follows a religious model rather than a rights-based approach to bodily integrity. A sex education curriculum for schools that was approved by the Cabinet in 2006 has yet to be fully implemented.
- Raids on entertainment venues are common. **The presence of condoms can be used as evidence of sex work, and works against ensuring and protecting public health.**
- **Access to health care is even more limited for vulnerable groups,** including refugee women, indigenous women, migrant women, and transgender women.

2018 Concluding Observations to Malaysia

In its Concluding Observations to Malaysia in 2018, the CEDAW Committee expressed its concern with the difficulties faced by certain vulnerable groups of women in accessing health care services, such as asylum seekers and refugee women, women migrant workers, rural women, transgender women, and indigenous women. Another issue it raises concerns a government directive that requires public hospitals to refer undocumented asylum seekers and migrants who seek medical attention to the Immigration Department. This deters women from accessing health care services due to fear of arrest and detention.⁹⁸⁵

The Committee recommends that Malaysia:

- a) “Ensure that all women, regardless of nationality or income, have effective access to affordable health care services, including childbirth, family planning and reproductive health care services;

985 CEDAW Concluding Observations to Malaysia 2018, para 39 (CEDAW/C/MYS/CO/3-5).

- b) Take measures to improve the affordability of health care services for non-citizens, including by fully exempting asylum-seeking and refugee women from the payment of deposits and higher fees than Malaysian nationals for the same health care services;
- c) Immediately repeal the directive requiring public hospitals to refer undocumented asylum-seekers and migrants to the Immigration Department.⁹⁸⁶

Access to health care

Privatisation of health care

Publicly provided, highly subsidised health care was the norm in Malaysia after decolonisation.⁹⁸⁷ All patients, regardless of income level, could access senior specialists if their condition warranted it, since most specialists were employed by the government.⁹⁸⁸ However, private health expenditures have risen more swiftly than government health care expenditure, and public funds have been used to purchase private services from public hospitals.⁹⁸⁹ Government agencies have been acquiring controlling shares in major private health care enterprises, and government-linked companies account for more than 40% of “private hospital beds” in the country.⁹⁹⁰ This has led to lower investment into public health care, and subsequently, limited high-quality health care services being made accessible to lower-income communities.⁹⁹¹ Qualified practitioners are also pushed to leave the public sector, and one third of specialists are now practising in the private sector.⁹⁹²

The social impact of privatisation is especially evident with regard to rural women, for whom accessible, quality services have become even more limited, exacerbated by geographic constraints. However, many urban women are also adversely affected by such privatisation. For example, Putrajaya Hospital and Selayang Hospital have been offering “full-paying” patients preferential access to consultations and treatment by specialists since August 2007. Both these institutions are quite new public hospitals with advanced treatment facilities for breast cancer.⁹⁹³

986 Ibid, para 40.

987 Chee-Koon Chan. (2014). *The Malaysian health system in transition: The ambiguity of public and private*. Available at: http://www.municipalservicesproject.org/sites/municipalservicesproject.org/files/publications/OccasionalPaper26_Chan_Malaysian_health_system_in_transition_Aug2014.pdf

988 Dr. Jeyakumar Devaraj. (2004). *Health care privatisation will burden Malaysians*. Available at: <https://aliran.com/archives/monthly/2004b/11h.html>

989 Rasiah, R. (2009). Privatising health care in Malaysia: Power, Policy and Profits. *Journal of Contemporary Asia*, 39(1), 50-61.

990 Ormond, M., Mun, WK., Khoon, CC. (2014). Medical tourism in Malaysia: how can we better identify and manage its advantages and disadvantages? *Global Health Action*, 7, 25201.

991 Ibid.

992 Ibid.

993 Khoon, CC. (2010). Reinventing the Welfarist State? The Malaysian Health System in Transition. *Journal of Contemporary Asia*, 40(3), 451.

Third party administrators

Third party administrators (TPAs), who serve as intermediaries between insurers and policyholders, are unregulated in Malaysia.⁹⁹⁴ As a result, doctors may be limited by the TPAs in what medicines and treatments they can prescribe to their patients. Moreover, because of the fixed patient fees imposed by TPAs, services have become more expensive, with extra costs generally being passed on to patients. This limits all women's access to affordable health care services, but it disproportionately affects those of a low-income background.

Lack of gender disaggregated data

The CEDAW Committee has noted that “there are societal factors that are determinative of the health status of women and men, which can also vary among women themselves,”⁹⁹⁵ highlighting the ever-growing need to collect disaggregated data on health. As has already been reported in the *Malaysian NGO CEDAW Shadow Reports* of 2005 and 2012, gender disaggregated data on health is not collected nor made available to the public in Malaysia.

Furthermore, health data is generally collected exclusively from public hospitals and not from private clinics or pharmacies. This poses a major barrier to understanding women's access to medical services, especially in relation to their sexual and reproductive health; most women seeking abortions for instance access private clinics.⁹⁹⁶ It is therefore essential for these sectors to also be represented in the data.

Contraceptive prevalence

The 2014 Family Planning Survey conducted by the government indicated that only 52.2% of –currently– married women use a form of contraception.⁹⁹⁷ Only 34.3% reported using “modern” methods of contraception, including the contraceptive pill (13.2%), tubal ligation (6.9%), condoms (5.6%), injectables (4.9%), IUDs (2.7%), implants (0.7%), and others. These surveys however exclude a key demographic; young, unmarried women.

994 “Intermediaries compromising health care, warns MMA.” Free Malaysia Today News. 22 June 2017. Available at: <http://www.freemalaysiatoday.com/category/nation/2017/06/22/unregulated-tpas-are-compromising-health-care-warns-mma/>

995 CEDAW General Recommendation No. 24, para 6 (A/54/38).

996 Kamaluddin, F. (2010). A Follow-up Profile of Women Seeking Pregnancy Terminations in a Clinic in Urban Malaysia: 1998-2005. *Jurnal Sains Kesihatan Malaysia*, 8(1), 6.

997 KPWK, LPPKN. (2014). *Kajian Penduduk dan Keluarga Malaysia Kelima (KPKM-5) 2014*. Available at: <http://www.lppkn.gov.my/index.php/pusat-sumber/2016-02-26-02-25-15/2016-03-04-00-42-00/file>

This happens in spite of the fact that 2.3% of Malaysians between the ages of 13 – 17, and 8.3% of those between 18 – 25, reported being sexually active. Only one third of these groups reported that they use contraception.⁹⁹⁸ As gender disaggregated data is not made available, it is difficult to analyse the percentage women that are using contraception.

Access to contraception

Contraceptive prevalence rate (CPR) and “unmet need for family planning” are indicators used in assessing the quality of states’ reproductive health care systems. CPR is a “proxy measure to access reproductive health services, assuming that there is no coercion for acceptance of birth control through government policy,”⁹⁹⁹ while the unmet need for family planning indicates the gap between women’s reproductive intentions and their actual contraceptive behaviour. CPR has remained the same in Malaysia for over a decade, while the unmet need for contraception is increasing, especially among young, unmarried women.¹⁰⁰⁰ This has led to an increase in unplanned pregnancies and unwanted births, especially for women with lower levels of education, all the while Malaysia’s total fertility rate has been decreasing overall.

In addition to the general shift in the national programme from family planning to family development, and the structural barriers associated with it, the legal framework functions as a fundamental barrier to accessing contraception – especially for Muslim youth. Sexual intercourse and “acts preparatory to sexual intercourse” outside of marriage are criminalized under *Syariah* law, and can subject offenders to fines up to RM 5,000, three years in prison, and whipping.^{1001,1002} An unmarried couple being found together in “any secluded place which gives rise to the suspicion of immoral acts,” is also an offense.¹⁰⁰³ In addition, minors require parental consent to purchase contraceptives. This context proves a significant barrier to accessing contraception outside of marriage, as the need for it already implicates a criminal act. It is therefore safe to assume that unmarried women are not accessing contraceptive services.

Contraception in rural areas

The CPR rate is low in rural areas of Malaysia while the unmet need for family planning

998 KPWK, LPPKN. (2014). *Kajian Penduduk dan Keluarga Malaysia Kelima (KPKM-5) 2014*. Available at: <http://www.lppkn.gov.my/index.php/pusat-sumber/2016-02-26-02-25-15/2016-03-04-00-42-00/file>

999 ARROW and The Federation of Reproductive Health Association (FRHAM). (2015). *Country Profile on Universal Access to Sexual and Reproductive Health: Malaysia*, page 4. Available at: <http://arrow.org.my/wp-content/uploads/2015/04/Country-Profile-SRH-Malaysia.pdf>

1000 Ibid, page 5.

1001 *Act 599 Syariah Criminal Offences (Federal Territories) Act 1997*, s23.

1002 Ibid, s24.

1003 Ibid, s27.

is often higher than in Kuala Lumpur.¹⁰⁰⁴ CPR in rural areas of Sarawak was at only 42.9% in 2014, which was lower than Malaysia's overall CPR of 51.9% in 2014.¹⁰⁰⁵ This can in part be explained by the difficulty involved in reaching outlets that sell contraceptives, including condoms, in rural areas. Access is made even harder for unmarried women, who may not be comfortable purchasing contraceptives in public due to the stigma and legal consequences associated with it, as discussed above.

What is more, it is very common for the male partner to be the exclusive decision-maker about contraception in a marriage, including the type of contraception and how long the pair will use it for.¹⁰⁰⁶ Thus, there have been many instances where rural Malaysian women would travel to family-planning clinics in other districts, in order to keep their spouses from finding out they were buying and using contraceptives.¹⁰⁰⁷ It has been statistically proven that, in the Sarawakan context, effective "husband-wife communication" is linked with a higher use of contraceptives in rural areas.¹⁰⁰⁸

Sterilisation

In practice, before agreeing to a sterilisation, doctors often require women to prove that they have two or more children of each sex, achieved a "desired" family size, have a medical contraindication to other contraceptive methods, and spousal consent to the procedure.¹⁰⁰⁹ Requiring spousal consent for tubal ligation is a violation of women's right to make decisions regarding reproduction and their own bodies freely, and the Malaysian Medical Council has issued guidelines that explicitly state that it is *not* a requirement for sterilisation.¹⁰¹⁰ NGOs have come to the same conclusion.^{1011,1012}

1004 Najimudeen, M., Sachchithanantham, K. (2014). An insight into low contraceptive prevalence in Malaysia and its probable challenge. *International Journal Reprod Contracept Obstet Gynecol*, 3(3), 493.

1005 Jawa, A.J., Rahman, M.M. (2015). Factors affecting contraceptive use among the women of reproductive age in Samarahan district, Sarawak, Malaysia. *Malaysian Journal of Public Health Medicine*, 15(1), 10.

1006 Kamaluddin, F. (1998). Urban Malaysian Women's Experiences of Abortion: Some Implications for Policy. *Kajian Malaysia*, 16(1-2).

1007 Ibid.

1008 Jawa, A.J., Rahman, M.M. (2015). Factors affecting contraceptive use among the women of reproductive age in Samarahan district, Sarawak, Malaysia. *Malaysian Journal of Public Health Medicine*, 15(1), 10.

1009 Centre for Reproductive Rights, ARROW. (2005) *Women of the World: Laws and Policies Affecting their Reproductive Lives – East and Southeast Asia*, page 94. Available at: <https://www.reproductiverights.org/sites/crr.civicactions.net/files/documents/Overview.pdf>

1010 Malaysian Medical Council. Undated. *Guideline: Consent for Treatment of Patients by Registered Medical Practitioners*, page 12. Available at: http://www.mmc.gov.my/images/contents/ethical/Consent%20Guideline_21062016.pdf

1011 RRAAM. Undated. *For Health Professionals: Consent*. Available at: <http://www.rraam.org/for-health-professionals/standard-medical-procedures/consent/>

1012 "Sterilising a woman." The Star Online. 24 March 2013. Available at: <https://www.thestar.com.my/opinion/columnists/the-doctor-says/2013/03/24/sterilising-a-woman/>

The CEDAW Committee has reiterated the problematic nature of requiring spousal consent in General Recommendation No. 24.¹⁰¹³ Women should have the right to access sterilization procedures without needing spousal consent or meeting any other conditions, and maintaining women's privacy should be of the utmost priority.

Abortion

Attitudes towards abortion

Abortion is criminalised under section 312 of the Penal Code 1936, unless it is performed in effort to save a woman's life, or to preserve her physical or mental health.¹⁰¹⁴ Married Muslim women however also require the consent of their husbands in order to terminate a pregnancy, according to the National *Fatwa* Council.¹⁰¹⁵ The beliefs of medical doctors regarding sexuality form an additional barrier to accessing such services. A study on Malaysian doctors' knowledge of, and willingness to provide abortion related services indicated that "most doctors were conventional and 'pro-life' in their attitude towards sexuality and abortion."¹⁰¹⁶

While the Ministry of Health formally acknowledges the right to abortion in its Guidelines on Termination of Pregnancy for Hospitals,¹⁰¹⁷ such termination remains a major challenge in public institutions, especially when it is based on reasons related to mental health. Abortions are usually only approved in rare cases, for women with confirmed psychiatric disorders.¹⁰¹⁸ Additionally, a Reproductive Rights Advocacy Alliance Malaysia (RRAAM) rapid assessment showed that women who had been raped or survived incest, as well as ones who had foetuses with gross brain deformities, have been refused abortion services in public hospitals.¹⁰¹⁹ Abortions are more accessible in the private sector, but it remains a challenge for those with lower incomes whose vulnerability to unplanned pregnancies –through lower contraceptive usage– is even more pronounced. Medical abortions can cost between RM 600 to RM 2,000 in the private sector.¹⁰²⁰

1013 CEDAW General Recommendation No. 24, para 21-22 (A/54/38).

1014 Act 574 Penal Code 2015, s312.

1015 Decision at the 26th Muzakarah (Conference) of the Fatwa Committee National Council (13-14 April 1982).

1016 ARROW and The Federation of Reproductive Health Association (FRHAM). (2015). *Country Profile on Universal Access to Sexual and Reproductive Rights: Malaysia*. Available at: <http://arrow.org.my/wp-content/uploads/2015/04/Country-Profile-SRR-Malaysia.pdf>

1017 Ministry of Health of Malaysia. (2015). *Guidelines on Termination of Pregnancy*. Available at: https://www.moh.gov.sg/content/dam/moh_web/Legislations/Legislation%20And%20Guidelines/TOP_Guidelines%202015.pdf

1018 "Let's talk about abortion." Free Malaysia Today. 1 June 2018. Available at: <http://www.freemalaysiatoday.com/category/leisure/2018/06/01/lets-talk-about-abortion/>

1019 Fathilah Kamaluddin. (2008). *Rapid Assessment Study of Customer Experiences with Abortion and Contraception in an Urban Health Clinic in Malaysia*. Kuala Lumpur: RRAAM.

1020 Safe Parenthood Malaysia. Undated. *Abortion Cost in Malaysia*. Available at: <http://safeparent->

In addition, health care professionals in the public and private sector remain unsure of the exact legal requirements for termination, compounding the issue of access. In 2007, a survey conducted by RRAAM found that only 57% of doctors and nurses surveyed in six states, in both public and private clinics, knew that abortion was legal in certain circumstances.¹⁰²¹ Medical practitioners are also under no formal obligation to refer cases to alternative health care providers if the former maintains a conscientious objection to the procedure.

The reluctance of doctors to provide the service has resulted in many women not being able to access safe, affordable abortions. Pre and post-procedure counselling is also lacking,¹⁰²² endangering the mental health of young women further.

The sheer lack of information on safe sex and abortion services in Malaysia, as well as the social stigma associated with premarital relations, also contribute to the increasing rate of illegitimate children being born in the country. The National Registration Department has reported that between 2005 and 2015, over half a million children were born out of wedlock.¹⁰²³ Some women conceal their pregnancies and continue to work and study, and there are frequent media reports of women giving birth in public toilets,¹⁰²⁴ to the detriment of the health of both mother and child.

Additionally, women who hide their pregnancy and later abandon their child have been charged under the Penal Code 1936 with infanticide.¹⁰²⁵ Unmarried Muslim women and couples who abandon their children have also been charged under state *Syariah* law for illegal sexual relations; *zina*. Punishments like this only add to the stigma and shame associated with premarital sex, and by extension, abortion.

Nirmala Thapa Case

In January 2015, Nirmala Thapa became the first woman in Malaysia to be charged and convicted for having an abortion. Being a migrant worker, Thapa was prohibited from

hood.org/abortion-cost-in-malaysia/

1021 RRAAM. (2007). *Survey Findings of Knowledge and Attitudes of Doctors and Nurses on Abortion by the Reproductive Rights Advocacy Alliance Malaysia*. Available at: <http://www.rraam.org/issues/misconceptions/>

1022 Wah Yun Low, Wen Ting Tong, Veenah Gunasegaran. (2013). *Issues of Safe Abortions in Malaysia: Reproductive Rights and Choice*. Available at: https://malaysia.unfpa.org/sites/default/files/pub-pdf/Abortion_Issues%20of%20Safe%20Abortion.pdf

1023 “532,158 born out of wedlock.” The Star Online. 15 November 2016. Available at: <https://www.thestar.com.my/news/nation/2016/11/15/532158-born-out-of-wedlock-some-babies-delivered-by-mothers-as-young-as-10/>

1024 “Mother stunned after 15-year-old gives birth in toilet of KK mall.” The Star Online. 21 November 2017. Available at: <https://www.thestar.com.my/news/nation/2017/11/21/mother-stunned-after-15-year-old-gives-birth-during-trip-to-the-mall/>

1025 *Act 574 Penal Code 2015*, s309A.

becoming pregnant in Malaysia,¹⁰²⁶ and in light of the risk of losing her job, she sought an abortion at a private clinic.¹⁰²⁷ The clinic where Nirmala terminated her pregnancy was raided by representatives from the Ministry of Health's Private Medical Practice Control Unit after the incident, and she and the doctor who performed the procedure were detained. Nirmala was charged under section 315 of the Penal Code 1936 and lost her job. The Session Court subsequently acquitted her.^{1028,1029}

Availability of abortion in rural areas

Abortion services are not available in rural areas. There is little information available on abortion trends in East Malaysia, but it is presumed that rural women resort to traditional means to attempt termination.¹⁰³⁰

Baby hatches and "baby dumping"

It has been reported that an average of 100 babies are dumped nationwide in Malaysia every year, and more than half of them are found dead.¹⁰³¹ Out of the 104 babies dumped in 2015, for instance, 61 were found dead.¹⁰³² As a solution, Malaysia's first baby hatch was launched in 2010 by OrphanCare, and various baby hatches in other parts of the country followed. By the end of 2015, 207 babies had been saved through the programme. However, the number of babies dumped yearly had not shown a corresponding reduction.¹⁰³³

Although baby hatches have offer a temporary solution, it is unlikely that many mothers would reach out and utilise them, as they are often not aware of their existence, nor would they have the means to reach them immediately after giving birth. Many mothers who abandon babies are trying to hide their pregnancy from others, and are therefore likely to be on their own when giving birth.

1026 "Report: Malaysia has 'most restrictive' laws on female foreign workers." Free Malaysia Today. 26 March 2018. Available at: <http://www.freemalaysiatoday.com/category/nation/2018/03/26/report-malaysia-has-most-restrictive-laws-on-female-foreign-workers/>

1027 "Nepali worker acquitted of abortion charge." Malaysiakini. 21 September 2015. Available at: <http://www.malaysiakini.com/news/312981>

1028 "In second shot at abortion case, Nepali woman pleads not guilty." Malay Mail Online. 29 January 2015. Available at: <http://www.themalaymailonline.com/malaysia/article/in-second-shot-at-abortion-case-nepali-woman-pleads-not-guilty#sthash.zH1ne55i.dpuf>

1029 "Women's rights groups hail decision." The Star Online. 22 September 2015. Available at: <http://www.thestar.com.my/news/nation/2015/09/22/womens-rights-groups-hail-decision-sessions-court-frees-nepali-25-of-abortion-charge-after-a-retrial/>

1030 Asia Safe Abortion Partnership. Undated. *Country profile – Malaysia*. Available at: <http://asap-asia.org/country-profile-malaysia/>

1031 "Baby dumping in Malaysia, the unending tragedy – Dr John Teo." Malay Mail Online. 23 January 2017. Available at: <http://www.themalaymailonline.com/what-you-think/article/baby-dumping-in-malaysia-the-unending-tragedy-dr-john-teo>

1032 Ibid.

1033 Ibid.

Unwanted pregnancies abound among young, unmarried women. The stigma surrounding sexuality as well as requiring another party's consent to access contraception and abortion services has resulted in young women carrying their pregnancies to term. This is further exacerbated by the lack of knowledge among young women regarding sexuality. One of the solutions offered and discussed by the government is to criminalize "baby dumping" – this would of course further stigmatise unmarried women who fall pregnant. Instead, sexuality should be de-stigmatised through sexual and reproductive health and rights education services.

In one case of baby dumping in Sarawak, a 24-year-old woman was initially arrested for concealing the birth of her child by disposing of the body.¹⁰³⁴ She was later charged with murder and is currently imprisoned, and awaiting trial.^{1035,1036} This demonstrates the crucial need for more accessible family planning services and psychological support for expectant mothers in both urban and rural areas.

Comprehensive Sexuality Education

Comprehensive sexuality education (CSE) from an empowerment perspective has proven outcomes in reducing rates of sexually transmitted infections (STIs) and unintended pregnancies.¹⁰³⁷ Studies have also indicated that CSE does not foster earlier sexual debut or unsafe activity, and it is thus preferable to abstinence-only approaches which have proven to be ineffective in reducing rates of STIs and unintended early pregnancy.

In Malaysia, CSE is limited to sex education, if it is taught at all. A 2011 study by the Centre for Gender Studies at Universiti Kebangsaan Malaysia (UKM), on whether sex education or its elements were being taught in schools,¹⁰³⁸ found that 95% of respondents agreed that sex education was not being taught in Malaysian Schools and that, if it was, it was done informally. When taught, sex education is not a standalone subject; different elements will be addressed in *Pendidikan Islam* (Islamic studies), *Pendidikan Kesihatan* (Health studies), and science subjects, and the curriculum is often limited to reproductive systems and abstinence-only approaches that are considered in line with

1034 "Fatimah wishes student sought help before dumping baby." Borneo Post Online. 13 April 2017. Available at: <http://www.theborneopost.com/2017/04/13/fatimah-wishes-student-sought-help-before-dumping-baby/>

1035 "Baby dumping case: It's murder." Borneo Post Online. 13 April 2017. Available at: <http://www.theborneopost.com/2017/04/13/its-murder-2/>

1036 "Newborn baby murder case transferred to High Court." Borneo Post Online. 8 July 2017. Available at: <http://www.theborneopost.com/2017/07/08/newborn-baby-murder-case-transferred-to-high-court/>

1037 UNFPA. (2015). *The Evaluation of Comprehensive Sexuality Education Programmes: A Focus on the Gender and Empowerment Outcomes*. Available at: <https://www.unfpa.org/publications/evaluation-comprehensive-sexuality-education-programmes>

1038 Talib J, Mamat M, Ibrahim M and Mohamad Z. (2001) *Analysis on Sex Education in Schools Across Malaysia*. UKM Teaching and Learning Congress 2011.

Islamic values.^{1039,1040}

According to the 2014 Population and Health Survey,¹⁰⁴¹ only 45% of people surveyed considered themselves sufficiently informed about contraceptives. This statistic was lower within the 13-17 age bracket, where only 38.4% of people surveyed considered themselves sufficiently informed about contraceptives. There has been also an alarming increase of teenage pregnancy, with a 300% increase recorded between 2010 and 2012.¹⁰⁴²

The government must ensure that young women have access to comprehensive education around sexual and reproductive health, as this is imperative to an individual's ability to protect their health and make informed decisions about sexuality and reproduction, while also reducing adolescent pregnancies and unsafe abortions.¹⁰⁴³

Sex education in rural Areas

Sabah and Sarawak have the highest rate of teenage pregnancies in the country.¹⁰⁴⁴ The rate is significantly higher in rural areas as compared to urban centres.¹⁰⁴⁵ As good knowledge of sexual health is critical among teenagers, a One-Stop Teenage Pregnancy Committee was set up in 2014 to help address the issue.¹⁰⁴⁶ Nonetheless, more efforts must be undertaken to develop sex education, especially in rural areas.

1039 "It's high time we take sex education seriously." *New Straits Times*. 22 June 2016. Available at: <http://www.nst.com.my/news/2016/06/153620/its-high-time-we-take-sex-education-seriously>

1040 Mutalip, SSM., and Mohamed, R. (2012). Sexual Education in Malaysia: Accepted or rejected? *Iranian Journal of Public Health*, 41, 34.

1041 KPWK, LPPKN. (2014). *Kajian Penduduk dan Keluarga Malaysia Kelima (KPKM-5) 2014*. Available at: <http://www.lppkn.gov.my/index.php/pusat-sumber/2016-02-26-02-25-15/2016-03-04-00-42-00/file>

1042 "Oh dear, I'm pregnant?! – Dr. John Teo" *The Malaysian Medical Gazette*. 14 July 2014. Available at: <http://www.mm Gazette.com/oh-dear-im-pregnant-dr-john-teo/>

1043 UNFPA, *Programme of Action of the International Conference on Population and Development*, 5 September 1994, para 7.44 (a)(b) (A/CONF.171/13/Rev.1).

1044 "Teenage pregnancy in Sarawak second highest in country." *Borneo Post Online*. 8 January 2017. Available at: <https://www.pressreader.com/malaysia/the-borneo-post-sabah/20170108/281844348316804>

1045 "Teenage pregnancy rate highest in past five years." *The Star Online*. 21 October 2014. Available at: <http://www.thestar.com.my/news/community/2014/10/21/consistently-in-bad-light-teenage-pregnancy-rate-highest-in-past-five-years/>

1046 "Sarawak concerned over teen pregnancies." *The Star Online*. 29 April 2015. Available at: <http://www.thestar.com.my/news/nation/2015/04/29/sarawak-concerned-over-teen-pregnancies/#3ZdK-wkkldz1UfT7J.99>

Violations of women’s rights in government hospitals

RRAAM has reported that unmarried women in Malaysia above 18 years of age, who give birth at government hospitals, regularly have their rights to privacy and confidentiality violated when their parents are informed of their pregnancies against their wishes.

The organisation has also reported that Muslim clerics have been employed in recent years to counsel pregnant unmarried Muslim women in hospitals, involving their parents in the process. Doctors, on the other hand, are required to make an official report on the marital status of single Muslim mothers.

RRAAM reported similar violations among women in their 20s in Kuala Lumpur, who were admitted to government hospitals for post-abortion treatment after having abortions at private clinics.¹⁰⁴⁷

One Stop Crisis Centres

One Stop Crisis Centres (OSCC) were established in the emergency departments of government hospitals in the 1990s to handle cases of gender-based violence. The aim of OSCCs is to provide a one-stop service for survivors of rape and abuse, offering medical examination, treatment, specimen collection and counselling, as well as providing referrals for shelter and legal aid.¹⁰⁴⁸ The quality of OSCC services differs among hospitals in Malaysia, though the Ministry of Health developed and published clinical practice guidelines to standardise practices in 2015.¹⁰⁴⁹

There are OSCC services in 102 government hospitals nationwide. The number of clients at each differs greatly and vary from fewer than 10 to over 500 a year.¹⁰⁵⁰

However, significant barriers keep OSCCs from functioning as intended. The following has been reported:

“For many rape and incest survivors, emergency contraception is not routinely

1047 For more information refer to *Malaysian NGO CEDAW Alternative Report 2012*, page 137.

1048 UNFPA. (2011) *Hospital-Based One-Stop Crisis Centres (OSCC): Health Sector Response to Gender-Based Violence in Peninsular Malaysia*, page 9.

1049 Ministry of Health. (2015). *Manual on Development and Implementation of Evidence-Based Clinical Practice Guidelines*. Available at: <http://www.moh.gov.my/index.php/pages/view/117>

1050 *Ibid*, page 13.

available, referral for abortion for unwanted pregnancies depends on the views of the Head of the [Obstetrics and Gynaecology] Department and there is little follow up to identify and treat HIV and other infections. In addition, it seems that apart from the initial medical assessment, little is done to support the emotional well-being of these women. Women are thus not accessing their sexual and reproductive rights and health rights as planned through these services.”¹⁰⁵¹

Currently, many survivors of domestic violence and rape living in rural areas do not have access to a coordinated, user-friendly service. NGOs have therefore recommended that OSCCs be established in designated rural clinics and staff be suitably mentored.¹⁰⁵²⁻

OSCCs are funded as part of the emergency department within hospitals, and do not receive funds individually.

HIV/AIDS

While persons in Malaysia living with HIV are predominantly male, female infections have significantly increased in recent years, with the male to female ratio of cases declining from 9.6 in 2000, to 4.5 in 2010, and to 4.0 in 2014.¹⁰⁵³ 92.4% of women with HIV acquired it through heterosexual intercourse.

In Malaysia, intravenous drug use has historically been the main driving factor behind the country’s HIV epidemic.¹⁰⁵⁴ However, cases resulting from sexual transmission have been progressively increasing. Sexual transmission of HIV is currently responsible for almost 80% of new infections. The percentage of transmissions by intravenous drug use has declined significantly from 60-75% in the 1990s to less than 20% in 2014.¹⁰⁵⁵

The Ministry of Health initiated a National Strategic Plan for Ending Aids (NSPEA) to apply to 2016 – 2030, which provides a roadmap for how Malaysia will address HIV for the next 15 years. The plan builds on the success of previous strategies and addresses the challenges identified in the mid-term report of the 2011-2015 NSP and the subsequent

1051 ARROW. (2009). *Increasing Access to the Reproductive Right to Contraceptive Information and Services, SRHR Education for Youth and Legal Abortion*. Kuala Lumpur, Malaysia: Asian-Pacific Resource and Research Centre for Women, page 16.

1052 Sarawak Women for Women Society. (2009). *Empowering Rural Girls: Project Summary and Recommendations*. Available at: <http://sarswws.org/wp-content/uploads/2017/06/Empowering-Rural-Girl-Booklet.pdf>

1053 Ministry of Health Malaysia. (2016). *National Strategic Plan: Ending AIDS 2016-2030*, page 11. Available at: http://www.aidsdatahub.org/sites/default/files/publication/Malaysia_National_strategic_plan_2016-2030.pdf

1054 Ibid, page 1.

1055 Ibid, page 11.

consultation processes.

As of 2014, 19.3% of new infections are caused by intravenous drug use, while 78.3% are caused by sexual transmission – from the total number of infections, 50.3% occur through heterosexual transmission and 28.0% through homosexual transmission.¹⁰⁵⁶

In its General Recommendation No. 15, the CEDAW Committee specifically recommends that State Parties “intensify efforts in disseminating information to increase public awareness of the risk of HIV infection and AIDS, especially in women and children, and of its effect on them.”¹⁰⁵⁷ The rising number of women infected with HIV could be due – in part – to the fact women and children are not aware of the causes of HIV and methods of transmission.

Notably, the new National Strategic Plan for 2016 – 2030, highlights stigma and discrimination as key issues. “Ending AIDS requires addressing the still experienced stigma and discrimination by persons living with HIV through increasing their access to and availability of care and support programs, addressing their physical, mental, social, spiritual, religious and economic needs, and providing social and legal protection. These will be addressed as cross-cutting issues in each of the priority strategies.”¹⁰⁵⁸ It is essential that these problems be broken down into specific actionable components and each recommendation is seen through.

The NSP also prioritises the issue of transmitting HIV from mothers to children and aims to increase comprehensive national prevention of mother-to-child transmission (PMTCT) services to private facilities among others. However, reports from workers on the ground indicate that there have been many cases of young women with HIV being coerced to undergo sterilisation procedures, either after giving birth or prior to doing so.¹⁰⁵⁹ Case studies from the Hospital Teluk Intan indicate that between 2009 and 2014, 36 women living with HIV were coerced into sterilization.¹⁰⁶⁰ Most of these women were Malay, with 13 being between 24 and 39 years old, and 11 being between 41 and 53. Two of the 36 women were of Indian ethnicity, while the others were from Thailand, Myanmar, and Indonesia.

HIV/AIDS infection is also on the rise in Sarawak. 2,178 cases have been reported between 1989 and 2015 — 480 of which resulted in AIDS-related death. There was a noticeable

1056 Ministry of Health Malaysia. (2016). *National Strategic Plan: Ending AIDS 2016-2030*, page 11. Available at: http://www.aidsdatahub.org/sites/default/files/publication/Malaysia_National_strategic_plan_2016-2030.pdf.

1057 CEDAW General Recommendation No. 15, para (a) (A/45/38).

1058 Ministry of Health Malaysia. (2016). *National Strategic Plan: Ending AIDS 2016-2030*, page 38. Available at: http://www.aidsdatahub.org/sites/default/files/publication/Malaysia_National_strategic_plan_2016-2030.pdf

1059 Interviews with hospital staff by Persatuan Wahidayah Malaysia (PEWAHIM).

1060 Ibid.

hike in incidences during the 2010s; from 169 cases in 2011 to 230 in 2015.¹⁰⁶¹ Between January and October 2016, 210 new incidences were reported for HIV; 104 for AIDS and 46 for HIV.¹⁰⁶² This is compounded by the fact that HIV prevention, treatment, and support services are mostly only available at the General Hospital in Sarawak or at NGOs.

Women who use drugs

Women who use drugs face more stigma than men who do so because their drug use is seen as contravening the gendered role of women in society; as “mothers, the anchors of their families, and caretakers.”¹⁰⁶³ Women experience addiction and its contributing factors, including those related to sexual and physical violence, differently from men, and thus have unique treatment needs.

Treatment for drug addiction and harm reduction services in Malaysia are not targeted towards the unique needs of female drug users. For example, these services are not integrated with childcare, sexual and reproductive health services, counselling, or domestic violence services.¹⁰⁶⁴

A study by the Malaysian AIDS Council has highlighted further key gaps in the service provision for women who use drugs in Malaysia. Services are often provided to address one or two needs individually rather than a cluster of them. For example, a person may receive sterile needles and syringes and be encouraged to utilise free, anonymous HIV testing, but will not receive referrals for childcare assistance, welfare, mental health services, or sexual reproductive health check-ups.¹⁰⁶⁵ The study also specifically emphasises that interventions need to more explicitly incorporate and address familial contributors to drug use, beginning with non-judgmental, evidence-based services for children who use drugs.

Mandatory HIV testing for Muslim couples

Mandatory premarital HIV testing in Malaysia began at the initiative of the Johor State Religious Department in November 2001. It has since become the policy of the religious

1061 “Get rid of HIV/AIDS stigma.” Borneo Post Online. 14 May 2017. Available at: <http://www.the-borneopost.com/2017/05/14/get-rid-of-hiv-aids-stigma/>

1062 “HIV/AIDS cases on the rise in Sarawak, state assembly told.” New Straits Times. 28 November 2016. Available at: <https://www.nst.com.my/news/2016/11/192491/hiv-aids-cases-rise-sarawak-state-assembly-told>

1063 Fafa Rahman, Farah Iqbal. (2015). *Everything on My Own: A Policy Brief on Women who use Drugs*. Malaysia: Malaysian AIDS Council. Available at: http://www.mac.org.my/v3/wp-content/uploads/2015/03/Women-Drug-Users-Project_Report_10032015-web.pdf

1064 Ibid.

1065 Ibid, page 17.

departments in seven additional states, but extends only to Muslim couples. The results are not confidential and spouses are informed of each other's status.^{1066,1067}

Health promotion for sex workers hindered by police

There are an estimated 60,000 sex workers in Malaysia; 40,000 cisgender women, and 20,000 transgender persons (mostly transgender women).¹⁰⁶⁸ There are no available estimates of male sex workers. A study conducted in 2012 reported an HIV prevalence of 4.2% among female sex workers in Malaysia.¹⁰⁶⁹ Sex workers face tremendous stigma and discrimination, with the public opinion of sex work being defined by police raids and sensational media portrayals. This is further exacerbated by the fact that sex work is criminalized in Malaysia.

Sex workers form one of the most vulnerable communities to HIV. There is a close association between sex workers and HIV transmission, leading to the stigma attached to their profession denying them access to safe and quality health care. Having to conceal sexual relations and the threat of exposure leads to inconsistent safe sex practice; the possession of condoms is often used as proof of sex work, for instance.¹⁰⁷⁰ The threat of and actual harm being done to sex workers by perpetrators, including law enforcement officers, places sex workers at higher risk of being infected.¹⁰⁷¹

Female circumcision

In April 2009, the National Fatwa Committee declared female circumcision obligatory for Muslim women, unless it would result in some form of harm to the woman.¹⁰⁷² This *fatwa* has not been gazetted in any state of Malaysia, so it does not have force of law.

1066 Open Society Foundations, Public Health Program. Undated. *Women and HIV Testing: Policies, Practices, and the Impact on Health and Human Rights*. Available at: <http://www.hivpolicy.org/Library/HPP001645.pdf>

1067 For more information refer to *Malaysian NGO CEDAW Alternative Report 2012*, page 139.

1068 UNDP. (2014). *Review and Consultation on the Policy and Legal Environments Related to HIV Services in Malaysia*, page 14. Available at: <http://www.my.undp.org/content/malaysia/en/home/library/hiv--health-development.html>

1069 Ibid.

1070 UNDP. (2014). *Review and Consultation on the Policy and Legal Environments Related to HIV Services in Malaysia*, page 15. Available at: <http://www.my.undp.org/content/malaysia/en/home/library/hiv--health-development.html>

1071 Ibid, page 14.

1072 *Decision at the 86th Muzakarah (Conference) of the National Committee of the Fatwa Council* (21 – 23 April 2009). Available at: <http://www.e-fatwa.gov.my/fatwa-kebangsaan/hukum-pemotongan-genitalia-wanita-female-genital-mutilation>

A 2012 study of Muslim Women from three Malaysian provinces found that around 93% of those surveyed had undergone female circumcision.^{1073,1074} However, the full extent of the practice is unknown, as is the extent of the standard procedure.¹⁰⁷⁵

A report by UNICEF and Al-Azhar University highlighted that female circumcision finds no support in Islamic teachings. Members of the CEDAW Committee have also made remarks to that effect during the Malaysian government's second review at the 6th CEDAW session in 2018. Naela Gabr raised this point to drive home the message that the *fatwa* was being utilised to perpetuate a discriminatory practice not considered Islamic, even by the Organisation of Islamic Cooperation (OIC).¹⁰⁷⁶

Female circumcision violates a number of human rights and principles of international human rights law, including “the principles of equality and non-discrimination on the basis of sex, the right to life when the procedure results in death, and the right to freedom from torture or cruel, inhuman or degrading treatment.”¹⁰⁷⁷ The CEDAW Committee has issued General Recommendation No. 14 condemning female circumcision and calling on states to take effective steps to eradicate the practice.¹⁰⁷⁸ The Malaysian *fatwa* on circumcision was issued 19 years after this recommendation was issued (in 1990).

Access to health care for vulnerable women

Refugee women

Refugees in Malaysia experience a number of barriers to accessing health care. Although holders of United Nations High Commissioner for Refugees (UNHCR) ID cards can access health care services with a 50% discount of the usual non-citizen rate, asylum seekers still in the process of having their refugee status claim assessed by the UNHCR are not entitled to this discount.¹⁰⁷⁹

1073 “Just one millimetre.” Southeast Asia Globe. 7 April 2015. Available at: <http://sea-globe.com/female-genital-mutilation-malaysia-southeast-asia-globe/>

1074 “Malaysia storm over female circumcision.” ABC News. 7 December 2012. Available at: <http://www.abc.net.au/news/2012-12-07/an-malaysia-debate-over-female-circumcision/4416298>

1075 Isa, AR., Shuib, R., Othman, MS. (1999). The Practice of Female Circumcision among Muslims in Kelantan, Malaysia. *Reproductive Health Matters*, 7(13), 137.

1076 “How much do we really care about women and their rights?” The Malaysian Insight. 21 February 2018. Available at: <https://www.themalaysianinsight.com/s/39283/>

1077 World Health Organisation. (2008). *Eliminating Female genital mutilation: An interagency statement*. Available at: http://www.un.org/womenwatch/daw/csw/csw52/statements_missions/Interagency_Statement_on_Eliminating_FGM.pdf

1078 CEDAW General Recommendation No. 14 (A/45/38).

1079 “Suffering in silence.” The Star Online. 19 May 2015. Available at: <https://www.thestar.com.my/metro/focus/2015/05/19/suffering-in-silence-with-little-support-over-150000-refugees-are-finding-it-tough-to-make-ends-meet/>

In addition to the cost of health care, refugees cite the “fear of physical violence and fear of being robbed while travelling to health care facilities, arrest during treatment, insufficient funds for treatments, transportation inaccessibility, language barriers and discrimination during treatment,” as barriers to accessing health care.

The experience of Rohingya refugees in Malaysia illustrates many of the obstacles refugee women face in accessing health care. Rohingya have been living in Malaysia for about three decades.¹⁰⁸⁰ As of June 2018, 73,900 Rohingya are registered as either refugees or asylum-seekers with the UNHCR office in Malaysia,¹⁰⁸¹ while it is estimated that there are tens of thousands more who remain unregistered. Rohingya make up the largest group (46.6%) of refugees in Malaysia.¹⁰⁸² Many of these refugees live in protracted displacement in Malaysia, where they “spend years, decades and even generations living in limbo, lacking the prospect of a formal durable solution.”¹⁰⁸³

The UNHCR office is the primary response provider in the country for issues pertaining to refugees.¹⁰⁸⁴ It supports access to health care, including health insurance (Refugee Medical Insurance, known as REMEDI), and individual assistance.¹⁰⁸⁵ As of December 2016, about 7,770 refugees, including Rohingya, were enrolled in REMEDI scheme under RHB Insurance and the UNHCR. However, REMEDI only covers registered Rohingya refugees who hold UNHCR ID cards, and many Rohingya are still unaware of this insurance scheme.¹⁰⁸⁶ In addition, REMEDI, just as other local insurance policies, does not cover sexual and reproductive health services.¹⁰⁸⁷ UNHCR’s efforts to encourage private sector partnerships have resulted in Qualitas Medical Group offering alternative and affordable primary health care services and antenatal check-ups to refugees in 72 clinics throughout Peninsular Malaysia.¹⁰⁸⁸

For Rohingya refugees, the UNHCR cards are the “single most important form of protection” while living in Malaysia.¹⁰⁸⁹ The cards provide a critical form of protection

1080 Wake, C. (2016). ‘Turning a Blind Eye’: the policy response to Rohingya refugees in Malaysia. *Humanitarian Policy Group Working Paper*, page 5. Available at: <https://www.odi.org/publications/10648-rohingya-refugees-unhcr-livelihood>

1081 UNHCR. Undated. *Figures at a Glance in Malaysia*. Available at: <http://www.unhcr.org/en-my/figures-at-a-glance-in-malaysia.html?query=rohingya%20refugees>

1082 Ibid.

1083 Wake, C. (2016). ‘Turning a Blind Eye’: the policy response to Rohingya refugees in Malaysia. *Humanitarian Policy Group Working Paper*, page 4. Available at: <https://www.odi.org/publications/10648-rohingya-refugees-unhcr-livelihood>

1084 Ibid, page 7.

1085 Ibid, page 6.

1086 Refugees International. (2016). *Still Adrift: Failure to Protect Rohingya in Malaysia and Thailand*, page 7. Available at: <https://static1.squarespace.com/static/506c8ea1e4b01d9450dd53f5/t/582ce2ef20099e7f0c91b8f4/1479336695008/20161117+Rohingya.pdf>

1087 Ibid.

1088 UNHCR. (2016). *UNHCR Health Factsheet*. Available at: <http://www.unhcr.org/en-my/protection/operations/56167f6b6/malaysia-fact-sheet.html>

1089 Refugees International. (2016). *Still Adrift: Failure to Protect Rohingya in Malaysia and*

and enable refugees to access essential services from government facilities without the risk of deportation.¹⁰⁹⁰

A study conducted in 2011 by the UNHCR, Women's Refugee Commission, and Centre for Disease Control and Prevention (CDC) found that out of the 422 Burmese women refugees interviewed, 42.2% used some method of contraception.¹⁰⁹¹ Among the women who used contraception, 32.7% were Rohingya. The study also found that although community members had heard of family planning, they had difficulty accessing services due to a lack of information.

In November 2015, the UNHCR carried out a survey among refugee households living in Malaysia to monitor access to and utilization of key health care services, including antenatal and maternity care services.¹⁰⁹² The findings from the survey indicated that about 38.7% of the 62 women interviewed who had been pregnant in the previous two years had experienced difficulty accessing ante-natal and maternity care services. They cited financial barriers as the main reason for their limited access. About 91.7% of the women could not afford medical service fees and 75% of them could not afford the transportation costs. Among the pregnant women, 88.5% delivered their children in government health facilities and the remaining 11.5% delivered in private facilities. In sum, the average cost of delivery has doubled in 2016 (RM 3,767.21) compared to 2015 (RM 1,748.04). This is due to the introduction by the Ministry of Health of new rates for foreigners, including refugees, who utilise government health facilities. Similar findings were reached in another study on Rohingya women residing in Kuala Lumpur.¹⁰⁹³

The Ministry of Health again announced higher rates in April 2017, this time for wards and surgery for foreigners.¹⁰⁹⁴ The burden of increasing health care costs may limit the refugees' accessibility to health care services or contribute to their poverty.

Non-citizen spouses

The Ministry of Health now allows foreign spouses to access health care at local rates.¹⁰⁹⁵

Thailand, page 8. Available at: <https://static1.squarespace.com/static/506c8ea1e4b01d9450dd53f5/t/582ce2ef20099e7f0c91b8f4/1479336695008/20161117+Rohingya.pdf>

1090 Wake, C. (2016). 'Turning a Blind Eye': the policy response to Rohingya refugees in Malaysia. *Humanitarian Policy Group Working Paper*, page 9. Available at: <https://www.odi.org/publications/10648-rohingya-refugees-unhcr-livelihood>

1091 Women's Refugee Commission. (2011) *Baseline Study: Family Planning among Burmese Refugees in Malaysia*. Available at: https://www.womensrefugeecommission.org/youth/resources/doc_download/790-baseline-study-family-planning-among-burmese-refugees-in-malaysia

1092 UNHCR. (2016). *At a Glance. Health Access and Utilisation Survey among Non-Camp Refugees in Malaysia*.

1093 MacFarlane, K., Sietstra, Ci., and Foster, A. *Assessing the Reproductive Health Needs of Rohingya Women and Girls in Kuala Lumpur, Malaysia*. Dissemination Meeting at UNHCR Office Malaysia on 11 April 2017.

1094 "Foreign Residents to Pay Higher Fee." *The Star Online*. 8 April 2017. Available at: <http://www.thestar.com.my/news/nation/2017/04/08/foreign-residents-to-pay-higher-fees/>

1095 *Ibid.*

The Government should disseminate this policy to public health care institutions in all states including East Malaysia and rural areas.

Indigenous women

In peninsular Malaysia, there are 125 locations accessed by a mobile clinic, 20 transit centres for people in rural areas waiting to go to a hospital, as well as 10 clinics for Orang Asli communities.¹⁰⁹⁶ Past data has shown that indigenous women in peninsular Malaysia die at an earlier age than males. It has been noted that, “Orang Asli women have the highest recorded rates of postpartum haemorrhage and puerperal sepsis, far above the rates for other groups.”^{1097,1098}

Statistics on health are sometimes disaggregated by – Bumiputera, Chinese, Indian, and ‘Other’. This can mask the realities of the health of indigenous women in the states of Sabah and Sarawak, who are categories as Bumiputera along with ethnic Malays. Clearly defined and distinct data collection and analysis for indigenous populations is needed to better understand the state of health of indigenous women from both peninsular and East Malaysia.

Rural women

It is often difficult for women in rural areas of East Malaysia to access health care services as the facilities are very limited.¹⁰⁹⁹ Thus, patients need to travel to urban areas—which are often inaccessible due to poor roads and infrastructure—to seek further treatment. These journeys are often the only way for women to see a doctor, as many rural clinics are sustained by medical assistants/nursing staff. In addition to transportation issues, a general lack of finances and time deter women from seeking help before a medical condition reaches a critical stage.¹¹⁰⁰ Although there are bridging services such as the Flying Doctors in Sarawak, they face budget constraints.¹¹⁰¹ Additionally, with the opening of logging roads, helicopter service has been reduced. There is therefore a critical need for a comprehensive and accessible health care system to developed in rural areas, which would not only increase facilities in and access to clinics, but would also enable the effective outreach to dispersed rural communities.

1096 Colin Nicholas. (2010). *Orang Asli: Rights, Problems, Solutions*. Kuala Lumpur: SUHAKAM, page 46.

1097 Ibid, page 42.

1098 For more information refer to *Malaysia NGO CEDAW Shadow Report 2012*, page 141.

1099 Sarawak Women for Women Society. (2009). *Empowering Rural Girls: Project Summary and Recommendations*. Available at: <http://sarswws.org/wp-content/uploads/2017/06/Empowering-Rural-Girl-Booklet.pdf>

1100 Ministry of Health. (2010). *Country Health Plan 2011-2015*, page 18. Available at: http://www.moh.gov.my/images/gallery/Report/Country_health.pdf

1101 Ibid, page 9.

According to the State Health Plan 2011–2015, the doctor to patient ratio in Sabah and Sarawak is at a concerning 1:1357 and 1:957 respectively, while states in peninsular Malaysia like Kelantan and Kedah fare slightly better, at 1:917 and 1:837 respectively.^{1102,1103}

In 2010, it was reported that out of Malaysia's 55 tertiary care centres specialising in the treatment of cancer, 28 are public hospitals while 27 are private. The majority of these centres are located on the west coast of peninsular Malaysia, with most being located in urban areas.¹¹⁰⁴

Transgender women

Lack of access to health care services

Transgender people face discrimination when accessing health care as their assigned gender on their identity card differs from the gender they express.¹¹⁰⁵ In 2015, the ISEAN-Hivos Programme surveyed 176 transgender women and 233 cisgender men who have sex with men (MSM) in Malaysia regarding their experiences in the health care sector. The found that 86 out of the 409 respondents had experienced verbal maltreatment. More specifically, 76 of the transgender women respondents, or 43% of the respondents, had experienced verbal maltreatment. Until 2012, when funding was frozen, Malaysia had a sexual minority clinic that tailored services towards transgender people and MSM.¹¹⁰⁶ Currently, no such integrated service centres remain.

The discriminatory treatment transgender women receive in hospitals encourages some of them to self-medicate with over the counter medication rather than face going to a hospital or a clinic.

Case Study - Nazz's Story¹¹⁰⁷

Nazz, went to a government hospital in Penang for treatment for dengue fever. She said, "I could hear [hospital staff] chatting while I was waiting. 'is that a boy or a girl? I think

1102 "Suturing the gap – the urban-rural health dilemma." Malaysiakini. 17 June 2016. Available at: <http://www.malaysiakini.com/letters/345693>

1103 Ministry of Health. (2010). *Country Health Plan 2011-2015*, page 17. Available at: http://www.moh.gov.my/images/gallery/Report/Country_health.pdf

1104 Ibid.

1105 Altice, F., Brown, SE., Gibson, BA., Kamarulzaman, A., Rutledge, R., Wickersham, JA. (2016). Gender identity, health care access, and risk reduction among Malaysia's mak nyah community. *Glob Public Health*, 11(7-8), 1010.

1106 Ibid, page 1024.

1107 Human Rights Watch. (2014). I am Scared to be a Woman: Human Rights Abuses against Trans People in Malaysia, page 45. Available at: <https://www.hrw.org/report/2014/09/24/im-scared-be-woman/human-rights-abuses-against-transgender-people-malaysia>

it's a *mak nyah*, 'I think it's a sissy boy.' it hurt, but I just kept my head down - I don't want to cause any trouble."

In 2010, a Malaysian transgender woman was granted refugee status in Australia owing to the discrimination she faced in Malaysia. In its published decision, the Australian Refugee Review Tribunal found that "the applicant ... was vulnerable in Malaysia due to her socio-economic circumstances, brought about principally by the lack of an identity card that would enable her to access every day services, circumventing prejudice and discrimination on a daily basis."¹¹⁰⁸

Lack of information on hormone replacement therapy

Information and services related to hormone replacement therapy and gender affirmation surgery are largely unavailable in government and private hospitals.¹¹⁰⁹ As a result, transgender people are often forced to source and self-administer hormones.¹¹¹⁰ In addition, some hormones are classified under the Poisons Act 1952.¹¹¹¹ This creates barriers for both health care professionals and transgender people to access hormone replacement therapy.

Sexual reproductive health services

Transgender people especially avoid going to hospitals or clinics to access sexual reproductive health services, as they are often made into a spectacle when having to reveal their bodies.¹¹¹² The Human Rights Watch report, "I Am Scared to be a Woman", records the experience of a transgender man who was raped by a cisgender male client. He did not seek medical assistance as he was embarrassed at the prospect of revealing his genitalia to a doctor; "I was embarrassed. I couldn't seek help. I would have to explain all these things, reveal my parts."¹¹¹³

Unavailability of gender affirmation surgery and post care

Gender affirmation surgeries are unavailable in government and private hospitals in Malaysia. A *fatwa* introduced in 1983 banned the surgeries for Muslims – even though

1108 RRT Case Number 0903346, Refugee Review Tribunal Decision Record, 5 February 2010.

1109 Altice, F., Brown, SE., Gibson, BA., Kamarulzaman, A., Rutledge, R., Wickersham, JA. (2016). Gender identity, health care access, and risk reduction among Malaysia's mak nyah community. *Glob Public Health*, 11(7-8), 1012.

1110 Ibid, page 1017.

1111 *Act 366 Poisons Act 1952*.

1112 Altice, F., Brown, SE., Gibson, BA., Kamarulzaman, A., Rutledge, R., Wickersham, JA. (2016). Gender identity, health care access, and risk reduction among Malaysia's mak nyah community. *Glob Public Health*, 11(7-8), 1017.

1113 Human Rights Watch. (2014). *I am Scared to be a Woman: Human Rights Abuses against Trans People in Malaysia*, page 46. Available at: <https://www.hrw.org/report/2014/09/24/im-scared-be-woman/human-rights-abuses-against-transgender-people-malaysia>

the *fatwa* does not have force of law, doctors stopped performing the procedure.^{1114,1115} As a result, trans people seek surgeries overseas, forcing them to incur additional costs and face additional barriers in accessing proper aftercare.¹¹¹⁶

Forced “rehabilitation”

In addition to a lack of health care services, transgender people in Malaysia are subjected to forced ‘rehabilitation.’ Despite a general consensus that efforts to rehabilitate one’s sexual orientation and gender identity classify as a violation of human rights,^{1117,1118} the Malaysian government actively promotes the idea that LGBTI people can be “cured,” rehabilitated, and return to the “right path.”¹¹¹⁹

The CEDAW Committee has highlighted the discrimination the LGBTI community faces in accessing health care services.¹¹²⁰ In the 2018 Concluding Observations to Malaysia, the Committee urged the Government to expedite measures to discontinue all policies and activities which aim to “correct” or “rehabilitate” LGBTI women.¹¹²¹

Women prisoners

Mothers and pregnant women

The Human Rights Commission of Malaysia, SUHAKAM, conducted a nationwide survey on the access to health care in prisons. They concluded that there is a need to provide prenatal and postpartum care and treatment for female prisoners,¹¹²² as prisons are not medically equipped to safely provide birth services and pregnant prisoners do not necessarily have access to female medical practitioners. The study also highlighted

1114 Ibid.

1115 Altice, F., Brown, SE., Gibson, BA., Kamarulzaman, A., Rutledge, R., Wickersham, JA. (2016). Gender identity, health care access, and risk reduction among Malaysia’s mak nyah community. *Glob Public Health*, 11(7-8), 1012.

1116 Ibid, page 1017.

1117 OHCHR. (2014). *Preliminary observations and recommendations by the UN Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health*. Available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15370&LangID=E>

1118 WHO. (2012). “*Therapies to change sexual orientation lack medical justification and threaten health*. Pan American Health Organization. Available at: http://www.paho.org/hq/index.php?option=com_content&view=article&id=6803&Itemid=1926

1119 Jakim and Jawi help LGBT folk return to ‘right path’.” The Star Online. 13 November 2014. Available at: <https://www.thestar.com.my/news/nation/2014/11/13/jakim-and-jawi-help-lgbt-folk-return-to-right-path/>

1120 CEDAW *Concluding Observations to Malaysia 2018*, para 39 (CEDAW/C/MYS/CO/3-5).

1121 Ibid, para 48.

1122 “Suhakam: Give mothers in prison proper health care, child support.” Free Malaysia Today. 30 May 2017. Available at: <http://www.freemalaysiatoday.com/category/nation/2017/05/30/suhakam-give-mothers-in-prison-proper-health-care-child-support/>

the need for nutritional requirements to be met for breastfeeding mothers.

Regarding women prisoners, it is generally accepted that it is in the best interest of children to be allowed to stay with their mothers in prison, and Malaysian law allows children under the age of three to stay with their mothers. Despite this, there are no nursery programmes available in prison facilities.¹¹²³

Transgender women in prison

One's legally recognised gender, as designated on their birth certificate or identity card, is used to determine whether a convicted person is sent to a male or female prison facility in Malaysia. Placing transgender women inmates in a male prison however can lead to them being victims of sexual violence, including rape or molestation, as well as of physical violence and other degrading and humiliating treatment.¹¹²⁴

SUHAKAM observed that there is no standardised policy concerning the placement of transgender persons in prisons. They noted that although the number of transgender prisoners in Malaysia is low, these individuals are at a substantially elevated risk of suffering from assault or self-harm.¹¹²⁵

Recommendations to the Malaysian Government regarding Article 12 of CEDAW

- Collect disaggregated data on health and tailor health programs to the specific needs of vulnerable populations.
- Collect health data from both the public and private sector.
- Target available options for contraception to both men and women.
- Eliminate the requirement of parental consent for unmarried women to access contraception, abortion, or sterilisation.
- Abolish the requirement of spousal consent for unmarried young women to access contraception, abortion, and sterilization.

1123 Ibid.

1124 "Suhakam calls for SOP on transgender prisoners." Free Malaysia Today. 30 May 2017. Available at: <http://www.freemalaysiatoday.com/category/nation/2017/05/30/suhakam-calls-for-sop-on-transgender-prisoners/>

1125 Ibid.

- Implement training programmes with public and private health care providers on abortions.
- Institute mandatory comprehensive, scientific sexuality education in the national school system. The teacher training curriculum should include comprehensive sexuality education.
- Maintain the confidentiality of women's health data, including their reproductive and sexual health information. The disclosure of a woman's health status to anyone, including a spouse, should be prohibited unless the woman has given express permission for it.
- Develop an action plan to eliminate the stigma and discrimination surrounding HIV/AIDS.
- Introduce specific programs catering to women who use drugs.
- Make HIV testing optional for couples intending to marry and require HIV status to be kept confidential.
- Decriminalise sex work and associated practices, such as carrying condoms, that are used to detain and harass sex workers.
- Implement programmes to create awareness among workers on HIV and other sexually transmitted diseases.
- Prohibit all forms of female circumcision and penalise its practice.
- Make ante-natal and maternity care affordable for pregnant women, including non-citizens such as refugees.
- Publicise ante-natal check-up services that are provided by NGOs and private clinics as an alternative to government health facilities.
- Offer post-natal care and family planning counselling as part of sexual and reproductive health services.

- Ensure that all women, including rural and migrant women, have access to low-cost health services, including in particular pap smears for early detection of cervical cancer, immunisations including for HPV to protect against cervical cancer, mammograms, as well as information on breast self-examination for early detection of breast cancer.

- Extend the OSCC concept to designated rural clinics.

14.

Article 13

SOCIAL AND ECONOMIC RIGHTS

Article 13

States Parties shall take all appropriate measures to eliminate discrimination against women in other areas of economic and social life in order to ensure, on a basis of equality of men and women, the same rights, in particular:

- (a) The right to family benefits;
- (b) The right to bank loans, mortgages and other forms of financial credit;
- (c) The right to participate in recreational activities, sports and all aspects of cultural life.

Key issues in this chapter:

- There is a lack of disaggregated data on poverty by gender. As such, the ways in which females may be specifically and disproportionately affected by poverty remains unknown.
- Low labour force participation for women leaves many prone to poverty in old age as they are unable to rely on a pension for income.
- The government spends very little on benefits and **disadvantaged women often cannot access welfare assistance** from the state.
- **Non-citizen wives of Malaysian men face difficulty in opening individual bank accounts**, leaving them economically dependent on their husbands.
- **Non-citizen spouses who wish to purchase housing or property are subject to foreign investment directives and limitations on property purchase or ownership.** This is cost-prohibitive for middle and lower-income families and many non-citizen wives are excluded from purchasing or own property.
- Women from **East Malaysia and LGBTI women are especially vulnerable** to issues affecting their socio-economic wellbeing.

Much of what is contained in the 2006 Malaysian NGO Shadow Report and the 2012 Malaysian NGO Alternative Report relating to CEDAW Article 13 remains relevant.

In the 2006 report, the issues of childcare and parental leave were raised in relation to CEDAW Article 13, however in the current report these topics are addressed in the chapter on CEDAW Article 11. This chapter will focus instead on the effects of insufficient welfare benefits, pension plans, and bankruptcies on women, as well as restrictions on foreign wives, in line with the 2018 Malaysian NGO Shadow Report submitted to CEDAW.

2018 Concluding Observations to Malaysia

In the CEDAW Committee's 2018 Concluding Observations to Malaysia, the Committee expressed concern regarding the lack of specific measures targeting women and girls in ethnic minorities and aboriginal communities living rurally.¹¹²⁶ The low representation of women in village committees and the high drop-out rates of rural school girls were also highlighted as issues.¹¹²⁷

The CEDAW Committee also stated concern that foreign women married to Malaysian men are dependent on their husbands for their legal status, placing them in a position of vulnerability, and that those on a Long Term Social Visit Pass visa were unable to engage in any form of employment.¹¹²⁸

The Committee gave the following recommendations to the State party with regards to the social and economic rights of rural women and foreign wives:

- a) Eliminate all barriers inhibiting rural women's participation in village committees and ensure the integration and mainstreaming of a gender perspective into all agricultural and rural development policies, strategies, plans and programmes, enabling rural women to act and be visible as stakeholders, decision-makers and beneficiaries;^{1129,1130}
- b) Revise laws and policies to simplify the process of granting legal status to foreign women who are married to Malaysian men, including by removing the requirement that the husband be present for renewals of the Long Term Social Visit Pass, as well as simplifying the process of obtaining permanent residency. The Committee also recommended that the State party amend its laws and policies to enable foreign wives to work.¹¹³¹

1126 CEDAW Concluding Observations to Malaysia 2018, para 41 (CEDAW/C/MYS/CO/3-5).

1127 Ibid.

1128 Ibid, para 51.

1129 This recommendation was made with reference to the CEDAW Committees general recommendation on gender-based violence against women. Refer to CEDAW, *General Recommendation No. 34*, 14 July 2017 (CEDAW/C/GC/35).

1130 CEDAW Concluding Observations to Malaysia 2018, para 42 (CEDAW/C/MYS/CO/3-5).

1131 Ibid, para 52.

Socio-economic status of women

Poverty

According to the Eleventh Malaysia Plan, 0.6% of Malaysians were living below the poverty line in 2014.¹¹³² In 2009, the mean monthly income of the bottom 40% of Malaysian households was RM 1,440, but according to the government's statistics this figure had risen to RM 2,537 by 2014.¹¹³³ Though such data shows an improvement in the socio-economic situation of Malaysians generally, the Eleventh Malaysia Plan does not disaggregate the data on poverty by gender. As such, the ways in which females may be specifically and disproportionately affected by poverty remains unknown.

Women's human rights NGOs often find that their clients experiencing violence and discrimination also struggle with poverty, adding to their vulnerability.¹¹³⁴ The feminisation of poverty is an increasingly recognised concept around the world, with households headed by women at an elevated risk of poverty.¹¹³⁵

The 2010 Millennium Development Goals Report for Malaysia stated that, among the poor, female headed households were at the very bottom of income distribution. The poverty incidence for female headed households was 4.1% in 2009, compared with 3.7% for male headed-households in the same year.¹¹³⁶ These statistics have reportedly greatly improved. The 2015 Millennium Development Goals Report for Malaysia states that, for 2014, the rates of poverty in female-headed household and male-headed households were 0.8% and 0.6% respectively.¹¹³⁷ Female headed-households have seemingly benefited from various poverty reduction programmes, and efforts on this front must be continued.

Women prone to poverty in old age

Increasing longevity of life means that the Malaysian pension system will not be sufficient to support women who outlive rising life expectancies. According to Brigitte Miksa,

1132 EPU. (2015). *Eleventh Malaysia Plan: 2016-2020*. Available at: https://www.talentcorp.com.my/clients/TalentCorp_2016_7A6571AE-D9D0-4175-B35D-99EC514F2D24/contentms/img/publication/RMKe-11%20Book.pdf

1133 Ibid.

1134 "Domestic violence – a reality check." The Star Online. 19 December 2015. Available at: <https://www.thestar.com.my/news/nation/2015/12/19/domestic-violence-a-reality-check-we-need-a-change-of-mindsets-including-notions-of-male-superiorit/>

1135 UN. (2010). *The World's Women 2010*. Available at: <https://unstats.un.org/unsd/demographic-social/products/worldswomen/documents/Poverty.pdf>

1136 UN Malaysia and EPU. (2011). *Malaysia: The Millennium Development Goals at 2010*. Available at: <https://www.unicef.org/malaysia/Malaysia-MDGs-Progress-Report-2010.pdf>

1137 UN Malaysia and EPU. (2015). *Malaysia Millennium Development Goals Report*. Available at: http://un.org.my/upload/undp_mdg_report_2015.pdf

the Allianz Asset Management Head of International Pension, “current Employees Provident Fund (EPF) savings are too low to finance a longer period of retirement and depending only on EPF payments will not be enough” to support women through old age.¹¹³⁸

In addition, low labour force participation for women leaves many prone to poverty in old age as they are unable to rely on a pension for income. Statistics show that, in 2010, 47% of women over 65 years of age were widowed –one of the predominant factors associated with poverty in old age if the woman was economically dependent on her husband while he was alive.¹¹³⁹

Termination of pension

Generally, women in Malaysia enter into the workforce before becoming a parent. For government workers, should a woman leave the workforce early in order to raise children, as is often the case due to societal pressures, her pension will be foregone.¹¹⁴⁰

The chapter on CEDAW Article 5 in this report discusses women leaving the workforce in greater depth.

Women’s experience of bankruptcy

Almost 5,000 Malaysian women were declared bankrupt from January to October 2017.¹¹⁴¹ Between 2013 to October 2017, this number amounted to more than 30,000 women.¹¹⁴² Women’s bankruptcy tended to be contributed to and compounded by loan procedures lacking in safe-guards and low female participation rates in the workforce.¹¹⁴³

1138 “Women prone to old age poverty.” The Malaysian Reserve. 31 March 2017. Available at: <https://themalaysianreserve.com/2017/03/31/women-prone-to-old-age-poverty/>

1139 Ibid.

1140 “Boosting women’s participation in workforce”. New Straits Times. 11 December 2017. Available at: <https://www.nst.com.my/opinion/columnists/2017/12/313174/boosting-womens-participation-workforce>

1141 “Ignorance, loan ‘culture’ leading to young bankrupts in Malaysia”. Today Online. 16 December 2017. Available at: <http://www.todayonline.com/world/ignorance-loan-culture-leading-young-bankrupts-malaysia>

1142 Ibid.

1143 “Ignorance, loan ‘culture’ leading to young bankrupts in Malaysia”. Today Online. 16 December 2017. Available at: <http://www.todayonline.com/world/ignorance-loan-culture-leading-young-bankrupts-malaysia>

Benefits for families and women

Malaysia is not a welfare state and family benefits are minimal. Generally, the Malaysian government spends very little on benefits, and those payments which are made to single mothers and older people are made in an ad hoc way.¹¹⁴⁴

Though some programmes for monetary assistance exist, disadvantaged women often cannot access welfare assistance from the state, as they are either unaware of such aid or deemed ineligible for assistance based on unrealistic poverty line income levels.¹¹⁴⁵ For rural women, these issues are compounded by a lack of access to offices issuing benefits.

Social and economic discrimination against non-citizen wives

In Asia, cross-border marriages have been rising more consistently than anywhere else in the world.¹¹⁴⁶ This necessitates implementing measures which uphold the social and economic rights of both non-citizen women who marry Malaysian men and Malaysian women who marry non-citizens to ensure the wellbeing and economic development of all individuals permanently living in Malaysia.

Access to banking and financial services for non-citizen wives

Non-citizen wives who are not employed or permanent residents are unable to open individual bank accounts and may only open an account jointly with their husbands.¹¹⁴⁷ Non-citizen spouses also face difficulties securing credit cards in their own names – often they are required to secure a credit card with a large deposit of RM 10,000, or otherwise be linked with or dependent on their Malaysian spouse for account access.¹¹⁴⁸ This lack of economic independence creates a situation of vulnerability for non-citizen wives, particularly those who are in situations of domestic violence and financial abuse.

1144 “RM1.4bil allocation for elderly, disabled and single mothers.” *New Straits Times*. 24 March 2012.

1145 Prema Devaraj. (2010). Unpublished Paper. George Town, Penang: Women’s Centre for Change.

1146 “International Marriage - Herr and Madame, Señor and Mrs”. *The Economist*. 12 November 2011. Available at: <http://www.economist.com/node/21538103>

1147 “Setback for foreign spouses.” *The Star Online*. 30 October 2013. Available at: <https://www.thestar.com.my/opinion/letters/2013/10/30/setback-for-foreign-spouses/>

1148 “Survival manual for foreign spouses of Malaysian citizens.” *Aliran*. 23 March 2016: Available at: <https://aliran.com/civil-society-voices/2016-civil-society-voices/survival-manual-foreign-spouses-malaysian-citizens/>

CEDAW Committee's General Recommendation No. 21 states:

“When a woman cannot...have access to financial credit, or can do so only with her husband's or a male relative's concurrence or guarantee, she is denied legal autonomy... Such restrictions seriously limit the woman's ability to provide for herself and her dependants.”¹¹⁴⁹

Recognising the impact that these restrictive laws have upon not only women but also their dependents is essential if the best interests of the child are to be adequately upheld. Irrespective of ethnicity, religion, or income levels, immediate permanent residence or citizenship status should be granted to children with a Malaysian parent, allowing children access to residence, education, healthcare, and other essential services.¹¹⁵⁰ This should include children born to Malaysian mothers outside of Malaysia.¹¹⁵¹

Access to housing

Non-citizen spouses are subjected to foreign investment directives and to limitations on property purchase or ownership. The minimum property purchase price for foreigners is currently at a floor of RM 1 million in some states and RM 2 million in others, while in Penang the floor is RM 3 million.¹¹⁵² This is applicable even when foreign spouses are purchasing property jointly with their Malaysian spouses, which has a direct impact on middle to low-income families who may effectively be barred from buying property altogether.¹¹⁵³

Alternatively, if the Malaysian spouse earns enough to buy housing directly under his or her name, the non-citizen will not have his or her name listed as an owner of the property. This can leave non-citizen wives in vulnerable situations of complete financial dependence on their husbands, without the ability to support themselves in the event of domestic violence, divorce, or death.¹¹⁵⁴

1149 CEDAW, *General Recommendation No. 21*, 1994, para 7 (A/49/38).

1150 UN General Assembly, *Convention on the Rights of Child*, 20 November 1989, Art 7 (A/44/49).

1151 “Many children born overseas are in limbo about their M'sian citizenship status.” Malaysian Digest. 13 April 2017. Available at: <http://www.malaysiandigest.com/opinion/669222-many-children-born-overseas-are-in-limbo-over-their-m-sian-citizenship-status.html>

1152 “Setback for Foreign Spouses.” The Star Online. 30 October 2013. Available at: <http://www.thestar.com.my/opinion/letters/2013/10/30/setback-for-foreign-spouses/>

1153 Ibid.

1154 “Plight of foreign spouses.” The Star Online. 8 February 2013. Available at: <https://www.thestar.com.my/opinion/letters/2013/02/08/plight-of-foreign-spouses/>

Access to education, religious facilities, and tourist and leisure attractions

Non-citizen spouses are not permitted to study in Malaysia, unless they withdraw from the Long Term Social Visit Pass (LTSVP) and are moved onto a student visa.¹¹⁵⁵ This effectively jeopardises the non-citizen spouse's eligibility for permanent residence after five years on the LTSVP by requiring them to restart their five years upon completion of study and issuance of a new LTSVP.¹¹⁵⁶ This creates a further obstacle to non-citizen spouses already arduous path towards obtaining permanent residency or citizenship.

Muslim foreign spouses cannot register with Tabung Haji, Malaysia's premier financial institution to facilitate the Muslim community's savings for pilgrimage to Mecca.¹¹⁵⁷ This facility is only available to Malaysian citizens.¹¹⁵⁸

Access to tourist and leisure attractions

Foreign spouses of Malaysians pay the same rates as tourist foreigners at Malaysian tourist and leisure attractions, such as zoos, water parks, and museums.¹¹⁵⁹ It is a much higher entry fee than their Malaysian citizen family members are subject to pay.

Social and economic rights of East Malaysian women

Despite the cost of living being higher in East Malaysia than Peninsular Malaysia, the minimum wage for Sabah and Sarawak remains lower than the minimum wage on the mainland. Though there has been an increase in minimum wage through the Minimum Wages Order of 2016, the minimum wage for East Malaysia sits at RM 920 per month compared with RM 1,000 per month for Peninsular Malaysia.¹¹⁶⁰

1155 "Ease the burden of foreign spouses." The Star Online. 1 April 2016. Available at: <https://www.thestar.com.my/opinion/letters/2016/04/01/ease-the-burden-of-foreign-spouses/>

1156 Ibid.

1157 "About us." Tabung Haji. Undated. Available at: <https://www.tabunghaji.gov.my/en/corporate/corporate-information/about-us>

1158 "Are you a Malaysian planning to marry a foreigner? Then read this." Malaysian Digest. Available at: <http://www.malaysiandigest.com/features/558325-are-you-a-malaysian-planning-to-marry-a-foreigner-then-read-this.html>

1159 "Ease the burden of foreign spouses." The Star Online. 1 April 2016. Available at: <https://www.thestar.com.my/opinion/letters/2016/04/01/ease-the-burden-of-foreign-spouses/>

1160 "Minimum Wages Order 2016 to take effect on July 1 – Riot." Borneo Post Online. 2 May 2016. Available at: <http://www.theborneopost.com/2016/05/02/minimum-wages-order-2016-to-take-effect-on-july-1-riot/>

In 2013, 63% of those living in Sabah and 48% of those living in Sarawak were earning less than RM 700 - this is below the poverty line.¹¹⁶¹ Further, incomes in Sarawak are low in relation to the high price of goods, transportation, and other costs of living in remote or rural households.¹¹⁶² In rural Sarawak, women's lower socio-economic status is compounded by a lack of infrastructure, which can limit the ability of girls to attend school and impedes women from participating in the workforce.¹¹⁶³

The Ministry of Human Resources (MHR) stated that a new minimum wage to bridge the income gap between East and Peninsular Malaysia would be introduced in 2018, however, there have been no further developments on this front.¹¹⁶⁴

Poverty levels in East Malaysia

Sabah and Sarawak generally experience higher poverty levels than mainland Malaysia. According to the government's Economic Planning Unit (EPU), poverty incidence in Sabah, the Malaysian state with the highest poverty rate, was 4.0% in 2014.¹¹⁶⁵

Further, there is a clear rural-urban divide in the poverty levels experienced by those living in East Malaysia. While 9.1% of households in urban Sarawak earn under RM 1,999 per month, this rate reaches 33.1% of households when considering rural Sarawak.¹¹⁶⁶ Similarly, in Sabah, 12.5% of urban households earn under RM 1,999 per month, compared to 28.8% of rural households.¹¹⁶⁷ Statistics from the 2014 Household Income Survey show that only 61.6% of rural Sarawak households have access to piped water, while the percentage of car ownership per household stands at only 47.4% rurally compared to 84.9% in urban areas.¹¹⁶⁸

1161 "Minimum wage a violation of human liberty?" Free Malaysia Today. 13 April 2013. Available at: <http://www.freemalaysiatoday.com/category/opinion/2013/04/13/minimum-wage-a-violation-of-human-liberty/>

1162 Ibid.

1163 Ibid.

1164 "HR Ministry to announce new 2018 minimum wage, bridge income gap." New Strait Times Online. 12 October 2017. Available at: <https://www.nst.com.my/news/nation/2017/10/290333/hr-ministry-announce-new-2018-minimum-wage-bridge-income-gap>

1165 Centre for Poverty and Development Studies. (2016). *Poverty Summary Malaysia*. Available at: http://cpds.um.edu.my/wp-content/uploads/2016/08/Poverty-Summary_Malaysia_270516.pdf

1166 "Low incomes a massive challenge for Sarawak." Malaysiakini. 27 April 2016. Available at: <https://www.malaysiakini.com/news/339342>

1167 Ibid.

1168 Ibid.

Social and economic rights of LGBTI

Globally, LGBTI women fare poorly compared to the general population on a range of social and economic indicators.¹¹⁶⁹ Despite this, there are no government initiatives or plans specifically addressing the social and economic marginalisation of LGBTI women in Malaysia.

Government programmes aimed at LGBTI women generally promote changes in gender expression and identity, seeking to align individuals with hegemonic femininity and heterosexuality, and do not relieve specific disadvantages faced by LGBTI persons. This is discussed in depth in the chapters on CEDAW Article 5 and Article 12 of this report.

Recommendations to the Malaysian Government regarding Article 13 of CEDAW

- Compile and publish gender disaggregated data on poverty.
- Review eligibility criteria for access to welfare programmes based on a realistic poverty line.
- Create and implement a comprehensive plan to improve access to government benefits for women in remote areas, especially in East Malaysia.
- Allocate more funds for targeted family benefits for housing, child allowances, food, and nutritional supplements for families living below poverty line and for single parent families.
- Automatic permanent residence should be granted to non-citizen spouses upon two years stay in Malaysia, enabling non-citizen wives' residency status to exist independent to their husbands.
- Amend the law to allow foreign spouses and permanent residents to purchase housing under the same conditions as Malaysians. Foreign spouses and their children should have security of housing equal to that of all Malaysians.

1169 “The real cost of LGBT discrimination.” World Economic Forum. 5 January 2016. Available at: <https://www.weforum.org/agenda/2016/01/the-real-cost-of-lgbt-discrimination/>

- Allow foreign spouses to study while on the LTSVP, so as not to interrupt their permanent residence application.

- Allow non-citizen spouses access to tourist and leisure attractions on the same basis as their Malaysian family members.

- Consider excluding foreign spouses of Malaysians from overarching policies and regulations governing foreigners.

“The most common way people give up their power is by thinking they don’t have any.”

—Alice Walker

15.

Article 14

RURAL WOMEN

ARTICLE 14

1. States Parties shall take into account the particular problems faced by rural women and the significant roles which rural women play in the economic survival of their families, including their work in the non-monetized sectors of the economy, and shall take all appropriate measures to ensure the application of the provisions of the present Convention to women in rural areas.

2. States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right:

(a) To participate in the elaboration and implementation of development planning at all levels;

(b) To have access to adequate health care facilities, including information, counselling and services in family planning;

(c) To benefit directly from social security programmes;

(d) To obtain all types of training and education, formal and non-formal, including that relating to functional literacy, as well as, inter alia, the benefit of all community and extension services, in order to increase their technical proficiency;

(e) To organize self-help groups and co-operatives in order to obtain equal access to economic opportunities through employment or self employment;

(f) To participate in all community activities;

(g) To have access to agricultural credit and loans, marketing facilities, appropriate technology and equal treatment in land and agrarian reform as well as in land resettlement schemes;

(h) To enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.

Key issues in this chapter:

- The representation of women in village committees is very low.
- The targeted 30% quota for women's political participation in rural areas is far from being reached. Orang Asli women have never been put forward as candidates or elected to office.
- Teenage pregnancy and child marriage disproportionately affect rural Malaysian girls, especially those in East Malaysia.
- Rural women face many obstacles in accessing healthcare. When rural women do seek healthcare services, the facilities of rural clinics are often inadequate, understaffed, and underfunded compared with those available in urban areas.^[1]
- Penan communities in Sarawak experience a denial of their rights to land and access to services. Many are dependent on logging companies to provide basic services, such as transport.
- Women and girls living in rural or remote Malaysia are particularly vulnerable to sexual and physical abuse, though the state government has failed to afford the right to redress for these abuses.

Unfortunately, there is still a lack of data available on rural women in Malaysia. This includes data disaggregated by gender, ethnicity, and rural-urban classification regarding employment, education, health, and other areas of concern. Without this data, a comprehensive analysis of the situation of rural Malaysian women is not possible. This chapter presents some of the issues impacting rural women based on the information that is available.

2018 Concluding Observations to Malaysia

In the CEDAW Committee's 2018 Concluding Observations to Malaysia, the Committee expressed its concern about the lack of specific measures targeting women and girls among rural and indigenous communities.¹¹⁷⁰ The Committee also highlighted the low representation of women in village committees and the high drop-out rates among rural school girls.¹¹⁷¹

1170 CEDAW Concluding Observations to Malaysia 2018, para 41 (CEDAW/C/MYS/CO/3-5).

1171 Ibid.

The Committee recommended to the State party to:

- a) Expand programmes aimed at facilitating women's and girls' access to education, employment and health care, including through the adoption of temporary special measures;
- b) Eliminate all barriers inhibiting rural women's participation in village committees and ensure the integration and mainstreaming of a gender perspective into all agricultural and rural development policies, strategies, plans and programmes, enabling rural women to act and be visible as stakeholders, decision-makers and beneficiaries;
- c) Ratify Indigenous and Tribal Peoples Convention, 1989 (No. 169) of the International Labour Organization.¹¹⁷²

Rural women in leadership

Low representation of women in village committees

Women's participation in the Village Development and Security Committees (VDSCs) is low throughout the country. These committees are not local governments but, rather, work alongside state and federal governments to articulate the specific needs of villages, in order to have these needs incorporated into policy and development plans. In 2009, out of the 15,460 committees throughout the country, only 161 committees had a woman chairperson (1%).¹¹⁷³ Currently, there are a total of 16,459 committees throughout the country, but the number of women chairpersons is unknown.¹¹⁷⁴

In some cases, the low rates of female participation on village committees is purportedly due to requirements that committee heads conduct religious ceremonies which only men are permitted to conduct. Such requirements should not justify excluding women from these leadership positions, and constitute indirect discrimination.

Political participation of rural women

As in urban areas, the targeted 30% quota for women's political participation in rural areas is far from being reached. Orang Asli women have never been put forward as candidates or elected to office - only indigenous women from East Malaysia have been elected into office to date.¹¹⁷⁵

1172 Ibid, para 42.

1173 For more information, refer to *Malaysian NGO CEDAW Alternative Report 2012*, page 152.

1174 "JKKK/JKKP Information." Official Portal Ministry of Rural Development. 4 July 2018. Available at: <http://www.rurallink.gov.my/en/jkkkjkkp-information-2/>

1175 "International Women's Day 2017: Being bold for systemic change." Malay Mail Online. 8 March 2017. Available at: <http://www.themalaymailonline.com/print/what-you-think/international-wom->

It is current practice that only male Tok Batins may be appointed leaders of Orang Asli villages by the Department of Orang Asli Development (DOAD), despite the fact that these villages historically had some female Tok Batins.¹¹⁷⁶

Social and economic rights of rural women

Rural development was highlighted as a priority goal in the government's Tenth Malaysia Plan, in order to "enhance inclusivity as the nation progressed towards becoming an advanced inclusive nation."¹¹⁷⁷ Though there has not been much progress made on this front, the government's theoretical emphasis on rural development has been carried through as a priority in the Eleventh Malaysia Plan.¹¹⁷⁸ However, there are no plans or strategies stated in the Eleventh Malaysia Plan which are gender-specific. This is out of touch with the fact that rural women have been disproportionately affected by lack of development in rural and remote areas, experiencing a lack of access to essential services, education and, employment.

Women in rural areas are critical contributors to their local economies and are often simultaneously responsible for running households, raising children, and undertaking agricultural work.¹¹⁷⁹ Despite this, rural women's roles are almost never reflected in the mainstream public development agenda. Given the important contributions of rural women to their communities, policy measures and targeted rural development programmes should have a gendered focus if the government truly wishes to reach rural economic and social objectives.¹¹⁸⁰

The input of rural women is necessary if the government is to adequately address the nuanced needs and barriers faced by rural women in each area of Malaysia. However, as discussed in the chapter on CEDAW Article 13 in this report, women are normally bypassed in consultations regarding rural and village development.

Education of rural girls and women

In rural areas of Malaysia, settlements, villages, and longhouses are not easily accessible due to poor infrastructure. Because of this remoteness, the attendance of rural children

ens-day-2017-being-bold-for-systemic-change

1176 Ibid.

1177 EPU. *Transforming Rural Areas to Uplift Wellbeing of Rural Communities, Strategy Paper 4*. 4-5. Available at: <http://www.epu.gov.my/sites/default/files/Strategy%20Paper%2004.pdf>

1178 Ibid.

1179 Daniel Ugih Echoh. (Undated). *The Role of Iban Women in Rural Development in Sarawak*. Universiti Sains Malaysia. Available at: https://www.academia.edu/31750311/THE_ROLE_OF_IBAN_WOMEN_IN_RURAL_DEVELOPMENT_IN_SARAWAK

1180 Ibid.

at school is usually irregular, and the drop-out rate at rural schools is high.¹¹⁸¹ Some rural school girls are dependent on logging vehicles and overnight stays at logging camps in order to travel to school.¹¹⁸² This puts them at higher risk of sexual abuse, as is discussed in detail later in this chapter.

Of the many consequences of low school attendance and high numbers of school drop outs, are the sub-optimal literacy rates in Sarawak (79%) and Sabah (72%).¹¹⁸³ These are significantly lower than the nationwide average, which sits at 97.3%.¹¹⁸⁴

It is critical to provide rural women with legal literacy trainings to ensure the ability to access available governmental legal services in times of crisis.

Teenage pregnancy and child marriage amongst rural girls

Teenage pregnancy and child marriage are issues which disproportionately affect rural Malaysian girls, especially those in East Malaysia.^{1185,1186} For example, in 2016 an estimated 331 marriages of girls under the age of 17 were registered under the Sarawak Native Council.¹¹⁸⁷ This number does not include civil marriages of under aged girls but still remains unacceptably high.

In April 2017 the government implemented an awareness and advocacy programme on the subject of sex and reproduction in Kuching, Sarawak, to address high rates of teenage pregnancy in the area.¹¹⁸⁸ Since 2014, a 10% decline per annum has been observed in recorded teenage pregnancy rates in Sarawak, which the government credits to sexual

1181 “Orang asli issues: Access to education still difficult.” The Star Online. 24 March 2015. Available at: <http://www.thestar.com.my/lifestyle/family/features/2015/03/24/orang-asli-issues-access-to-education-still-difficult/>

1182 “The Women of Sarawak and Mindoro on the ‘Invisible Battles’ of Climate Change.” New Security Beat. 8 September 2016. Available at: <https://www.newsecuritybeat.org/2016/09/eye-storm-women-sarawak-mindoro-invisible-battles-climate-change/>

1183 “Literacy rate in Sabah and Sarawak lower.” Borneo Post Online. 16 May 2017. Available at: <http://www.theborneopost.com/2017/05/16/literacy-rate-in-sabah-and-sarawak-lower/>

1184 Ibid.

1185 “Teenage pregnancy in Sarawak second highest in the country.” The Borneo Post. 8 January 2017. Available at: <https://www.pressreader.com/malaysia/the-borneo-post-sabah/20170108/281844348316804>

1186 “Teenage pregnancy rate highest in past five years.” The Star Online. 21 October 2014. Available at: <http://www.thestar.com.my/news/community/2014/10/21/consistently-in-bad-light-teenage-pregnancy-rate-highest-in-past-five-years/#WYhTh5HcEo06231D.99>

1187 Ibid.

1188 “Advocacy programme to help address teen pregnancy, child marriage – Fatimah.” Borneo Post Online. 11 March 2017. Available at: <http://www.theborneopost.com/2017/03/11/advocacy-programme-to-help-address-teen-pregnancy-child-marriage-fatimah/>

education programmes run under the One Stop Teenage Pregnancy Committee.¹¹⁸⁹ It is important that effective, rights-based sexual education is made accessible to all girls in Malaysia, be they living in rural, remote, or urban areas, in order to reduce unwanted pregnancies and promote sexual health, understanding, and safety.

Single mothers in rural areas

Single mothers in rural areas face many barriers to gaining and maintaining employment. A lack of available transportation to work, lack of qualifications and training necessary to obtain decently paid work, and discrimination at work are just some of these barriers.¹¹⁹⁰ To exacerbate this, mothers in rural areas generally bear the responsibility of taking care of elderly family members as well as their children, which significantly impacts the time available to rural single mothers to seek and maintain employment.¹¹⁹¹

Many women in rural areas essentially become single mothers when their husbands move away for work and are unable to return for extended periods of time.¹¹⁹² These women are often overlooked in national conversations that concern advancing the position of Malaysian single mothers.

Though various targeted government initiatives which seek to increase social and economic participation within the rural population are theoretically available to rural single mothers, this group faces distinct challenges in accessing government social services and entrepreneurial programmes.¹¹⁹³

Rural women's access to health

Rural women face many obstacles in accessing healthcare. Distances of clinics from villages, longhouses, and settlements can be prohibitive, especially considered in light of the difficulty and expense of obtaining some medical treatments.¹¹⁹⁴ When rural women do seek healthcare services, the facilities of rural clinics are often inadequate,

1189 Ibid.

1190 "Create support system for single mothers." Borneo Post Online. 30 March 2017. Available at: <http://www.theborneopost.com/2017/03/30/create-support-system-for-single-mothers/>

1191 Ibid.

1192 "The Women of Sarawak and Mindoro on the "Invisible Battles" of Climate Change." New Security Beat. 8 September 2016. Available at: <https://www.newsecuritybeat.org/2016/09/eye-storm-women-sarawak-mindoro-invisible-battles-climate-change/>

1193 National Council of Women's Organisations. (2015). *Annual Report December 2012 – December 2014*. Available at: http://www.ncwomalaysia.com/doc/ourvoice/publication/annual%20report/NCWO_AR2014.pdf

1194 "Health care delivery in Malaysia: Changes, challenges and champions." *Journal of Public Health in Africa*. 5 September 2011. Available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5345496/>

understaffed, and underfunded compared with those available in urban areas.¹¹⁹⁵

Healthcare providers, especially nurses, are exposed to a higher risk of experiencing gender-based violence when travelling to rural areas to provide services, however they are often not provided with insurance to cover these increased risks.¹¹⁹⁶

For more information regarding Malaysian women and health, refer to the chapter on CEDAW Article 12 in this report.

Abuse and exploitation of rural women and girls in Sarawak

Abuse of Penan women and girls in Sarawak

The abuse of women and girls in Sarawak is well documented, especially amongst the Penan community. Both the Human Rights Commission of Malaysia (SUHAKAM) and a National Taskforce investigated and confirmed that sexual abuse of women and girls was rife in the Penan community, due largely to a combination of abject poverty, lack of access to health care and education, and vulnerability to local timber workers.^{1197,1198,1199}

The severity and complexity of the situation faced by rural women and girls was captured in a short documentary, *The Women of Sarawak and Mindoro: The Invisible Battle of Climate Change*, which depicts how climate change has worsened sexual violence in Sarawak:

“Deforestation and heavy rainfall have led to severe flooding; at the same time, many men have left for the mainland to search for better jobs. During these floods, not only does the onus fall on women to provide for their families but they are also vulnerable to sexual violence... Women and girls, some as young as 10 years old, have suffered sexual violence and exploitation by timber workers, including rape and domestic abuse... As logging displaces traditional travel routes, women

1195 “Accessibility to health care services and other facilities in Malaysia.” *Challenges*. 1 May 2018. Available at: <http://challengesmedia.com/3599-2/>

1196 National Council of Women’s Organisations. (2015). *Annual Report December 2012 – December 2014*. Available at: http://www.ncwomalaysia.com/doc/ourvoice/publication/annual%20report/NCWO_AR2014.pdf.

1197 “Suhakam to look into abuse claims by Penans.” *The Star Online*. 1 October 2008. Available at: <https://www.thestar.com.my/news/nation/2008/10/01/suhakam-to-look-into-abuse-claims-by-penans/>

1198 “What has been done for the Penan women since the National Task Force report?” Women’s Aid Organisation. 26 June 2013. Available at: http://www.wao.org.my/news_details.php?nid=298&ntitle=What+has+been+done+for+the+Penan+women+since+the+National+Task+Force+report

1199 Suaram. (2010). *A Wider Context of Sexual Exploitation of Penan Women and Girls in Middle and Ulu Baram, Sarawak, Malaysia: An Independent Fact-Finding Mission Report*. Petaling Jaya, Selangor: Suaram Komunikasi.

are left with riskier options, such as using logging vehicles or walking by foot through deforested land.”¹²⁰⁰

In 2010, an NGO group headed by Suaram, undertook a fact-finding mission to gather cases and stories of those Penan women who had suffered abuse.¹²⁰¹ The cases documented in the resultant NGO report all point to systematic patterns of violence. Themes include harassment, abduction, rape, physical assault, emotional abuse, coercion into marriage, and desertion upon pregnancy.¹²⁰²

The following is a selection of case studies from the NGO report:

A’s case:

In the middle of the night, sometime in 2001, two loggers... broke into A’s house... Despite their refusal and cries, A and her sister were forced into a car the next morning and taken to the logging camp... At the camp, the sisters were separated from each other... A was kept in the camp for a week, and she was badly beaten and scolded by the logger the whole time. She was repeatedly raped almost daily by the logger... A person-in-charge at the camp sympathised with A’s suffering and sent her back to the village. A then found herself pregnant... The headman and the villagers went to the camp to look for the logger but failed to find him. They were also unable to locate A’s sister who is still missing...

A is sick with tuberculosis and cannot work... She is in need of medical assistance and financial support for her child to go to school... She considered logging [sic.] a police report but did not do so in the end because she simply did not know how to and did not even have the money to go to the police station.¹²⁰³

1200 “The Women of Sarawak and Mindoro on the ‘Invisible Battles’ of Climate Change.” New Security Beat. 8 September 2016. Available at: <https://www.newsecuritybeat.org/2016/09/eye-storm-women-sarawak-mindoro-invisible-battles-climate-change/>

1201 Suaram. (2010). *A Wider Context of Sexual Exploitation of Penan Women and Girls in Middle and Ulu Baram, Sarawak, Malaysia: An Independent Fact-Finding Mission Report*. Petaling Jaya, Selangor: Suaram Komunikasi, pages 27-8.

1202 For more information, refer to *Malaysian NGO CEDAW Alternative Report 2012*, pages 152-154.

1203 Suaram. (2010). *A Wider Context of Sexual Exploitation of Penan Women and Girls in Middle and Ulu Baram, Sarawak, Malaysia: An Independent Fact-Finding Mission Report*. Petaling Jaya, Selangor: Suaram Komunikasi, pages 27-8.

J's case:

In 2002, when *J* was 14 years old, a logger... in his thirties approached her to propose friendship and marriage. *J* refused. One night, the logger returned *J*'s house and raped her. *J* did not tell her family members about the rape. *J* was afraid this man would kill her and her family members.

A few days after the rape, the logger returned to *J*'s house proposing to marry her. *J*'s father did not agree to this marriage. However, the logger was persistent... As *J* felt the logger would harm her family members unless she married (customary marriage only) him, she managed to convince her father to let her marry this man.

After marrying the logger, *J* stayed at the logging camp... Whilst *J* was there, the logger would abuse her physically and psychologically. The logger would force *J* to have sex with him, and if she refused he would beat her (sometimes with a wooden stick)...

When *J* became pregnant in 2003, the logger sent her back to her village so that her family could look after her... when her pregnancy reached seven months, he disappeared and never returned.¹²⁰⁴

O's case:

O was at [a logging] camp to look after her pregnant sister, who was married to a logger. Another logger... came to her and promised to marry her. *O* stayed with him after that, but they were never actually married, either by way of a customary wedding or legal registration.

Upon realising that *O* was pregnant, the logger claimed he needed to go back to his own village to visit his parents and promised to return soon. However, the logger never returned...

Shortly after *O* returned to her village, a Penan man from another village approached to marry her. *O* did not like the man and refused his proposal few times. But since she was pregnant and needed financial support, her parents persuaded her to marry the Penan man.¹²⁰⁵

1204 Suaram. (2010). *A Wider Context of Sexual Exploitation of Penan Women and Girls in Middle and Ulu Baram, Sarawak, Malaysia: An Independent Fact-Finding Mission Report*. Petaling Jaya, Selangor: Suaram Komunikasi, pages 23-4.

1205 Ibid, page 26.

T's case:

In 2001, *T* met a logger... Whenever *T*'s father was not home, the logger would come by the house... Despite *T*'s parents' objections, the logger insisted on marrying *T* and promised to take care of her. *T* kept crying when the logger tried to take her to the camp... Later, the parents found out that *T* had been raped by the logger prior to his proposal.

The logger did not marry *T*, either through customary or through legal registration. After *T* became pregnant, the logger abandoned her at the camp, leaving *T* no choice but to find her own way back to her village. While pregnant, *T* fell seriously ill and even contracted malaria.¹²⁰⁶

In 2013, the Minister of Women, Family and Community Development (MWFCD), vowed to get to the bottom of the cases of sexual abuse of Penan women. However, the Minister also noted that no new cases had been reported recently as of that time, and that officers on the ground had reported that problem had been solved.¹²⁰⁷

Given the wider socio-economic context that enabled this ongoing and systemic abuse to take place, it is doubtful that a lack of reporting of new cases is an indication that the issue has been resolved. The government must fulfil its obligations to investigate the abuse and its underlying causes, and take action to prevent ongoing and future abuse.

Empowering Rural Girls project

Following the reports of abuse and rape of Penan women discussed above, the NGO Sarawak Women for Women Society (SWWS) conducted a three-phase project in Sarawak called Empowering Rural Girls. The purpose of Empowering Rural Girls was to increase knowledge among rural women and girls on how to limit and leave sexually exploitative and abusive relationships.¹²⁰⁸ The project aimed to deliver training to local service providers who would be directly assisting survivors, to facilitate a systemic and empathetic community response, to connect rural communities with helpful resources, and to promote communication among youth about healthy relationships, sexually transmitted diseases, and family planning.¹²⁰⁹

1206 Suaram. (2010). *A Wider Context of Sexual Exploitation of Penan Women and Girls in Middle and Ulu Baram, Sarawak, Malaysia: An Independent Fact-Finding Mission Report*. Petaling Jaya, Selangor: Suaram Komunikasi, page 27.

1207 "Rohani views Penan sexual abuse claims seriously." Borneo Post Online. 27 May 2017. Available at: <http://www.theborneopost.com/2013/05/20/rohani-views-penan-sexual-abuse-claims-seriously/>

1208 SWWS. (2010). *Empowering Rural Girls Programme*. Available at: <http://sarswss.org/wp-content/uploads/2017/06/2010-Empowering-Rural-Girls-Programme.pdf>

1209 Ibid.

SWWS found, through the Empowering Rural Girls Project, that isolation, limited infrastructure, and a stagnant economy further exacerbated the power imbalances which lead to violence and abuse against women and girls in Sarawak.¹²¹⁰ As a result of their research, SWWS was able to make a number of recommendations which, if implemented, could significantly improve responses to rural survivors of gender-based violence and sexual assault.¹²¹¹ These included, but were not limited to:

- Extending the reach of One Stop Crisis Centres (OSCCs), which facilitate reporting of abuse through holistic a holistic emergency healthcare response, to rural clinics;
- Introducing and sustaining school programs on reproductive health and sex education;
- Investing in safe transportation for rural students to stem student's reliance on logging vehicles to travel to school, which has been shown to place students, especially young girls, at risk of abuse;
- Increasing access to legal redress and protection to women in rural areas;
- Providing guidelines to all major employers regarding prevention of sexual harassment and exploitative behaviour in the workplace, and requiring employers to implement preventative measures as a condition of their licensing and operation.¹²¹²

Recommendations to the Malaysian Government regarding Article 14 of CEDAW

- Integrate a gendered perspective into development policies and programmes for rural people, based on the rights and needs of rural, estate, and indigenous communities, placing them at the centre of all development policies through open discussions and consultations.
- The Ministry of Agriculture and Agro-based Industry (MOA) and the Ministry of Rural and Regional Development (MRRD) should target rural women as active participants and beneficiaries of agricultural technology and agro-based commercialisation programmes. A quota of at least 30% women in decision-making positions at all levels should be instigated.

□ Women engaged in agriculture, agro-based micro-enterprise, and as small-scale en-

1210 Ibid.

1211 Ibid.

1212 SWWS. (2010). *Empowering Rural Girls Programme*. Available at: <http://sarswws.org/wp-content/uploads/2017/06/2010-Empowering-Rural-Girls-Programme.pdf>

trepreneurs, must be empowered with technical and management skills and be able to access and utilise credit facilities available.

- The standard of housing, health, and education facilities provided by the private corporations for plantation workers must be monitored to ensure adequate provision and access to services and facilities.
- Implement frequent and accessible education and awareness programmes on various aspects of rural women's health, including family planning, sexual and reproductive health, and hygiene.
- Increase the allocation of resources for fully-equipped government clinics in rural areas, in order to increase the number and accessibility of these clinics. Educate women on the accessibility of these services, and promote regular health checks.
- Provide training to rural government entities, including police, schools, and health-care providers, on gender sensitivity and identification of/response to violence against women.
- Monitor the compliance of plantations on the usage of pesticides in the estates. Women workers must be made aware of the dangers of exposure to pesticides and supplied with the necessary protective gear. Estate clinics should be upgraded equal to district hospitals and there should be regular monitoring of women's health.
- Develop initiatives that attempt to reduce poverty, ill health, and low levels of education in indigenous communities, in close consultation with the women of those communities to ensure sustainable livelihoods.
- Facilitate the genuine and transparent participation of indigenous women in decision making and development planning at all levels, within all societal structures.
- Recognise ownership rights over land for indigenous women, rather than mere access rights.
- Increase the allocation and accessibility of government legal aid for women living in rural areas who require legal assistance for divorce and maintenance issues.
- Restore the previous practice of allowing district officers to be qualified magistrates

in areas without access to courts.

- Allow district officers to have the power to issue interim protection orders (IPOs) so that rural women do not have to travel to urban areas to gain the protection they need. Streamline the process for rural women to obtain emergency protection orders (EPOs) from the Department of Social Welfare officers at district offices.
- Implement a training programme with Pengulu and district officers to address the issues of teen pregnancy and child marriage in the communities they serve.
- Provide district officers and native courts with online access to the National Registration Department so that the marital status of individuals may be verified before customary marriages take place.
- Expand the availability of mobile phone networks to all rural residential areas.

Women sometimes go too far, it's true. But it's only when you go too far that others listen.

-Indira Gandhi

16.

Article 15

EQUALITY IN THE LAW

Article 15

1. States Parties shall accord to women equality with men before the law.
2. States Parties shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular, they shall give women equal rights to conclude contracts and to administer property and shall treat them equally in all stages of procedure in courts and tribunals.
3. States Parties agree that all contracts and all other private instruments of any kind with a legal effect which is directed at restricting the legal capacity of women shall be deemed null and void.
4. States Parties shall accord to men and women the same rights with regard to the law relating to the movement of persons and the freedom to choose their residence and domicile.

In its 2018 Concluding Observations to Malaysia, the CEDAW Committee reiterated its concerns that Malaysia has yet to pass any legislation which fully adopts the provisions of the CEDAW Convention.¹²¹³ Instead Malaysia has taken a piecemeal approach that has resulted in continued gaps and contradictions in the implementation of CEDAW.

1213 CEDAW Concluding Observations to Malaysia 2018, para 11 (CEDAW/C/MYS/CO/3-5).

The CEDAW Committee's Concluding Observations regarding constitutional and legislative framework can be found in the chapter on CEDAW Articles 1 – 4 of this report.

Key issues in this chapter:

- Article 8 (2) of the Federal Constitution, which prohibits discrimination on the basis of gender, has been interpreted narrowly by courts as applying only to discrimination relating to employment under a public authority and not discrimination within the private sector.

- Women and men are not deemed equal before the law in several areas, for example:
 - Anachronistic sections in the Penal Code and state *Syariah* laws criminalise enticing a married woman, perpetuating the view that women are the property of their husbands;
 - Women migrant domestic workers are not considered employees and therefore aren't afforded the labour rights and protections of other workers;
 - Laws discriminate against women on the basis of their gender identity, gender expression, and sexual orientation.

No definition of discrimination in the Federal Constitution or legislation

As mentioned in the chapter on Articles 1 – 4 of CEDAW in this report, Article 8 (2) of the Federal Constitution prohibits discrimination on the basis of gender. However, judicial interpretations of this provision have narrowly focused on discrimination relating to employment under a public authority only, and have not extended to discrimination in the private sector.¹²¹⁴

In the 2012 case, *Noorfadilla binti Ahmad Saikin v Chayed bin Basirun and Ors (Noorfadilla)*, the court accepted the definition of 'discrimination against women' in Article 1 of CEDAW. It also held that CEDAW has the force of law in Malaysia.

However, in the 2014 case, *AirAsia Berhad v Rafizah Shima binti Mohamed Aris (Air Asia)*, where an airline terminated a trainee due to her pregnancy, the Court found that Article 8(2) had not been violated.¹²¹⁵ ***Air Asia reversed the finding in Noorfadilla that CEDAW had the force of law in Malaysia, but the definition of 'discrimination against***

1214 For more information refer to *Malaysian NGO CEDAW Alternative Report 2012*, pages 157-158.

1215 *Noorfadilla binti Ahmad Saikin v Chayed bin Basirun and Ors (2012)*.

women' as defined in *Noorfadilla*, remains intact.¹²¹⁶

Limited wording of the anti-discrimination provision in the Federal Constitution

As outlined in the chapter on Articles 1 – 4 of CEDAW of this report, the wording of Article 8 (2) of the Federal Constitution, which prevents discrimination on the basis of gender, is problematic. Article 8 (2) states:

“Except as expressly authorized by this Constitution, there shall be no discrimination against citizens on the ground only of religion, race, descent, place of birth or gender in any law or in the appointment to any office or employment under a public authority or in the administration of any law relating to the acquisition, holding or disposition of property or the establishing or carrying on of any trade, business, profession, vocation or employment.”¹²¹⁷

Firstly, the Federal Constitution contains many provisions that are discriminatory to women, which continue to be valid owing to the phrase in Article 8 (2), “except as expressly authorized by this Constitution.”¹²¹⁸ Discrimination on the basis of gender is implicitly authorised by the Constitution in regard to Muslim personal law, employment or office within religious institutions, access to education, and citizenship rights.¹²¹⁹

Secondly, the term “discrimination” in Article 8 (2) has been left to courts to interpret. Consequentially, discrimination has been interpreted narrowly, relating only to discrimination arising from employment under a public authority.¹²²⁰ Women who have been discriminated against on the basis of their gender in the private sector are not protected under this interpretation of the Constitution.

Finally, Article 8 (2) of the Federal Constitution is limited in its understanding of gender, as this provision has been interpreted as applying to men and women in a biological sense.¹²²¹ The term gender should be understood in a broader, non-binary sense, encompassing gender identity and gender expression, amongst other aspects, and be inclusive of transgender and gender-diverse persons.

1216 *Noorfadilla binti Ahmad Saikin v Chayed bin Basirun and Ors* (2012).

1217 *Malaysian Federal Constitution as at 1 November 2010*, Part II, Art 8 (2).

1218 Ibid.

1219 For more information refer to the chapter on CEDAW Articles 1 – 4 in this report.

1220 *AirAsia Berhad v Rafizah Shima binti Mohamed Aris* (2014).

1221 “Gender equality and the Federal Constitution.” Women’s Aid Organisation. 6 September 2001. Available at: [http://www.wao.org.my/news_details.php?nid=40&ntitle=Briefing+Notes+by+the+Womens+NGOs+to+the+Ministry+of+Women+and+Family+Development+on+the+Constitutional+Amendment+of+Article+8\(2\)](http://www.wao.org.my/news_details.php?nid=40&ntitle=Briefing+Notes+by+the+Womens+NGOs+to+the+Ministry+of+Women+and+Family+Development+on+the+Constitutional+Amendment+of+Article+8(2))

Gender Equality Act

Despite the government's claim in 2006 that it was planning to adopt a Malaysian Gender Equality Act, such legislation is yet to be finalised and implemented. However, in 2016, there was renewed interest in gender equality from the Ministry of Women, Family and Community Development (MWFCD), with the Minister herself declaring that her ministry was "...currently enacting a Gender Equality Act" and was "...doing a lot of engagement to solidify our aim to draft the Act."¹²²²

In 2016, there was renewed interest from the Ministry of Women, Family and Community Development with the Minister herself declaring that her ministry was, "...currently enacting a Gender Equality Act," and has "...been doing a lot of engagement to solidify our aim to draft the Act."¹²²³ Following the change of government, the new Minister has also committed to introducing the Gender Equality Act.¹²²⁴

Gender discrimination in retirement age

Previously, certain industries had discrepancy in instituting a retirement age for men and women.

Industries often instituted policies which forced women to retire at a younger age than men, thus discriminating on the basis of gender.¹²²⁵ The material consequence of such discrimination was that women were effectively denied five years of salary and benefits that were granted to their male colleagues.

In 2012, eight former employees of Guppy Plastic Industries mounted a legal challenge against a company policy, which forced women workers to retire at 50, on the basis of Article 8 (2) of the Federal Constitution and Article 15 of CEDAW.¹²²⁶ The Court of Appeal rejected the employees' case, holding that forced retirement at 50 was the industry norm

1222 "Minister now says Gender Equality Act in the works." Malay Mail Online. 2 November 2016. Available at: <http://www.themalaymailonline.com/malaysia/article/minister-now-says-gender-equality-act-in-the-works>

1223 "Minister Now Says Gender Equality Acts in the Works." Malay Mail Online. 2 November 2016. Available at: <http://www.themalaymailonline.com/malaysia/article/minister-now-says-gender-equality-act-in-the-works>

1224 "DPM: Putrajaya to form parliamentary panel on gender equality." Malay Mail. 16 August 2018. Available at: <https://www.malaymail.com/s/1663049/dpm-putrajaya-to-form-parliamentary-panel-on-gender-equality>

1225 "The retirement conundrum." The Star Online. 18 November 2018. Available at: <https://www.thestar.com.my/business/business-news/2017/11/18/the-retirement-conundrum/>

1226 "Case of victory in defeat." The Malaysian Bar. 22 August 2012. Available at: http://www.malaysianbar.org.my/legal/general_news/case_of_victory_in_defeat.html

and did not constitute gendered discrimination.¹²²⁷

On 1 July 2013, the Minimum Retirement Age Act 2012 came into effect, instituting a minimum retirement age of 60 years.¹²²⁸ The Act is applicable to all employees and employers in Malaysia, with certain exceptions including non-citizen employees, contracted employees, and domestic workers.¹²²⁹

While the standardisation of the minimum retirement age is a positive step, the government must take measures to apply this legislation across all types of employment, such as formal, informal and contract-based work. The Act must be made applicable to all employees, be they citizen or non-citizen. Without this protection, women employees in some industries may be forced to retire at a younger age than men.

Women viewed as the property of their husbands in laws against “enticing a married woman”

As discussed in the chapter on CEDAW Articles 1 - 4 of this report, section 498 of the Penal Code criminalises the act of enticing a married woman away from her husband with the intent to have “illicit intercourse” with her.¹²³⁰

The differential treatment of men and women in section 498 of the Penal Code constitutes discrimination against women as defined in Article 1 of CEDAW.¹²³¹ This is not because section 498 fails to give women equal rights to sue other women who entice their husbands, but because the section does not recognise that in contemporary Malaysia neither husbands nor wives have ownership over their spouses. Further, every woman has the right to make decisions over her own body and consensual intimate relationships between adults should not be the government’s concern.¹²³²

Section 498 was adopted into Malaysian law at a time when women were perceived as the property of their husbands, and married women were subordinated due to the assumption that they were under their husbands’ protection.¹²³³ This section is outmoded, discriminatory, and irrelevant in contemporary Malaysia, and has the damaging effect

1227 Ibid.

1228 Act 753 *Minimum Age Retirement Act 2012*.

1229 MHR. (2013). *Minimum Retirement Age*. Available at: <http://minretirementage.mohr.gov.my/>

1230 Act 574 *Penal Code as at 1 February 2018*, s498.

1231 “Drop section 489 from Penal Code.” Women’s Aid Organisation. 9 November 2010. Available at: http://www.wao.org.my/news_details.php?nid=110&ntitle=Drop+Section+498+in+the+Penal+Code+

1232 Ibid.

1233 Eleventh Singapore Parliament. (2007). *Singapore Parliamentary Debates, Official Report*. Available at: [https://www.parliament.gov.sg/parliamentary-business/official-reports-\(parl-debates\)](https://www.parliament.gov.sg/parliamentary-business/official-reports-(parl-debates))

of maintaining the status of women as inferior partners.¹²³⁴

Similarly, section 86 of the Sabah Criminal Offences Enactment 1995, which applies only to Muslims, states that:

“Whoever entices or causes other person’s wife to abscond her matrimonial home determined by the husband shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding two thousand ringgit or to imprisonment for a term not exceeding one year or to both and the Court shall order the said wife to return to her husband.”¹²³⁵

Section 36 of the *Syariah* Criminal Offences (Federal Territories) Act 1997 also contains provisions on enticing a married woman, but with stiffer penalties:

“Any person who entices a married woman or takes her away from or in any manner influences her to leave the matrimonial home determined by her husband shall be guilty of an offence and shall on conviction be liable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding three years or to both, and the Court shall order the said woman to return to her husband.”¹²³⁶

The difference between these state-level laws and section 498 of the Penal Code is that, under the state laws, the *Syariah* Court can “order the said wife to return to her husband,” allowing wives even less agency within their marriage.^{1237,1238}

Married women do not have the choice of their domicile in divorce proceedings

Due to the lack of a definition for domicile under the Law Reform (Marriage and Divorce) Act 1976,¹²³⁹ the common law approach to domicile has been applied, resulting in a wife not having a separate domicile of her own but acquiring her husband’s upon marriage.¹²⁴⁰

1234 For details on a 2009 case involving section 498 of the Penal Code, see the chapter on Articles 1 – 4 of CEDAW of this report.

1235 *Act 3 of 1995 Sabah Syariah Criminal Offences Enactment*, s 86.

1236 *Act 599 Syariah Criminal Offences (Federal Territories) Act 1997*, s 36.

1237 *Ibid.*

1238 *Act 3 of 1995 Sabah Syariah Criminal Offences Enactment*, s 86.

1239 *Act 164 Law Reform (Marriage and Divorce) Act 1976*.

1240 Goh Siu Lin. (2014). *Domicile and Divorce*. Available at: <http://www.shooklin.com.my/pdf/Fami>

This reinforces the dependence of a wife upon her husband through Malaysian law, stripping married women of their individuality and freedom both in theory and in practice.

Inequality within the Syariah legal system

The *Syariah* legal system is often a great source of injustice to women in Malaysia. Most states have *Syariah* evidence laws which equate the testimony of two female witnesses to that of one male witness.¹²⁴¹ Further, as a matter of practice, women judges are excluded from hearing criminal cases involving *Syariah* offences.¹²⁴²

The chapter on Articles 1-4 of CEDAW of this report discusses the inequalities both within *Syariah* law and resulting from the Malaysian dual legal system at greater length.

Employment laws do not protect migrant domestic workers' rights

Malaysia's Employment Act 1955 does not afford domestic workers the same rights as other workers.¹²⁴³ The First Schedule of the Employment Act specifically **excludes** domestic workers from accessing maternity protections (including leave and allowance entitlements), annual leave, sick leave, and termination, lay-off, or retirement benefits.¹²⁴⁴ Domestic workers are also excluded from Employment Act provisions which grant employees the right to one rest day per week, breaks during the work day, and paid public holidays.¹²⁴⁵

The current situation in Malaysia for migrant domestic workers directly contradicts the CEDAW Committee's General Recommendation No. 26, which calls on states to ensure that women migrant workers are afforded the same rights and protections extended to all workers in the country.¹²⁴⁶

In May 2017, the Ministry of Human Resources (MHR) launched the Guidelines and

ly-Law-July-2014-Goh-Siu-Lin.pdf

1241 For example, refer to *Act 561 Syariah Evidence (Federal Territories) Act 1997*, s 86.

1242 "Hakim Wanita Di Mahkamah Syariah." Utusan Online. 29 February 2016. Available at: <http://www.utusan.com.my/rencana/hakim-wanita-di-mahkamah-syariah-1.195374>

1243 *Act 265 Employment Act 1955*.

1244 *Ibid*, Sch 1, Part XIX.

1245 For more information refer to *Malaysian NGO CEDAW Alternative Report 2012*, pages 160-162.

1246 CEDAW Committee, *General Recommendation No. 26*, 5 December 2008, para 26(b) (CEDAW/C/2009/W.P.1/R).

Tips for Employers of Foreign Domestic Helpers.¹²⁴⁷ The guidelines were devised with the International Labour Organization (ILO) and contain information on laws and best practices relating to the recruitment and employment of foreign domestic workers. Although select NGOs were initially consulted on the guidelines, there was no opportunity for NGO input on the final draft. These guidelines are not legally binding, so their effectiveness in protecting the rights of foreign domestic workers is minimal.

The Malaysian government has stated in the international arena that domestic workers should not be afforded labour rights

Prior to the 2011 ILO Conference, governments were invited to send comments about the proposed international standards for decent work for domestic workers. The Malaysian government is reported to have stated that “domestic workers cannot be equated to other workers in general,” and that “domestic work is not seen as ordinary employment. The rights of householders should also be considered.”^{1248,1249} The Malaysian government’s statements throughout the ILO Conference report **consistently reflect its perception that domestic workers should not be afforded the same rights as other workers.**

In June 2011, Decent Work for Domestic Workers (ILO Convention 189) and Recommendation 201 were adopted by the ILO.¹²⁵⁰ Malaysia **abstained** during the vote for both the Convention and the Recommendation.

Non-recognition of the rights of women of diverse sexual orientations and gender identities in law

Contrary court decisions on gender and name change for transgender people

There is no law in Malaysia that prohibits a change of gender on an identity card, the main identification document used in Malaysia. However, in practice, the process to change one’s name and gender marker on an identification card is costly, complex, time-consuming, and dehumanising.¹²⁵¹ There is no guarantee that a transgender person who applies to the National Registration Department or the courts to have the gender-marker changed on their identity card will be successful.

1247 “Guidelines, tips for employers of foreign domestic workers launched.” Malaysian Digest. 25 May 2017. Available at: <http://malaysiandigest.com/news/677387-guidelines-tips-for-employers-of-foreign-domestic-workers-launched.html>

1248 ILO, *Decent Work for Domestic Workers: Fourth Item on the Agenda*, 21 February 2011, Art 10 (ILC.100/IV/2A).

1249 Ibid, Art 1.

1250 ILO. (2011). *Decent Work for Domestic Workers*. Available at: http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_168266.pdf

1251 See the chapter on CEDAW Article 5 of this report for more information.

For a list of cases which illustrate the uncertainty in the law on the question of whether a transgender person may change the gender-marker on their identity card, refer to the chapter on CEDAW Article 5 of this report.

Laws that discriminate on the basis of gender identity

As mentioned previously in this report, *mak nyah* (transgender women) face continued persecution through the law in Malaysia. Transgender individuals are at constant risk of arrest, based merely on their gender identity and expression. All states of Malaysia have their own *Syariah* criminal offences which criminalise acts such as a man dressing as a woman.¹²⁵²

For more information on the discrimination of transgender people in Malaysia, refer to the chapters on CEDAW Articles 1-4, Article 5, and Article 12 of this report.

Laws that discriminate on the basis of women's sexual orientation

Lesbian women in Malaysia are discriminated against through various laws. In most states of Malaysia, *Syariah* criminal offences criminalise *musahaqah* (sexual relationships between women).¹²⁵³ The Penal Code continues to criminalise acts “against the order of nature” – that is, intercourse and sex acts that are not penile-vaginal - even if these are consensual sex acts between two adults.¹²⁵⁴

For more information on LGBTI women in Malaysia and examples of the significant discrimination that this community faces, refer to the chapter on CEDAW Article 5 of this report.

Recommendations to the Malaysian Government regarding Article 15 of CEDAW

- Discrimination as provided under Article 1 of the CEDAW Convention must be defined both in the body of the Federal Constitution and in legislation. This definition should include reference to discrimination in both public and private spheres.

- Repeal laws based on the anachronistic idea that women are the property of their husbands, for example section 498 of the Penal Code and state *Syariah* laws which

1252 For more information, refer to *Malaysian NGO CEDAW Alternative Report 2012*, page 163.

1253 Angela M Kuga Thas. (2012). “CEDAW in Defending the Human Rights of Lesbians, Bisexual Women and Transgenders in Malaysia” in *Equality Under Construction: Malaysian Women's Human Rights Report 2010/11*. Petaling Jaya, PJ: EMPOWER, pages 337-342.

1254 *Act 574 Penal Code as at 1 February 2018*, s377A.

criminalise enticing a married woman.

- Recognise migrant domestic workers as employees in national legislation. Amend immigration and labour laws to provide comprehensive and equal labour protections for domestic workers.

- Enable transgender people must to change their name and gender on their identity cards without onerous legal and administrative procedures.

- Review and reform all laws that discriminate on the basis of gender identity, gender expression and sexual orientation, including:
 - State *Syariah* criminal offences outlawing same-sex consensual sexual relations;
 - State *Syariah* criminal offences outlawing cross-dressing for immoral purposes, which are used to arrest and harass transgender people.

**“I do not wish women to have power
over men; but over themselves.”**

— Mary Shelley

“A gender-equal society would be one where the word ‘gender’ does not exist: where everyone can be themselves.”

— Gloria Steinem

17.

Article 16

EQUALITY IN MARRIAGE AND FAMILY

Article 16

1. States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:

(a) The same right to enter into marriage;

(b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent;

(c) The same rights and responsibilities during marriage and at its dissolution;

(d) The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount;

(

e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights;

(f) The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount;

(g) The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation;

(h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.

2. The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.

Key issues in this chapter:

- Discriminatory provisions in **civil law and Islamic family law reinforce, and in some instances worsen, unequal rights in marriage** between men and women.
- **Child marriage remains legally permissible** under civil, Islamic, and native customary laws despite Malaysia's removal of its reservation to Article 16 (2) of CEDAW.
- Conflicting court jurisdictions and lack of political will on the part of the government continue to be serious challenges in addressing the issue of **unilateral conversions**.

While there have been improvements in the status of non-Muslim women in the area of marriage and divorce since the 2005 Shadow Report, the status of Muslim women has not improved under Islamic family laws. Legal inequalities continue to be practiced within the law and justice system. Over and above this, cultural practices contribute to inequality in the position of women within the marriage and the family. The Malaysian government's reservations in relation to Article 16 of CEDAW remain barriers that preclude full equality for women in family life.

When Malaysia came before the CEDAW Committee in 2018, the Committee welcomed the Federal Court's 2018 decision in the case of Indira Ghandi, which affirmed civil court's ability to conduct judicial reviews regarding matters of unilateral conversion and custody under the Islamic family law and the actions of Islamic authorities.¹²⁵⁵ The Committee remained concerned, however, that Muslims (constituting over 60% of the Malaysian population) remain under Islamic family laws which have become increasingly discriminatory towards women.¹²⁵⁶ These women do not have equal rights in family and marriage matters and are often subjected to polygamous marriages. Further, child marriages continue to be permitted under both civil and Islamic family laws and conversion from Islam to other religions is not allowed.¹²⁵⁷

2018 Concluding Observations to Malaysia

In the CEDAW Committee's 2018 Concluding Observations to Malaysia, the Committee reiterated its previous recommendation that the State party undertake law reform to remove inconsistencies between civil and *Syariah* law, including by ensuring that any conflict of law with regards to women's rights to equality and non-discrimination is resolved in compliance with CEDAW and the Malaysian Federal Constitution.¹²⁵⁸

In particular, the Committee recommended that the State party:

- a) Provide safeguards against violations of women's human rights in all family and marriage matters by enabling review by State courts or administrative bodies of all decisions and provisions of the *Syariah* law system, including actions of Islamic authorities, in accordance with the Federal Court's judgment of 29 January 2018 in the case of Indira Gandhi and the Committee's general recommendations No. 33 (2015) on women's access to justice and No. 29 (2013) on article 16 of the Convention (economic consequences of marriage, family relations and their dissolution);
- b) Ensure that Muslim women have equal rights in all family and marriage matters, including equal capacity as men to enter into marriage as well as to divorce, and with regard to maintenance, custody and guardianship of their children, and inheritance;
- c) Prohibit the unilateral religious conversion of children by the father who converts to Islam;
- d) Discourage and prohibit polygamy, in accordance with the Committee's general recommendation No. 21 (1994) on equality in marriage and family relations, general recommendation No. 29

1255 CEDAW Concluding Observations to Malaysia 2018, para 53 (CEDAW/C/MYS/CO/3-5).

1256 Ibid.

1257 Ibid.

1258 Ibid, para 54.

(2013) on article 16 of the Convention (economic consequences of marriage, family relations and their dissolution), and joint general recommendation No. 31 (2014) of the Committee on the Elimination of Discrimination against Women and No. 18 of the Committee on the Rights of the Child on harmful practices;

- e) Raise the minimum age for marriage to eighteen years for women and men for both civil and Muslim marriages and request the full consent of women for any marriage;
- f) Fully guarantee the right to freedom of religion or belief, which includes the right of individuals to convert from Islam to another religion or belief, and ensure that religious interpretations do not perpetuate gender inequality, by taking appropriate measures as recommended in the reports of the Special Rapporteur on freedom of religion or belief.¹²⁵⁹

Reservations to Article 16

Removal of reservation to Article 16 (2)

Although the removal of Malaysia's reservation to Articles 16 (2) of CEDAW in 2010 is commendable, it has not resulted in law reform to raise the minimum age of marriage to 18. Laws which govern the age of marriage for both Muslims and non-Muslims have remained unchanged, with marriage being legally permissible under the age of 18. Efforts have been made by women's rights organisations to institute law reform in this area with no success.

Reservations to Article 16 (1) (a), (c), (f), (g)

Malaysia's remaining reservations to Article 16 of CEDAW continue to deny equal rights to women in substantive areas.

In its combined third to fifth periodic reports of State parties, the Government of Malaysia stated that:

“The Government reiterates its position that its reservations on paragraphs (a), (c), (f) and (g) of Article 16 (1) of the Convention fall within the ambit of Islamic Law or Shari'a (the divine law of Islam).”¹²⁶⁰

1259 CEDAW Concluding Observations to Malaysia 2018, para 54 (CEDAW/C/MYS/CO/3-5).

1260 CEDAW, Combined Third to Fifth Periodic Reports of Malaysia, 17 October 2016, para 183 (CEDAW/C/MYS/3-5).

The report further explained that there is a guarantee within *Syariah* law on the complementarity of rights, and thus, privileges:

“The Government therefore has to maintain its reservations ... and understands that the principle of ‘equality’ as expounded in the said articles has to be considered within the realm of the Shari’a which guarantees to a spouse complementary rights and responsibilities in order to preserve the sacred bond of matrimony.”¹²⁶¹

This concept of complementarity has been used by many majority-Muslim State parties to justify inequality in laws and practices regarding marriage and family. There is, however, “a huge disconnect between the law and the practice... the logic of reciprocity does not reflect reality for most men and women today. Thus, the argument about reciprocal arrangements is a legal fiction grounded in medieval *fiqh* (the philosophy of Islamic law) thinking that remains rigid in spite of the changed realities.”¹²⁶²

Overview of family law framework in Malaysia

Malaysia operates a pluralistic legal system, based on English common law, Islamic law, and native customary law.¹²⁶³ Civil courts have jurisdiction over the majority of laws, including contracts, torts, property, crime, and constitutional or administrative matters. State *Syariah* courts have jurisdiction over Islamic personal and family law.¹²⁶⁴ Both civil family laws and Islamic family laws contain elements which are discriminatory against women.

Malaysia’s pluralistic legal system creates issues regarding the jurisdiction between the courts. The Law Reform (Marriage and Divorce) Act 1976 regulates marriage relations for persons who do not profess the Islamic faith, under the jurisdiction of the civil courts.¹²⁶⁵ The *Syariah* courts, which are established and regulated by the states, have jurisdiction over Islamic family law matters. Article 121 (1A) of the Federal Constitution, introduced in 1988 by constitutional amendment, states that the civil courts have no jurisdiction in matters that fall within the *Syariah* court jurisdiction.¹²⁶⁶

In the past, the issue of jurisdiction of courts has been particularly contentious regarding the unilateral conversion of children to Islam by one party in the marriage. This has given

1261 Ibid, para 184.

1262 Musawah. (2010). *CEDAW and Muslim Family Laws*. Available at: http://www.musawah.org/sites/default/files/CEDAWMFLReport2012Edition_1.pdf

1263 “The power of difference courts.” The Star Online. 8 January 2015. Available at: <https://www.thestar.com.my/opinion/columnists/reflecting-on-the-law/2015/01/08/the-power-of-different-courts/>

1264 *Malaysian Federal Constitution as at 1 November 2010*, Sch 9, Part XV, List II, Item 1.

1265 *Act 164 Law Reform (Marriage and Divorce) Act 1976*.

1266 *Malaysian Federal Constitution as at 1 November 2010*, Art 121 (1A).

rise to parties not being accorded the justice and consideration that is guaranteed under the Federal Constitution of Malaysia.¹²⁶⁷ In 2009, the Cabinet decided that, where one parent converts to Islam, children of the marriage cannot be unilaterally converted to Islam.¹²⁶⁸ Conversion is often permanent and has major legal implications – for example, it can be used by the converting spouse to obtain an advantage in gaining custody. The Law Reform (Marriage and Divorce) (Amendment) Bill 2017 aimed to address unilateral conversion, but Clause 88A that dealt with the issue, was removed.¹²⁶⁹ In a positive development, the Federal court recently nullified the unilateral conversion of Indira Gandhi’s three children in a landmark decision,^{1270,1271} deeming that such conversions were not in the best interest of the child and that both parents must consent. The government must ensure that the Federal Court’s decision in the Indira Gandhi case is enforced by frontline officers, and that the Law Reform (Marriage & Divorce) Act and all relevant legislations are amended to reflect the Federal Court’s judgment.

In the Malaysian Borneo states of Sabah and Sarawak there exist native courts, who take on the role as administrators of native and customary laws.

As it stands, Malaysians are governed in relation to marriage and family law under the following:

- Muslims are governed under state Islamic Family Laws;
- Natives in Sabah and Sarawak are governed under separate native customary laws;
- Those who are neither Muslim nor native to Sabah or Sarawak, are governed under the Law Reform (Marriage and Divorce) Act 1976 (unless a person native to Sabah and Sarawak elects to marry under the Act).¹²⁷²

1267 “Unilateral conversion in Malaysia – Still at the brink.” Skrine. Undated. Available at: <http://www.skrine.com/unilateral-conversion-in-malaysia-still-at-the-brink>

1268 “Uphold 2009 cabinet decision prohibiting unilateral conversion of minors, Putrajaya told.” Malay Mail Online. 12 January 2016. Available at: <http://www.themalaymailonline.com/malaysia/article/uphold-2009-cabinet-decision-prohibiting-unilateral-conversions-of-minors-p#9dvKfbJGSslph1hF.97>

1269 “Parliament passes LRA, sans clause 88A, after marathon debate.” New Straits Times. 10 August 2017. Available at: <https://www.nst.com.my/news/nation/2017/08/265983/parliament-passes-lra-sans-clause-88a-after-marathon-debate>

1270 In 2015, the Court of Appeal in a majority ruling held that the validity of the conversion of Indira Gandhi’s three children by their Muslim father could only be determined by the Syariah Court. In determining that only the Syariah courts have jurisdiction to hear cases of conversion, the courts have left the non-Muslim parent without a remedy. It was only in 2018, after an eight year-long battle, that the unilateral conversion of Indira Gandhi’s children is nullified by the Federal Court.

1271 “Federal Court: Unilateral conversion of Indira Gandhi’s 3 children null and void (updated).” The Star Online. 29 January 2018. Available at: <https://www.thestar.com.my/news/nation/2018/01/29/federal-court-unilateral-conversion-of-indira-gandhis-3-children-is-null-and-void/>

1272 *Act 164 Law Reform (Marriage and Divorce) Act 1976*, Part I, s3.

Civil family law

There have been recent positive developments with regards to the status of non-Muslim women in civil family law. In 2017, a High Court judge ruled that a widow whose marriage was not registered under civil law was entitled to her late common-law husband's social security pension.¹²⁷³ The woman had been married to her husband for 24 years, by way of Chinese customary marriage. The judge ruled that she was a dependant, as a surviving widow of her late husband, and was thus entitled to the pension. This ruling paves the way to recognition and protection of the rights of women in common-law marriages regardless of their legal status under civil law.

Islamic family law

Islamic family law is a matter under the jurisdiction of the states. Each of the 14 jurisdictions (13 states and the Federal Territories) is able to enact its own set of laws through its State legislature, governing the personal law affecting Muslims in that particular state, so laws are not uniform across states.

Islamic Family law is administered through the *Syariah* courts which are also established at the state level. *Syariah* courts only have jurisdiction over matters within which all parties are Muslim. Proposed Islamic laws require the assent of the Head of State – often the Sultan – and must be publicly gazetted prior to having force of law.¹²⁷⁴

Other than laws which are promulgated within the state legislature, a *fatwa* may also have the force of law where it receives Royal assent and is gazetted.¹²⁷⁵ Fatwas are issued by state religious bodies.

In 1984, the Federal Parliament enacted the Islamic Family Law (Federal Territories) Act 1984 for the Federal Territories – that is, Kuala Lumpur, Labuan and Putrajaya.¹²⁷⁶ Many of the states adopted slightly altered versions of this model law, but several states, including Kelantan, Melaka and Kedah, adopted their own family law enactments with more restrictive provisions with regards to women's rights in marriage and divorce.¹²⁷⁷

1273 “Widow gets Socso pension in landmark ruling.” The Star Online. 17 May 2017. Available at: <https://www.thestar.com.my/news/nation/2017/05/17/widow-gets-socso-pension-in-landmark-ruling/>

1274 For more information regarding Islamic family law, jurisdiction, and court structures in Malaysia, refer to “Muslim Family Law.” Sisters in Islam (SIS). Undated. Available at: <http://www.sistersinislam.org.my/news.php?item.675.8>

1275 “Fatwa: A non-binding viewpoint.” The Star Online. 6 August 2017. Available at: <https://www.thestar.com.my/opinion/columnists/sharing-the-nation/2017/08/06/fatwa-a-nonbinding-viewpoint-we-need-dynamism-and-compassion-in-islamic-law-juristic-opinion-in-the/>

1276 *Act 303 Islamic Family Law (Federal Territory) Act 1984.*

1277 For example, see *Enactment 6 of 2002 Kelantan Islamic Family Law Enactment 2002*, s14.

The status of women under the Islamic Family Law (Federal Territories) Act, and corresponding Islamic family law legislation in each state, has progressively worsened throughout the last three decades. In 1994 and 2005, a series of gender discriminatory amendments were made to the Islamic Family Law (Federal Territories) Act, further eroding the legal rights of Muslim women in marriage and divorce whilst extending property rights to men that were traditionally only afforded to women.¹²⁷⁸ At the time of the 2005 amendment passing, the then Prime-Minister Tun Abdullah Ahmad Badawi acknowledged the concerns of women's rights groups that Muslim women's rights could be curtailed under the amendments, stating that further amendments may be made to the law to remove the discriminatory elements – however this never transpired.^{1279,1280}

Under the administration of the new government, there have been renewed efforts to review the Islamic Family Laws. There is acknowledgement by the Government that the manner in which Islam was administered through laws, fatwas and other policies have painted a very negative and backwards view of Islam in Malaysia. However, as of October 2018, 5 months after the new government has assumed office, there has not been a reform agenda on Islamic Family Laws announced.

Child marriage under civil law and Islamic family law

Child marriage permitted despite removal of reservations to CEDAW and Child Rights Convention

In July 2010, the Malaysian government removed its reservation to Article 16 (2) of CEDAW, which states that the age of majority is to be specified by the State. Whilst a specific age is not stated in CEDAW itself, the CEDAW Committee states that it “considers that the minimum age for marriage should be 18 years for both man and woman” in CEDAW General Recommendation 21.¹²⁸¹ The Recommendation also states that legal provisions which allow for different ages at which men and women can marry should be abolished.¹²⁸²

Malaysia already has legislation defining individuals under the age of 18 as a child, such as the Child Act 2001,¹²⁸³ rendering marriages of those under 18 as child marriage. In addition, Malaysia is signatory to the United Nations Convention on the Rights of the Child (CRC). Article 1 of the CRC states that, “For the purposes of the present Convention,

1278 “Islamic family law amendments still in limbo.” Malaysiakini. 8 March 2011. Available at: <https://www.malaysiakini.com/letters/158006>

1279 Ibid.

1280 “To review the Islamic Family Law (Federal Territories) (Amendment) Bill 2005.” SIS. 8 December 2005. Available at: <http://www.sistersinislam.org.my/news.php?item.1071.8>

1281 CEDAW Committee, *General Recommendation 21*, para 36 ((A/49/38)).

1282 Ibid, para 38.

1283 *Act 611 Child Act 2001*, s2.

a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.”¹²⁸⁴ On 6 July 2010, the Malaysian government announced that it was removing its reservation to Article 1 of the CRC, thereby affirming its view that a child is anyone under the age of 18 years.¹²⁸⁵

However, legislative provisions on the age of marriage have remained unchanged since the last NGO CEDAW Shadow Report on the Initial and Second Periodic Report of the Government of Malaysia, published in 2005.

An opportunity arose to start tackling this issue in April 2016, when an amendment to the Child Act 2001 was tabled for its second reading in Parliament.¹²⁸⁶ Even after repeated attempts by women’s rights groups, child rights agencies, human rights bodies, and members of the public, this amendment did not prohibit marriages for children under 18. Child marriage is still legal under certain circumstances in Malaysia today.

Civil laws on age of marriage

Under the Law Reform (Marriage and Divorce) Act 1976 which applies to non-Muslims, the minimum age for marriage is 18.¹²⁸⁷ However, a girl child who is sixteen years old can marry with the authorization of the Chief Minister of a state, as per the exception in section 10 of the Act.¹²⁸⁸

Native customary laws on age of marriage

Under native customary laws in Sabah and Sarawak, the minimum age for marriage is generally 18 for males and 16 for females.¹²⁸⁹ Both may be permitted to marry below the said ages with the written consent of a parent or legal guardian. There is no requirement for the prospective marriage to first be approved by the *Mahkamah Anak Negeri* (native courts).

1284 United Nations General Assembly, *Convention on the Rights of the Child*, 20 November 1989, Art 1.

1285 Child Rights Coalition Malaysia. (2012). *Status Report on Children’s Rights in Malaysia*. Available at: https://www.unicef.org/malaysia/Report_on_Childrens_Rights_.pdf

1286 “Suhakam welcomes Child Act amendments, but wants legal marrying age raised to 18.” The Star Online. 18 April 2016. Available at: <https://www.thestar.com.my/news/nation/2016/04/18/suhakam-welcomes-amendments-to-child-act/>

1287 *Act 164 Law Reform (Marriage and Divorce) Act 1976*, Part III, s10.

1288 Ibid.

1289 UNICEF. (2018). *Child Marriage in Malaysia: Working Paper*. Available at: https://www.unicef.org/malaysia/ChildMarriage_Malaysia_WorkingPaper_v2.pdf

Islamic laws on age of marriage

Under Islamic family law in Malaysia, the minimum age for marriage is 18 for males and 16 for females, with the exception that they may marry at younger ages with the permission of a *Syariah* judge in “certain circumstances”.¹²⁹⁰ No specific penalty is provided if such an approval is not obtained before the marriage is solemnised, only that the marriage is in contravention of the law and cannot be registered. However, if the marriage is in accordance with *Hukum Syarak* (codified Islamic norms), the marriage may be registered nonetheless, subject to a fine.

In 2014, the National Fatwa Council discouraged child marriage, though it did not explicitly label it as *haram* (prohibited). The Council’s *fatwa* declared that child marriage was not obligatory and that it was not a “healthy practice”.¹²⁹¹ Child marriage was neither *wajib* (mandatory) nor *sunat* (encouraged).¹²⁹²

The National Fatwa Council has stated that, in deciding whether or not to allow the marriage of a child under Islamic family law, the following factors should be taken into account (though this is non-binding on *Syariah* courts):

- The marriage of the Prophet to Aishah (in Islamic teachings) should not be used as an excuse to enable child marriage ;
- Although the laws allow for child marriage, it should not be done lightly without considering the interests of the child;
- Many child marriages occur as a result of sexual intercourse outside of marriage or teenage pregnancies and the “need for family and communities to remove the shame of such immoral behaviours and maintain the dignity of the girl and her family”;
- It is proven through research by medical practitioners that there are significant negative impacts of the physical and mental wellbeing of the child bride.¹²⁹³

One of the biggest concerns in terms of the exception allowing child marriage under Islamic family law, is that no absolute minimum age is provided — there is no limitation as to how young a Muslim bride or groom may be, as long as the marriage is approved by

1290 Act 303 Islamic Family Law (Federal Territories) Enactment 1984, s8.

1291 “Child marriage around the world: Malaysia.” Girls Not Brides. Undated. Available at: <https://www.girlsnotbrides.org/child-marriage/malaysia/>

1292 SIS and Asian-Pacific Resource and Research Centre for Women (ARROW). (2018). *Child Marriage: Its Relationship with Religion, Culture and Patriarchy*. Available at: <http://arrow.org.my/wp-content/uploads/2018/03/National-Report-Child-Marriage-Single-Page.pdf>

1293 SIS and ARROW. (2018). *Child Marriage: Its Relationship with Religion, Culture and Patriarchy*. Available at: <http://arrow.org.my/wp-content/uploads/2018/03/National-Report-Child-Marriage-Single-Page.pdf>

a *Syariah* judge. There have been reported cases of girls as young as 10 and 11 years being married off to adult males.¹²⁹⁴

In a recent, widely-publicised case which caused outrage among many Malaysians, a 41 year-old Malaysian man married an 11 year-old Muslim Thai girl in a religious ceremony performed at a mosque in a border town in Thailand's largely Muslim south.¹²⁹⁵ After much public outcry, the girl was returned to Thailand, where she is being cared for by the local social welfare department.¹²⁹⁶

Another concern is that it has never been made clear as to what constitutes the "certain circumstances" which may give rise to the approval of a child marriage by the *Syariah* court.¹²⁹⁷ In fact, the majority of applications for child marriage are approved. In 2012, it was reported that there was a total of 1,022 approvals out of 1,165 child marriage applications filed in the *Syariah* Courts, making the approval rate at approximately 88 per cent.¹²⁹⁸

Anecdotal evidence also suggests that there is no guidance for judges on process or grounds for rejection and approval.¹²⁹⁹ Furthermore, section 8 of the Islamic Family Law (Federal Territories) Enactment 1984 is silent on the issue of consent of the child.¹³⁰⁰ As such, there are circumstances where the child is not called in by the *Syariah* Court for an interview, and reliance is placed upon the word of the parents as to whether the child consents to the marriage. In 2016 a case where a marriage was approved despite the husband being prosecuted for the statutory rape of his future child bride have emerged.¹³⁰¹

Section 8 of the Islamic Family Law (Federal Territories) Act is also silent on requiring the court to decide whether to allow the marriage in accordance with the best interest of the child.¹³⁰² Again, the absence of such a requirement allows judges to fully rely on their discretion to decide on child marriage applications without specific consideration of the best interest of the child.

1294 "Malaysia has a child marriage problem – it's time to act." Asian Correspondent. 21 June 2018. Available at: <https://asiancorrespondent.com/2018/06/malaysia-has-a-child-marriage-problem-its-time-to-act/#6UmRtGJIHAQ518jM.97>

1295 "Malaysian man who married 11 year-old Thai girl fined \$450 by sharia court." The Guardian. 10 July 2018. Available at: <https://www.theguardian.com/world/2018/jul/10/malaysian-man-marriage-11-year-old-thailand-girl-fined>

1296 "11 Year-Old Bride of Malaysian Man is Returned to Thailand." The New York Times. 16 August 2018. Available at: <https://www.nytimes.com/2018/08/16/world/asia/11-year-old-bride-thailand.html>

1297 *Act 303 Islamic Family Law (Federal Territories) Enactment 1984*, s8.

1298 "Child marriages on the rise." The Star Online. 6 October 2013. Available at: <https://www.the-star.com.my/news/nation/2013/10/06/child-marriages-on-the-rise-1022-applications-approved-in-2012-compared-to-900-in-2011/>

1299 SIS and ARROW. (2018). *Child Marriage: Its Relationship with Religion, Culture and Patriarchy*. Available at: <http://arrow.org.my/wp-content/uploads/2018/03/National-Report-Child-Marriage-Single-Page.pdf>

1300 *Act 303 Islamic Family Law (Federal Territories) Enactment 1984*, s8.

1301 "Child marriage used to cover up rape." Malay Mail. 23 April 2016. Available at: <https://www.malaymail.com/s/1105455/child-marriage-used-to-cover-up-rape>

1302 *Act 303 Islamic Family Law (Federal Territories) Enactment 1984*, s8.

Comparison of the legal minimum age of marriage under respective legal systems in Malaysia

Legal System	Minimum Age for Marriage (years)		Exception	
	Male	Female	Male	Female
Islamic Law	18 (Section 8 IFLA).	16 (Section 8 IFLA).	Syariah Courts may grant its written permission under certain circumstances. (Section 8 IFLA).	Syariah Courts may grant its written permission under certain circumstances. (Section 8 IFLA).
Civil Law	18 (parental consent required for those under 21) (Section 10 LRA).	18 (parental consent required for those under 21) (Section 10 LRA).	Nil.	The Chief Minister of various states may grant a licence to authorize the solemnisation of marriage for those between the ages of 16 and 18. (Section 10 LRA).
Customary Law	18 (Adat Iban 1993).	16 (Adat Iban 1993).	A parent or legal guardian may give their written consent for underage marriages. (Adat Iban 1993).	A parent or legal guardian may give their written consent for underage marriages. (Adat Iban 1993).

Source: Islamic Family Law (Federal Territories) Act 1984 (IFLA), Law Reform (Marriage and Divorce) Act 1976 (LRA), and Adat Iban (native customary law in Sarawak).

In one positive recent development, the state of Selangor raised the minimum legal age of marriage for Muslims from 16 to 18. However, individuals under the age of 18 can still apply to get married upon compliance with certain guidelines.¹³⁰³

Statistics on child marriage in Malaysia

Statistics for child marriage are not provided regularly by the government. The 2000 Population Census shows that 1.2% (53,261) of females married are between 15 and 19.¹³⁰⁴

1303 Selangor raises minimum age for marriage from 16 to 18." The Sun Daily. 6 September 2018. Available at: <http://www.thesundaily.my/news/2018/09/06/selangor-raises-minimum-age-marriage-16-18>

1304 "Underaged marriages on the increase since 2000." Malaysiakini. 23 February 2016. Available

The 2010 Population Census showed a rise to 1.4% of women married between 15 and 19.¹³⁰⁵ In absolute terms the rise was significant - 82,382 child marriages for females, while the corresponding number for males is 73,428. The 2000 Census also estimated that 6800 girls below 15 were recorded as married, however these numbers were not available for the year 2010.¹³⁰⁶

Table: The number of married girls and boys

Age Group	2000 Census		2010 Census	
	Girls	Boys	Girls	Boys
Under 15	6,800	4,334	Data not provided	Data not provided
15-19	53,196	11,833	68,668	72,640

Source: Department of Statistics Malaysia 2000 and 2010.

Human Rights Watch reported that in 2010, 16,000 girls under the age of 15 were married.¹³⁰⁷ The UN reported that in 2015, an estimated 15,000 girls had been married before the age of 19 and that there were many instances of young girls being forced to marry their rapists.¹³⁰⁸ In May 2016, the former Deputy Minister with the Ministry of Women, Family and Community Development (MWFCD,) Azizah Mohd Dun, said that 9,061 child marriages were recorded between 2011 and 2016, but looked to be on a downward trend between 2013 and 2016.¹³⁰⁹ Of that number, 6,286 Muslim children – below age 18 for males and 16 for females – were married between 2010 and 2015 following approvals by the *Syariah* Court, and 2,775 were non-Muslims.¹³¹⁰

Sisters in Islam (SIS) conducted a series of consultations with Islamic organisations, discovering that, whilst the harm of early marriages to girls in terms of health, emotional, psychological, and economic effects were acknowledged, there seemed no other solution for the issue of pre-marital sex which constituted a great sin in Islam.¹³¹¹

at: <https://www.malaysiakini.com/news/331429>

1305 Ibid.

1306 Ibid.

1307 “Time to Ban Child Marriage in Malaysia.” Malaysiakini. 29 April 2016. Available at: <https://www.hrw.org/news/2016/04/29/time-ban-child-marriage-malaysia>

1308 “Child marriages not rare in Malaysia with 15,000 underage brides, activists say.” Malay Mail. 2 October 2015. Available at: <http://www.themalaymailonline.com/malaysia/article/child-marriages-not-rare-in-malaysia-with-15000-underage-brides-activists-s>

1309 SIS and ARROW. (2018). *Child Marriage: Its Relationship with Religion, Culture and Patriarchy*. Available at: <http://arrow.org.my/wp-content/uploads/2018/03/National-Report-Child-Marriage-Single-Page.pdf>

1310 Ibid.

1311 “Early marriage.” SIS. Undated. Available at: <http://www.sistersinislam.org.my/news.php?item.674.41>

The Islamic organisations surveyed held the belief that marriage provided an easy way to manage pre-marital sex and teenage pregnancy.¹³¹²

Another reason given by the Islamic authorities for the preservation of child marriage under *Syariah* law is that some sources of laws and jurisprudence (in particular, the Sunnah or actions of the Prophet Muhammad pbuh) recognise and condone early marriages. Often, proponents for child marriage within Islam cite the example of the Prophet Muhammad's marriage to Aishah bint Abu Bakr. Reportedly, Aishah was six years old when she was betrothed and nine when the marriage was consummated. However, the question arises as to why the Prophet's marriage to Aishah is used as model while his marriage to Khadijah, a widow fifteen years older than him, or his marriage to other widows and divorcees are ignored as exemplary practices. Furthermore, some more recent research asserts that Aishah was more likely to have been nineteen at the time of her marriage, rather than six.

Marriage as an avoidance of statutory rape charges

Section 375 of the Penal Code provides that a man commits rape when he “has sexual intercourse with a woman ... with or without her consent, when she is under sixteen years of age.”¹³¹³ An exception to this section is that sexual intercourse by a man with his own wife is not rape.¹³¹⁴

There have been several instances, such as those documented below, where rape or statutory rape charges were withdrawn or not pursued as the victim was held to have agreed to marry the perpetrator. It is likely that there are many cases such as this that are unreported, and dealt with through marriage to settle the issue. Furthermore, in the cases that are reported, it appears that courts are reluctant to annul such marriages.

In 2012, a 12 year old girl was permitted to marry a 19 year old boy in a union that the victim described as a marriage of love.¹³¹⁵ It was revealed a year later that the girl's father had permitted the union as the 19-year-old had raped his daughter. No charges were made against the then-husband, as the father retracted the police report made regarding the rape.¹³¹⁶

In 2013, a 40 year old restaurant owner took a 13 year old girl from an impoverished family as his second wife after he was charged with the statutory rape of the girl, in the hopes of avoiding prosecution.¹³¹⁷ This union, again, was given its approval by the victim's

1312 Ibid.

1313 *Act 574 Penal Code as at 1 February 2018*, s375(g).

1314 Ibid, s375.

1315 “Kahwin kerana telah diperkosa, kata bapa remaja cerai talak tiga.” Astro Awani. 29 November 2013. Available at: <http://www.astroawani.com/berita-malaysia/kahwin-kerana-telah-diperkosa-kata-ba-pa-remaja-cerai-talak-tiga-26126>

1316 Ibid.

1317 “Malaysian rape accused marries 13-year-old alleged victim.” The Guardian. 22 May 2013.

father and the *Syariah* Court. The victim's father was reported to have said that, "It is best for her that they get married . . . What else can I do?"¹³¹⁸ Two days after a rape report was made by the victim's aunt, the victim lodged a second police report to withdraw the one made by her aunt, claiming that she was not raped or forced to have sex with the rapist. A sum of RM 5,000 was given to the victim, which she emphasised was meant to be her marriage dowry and not bribery.

Subsequently, the victim's father lodged another police report in favour of his daughter's alleged decision to withdraw the first report. As a result, the rapist was discharged not amounting to acquittal.¹³¹⁹ Prosecution was initiated again after outcry from civil society organisations, and the rapist was convicted. He was also charged for bribery for paying a sum of money to the victim's father in order to obtain his consent to marry her and for the withdrawal of the report.¹³²⁰ In the charge read out in Court, it was revealed that the rapist had a conversation with the victim's father and said, "*Saya sanggup kahwin dengan anak kamu, asalkan kamu menarik repot polis rogol terhadap saya* (I am willing to marry your daughter if you withdraw the police report against me for rape)."¹³²¹

More recently, a 28-year-old man's marriage application to a 15-year-old girl was approved in 2016.¹³²² The former was accused of raping the latter, who was then only 14, two times in 2015.¹³²³ Pursuant to the presentation of a marriage certificate in court, the alleged rapist was discharged not amounting to acquittal of statutory rape charges, with the presiding judge saying that, "there is no necessity to proceed further with this case."¹³²⁴ However, later in the same year, a retrial was ordered and the perpetrator was found guilty of statutory rape.¹³²⁵ Nevertheless the status of their marriage remained intact.

Available at: <https://www.theguardian.com/world/2013/may/22/malaysian-rape-marries-victim-girl>

1318 Ibid.

1319 "Man in rape-and-marry case jailed, fined RM 10,000 for bribing girl's father." The Star Online. 23 June 2014. Available at: <https://www.thestar.com.my/news/nation/2014/06/23/man-rape-marry-guilty-of-bribery/>

1320 Ibid.

1321 "Riduan to spend 3 days in jail." Daily Express. 24 June 2014. Available at: <http://www.dailyexpress.com.my/news.cfm?NewsID=90153>

1322 "Statutory rape case accused discharged as he married victim." Borneo Post Online. 28 July 2016. Available at: <http://www.theborneopost.com/2016/07/28/statutory-rape-case-accused-discharged-as-he-married-victim/>

1323 "Outcry over man discharged of statutory rape." Borneo Post Online. 29 July 2016. Available at: <http://www.theborneopost.com/2016/07/29/outcry-over-man-discharged-of-statutory-rape/>

1324 Ibid.

1325 "Retrial set for Malaysian man who married 14yo rape victim to avoid jail: lawyer." ABC News. 6 August 2016. Available at: <http://www.abc.net.au/news/2016-08-06/retrial-set-for-malaysia-rape-marriage-case-lawyer-says/7697628>

Statements from policy makers condoning child marriage

Statements by some political leaders indicate a lack of understanding regarding the harms of child marriage.

In 2016, policymakers from the Islamic political party, Pan-Malaysian Islamic Party (PAS), argued that the banning of child marriage would only lead youth to casual premarital sex as “teenagers would have sexual urges” and this would lead to the act of *zina* (sex out of wedlock).¹³²⁶ *Zina* is regarded as being more detrimental than child marriage.

In March 2017, Faiz Fadzil - a *Syariah* lawyer and deputy chief of the youth wing of the National Trust Islamic Party (Parti Amanah Negara), a faith-based political party in Malaysia - stated that, if a girl is below the age of 16 and falls pregnant as a result of “consensual sex” the man who had sex with her will be prosecuted for rape and would then not want to take responsibility for the child.¹³²⁷ Faiz Fadzil attempted to justify this statement by remarking that “it may be in the best interests of both the girl and the child for her to get married.”¹³²⁸

During a parliamentary debate in April 2017, the United Malays National Organisation (UMNO) Member of Parliament and former *Syariah* court judge Shabudin Yahaya, said that a child who has reached puberty, even those who are only nine years old, can be mature enough for marriage. He was quoted to have said:

“In some instances, it is not impossible that they get married if they have reached puberty at the age of nine. A 12-year-old may have the body of an 18-year-old which means some girls are ‘physically and spiritually’ ready for marriage.”¹³²⁹

In the same speech during parliamentary debate, Shabudin Yahaya stated:

“Perhaps through marriage they can lead a healthier, better life. And the person who was raped does not necessarily have a bleak future. She will have a husband, at least, and this could serve as a remedy to growing social problems.”¹³³⁰

1326 “Legalise child marriage to stop teens from having premarital sex, says PAS lawyer.” Malaysian Digest. 7 April 2016. Available at: <http://malaysiandigest.com/frontpage/29-4-tile/604622->

1327 “Marriage isn’t the worst thing for rape victims.” Free Malaysia Today. 12 March 2017. Available at: <http://www.freemalaysiatoday.com/category/nation/2017/03/12/marriage-isnt-the-worst-thing-for-rape-victims/>

1328 Ibid.

1329 “Video of Shabudin’s remarks on child marriage go viral.” The Star Online. 9 April 2017. Available at: <https://www.thestar.com.my/news/nation/2017/04/09/video-of-shabudins-remarks-on-child-marriage-goes-viral/>

1330 “MP: Okay for rapist to marry victims, even some 9-year-olds can marry.” The Star Online. 4

Most recently, the mufti (religious authority) of the state of Sabah suggested that the age of marriage be brought down to 14 for girls and 16 for boys; after facing substantial backlash, the mufti then clarified that this should only be done under “special circumstances.”¹³³¹

Unilateral conversion of children to Islam by one spouse

Article 8 of the Federal Constitution of Malaysia guarantees that all persons are equal before the law and entitled to the equal protection of the law, and provides that there shall be no discrimination against citizens on the grounds of religion, race, descent, place of birth, or gender in any law.^{1332,1333} This right to equality before the law and protection from discrimination must be the basic premise by which all provisions of the Constitution, including on matters of jurisdiction and conversion to Islam, be interpreted.

However, there have been several cases where Article 8 has been derogated in the case of the unilateral conversion of one spouse to Islam, along with the children.¹³³⁴ There is concern regarding the impact such conversions have on the non-Muslim spouse and their children in issues of divorce, division of assets, maintenance, inheritance, custody and guardianship of children, and the ability to have an equal say in determining the children’s religion and upbringing.^{1335,1336}

In its 2018 Concluding Observations to Malaysia, the CEDAW Committee stated that it was:

“...concerned about the existence of the dual legal system of civil law and multiple versions of Syariah law, which results in continuing discrimination against women, particularly in the field of marriage and family relations... The committee is further concerned about the lack of clarity in the legal system, particularly as to whether civil or Syariah law applies to the marriages of non-Muslim women whose husbands convert to Islam.”¹³³⁷

April 2017. Available at: <https://www.thestar.com.my/news/nation/2017/04/04/tasek-gelugor-mp-not-impossible-for-12-year-old-girls-to-be-married/>

1331 “Sabah mufti says proposal to lower marriage age only for ‘special cases’. The Star Online. 29 September 2018. Available at: <https://www.thestar.com.my/news/nation/2018/09/29/sabah-mufti-says-proposal-to-lower-legal-marriage-age-only-for-special-cases/>

1332 *Malaysian Federal Constitution as at 1 November 2010*, Part II, Art 8.

1333 “More still needs to be done to resolve unilateral conversion of minors.” Malaysiakini. 28 August 2016. Available at: <https://www.malaysiakini.com/news/353860>

1334 Ibid.

1335 “Make it right for all.” The Star Online. 13 August 2017. Available at: <https://www.thestar.com.my/news/nation/2017/08/13/make-it-right-for-all-the-newly-passed-law-reform-marriage-and-divorce-amendment-bill-failed-to-settle/>

1336 “Other cases of unilateral child conversion.” Malay Mail. 30 July 2018. Available at: <https://www.malaymail.com/s/1565215/other-cases-of-unilateral-child-conversion>

1337 CEDAW, *Concluding Comments to Malaysia*, 31 May 2006, para 30 (CEDAW/C/MYS/CO/2).

In 2015, the Court of Appeal held that the validity of the conversion of Indira Gandhi's three children by their Muslim father could only be determined by the *Syariah* Court.¹³³⁸ In finding that only the *Syariah* courts had jurisdiction to hear cases of conversion, the courts left the non-Muslim parent in unilateral conversion cases without a remedy, as the *Syariah* court have no jurisdiction over civil matters and persons who are not Muslim.¹³³⁹ Besides this being unfair to non-Muslims, it entrenches legal inequalities in family relations and does so in the name of Islam. It implies that a Muslim parent, even if newly converted, has greater rights than a non-Muslim parent.

It was only in 2018, after an eight year-long battle, that the unilateral conversion of Indira Gandhi's children was nullified by the Federal Court, when the court re-affirmed its jurisdiction over such matters.¹³⁴⁰

Law and policy reforms on unilateral conversion

In 2009, the Cabinet had decided where one of parent opts to convert the children to another religion without the consent of their spouse, the children must continue to be raised in the religion which was common at the time of the marriage.¹³⁴¹ After many years of consideration, the Law Reform (Marriage and Divorce) Act 1976 was passed in Parliament in August 2017.¹³⁴²

The amendments should settle some of the issues around unilateral conversion, through the following changes:

- Where parties marry under the Law Reform (Marriage and Divorce) Act in a non-Muslim marriage, the dissolution of that marriage and the determination of all matters incidental thereto must also be pursuant to Law Reform (Marriage and Divorce) Act provisions;
- Muslim and non-Muslim parties are able to apply for divorce under section 51 of the Law Reform (Marriage and Divorce) Act. The divorce may be applied for on the basis of mutual consent or by proving that the marriage has irretrievably broken down because of adultery, unreasonable behaviour, or two years of separation or desertion. This means that, for the first time, an unconverted non-Muslim spouse is able to cite issue of domestic violence as grounds for divorce where a converted spouse is concerned. This is important as the amount of maintenance that may be paid to a spouse upon divorce is partially influenced by whom the

1338 Federal Court: Unilateral conversion of Indira Gandhi's 3 children null and void (updated)." The Star Online. 29 January 2018. Available at: <https://www.thestar.com.my/news/nation/2018/01/29/federal-court-unilateral-conversion-of-indira-gandhis-3-children-is-null-and-void/>

1339 Ibid.

1340 Ibid.

1341 "Enforce 2009 Cabinet decision on conversion." The Star Online. 22 January 2016. Available at: <https://www.thestar.com.my/news/nation/2016/01/22/enforce-2009-cabinet-decision-on-conversion/>

1342 "Dewan Rakyat Passes Law Reform (Marriage and Divorce) (Amendment) Bill 2017." Bernama. 10 August 2017. Available at: www.bernama.com/en/general/news.php?id=1380451

courts decide is responsible for the irretrievable breakdown of the marriage;

- Upon the death of a newly converted spouse, non-Muslim relatives may inherit property of the converted spouse and will not be left destitute. Besides non-converted spouses and children, non-converted parents can also receive a share.

These amendments provide certainty as to which court of law – civil or *Syariah* – has absolute jurisdiction in the dissolution of marriage and ancillary orders in the case where one spouse converts into Islam.

However, the final bill that was passed omitted a key amendment – a new section 88A – that was originally proposed in the bill. Section 88A proposed that, where a marriage was contracted under the civil law, the religion of children born within that marriage must remain as such except where both the father and mother otherwise agree.¹³⁴³ The provision goes on to say that the wishes of the child may also be taken into account when the child has attained the age of 18. As a result of this omission of section 88A, the issue of unilateral conversion remained unaddressed by the Law Reform (Marriage and Divorce) Act.

The Mufti of Perak, Harussani Zakaria, declared the amendments to be unconstitutional and contrary to Islamic law, claiming that any law that is against Islam is a direct opposition to God and would constitute idolatry.¹³⁴⁴ The Perak Mufti was reported to have claimed that the amendments would deny the rights of a Muslim convert, in addition to side lining the powers of the *Syariah* courts:

“This is a very serious matter, a matter that is against the Constitution and furthermore against Islam, and it is opposed to the rules set by the Shariah.”¹³⁴⁵

The former Deputy Prime Minister Dr Ahmad Zahid Hamidi, responded to these claims by stating:

“We are committed to taking other religions into consideration but the Government feels that, based on the concerns raised by certain groups and individuals, the matter needs to be reviewed. We want to ensure that the amendments are not against Islamic fatwa or the Federal Constitution.”¹³⁴⁶

1343 “Azalina: Article 88A covering child conversion not included in fresh bill.” The Star Online. 8 August 2017. Available at: <https://www.thestar.com.my/news/nation/2017/08/08/contentious-clause-dropped-azalina-article-88a-covering-child-conversion-not-included-in-fresh-bill/>

1344 “Perak mufti claims unilateral conversion ban bill ‘insult’ to Islam, wants retraction.” Malay Mail. 3 April 2017. Available at: <http://www.themalaymailonline.com/malaysia/article/perak-mufti-claims-unilateral-conversion-ban-bill-insult-to-islam-wants-ret>

1345 Ibid.

1346 “Zahid: Need to relook proposed amendments to Marriage and Divorce Act.” The Star Online. 7 April 2017. Available at: <https://www.thestar.com.my/news/nation/2017/04/07/deferment-to-review-con>

Case Study: S. Deepa

The case of *Viran Nagapan v Deepa Subramaniam* illustrates one of the critical issues in both Civil and Syariah laws - the unilateral conversion of children.

In this case, the Federal Court reversed two previous rulings that granted Deepa full custody of her two children. This resulted in her ex-husband, Izwan Abdullah being granted custody of their 8 year-old son, whom he had taken away, while Deepa was granted custody of their 11 year-old daughter.¹³⁴⁷ Previously, Izwan had converted to Islam and also converted his children, thus gaining sole custodial rights of the children from *Syariah* court.¹³⁴⁸

This case was then brought forth to the Court of Appeal where it was held that the Civil Court had the power and jurisdiction to decide on the case despite the fact that there was a Muslim involved. The Court of Appeal upheld the decision of the High Court and granted Deepa custody of both of her children. However, this decision was later overturned at Federal Court following interviews with the children where they gave their preference about which parent they would want to stay with.¹³⁴⁹

It was also decided here that, if a marriage had been originally registered under the Law Reform (Marriage and Divorce) Act, the matters of child custody and other related issues upon divorce should fall under the purview of the civil courts even if one of the parties had converted to Islam. Muslim converts therefore cannot seek a ruling on custody, guardianship or maintenance from the *Syariah* Court if his/her marriage was registered under civil law.¹³⁵⁰

Worryingly, the acts of domestic violence perpetrated by Izwan against Deepa were overlooked in the Federal Court's custody decision. It was recorded that Deepa had lodged more than 7 police reports from 2007 to 2012 for acts of domestic violence by her husband, and this should have been given greater weight in the case as it should play a significant role in determining custodial rights.¹³⁵¹

version-bill-zahid-need-to-relook-proposed-amendments-to-marriage-and-divorce/

1347 "Bittersweet 2016 for human rights in Malaysia." Malay Mail Online. 1 January 2017. Available at: <https://www.malaymail.com/s/1283531/bittersweet-2016-for-human-rights-in-malaysia>

1348 Mohamed Adil, M. A. (2016). Custodial issues arising upon the conversion of one spouse to Islam. *Islam and Civilisational Renewal*, 7(3), pages 415-418.

1349 Ibid.

1350 Ibid.

1351 "Domestic Violence overlooked in Deepa custody decision." Malaysiakini. 13 February 2016. Available at: <https://www.malaysiakini.com/news/330257>

Polygamy

Muslim men in Malaysia are still permitted to practice polygamy with the consent of a *Syariah* court. Polygamy contravenes Article 5 (a) of CEDAW regarding prejudicial customary practices, as well as Article 16 (1)(a) concerning equal rights to enter into marriage. The Malaysian government maintains its reservation to the latter Article.

The CEDAW Committee's General Recommendation 21 states that "Polygamous marriage contravenes a woman's right to equality with men, and can have such serious emotional and financial consequences for her and her dependants that such marriages ought to be discouraged and prohibited."¹³⁵²

Polygamy in Malaysia raises a number of significant concerns:

- The criteria which must be met before polygamy is permitted is limited, and oftentimes not met before a polygamous marriage is granted by the *Syariah* court;
- Although men are not legally able to enter into polygamous marriages without the court's permission, in practice permission from the court can be granted retrospectively and the man is fined an insignificant amount;
- There are negative emotional and mental health consequences of polygamy on women and their children, and there are often devastating effects on the wellbeing of the family.¹³⁵³ See the section on the impact of polygamy in Malaysia below for more details.

In March 2017, the former Minister of Parliament, Jamil Khir Baharom, stated that the *Syariah* courts have allowed 8,808 polygamy applications of Muslim husbands between 2010 and 2016.¹³⁵⁴ Increasingly, polygamous marriages are being conducted on the border of Thailand to escape the need to obtain *Syariah* Court approval prior to a polygamous marriage. The Malaysian consulate in Thailand's Songkhla district recorded 4,178 such marriages in 2016, an increase from 4,081 in 2015 and 3,831 in 2014.¹³⁵⁵

In recent years, polygamy has been equated with being a good, pious Muslim, and

1352 CEDAW Committee, *General Recommendation 21*, para 14 (A/49/38).

1353 "Polygamy in Malaysia: Why laws and their enforcement need to be strengthened." SIS. Undated. Available at: www.sistersinislam.org.my/news.php?item.1510.7

1354 "Over 8,000 polygamy applications given green light since 2010, Putrajaya reveals." Malay Mail. 20 March 2017. Available at: <http://www.themalaymailonline.com/malaysia/article/over-8000-polygamy-applications-given-green-light-since-2010-putrajaya-reve>

1355 "The best spot to keep polygamous marriages secret." Free Malaysia Today. 27 March 2017. Available at: <http://www.freemalaysiatoday.com/category/nation/2017/03/27/the-best-spot-to-keep-polygamous-marriages-secret/>

conservative Muslim groups have publicly supported polygamy as one of the accepted tenets of Islam. The Selangor Islamic Religious Department (JAIS) states that Islam mandates polygamy in certain situations, such as where a man's sexual needs are unable to be fulfilled by the wife, where the wife is always ill, to care for widows or divorcees, or where the wife is unable to have a child.¹³⁵⁶ Kelantan's Women, Family and State Welfare Agency chairman, Mumtaz Md Nawi, encouraged eligible Muslim men with "desire" for a second wife to practice polygamy, as part of the state's campaign to combat undocumented marriage.¹³⁵⁷

Islamic laws on polygamy

In Malaysia, since the Law Reform (Marriage and Divorce) Act 1976 was enforced in 1982 banning polygamy for non-Muslims, polygamy has increasingly come to be associated with Islam. All states in Malaysia have allowed polygamous marriages for Muslim persons under Islamic family law, provided that the husband has permission from the relevant *Syariah* court.¹³⁵⁸

Though a husband is required to apply for the consent of the court under Islamic family law to enter into and register a polygamous marriage, it is not uncommon for the *Syariah* court to grant retrospective permission and registration in cases where the marriage has already been solemnised. This is provided for in the law.¹³⁵⁹

Different states require different conditions to be made out to the *Syariah* court before permission to enter into a polygamous marriage is granted, so the laws of some states are more restrictive against polygamy than others. For example, under section 23 of the Islamic Family Law (Federal Territory) Act 1984, the following conditions are imposed upon would-be polygamous marriages:

- The marriage must be "just or necessary", having regard to whether the existing wife is sterile, physically unfit to engage in sex, avoiding conjugation, or insane;
- The applicant must be able to support all wives and children financially;
- The applicant must be able to accord equal treatment to all wives and dependants;
- The marriage must not cause *darar syarie* (harm) to the existing wife or wives and dependants.¹³⁶⁰

However, in states such as Kelantan, the consent or even opinion of the existing wife is

1356 "Poligami." JAIS. Undated. Available at: <http://www.jais.gov.my/artikel/poligami>

1357 "Kelantan government says polygamy good to combat illegal marriage." Malay Mail. 2 February 2017. Available at: <http://www.themalaymailonline.com/malaysia/article/kelantan-government-says-polygamy-good-to-combat-illegal-marriage>

1358 Abdullah, R. and Khairuddin, S. (2009). The Malaysian Shari'ah courts: polygamy, divorce and the administration of justice." *Asian Women*, 25(1), page 35.

1359 *Act 303 Islamic Family Law (Federal Territory) Act 1984*, s23.

1360 *Ibid.*, s23.

not necessarily sought before the marriage is granted. In order to avoid more restrictive laws in their own state, some husbands have gone across state (and even international) borders to contract polygamy without the consent of the existing wife or wives.¹³⁶¹

The Islamic Family Law Act/Enactment considers it an offence if a polygamous marriage takes place without the permission of the Court. However, the marriage eventually gets registered, with a penalty imposed upon the husband. The law actually states that the husband will have to pay a fine not exceeding RM1000 or undertake a jail term of not more than six months. However, it is very rare for a man to be sentenced to jail for such an offence, and in most cases, he is merely sentenced to pay fine. The fines are usually about RM300. Many argue that this kind of penalty only makes it easier for husbands to contract polygamous marriages first, and inform the court after the fact, because they know that all they will have to do is to pay a small fine.

Section 23 of the original Islamic Family Law (Federal Territories) Act 1984 provided five criteria which needed to be satisfied before a polygamous marriage could be permitted, as a way to safeguard the interests of women and families. The criteria have been eroded in subsequent amendments. The 1994 amendments to the law repealed the final criterion, which was that the proposed marriage would not directly or indirectly lower the standard of living that the existing wife or wives and dependents had been enjoying and would reasonably expect to continue to enjoy were the marriage not to take place.

The Islamic Family Law (Federal Territories) Amendment Act 2006 further deteriorated the position of women in polygamy. Subsection 23(3) and (4)(a) in the (previously) 1984 Act imposes the conditions on the proposed polygamous marriage being both “just AND necessary.” Justice is mandatory in the Qur’an, as stated in the 1990 judgment of the Selangor Syariah Appeals Committee in the case of *Aishah Abdul Rauf v Wan Mohd Yusof Wan Othman* ([1990] 3 MLJ lx). The reason given by the husband for wanting to contract another marriage was that of legitimising his love for the other woman. The Appeal Committee observed that while this may be sufficient ground to show why the proposed marriage was “necessary”, it has no relevance to the question of whether the proposed marriage was “just”. Unfortunately, the 2006 Amendment has now changed the condition from “just AND necessary” to “just OR necessary”. This appears to be a deliberate attempt to nullify the decision in the above case¹³⁶² and thereby reducing the husband’s burden of proof to justify a polygamous marriage in court.

In the original Islamic Family Law (Federal Territories) Act 1984 a polygamous marriage could only be entered into with the prior permission of the court. The 1994 amendments made it possible for a polygamous marriage to take place followed by a retrospective registration of the marriage:

1361 “Polygamy.” Women’s Aid Organisation (WAO). Undated. Available at: www.wao.org.my/Polygamy_84_76_1.htm

1362

“23. (1) No man, during the subsistence of a marriage, shall, except with the prior permission in writing of the Court, contract another marriage with another woman nor shall such marriage contracted without such permission be registered under this Act: **Provided that the Court may if it is shown that such marriage is valid according to Hukum Syarak order it to be registered subject to section 123.**” [1994 amendments in bold text]

Impact of Polygamy in Malaysia

Sisters in Islam (SIS), in collaboration with Universiti Kebangsaan Malaysia, Universiti Sains Malaysia and Universiti Malaya, conducted nation-wide survey on the impact of polygamy in Muslim families from 2007 to 2012.¹³⁶³ During the research, they interviewed husbands, first wives and their children, and second wives and their children in polygamous families. This research painted a bleak picture of the experiences of Malaysians living in polygamous situations:

- While 31% of husbands were “very satisfied” with their marriages to both first and second wives, only 7% of first wives reported they were “very satisfied” and 13% of second wives reported to being “very satisfied” in their marriage;
- Most polygamous husbands could not fulfil financial demands. 44% of first wives started working long hours to supplement the family income upon entering into the polygamous marriage, and 44% reported feeling “always” or “often” feeling financially insecure since their husband’s second marriage;
- While 63% of husbands believed they were “always” or “often” sharing their financial obligations fairly among their wives, 60% of first wives did not think this was the case;
- 77% of children of first wives were unhappy with how much time their fathers allocated to them;
- Over 90% of children of both first and second wives said they would not recommend polygamy as a form of marriage or family institution. Their experience of polygamous families had negatively affected their beliefs in the institution of marriage;
- 87% of children surveyed said that their experience of polygamy had left negative emotional and psychological impacts, while 60% of children were involved in problematic activities such as drug and alcohol abuse and truancy.¹³⁶⁴

SIS’s study also showed that the *Syariah* court has not strictly enforced requirements for polygamous marriages:

1363 “Polygamy in Malaysia: Why laws and their enforcement need to be strengthened.” SIS. Undated. Available at: www.sistersinislam.org.my/news.php?item.1510.7

1364 Ibid.

- Of those surveyed, 45% of husbands did not submit applications before entering into a polygamous marriage to the court;
- In 50% of cases, no financial or health documents were requested by the court from husbands;
- 60% of first wives were not called by the court and asked for their views or consent to their husbands marrying a second wife.¹³⁶⁵

Extending the right of fasakh category of divorce to husband under Islamic family law

Under section 47 of the Islamic Family Law (Federal Territories) Act, a husband or wife may apply to the *Syariah* court for a divorce.¹³⁶⁶ If the court is satisfied that the marriage has irretrievably broken down and both parties consent to the divorce, the court may ask the husband to pronounce *talaq* (the husband's formal repudiation of his wife) to the court. If the desire for the divorce is not mutual, the court must direct the parties to attempt reconciliation - except in cases where this is impracticable due to desertion, imprisonment, mental illness of a spouse, or other exceptional circumstances.

The most common way for wives to institute divorce under Islamic law is by *fasakh* (voiding the marriage). Under section 52 of the Islamic Family Law (Federal Territories) Act, a woman may apply to the *Syariah* court for the dissolution of marriage by *fasakh* if her husband has failed to provide maintenance, has become mentally ill, has contracted a sexually transmitted disease, treats her cruelly, does not treat her equally with his other wives, hinders her legal rights over her property, attempts to force her to lead an immoral life, or associates with "women of ill repute."¹³⁶⁷ A woman may void an invalid marriage through *fasakh*, including a marriage to which she did not give consent. Nevertheless, fairly strong grounds must be made out if a woman is to dissolve her marriage through *fasakh*, and the court should not make an order for the dissolution of the marriage if such a dissolution could be regarded as "unjust to the husband."¹³⁶⁸ It is unclear in which circumstances dissolution of a marriage through *fasakh* could be considered unjust.

Though a traditionally only wives were given the right to divorce through *fasakh*, under amendments made to the Islamic Family Law (Federal Territory) (Amendment) Act 2006, husbands were also extended the right to *fasakh* divorce.¹³⁶⁹ This is despite the fact that only a husband is permitted to unilaterally divorce his wife under *talaq* divorce proceedings.

1365 Ibid.

1366 Act 303 Islamic Family Law (Federal Territory) Act 1984, s47.

1367 Ibid, s52.

1368 Act 303 Islamic Family Law (Federal Territory) Act 1984, s52(4).

1369 Ibid, s52.

Prohibitory order against wife's property under IFL

The Islamic Family Law (Federal Territories) Act 1984 Act allows the Court to grant an injunction preventing the disposition of property by a husband or former husband, in order to protect the wife or former wife's financial claims. The 2006 Amendment Act, in the new section 107A, uses gender neutral language, and also allows the court to grant injunction preventing the disposition of property by a wife or former wife, to protect the husband and former husband's financial claims.

Under traditional Islamic law, the husband has no legal rights over his wife's property. The wife's property is exclusively her own, and she also has the right to maintenance from her husband. The different rights and responsibilities under traditional Islamic law are related to men's greater inheritance rights. However, the administration of the syariah laws on inheritance emphasize the provision that male heirs be given a double share under the *faraid* distribution, without emphasizing on the rationale for this rule -- that the man has the legal responsibility to provide maintenance for the family, and thus every female should always have a man to provide for her needs, be he a father, a brother, a husband or a son. In today's society, however, many women have to earn a living and contribute towards the family needs. Moreover, divorced or widowed mothers often have to provide for their children's needs without assistance (or adequate assistance) from the father or male relatives who were traditionally regarded as responsible for the children's maintenance. There is no mechanism in the present legal system for women to obtain the redress that would reflect on the balance and justice that was originally intended by the *Syariah*.

Guardianship of children for Muslim women

Pursuant to section 88 of the Islamic Family Law (Federal Territories) Act, only a father is regarded as *wali* (legal guardian) of any children born within his marriage.¹³⁷⁰ If the father dies prematurely, guardianship passes on to the paternal grandfather. This differs from the treatment of non-Muslim mothers, who are granted an equal right with fathers to guardianship of their children under the Guardianship of Infants Act 1961.¹³⁷¹

Though a Cabinet Directive was issued to enable all Malaysian mothers, including Muslims, to sign official documents on matters related to their children was issued in 2000, it is hoped that the right of Muslim mothers to be guardians of their children will also be explicitly recognized by law.¹³⁷²

1370 Ibid, s88.

1371 Act 351 *Guardianship of Infants Act 1961*.

1372 "The fight for equality." The Star Online. 7 March 2011. Available at: <https://www.thestar.com.my/travel/malaysia/2011/03/07/the-fight-for-equality/>

Current Malaysian Islamic family law legislation regarding guardianship does not reflect present day realities. Both mothers and fathers have to contribute towards family needs, and divorced or widowed mothers often face difficulties in obtaining financial assistance from their ex-husband or his relatives to help them to raise children. Further, there is no statutory provision for the father's loss of guardianship in the case of irresponsibility regarding his children's maintenance.

Loss of custody of children for Muslim women upon remarriage

Various conditions are attached to Muslim a mother's right of custody to her children under Malaysian Islamic family law. Some of these conditions are sensible, for instance a mother's right to custody is lost if she neglects or is cruel to her child.¹³⁷³ However, a mother's custody to her children is also lost "by her marriage with a person not related to the child within the prohibited degrees if her custody in such case will affect the welfare of the child."¹³⁷⁴ There is no specific statutory provision on how a man may lose his right to custody, even if he is cruel or neglectful of the child.

Children Born Out of Wedlock

When a Muslim child is born out of wedlock in Malaysia, it is common practice that the child is not able to take their father's name, and instead is ascribed the name "bin Abdullah". This practice leads to the humiliation, public scorn, and discrimination of those born out of wedlock, and marks them as illegitimate for the rest of their lives.

Section 110 of the Islamic Family Law (Federal Territories) Act provides that:

"Where a child is born to a woman who is married to a man more than six qamariah [Quranic] months from the date of the marriage ... paternity of the child is established in the man, but the man may, by way of li'an or imprecation, disavow or disclaim the child before the Court."

The effect of this provision is that when a child is born to a couple who have been married for less than six months, that child is deemed to be born out of wedlock. The father cannot be legally recognised as wali (guardian) to the child, and the child will not have any inheritance rights from the father.

Custody of children born out of wedlock is exclusively the responsibility of the mother and her relatives, and the court may order a woman to pay maintenance to her illegitimate child. However, there is still no provision for the Syariah court to order a man to pay or contribute to the maintenance of his illegitimate child.

1373 Act 303 *Islamic Family Law (Federal Territory) Act 1984*, s83.

1374 *Ibid.*

In July 2017, the Court of Appeal issued a landmark decision in the case of *A Child v National Registration Department*, holding that the National Registration Department was not bound to follow the *fatwa* on naming children born out of wedlock as “bin Abdullah” on their birth certificate and identity card.¹³⁷⁵ The Court of Appeal issued the decision on the basis of compassion and in the best interest of the child, stating:

“Herein lies the injustice because the sad truth is, there is a stigma attached to the surname “bin Abdullah” among the Muslim community. It is generally understood that if a Muslim child is given “Abdullah” as his surname when his father’s name is not in fact Abdullah, he will be exposed as a child that is born out of wedlock.”¹³⁷⁶

This judgement was immediately met with consternation from conservative Muslim proponents. The Perak Mufti Harussani Zakaria stated that those who are in favour of illegitimate Muslim children taking on their fathers’ names are legitimising *zina* (sex out of wedlock).¹³⁷⁷ Furthermore, the National Registration Department said it would continue to register such births as usual despite the judgement, and filed an appeal in the Federal Court. The then-Deputy Prime Minister, Dr Ahmad Zahid Hamidi agreed with the National Registration Department’s move to appeal, on the basis that the Department was carrying out its tasks according to the Fatwa Committee of the National Council for Islamic Affairs’ ruling which does not allow children conceived out of wedlock to take the name of the father.¹³⁷⁸

Other issues in Islamic family law in contravention of Article 16 of CEDAW

Women’s capacity to enter into marriage

Under Islamic Family Law (Federal Territory) Act a *wali* (guardian) for the woman must be present to register the marriage,¹³⁷⁹ and the *wali* must give consent to the marriage.¹³⁸⁰ As previously discussed, under Malaysian Islamic family law only a father, and not a mother, is permitted to be recognised as a guardian. If there is no *wali* or the *wali* unreasonably withholds his consent, the marriage may be solemnised with approval of a judge. However, both women and men should be able to enter into marriage with the spouse of their choice without the consent of a third party. The repeal of this law would

1375 *A Child v National Registration Department* (2017).

1376 *Ibid*, [10].

1377 “Perak mufti: l’ts zina if illegitimate kids take on fathers’ names.” The Star Online. 1 August 2017. Available at: <https://www.thestar.com.my/news/nation/2017/08/01/perak-mufti-its-zina-if-illegitimate-kids-take-on-fathers-names/>

1378 “Zahid backs NRD’s move to appeal court decision.” Berita Daily. 31 July 2017. Available at: <https://www.beritadaily.com/zahid-backs-nrds-move-to-appeal-court-decision/>

1379 *Ibid*, s7.

1380 *Ibid*, s13.

give Muslim women the same right as men to consent to their own marriage.

Nusyuz

Nusyuz can be defined as the disruption of matrimonial harmony by either spouse. However, it is widely used in Malaysia to state that a wife “unreasonably refuses to obey the lawful wishes and commands of the husband.”¹³⁸¹ *Nusyuz* is only applicable to wives according to the Islamic Family Law (Federal Territory) Act, therefore only husbands are able to file for divorce based on *nusyuz*.¹³⁸² The stigma and fear attached to declaring ones wife *nusyuz* is sometimes used by husbands to keep their wives compliant in situations of domestic violence.

Payment of *mut’ah* to divorced wife

Under the Islamic Family Law (Federal Territory) Act, *mut’ah* is translated as a “consolatory gift” paid to a wife by her husband upon divorce.¹³⁸³ This gives the impression that *mut’ah* is merely a voluntary gift rather than being interpreted as mandatory compensation. The statutory provision states that the amount to be paid should be “fair and just” but does not mention the factors that the court must take into consideration in assessing this.¹³⁸⁴ *Mut’ah* should be assessed based on the means and needs of the parties, duration of marriage and circumstances of the divorce.

Payment of *tebus talaq* to divorced husband

Under the Islamic Family Law (Federal Territory) Act, the wife a file for a divorce and make a payment as ‘compensation’ known as *tebus talaq*¹³⁸⁵ Under traditional Islamic family law, the amount of compensation due to the husband was limited to the *mahr* (mandatory payment) of gifts that had been made by the husband to the wife when they married. The current statutory provision does not limit the husband’s claim, which has resulted in unfair situations where the women is unable to afford the amount demanded.

Harta sepencarian

The traditional view on *harta sepencarian* (property acquired during marriage) is that a wife may claim one-third of the property acquired by her husband during the marriage,

1381 Ibid, s59.

1382 Ibid.

1383 Ibid, s56.

1384 Ibid.

1385 Act 303 Islamic Family Law (Federal Territory) Act 1984, s49(3).

in recognition of her contributions in looking after the family.¹³⁸⁶ The gender neutral language on *harta sepencarian* in the Islamic Family Law (Federal Territory) Act enables either spouse to claim a share in the properties acquired by the other spouse during the marriage.^{1387,1388} Section 23(9) of the Islamic Family Law (Federal Territory) Act allows “any party” to claim *harta sepencarian* before a polygamous marriage is contracted.¹³⁸⁹

The provisions in the Islamic Family Law (Federal Territory) Act are similar to the provisions on matrimonial property in the Law Reform (Marriage and Divorce) Act. However, the effect of this gender neutral *harta sepencarian* is discriminatory to Muslim as other provisions in the Islamic family law have not been made gender neutral, such as those regarding inheritance and polygamy. Under Malaysian Islamic family law, rights which were traditionally held by women for protection and wellbeing have been extended to men, while women’s rights have been restricted further. The new subsection 23(9) allows “any party” to claim *harta sepencarian* before a polygamous marriage is contracted. Therefore, a husband who is going to marry a new wife would also be entitled to claim *harta sepencarian* from his existing wife or to apply that their matrimonial home should be sold and the proceeds divided.

In the present day circumstances it is unjust and discriminatory against women to regard one-third as the “normal” share to be given to the wife. Even one-half may be inadequate in circumstances where the woman has carried a double burden - giving her financial contributions for the upkeep of the family as well as her non-financial contribution in doing housework and looking after children.

Recommendations to the Malaysian Government regarding Article 16 of CEDAW

- Amend the Law Reform (Marriage and Divorce) Act and Islamic family law legislation in each state to raise the minimum age for marriage of girls to eighteen without exceptions. Identify specific timelines and consultative processes for these reforms.
- As an interim measure prior to law reform, establish a register to document underage marriages. All applications, approvals and rejections of underage marriages in the *Syariah* court should be documented and collated, with justifications for approving these marriages.

1386 Gavin W. Jones and Kamalini Ramdas. (2004). *(Un)tying the knot: Ideal and reality in Asian marriages*. National University of Singapore, Singapore: NUS Press.

1387 *Act 303 Islamic Family Law (Federal Territory) Act 1984*, s58.

1388 *Ibid*, s122.

1389 *Ibid*, s23(9).

- Identify steps to change practices and perceptions regarding child marriage across all cultures, such as through educational and awareness raising campaigns.
- Improve the enforcement of the registration requirements for marriages, particularly polygamous marriages, and establish rules and procedures to ensure the legality of marriages solemnised through religious ceremony, custom, or usage.
- Allow any woman who unknowingly or unwillingly finds herself in a polygamous marriage to apply for a speedy divorce with fair maintenance and property for herself and her children.
- Develop a provision for women in de facto marriages to claim for maintenance, especially where children are involved.
- Amend the Law Reform (Marriage and Divorce) Act to allow both men and women to file and pursue applications for enforcement of maintenance payments without legal representation.
- Establish a National Child Support Agency that would function as an independent body to assess, review, enforce, and arrange child support payments for Muslim and non-Muslim applicants. Until this reform takes place, implement a mechanism to reliably recover maintenance payments from defaulting husbands, and collate data on the number of husbands who default..
- Increase public awareness on the rights of women to claim maintenance.
- Sensitise the family law judiciary, marriage conciliators, and marriage counselors regarding gender issues, and require specific qualifications or training for persons holding these positions.
- Review requirement to certify a couple's attendance at religious counselling prior to filing for a divorce in Muslim marriages.
- Ensure that all Malaysian states and federal territories adopt Islamic family law legislation that is uniform, and guarantee reciprocity among the *Syariah* courts in different states.

- Abolish provisions on *nusyuz* in Islamic family law as this forces some women to remain in abusive relationships.
- Remove the requirement for a *wali* to consent to a woman's marriage in Islamic family law to allow Muslim women the same right as Muslim men to enter the marriage of their choice.
- Give equal value to women's non-wage contributions to a marriage, such as childcare and housework, in determining the division of marital property during both civil and Islamic family law divorces. The interests and needs of the couple's children need also to be taken into account during the division of matrimonial property.
- Islamic family law legislation must be amended to allow both fathers and mothers to be appointed legal guardians of their children.
- Repeal Islamic family law legislation which denies women the right to remarry and maintain custody of their children from a prior marriage. Remarriage should not affect a parent's rights to custody of his/her children unless the remarriage affects the welfare of the child.
- Fathers and mothers should be equally responsible for maintaining children born out of wedlock under Islamic family law.
- The naming convention, requiring children born out of wedlock to take the name "Abdullah", must be abolished.

18.

GR 19

CEDAW COMMITTEE GENERAL RECOMMENDATION NO. 19: VIOLENCE AGAINST WOMEN¹³⁹⁰

The CEDAW Committee released General Recommendation No. 19 in 1992. In this document, the CEDAW Committee articulates that gender-based violence, “which impairs or nullifies the enjoyment by women of human rights and fundamental freedoms under general international law or under human rights conventions, is discrimination within the meaning of article 1 of the Convention. These rights and freedoms include:

- a) The right to life;
- b) The right not to be subject to torture or to cruel, inhuman or degrading treatment or punishment;
- c) The right to equal protection according to humanitarian norms in time of international or internal armed conflict;
- d) The right to liberty and security of person;
- e) The right to equal protection under the law;
- f) The right to equality in the family;
- g) The right to the highest standard attainable of physical and mental health;
- h) The right to just and favourable conditions of work.”¹³⁹¹

1390 The text of the *CEDAW Committee General Recommendation No. 19* is available here: <http://www2.ohchr.org/english/bodies/cedaw/comments.htm>.

1391 *CEDAW Committee General Recommendation No. 19*, paragraph 7.

Key issues in this chapter:

- **Although the Domestic Violence Act 1994 (DVA) has been in operation since 1996, the implementation of this law has been poor.** The legislation has been implemented inconsistently across states and there are problems with the way in which cases are dealt with by the police, the welfare department, and the courts.
- **In 2011 and 2017, amendments to the DVA were passed by parliament.** While these were positive amendments, there are still vital gaps in the legislation, including a lack of protection for non-married intimate partners under the act.
- **Stalking** has not been criminalised in Malaysia, and very limited protection exists for women who are stalked.
- Cases have emerged introducing a disturbing notion that **victims of statutory rape can be married off to their rapists, subjecting them to a lifetime of rape**, while the rapists are subsequently exonerated of any crime. Member of Parliament and former *Syariah* judge Shabudin Yahaya went as far as to suggest that child victims of rape *should* marry their rapists to avoid social problems and lead a better life.
- **Marital rape is not a criminal offence.** An exception remains in Section 375 of the Penal Code, which states “Sexual intercourse by a man with his own wife by a marriage which is valid under any written law for the time being in force, or is recognised in Malaysia as valid, is not rape.”
- According to Section 377C of the Penal Code, **rape with an object is not considered rape** – it is considered sex “against the order of nature.”
- **The State carries out violence against women as punishment for crimes under *Syariah* law.** For example, women found guilty of *musahaqah* (lesbianism) can be punished by whipping.
- **Transgender women report high levels of violence, including harassment, hate crimes, and murder.** Sometimes this violence and harassment is carried out by religious enforcement officers and police. Between 2007–2017, at least 12 murders of transgender women have been reported in the media.
- **Online gender-based violence is a growing area of concern.** Although there

is little data on the frequency and forms of online violence against women (VAW) in Malaysia, reported instances of online violence include distribution of intimate photos or videos without consent; harassment; stalking; dissemination of private information; identity theft; hate speech; rape and death threats.

- Women **refugees and asylum seekers are vulnerable to violence and harassment owing to their precarious legal status.** The Malaysian government has not ratified the 1951 UN Refugee Convention or established mechanisms for the protection of the rights of refugees and asylum seekers.

During the Malaysian government's appearance before the CEDAW Committee in 2018, the Committee welcomed the legal measures which have been taken by the government to enhance the protection of women from gender-based violence. However, the Committee also expressed a number of concerns. For instance, marital rape has yet to be criminalised in Malaysia and unmarried women who survive intimate partner violence continue to be denied access to legal protection.¹³⁹² These holes in legislative protection for survivors of gender-based violence reflect and perpetuate societal attitudes towards women.

The CEDAW Committee's concerns echo many issues highlighted in the NGO CEDAW Shadow Report of 2012 which still persist. Up to date, cohesive data is required from the government regarding the prevalence of all forms of gender-based violence against women in Malaysia.

2018 Concluding Observations to Malaysia

In the Committee's concluding observations to Malaysia, the Committee recalled its general recommendation No. 35 (2017) on gender-based violence against women.

The Committee recommended to the State party to:

- a) Establish a system to regularly collect, analyse, and publish statistical data on the number of complaints about all forms of gender-based violence against women, disaggregated by sex, age, ethnicity, geographic location and relationship between victim and perpetrator, the number and type of protection orders issued, the rates of dismissal and withdrawal of complaints, prosecution and conviction, and the amount of time taken for the disposal of cases;
- b) Criminalize marital rape in domestic legislation, defining such rape on the basis of lack of freely given consent of the woman;

1392 CEDAW Concluding Observations 2018, para 23 (CEDAW/MYS/CO/3-5).

- c) Ensure that victims of intimate partner violence have access to protection orders and compensation on an equal footing with married women;
- d) Take effective measures to ensure that perpetrators of rape, including those who rape women with an object or through incest, are effectively punished and that they do not evade criminal sanctions by marrying their victims;
- e) Harmonize *Syariah* law with Section 289 of the Criminal Procedural Code to prohibit the use of whipping of women as a form of punishment;
- f) Adopt concrete measures to combat gender-based violence against women and girls, including the provision of mandatory, recurrent and effective capacity-building, education and training for members of the judiciary, lawyers and law enforcement officials, and educational campaigns targeting men and boys.¹³⁹³

Statistics on violence against women

Police Re-ports	2009	2010	2011	2012	2013	2014	2015	2016
DV	3643	3173	3277	3488	4123	4807	5014	5796
Rape	3626	3595	3301	2998	2767	2045	1873	1698
Incest	385	Un-avail-able	342	302	249	304	251	253
Abuse of Do-mestic Work-ers	Un-avail-able	Un-avail-able	78	29	28	28	Un-avail-able	Un-avail-able
Child Abuse	203	257	242	285	295	328	Un-avail-able	Un-avail-able
Out-raise of Mod-esty	2110	2054	1941	1803	1730	1590	1585	1526
Sexual Har-ass-ment in the Work-place	Un-avail-able							

¹³⁹³ CEDAW Concluding Observations 2018, para 24 (CEDAW/MYS/CO/3-5).

Source: Royal Malaysian Police and Ministry of Women, Family, and Community Development

Prevalence of violence

Violence against women—from domestic violence, to rape, to sexual harassment, to abuse of migrant domestic workers—is still pervasive in Malaysian society. Statistics from the Ministry of Women, Family, and Community Development state that a total of 57,519 cases of violence against women were reported between 2010 and March 2017.¹³⁹⁴ This number is likely not fully reflective of the true extent of violence against women. Underreporting is common with many forms of gender-based violence, largely due to the inherent power imbalance that marks much of violence against women.

Gender-based violence is a product of a patriarchal society, ingrained gender stereotypes, and institutionalised discrimination against women. Although laws and policies have progressed towards enhanced protection from violence against women, there are still many gaps in the legislation and implementation of existing laws remains lacking.

Domestic violence

5,796 cases of domestic violence (DV) were reported in 2016, as compared to 3,488 in 2012—an increase of 66%.¹³⁹⁵ Some of this increase may be attributable to heightened public awareness around available protections against domestic violence. However, as domestic violence is commonly underreported, the actual figure may be significantly higher.

Police statistics show that approximately half of the reported cases of domestic violence involve spousal abuse, whilst the other half involves violence between family members. Furthermore, police data shows that approximately 75% of victims are female and 25% of victims are male; however, this 25% includes male victims who have been abused by their parents, siblings, or children (e.g. elder abuse). The vast majority of perpetrators of domestic violence are male, with the husband being the victim and the wife the perpetrator in only around 2% of cases.¹³⁹⁶

Between 2015 and 2016, there were 10,810 reports of DV, of which 4,470 reports resulted

1394 “Domestic violence cases on the rise, 5,796 cases recorded last year.” *New Straits Times*. 26 April 2017. Available at: <https://www.nst.com.my/news/nation/2017/04/233984/domestic-violence-cases-rise-5796-cases-recorded-last-year>

1395 Ibid.

1396 Women’s Centre for Change (WCC) Penang. (2015). *Domestic Violence Cases Reported in Malaysia (2006-2015)*. Available at: http://wccpenang.org/wp-content/uploads/2016/08/Domestic-Violence-Cases-In-Malaysia-Website_updated-till-2015final.pdf

in a charge and only 799 cases resulted in a conviction.¹³⁹⁷

Rape

There were 37,263 reported rape cases, involving girls as young as six, from 2000 until 2015.¹³⁹⁸ More than half (16,265) of the total reported rape cases were committed against minors between the ages of 13 and 15, followed by cases with victims over the age of 18 (10,289).

According to the Ministry of Home Affairs, 28,741 rape cases were reported from 2005 to 2014. Only 16% (4,514) of those cases were taken to court, with 2.7% (765) of cases reaching a guilty verdict.¹³⁹⁹ Between 2015 and 2016, there were 504 reports of incest, of which charges were laid in 72 cases and convictions obtained in only seven cases.¹⁴⁰⁰ As is the case with domestic violence, many rapes go unreported. Furthermore, there are no reports of marital rape because this has not been criminalised in Malaysia.

Lack of uniform and gender-sensitive procedures and protocols around the reporting of rape, as well as the long and traumatic court processes and high evidentiary burdens, may contribute to the low rates of rape survivors attempting to access justice.

Sexual harassment

The statistics collected by the Royal Malaysian Police include ‘outrages of modesty,’ which covers cases of physical molestation. From 2000 to 2013, 24,939 cases involving outrages of modesty were reported.¹⁴⁰¹ Statistics for 2014 onwards are not available, but anecdotal evidence suggests that sexual harassment is common and often underreported. The complaint mechanisms in place are inadequate, and survivors may face undesirable repercussions—including redesignation or relocation—as a result of reporting the harassment.

A 2013 study on the working conditions of male and female lawyers in Malaysia found

1397 Dr. Michael Jeyakumar Devaraj, Minister of Home Affairs. (2017). *No. Soalan: 52, Rujukan: 9722: Perberitahuan Pertanyaan bagi Bukan Jawab Lisan Dewan Rakyat*. Available at: <https://pardocs.sinarproject.org/documents/2017-march-april-parliamentary-session/written-replies-soalan-bertulis/soalan-52.pdf>

1398 “Rape and Sexual Assault: Rape Cases and Sexual Violence Statistics In Malaysia.” Ask Legal. 17 May 2016. Available at: <http://asklegal.my/prape-and-sexual-assault-rape-cases-and-sexual-violence-statistics-in-malaysia>

1399 “3,000 rape cases in Malaysia every year.” Malaysiakini. 11 December 2015. Available at: <http://www.malaysiakini.com/news/322980>

1400 Dr. Michael Jeyakumar Devaraj, Minister of Home Affairs. (2017). *No. Soalan: 52, Rujukan: 9722: Perberitahuan Pertanyaan bagi Bukan Jawab Lisan Dewan Rakyat*. Available at: <https://pardocs.sinarproject.org/documents/2017-march-april-parliamentary-session/written-replies-soalan-bertulis/soalan-52.pdf>

1401 “3,000 rape cases in Malaysia every year.” Malaysiakini. 11 December 2015. Available at: <http://www.malaysiakini.com/news/322980>

that, even where a mechanism for reporting sexual harassment are in place in the workplace, the level of awareness of its existence is low. It was found that only around 45% of lawyers were aware that the Bar Council had adopted the Code of Practice on the Prevention and Eradication of Sexual Harassment at the Workplace in 2007, with a mechanism for lodging complaints.¹⁴⁰² Close to 33% were not aware, while around 22% of lawyers were unsure of the existence of the adoption of the code and the mechanism for redress.¹⁴⁰³

Abuse of Migrant Domestic Workers

Significant numbers of domestic workers in Malaysia are subject to physical, emotional, and sexual abuse by their employers. There have been many high-profile cases of deaths of domestic workers at the hands of their employers.^{1404,1405,1406,1407}

It is difficult to obtain exact numbers of those abused due to insufficient reporting mechanisms and the legal vulnerability of the domestic worker population. The statistics reported by the Royal Malaysian Police relating to abuse of domestic workers are fewer than the reports received by NGOs. According to Malaysian officials, there are 50 cases per year in which migrant domestic workers are abused.¹⁴⁰⁸ However, the Indonesian-based NGO Migrant Care estimates that the actual number of abuse cases is closer to 1,000 annually.¹⁴⁰⁹ There are reports from the Indonesian Embassy in Malaysia which state that 100 abused domestic workers are given shelter there every month.¹⁴¹⁰

1402 Lai Suat Yan, Kuppusamy Singaravelloo, Nurjaanah Chew and Sarina Mohamed. (2014). *Final Report: Baseline Study on the Working Conditions of Male and Female Lawyers in Kuala Lumpur and Selangor*. Kuala Lumpur, KL: Association of Women Lawyers, Malaysia. Page 43.

1403 Ibid.

1404 "Nirmala Bonat case: Housewife found guilty, 18 years jail." *The Star*. 27 November 2008. Available at: <https://www.thestar.com.my/news/nation/2008/11/27/nirmala-bonat-case-housewife-found-guilty-18-years-jail-updated/>

1405 "It's murder: Indonesian maid dies of alleged abuse (Updated)." *The Star*. 26 October 2009.

1406 "Maid may have been starved to death." *The Star*. 9 June 2011. Available at: <https://www.thestar.com.my/news/nation/2011/06/09/maid-may-have-been-starved-to-death/>

1407 "Couple charged with maid's murder." *New Straits Times*. 16 June 2011. Available at: <http://www.asiaone.com/News/AsiaOne%2BNews/Crime/Story/A1Story20110616-284333.html>

1408 Cecilia Ng. (2011). *Gender and Rights: Analysis for Action*. Gelugor, Penang: Good Governance and Gender Equality Society, Penang (3Gs) and Women's Development Research Centre (KANI-TA) Universiti Sains Malaysi. Page 38.

1409 "Malaysians And Their Maids: A Mutual But Unequal Relationship." *Malaysian Digest*. 27 February 2015. Available at: <http://www.malaysiandigest.com/opinion/543453-malaysians-and-their-maids-a-mutual-but-unequal-relationship.html>

1410 Cecilia Ng. (2011). *Gender and Rights: Analysis for Action*. Gelugor, Penang: Good Governance and Gender Equality Society, Penang (3Gs) and Women's Development Research Centre (KANI-TA) Universiti Sains Malaysi. Page 39.

Violence against rural women

Rural women from Sabah and Sarawak continue to face sexual, emotional, and physical violence, including reports of harassment, abduction, rape, physical assault, emotional abuse, coercion into marriage, and desertion upon pregnancy.¹⁴¹¹

Despite high rates of gender-based violence in East Malaysia, rural Sabahan and Sarawakian women have little access to protection or services. Rural indigenous women and girls have not benefited from laws, government policies, or programs specifically provided for the advancement of women and gender equality, and many are not aware of their rights in situations of gender-based violence.

Violence against rural women in Sabah

Between 2013 and 2016, the NGO Sabah Women's Action Resource Group (SAWO), together with one international and two local partners, undertook a project to assess the situation of women and young girls affected by gender-based violence in the northern and interior regions of Sabah.

The project found that most women and girls in rural Sabah were unaware of the existence of the National Women Policy and Action Plans, the Domestic Violence Act, and the Child Act. Many still think that it is the right of husbands to beat their wives and that rape and sexual abuse are normal occurrences that are part and parcel of life in the villages. In some ethnic groups, wives are seen as "belonging" to their husbands, who have paid the bride price, and therefore have the right to behave as they so wish.

Compounding these issues is the lack of necessary access to services and personnel available to rural Sabahan women to enable proper assistance and protection. Often, if these women do not have family or community support, they and their children remain trapped in violent domestic situations.

Violence against rural women in Sarawak

In September 2009, findings from a government-backed National Taskforce were released, confirming earlier reports of sexual violence and exploitation of Penan women and girls in rural Sarawak.

1411 Penan Support Group, Forum-Asia and Asian Indigenous Women's Network. (2010). *A Wider Context of Sexual Exploitation of Penan Women and Girls in Middle and Ulu Baram, Sarawak, Malaysia*. Petaling Jaya, Selangor: Suaram Komunikasi.

In 2010, a group of NGOs set out to further investigate this situation. All of the cases documented during the fact-finding mission point to systematic patterns of violence against Penan women living in Sarawak. The mission found that the women were willing to share their stories, but they did not want to report to the authorities, owing to past police responses and further obstacles, including the lack of identity cards, language barriers, and the prohibitive cost of travel.

For additional discussion of violence against rural women, including case studies, please refer to Article 14.

Obligation of the State to provide protection, including shelter

General Recommendation 19 outlines the connection between discrimination against women and violence against women, as well as the State's obligation to eliminate and respond to such violence. A recent report by the UN Special Rapporteur on violence against women to the Human Rights Council articulated the duty to provide shelters as part of the State's obligation.¹⁴¹²

The Special Rapporteur stated:

“These measures are not optional extras. They are human rights obligations which are essential to ensuring women's safety and human rights. But many States seem to lack understanding of their requirement to combat gender-based violence, which includes offering shelters and protection measures.”

Every year in Malaysia, only a few hundred women are able to seek shelter services at one of the 42 shelters gazetted by the Malaysian government.¹⁴¹³ Of the 42 shelters, 34 are government shelters. In the five-year period between 2008 and 2012, these government shelters housed an average total of just 32 domestic violence survivors each year (the shelters housed other women who were not domestic violence survivors). Women's Aid Organisation (WAO), the largest gazetted shelter provider, shelters roughly 100 domestic violence survivors each year (117 women in 2016). Demand for WAO's shelter services consistently exceeds capacity.

1412 “States must provide shelters as “survival tool” for women victims of violence - UN expert.” United Nations Office of the High Commissioner on Human Rights. 12 June 2017. Available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21724&LangID=E>

1413 Women's Aid Organisation (2017). *Perspectives on Domestic Violence: A Community Response to a Community Issue*. Available at: http://www.wao.org.my/Perspectives+on+Domestic+Violence+2017+Report+by+WAO_131_6_1.htm

Lack of uniform and comprehensive implementation of laws

Implementation of existing laws, including the Domestic Violence Act 1994 (DVA) and the Penal Code, remains inconsistent, largely due to a lack of training for state responders, Deputy Public Prosecutors, Judges, and Magistrates.

Increased measures have been undertaken by the government to address gender-based violence, such as the move to amend the Domestic Violence Act, supplemented by the Guidelines on the Handling of Domestic Violence cases,¹⁴¹⁴ geared at assisting state responders in understanding and fulfilling their obligations under the Domestic Violence Act. However, in terms of real, long-term commitment by the State towards fulfilling their due diligence obligations, there are numerous gaps, especially in how gender-based violence is addressed in the criminal justice system.

Monitoring of implementation and effectiveness of laws and policy on gender-based violence is inconsistent. Access to protection and remedies for survivors remains sporadic. Research in five states shows that only 34.4% of Deputy Public Prosecutors (DPPs) have sought and obtained compensation for victims, despite the clear provision in the Criminal Procedure Code.¹⁴¹⁵ This suggests that DPPs are not adequately versed in the DVA and the protections available for the victims they represent.

In terms of the response to domestic violence and other gender-based crimes, far too much is left to police discretion, with victims often being denied access to rights to which they are entitled. For an example of such response, see “Case Study – Sarah’s Story” in this chapter.

In a particularly egregious example of first responders lacking awareness of their obligations and the rights of survivors under the law, two policemen were charged with intentionally neglecting to arrest a man who was suspected of raping a four-year-old girl, due to the fact that the survivor’s mother was reluctant to file a police report owing to her foreign national status and lack of legal documentation.¹⁴¹⁶

1414 An electronic version of the *Garis Panduan* is available for download from the official website of the National Population and Family Development Board (LPPKN), part of the Ministry of Women, Family, and Community Development. The download is available at: <http://www.lppkn.gov.my/index.php/en/garis-panduan-pengendalian-kes-keganasan-rumah-tangga/download/0-/33-smartstart.html>

1415 Women’s Centre for Change. (2015). *Consultation Proceedings: National Consultation on the Rights of Vulnerable Witnesses in Court*. Page 38.

1416 “Two policemen charged for deliberately not arresting rape suspect.” Malay Mail Online. 25 April 2016. Available at: <http://www.themalaymailonline.com/malaysia/article/two-policemen-charged-for-deliberately-not-arresting-rape-suspect>

Attacks on women journalists, women human rights defenders, and women in leadership positions

The State and its apparatus did not fully protect and uphold the rights of women who were attacked by non-State actors but, instead, added fuel to the fire by either launching criminal investigations into the victims, remaining silent, or appearing to be working closely with the violent non-State actors. At other times, the principle agent responsible for these attacks was the State itself. At the core of these forms of intimidation was a clear agenda to suppress women's leadership, freedom of expression, and freedom of assembly to speak up against human rights violations in the area.

Although there have been no physical acts of violence against these prominent women leaders, the threats of violence were acute and damaging to their freedom of movement - at least two of these women resorted to employing body guards. The majority of these attacks remain unpunished.

Threats against women journalists

Threat to arrest columnist Mariam Mohhtar

On 29 November 2013, Mariam Mohhtar wrote an article entitled "One ideology, two reactions"¹⁴¹⁷ on the news portal, Free Malaysia Today, whereby she questioned the Government's discriminatory actions around the return of two Malaysian-born communists. The Inspector General of Police, Khalid Abu Bakar, warned her that her article was seditious and that the police would go after her.¹⁴¹⁸

Threats against BFM-Radio journalist Aisyah Tajuddin

Aisyah Tajuddin, a radio journalist, presented a satirical piece on *hudud* (laws pertaining to punishments under *Syariah*). The video entitled, "Hudud Isi Periuk Nasi? [Kupas]" (Does *hudud* fill our rice bowls?) shows Aisyah pointing out that, even as the Kelantan state PAS government is attempting to implement *hudud*, the state is facing other problems like its homeless flood victims and increasing rates of drug use and divorce.¹⁴¹⁹

1417 "One ideology, two reactions." Rebuilding Malaysia. 29 November 2014. Available at: <https://www.mariamohhtar.com/one-ideology-two-reactions/>

1418 Ibid.

1419 "BFM journalist gets death, rape threats over video questioning hudud." Malay Mail Online. 20 March 2015. Available at: <http://www.themalaymailonline.com/malaysia/article/bfm-journalist-gets-death-rape-threats-over-video-questioning-hudud>

Social media attacks on Aisyah responding to the video ranged from “Burn her alive,” to “Wait till I rape you, woman,” to “If I see you in front of me, I’ll shoot you in the head.” Several criticised Aisyah for not wearing a headscarf. A state authority, the Kelantan Chief Minister, Ahmad Yakob, added that those who brand *hudud* law as inhumane are immoral liars.¹⁴²⁰

The radio station removed the video and Aisyah Tajuddin apologised in a public statement, stating that it was never her intention to insult the religion. The Inspector-General of Police reported that those who had threatened Aisyah Tajuddin, as well as the radio presenter herself, would be investigated. As of the time of writing, there has been no conclusion to these investigations.

Threats against women human rights defenders

Attacks against civil society movement leaders Ambiga Sreenevasan and Maria Chin Abdullah

From 2011 to 2016, two women leaders of the Coalition for Free and Fair Elections (BERSIH) came under intense attack. Ambiga Sreenevasan, chair of BERSIH, has been the target of severe and sustained vilification. Maria Chin Abdullah, who took over as chair of BERSIH in 2013, also faced insidious threats that included throwing red paint on her effigy and threats to harm and kill her. Appendix I and II contain a list of some of the threats and attacks made against these women.

On 15 May 2016, upon attempting to leave Malaysia to receive a human rights award, Maria Chin was stopped by Immigration authorities and informed that there was a travel ban against her.¹⁴²¹ During court proceedings in 2017, challenging the constitutionality of the travel ban, the court was informed that the Immigration Act did not impose a duty on the Director-General to give reasons for a travel ban, or a duty to notify persons they have been blacklisted.

On 29 October 2016, Maria Chin was arbitrarily arrested under Article 11 of the 1984 Printing Presses and Publications Act, for distributing BERSIH 5 leaflets in preparation for the peaceful BERSIH 5 rally in Kota Marudu, Sabah.¹⁴²² She was brought to district police headquarters for questioning and subsequently released on bail.

1420 Ibid.

1421 “Court rejects Maria Chin’s bid to review travel ban.” The Star Online. 19 May 2017. Available at: <http://www.thestar.com.my/news/nation/2017/05/19/court-rejects-maria-chins-bid-to-review-travel-ban/#HvSkg0lbkSGVc3EB.99>

1422 “Maria Chin’s Arrest Over Bersih Flyers ‘Selective’, Form Of Harassment.” Borneo Today. 31 October 2016. Available at: <https://www.borneotoday.net/maria-chins-arrest-over-bersih-flyers-selective-form-of-harassment/>

On 18 November 2016, one day before the BERSIH 5 rally, Malaysian authorities raided the office of BERSIH and arrested Maria Chin and secretariat manager, Mandeep Singh. Maria was the first human rights defender to be detained under the Security Offences Special Measures Act 2012 (SOSMA).¹⁴²³ She was held in an undisclosed detention center in solitary confinement for 11 days, kept in an 8 by 15-foot windowless cell with no bed, concrete floors, and with two light bulbs kept on for 24 hours a day.

The UN Special Rapporteur on the right to freedom of peaceful assembly and association, Maina Kiai, said in a statement on 19 November 2017 that the arrests prior to the peaceful assembly were a “pre-emptive restriction of assembly rights.”

Most recently, on 11 July 2017, the window of Maria Chin’s car was smashed by an unidentified assailant while Maria Chin was driving her car on a highway in Kuala Lumpur.¹⁴²⁴

Arrest and detention of student leader Anis Syafiqah

24-year-old Anis Syafiqah led a student movement and protest called “Tangkap MO1” (Catch Malaysian Official Number One) on 27 August 2016. Over 1,000 students rallied in the city, calling for the arrest of ‘Malaysian Official 1’, the mysterious figure whom the US Department of Justice claimed extorted US\$731 million in 1MDB funds.¹⁴²⁵ Anis Syafiqah and her team faced suspension from their respective universities for disciplinary offences but stood their ground and asserted their right to assemble and protest.¹⁴²⁶

On 18 November 2016, Anis Syafiqah was arrested at her home and detained.¹⁴²⁷ She was released on Sunday, 20 November 2016. The arrest was viewed as a pre-emptive attempt to discourage students from protesting at the BERSIH 5 rally scheduled the next day.

1423 “US ‘troubled’ over Malaysia’s detention of activist and Najib critic.” The Guardian. 24 November 2016. Available at: <https://www.theguardian.com/world/2016/nov/24/us-malaysia-detention-activist-maria-chin-abdullah>

1424 “Bersih chief Maria Chin’s car attacked on road.” Malay Mail Online. 11 July 2017. Available at: <http://www.themalaymailonline.com/malaysia/article/bersih-chief-maria-chins-car-attacked-on-road#WrMsXC5UybJBzsPT.99>

1425 The 1Malaysia Development Berhad Scandal is an ongoing political scandal occurring in Malaysia. In 2015, Malaysia’s Former Prime Minister, Najib Tun Razak, was accused of channelling over RM2.67 billion (nearly USD 700 million) from 1MDB, a government-run strategic development company, to his personal bank accounts. The event triggered widespread criticisms among Malaysians, with many calling for Prime Minister Najib’s resignation.

1426 “Anis Syafiqah guilty of ‘Tangkap MO1’ disciplinary charges.” Malaysiakini. 9 December 2016. Available at: <https://www.malaysiakini.com/news/365751#ixzz4jCas8s8K>

1427 “More arrests on Bersih 5 eve, Maria and Mandeep may miss rally, Red Shirts leader missing.” Malay Mail Online. 18 November 2016. Available at: <http://www.themalaymailonline.com/malaysia/article/more-arrests-on-bersih-5-eve-red-shirts-leader-missing>

Noor Farida Ariffin, spokesperson for G25, threatened with rape

In December 2015, Noor Farida, spokesperson for G25 (a group of retired and prominent civil servants who speak up against religious extremism) announced that G25 intended to review *khalwat* (close proximity) laws and *Syariah* enactments that encroach on personal privacy. Sharul Nizam Ab Rahim, president of the Animal Action Group, threatened Noor Farida on social media, saying he would break into her bedroom and rape her. Another Facebook user, Al Mujahid Arman, posted “halal darahnya untuk dibunuh” (“it is religiously permissible to kill her”). Noor Farida is a retired judge and ambassador.

This criminal intimidation by non-State actors was met by State authorities opening criminal investigations against Noor Farida, under the Sedition Act, for stating that intruding on individuals’ privacy is not Islamic and that G25 was against criminalising “personal sins.” Progressive and alternative views on Islam are discouraged by the State.

Fatwa against NGO Sisters in Islam

A July 2014 *fatwa* was issued by the Selangor Fatwa Committee against the women’s human rights NGO, Sisters in Islam (SIS). The *fatwa* declared that SIS subscribed to liberalism and religious pluralism, and thus deviated from the teachings of Islam, and has been used by government and religious leaders to silence SIS’s efforts to promote women’s rights within the framework of a just and inclusive Islam.¹⁴²⁸

In 2016, in response to SIS lodging a judicial appeal against the *fatwa*, the High Court held that civil courts have no authority on matters falling within the jurisdiction of the *Syariah* Court. The Court of Appeal subsequently disagreed with the High Court’s ruling, and SIS will be allowed to challenge the *fatwa* in civil court.

Activist Lena Hendry subjected to fine after human rights documentary screening

Human rights activist Lena Hendry was prosecuted and found guilty for screening a documentary on human rights violations during the Sri Lankan civil war, which had not been approved by the Censorship Board.¹⁴²⁹ Hendry was fined RM 10,000. Human rights NGOs decried this sentence as unjust, violating the right to freedom of expression, and equating to a human rights defender being convicted for highlighting human rights abuses.¹⁴³⁰

1428 “Sisters in Islam’s case against fatwa goes back to High Court.” The Star Online. 2 March 2017. Available at: <http://www.thestar.com.my/news/nation/2017/03/02/sisters-in-islam-allowed-appeal-against-deviasion-ruling/#YTXKL3loqgiRTQap.99>

1429 “Activist Lena Hendry fined RM10,000 over unapproved documentary screening.” The Star Online. 22 March 2017. Available at: <http://www.thestar.com.my/news/nation/2017/03/22/activist-lena-hendry-fined-rm100000-for-screening-unapproved-documentary/#LrbpKK5Mzy0ZDdWH.99>

1430 “Lena Hendry’s Conviction and Fined RM10,000 Unjust.” Pusat Komus. 23 March 2017.

Violence against women perpetrated by the State

Caning of women for offences under state-level *Syariah* law

Women are expressly excluded from being whipped under Section 289 of Malaysia's Criminal Procedure Code. However, cases have arisen in 2009 and 2010 where women have been sentenced to strokes of the *rotan* and to whipping by the *Syariah* Court for drinking alcohol and for having illicit sex respectively.¹⁴³¹

Violence against transgender women by police and religious officers

Violence against transgender women

Transgender women (also referred to as *Mak Nyah*) report high levels of violence, including harassment, hate crimes, and murder. Sometimes this violence and harassment is carried out by religious enforcement officers and police.

Between 2007 and 2017, at least 12 murders of transgender women have been reported in the media, and two of these occurred in 2017 alone. In these cases, transgender women were subjected to brutal violence – for instance, being beaten to death with a hammer, strangled, gagged, stabbed multiple times, physically assaulted, pushed from a building, and drowned in a water retention pond.¹⁴³² In one instance, the police refused to accept a transgender woman's report of rape because the officer stated that "It is not a real vagina and therefore, she cannot be raped."¹⁴³³

Available at: <http://komas.org/press-statement-for-immediate-release-lena-hendrys-conviction-and-fined-rm10000-unjust/>

1431 For more information, refer to *Malaysian NGO CEDAW Alternative Report 2012*, pages 196-197.

1432 "Justice For Sameera – Ensure Thorough Investigation & Hold Perpetrators Accountable." Justice For Sisters. 3 March 2017. Available At: <https://Justiceforsisters.Wordpress.Com/2017/03/03/Justice-For-Sameera-Ensure-Thorough-Investigation-Hold-Perpetrators-Accountable/>

1433 Angela M Kuga Thas (with research assistance from Thilaga Sulathireh). (2012). "CEDAW in Defending the Human Rights of Lesbians, Bisexual Women and Transgenders in Malaysia", *Equality Under Construction: Malaysian Women's Human Rights Report 2010/11*. Petaling Jaya, Malaysia: Persatuan Kesedaran Komuniti Selangor (EMPOWER), page 262.

Murder of Sameera Krishnan

On 23 February 2017, a young transgender woman was brutally murdered in Kuantan, Malaysia. She was slashed on her arms, head, and legs with a knife and shot three times.¹⁴³⁴ The woman's murder was allegedly linked to a previous case—for which she was scheduled to appear in court the following month—that involved her abduction and torture by gang members in February 2015. Five brothers were arrested in April 2017 for the murder.¹⁴³⁵

Attacks on transgender woman activist Nisha Ayub

Malaysian transgender activist Nisha Ayub—who received the US Secretary of State's International Women of Courage Award—has been the subject of multiple attacks, including being jailed for cross-dressing,¹⁴³⁶ being sexually assaulted in prison,¹⁴³⁷ and being attacked and beaten with an iron rod.^{1438,1439}

Further information about discrimination against transgender women can be found in the chapter in this report on the CEDAW Article 5.

Legal reform

Domestic violence

The Malaysian government asserted that changes were pending to the Domestic Violence Act 1994 (DVA) during the 2006 discussions with the CEDAW Committee.¹⁴⁴⁰

1434 “Justice for Sameera: Ensure thorough investigation, hold perpetrators accountable — NGOs.” Malay Mail Online. 3 March 2017. Available at: <http://www.themalaymailonline.com/what-you-think/article/justice-for-sameera-ensure-thorough-investigation-hold-perpetrators-account>

1435 “Five brothers arrested over transgender's murder.” The Star Online. 7 April 2017. Available at: <http://www.thestar.com.my/news/nation/2017/04/07/five-brothers-arrested-over-transgenders-murder/>

1436 “Malaysia's Nisha Ayub Was Thrown in Prison For Being Transgender.” Daily Beast. 30 April 2015. Available at: <http://www.thedailybeast.com/malaysias-nisha-ayub-was-thrown-in-prison-for-being-transgender>

1437 Ibid.

1438 “Malaysian transgender activist wins US government award for courage.” Malay Mail Online. 30 March 2016. Available at: <http://www.themalaymailonline.com/malaysia/article/malaysian-transgender-activist-wins-us-government-award-for-courage#sthash.OxL420qv.dpuf>

1439 “Battered and bruised, award-winning transgender activist fears assault complaint may be ignored.” Malay Mail Online. 15 September 2015. Available at: <http://www.themalaymailonline.com/malaysia/article/battered-and-bruised-award-winning-transgender-activist-fears-assault-compl>

1440 For more information, refer to *Malaysian NGO CEDAW Shadow Report 2012*, pages 196-197.

In 2011, the amendments were tabled in Parliament and, in 2012, they were gazetted. These 2012 Amendments were largely positive, such as the extension of the definition of domestic violence to encompass “psychological abuse, including emotional injury”, the attachment of powers of arrest to protection orders, and the ability to bar offenders from communicating with a person named on a protection order.¹⁴⁴¹

Additional amendments to the Domestic Violence Act were proposed in a bill by the Ministry of Women, Family, and Community Development and passed in Parliament on 24 July 2017.

The 2017 amendments to the DVA:¹⁴⁴²

- **Create the Emergency Protection Order (EPO).** The EPO helps survivors get protection faster – EPOs are issued by social welfare officers who are easily accessible (IPOs are issued by Magistrates) and survivors won’t have to make a police report to get an EPO. The EPO is valid for seven days and protects against physical injury and fear of physical injury.
- **Prevent gaps in protection.** An interim protection order (IPO) protects survivors during police investigation, while a protection order (PO) protects survivors during criminal court proceedings. The amendments specify when an IPO ends, and when a PO begins, so survivors won’t be left without protection between police investigations and court proceedings.
- **Strengthen IPO provisions to prevent further abuse.** With the amendments, an IPO can include additional safeguards, like prohibiting an abuser from coming near a survivor so police can intervene before further violence happens.
- **Expand the definition of domestic violence.** Domestic violence now includes intentionally damaging property, in instances where this causes distress; threatening in instances where this causes distress or fear for safety; or communicating (including electronically) with the survivor to insult modesty.
- **Improve rehabilitation provisions.** A court can no longer order a survivor to attend reconciliatory counselling with the abuser, endangering the survivor. Instead, the abuser alone can be ordered to complete a rehabilitation programme.
- **Recognise survivor’s right to exclusive occupancy.** If a court grants a survivor occupancy of a shared residence, it must grant the survivor exclusive occupancy – not just to a specified part of the residence.
- **Keep survivors better informed.** The police officer must keep survivors informed on the status of investigation, the status of any IPO or PO, and important court dates.

1441 Ibid, pages 197-199.

1442 “Enforce the amendments.” The Star Online. 6 April 2017. Available at: <http://www.thestar.com.my/opinion/letters/2017/04/06/enforce-the-amendments/>

While these amendments are a substantial step towards the full protection of women from domestic violence, there are several remaining areas of concern. Stalking is a common form of domestic violence but is still not recognised in the definition of domestic violence in the DVA or in any other legislation.

Further, the category of victims/perpetrators is still limited to familial relationships and the DVA does not cover intimate partner violence. Engaged persons and unmarried couples with a child are not protected in the DVA.

Additionally, protection orders can only last a maximum of 12 months, with the possibility of renewal up to another 12 months. There is no guarantee the survivor will be safe after this period. The DVA should be amended so that protection orders can last until the court is assured the abuser no longer poses a threat.

There is also a lack of standardised implementation of the DVA across the country and in the level of treatment women receive from the police. NGO service providers cite cases in which service providers have been reluctant to help the complainants obtain protection orders, due to the misconceived belief that the woman will change her mind and withdraw the report anyway.

The following case study from a women's human rights NGO in Selangor highlights the diversity in the police response to domestic violence.¹⁴⁴³

Case study: Sarah's Story (2016)

Sarah's husband subjected her to daily abuse for 12 years, including physical, psychological, sexual, financial, and social abuse. Sarah's husband also abused their children. Throughout their marriage, he would prevent Sarah from seeing the children, moving them without her consent, or taking them away in attempts to lure Sarah back home when she would leave to escape the abuse.

Verbal arguments usually escalated into physical abuse and Sarah's husband would slap and kick her before ramming her head into the wall; one such incident took place when he informed her of his plans to marry a second wife and she rejected his decision. Sarah's husband demanded sex from her daily, and often raped Sarah. He also accused Sarah of having an affair with another man. At one point, Sarah underwent treatment at a hospital for injuries resulting from her abuse. The doctor posed her the option of moving into a shelter; however, Sarah decided against this option.

1443 Women's Aid Organisation. (2017). *Perspectives on Domestic Violence: A Community Response to a Community Issue*. Available at: http://www.wao.org.my/Perspectives+on+Domestic+Violence+2017+Report+by+WAO_131_6_1.htm

Sarah was prevented from speaking to her family and prohibited by her husband from seeking relief via religious institutions. This social abuse was coupled with a stream of psychological abuse in the form of humiliation, threats, and incessant insults. Sarah cared for the children and was not employed during the marriage. Her husband gave her no money for sustaining herself and the children. With no family or financial support, Sarah became depressed and attempted suicide more than once.

Sarah filed 12 police reports over the years, but no investigation paper was ever opened; the police only called the husband to give him a warning. When Sarah would return to the police station to file another report, she was asked by the police officers, "Why are you still getting pregnant?" but they would not directly acknowledge the domestic violence.

The final straw for Sarah was an incident wherein Sarah's husband slapped her in public and verbally assaulted her. When Sarah tried to leave, her husband's mistress dragged her into the car and forced her to return home with her husband. Sarah left immediately after this event and found employment. Her employer referred her to WAO.

At WAO, a social worker assisted Sarah in following up on her 13th police report in order to obtain assistance from JKM to get an IPO. As Sarah was worried about her children, who were still living with her husband, the JKM officer assigned to the case accompanied Sarah to her home to see the children. The officer noted the poor living conditions of the children, but informed Sarah and her social worker that JKM could not take any action to remove the children from the home, as there were no recent bruises or injuries evident. The officer then advised Sarah to get the children's names added to the IPO so that Sarah could later go back to the home with the police and get her children. The officer also warned Sarah's husband against using any form of violence on Sarah and bolstered the warning with the threat of police reinforcement.

WAO subsequently accompanied Sarah to JKM to add the children's name to the IPO; however, they were informed that the children could not be added to the IPO as their names were not included in the referral letter given by the police. The JKM officer advised Sarah to hire a lawyer and apply for temporary child custody from the court.

WAO also accompanied Sarah to her marriage tribunal at JPN. At her first tribunal, the JPN officer advised Sarah to go back to her husband for a few months, telling Sarah that 'she should think of what's best for her children and go back and stay there.'

Rape

Marital rape

In its 2006 Concluding Comments, the CEDAW Committee requested that Malaysia “enact legislation criminalizing marital rape.”¹⁴⁴⁴ This request was repeated again during Malaysia’s 2018 review, as **marital rape continues to be condoned under section 375A of the Penal Code, which states:**¹⁴⁴⁵

“Sexual intercourse by a man with his own wife by a marriage which is valid under any written law for the time being in force, or is recognized in Malaysia as valid, is not rape.”

Rape with an object

In the Penal Code, rape with an object is not considered rape – it is considered sex “against the order of nature.”

It was this narrow definition of rape that led to an absurd and unjust outcome in the case of *Bunya Anak Julong v PP* (known as the ‘digital rape case’). In this case, a 60-year-old man was acquitted on four counts of rape of a child in the state of Sarawak. Despite the fact that the child became pregnant as a result of the rape, the defence was raised—and accepted by the Court—that the man had impregnated the girl with his fingers, and not through sexual intercourse, so she had not been raped.¹⁴⁴⁶

Although 377CA was subsequently amended after this case to include introduction into the vagina or anus of a body part other than the penis or with an object, such acts are still considered to be sex “against the order or nature,” which carry a lesser punishment than penile-vaginal rape.

Sexual Harassment

Progressive court judgment establishes the tort of sexual harassment

We applaud the landmark ruling of the Federal Court in the case of *Mohd Ridzwan Bin*

1444 CEDAW Committee Concluding Comments 2006, para 22 (CEDAW/C/MYS/CO/2).

1445 CEDAW Concluding Observations 2018, para 24 (CEDAW/MYS/CO/3-5).

1446 “Finger-rape case: Court wants definition of rape reviewed.” The Star Online. 11 June 2015. Available at: <https://www.thestar.com.my/news/nation/2015/06/11/court-finger-rape-case/>

Abdul Razak.Appellant and Asmah Binti Hj. Mohd Nor,¹⁴⁴⁷ which recognised and defined the tort of sexual harassment, and has paved the way for victims to seek redress in civil court beyond the restrictive means for redress provided in the Employment Act.

In this case, an employee of Lembaga Tabung Haji, Asmah Mohd Nor, lodged a report of sexual assault against her superior, Mohd Ridzwan Abdul Razak, to the CEO of the company. An inquiry committee set up within Lembaga Tabung Haji investigated the claim internally but stated that there was insufficient evidence to warrant disciplinary action against Ridzwan. Ridzwan subsequently lodged a civil claim against Asmah, stating that her allegations of sexual assault were defamatory. After a number of appeals and the dismissal of Ridzwan's defamation claim the Federal Court established, in a rare case of judicial activism, that the tort of sexual harassment exists in Malaysian common law.

There is still a need for comprehensive legislation on sexual harassment

There is a need for comprehensive legislation to define, address, and provide additional remedies for sexual harassment. Seeking redress through the common law tort of sexual harassment still requires an individual to go through the court process to access justice, which means going through a very public, expensive, and timely procedure. An independent Sexual Harassment Act and tribunal would allow complainants to seek redress without going to court, and would reduce other barriers to accessing justice. Additionally, a tort action for sexual harassment requires the claimant to quantify physical, mental, and emotional harm in monetary terms. Such evidence may not be available in all cases.

In July 2010, an Employment Amendment Bill 2010 was brought before parliament with new provisions which compel employers to examine claims of sexual harassment at the risk of facing a fine if complaints are ignored. The bill was passed in October 2011,¹⁴⁴⁸ however the complaint procedure laid out by the Department of Labour is vague as to the evidentiary burden for deciding a complaint, and—most problematically—still relies on the employer's own investigation of the complaint.¹⁴⁴⁹

The limited protections of the Employment Act still do not extend to Sabah and Sarawak, which have separate labour ordinances that do not include sexual harassment in their scope. Thus, employees of Sabah and Sarawak, in particular women, continue to lack access to justice after experiencing sexual harassment and discrimination in the workplace.

1447 See *Mohd Ridzwan Bin Abdul Razak.Appellant and Asmah Binti Hj. Mohd Nor*. In The Federal Court Of Malaysia (Appellate Jurisdiction) Civil Appeal No: 01(F)-13-06/2013 (W). 2 June 2016. Available at: [http://www.foongchingleong.com/judgements/Mohd%20Ridzwan%20bin%20Abdul%20Razak%20v%20Asmah%20Binti%20Hj%20Mohd%20Nor%20\(FC\).pdf](http://www.foongchingleong.com/judgements/Mohd%20Ridzwan%20bin%20Abdul%20Razak%20v%20Asmah%20Binti%20Hj%20Mohd%20Nor%20(FC).pdf)

1448 For more info refer to *Malaysian NGO CEDAW Alternative Report 2012*, page 200.

1449 "Managing Sexual Harassment at Workplace – Guide for HR Practitioners." National Human Resource Center Online. Available at: http://www.nhrc.com.my/rss/-/asset_publisher/hCox5Xd15nGy/blog/id/2924455

The lack of appropriate legislation dealing with sexual harassment contravenes **Article 11 (f) of CEDAW**, which states that women must have the “right to protection of health and to safety in working conditions” as well as **Article 2 (b) of CEDAW** which encourages states to “adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women.”

The government should enact separate comprehensive sexual harassment legislation, which includes the creation of an independent tribunal to examine sexual harassment claims inside and outside the workplace.

Abuse of Migrant Domestic Workers

In Malaysia, legislation that specifically protects migrant workers is still non-existent. In 2011 Malaysia signed a second Memorandum of Understanding (MoU) with Indonesia, the source country of most of Malaysia’s migrant domestic workers, but this lacks labour protections and complaint resolution measures.^{1450, 1451} Although Malaysia’s criminal law theoretically protects migrant domestic workers from physical abuse, the loss of the work visa upon termination of employment and the resulting inability to work legally combined with lengthy trials and the monthly expense of special immigration passes makes pursuing justice next to impossible.¹⁴⁵² In order for migrant workers to be fully protected, the amendment of immigration laws and labour laws is necessary.¹⁴⁵³

More information on the discrimination faced by migrant domestic workers in Malaysia can be found in the chapter of this report on the CEDAW Committee’s General Recommendation No. 26.

Stalking

Stalking has not been criminalised in Malaysia. The principle of stalking is already recognised in the Domestic Violence Act (DVA) through protection orders; however, a person should not need to obtain a protection order to be protected from stalking. Furthermore, the DVA does not cover violence where there has been no marriage between partners, so individuals who are being stalked by intimate partners, acquaintances, or strangers would not be able to access even the limited protections of the DVA.

I450 “Indonesia/Malaysia: New Pact Shortchanges Domestic Workers.” Human Rights Watch. 31 May 2011. Available at: <https://www.hrw.org/news/2011/05/31/indonesia/malaysia-new-pact-shortchanges-domestic-workers>

I451 “Indonesia/Malaysia: Proposed Labor Pact Lacks Key Reforms.” Human Rights Watch. 4 March 2010. Available at: <https://www.hrw.org/news/2010/03/04/indonesia/malaysia-proposed-labor-pact-lacks-key-reforms>

I452 Human Rights Watch “Indonesia/Malaysia: Proposed Labor Pact Lacks Key Reforms.” Human Rights Watch. 4 March 2010. Available at: <https://www.hrw.org/news/2010/03/04/indonesia/malaysia-proposed-labor-pact-lacks-key-reforms>

I453 For more info refer to *Malaysian NGO CEDAW Alternative Report 2012*, page 201-202.

Online violence against women

The development of the Internet for public use has provided countless opportunities for women's empowerment, engagement, and education. However, various studies have shown that, while growing access to the Internet has expanded opportunities in advancing rights, it has also led to the disproportionate use of technology to perpetrate gender-based abuses and violence, often resulting in the infringement of women's human rights online and offline.¹⁴⁵⁴ While online violence and abuses may affect all users in differing ways, incidents of online violence against women (VAW) are part of the broader issue of gender-based violence (GBV), resting on existing discrimination and stereotypes against women.

Though some efforts have been made to define online abuse and gender-based violence, there remains no formally recognised definition internationally. The UNHRC consensus resolution on "The promotion, protection and enjoyment of human rights on the Internet" reaffirmed that the same rights that people have offline must also be protected online.¹⁴⁵⁵ CEDAW Committee General Recommendation No. 19 states clearly that gender-based violence in all forms amount to discrimination and inhibits women's ability to enjoy their human rights and fundamental freedoms.

There is very little data on the number and forms of online VAW in Malaysia. Instances of online violence based on NGO service providers' accounts and anecdotal evidence include distribution of intimate photos or videos without consent; harassment (women receiving insulting text messages); stalking; dissemination of private information; identity theft; hate speech; and rape and death threats.

Domestic legal remedies

Victims often face barriers in obtaining legal redress for online violence perpetrated through ICTs. Authorities, including police officers, can be gender-insensitive and dismissive when women report a case of online VAW. Anecdotal cases show that police officers lack the necessary capacity and training in identifying online threats and harassment as GBV or possible crimes. The general perception on the part of the authorities seems to be that if violence is not physical, then the harm is trivial.

There is also a reluctance among authorities to extend existing laws that addresses online harassment to address online GBV. For instance, Section 233 of the Communications and Multimedia Act 1998 provides that it is an offence for anyone to make "any comment,

1454 Internet Governance Forum (IGF) (2015). *Best Practice Forum (BPF) on Online Abuse and Gender-Based Violence Against Women*. IGF. Available online: <http://www.intgovforum.org/cms/documents/best-practice-forums/623-bpf-online-abuse-and-gbv-against-women>.

1455 United Nations Human Rights Council (UNHRC). *Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development*, 27 June 2016 (A/HRC/32/L.20). Available at: https://www.article19.org/data/files/Internet_Statement_Adopted.pdf.

request, suggestion or other communication which is obscene, indecent, false, menacing or offensive...with the intent to...harass another person.” However, this provision is not being applied to cases of online GBV.

Penal Code provisions have been used to address gender-based violence, for instance section 385 (“putting or attempting to put in fear of injury, in order to commit extortion”) and Section 509 (“uttering any words or making any gesture intended to insult the modesty of a person”) of the Penal Code have been used by the criminal court to convict perpetrators for blackmail by distribution of sexually explicit photos through ICTs.^{1456,1457} Nonetheless, applicability of such laws has only been extended to cases where there is financial extortion, and Penal Code provisions lack an understanding of the gender-specificity of these acts and awareness of the compounded effect of certain acts as a result of the vast and intractable nature of the Internet.

Aside from these limited provisions, existing legislation addressing GBV has yet to be extended to cover online abuse and gender-based violence. For instance, the Domestic Violence Act does not have provisions that recognise the continuum of violence that victims experience online which is just as dangerous and traumatic as its offline equivalent. Anecdotal evidence from cases handled by women’s rights organisations suggests that technology can aggravate and abet VAW, including domestic violence.¹⁴⁵⁸

Cases: Types of behaviour and/or conduct

#WomensMarchKL

Participants of #WomensMarchKL, which was held in conjunction with International Women’s Day on 11 March 2017, came under attack on Twitter as they shared comments and updates online. The positive and empowering expressions of women of their experiences at the #WomensMarchKL quickly resulted in a concerted effort to silence, belittle, and discredit the movement. These acts were deliberate forms of gender-based violence, which impeded women’s right to freedom of expression, public participation, and privacy by creating a hostile online environment in which women do not feel safe to express themselves.

1456 “Guard fined RM3,500 for threatening to distribute nude pictures.” Free Malaysia Today. 23 February 2017. Available at: <http://www.freemalaysiatoday.com/category/nation/2017/02/23/guard-fined-rm3500-for-threatening-to-distribute-nude-pictures/>

1457 “Man who tried to blackmail girlfriend with nude photos picks jail over RM3,000 fine.” The Star Online. 5 May 2014. Available at: <http://www.thestar.com.my/news/nation/2014/05/05/man-choose-jail-over-fine-for-blackmail/>

1458 “Kula: Indira was harassed by husband on WhatsApp.” Free Malaysia Today. 29 April 2016. Available at: <http://www.freemalaysiatoday.com/category/nation/2016/04/29/kula-indira-was-harassed-by-husband-on-whatsapp/>

Among the participants who received the most intense attack was a teenage girl who carried a placard reading, “*I wish to be the next Prime Minister but I can’t ... Do you know why???* (Speech bubble: ‘*Mana tudung?*’ (‘Why aren’t you wearing a headscarf?’)).”¹⁴⁵⁹ The teenager was reportedly extremely affected by the trolling and insults directed at her. Significant attacks also targeted those who carried placards in support of transgender women. The attacks included body shaming of at least one participant.

Thaipusam

In January 2017, a Facebook page titled “Thaipusam Spraying Group” posted threats of spray painting women who were deemed to be “inappropriately dressed” at Thaipusam celebrations.¹⁴⁶⁰ The page included pictures depicting the backs of women donning sarees with the comment: “Advance warning to Hindu female patrons coming to Thaipusam festival, beware of being sprayed with aerosol [sic.] paint if found inappropriate [sic.] dressed.” The creator of the Facebook page, age 29, was reported to be arrested on 26 January 2017, two weeks before the actual day of Thaipusam.¹⁴⁶¹ However, it was not reported whether any charges were laid against him.

It is important to note that abusive online behavior cannot be viewed in isolation of offline culture. Women often disproportionately bear the burden of upholding traditional, religious, and moral values, as interpreted by particular groups of society. This is particularly the case in relation to women’s bodily autonomy and sexuality. Women are subjected to unnecessary, intrusive, and sexualised persecution and surveillance in their daily lives, whether it is online or offline.

Arlina Banana

Arlina Arshad, or more widely known as Arliana Banana, is an author, entrepreneur, and social media influencer who uploads videos, pictures, and has written posts that encourage self-confidence and positive body image.

Online attacks against Arlina are many and are usually based on her physical appearance, her Borderline Personality Disorder (BDP), and her purported “attention-seeking.” On 4 July 2016, Arlina appeared to be suicidal based on her Twitter posts, due to ongoing online harassment.

I459 “Women’s March KL receives backlash, some Malaysians think it’s a Western trend.” Elle MY. 13 March 2017. Available at: <http://www.elle.my/life-and-love/News/Womens-March-KL-receives-backlash-Malaysians-think-its-a-Western-trend>

I460 “Group warned against spray-painting women on Thaipusam.” Free Malaysia Today. 9 January 2017. Available at: <http://www.freemalaysiatoday.com/category/nation/2017/01/09/group-warned-against-spray-painting-women-on-thaipusam/>

I461 “Thaipusam spraying group’ creator nabbed.” The Star Online. 27 January 2017. Available at: <http://www.thestar.com.my/news/nation/2017/01/27/thaipusam-spraying-group-creator-nabbed/>



The attacks against Arlina grew in intensity after the suicidal announcement on Twitter and went as far as encouraging her to commit suicide. Among the comments made online were: “Are you already in hell?,” “She’s just seeking cheap publicity,” and other comments involving her body.¹⁴⁶²

Online bullying, harassment, and violence against LGBTI women

Case Study¹⁴⁶³

Katrina, a lesbian in her thirties who was part of the campaign in support of Fatine Young, was called “pig” and told she was “fat and ugly and that’s why guys do not want to have sex with you.” The attackers questioned her sexual orientation. She received death and rape threats from online users she did not know. Some of the online attackers said they wished that God would punish Katrina and that she would die a horrible death.

Case Study¹⁴⁶⁴

Mei Mei, a 27-year-old lesbian, explained that she experienced Internet bullying when an anonymous online chatter, to whom she revealed her sexual orientation, made disparaging remarks: “You women need guys to straighten you all up ... if you don’t date a guy, if you don’t have sex with a guy, you are not a complete woman.”

Aleesha Farhana

In 2011, Aleesha Farhana filed an application to change her name and gender marker to facilitate her application to a higher learning institution, as the name on certificates, assignment of student accommodation, dress code, and other rules would be based on the name and gender stated on her IC. Her application was denied by the High Court on July 18, 2011 for failing to satisfy all four criteria - chromosomal, gonadal, genital, and

1462 “Dah Masuk Neraka Ke?’ - Arlina Banana Dikecam Lebih Teruk Selepas Umum Nak Bunuh Diri” Says. 4 July 2016. Available at: <http://says.com/my/seismik/arlina-banana>

1463 KRYSS & Outright International. (2014). *On the Record: Violence against lesbian, bisexual and trans people in Malaysia*. Available at: https://www.outrightinternational.org/sites/default/files/MalaysiaCC_0.pdf

1464 Ibid.

psychological factors.

Aleesha Farhana had hinted about ending her life following the court case and the attacks and comments she received on social media platforms:

“If society cannot accept my condition based on the multiple insults and taunts that I have received through social media Facebook, I would rather be killed if that’s the best solution.”¹⁴⁶⁵ (Translated from Bahasa Malaysia)

Almost two weeks later, on 30 July 2011, Aleesha Farhana passed away due to a heart attack from an “unstable angina with cardiogenic shock.” In the course of her case, both she and her parents were condemned because of her gender identity. Her parents were criticized for their parenting skills and their piety was questioned.¹⁴⁶⁶

Ayu Siti

In 2015, the identity card of Ayu Siti, a local performer, was uploaded and shared on social media platforms without her consent. Ayu Siti posted a video in response, where she was visibly stressed and humiliated. She cried and pleaded with online users to stop editing and sharing her IC, stating that all she was doing was earning a *halal* (meaning legal, religious, and moral) living.¹⁴⁶⁷ Ayu Siti maintained that she is intersex.¹⁴⁶⁸

Suria Sabah Mall Incident

In 2016, a video of a transgender woman who joined a group of buskers for an impromptu performance at the Suria Sabah mall went viral. According to a news report about the video, the woman’s breasts were visibly noticeable throughout the video, although it was clear that she was struggling to tuck them in.¹⁴⁶⁹

1465 “Mohd Ashraf Hafiz @ Aleesha Farhana : Dilema Wanita Berstatus Lelaki.” *Aku Dan Sesautu*. 21 July 2011. Available at: <https://akudansesuatuz.blogspot.nl/2011/07/mohd-ashraf-hafiz-aleesha-farhana.html>

1466 “Malaysia: Parents of transgender reach out for help.” *New Straits Times*. 20 July 2011. Available at: <http://www.wluml.org/news/malaysia-parents-transgender-reach-out-help>

1467 “Princess Nur Bidadari aka Hafizal Hussain Merayu Berhenti Sebar IC.” *You Tube*. 5 April 2015. Available at: <https://www.youtube.com/watch?v=SgPeLcybkbY>,

1468 “(Video) Pondan Hafizal aka “Princess Nur Bidadari” Merayu Berhenti Sebar Gambar Kad Pengenalan.” *Teh Panas*. 5 April 2015. Available at: <http://www.tehpanas.com/pondan-hafizal-aka-princess-nur-bidadari-merayu-berhenti-sebar-ic/>

1469 “Transvestite’ performing at Suria Sabah told to report to police station.” *The Borneo Post*. 22 January 2016. Available at: <http://www.theborneopost.com/2016/01/22/transvestite-performing-at-suria-sabah-told-to-report-to-police-station/>

The police called for the person featured in the video to report to the nearest police station:¹⁴⁷⁰

*Police are looking for [deleted], who is believed to be the individual in the said video and photos which have gone viral and appeared in local and portal news to report 'herself' at the Kota Kinabalu or any nearest police station to help with the rest of the investigation of the case which was being investigated under Section 294 of the Penal Code for obscene performance.*¹⁴⁷¹

The woman surrendered herself at the police station, where she was detained for her statement to be taken before being released on police bail.¹⁴⁷² No further information is available.

Women in detention

Female detainees in Malaysia are subject to hostile treatment by the police and prison guards, including verbal, physical, and sexual abuse. In one instance, a group of migrant women accused (but not yet proven guilty) of working as prostitutes were chained and 'cattle-branded'.¹⁴⁷³

Detainees at immigration detention centres are subject to deplorable conditions – overcrowding, lack of sanitation, malnutrition – that results in physical harm and death for some women and girls.¹⁴⁷⁴

Currently, the determination of whether to send a convicted person to a male or female prison is made based on their legally recognised gender, as designated on their birth certificate or identity card. This is problematic, as placing transgender women inmates with men due to their legal status as males can lead to them being sexually abused or raped.¹⁴⁷⁵

I470 “Sexy crossdresser not a busker, say Sabah police.” Malaysiakini. 23 January 2016. Available at: <https://www.malaysiakini.com/news/328053>

I471 “‘Transvestite’ performing at Suria Sabah told to report to police station.” The Borneo Post. 22 January 2016. Available at: <http://www.theborneopost.com/2016/01/22/transvestite-performing-at-suria-sabah-told-to-report-to-police-station/>

I472 “Wardrobe malfunction unintentional, says Sabah transsexual.” The Star. 22 January 2016. Available at: <http://www.thestar.com.my/news/nation/2016/01/22/wardrobe-malfunction-unintentional/>

I473 “Malaysia Police Slammed for Cattle-branding women.” CNS News. 3 June 2011. Available at: <https://www.cnsnews.com/news/article/malaysia-police-slammed-cattle-branding-women>

I474 For more information, refer to *Malaysian NGO CEDAW Alternative Report 2012*, page 202.

I475 “Suhakam calls for SOP on transgender prisoners.” Free Malaysia Today. 30 May 2017. Available at: <http://www.freemalaysiatoday.com/category/nation/2017/05/30/suhakam-calls-for-sop-on-transgender-prisoners/>

The Human Rights Commission of Malaysia (SUHAKAM) conducted a nationwide survey on the right to health in prison and observed that there is no standardised policy concerning the placement of transgender persons in prisons. SUHAKAM noted that although the number of transgender prisoners in Malaysia is low, these individuals are at a substantially elevated risk of suffering from assault or self-harm.¹⁴⁷⁶

Violence against refugee women

Refugee women are at greater risk of sexual and gender-based violence. By not legally recognising refugees, the State is complicit in this violence. Barriers to seeking help include the need for personal documentation when visiting hospitals and police – without this the women may be arrested.¹⁴⁷⁷ UNHCR received 236 reports of sexual and gender-based violence to its refugee processing centre in Malaysia in 2009 alone.¹⁴⁷⁸

Recommendations to the Malaysian Government regarding the CEDAW Committee’s General Recommendation 19

- Put in place mechanisms to monitor the prevalence of gender-based violence and to analyse emerging trends and areas of concern. Make this information publicly available.

- Review all provisions of the Domestic Violence Act, Penal Code, Criminal Procedure Code, and Evidence Act to ensure that these laws protect women from violence and account for complexities in the crime of domestic violence. This includes:
 - Expanding the Domestic Violence Act to include violence perpetrated in unmarried partnerships;
 - Amending the Penal Code to criminalise marital rape;
 - Amending the Penal Code to criminalise rape with an object as rape, not as sex “against the order of nature.”

- Enact anti-stalking legislation.

1476 Ibid.

1477 For more information, refer to *Malaysian NGO CEDAW Alternative Report 2012*, pages 202-204.

1478 Cecilia Ng. (2011). *Gender and Rights: Analysis for Action*. Gelugor, Penang: Good Governance and Gender Equality Society, Penang (3Gs) and Women’s Development Research Centre (KANITA) Universiti Sains Malaysi. Page 45.

- Enact a separate, comprehensive sexual harassment law that establishes an independent tribunal to assess claims and provide women redress.
- Review all aspects of the investigation process for cases of gender-based violence to ensure speedy redress and gender sensitive responses to these cases, especially for cases of domestic violence and rape. For example, the police should do away completely with face to face identification parades and use a one-way mirror as a matter of practice in all cases involving rape and sexual assault.
- Review the rules of evidence in court to remove any loopholes and provisions that continue to cause trauma to survivors who testify, especially those involving the cross examination of rape survivors' past sexual history, disclosure of survivors' identity and the need for corroboration in rape cases.
- Allocation of resources by the government is needed to ensure:
 - More staff and shelters for women and children in crisis are made available to all agencies involved in combating violence against women;
 - A victim support, restitution, and compensation fund is made available;
 - Shelters specifically designated for survivors of domestic violence and sexual assault equipped with trained personnel are made available.
- Implement compulsory ongoing training programmes for all public officers (such as the police, welfare officers, medical personnel, detention personnel, and the judiciary) on issues of violence against women, which include:
 - Training modules on gender, violence against women, and rights of migrant workers developed in consultation with the relevant NGOs;
 - Provision of education regarding the human rights of women in detention.
- Develop a concerted and consistent approach to public education on issues of violence against women. Media campaigns are needed to increase awareness of women's rights and to bring about a mindset change on issues of domestic violence, rape, sexual harassment, and rights of migrant domestic workers.
- Amend laws, policies, and regulations that leave migrant domestic workers vulnerable to abuse by:
 - Removing the imposition of special visas (which cost RM100 per month) for those seeking legal redress and awaiting completion of court proceedings;
 - Amending the recruitment policy as it deters migrant domestic workers from seeking redress for fear of deportation;
 - Providing all migrant domestic workers with an orientation on their rights

upon arrival, and advise of available resources for dealing with crises and abuse.

- Develop a multi-agency approach to handle all cases of abuse in cooperation with the police, welfare, courts, immigration, hospitals, and NGOs. Any existing multi-agency networks should be enhanced and broadened to encompass all forms of violence against women.
- Investigate and prosecute persons accused of violating the human rights of women in detention.
- Establish legal protection and mechanisms to redress violence perpetrated against women who engage in same-sex relationships and transgender people, in full consultation with them. This includes:
 - The review and expansion of rape laws to include the rape of lesbians and transgender people;
 - Providing effective redress for violence perpetrated by police personnel, religious authorities, family members and other institutions or members of the public against lesbians, bisexual women, and transgender people;
 - Enforcing the law against all State and non-State actors for vigilantism against those whose sexuality or gender identity is perceived to deviate from heteronormativity.
- Repeal the Sedition Act, as it has been used to quell dissent and advocacy for transparency and democracy, and recognise and uphold the rights to freedom of assembly and expression related to all matters, including religion.
- Establish a reasonable time frame in which to provide information on the progress of investigations into attacks on women journalists, women human rights defenders, and women in leadership, and to punish those who have been identified by the relevant authorities as responsible for the attacks

**The way to right wrongs is to turn
the light of truth upon them.**

-Ida b. Wells

19.

GR 26

CEDAW COMMITTEE GENERAL RECOMMENDATION 26: ON WOMEN MIGRANT WORKERS

The CEDAW Committee issued General Recommendation No. 26 (“GR 26”) in December 2008. GR 26 specifically guides States parties on how to address their obligations under the CEDAW Convention to:

“respect, protect and fulfil the human rights of women migrant workers, alongside the legal obligations contained in other treaties, the commitments made under the plans of action of world conferences and the important work of migration-focused treaty bodies, especially the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families.”

GR 26 sets out that the CEDAW Convention applies to prohibit gender and sex-based discrimination and impose a positive obligation on States in controlling their borders and regulating migration. This includes the promotion of safe migration procedures and the obligation to respect, protect, and fulfil the human rights of women throughout the migration cycle, recognising the social and economic contributions of women migrant workers to their own countries and countries of destination, including through caregiving and domestic work.

GR 26 addresses the situations of the following categories of migrant women who, as workers, are in low-paid jobs, may be at high risk of abuse and discrimination, and who may never

acquire eligibility for permanent stay or citizenship, unlike professional migrant workers in the country of employment:

- (a) Women migrant workers who migrate independently;

- (b) Women migrant workers who join their spouses or other members of their families who are also workers;
- (c) Undocumented women migrant workers who may fall into any of the above categories.

Key Issues:

- Migrant domestic workers are currently denied the same working rights afforded to all other workers under Malaysia's Employment Act 1955, including rest days, maternity benefits, and regular hours of work. In 2014, the Ministry of Human Resources drafted 'Regulations (Terms & Conditions of Employment) of Domestic Servants 2014.' However, the Regulations did not adequately protect the rights of domestic workers, who are uniquely vulnerable to abuse and labour rights violations. In May 2014, the Domestic Workers Campaign Coalition provided detailed recommendations to address gaps in the Regulations. These recommendations were never incorporated into the Regulations, which were never passed.
- Refugee women workers are particularly vulnerable to labour exploitation and abuse, as they lack legal status and the right to work in Malaysia.

2018 Concluding Observations to Malaysia

In the 2018 Concluding Observations to Malaysia, the Committee reiterated its previous concern (CEDAW/C/MYS/CO/2, para.25) regarding the situation of women migrant domestic workers, who are denied rights under the Malaysian labour laws vis-à-vis other migrant workers, including in relation to minimum wages, working hours, rest days, leave, freedom of association, and social security coverage.¹⁴⁷⁹

Recalling its previous recommendations (CEDAW/C/MYS/CO/2, para.26), the Committee recommends that the State party:

- a) Ensure that women migrant domestic workers are guaranteed the same level of protection and benefits as other migrant workers in law and in practice, and that they have access to effective remedies and redress against abuse by employers;
- b) Repeal the policy which prohibits women migrant domestic workers from becoming pregnant on the basis that their contract of service would normally be for two years;

1479 CEDAW Concluding Observation 2018, para 43 (CEDAW/MYS/CO/3-5)

- c) Ensure that women migrant workers have access to affordable health care services;
- d) Ratify the International Labour Organization (ILO) Discrimination (Employment and Occupation) Convention, 1958 (No. 111), and the ILO Domestic Workers Convention, 2011 (No. 189).¹⁴⁸⁰

Migrant domestic workers

Background

Media reports estimate that, as of 2015, there were 300,000 domestic workers in Malaysia, with the majority being from Indonesia.¹⁴⁸¹ Malaysia allows the recruitment of domestic workers from eight source countries,¹⁴⁸² although it has signed Memoranda of Understanding (MoUs) with only Indonesia, the Philippines, and Cambodia (with the source countries halting deployment at various points due to disputes in wage setting, labour rights, and cases of abuse).

In December 2015, the Government of Cambodia removed a 2011 ban on Cambodian citizens becoming domestic workers in Malaysia.¹⁴⁸³ While Malaysia and Cambodia signed two MoUs to further regulate contracts and protect workers' rights, Cambodian domestic workers remain vulnerable to exploitation.¹⁴⁸⁴

Domestic workers are recognised under Malaysia's Employment Act 1955 as 'domestic servants,' and are, thus, explicitly denied the basic rights that are afforded to other workers, including termination of contracts, maternity benefits, rest days, hours of work and holidays, and benefits related to termination, layoff, and retirement.¹⁴⁸⁵ An ILO report found that Malaysian domestic workers work an average of 65 hours per week.¹⁴⁸⁶

1480 CEDAW Concluding Observation 2018, para 44 (CEDAW/MYS/CO/3-5)

1481 "Providing better protection for Indonesian domestic migrant workers in Malaysia." ILO. 3 November 2015. Available at: http://www.ilo.org/jakarta/info/public/pr/WCMS_421136/lang--en/index.htm/

1482 Foreign Domestic Worker (FDH). *Immigration Department of Malaysia*. Available at: <http://www.imi.gov.my/index.php/en/foreign-domestic-helper-fdh.html>

1483 "Cambodian workers and maids to make comeback." *New Straits Times*. 10 December 2015.

1484 US Department of State. *Trafficking in Persons Report 2016*, page 255.

1485 Schedule 1 of the Employment Act 1955 states that Section 12, 14, 16, 22, 61 and 64 and Parts IX, XII and XIIA are not applicable to a Domestic worker: Part IX (Maternity Protection), Part XII (Rest Days, Hours of Work, Holidays and Other Conditions of Service), Part XIIA (Termination and, Lay-Off and Retirement Benefits).

1486 "Some domestic workers work up to 100 hours a week." *The National World*. 12 January 2013. Available at: <http://www.thenational.ae/news/world/middle-east/some-domestic-workers-work-up-to-100-hours-a-week>

At the 99th Session of the International Labour Conference (ILC) in Geneva in 2010, in relation to the Convention concerning decent work for domestic workers (C189),¹⁴⁸⁷ the Malaysian Government was amongst the minority of voters and governments who would only support a Recommendation and not a Convention. Malaysia's response to the proposed Convention was reported in ILO's Report IV (2A) Decent Work for Domestic Workers, in which the Malaysian government observed that "Domestic work is not seen as ordinary employment,"¹⁴⁸⁸ and that in relation to the proposed Article 10(3) concerning hours of work, "Domestic workers cannot be equated to other workers in general."¹⁴⁸⁹ Despite intense lobbying in Malaysia and at the 100th Session of the ILC by civil society organisations, held in Geneva in 2011, Malaysia abstained from voting to adopt the Convention.¹⁴⁹⁰

In 2014, the Ministry of Human Resources drafted 'Regulations (Terms & Conditions of Employment) of Domestic Servants 2014.' The Regulations did not address many of the fundamental issues behind labour rights violations against domestic workers. Additionally, the rhetoric of the Regulations continued to refer to domestic workers as "domestic servants," which perpetuates negative and demeaning perceptions of domestic workers.¹⁴⁹¹ However, the government put the regulations on hold and no further consultations were initiated by the government on the regulations.

In May 2014, the Domestic Workers Campaign Coalition, made up of eight civil society organizations, submitted recommendations to the Ministry of Human Resources regarding the Regulations.¹⁴⁹² The Coalition's recommendations directly responded to the labour rights violations and physical and mental abuse faced by many domestic workers. Among other abuses, the Coalition reported:

- "Many domestic workers have experienced unimaginable physical and mental ill-treatments, from scalding with hot water and beatings with electrical wires, to harassment, psychological abuse, and sexual assault.
- Most domestic workers are never granted a day off and many are requested to be at the beck and call of their employers 24 hours a day.
- They are also frequently prevented from communicating with family and friends, from associating and unionizing, as well as from moving freely outside

I487 ILO (2013). *C189 – Domestic Workers Convention, 2011 (No. 189)*. Available at: http://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100_ILO_CODE:C189

I488 ILO's Report IV(2A) Decent Work for Domestic Workers, page. 6 Available at: http://www.ilo.org/ilc/ILCSessions/100thSession/reports/reports-submitted/WCMS_151864/lang--en/index.htm

I489 Ibid, page. 40 Available at: <http://www.ilo.org>

I490 "Migration Working Groups issued a press statement urging the Malaysian government to adopt the C189 Convention at the 100th ILC." Malaysiakini. 31 May 2011. Available at: <https://www.malaysiakini.com/letters/165594>

I491 Domestic Workers Campaign Coalition (2014). *Response and Recommendations to the Draft 'Regulations (Terms & Conditions of Employment) of Domestic Servants 2014.'* 20 May 2014.

I492 Ibid.

their working hours. In far too many cases, they are also completely locked in the household for days, months, or years.

- Withholding of passports, withholding of wages, and denial of communication with the outside world significantly heightens the vulnerability of domestic workers. As abusive employers cancel, or threaten to cancel work permits, the risk of being arrested, detained, and eventually deported for being ‘undocumented’/‘illegal’, keeps domestic workers from seeking help.”¹⁴⁹³

Many migrant domestic workers are “subjected to practices that can indicate forced labor,” according to the US State Department’s 2016 Trafficking in Persons Report.¹⁴⁹⁴ Such practices include passport retention, as employers are allowed to hold domestic workers’ passports for “safekeeping.”¹⁴⁹⁵ In 2015, the NGO Tenaganita saw 62 women who complained of passport withholding by their employer or agent. Other rights violations indicative of forced labour include “contract violations, restricted movement, wage fraud, and imposition of significant debts by recruitment agents or employers.”¹⁴⁹⁶ Tenaganita has recorded cases of women being recruited as domestic workers, but who are subsequently forced to work in other sectors upon their arrival in Malaysia.

The US State Department’s Malaysia Report on Human Rights Practices for 2016 stated:

“In general migrant workers were more apt to face poor working conditions, worked in sectors where violations were common, and faced challenges in accessing justice. Migrant workers, documented and undocumented, often worked under difficult conditions, performed hazardous duties, had their pay withheld by employers, and had no meaningful access to legal counsel in cases of contract violations and abuse. Some workers alleged their employers subjected them to inhuman living conditions, confiscated their travel documents, and physically assaulted them. Employers of domestic workers sometimes failed to honor the terms of employment and subjected workers to abuse. Employers reportedly restricted workers’ movement and use of mobile telephones; provided substandard food and living conditions; physically and sexually assaulted workers; and harassed and threatened workers, including with deportation.”¹⁴⁹⁷

In May 2017, the Ministry of Human Resources launched Guidelines and Tips for Employers of Foreign Domestic Helpers, which was devised with the ILO and contains information on laws and best practices related to recruitment and employment of foreign domestic workers. Although select NGOs were initially consulted on the Guidelines,

I493 Domestic Workers Campaign Coalition (2014). *Response and Recommendations to the Draft ‘Regulations (Terms & Conditions of Employment) of Domestic Servants 2014’*, page 2-3.

I494 US Department of State. *Trafficking in Persons Report 2016*, page 255.

I495 Domestic Workers Campaign Coalition (2014). *Response and Recommendations to the Draft ‘Regulations (Terms & Conditions of Employment) of Domestic Servants 2014.’* 20 May 2014.

I496 US Department of State. *Trafficking in Persons Report 2016*, page 255.

I497 US Department of State. Country Report on Human Rights Practices for 2016: Malaysia, page 36.

there was no opportunity for NGO input in the final draft. These Guidelines are not legally binding.¹⁴⁹⁸

Recruitment of domestic workers

Media reports in 2013 indicated that the cost for a Malaysian employer to recruit an Indonesian domestic worker was approximately RM 14,000. The Indonesian and Malaysian governments made attempts to cap the recruitment costs to RM 7,800 wherein the employer will pay RM 6,000 while the domestic worker will pay RM 1,800 via deductions of RM 300 from her monthly salary over a six-month period. However, desperate employers are exploited by unscrupulous recruiters (often unlicensed recruiters) to pay more to expedite the approval for the application as a result of high demand and short supply.¹⁴⁹⁹ In turn, employers unlawfully deduct a higher sum from the monthly wages of the domestic worker for a longer period of time, leaving the domestic worker very little or nothing at all to send to families back home. The desperation of employers to exploit domestic workers is further perpetuated by the risk of employers losing the fee paid to the agency in the event the domestic worker absconds, although some agencies, as warranty, do replace domestic workers if the previous domestic worker runs away within three or six months.

The Migration Working Group (MWG) recorded cases from employers where the domestic workers would mysteriously disappear the day after the warranty period expired, leaving the employer to fork out more money to replace the absconded domestic worker. Such incidents only leave the employers more resentful and abusive to the domestic workers.

In 2006, Malaysia and Indonesia signed a Memorandum of Understanding (MoU) to formalise the recruitment of domestic workers from Indonesia to Malaysia. However, in 2009, due to a string of horrific abuse cases of Indonesian domestic workers, the Indonesian government imposed a ban on the recruitment of its nationals as domestic workers. Bans are ineffective and counter-productive, as the demand for domestic workers remains high, due to the need of Malaysian women to work to supplement the family income due to increasing cost of living. Further, there are very few or no alternative arrangements for child care in work places and informal childcare is very costly. Recruiters and employers then resort to bringing in Indonesian women (and other nationalities) on JP visas (Journey Performed) wherein a recruiter or an employer goes to the source country to bring an Indonesian woman into Malaysia on a social visa and, thereafter, converts the visa to a worker permit. This practice leaves employers and domestic workers vulnerable to high costs, long waiting periods for the conversion of the permit, and, often, fraud by agents.¹⁵⁰⁰

1498 “Guidelines, Tips For Employers Of Foreign Domestic Workers Launched.” Malaysian Digest. 25 May 2017. Available at: <http://malaysiandigest.com/news/677387-guidelines-tips-for-employers-of-foreign-domestic-workers-launched.html>

1499 “RM 14,000 fee for a maid.” The Star Online. 25 December 2013. Available at: <http://www.thestar.com.my/news/nation/2013/12/25/rm14000-fee-for-a-maid-dishonest-agents-exploiting-desperate-need-for-household-help/>

While the MoU with Indonesia was revisited and amended in 2011, employers are still able to hold domestic workers' passports with their consent "for safekeeping." In practice, domestic workers do not have adequate knowledge of the law to prevent employers or agents from taking their passports, which is still common practice.

MWG recorded cases of women from Indonesia, Sri Lanka, and India being brought into Malaysia as domestic workers with social visas which expire within 30 days of the date of arrival. The domestic workers are made to work long hours with little or no pay to purportedly pay the agents to convert the visas to work permits, which, most of the time, they are unsuccessful in doing.

Pregnancy

Domestic workers and women migrant workers are required to undergo a mandatory pregnancy test within the Foreign Workers' Medical Examination (FOMEMA),¹⁵⁰¹ a requirement to obtain a work permit and subsequent renewals of such documents. Pregnant domestic workers and women migrant workers are classified as medically unfit and deported back to their home countries. Deportation due to pregnancy is also a clause included in the contract of employment.

Section 312 of the Penal Code allows abortions to be carried out by a doctor registered under the Medical Act 1971 only under the following circumstances: there is risk of life or injury to the physical health of the woman or risk of life or injury to the mental health of the woman. With limited avenues to seek a termination of the pregnancy, coupled with the fear of deportation including social stigma in the host and home countries, migrant women workers resort to unauthorised abortions, risking various medical complications and long-term effects on their health.

MWG has recorded two cases of domestic workers who had fallen pregnant during their visit to their home countries. Through successful negotiations with the employers, the women were allowed to return to their home countries for safe deliveries of their child and return back to Malaysia to continue their work.

Case Study – Nirmala's Story

In October 2014, Nirmala Thapa, a Nepalese migrant worker was arrested for terminating her six-week pregnancy by the Health Ministry's Private Medical Practice Control Unit

1500 "Papa: Don't hire maids brought in using JP visa." The Star Online. 15 Jan 2014. Available at: <http://www.thestar.com.my/news/nation/2014/01/15/papa-dont-hire-maids-brought-in-using-jp-visa/>

1501 FOMEMA Sdn. Bhd. ("FOMEMA") is the concession company appointed by the Government of Malaysia to manage, monitor and supervise a mandatory comprehensive health and medical screening programme for all foreign workers employed in the country, under Section 8, Subsection 3 (b), and Immigration Act 1959. Available at: <http://www.fomema.com.my>

(Ukaps) during a routine inspection at a clinic in Penang. She was charged under Section 315 of the Penal Code for allegedly preventing a child from being born alive. She was found guilty and sentenced to one year of imprisonment.

Media reports indicated that she did not have access to a proper translator or legal representation during the court proceedings. Subsequently, Nirmala submitted an application for leave to appeal the conviction and also a revision for the court to exercise its judiciary powers to review the whole case. E. Gnasegaran held a watching brief for the Malaysian Bar and later went on to represent Nirmala as counsel.¹⁵⁰²

The conviction was overturned and the case was ordered for a retrial at the Sessions Court. During the retrial, the doctor who performed the termination of the pregnancy testified that *“he conducted an abortion on Nepali Nirmala Thapa to save her life... and that if Nirmala had continued with her pregnancy, it would have posed a risk to her mental health and lead to possible suicidal attempts...The doctor also agreed with Gnasegaran’s suggestion that Nirmala did not know her own mental and physical health conditions and that it is up to the doctor to assess and perform the required treatment.”*¹⁵⁰³ In September 2015, Nirmala was acquitted after the prosecution failed to establish a *prima facie* case against her.^{1504,1505}

Many organisations, including the 11¹⁵⁰⁶ organisations in the Joint Action Group for Gender Equality (JAG),¹⁵⁰⁷ spoke up against the case, citing the charge against Nirmala as a discriminatory practice against a foreign national.¹⁵⁰⁸ Media reports also stated that Nirmala was the first woman in Malaysia to be sent to jail for having an abortion.¹⁵⁰⁹ Nirmala was also terminated from her employment and during the one year of her court proceedings she spent time in prison and later at a charity shelter.

1502 “Wrong interpreter was appointed for Nepalese woman, court told in abortion case.” Malay Mail Online. 6 January 2015. Available at: <http://www.themalaymailonline.com/malaysia/article/wrong-interpreter-was-appointed-for-nepalese-woman-court-told-in-abortion-c>

1503 “In illegal abortion trial, doctor says performed procedure to save Nepali mother.” Malay Mail Online. 30 July 2015. Available at: <http://www.themalaymailonline.com/malaysia/article/in-illegal-abortion-trial-doctor-says-performed-procedure-to-save-nepalese#t0ooCAcl0C476ziZ.99>

1504 “Nepalese woman acquitted of abortion charge.” The Star Online. 21 September 2015. Available at: <http://www.thestar.com.my/news/nation/2015/09/21/courts-nepali-women-acquitted-abortion/>

1505 “Nirmala’s Acquittal Welcome, but Reproductive Rights Still a Concern.” Women’s Centre for Change (WCC) Penang. Available at: <http://wccpenang.org/nirmalas-acquittal-welcome/>

1506 As of 2016, with the addition of the NGO Justice for Sisters, there are 12 organisations that make up the Joint Action Group for Gender Equality.

1507 “Migrant denied abortion rights.” New Straits Times. 12 December 2014. Available at: <https://www.nst.com.my/news/2015/09/migrant-denied-abortion-rights>

1508 “Was Nepali freed in abortion case targeted because she is foreigner?” NST Online. 28 September 2018. Available at: <https://www.nst.com.my/news/2015/09/was-nepali-freed-abortion-case-targeted-because-she-was-foreigner>

1509 “Nepalese worker first woman in Malaysia jailed for terminating pregnancy. MTUC. 5 December 2014. Available at: <http://www.mtuc.org.my/nepalese-worker-first-woman-in-malaysia-jailed-for-terminating-pregnancy/>

Minimum Wage

The Minimum Wages Order 2012 (“Order”) came into effect on 16 July 2012, wherein the minimum wage was set at RM 900 and RM 800 for the Peninsular and East Malaysia respectively. The National Wages Consultative Council issued “Guidelines on the Implementation of the Minimum Wages Order 2012,” dated 6 September 2012, which stipulated that the minimum wage order did not apply to domestic workers. The exclusion for a minimum wage for domestic workers has effectively been reiterated in the Minimum Wage Order 2016, which also raised the minimum wage to RM 1000 in peninsular and RM 900 in East Malaysia, effective 1 July 2016. Notably, on 7 June 2016, Malaysia deposited the instrument of ratification of the Minimum Wage Fixing Convention, 1970 (No. 131) with the International Labour Office.¹⁵¹⁰ However, Article 1 of C131 allows for countries to submit a list of reasons for not covering any wage earner under C131.

Wages for domestic workers are usually fixed through bilateral agreements signed by sending and receiving countries. In May 2011, an amended MoU was signed between Malaysia and Indonesia. The MoU is intended to clarify rights and conditions of work for domestic workers. In this MoU, it was reported that domestic workers should have one day off per week, or be paid one-and-a-half days’ wages in lieu of a day off. Domestic workers will be permitted to keep possession of their own passports; however, employers may take them for “safekeeping.”¹⁵¹¹ Employers must also pay wages into the domestic worker’s bank account; however, cash payments are still permitted. The revised MoU failed to address low wages and high recruitment fees and continues to allow the repayment of recruitment fees by the domestic worker.

In every so-called “protection measure” for domestic workers in MOUs and statutory systems, there seems to be an exception or loophole, leaving the domestic worker vulnerable to abuse and exploitation.

While there are written contracts formulated by individual sending countries for their domestic workers, such contracts are not honoured by employers in Malaysia. However, reliance on the employment contract alone to protect domestic workers is inadequate, as domestic workers do not have the bargaining power to negotiate contractual terms in their favour.

1510 C131 will enter into force for Malaysia on 7 June 2017, one year after its ratification.

1511 “New MoU on maids inked”. The Star. 31 May 2011.

The small pool of labour inspectors in Malaysia, numbering 500 for the whole of Malaysia, are ineffective in implementing a monitoring system and reigning in errant agents and employers. The isolating nature of domestic work and the lack of legal protection leaves domestic workers further vulnerable to abuse.

In 2015, Tenaganita recorded complaints from 58 migrant women workers regarding unpaid wages. 39 women complained about not receiving a rest day from work, 30 women complained about lower than promised wages, and 39 women complained that wages earned for overtime work had not been paid.

Additionally, other reported violations endured by domestic workers include holding of travel documents, withholding of salary, unlawful deductions, being overworked (multiple tasks such as household chores, preparing meals, looking after children or seniors citizens, washing cars, etc.) insufficient food or deprivation of food, doing double jobs (at home and at the employer's business), poor living conditions, no privacy (either having to sleep in living rooms, kitchen, or sharing a room with the children of the employer), and sexual assault or rape.¹⁵¹²

Case studies - exploitation and abuse of migrant women workers

Case Study – Jothi's Story

Jothi, an Indian national, came to Malaysia for employment as a domestic worker in April 2014. Kala, the Malaysian agent, sent Jothi to work at various houses on a daily and monthly basis and no proper salary was paid to Jothi.

Malar, another Malaysian agent (and a friend of Kala), then placed Jothi with a Tamil-speaking family in Johor. Jothi was burdened with heavy work and long hours. When she complained of the long hours, she was beaten and tortured, but she continued to work for the sake of her family in India. Jothi claimed that the children of the employer beat and tortured her, too.

Jothi complained to the agent, Malar, but was harassed by the agent at the employer's house. Jothi requested the first agent, Kala, to send her back to India. Kala asked Jothi to pay INR 75,000 to be returned to India, or to work another six months to pay the amount to be returned home. Jothi was not allowed to go out of the house.

On 18 December 2015, Jothi's family informed Ms. Kay, a CSO representative, who then informed the police of Jothi's situation. Ms. Kay told the police that Jothi was only able to speak Tamil, and requested them to expedite the rescue.

1512 "Treat domestic workers as equal human beings." The Star Online. 29 October 2012. Available at: <http://www.thestar.com.my/lifestyle/features/2012/10/29/treat-domestic-workers-as-equal-human-beings/>

On 21 December 2015, Ms. Kay emailed the police and Anti-Trafficking in Persons and Anti-Smuggling of Migrants Council (MAPO), informing them that Jothi had mentioned that Kala had warned her current employer that someone had informed the police of Jothi's situation and may be coming to the employer's house to take Jothi. Kala asked Jothi whether she knew about this, and Jothi unwittingly said that her daughter may have passed on information to someone in Malaysia (Jothi's daughter had been in touch with Ms. Kay). Ms. Kay again requested for the rescue to be expedited.

On 22 December 2015, Jothi called Ms. Kay and told her that someone had called Jothi on her mobile phone to tell her that they were coming to take her, and not to tell anyone. Jothi asked Ms. Kay if she had sent someone, and Ms. Kay replied that she had not and that Jothi should not go with anyone unless they were the police. Ms. Kay told Jothi to call her when they arrived. Jothi did not call, and Ms. Kay feared that Jothi had been forcibly taken away.

On 23 December 2015, Jothi's daughter called Ms. Kay in the morning and told her that she had been on the phone with Jothi when the persons had come to the house. She said she could hear her mother being taken in a car and later someone realised the phone was on and switched it off (not before saying that someone was listening on the mobile).

On 23 December 2015, the police emailed Ms. Kay to state that Jothi was rescued on the night of 22 Dec 2015 in Kluang, and that a report had been lodged at the Kluang Polis Station.

On 23 December 2015, Ms. Kay emailed the police and MAPO to clarify the confusion on the issue of Jothi being taken away by someone due to the following reasons:

-The police did not tell Ms. Kay that they were going to do a rescue. Ms. Kay was in constant touch with Jothi (Ms. Kay was her only contact person in Malaysia). Ms. Kay had been in touch with Jothi's family for months and each time Ms. Kay had tried to reach out to Jothi through contact numbers provided by her family, Jothi would be taken away from the employer and sent to another employer.

-Whoever called Jothi did not explain who they were, and only stated that they were coming to pick her up and not to tell anyone.

- After the rescue, the police did not inform Ms. Kay of the rescue.

-Jothi panicked when someone called to say that they were taking her away, as she had no idea who these people were. She felt that she would not be able to communicate again as in the past.

-Jothi's daughter, who was speaking to the mother at the time of the rescue, could hear the mother being taken away and someone saying "Why did you take the DWs phone along? Someone is online, cut the line."

-Ms. Kay tried calling Jothi's mobile all morning, and it could not be reached.

During the period from 18 January 2016 – 25 February 2016, Ms Kay emailed Police HQ and MAPO for updates on Jothi's case. On 22 March 2016, the police sent a letter to Ms. Kay saying that Jothi had been rescued on 22 December 2015 and placed under IPO for 21 days. The info was outdated, as Ms. Kay already knew of the rescue date and the 21 days of the IPO had lapsed.

Jothi's case came up for mention on 20 July and 30 August 2016, and the hearing date was fixed for 10 October 2016. During this time, Jothi spoke to her family about five times. On 17 September 2016, Ms. Kay emailed MAPO to request for the court to take Jothi's statement in accordance with Section 52 of the ATIPSOM and for subsequent repatriation. Ms. Kay was worried that the longer Jothi was kept in the shelter, the more likely she would not cooperate and the case may collapse. She very much wanted to go home and had been indicating the same to her daughter in India. The trafficker's relatives had been harassing Jothi's daughter in India to drop the case. Jothi would not be considered for work under the new regulations as she was already 43 years of age and in poor health.

On 20 October 2016, Jothi was sent home (expenses paid by Indian High Commission).

Case Study – Cynthia's Story

Cynthia worked as a domestic worker in Klang. When Cynthia applied for the job in Malaysia, in the Philippines, she signed a contract through a Filipino agency. Upon arrival in Malaysia on 5 August 2016, she was met by NJ, an agent from a local agency and made to sign a contract which had a lower salary rate than what was agreed upon in the Philippines. When Cynthia complained about this, she was informed that she will need to pay PHP 150,000 to terminate her contract, as this was the amount spent by her employers for her.

The agent also took Cynthia's passport and mobile. The employer gave her another mobile so that the employer could contact her, and this allowed her to communicate with her family. Cynthia's working conditions were very difficult, as she was made to work until very late at night and had to wake up very early each day.

Cynthia's family wanted her to come back, but since she did not have her passport, she was unable to do so. The family approached Ms. S, a CSO representative, for help.

On 15 September 2016, Ms. S informed the Philippine embassy of the case. The Philippine embassy called the local agency and requested the agency to bring Cynthia to the embassy.

On 17 October 2016, the agency brought Cynthia to the embassy for settlement of the claims. The Philippine embassy welfare officer personally interviewed Cynthia without the presence of the agent to verify the complaint (which was filed as substitution of contract). Based on the facts, Cynthia did not sign a contract, but an undertaking that she would complete her contract for a salary equivalent to RM 1,600.00 per month, and with no rest day or day off.

The employer, through the agent, paid the outstanding amount of RM 1,600 per month and for rest days totalling RM 4,307.69. The deductions from Cynthia's salary included RM 1,500 cash advance while in the Philippines, levy of RM 631, FOMEMA RM 201.40, Airport Clearance RM 180, insurance RM 100, and processing fee of COM RM 212.

Cynthia paid RM 445 for her ticket back to Manila, and she flew home on 20 October 2016.

Case Study - Maria's Story¹⁵¹³

Maria was recruited by an agent and came to Malaysia along with 20 other Indonesian women. After three flights and a ferry ride, they arrived at the agent's office. Maria's passport and mobile phone were immediately confiscated, leaving her unable to communicate with her family or anyone able to provide her assistance. Maria was kept at the office for three weeks before the agent placed her with a Chinese couple as a domestic worker.

Over the five years Maria was employed as a domestic worker, she worked from 4 a.m. until 1 a.m. every day. She was never paid for her labour. Her employer required her to prepare and assist him in selling *yong tau foo* at markets. Then, she had to clean her employer's house from 1 p.m. until 1 a.m., including washing the windows and floors as well as washing clothes by hand. As she constantly had her hands immersed in water and strong chemicals, Maria's fingernails eroded. Her employers repeatedly called her *anjing* (dog) and *babi* (pig). They slapped her on the face and occasionally beat her with other objects, causing bodily harm. Every time her agent visited, Maria insisted on returning home. The agent postponed her departure each time.

One day, Maria was working but lacked energy as she had not been given food. It took her longer to perform her daily tasks, and her employers scolded her and chased her

1513 Maria's story is based on the experience of a woman who sought assistance from Tenaganita. Her name in the story has been changed to protect her identity.

out of the house. She had nowhere to go and slept in a drain for two nights. A stranger found her and cared for her before bringing her to Tenaganita. With the assistance of Tenaganita, Maria filed a police report against her employers. Mediation was organized with the employers to negotiate five years of unpaid wages and an agreement was reached. While the mediation was taking place, an investigating officer arrived and arrested her employer. However, Maria was also brought to the police station in the same car as her employer, before being taken to a government shelter. Tenaganita has tried to gain access to further information regarding Maria's case and whereabouts, but has been denied any information regarding the case.

Case Study - Annisa's story¹⁵¹⁴

Annisa, an Indonesian woman, was promised to work as a domestic worker by an agent who facilitated her entry into Malaysia on a visitor's pass. She was promised RM 900 as her monthly wages. Annisa did not sign a contract with the Indonesian agent or the Malaysian agent when she arrived in Malaysia.

Annisa was rejected by her first employer. After staying with the agent for a week, Annisa was sent to work for another employer, who withheld her passport from her. This employer forced her to work cleaning multiple residences every day. Annisa was only paid RM 50 per month for the first four months she worked. She was made to work 11 hours per day and was not given a day off.

After the initial four months, Annisa only received RM 500 per month. The employer deducted RM 200 for a work permit and another RM 200 for "savings." When she asked about her work permit after 10 months, Annisa was scolded and told that this RM 200 deduction would continue. Annisa never received a work permit and does not know where the supposed "savings" money went. Subsequently, her employer asked her to pay an additional RM 600 for the work permit. Annisa's work permit was never processed. With Tenaganita's assistance, Annisa was able to make a police report. After being placed in a shelter, she was safely repatriated to Indonesia.

Case Study - Aishah's story¹⁵¹⁵

Aishah, an Indonesian woman, was brought to Malaysia by her agent. Her passport was withheld by her agent and her work permit was not processed. Aishah was not directly paid her wages. Her employer informed her that her wages were paid to her family in Indonesia. Aishah survived sexual harassment and attempted rape by her employer.

1514 Annisa's story is based on the experience of a woman who sought assistance from Tenaganita. Her name in the story has been changed to protect her identity.

1515 Aishah's story is based on the experience of a woman who sought assistance from Tenaganita. Her name in the story has been changed to protect her identity.

Eventually, Aishah was able to contact other Indonesians working in the area, who then contacted Tenaganita. Tenaganita attempted to rescue Aishah several times, but she was always transferred to different locations before they could. After four months, Tenaganita rescued Aishah and helped her file a claim with the Labour Department for her unpaid salary and other labour violations.

During the seven months that Aishah pursued her claim, she suffered from acute distress. Aishah did not receive the full amount of unpaid wages from her Labour Department claim. After she was repatriated, her relatives contacted Tenaganita and reported that she was experiencing mental challenges and showed signs of behavioural changes.

Case Study - Indonesian domestic worker killed by employer¹⁵¹⁶

The life of a 38-year-old Indonesian domestic worker ended at the hands of her employer in Georgetown, Penang. While her employer claims she slipped and fell down the stairs, a post-mortem examination found the cause of death to be the result of blunt force trauma to the chest. In addition to the death of the Indonesian domestic worker, the employer is being charged with causing grievous harm to a Cambodian domestic worker by beating her with a metal pipe. The employer has been arrested. She was denied bail on March 10, 2017 before court proceedings continue in May 2017.

Excerpt from newspaper article:

Khmer Times, “Fleeing abuse, becoming undocumented,” 9 March 2017

Sok Nay has lived in Malaysia for more than a decade now and is no longer a domestic worker.

While she has stories of being beaten, starved and overworked by her Malaysian employers, she chose to return to the country to help other Cambodians looking for work there.

Today, she helps domestic workers settle in once they arrive from either Cambodia or other countries in the region.

However, of the 30 Cambodian domestic workers she knows in Malaysia, she says at least 10 are undocumented because they had to run away from abusive employers.

“If your employer doesn’t pay you your salary, you just have to leave the house and find a new employer because you can’t file a police report,” she said. “When you’re undocumented, if they catch you then you just end up in jail.”

1516 “Woman charged with murder of maid and abuse of another.” Free Malaysia Today. 10 March 2017.

“Sometimes the employer beats you, doesn’t pay you, you can’t go to the agency either because the agency might also be bad, so they run away and just find a new employer. They cannot do anything else, they’re scared to go to the authorities. It happens a lot.”

According to Por Heong Hong, from the economic and administration department of Malaysia’s Universiti Malaya, almost half the Cambodian migrant workers spoken to for her latest research project in Malaysia were undocumented.

“There are several reasons why people become undocumented. Some workers fled their abusive employers, so they became undocumented; some workers became undocumented because they were unable to renew their legal documents as their passports and/or work permits had been retained by their employers/agents who refused to return them to the workers; some came to Malaysia as tourists and worked without a permit,” Ms. Por said in a recent email interview.

She added that their subsequent illegal status then makes them even more vulnerable to exploitation as they fear going to the police or even to hospitals when in need of help.

“Whether the last situation is a decision out of one’s own choice is difficult to say, as some had been led by brokers into believing that taking the undocumented channel is a more convenient way,” she added.¹⁵¹⁷

Refugee women workers

Due to their lack of legal status and right to work in Malaysia, refugees are especially vulnerable to exploitation by employers. According to the NGO SUARAM’s 2016 Human Rights Report, “long hours, low wages, uncertain tenure, lack of any health or accident insurance, and no right of redress if abuses happen” are all issues faced by working refugees. SUARAM reports that “many are in situations of modern day slavery.”¹⁵¹⁸

Recommendations to the Malaysian Government regarding General Recommendation 26 of the CEDAW Committee

- Amend the Employment Act 1955 to give domestic workers the same protections as all workers. Malaysia’s Employment Act 1955 explicitly denies domestic workers basic workers’ rights afforded to other workers, such as regulations on holidays, minimum wage, work hours, and maternity leave.
- Ensure that all domestic workers have one paid day-off per week and are protected by a fair and standard employment contract that protects their labour

1517 “Fleeing abuse, becoming undocumented.” Khmer Times. 9 March 2017.

1518 SUARAM. (2016) *Malaysia Human Rights Report: Civil & Political Rights 2016*. Page 39.

and human rights. There should be separate legislation to specifically address the needs of domestic workers, who work in isolated and confined environments and are vulnerable to abuse.

- Enforce the Passport Act, which requires that passports should remain in the passport holder's possession at all times. All workers, including domestic workers, should be informed of their right to hold their passport at all times.
- Promote and protect the rights of domestic workers to freedom of association, the right to organise, and to form and join trade unions by amending laws, policies, and practices as necessary.
- Ensure that domestic workers have access to justice when they face violations of their rights.
- Establish multilateral or bilateral agreements with other countries to strengthen the promotion and protection of the rights of all migrant domestic workers.
- Extend minimum wage laws to domestic workers.
- Promote other work style options for domestic workers to choose from, e.g. part-time domestic workers (hourly wages), allowing domestic workers to live outside the employer's home, etc.
- Define the scope of work for domestic workers to avoid employers from overworking domestic workers by requiring them to perform tasks in addition to domestic work.
- Require employers to pay the levy on the migrant worker's work permit. No fees should be deducted from worker's salaries.
- Introduce measures to uphold domestic workers' right to information about mental and reproductive health care.
- Ensure that all domestic workers, whether documented or undocumented, have access to health care services.
- Expand labour protections for domestic workers through the adoption of the recommendations of the Domestic Workers Campaign Coalition, which were submitted to the Ministry of Human Resources in 2014:
 - Domestic workers should not be classified as "domestic servants" in legislation. Language such as "servant" or "maid" has been used to deny domestic workers basic rights under the Employment Act 1955 and perpetuates negative and demeaning perceptions of domestic workers.
 - Domestic workers' contracts must not be changed, altered, or substituted without the domestic worker's consent. Employers must give the Labour Department of the Ministry of Human Resources a copy of the contract with the domestic worker. Employers must also provide the domestic worker a copy of their contract.
 - Domestic workers must have one paid day off per week, as well as public holidays and annual leave. The domestic worker must not work more than eight hours per day. If the domestic worker works more than eight hours in a day, they shall be compensated for overtime work (up to 12

hours).

- Domestic workers must be guaranteed decent working and living conditions.
- The employer shall pay for the medical insurance and medical expenses of the domestic worker. Domestic workers shall be ensured sick leave and maternity leave.
- The government must remove the regulation that requires migrant workers, including domestic workers, to undertake mandatory HIV and pregnancy testing.
- Minimum wage for domestic workers must correspond with the national minimum wage law. Wages must be paid once per month directly to the domestic worker. In-kind payments as a substitution for wages shall not be allowed, unless the domestic worker has given consent in writing.
- The employer must not require the domestic worker to carry out any task that is not within their contract, especially work that is strenuous or harmful to health.
- The domestic worker has the right to communicate with their family and the right to move freely beyond the workplace outside of working hours.
- The domestic worker may terminate their contract immediately due to physical, sexual, social, financial or psychological abuse, or any violation of their contract.
- Either employer or domestic worker has the right to lodge a complaint with the Labour Department in case of a dispute.
- The cost of repatriation of the domestic worker must be borne by the employer, except in the case of resignation or contract violation by the domestic worker.
- Domestic workers must be between the ages of 21 and 45 upon recruitment.¹⁵¹⁹

“There is no greater pillar of stability than a strong, free and educated woman, and there is no more inspiring role model than a man who respects and cherishes women and champions their leadership.”

-Angelina Jolie

“There’s really no such thing as the ‘voiceless’. There are only the deliberately silenced, or the preferably unheard.”

-Arundhati Roy

20.

GR 32

CEDAW COMMITTEE GENERAL RECOMMENDATION NO. 32: ON THE GENDER- RELATED DIMENSIONS OF REFUGEE STATUS, ASYLUM, NATIONALITY AND STATELESSNESS OF WOMEN

THE CEDAW Committee issued General Recommendation No. 32 (“GR 32”)^{1520,1521} in November 2014.

GR 32 specifically guides States parties on how to address their obligations under the CEDAW Convention to:

“respect, protect and fulfil the rights of refugee, asylum-seeking and stateless women to non-discrimination and substantive equality, in times of peace, in situations of international and non-international armed conflict and in situations of occupation.”¹⁵²²

1520 Under Article 21 of CEDAW, the Committee is given responsibility for reporting on trends that come out of their work, which they do in part by producing General Recommendations, designed to be authoritative guidance on the interpretation of CEDAW, available at: <http://www.ohchr.org/EN/ProfessionallInterest/Pages/CEDAW.aspx>

1521 CEDAW Committee General Recommendation No. 32, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N14/627/90/PDF/N1462790.pdf?OpenElement>

1522 Ibid, para 4

GR 32 sets out that the CEDAW Convention applies to prohibit gender and sex-based discrimination at:

- 1) **Every stage of the displacement cycle** - from arrival, throughout refugee status determination procedures and the implementation of any durable solutions.¹⁵²³
- 2) As well as to **processes relating to statelessness** - including statelessness determination and relating to women acquiring, retaining or changing their nationality or conferring their nationality on their children and spouses.¹⁵²⁴

GR 32 is **important in that it also articulates the overarching gender dimension of the existing international legal protection regime relating to asylum seeker, refugee and stateless women** and girls¹⁵²⁵, which is absent from the *1951 Convention relating to the Status of Refugees* and its *1967 Protocol*, the *1954 Convention relating to the Status of Stateless Persons* and the *1961 Convention on the Reduction of Statelessness*.

Key issues in this chapter:

- The government continues to detain women and children asylum seekers and refugees in poor conditions, subjecting them to risk of harm. **Female detainees are subject to sexual and gender-based violence (SGBV), other forms of abuse, poor sanitation, and a lack of adequate food, water, and medical care.** Even pregnant and lactating women are detained and lack access to facilities and services appropriate to their particular needs.
- Asylum seeker and refugee women continue to be denied legal status in Malaysia. This lack of legal status exacerbates the vulnerability of these women in many ways, including by limiting their ability to access justice and treatment for SGBV; precluding lawful access to the labour market, which forces these women into the informal labour market and makes them more susceptible to SGBV, withheld wages, and unsafe working conditions; restricting their access to healthcare as a result of being charged at the foreigner's rate or due to fear of arrest and detention when travelling to treatment centres; and curbing access to formal education through the public-school system.
- Formal legal aid continues to be unavailable to asylum seekers and refugee women who are over the age of 18 and wish to access the justice system for SGBV or other crimes committed against them.

1523 Ibid, para 14 and para 24

1524 Ibid, para 53-54

1525 On which the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness were silent.

2018 Concluding Observations to Malaysia

In the 2018 Concluding Observations to Malaysia, the Committee reiterated its previous concern that the Government has not enacted any laws or regulations concerning the status of asylum seekers and refugees, and that asylum seekers and refugees are prosecuted for immigration-related offences and may be indefinitely detained at immigration detention centres or deported. It was also a grave concern with regards to recent reports of refoulement of individuals, including women, even though they were registered with the UNHCR. The lack of legal and administrative framework exposes asylum seeker and refugee women and girls to a range of human rights violations.¹⁵²⁶

With reference to its general recommendation No. 32 (2014) on the gender-related dimensions of refugee status, asylum, nationality, and statelessness of women, the Committee recommends that the State party:

- a) Ratify the 1951 Convention relating to the Status of Refugees and the 1967 Protocol thereto without further delay;
- b) Adopt national asylum and refugee legislation and procedures, in conformity with international standards, which ensures that the specific needs of women and girls are addressed and codifies the principle of non-refoulement;
- c) Fully respect the principle of non-refoulement and ensure that no individual who is registered with the United Nations High Commissioner for Refugees is deported;
- d) Ensure full access to asylum procedures for persons seeking asylum in the State party, including women and girls;
- e) Establish alternatives to detention for asylum-seeking and refugee women and girls, and in the meantime take concrete measures to ensure that detained women and girls have access to adequate hygiene facilities and goods and are protected from all forms of gender-based violence, including by ensuring that all complaints are effectively investigated, perpetrators are prosecuted and adequately punished, and victims are provided effective remedies;
- f) Ensure that asylum-seeking and refugee women and girls have access in practice to income generating opportunities, education, health care, and other basic social services which are appropriate for their particular needs, as well as legal assistance.¹⁵²⁷

1526 CEDAW Concluding Observation 2018, para 45 (CEDAW/MYS/CO/3-5)

1527 CEDAW Concluding Observation 2018, para 46 (CEDAW/MYS/CO/3-5)

Overview: asylum seeker and refugee women in Malaysia

Malaysia is not a signatory to the 1951 Refugee Convention, or its 1967 Protocol, and has no legislative or administrative framework in place to identify and protect asylum seekers and refugees in Malaysia. Under the *Immigration Act 1959/63* (Act 55), asylum seekers and refugees are not distinguished from undocumented illegal migrants (of which there are some estimated two-four million currently in Malaysia),¹⁵²⁸ leaving them vulnerable to arrest, penal sanction¹⁵²⁹, detention, deportation, and refoulement. Lack of legal status also means asylum seekers and refugees do not have access to safe and lawful employment, struggle to access and afford healthcare and education, and face major obstacles in accessing justice.

This is especially problematic in the context of asylum seeker and refugee women, who face unique violations of their rights throughout the displacement cycle, including specific forms of gender-based discrimination, violence, and exploitation.¹⁵³⁰

At the end of January 2017, there were 150,430 refugees and asylum-seekers registered with the United Nations High Commissioner for Refugees (UNHCR) in Malaysia. Approximately 32% of these are women.¹⁵³¹

In Appendix A to its Third to Fifth Combined Periodic Report (2016),¹⁵³² the Malaysian Government noted that:

*“Although there are no laws or regulations relating to the status of asylum seekers and refugees in Malaysia, the Government of Malaysia has adopted a policy concerning refugees in the form of administrative measures which provides for the mechanism to allow illegal immigrants who possess UNHCR Cards, on humanitarian grounds, to remain temporarily in Malaysia.”*¹⁵³³

1528 UNHCR. *Challenges and Way Forward in Handling Rohingya Refugees in Malaysia*. Available at: https://www.unhcr.org/my/News_Views-@-Challenges_and_Way_Forward_in_Handling_Rohingya_Refugees_in_Malaysia.aspx

1529 Such persons face mandatory imprisonment for a maximum of five years, a maximum fine of RM 10,000 (\$2,287), or both, and mandatory caning of not more than six strokes; source: Malaysia 2015 Human Rights Report Executive Summary, available at: <https://www.state.gov/documents/organization/252989.pdf>

1530 UNHCR. *UN Refugee Agency Malaysia* Available at: <http://www.unhcr.org/my/refugeeMsia.htm#>

1531 UNHCR. *Malaysia: Figures at a Glance*. Available at <http://www.unhcr.org/en-my/figures-at-a-glance-in-malaysia.html>

1532 Appendix A to Third to Fifth Combined Periodic Report of the Malaysian Government (2016), page 20, available at: http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/MYS/INT_CEDAW_ADR_MYS_25048_E.pdf

1533 Appendix A to Third to Fifth Combined Periodic Report of the Malaysian Government (2016), p 20, available at: http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/MYS/INT_CEDAW_ADR_MYS_25048_E.pdf

Although the Malaysian Government permits UNHCR to carry out registration and refugee status determination processes for the asylum seeker and refugee population in Malaysia,¹⁵³⁴ GR 32 makes clear that it is State parties who bear the primary responsibility for ensuring that asylum-seeking women, refugee women, and stateless women within their territory or under their effective control or jurisdiction, are not exposed to violations of their rights under the Convention.¹⁵³⁵

The Malaysian Government continues to detain women and children, including pregnant and lactating women, in inadequate conditions, exposing them to risk of harm

GR 32¹⁵³⁶ articulates that, under the CEDAW Convention, failure to address the specific needs of women in immigration detention and ensure respectful treatment during detention could constitute discrimination within the scope of the Convention.

The Malaysian Government continues to detain vulnerable groups within the asylum seeker and refugee populations, including women and children, as well as pregnant and lactating women.¹⁵³⁷ According to the Ministry of Home Affairs, from 1 January 2015 to 30 September 2015, there were 14,924 women detained in 13 detention centres across the country.¹⁵³⁸ A report by the Migration Working Group notes that the average period in detention can range from two months to two years.¹⁵³⁹ There is currently no publicly available disaggregated data on the number of refugee and asylum seeker women who are in immigration detention centres.

1534 Written instructions were issued in 2005 by the Attorney-General not to prosecute immigration-related offences committed by asylum-seekers and refugees holding valid UNHCR documentation. Written instructions have also been issued by the Ministry of Health to reduce medical fees for refugees to 50 per cent of the foreigners' rate; and UNHCR is provided with access to refugee or asylum-seeker detainees in immigration detention centres. Source - International Federation for Human Rights (FIDH) and SUHAKAM, *Undocumented migrants and refugees in Malaysia: Raids, Detention and Discrimination*, March 2008, p 9; Equal Rights Trust, *Equal Only in Name: The Human Rights of Stateless Rohingya in Malaysia*, 2014, available at <http://www.equalrightstrust.org/ertdocumentbank/Equal%20Only%20in%20Name%20-%20Malaysia%20-%20Full%20Report.pdf>.

1535 CEDAW Committee General Recommendation No. 32, paragraph 7, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N14/627/90/PDF/N1462790.pdf?OpenElement>

1536 CEDAW Committee General Recommendation No. 32, paragraph 34, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N14/627/90/PDF/N1462790.pdf?OpenElement>

1537 General Assembly (2011) Human Rights Council, 16th Session: Report of the Working Group on Arbitrary Detention, A/HRC/16/47/Add.2, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G11/106/38/PDF/G1110638.pdf?OpenElement>

1538 Out of a total of 71,362 irregular migrants detained across this period – Source: Parliamentary reply by the Ministry of Home Affairs to a question posed by MP Ong Kian Ming, Third Parliamentary Session 2015, 20 October 2015, available at: <http://pardocs.sinarproject.org/documents/2015-october-november-parliamentary-session/oral-questions-soalan-lisan/2015-10-20-parliamentary-replies/soalan-24.pdf>.

1539 Migration Working Group. *Recommendations for the National Human Rights Action Plan 2016* (2016). MWG Submission (Refugees).

Reports by NGOs working with asylum seekers and refugees note that female detainees are subject to sexual and gender-based violence whilst in detention^{1540,1541}, and reports by SUHAKAM and the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health (Special Rapporteur on Health) note that detention centres are overcrowded¹⁵⁴², detainees are subject to abuse, there is inadequate food, water, and medical care, and poor sanitation,¹⁵⁴³ and female detainees lack adequate facilities and services appropriate to their particular needs as women.

The Special Rapporteur on Health noted, in a 2015 Report,¹⁵⁴⁴ that at the Lenggeng Immigration Depot, women were only provided two meals per day and clean water was only available upon specific request, which was not appropriate for breastfeeding mothers.¹⁵⁴⁵ The report also found that, in some cases, women and their babies did not receive appropriate medical attention during the postnatal care period.¹⁵⁴⁶ Detainees, including women, were also noted to lack access to psycho-social support.¹⁵⁴⁷

Female detainees are also subject to sexual and gender-based violence (SGBV). A July 2013 report produced by the United States Department of State, noted that:

“One female key informant reported to the evaluation team that she had been taken out of the detention center and raped by a male guard.”¹⁵⁴⁸

There have also been reports by NGOs and communities to UNHCR that unregistered asylum seeker and refugee women who sought antenatal treatment at public hospitals

1540 Holzaepfel, E. and Paul, D (2013). , *Evaluation Report: Evaluating the Effectiveness of Gender Based Violence Prevention Programs with Malaysia*. Social Impact, Inc on behalf of the United States Department of State. Available at: http://www.ecoi.net/file_upload/1226_1441694758_233056.pdf

1541 Vit, Jonathan (2016). *Rohingya Girls for Sale: Malaysia's Forced Marriage Problem*. Available at: https://www.vice.com/en_id/article/rohingya-girls-for-sale-malaysias-forced-marriage-problem

1542 National Human Rights Commission of Malaysia (SUHAKAM). *Roundtable on Alternatives to Immigration Detention*. Available at <http://www.suhakam.org.my/wp-content/uploads/2013/12/Report-on-Roundtable-on-ATD-Malaysia.pdf>

1543 General Assembly (2011) Human Rights Council, *16th Session: Report of the Working Group on Arbitrary Detention (A/HRC/16/47/Add.2)*. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G11/106/38/PDF/G1110638.pdf?OpenElement>

1544 Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Dainius Pūras; Addendum; Visit to Malaysia (19 November-2 November 2014) [A/HRC/29/33/Add.1]; available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/087/06/PDF/G1508706.pdf?OpenElement>

1545 Ibid.

1546 Ibid.

1547 UNHCR, *Progress Under the Global Strategy Beyond Detention 2014-2019, Mid 2016*, available at: http://www.ecoi.net/file_upload/1930_1474362656_57dff0a82.pdf

1548 Holzaepfel, E. and Paul, D (2013). , *Evaluation Report: Evaluating the Effectiveness of Gender Based Violence Prevention Programs with Malaysia*. Social Impact, Inc on behalf of the United States Department of State. Available at: http://www.ecoi.net/file_upload/1226_1441694758_233056.pdf

were sent to detention upon delivery of their children, in some cases, with their newborn babies and, in other cases, being separated from their children.^{1549, 1550}

Asylum seeker and refugee women remain vulnerable to SGBV and lack of legal status is a major obstacle to accessing justice and treatment for victims

GR 32 articulates that, under CEDAW, State parties are obliged to assume their due diligence obligations and assure that women are protected from discrimination and harm that may be inflicted by non-State actors.¹⁵⁵¹ This is also articulated in GR 19, which notes that “*gender-based violence is a form of discrimination that seriously inhibits women’s ability to enjoy rights and freedoms on a basis of equality with men.*”¹⁵⁵²

Female asylum seekers and refugees in Malaysia are vulnerable to sexual and gender-based violence and their lack of legal status exacerbates this vulnerability.¹⁵⁵³ Data released by UNHCR notes that, as of October 2014, 196 SGBV incidents had been reported to them, of which women were victims in 190. The International Catholic Migration Commission (ICMC), a non-profit working in the area of refugee and migration issues, also noted that it assisted 95 cases of domestic violence, rape, child abuse, and sexual harassment through its hotline service.¹⁵⁵⁴ NGOs working with female asylum seeker and refugee communities report that generally SGBV has been carried out by police and immigration officers, as well as during detention, at work, in the home, and through forced prostitution and forced marriage.^{1555,1556}

1549 Health Equity Initiative. *Press statement: Stop the Arrest and Detention of Asylum Seeking Women Accessing Maternal Health Care*. 3 April 2014

United States Department of State, Bureau of Democracy, Human Rights, and Labor (2015). *Malaysia 2015 Human Rights Report Executive Summary* Available at: <https://www.state.gov/documents/organization/252989.pdf>

1550 Migration Working Group – Joint UPR Submission – Malaysia – October 2013. *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. Dainius Pūras; Addendum; Visit to Malaysia*, 19 November-2 November 2014 (A/HRC/29/33/Add.1). Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/087/06/PDF/G1508706.pdf?OpenElement>

1551 CEDAW, Article 2 (d)-(e): available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CEDAW.aspx>

1552 CEDAW Committee General Recommendation No 19: *Violence Against Women*, paragraph 9-10, available at: http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/INT_CEDAW_GEC_3731_E.pdf

1553 UNHCR, *Age, Gender and Diversity Accountability Report 2014*, available at: http://www.ecoi.net/file_upload/1930_1436957479_55a61f794.pdf

1554 International Catholic Migration Commission (2015). *2015 Annual report*. Available at: <https://www.icmc.net/resources/annual-reports>

1555 Holzaepfel, E. and Paul, D (2013). *Evaluation Report: Evaluating the Effectiveness of Gender Based Violence Prevention Programs with Malaysia*. Social Impact, Inc on behalf of the United States Department of State. Available at: http://www.ecoi.net/file_upload/1226_1441694758_233056.pdf;

1556 Vit, J. (2016). , *Rohingya Girls for Sale: Malaysia’s Forced Marriage Problem*. Available at: https://www.vice.com/en_id/article/rohingya-girls-for-sale-malaysias-forced-marriage-problem

Overall however, there is limited gender-disaggregated data available on the prevalence and forms of SGBV being perpetrated against asylum seeker and refugee women in Malaysia.

Domestic violence

Between 2013-2015, there were 13,944 reports of domestic violence lodged with the police; it is unclear what percentage, if any, of these reported incidences were asylum seeker and refugee women. UNHCR has noted that, as at October 2014, out of the 196 SGBV incidents that had been reported to them, 136 were reports of domestic violence.¹⁵⁵⁷ Refugee and asylum seeker women are covered by the *Domestic Violence Act* and the *Penal Code*, however given their lack of legal status, they often fear arrest, detention, and police extortion, which deters them from reporting domestic violence or taking steps to leave unsafe familial situations.¹⁵⁵⁸

Lack of legal status also means that female victims have no access to safe and legal employment, causing economic reliance on partners who may also be perpetrators. Shelters providing protection for victims of domestic violence are also few and far between, and UNHCR is overwhelmed in its capacity to provide protection to the growing urban refugee population. Lack of legal status also means that, for victims of SGBV, treatment is expensive and, therefore, inaccessible.

Asylum seeker and refugee women who are victims of domestic violence are trapped in untenable situations. If they were able to regularise their legal status, this would enable them to report instances of domestic violence without fear of arrest and detention, and facilitate greater access to affordable and adequate medical treatment.

Case study – Jeyan’s Story

Jeyan has been in Malaysia for two years with her husband and two young children. They registered with UNHCR when they arrived, but they have been waiting a long time for their interview. Life is very hard and they struggle to afford rent and food. Jeyan’s husband has to work long hours at a construction site with little pay, and some months he doesn’t get any pay at all.

He has become depressed, moody, and violent against Jeyan. He screams at her and the

1557 UNHCR. *SGBV Prevention and Response (2016) Plan*. Available at: <http://reporting.unhcr.org/node/10049>

1558 Holzaepfel, E. and Paul, D (2013). *Evaluation Report: Evaluating the Effectiveness of Gender Based Violence Prevention Programs with Malaysia*. Social Impact, Inc on behalf of the United States Department of State. Available at: http://www.ecoi.net/file_upload/1226_1441694758_233056.pdf

children, punches and kicks her, and throws her against the wall or floor. Jeyan does not know what to do since she does not have any family or support in Malaysia, and she fears if she leaves, her husband will find her and kill her. She is reliant on her husband for money and basic necessities and does not know how she would support herself or her children.

One night, Jeyan's husband hurt her very badly and forced her to have sex with him. Her children were in the room and were crying. Afterwards she was in a lot of pain and bleeding.

One of her friends told her to go to the hospital, but she had no money for transport or treatment and was afraid of being caught by police. She was also ashamed to talk about what happened and could not leave her children alone. Jeyan had been stopped by the police before and made to pay money; the police were rude, aggressive, and frightened her, and she felt if she went back they would not help her and might even take her away and put her in detention.

The night after this incident, Jeyan's husband took an iron and burned their youngest son. The screaming caused neighbours to call the police. But when the police arrived, Jeyan's husband told police that the iron fell on the boy and that his wife was hysterical because of this. The police were both men and didn't even look at Jeyan when they came in. They listened to her husband and left.

Jeyan and her children feel powerless and trapped. They feel they have no legal rights in Malaysia and no way to find help.

Case Study

A, B, and C are sisters and nationals of Saudi Arabia who came to Malaysia seeking resettlement.

A was physically, psychologically, and sexually abused by her brother from the age of seven years to 14 years, when her brother would enter A's room while she was sleeping and rape her. A was also physically and verbally abused by her mother and, after her father's death, A's mother would also financially abuse A and her sisters by refusing to give them money for food and drink.

When A was 14, she was forced to marry a man in his 50s, and was then subsequently physically abused by him, but divorced him after approximately one year. However, A's mother further abused her for not returning to her abusive husband, since A's husband was well-off and routinely sent money to A's mother.

B was raped by her step-sister's husband when she was around five years old for a period of three months. B's brother also raped her into her teenage years. B attempted to seek help from her mother, but her mother responded by hitting her and telling her that she was lying

because she was a woman. Although the rape stopped, B continued to experience psychological and physical abuse by her brother and mother.

C was first raped by her brother and brother-in-law when she was five years old. When C told her mother what had happened, her mother did not stop the abuse, and told C that 'she was making her brother very happy.' C subsequently did not tell her father about the abuse, and her father died without knowing about it. C continued to be raped by her brother on a regular basis until she turned 18. The rape by C's brother-in-law also continued, as did verbal abuse by her mother.

A, B, and C each sought protection from their abuse in Saudi Arabia, but the police and NGOs refused to help them as they were not accompanied by a male chaperone, as required by Saudi Arabian law.

Subsequently, A's mother arranged marriages for A, B, and C. In preparation for this, A's mother and other siblings had scheduled hymen reconstruction surgery for A, B, and C in Jakarta, Indonesia. The three sisters were brought to Jakarta by their brother, but managed to escape from their hotel the night before the surgery, tearing up their brother's passport to ensure that he would not be able to follow them. The sisters bought flight tickets and flew to Malaysia.

The sisters were then advised by an international NGO to purchase tickets to New Zealand and go there to seek aid, as they would not require a visa. However, while waiting to board the flight, the sisters were stopped by Border Control officer and questioned as to why they were going to New Zealand. Despite explaining that they were seeking protection from domestic violence and rape at the hands of their family, the sisters were not allowed to fly and were ridiculed by the officer. The sisters then left the airport and checked into a hostel. They sought assistance from an international NGO which eventually led them to a Malaysian NGO. The NGO referred the sisters to UNHCR, and they were able to register as refugees. The sisters sought shelter from the NGO while they waited for resettlement.

One night, A, B, and C went out to celebrate B's birthday in Kuala Lumpur. When the three women were late returning to the NGO shelter, the NGO staff tried to reach them on their cellphones, but there was no reply. The women did not return to the NGO shelter that night. A security guard told the NGO that he had seen a group of men and women surrounding A and grabbing her, but he did not know what happened after that. The whereabouts of A, B, and C remains unknown, but it is suspected that they may have been kidnapped and either trafficked or forced to return to Saudi Arabia.

Children

A study conducted by the Health Equity Initiative (HEI) in 2012 found that, out of 114 refugee children from Burma (aged 10-19), 8% of girls reported being touched below the waist and 75% of all children surveyed did not know where to seek help if experiencing SGBV.¹⁵⁵⁹ A report published in July 2013, by the United States Department of State Bureau of Population, Refugees and Migration, on the “Effectiveness of Gender-Based Violence Prevention Programs with Refugees in Malaysia,” also noted that the Malaysian Department of Social Welfare does not intervene to assist a refugee child who is a victim or at risk of SGBV.¹⁵⁶⁰

SGBV at work

Female asylum seekers and refugees lack legal status and, under the *Employment Act 19*, have no access to safe or lawful employment. Those women that are able to secure work in the informal sector are highly vulnerable to abuse and exploitation by employers. UNHCR has noted that, as of October 2014, out of the 196 SGBV incidents that had been reported to them, 21 cases were reports of sexual abuse and exploitation.¹⁵⁶¹ In a survey conducted by the International Rescue Committee involving 1,003 refugee respondents in Malaysia in 2012, just over 30% reported experiencing abuse in the workplace.

One survivor recounted:

“Some of the boss[es]... show their private parts or physically touch [female employees]...they can do what they want, since the men cannot be arrested. Even if there is a rape [no one] can do anything.”¹⁵⁶²

Female asylum seekers and refugees are exposed to unacceptable risks of abuse at the workplace, including SGBV and sexual exploitation.¹⁵⁶³ By providing them with legal status, this would allow them access to safe and lawful employment, and give them the confidence to stand up to and report SGBV and other forms of harassment, without fear

1559 Health Equity Initiatives (2012). *Sexual Education in Burmese Refugee School-Aged Adolescents*, Kuala Lumpur, HEI.

1560 Holzaepfel, E. and Paul, D (2013). *Evaluation Report: Evaluating the Effectiveness of Gender Based Violence Prevention Programs with Malaysia*. Social Impact, Inc on behalf of the United States Department of State. Available at: http://www.ecoi.net/file_upload/1226_1441694758_233056.pdf ;

1561 UNHCR. *SGBV Prevention and Response (2016) Plan*. Available at: <http://reporting.unhcr.org/node/10049>

1562 Holzaepfel, E. and Paul, D (2013). *Evaluation Report: Evaluating the Effectiveness of Gender Based Violence Prevention Programs with Malaysia*. Social Impact, Inc on behalf of the United States Department of State. Available at: http://www.ecoi.net/file_upload/1226_1441694758_233056.pdf

1563 UNHCR (2014). *Age, Gender and Diversity Accountability Report 2014*. Available at: http://www.ecoi.net/file_upload/1930_1436957479_55a61f794.pdf

of unfair dismissal, police extortion, or arbitrary arrest and detention.

Case study – Fariah’s Story

Fariah has been in Malaysia for three years. During that time, she was unable to secure a job and survived only through the charity of members of her community. Recently though, people have stopped helping Fariah because she received her UNHCR card and they are prioritising the new people coming into Malaysia. She has nowhere to live and no way to buy food. A local salon told her they would give her a job, but that they would only pay her after the first month, once she had proven herself to them. They made her work long hours, but she had no choice and she held hope that they would pay her.

At first her employer and colleagues left her alone, but after the first few weeks they started to say inappropriate things to her and her boss once said to her that she could make more money if she slept with him. Another of her colleagues touched her inappropriately when she was coming out of the bathroom. She was terrified, but she needed the job. One night, when she was cleaning after the shop had closed, her boss grabbed her and sexually assaulted her by grabbing her breasts painfully and trying to kiss her. He didn’t force her to have sex with him, so she felt lucky because she had heard of that and much worse happening to other female refugees.

Even with a refugee card she refuses to go to the police, because she is afraid they will force her to pay a bribe and she knows some police do not respect the UNHCR card. She does not trust the police in Malaysia, after three years of hiding from and avoiding them. She hopes her boss will stop the harassment and knows that, despite it, she will still go back the next day, even though she is not yet getting paid, because she has no other choice and no one else to help her.

Victims of rape

NGOs noted that victims of SGBV were deterred from accessing assistance at the government’s “One Stop (Rape) Crisis Centres,” due to the requirement that you must first lodge a police report.¹⁵⁶⁴ There have also been reports of victims of SGBV being reported to the immigration authorities if they are unable to afford medical treatment following violence.¹⁵⁶⁵ As a result, reporting of SGBV amongst refugees and asylum-seekers is low.

1564 Holzaepfel, E. and Paul, D (2013). *Evaluation Report: Evaluating the Effectiveness of Gender Based Violence Prevention Programs with Malaysia*. Social Impact, Inc on behalf of the United States Department of State. Available at: http://www.ecoi.net/file_upload/1226_1441694758_233056.pdf

1565 Ibid.

Violence is a form of discrimination against women.¹⁵⁶⁶ Affording asylum seekers and refugees legal status would enable survivors of SGBV to report violence and facilitate access to treatment without discrimination and fear, and would protect them from arrest and detention when seeking such treatment.

No permission to work means asylum seeker and refugee women struggle to obtain livelihoods and access safe employment, which increases the risk of exploitation

GR 32 articulates that female refugees should be **offered sources of livelihood and employment opportunities.**¹⁵⁶⁷

Female asylum seekers and refugees lack legal status and, under the *Employment Act 1968*, have no lawful access to the labour market. They struggle to access jobs and, when they do, they are forced into the informal labour market. A 2008 study by the Women's Refugee Commission of Burmese women in Malaysia noted that jobs in the informal sector are often more difficult for female asylum seekers and refugees to access, and are commonly restricted to waitressing and dishwashing.^{1568, 1569}

Lack of legal status means that asylum seeker and refugee women who are able to secure informal employment are vulnerable to exploitation in the workplace, including a heightened risk of SGBV, withheld wages, unsafe or unreasonable working conditions, and unfair dismissal. In a 2012 survey conducted by the International Rescue Committee involving 1,003 refugee respondents, including women, around 30% reported experiencing abuse in the workplace. Of these, 80% reported unpaid wages or receiving only partial wages; 42% experienced verbal abuse; 15% suffered from an injury in the workplace; 15% had been dismissed without reason; and 6% suffered from physical abuse, with employers committing most of these abuses.¹⁵⁷⁰

1566 CEDAW Committee General Recommendation No. 19: Violence Against Women, paragraphs 9-10, available at: <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom19>

1567 CEDAW Committee General Recommendation No. 32, paragraph 33, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N14/627/90/PDF/N1462790.pdf?OpenElement>

1568 Women's Refugee Commission (2008). *Desperate Lives: Burmese Women Struggle to Make a Living in Malaysia*. Available at, http://www.womensrefugeecommission.org/docs/mys_rep.pdf

1569 Women's Refugee Commission. *Desperate Lives: Urban Refugee Women in Malaysia and Egypt*. Available at: <https://www.womensrefugeecommission.org/empower/resources/620-desperate-lives-urban-refugee-women-in-malaysia-and-egypt>

1570 International Rescue Committee (2012). *In Search of Survival and Sanctuary in the City: Refugees from Myanmar/ Burma in Kuala Lumpur, Malaysia*.

Case Study

“I am afraid. Women are getting attacked and arrested coming home late from work. We have problems getting paid at work. I am afraid of the police and am constantly hiding. Our children go hungry when we are not paid and I can’t afford to go to the hospital when I get sick, so I have to work. Once I tried to complain when my employer did not pay me and he stood over me and said, ‘If you have a problem with it then leave, we don’t care if you work here or not and we will pay you when we think you deserve it.’”

Female asylum seekers and refugees are also exposed to unacceptable risks when travelling to work and within the workplace,¹⁵⁷¹ which could be reduced by giving them legal status. This would allow access to safe and lawful employment and foster confidence to stand up to and report exploitation and harassment, without fear of unfair dismissal, police extortion, or arbitrary arrest and detention.

For those women who are unable to access jobs within the informal sector, lack of income is a serious concern, as it can increase the risk of exploitation, contributes to marginalisation,¹⁵⁷² and can also lead to negative coping mechanisms, such as survival sex or early marriage.¹⁵⁷³

Economic security is crucial in securing the livelihoods of all asylum seekers and refugees.¹⁵⁷⁴ It increases self-reliance and the capacity to contribute to their host communities.¹⁵⁷⁵ Allowing asylum seekers and refugees the right to legally work would allow the Government to record the presence and movement of these persons within their territory, which would provide freedom of movement, protection from arrest and detention, allow for formal legal redress in circumstances of exploitation at work, and allow asylum seeker and refugees to increase their self-reliance and contribute to the Malaysian economy and society.

We note that the Malaysian government has recently launched a pilot labour migration project, to allow 300 Rohingya refugees to legally take up employment opportunities in

I571 UNHCR (2014). *Age, Gender and Diversity Accountability Report 2014* Available at: http://www.ecoi.net/file_upload/1930_1436957479_55a61f794.pdf and <http://www.unhcr.org/548180b69.pdf>

I572 Ibid.

I573 Ibid.

I574 Migration Working Group (2016). *Recommendations for the National Human Rights Action Plan 2016*

I575 Umlas, E. (2011). *Cash in Hand” – Urban Refugees, the right to work and UNHCRs advocacy activities*. UNHCR. Available at: <http://www.unhcr.org/research/evalreports/4dc7f82c9/cash-hand-urban-refugees-right-work-unhcrs-advocacy-activities-elizabeth.html>

certain sectors.^{1576,1577} At the time of writing, the pilot project is limited to the plantation sector and for men only.

Lack of access to affordable and appropriate healthcare

GR 32 articulates that CEDAW provides for women seeking asylum and refugee women to be granted, without discrimination, the right to a range of services, including healthcare. This is also provided for by Article 12.2 of CEDAW and its GR 24 on Women and Health, which require States to eliminate discrimination against all women in their access to health care services.

In Appendix A to their Third to Fifth Combined Periodic Report (2016), the Malaysian government asserted that refugees and asylum seekers are “not denied access to healthcare facilities, including maternal and child healthcare services.”¹⁵⁷⁸

Asylum seekers and refugees are able to access healthcare services (including maternal and child healthcare services); however, given their lack of legal status, they are charged at the full foreigner’s rate, with discounts provided only to those with a UNHCR card when visiting public hospitals. Even with the discount, lack of legal status—which leads to an inability to afford treatment, given asylum seekers and refugees have no access to safe and lawful employment—as well as fears of arrest and detention when travelling to treatment centres and prohibitive language barriers^{1579,1580} remain major obstacles that deter asylum seekers and refugees from accessing healthcare in Malaysia.

Access to affordable and professional healthcare is critically important for asylum seeker and refugee women and girls. Without it, they face specific risks, including pregnancy complications, pregnancy-related death, and infant disease or death.¹⁵⁸¹

1576 “Malaysia mulls opening job market to Rohingya refugees.” World Bulletin. 17 November 2015.. Available at: <http://www.worldbulletin.net/todaysnews/166421/malaysia-mulls-opening-job-market-to-rohingya-refugees>;

1577 UNHCR (2017). *UNHCR Lauds Government Work Scheme for Refugees*. Available at: https://www.unhcr.org/my/News_Views-@-UNHCR_Lauds_Government_Work_Scheme_For_Refugees.aspx

1578 Appendix A to Third to Fifth Combined Periodic Report of the Malaysian Government (2016), page 20. Available at: http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/MYS/INT_CE-DAW_ADR_MYS_25048_E.pdf

1579 Dainius Pūras. *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health,; Addendum; Visit to Malaysia*, 19 November-2 November 2014. (A/HRC/29/33/Add.1). Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/087/06/PDF/G1508706.pdf?OpenElement>

1580 UNHCR (2016). *Health Refugees and Asylum Seekers (Urban)*. Available at: <http://reporting.unhcr.org/node/10048>

1581 Women’s Refugee Commission. *Livelihoods Facts and Figures*. Available at: <https://www.womensrefugeecommission.org/empower/resources/practitioners-forum/facts-and-figures>

Lack of access to family planning services

Family planning services for female asylum seeker and refugee women are crucial in ensuring the health of women and their children, as well as reducing mortality and morbidity and ensuring the economic sustainability and quality of life of the family unit.¹⁵⁸² A November 2011 Report by the Women's Refugee Commission and the Centres for Disease Control and Prevention¹⁵⁸³ found that, amongst the Burmese refugee community in Kuala Lumpur, the quality of family planning services available were adequate, but the cost of services and fears associated with arrest and detention limited access.¹⁵⁸⁴

Lack of access to reproductive healthcare

According to UNHCR figures, women in the reproductive age group comprise approximately 18% of the asylum seeker and refugee population.¹⁵⁸⁵ Although women are not prevented from accessing hospitals for reproductive care, the services are costly; for example, ongoing natal care, when charged at the foreigner's rate, can range from RM 120- RM 400 per month, not including costs for blood tests and ultrasounds.¹⁵⁸⁶ NGOs working with asylum seekers and refugee women report that many do not attend antenatal care due to these financial constraints, which can lead to maternal, fetal, and infant mortality and morbidity.¹⁵⁸⁷

Inquiries undertaken in November-December 2014 into the Rohingya community by the Special Rapporteur on Health, found that inability to access maternal and general health care was having serious consequences for asylum seeker and refugee women and their children.^{1588, 1589} Of 87 children studied, 74 were underweight, 11% stunted, 16% thin, 18% had low birth weight, and 12% had received no immunisations.¹⁵⁹⁰

1582 Women's Refugee Commission (2011)., *Refocusing Family Planning in Refugee Settings: Findings and Recommendations from a Multi-Country Baseline Study*. Available at: <https://www.womensrefugeecommission.org/srh-2016/resources/792-refocusing-family-planning-in-refugee-settings>

1583 Women's Refugee Commission, UNHCR & Centres for Disease Control and Prevention (2011). *Special or analytical report: Baseline Study: Documenting Knowledge, Attitudes and Behaviours of Burmese Refugees and the Status of Family Planning Services in UNHCR's Operation in Kuala Lumpur, Malaysia*. Available at: <http://www.unhcr.org/4e8c0d1c9.pdf>

1584 Women's Refugee Commission (2011). *Refocusing Family Planning in Refugee Settings: Findings and Recommendations from a Multi-Country Baseline Study*. Available at: <https://www.womensrefugeecommission.org/srh-2016/resources/792-refocusing-family-planning-in-refugee-settings>

1585 UNHCR. *Health Refugees and Asylum Seekers (Urban)* (2016), available at: <http://reporting.unhcr.org/node/10048>

1586 Dr Veena Pillai, Malaysian Social Research Institute (MSRI).

1587 Ibid.

1588 Mohd Shariff, Z. and Tan, S. T. (2011), *Nutritional status of Rohingya children in Kuala Lumpur*, Malaysian Journal of Medicine and Health Sciences, 7 (1), page. 41-49.

1589 Equal Rights Trust. *Equal Only in Name*. Available at: <http://www.equalrightstrust.org/ertdocumentbank/Equal%20Only%20in%20Name%20-%20Malaysia%20-%20Full%20Report.pdf>

1590 Ibid.

Case Study – Harnia’s Story

Harnia is an asylum seeker. She has applied for refugee status with UNHCR, but her claim is still being assessed. As a result, she has no refugee card and is not entitled to the 50% discount provided to refugees at public hospitals.

Harnia is six months pregnant and has diabetes, which affects her pregnancy, and for which she requires urgent care. She approached the private clinics providing free/subsidised treatment for asylum seekers, but they do not provide the type of reproductive care services she needs. She then approached a public hospital, but she was told the cost would end up being about RM 2,000 for treatment and she could not afford this.

Harnia is not working and her husband earns very little working in construction and has not been paid for the last three months. She is also afraid of travelling to the hospital as she fears the police will arrest her and put her in detention. She has also heard that sometimes the hospital staff report people or refugees to police and she is terrified of this. Her health and the health of her unborn child are at risk and she has no affordable treatment options available.

Limited access to formal education

GR 32 articulates that Articles 3, 10, and 13 of CEDAW provides for women seeking asylum and refugee women to be granted, without discrimination, the right to a range of services, including education. The basic right of all refugee children to education is further enshrined in Article 22 of the 1951 Refugee Convention, as well as Article 28 (1)(a) of the Convention on the Rights of the Child (CRC).

In Appendix A to their Third to Fifth Combined Periodic Report (2016), the Malaysian Government noted that: “UNHCR Card Holders in Malaysia...are not prevented from receiving education in private schools.”¹⁵⁹¹ Whilst refugees are able to attend private schools, these schools are often unaffordable and, therefore, inaccessible. Additionally, under the *Education Act 1996*, asylum seeker and refugee children without national identity documentation have no access to the public-school system in Malaysia.¹⁵⁹² Application for a birth certificate is possible, but, often, fears associated with arrest, detention, and

1591 Appendix A to Third to Fifth Combined Periodic Report of the Malaysian Government (2016), page 20, available at: http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/MYS/INT_CE-DAW_ADR_MYS_25048_E.pdf

1592 Migration Working Group (2016). *Recommendations for the National Human Rights Action Plan 2016*, MWG Submission (Refugees): The *Education Act 1996* sets out that children who do not have a birth certificate may not enroll in public educational institutions. The parents of asylum seekers or refugees who were born in Malaysia can, in principle, apply for birth certificates, which would allow them to register within the national schooling system. However, the fear associated with arrest and detention means that most will no hesitant to approach government agencies to apply for such a certificate

mistrust of government institutions limit applications.¹⁵⁹³ The alternative for asylum seeker and refugee students is to attend educational programs run by UNHCR or NGOs, or one of the 120 plus informal learning centres providing schooling to asylum seeker and refugee students.¹⁵⁹⁴

The lack of access to formal education further marginalises asylum seekers and refugee women and girls and has negative impacts on their capacity to improve their situation or to contribute to Malaysian society.¹⁵⁹⁵ A 2015 Save the Children Report, *Education Under Attack*, noted that for asylum seeker and refugee women in particular, education can prevent the risk of human rights abuses, including forced labour, child marriage, and SGBV, and can assist with combatting traditional gender roles and entrenched inequality. Education can empower asylum seeker and refugee women and girls whilst protecting them from exploitation, which is particularly important given that they face increased risks in the context of conflict and statelessness.

Trafficking: the new ATIPSOM Regulations

In its combined Third to Fifth Periodic Report, the Malaysian government noted that:

“Although refugees and asylum seekers are not recognised under Malaysia’s legislative framework, they are not distinguished under Act 670 if they are a trafficked person.”¹⁵⁹⁶

Under new 2015/2016 Regulations to the ATIPSOM, victims of trafficking who are under a protection order will have, amongst other protections, freedom of movement, the right to apply for a work permit, immunity from immigration related offences, and an avenue for victims to bring civil suits against their abusers.¹⁵⁹⁷ Asylum seekers and refugees who are victims of trafficking, should, in principle, be able to access this protection framework, which would allow the regularisation of their legal status, freedom of movement, and the right to work.

Whilst this affords greater protections than they would otherwise have access to, the legal framework for victims of trafficking does not envision asylum seekers and refugees, and is not adequate to provide protection for the unique circumstances and vulnerabilities of

1593 Ibid.

1594 “Rohingya All-Rounder Shines at Malaysia Learning Centre.” UNHCR Press Release. . Press Release 20 October 2016. Available at: https://www.unhcr.org/my/News_Views-@-Rohingya_all-round-er_shines_at_Malaysia_learning_centre.aspx

1595 UNHCR. *The UN Refugee Agency Malaysia*. Available at: <http://www.unhcr.org/my/refugeeM-sia.htm>

1596 Third to Fifth Combined Periodic Report of the Malaysian Government (2016), available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N16/329/01/PDF/N1632901.pdf?OpenElement>

1597 United States Department of State. *2016 Trafficking in Persons Report*. Available at: <https://www.state.gov/j/tip/rls/tiprpt/countries/2016/258814.htm>

this population group. It may, in fact, lead to adverse consequences for victims, including arrest, detention, or deportation of refugees. This is unacceptable, particularly noting the Malaysian Government's non-refoulement obligations under international law.

For example, a 2016 United States Department of State Report on Trafficking in Persons, noted that although the ATIPSOM provides victims of trafficking immunity from immigration-related offences, potential trafficking victims who denied they had been subjected to trafficking, or whose employers confiscated their documents were sometimes detained, deported, or charged with immigration offenses.¹⁵⁹⁸ The report also noted that victims whose cases did not result in a prosecution generally were not granted a protection order and were transferred to immigration detention facilities for deportation.

A Human Rights Watch report to the Malaysian Prime Minister in 2010 also noted that the anti-migrant-smuggling amendments to the ATIPSOM do not recognise the unique needs of asylum seekers and refugees and risks increasing the possibility that refugees will be detained and deported to places where they face further persecution or where their lives or freedom may be threatened, in violation of Malaysia's non-refoulement obligations under international law.¹⁵⁹⁹

Case Study – Jane's Story

Jane is a young woman who was trafficked to Malaysia from Pakistan and forced to work in a brothel. Some of the people who trafficked her regularly frequent the brothel and she knows their faces well. Jane eventually escaped and fled, having to undergo a risky and illegal abortion soon afterwards.

Jane is in contact with NGOs who can assist her to report the brothel workers and help her to pursue prosecution of those who were responsible for trafficking her. However, Jane refuses to do so, as she does not yet have a UNHCR card and is terrified that she will be arrested and deported if she goes to the police. She feels has no power and nobody will believe her. She also does not trust the police, who often stop her and force her to pay bribes. She does not believe anyone can protect her if she comes forward.

Whilst the 2016 ATIPSOM Regulations may, in some circumstances, afford protections to asylum seekers and refugees who have been victims of trafficking, it does not replace the need for a domestic legislative and administrative framework to identify and protect asylum seekers and refugees in Malaysia.

1598 United States Department of State. *2016 Trafficking in Persons Report*. Available at: <https://www.state.gov/j/tip/rls/tiprpt/countries/2016/258814.htm>

1599 Human Rights Watch Report (2010). *Letter to the Prime Minister regarding amendments to the Anti-Trafficking in Persons Act, from Phil Robertson, Deputy Director, Asia Division*

Access to legal aid

GR 32 notes that States must take steps to eliminate discrimination against women in the public and private spheres. To this end, they must take positive steps to ensure that women are not discriminated against and that they are provided effective legal protection throughout the asylum process, including by providing legal aid, legal representation and assistance.

Whilst non-Malaysians below the age of 18 have access to the National Legal Aid Foundation scheme with respect to criminal matters,¹⁶⁰⁰ other asylum seekers and refugees have no formal access to it. A Malaysian based NGO, Asylum Access, provides legal aid to asylum seekers and refugees in relation to their refugee claims before UNHCR in Malaysia.

Recommendations to the Malaysian Government regarding General Recommendation 32 of the CEDAW Committee

- Implement screening and assessment for vulnerable groups, and provide alternative arrangements for women, in particular pregnant and lactating women. Where detention is not avoidable, ensure that separate facilities and materials are required to meet the specific hygiene and health needs of women. Ensure that all staff assigned to work with female detainees are provided regular gender sensitivity training.
- Afford asylum seekers and refugees legal status, which would protect asylum seekers and refugees from arbitrary arrest and detention, and would address many of the protection issues and rights violations refugees face, including access to safe and lawful employment, access to justice, and access to adequate healthcare and education. Specifically, this would enable survivors of SGBV to report violence and facilitate access to treatment without discrimination and fear, and would protect them from arrest and detention when seeking such treatment.
- Prioritise the employment of refugees and UNHCR registered asylum seekers who are already present in the country, rather than sourcing new migrant workers from outside of Malaysia. All UNHCR card-holders, including women, should be given legal status with attached work rights that are not limited to low-skilled sectors.

1600 “Malaysian Bar: Delayed Payment for Legal Aid Scheme Not Due to Funding Issues.” Malay Mail Online. 18 March 2017.

Available at: <http://www.themalaymailonline.com/malaysia/article/malaysian-bar-delayed-payment-for-legal-aid-scheme-not-due-to-funding-issue>

- Review the scope of the *Employment Act 1955* and other existing employment laws and policies to strengthen the capacity of the Ministry of Human Resources to take appropriate measures to protect against abuse and exploitation of refugees and asylum seekers, and to develop mechanisms to complain and report abuses. Such mechanisms should have safeguards to ensure refugees and asylum seekers are not at risk of arrest and deportation.

- Provide access to healthcare facilities on a non-discriminatory basis and remove the prohibitive foreigner's rate. In particular, ensure that women are, to the greatest extent possible, able to access public health care, in particular critically important family planning and reproductive health care services, including in emergency situations such as labour and childbirth.

- Allow all refugee and asylum seeker children to access the national education system and remove the prohibitive foreigner's rate. In the alternative, provide funding for Alternative and Community Learning Centres, to allow for lower fees, provision of improved quality of education, and better training for teachers.

- Adopt laws and regulations, per the recommendation of the CEDAW Committee in its 2006 Concluding Observations, relating to the status of asylum seekers and refugees in Malaysia in line with international standards in order to ensure protection for asylum seeker and refugee women and their children.¹⁶⁰¹

- Ratify the 1951 Convention Relating to Refugees and its 1967 Protocol and implement a legislative and administrative framework to identify and protect asylum seekers and refugees in Malaysia.

1601 CEDAW Committee Concluding Comments (2006), available at: CEDAW Committee Concluding Comments (2006)

List of Abbreviations

ARROW	Asian-Pacific Resource and Research Centre for Women
BN	Barisan Nasional (National Front)
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
DOAD	Department of Orang Asli Development
EPO	Emergency Protection Order
GFP	Gender Focal Point
SUHAKAM	Suruhanjaya Hak Asasi Manusia Malaysia (Human Rights Commission of Malaysia)
IPO	Interim Protection Order
ILO	International Labour Organization
JAIS	Jabatan Agama Islam Selangor (Selangor Islamic Religious Department)
JAKIM	Jabatan Kemajuan Islam Malaysia (Department of Islamic Development)
JAWI	Jabatan Agama Islam Wilayah Persekutuan (Department of Federal Territory Islamic Affairs)
JAG	Joint Action Group for Gender Equality
JPN	Jabatan Pendaftaran Negara (National Registration Department)
LBTI	Lesbian, Bisexual, Transgender, and Intersex
MAC	Malaysian Aids Council
WWCW	Ministry for Welfare, Women and Community Wellbeing Sarawak
MOA	Ministry of Agriculture and Agro-based Industry
MOE	Ministry of Education
MECD	Ministry of Entrepreneurial and Cooperative Development

MOH	Ministry of Health
MHR	Ministry of Human Resources
MRRD	Ministry of Rural and Regional Development
MWFCD	Ministry of Women, Family, and Community Development
NCWO	National Council of Women's Organisations Malaysia
OSCC	One Stop Crisis Centre
OSTPC	One Stop Pregnancy Committee
PAS	Parti Islam Se-Malaysia (Pan Malaysian Islamic Party)
RRAAM	Reproductive Rights Advocacy Alliance Malaysia
SWWS	Sarawak Women for Women Society
SENADA	Secretariat of Defense and Empowerment of Islamic Women
SIS	Sisters in Islam
SOCISO	Social Security Organisation
SDG	Sustainable Development Goals
TPA	Third Party Administrator
UMNO	United Malays National Organisation
UNHCR	United Nations High Commissioner for Refugees
UNDP	United Nations Development Programme
VDSC	Village Development and Security Committees
WAO	Women's Aid Organisation
WCC	Women's Centre for Change, Penang

Explanation of Malay Terms

Aurat	Those (private) parts of the body that should not be exposed according to Islam
Darar Syarie	Harm
Dewan Negara	Upper House of Parliament of Malaysia
Dewan Rakyat	Lower House of Parliament of Malaysia
Fasakh	A means of dissolving a marriage by voiding it
Fatwa	A non-binding legal opinion or interpretation on a point of Islamic law
Fiqh	The theory or philosophy of Islamic laws
Haram	Forbidden by Islamic law
Harta sepencarian	Property acquired during marriage
Hudud	Laws set by God as given in the Koran
Hukum Syarak	Codified Islamic norms
Khalwat	Close, 'suspicious' proximity between people of the opposite sex
Liwat	Sexual relations between men
Mahkamah Anak Negeri	Native courts
Mak Nyah	Transgender
Mufti	A Muslim legal expert authorised to issue fatwas
Musahaqah	Sexual relations between women
Mut'ah	Gift paid to a wife by her husband upon divorce
Pengkids	Women whose appearance is masculine
Pondan	Literally translating to transvestite, used as a slur for transgender people
Sunat	Sum to be paid to a husband by his wife where she has instigated a divorce
Actions encouraged in Islam	
Talaq	A husband's formal repudiation of his wife

Wajib	Mandatory
Wali	Guardian
Zina	Sex out of wedlock or unlawful sexual intercourse, this can also refer to extra-marital sex

Short Names for Cases

AirAsia Berhad v Rafizah Shima binti Mohamed Aris (AirAsia)

Noorfadilla binti Ahmad Saikin v Chayed bin Basirun and Ors (Noorfadilla)

Beatrice Fernandez v Sistem Penerbangan Malaysia & Anor (Beatrice Fernandez)

Bunya Anak Julong v PP (Digital Rape Case)

A Child, MEMK, NAW v NRD, NRD D-G, Government of Malaysia (Bin Abdullah)

Mohd Ridzwan Bin Abdul Razak v Asmah Binti Hj. Mohd Nor (Mohd Ridzwan)

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PERTUBUHAN PERTOLONGAN WANITA

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