

# **NGO CEDAW Shadow Report, for the Malaysian Government's Review by the CEDAW Committee, at the 69<sup>th</sup> CEDAW Session in February 2018**

**Submitted on 29 January 2018**

## **Joint NGO Submission<sup>1</sup>**

Coordinated by Women's Aid Organisation (WAO) and the Joint Action Group for Gender Equality (JAG)<sup>2</sup>

### **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.<sup>3</sup> Unfortunately, many of the issues highlighted in the Initial and Second Periodic Report of the Government of Malaysia and the 2012 NGO Alternative Report<sup>4</sup> 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

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<sup>1</sup> 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.

<sup>2</sup> 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, Tenaganita, Women's Aid Organisation (WAO), and Women's Centre for Change (WCC) Penang. For information, contact [womensaidorg@gmail.com](mailto:womensaidorg@gmail.com).

<sup>3</sup> 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 16<sup>th</sup> November 2017).

<sup>4</sup> 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.

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 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.
- 2.1.1 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.*
- 2.1.2 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.**<sup>5</sup> 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.
- 2.1.3 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.
- 2.1.4 Positively, the Ministry of Women, Family, and Community Development has taken steps to formulate a Gender Equality Act.<sup>6, 7</sup>
- 2.2 The **Attorney General’s Chambers (AGC) has pursued actions contrary to the fulfilment of women’s rights.** In *Noorfadilla*,<sup>8</sup> where a public 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

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<sup>5</sup> 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*

<sup>6</sup> 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>)

<sup>7</sup> 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)

<sup>8</sup> *Noorfadilla binti Ahmad Saikin v Chayed bin Basirun and Ors (2012)*

policing by authorities must continue and that transgenders are not legally recognised in the country.<sup>9</sup>

- 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.**<sup>10</sup> 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.<sup>11</sup> **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’).**<sup>12</sup>
- 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.<sup>13,14</sup> **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.**<sup>15</sup> However, the victory was short-

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<sup>9</sup> 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.

<sup>10</sup> “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>

<sup>11</sup> 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](http://www.federalgazette.agc.gov.my/outputaktap/aktaBI_20170602_ActA1536BI.pdf))

<sup>12</sup> 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>)

<sup>13</sup> Between 2008-2012, 794 cases of arrest in relation to ‘posing as a woman’ were reported by the state Islamic departments and JAKIM.

<sup>14</sup> 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.

<sup>15</sup> “The Transgender Case: A Summary.” Loyar Burok. 9 October 2015. Available at: <http://www.loyarburok.com/2015/10/09/transgender-case-summary/>

**lived** as the government was granted leave to appeal, and the ruling was subsequently overturned on a procedural technicality.<sup>16</sup>

- 2.7 Syariah laws in states and Federal Territories<sup>17</sup> **criminalise same-sex sexual relations for women (*musahaqah*)<sup>18</sup> and men (*liwat*)<sup>19</sup>**. 13 cases of *musahaqah* were reported between 2009-2012.<sup>20</sup> In 2014, a couple was arrested in a hotel raid and investigated under Section 26 of Johor's Syariah Criminal Offences Enactment 1997.<sup>21</sup>

### **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 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.<sup>22,23</sup>
- 3.2 The Government committed to implement the Sustainable Development Goals (SDG), including Goal 5 on gender equality. Ministries, departments, agencies,

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<sup>16</sup> 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/>)

<sup>17</sup> 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)

<sup>18</sup> 12 Malaysian states and the Federal Territories criminalise *musahaqah*. Only Pahang does not.

<sup>19</sup> 10 states and the Federal Territory criminalise *liwat*.

<sup>20</sup> JAKIM Strategic Plan for 2015-2019, page 23. Available at: <https://www.islam.gov.my/mengenai-jakim/profil-jakim/pelan-strategik>

<sup>21</sup> "Malaysia Religious Police Raid Hotel, Arrest Two Women Sharing Room." The Rainbow Hub. 8 September 2014. Available at: <http://www.therainbowhub.com/malaysia-religious-police-raid-hotel-arrest-two-women-sharing-room/>

<sup>22</sup> 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.

<sup>23</sup> The Government noted in its Replies to the List of Issues that the policy is currently being reviewed with the United Nations Development Programme.

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.<sup>24</sup>
- 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:
  - 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.<sup>25</sup>

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<sup>24</sup> 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.

<sup>25</sup> 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>)

## 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 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.<sup>26</sup>
- 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.<sup>27 28</sup>
- 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.

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<sup>26</sup> 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.)

<sup>27</sup> "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/#YTXKL3lqqgiRTQap.99>

<sup>28</sup> 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.

- 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 the public.<sup>29, 30</sup>
- 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.<sup>31,32</sup>
- 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.<sup>33</sup>
- 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.<sup>34</sup> 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 non-state actors.<sup>35,36,37,38,39</sup>

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<sup>29</sup> “Golongan LGBT boleh diubah.” BH Online. 25 December 2016. Available at: <https://www.bharian.com.my/node/227009>

<sup>30</sup> “Seminar Pemahaman Ummah; LGBT: Apa Yang Anda Tahu.” PUSPANITA Negeri Selangor. 7 November 2016. Available at: <http://puspanita.selangor.gov.my/?p=667>

<sup>31</sup> “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>

<sup>32</sup> “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>

<sup>33</sup> 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).

<sup>34</sup> “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>

<sup>35</sup> 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.)

<sup>36</sup> 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>)

<sup>37</sup> 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>)

5.10 **Attempts to police women's bodies and attire remain pervasive**, from restrictions on women's entry into government offices based on clothing,<sup>40</sup> to scrutiny by private citizens and religious authorities of their attire at sporting events<sup>41,42</sup> to warnings by religious authorities to women against dressing 'provocatively' during the month of Ramadan,<sup>43,44</sup> to threats made by a private group against Hindu women wearing sarees for the festival of Thaipusam that they would be sprayed with paint.<sup>45</sup> While 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.<sup>46</sup> 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 Mukharyam Programme is a spiritual camp by JAKIM that aims to rehabilitate and bring trans women back to the 'right path' or 'original state'.<sup>47,48</sup>

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<sup>38</sup> 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/>)

<sup>39</sup> 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>)

<sup>40</sup> 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](http://www.malaysianbar.org.my/press_statements/press_release_%7C_rein_in_overzealous_dress_code_enforcement_and_reject_clothing_or_moral_policing.html)

<sup>41</sup> "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>

<sup>42</sup> 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>)

<sup>43</sup> "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>

<sup>44</sup> "Respecting the month of Ramadan." The Star Malaysia. 18 June 2016. Available at: <http://www.pressreader.com/malaysia/the-star-malaysia/20160618/281775628445794>

<sup>45</sup> "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/>

<sup>46</sup> 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.

<sup>47</sup> "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>

JAKIM reported that between 2010 and 2014, it had 'rehabilitated' 1,000 transgender women through the programme.<sup>49,50</sup>

### **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.
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.<sup>51</sup> Despite initial arrests made, **all Malaysian officials were released and none were prosecuted for crimes related to the "death camps" or human trafficking.**<sup>52,53</sup>
- 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

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<sup>48</sup> The programme also offers microcredit assistance as well as information on HIV and Islam.

<sup>49</sup> 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>)

<sup>50</sup> 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](http://www.aidsdatahub.org/sites/default/files/publication/Malaysia_Annual_Report_2016.pdf))

<sup>51</sup> "Asia migrant crisis: New mass graves on Malaysia-Thai border." *BBC News*, 23 August 2015.

<sup>52</sup> "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-thailands-songkhla-human-trafficking-camp-says-ngo>

<sup>53</sup> "[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>

sheltering trafficking survivors by 2020, the Plan does not include a detailed framework for how CSOs will take over sheltering activities.<sup>54</sup>

## **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 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**,<sup>55,56,57</sup> creating an antagonistic environment for women. Sexist remarks have been banned in Parliament through an amendment to the rules of conduct,<sup>58</sup> but continue to be made, indicating the broader acceptance of sexist mind-sets.<sup>59,60</sup>
- 7.2 **Numerous attacks have been directed at women leaders,** including those currently or formerly in government, opposition parties, and civil society.<sup>61</sup>

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<sup>54</sup> A framework is being developed, with input from CSOs. This process must be prioritised and carried through.

<sup>55</sup> "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/>

<sup>56</sup> "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>

<sup>57</sup> "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/>

<sup>58</sup> "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/>

<sup>59</sup> "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>

<sup>60</sup> 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.

<sup>61</sup> 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 Datuk Noor Farida Affrin 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.

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).<sup>62,63</sup> **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.<sup>64</sup> 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.<sup>65</sup>
- 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.<sup>66</sup> The government's Report highlights an increased percentage since 2004, but does not mention the lack of improvement since 2008.<sup>67,68</sup> Only three out of 34 cabinet ministers<sup>69</sup> (8.8%) and six out of 34 deputy ministers (17.6%) are women.<sup>70</sup>
- 7.5 Women judges in the Federal Court number three out of 11 (27.3%)<sup>71</sup>; in the Court of Appeal, women make up 15 of the 29 judges (51.7%)<sup>72</sup>, signifying a positive development in the Malaysian judiciary.

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<sup>62</sup> "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>

<sup>63</sup> 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>)

<sup>64</sup> "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/>

<sup>65</sup> 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.)

<sup>66</sup> People's Development Justice Report (unpublished draft). Persatuan Kesedaran Komuniti Selangor (EMPOWER). 2017.

<sup>67</sup> In 2013 this percentage was 10.4% and in 2008 it was also 10.4%.

<sup>68</sup> 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%.

<sup>69</sup> Since 1957, there have never been more than three women Ministers in Cabinet at one time.

<sup>70</sup> *Ministry of Women, Family and Community Development, Statistics on Women, Family and Community 2016*, page 102

<sup>71</sup> 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>)

<sup>72</sup> "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>

- 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.<sup>73,74</sup>
- 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.<sup>75</sup>

## **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.<sup>76</sup>

## **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;**<sup>77</sup> **mothers must go through a more arduous process.**<sup>78,79,80,81</sup> The waiting time for the approval of

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<sup>73</sup> "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/>

<sup>74</sup> Why I support the women quota and more." DAP Malaysia. 23 December 2014. Available at: <https://dapmalaysia.org/en/statements/2014/12/23/19807/>

<sup>75</sup> 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.

<sup>76</sup> 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.

<sup>77</sup> 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/>)

<sup>78</sup> "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>

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.**<sup>82</sup> 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 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.**<sup>83</sup>

**9.3** The application criteria, approval process, and duration for obtaining the Long Term Social Visit Pass and Permanent Residence<sup>84</sup> vary at the discretion of Immigration Officers, with practices such as giving shorter-term visas to couples

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<sup>79</sup> 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.

<sup>80</sup> "Malaysian women can register children born abroad." *The Star*. 12 April 2010.

<sup>81</sup> 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/>)

<sup>82</sup> 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))

<sup>83</sup> 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.

<sup>84</sup> Although tougher rules are imposed on non-citizen husbands, the social, economic and psychological impact, affects the Malaysian wife tremendously.

without children.<sup>85</sup> **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.

### **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.<sup>86</sup>
- 10.2 **Transgender and gender diverse students ('effeminate' boys,<sup>87</sup> 'masculine' girls<sup>88</sup>) 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.<sup>89</sup> Schools regard homosexuality and 'gender confusion' as an offence and students can be punished.<sup>90,91</sup>
- 10.3 There is a continued lack of comprehensive **sex education** in all schools that is rights-based.

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<sup>85</sup> 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.

<sup>86</sup> 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](https://umexpert.um.edu.my/file/publication/00000380_125559.pdf)

<sup>87</sup> "'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>

<sup>88</sup> "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>

<sup>89</sup> "'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>

<sup>90</sup> 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.

<sup>91</sup> Some university administrations are also initiating 'research' which involves asking students to identify other students of diverse sexual orientations and gender identities.

- 10.4 Women teachers outnumber male teachers; however, **men dominate decision-making positions** in primary and secondary public schools, and public universities.<sup>92</sup>
- 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.

### **Article 11: Employment**

- 11.1 In 2016, **the labour force participation rate for women, which has remained consistently low for many years, was 54.3%**<sup>93,94</sup> (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,<sup>95,96</sup> and the fact that women have less opportunities for advancement.<sup>97,98</sup>
- 11.2 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.<sup>99</sup> These women may feel that they are not able to go out to work owing to family pressures.
- 11.3 In 1999, a voluntary Code of Practice on the Prevention and Eradication of Sexual Harassment in the Workplace was launched; however this has not

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<sup>92</sup> 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)

<sup>93</sup>“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=SGZCNnMrWW9ZTEdpYys4YW0yRIh oQT09>

<sup>94</sup> “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=dHNTVHV0My9QK1MxNHBtSnRucVJ qZz09>

<sup>95</sup> “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>

<sup>96</sup> “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=U3JoKzFiekE5WFFKK0VMRWQ0a2F DQT09>

<sup>97</sup> Ibid.

<sup>98</sup> 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.

<sup>99</sup> Ministry of Women, Family and Community Development, *Statistics on Women, Family and Community 2016*, page 43

been implemented widely.<sup>100</sup> 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,<sup>101</sup> and the complaint mechanism.<sup>102</sup>** The landmark ruling of the Federal Court in the case of *Mohd Ridzwan Bin Abdul Razak.Appellant and Asmah Binti Hj. Mohd Nor*,<sup>103</sup> 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,**<sup>104</sup> 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.”**<sup>105</sup> 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.<sup>106</sup> Additionally, the Malaysian employer’s contribution of 12-13% of the salary to the social security fund (EPF) is not mandatory for foreign spouses,<sup>107</sup> nor do foreign spouses receive social security protection under SOCSO, which provides benefits to employees who suffer from employment-related injuries, or invalidity pension.

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<sup>100</sup> “Legislate against sexual harassment.” The Malaysian Bar. 6 November 2009. Available at: [http://www.malaysianbar.org.my/letters\\_others/legislate\\_against\\_sexual\\_harassment.html](http://www.malaysianbar.org.my/letters_others/legislate_against_sexual_harassment.html)

<sup>101</sup> 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.

<sup>102</sup> 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>

<sup>103</sup> *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.foongchungleong.com/judgements/Mohd%20Ridzwan%20bin%20Abdul%20Razak%20v%20Asmah%20Binti%20Hj%20Mohd%20Nor%20\(FC\).pdf](http://www.foongchungleong.com/judgements/Mohd%20Ridzwan%20bin%20Abdul%20Razak%20v%20Asmah%20Binti%20Hj%20Mohd%20Nor%20(FC).pdf)

<sup>104</sup> 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.

<sup>105</sup> “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/>

<sup>106</sup> 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.

<sup>107</sup> “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/>

## 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.
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.<sup>108</sup>
- 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.<sup>109,110</sup> The use of modern methods of contraception is lower, at 34%.<sup>111</sup>
  - 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 was subsequently acquitted.<sup>112,113</sup>

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<sup>108</sup> "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](http://www.municipalservicesproject.org/sites/municipalservicesproject.org/files/publications/OccasionalPaper26_Chan_Malaysian_health_system_in_transition_Aug2014.pdf)

<sup>109</sup> "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>

<sup>110</sup> "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>

<sup>111</sup> Ibid.

<sup>112</sup> "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>

- 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.<sup>114,115</sup>
- 12.5 Women are the **fastest growing part of the population being infected with HIV**.<sup>116</sup>
- 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.<sup>117</sup> The sex education curriculum for schools was approved by Cabinet in 2006 but has yet to be fully implemented.<sup>118</sup>
- 12.8 Raids on entertainment venues are common. **The presence of condoms can be used as evidence against an individual and works against ensuring**

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<sup>113</sup> 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.

<sup>114</sup> "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>

<sup>115</sup> 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)

<sup>116</sup> 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](http://www.aidsdatahub.org/sites/default/files/publication/Malaysia_National_strategic_plan_2016-2030.pdf))

<sup>117</sup> 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 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-putrajaj#OmvObCRG8WKc0loS.97>)

<sup>118</sup> 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))

**and protecting public health.**<sup>119</sup> This hinders people from practising safe sex.

- 12.9 **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 women<sup>120</sup> and transgender women.<sup>121</sup>

### **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.
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<sup>122,123</sup> 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.<sup>124</sup>
- 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.<sup>125</sup>

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<sup>119</sup> “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/>

<sup>120</sup> 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/>)

<sup>121</sup> 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/>)

<sup>122</sup> “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/>

<sup>123</sup> “RM1.4bil allocation for elderly, disabled and single mothers.” New Straits Times. 24 March 2012.

<sup>124</sup> Unpublished paper by Prema Devaraj, Women’s Centre for Change (WCC), Penang, 2010.

<sup>125</sup> “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>

- 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 safeguards and low female participation rates in the workforce.<sup>126</sup>
- 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.

### **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.<sup>127</sup>
- 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

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<sup>126</sup> "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>

<sup>127</sup> "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>

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.<sup>128</sup>

14.3 The representation of women in village committees is very low.<sup>129</sup>

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.**<sup>130</sup>

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

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<sup>128</sup> “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](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)

<sup>129</sup> In 2009, out of the 15,460 committees throughout the country, only 161 committees had a woman chairperson, which equates to 1 per cent. (Data from the Malaysian National Council of Women’s Organisations (NCWO))

<sup>130</sup> Section 86 of the Syariah Court Evidence (Federal Territories) Act 1997.

discriminatory elements.<sup>131</sup> To date, these amendments have not been tabled in Parliament.

- 16.2 A **dual legal system governs Muslim and non-Muslim personal laws 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.<sup>132</sup>
- 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.<sup>133</sup>
- 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.<sup>134</sup>
- 16.6 The Cabinet decided in 2009, where one parent converts to Islam, children of the marriage cannot be unilaterally converted to Islam.<sup>135</sup> 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

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<sup>131</sup> 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)).

<sup>132</sup> 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.

<sup>133</sup> 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.

<sup>134</sup> Sections 80 and 85 of the Islamic Family Law (Federal Territories) (Amendment) Act 2005.

<sup>135</sup> "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>

removed.<sup>136</sup> Positively, the Federal court recently nullified the unilateral conversion of Indira Gandhi's three children in a landmark decision.<sup>137,138</sup>

### **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 30% of the time.<sup>139</sup>
- 19.2 The DVA also has major gaps. The Act does not extend protection to **non-married intimate partners**, including engaged persons.

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<sup>136</sup> "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>

<sup>137</sup> 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.

<sup>138</sup> "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/>

<sup>139</sup> 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)

- 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.<sup>140</sup>
- 19.4 **Stalking** has not been criminalised in Malaysia.<sup>141</sup>
- 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.**<sup>142</sup> 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.<sup>143,144</sup>
- 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.”<sup>145</sup>
- 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.”

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<sup>140</sup> 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.)

<sup>141</sup> 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.

<sup>142</sup> 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/>)

<sup>143</sup> “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>

<sup>144</sup> “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-rapists>

<sup>145</sup> 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.

- 19.8 **The State carries out violence against women as punishment for crimes under *Syariah* law.**<sup>146</sup> For example, women found guilty of *musahaqah* (lesbianism) can be punished by whipping.<sup>147</sup>
- 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.<sup>148</sup>
- 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);<sup>149</sup> stalking; dissemination of private information; identity theft; hate speech; and rape and death threats.<sup>150,151</sup>

### **Recommendations**

28. Expand the DVA to **include violence perpetrated in unmarried intimate partnership**, 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.

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<sup>146</sup> 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.

<sup>147</sup> Six states in Malaysia impose maximum fines of RM 3,000, three years of imprisonment, and six strokes for *musahaqah*,

<sup>148</sup> "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/>

<sup>149</sup> 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.

<sup>150</sup> 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/>)

<sup>151</sup> 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 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>)

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.<sup>152</sup>

#### **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.<sup>153</sup> 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.**<sup>154</sup>

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<sup>152</sup> 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>)

<sup>153</sup> 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.

<sup>154</sup> 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

- 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.’**<sup>155 156</sup>

## **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,<sup>157</sup> other forms of abuse, poor sanitation, and a lack of adequate food, water,<sup>158</sup> and medical care.<sup>159</sup>** Even pregnant and lactating women are detained and lack access to facilities and services appropriate to their needs.<sup>160</sup> 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.<sup>161,162,163</sup>

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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.

<sup>155</sup> 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)

<sup>156</sup> In 2015, Malaysia’s highest court has also upheld the ban on cross-dressing by transgender 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>

<sup>157</sup> Sexual and Gender-Based Violence (SGBV) Factsheet, Malaysia. UNHCR. October 2017.

<sup>158</sup> 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>

<sup>159</sup> Ibid.

<sup>160</sup> Ibid.

<sup>161</sup> 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.

<sup>162</sup> 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>

- 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.

### **Recommendations**

32. Adopt effective policies to improve the protection of refugee women,<sup>164</sup> 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.<sup>165</sup> This is often attributed to the lack of support services for victims and the complexity in navigating the criminal justice process.<sup>166,167</sup>
- 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.<sup>168</sup> This includes **the requirement of corroboration in cases of sexual violence**, which does not have any statutory basis.<sup>169</sup>

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*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*).

<sup>163</sup> 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.

<sup>164</sup> 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

<sup>165</sup> *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

<sup>166</sup> *Seeking Justice for Victims of Sexual Crime* by James Lochhead and Tan Pek Leng, 2009

<sup>167</sup> *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

<sup>168</sup> "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](http://www.wao.org.my/Perspectives+on+Domestic+Violence+2017+Report+by+WAO_131_6_1.htm)

<sup>169</sup> "Seeking Justice" Public Prosecutor v Mohd Ridzwan Bin Md Borhan (2004) 5 MLJ 300, 302. Page 55.

- 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.
- 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.<sup>170</sup>

### ***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.

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<sup>170</sup> 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](http://www.jbg.gov.my/images/doc/Akta/20171017_A1548_BI_Act%20A1548%20BI.pdf))