

Critical issues and questions to be raised with the Malaysian government at the 69th CEDAW Pre-Sessional Working Group

July 2017

Joint NGO Submission¹

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

Introduction

This List of Critical Issues is based on the Malaysian government's Third through Fifth Periodic Report to the CEDAW Committee ("Report").³ Unfortunately, many of the issues highlighted in the 2005 NGO Shadow Report on the Initial and Second Periodic Report of the Government of Malaysia and the 2012 NGO Alternative Report⁴ remain relevant, as do the majority of the CEDAW Committee's 2006 Concluding Observations to Malaysia.

The issues raised in this report constitute some of the obstacles to the full enjoyment of women's rights in Malaysia, and should be viewed in the broader context of increasing religious conservatism and repression of those who speak out against human rights violations. We also propose corresponding critical questions for the CEDAW Committee to pose to the Malaysian government.

¹ 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.

² 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.

³ This List of Critical Issues addresses gaps in the government's Report, and should be read with the government's Report.

⁴ 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.

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 practical realisation of the intent of these Articles, as there has been no change in law or policy and the status quo remains.
- 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.

Article 2: Eliminating discrimination in the law

- 2.1 Article 8(2) of the FC prohibits discrimination on the basis of gender. In the 2012 case of *Noorfadilla binti Ahmad Saikin v Chayed bin Basirun and Ors (Noorfadilla)*, the court accepted the definition of ‘discrimination against women’ as defined by Article 1 of CEDAW. It also went on to hold that CEDAW has the force of law in Malaysia.
 - 2.1.1 However, in the 2014 case of *AirAsia Berhad v Rafizah Shima binti Mohamed Aris (Air Asia)*, where an airline terminated a trainee due to her pregnancy, the Court found that Article 8(2) had not been violated. *Air Asia reversed the finding in Noorfadilla that CEDAW has the force of law in Malaysia, but the definition of ‘discrimination against women’ in Malaysia, as defined in Noorfadilla, remains intact.*
 - 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**.⁵ This unjustifiable distinction between state and private actors continues to hamper the full enjoyment of women’s rights in all areas of their lives. The government

⁵ 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

needs to fully understand and implement its duty of due diligence when it comes to acts and omissions of private actors.

- 2.1.3 The government in its Report continues to state that there is no ‘cogent reason to review the definition of discrimination in the FC,’ nor a need for specific national legislation to provide such definition.
- 2.1.4 However, in 2016, the Ministry of Women, Family, and Community Development declared that her Ministry is formulating a Gender Equality Act.⁶
- 2.2 The **Attorney General’s Chambers (AGC) pursued actions contrary to the fulfilment of women’s rights and freedoms.** In *Noorfadilla*,⁷ 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,’—thereby criminalising trans persons on the basis of their gender identity and expression—arguing that moral policing must continue to be undertaken by authorities and that transgenders are not legally recognised in the country.⁸
- 2.3 **Even the positive impact of *Noorfadilla*—in which the Court found that the termination of *Noorfadilla*’s employment based on her pregnancy constituted discrimination under Article 8(2) of the FC—was lessened when the government appealed, and the Court’s initial award of RM300,000 was subsequently reduced to RM30,000.**⁹ 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 implementing CEDAW and eliminating discrimination, and diluted the ground-breaking judgment.
- 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. **It was the narrow**

⁶“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>

⁷ *Noorfadilla binti Ahmad Saikin v Chayed bin Basirun and Ors* (2012)

⁸ 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.

⁹ “To prevent profiteering, court slashes woman’s gender equality case award by 90pc.” The Malay Mail Online. 17th February 2016. Available at: <http://www.themalaymailonline.com/malaysia/article/to-prevent-profiteering-court-slashes-womans-gender-equality-case-award-by#sthash.ybwtHQMB.dpuf>

definition of rape that led to an absurd and unjust outcome in the case of *Bunya Anak Julong v PP* (the ‘finger rape case’).¹⁰

- 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.^{11,12} **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.**¹³ However, the victory was short-lived, as the government was granted leave to appeal, and the ruling was subsequently overturned on a procedural technicality.¹⁴
- 2.7 Syariah laws in states and Federal Territories¹⁵ **criminalise same-sex sexual relations for women (*musahaqah*)¹⁶ and men (*liwat*).**¹⁷ 13 cases of *musahaqah* were reported between 2009-2012.¹⁸ In 2014, a couple was arrested in a hotel raid and investigated under Section 26 of Johor’s Syariah Criminal Offences Enactment 1997.¹⁹

Critical questions

- Q1. The government’s position in its Report is that Article 8(2) of the FC provides adequate protection against gender-based discrimination, even after the *Air Asia* and *Beatrice*²⁰ cases. However, the Minister of Women has stated her commitment to enacting gender equality legislation. Does the government reaffirm its positive commitment, via the Minister’s statement, to enacting

¹⁰ 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. Criminal Appeal No. Q-09-212-08/2014. Available at: <http://www.kehakiman.gov.my/directory/judgment/file/Q-09-212-08-2014.pdf>

¹¹ Between 2008-2012, 794 cases of arrest in relation to ‘posing as a woman’ were reported by the state Islamic departments and JAKIM.

¹² 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.

¹³ “The Transgender Case: A Summary.” Loyar Burok. 9 October 2015. Available at: <http://www.loyarburok.com/2015/10/09/transgender-case-summary/>

¹⁴ 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/>)

¹⁵ 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)

¹⁶ 12 Malaysian states and the Federal Territories criminalize *musahaqah*. Only Pahang does not.

¹⁷ 10 states and the Federal Territory criminalize *liwat*.

¹⁸ JAKIM Strategic Plan for 2015-2019, page 23. Available at: <https://www.islam.gov.my/mengenai-jakim/profil-jakim/pelan-strategik>

¹⁹ “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/>

²⁰ *Beatrice AT Fernandez v Sistem Penerbangan Malaysia & Anor* [2005] 2 CLJ 713

gender equality legislation, which must include provisions for women to seek redress for discrimination against them by private actors?

- Q2. Section 375A of the Penal Code does not criminalise the act of rape itself, and does not protect against non-consensual intercourse within a marriage that does not cause or involve the threat of hurt or fear, e.g. intoxication. How does the government plan to address this shortcoming in the law?
- Q3. How does the government intend to amend the Penal Code so that acts of rape committed with other parts of the body (other than the penis) or objects are correctly classified as rape?²¹
- Q4. How does the government plan to address the arbitrary arrests, detention, violence, and discrimination faced by trans women?

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.²² The government has recently stated its intent to review the Policy.
- 3.2 Gender equality is Goal 5 of the Sustainable Development Goals (SDGs) and has been incorporated in the 11th Malaysia Plan. Malaysia is one of 43 countries set to carry out a Voluntary National Review at the High-Level Political Forum in July 2017.^{23,24,25} As part of the Malaysian government's commitment towards implementing the SDGs, government ministries, departments, agencies, CSO coalitions, UN bodies, and professional unions have been brought together to form Malaysia's SDG Steering Committee, spearheaded by the Economic Planning Unit (EPU).

²¹ Although 377CA was recently amended to include 'sexual connection' by other parts of the body (other than the penis), this would not fully serve to prevent outcomes such as that in *Bunya Anak Julong v PP* (known as the 'digital rape case'), wherein a perpetrator who impregnated a girl using his fingers was not convicted of rape. 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. This was prior to the amendments to Section 377CA of the Penal Code, and so the man was acquitted from any crime at all. Criminal Appeal No. Q-09-212-08/2014. Available at: <http://www.kehakiman.gov.my/directory/judgment/file/Q-09-212-08-2014.pdf>

²² 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.

²³ As part of its their SDG follow-up and review mechanisms, member states are encouraged to "conduct regular and inclusive reviews of progress at the national and sub-national levels, which are country-led and country-driven."

²⁴ To view the Malaysia's recent report at the Asia Pacific Forum on Sustainable Development on its SDGs implementation, see: <http://www.unescap.org/events/apfsd4>

²⁵ The theme for HLPF 2017 is "Eradicating Poverty and Promoting Prosperity in a changing World"²⁵, with a focus on Goal 1, Goal 2, Goal 3, Goal 5, Goal 9, Goal 14, and Goal 17.

- 3.2.1 For detailed planning and implementation, the SDGs were grouped into clusters,²⁶ with Goal 5 being grouped in the Inclusivity cluster.
- 3.2.2 Each cluster has its own taskforce, consisting of the private sector, NGOs, CSOs, and academia. One of the core tasks of the taskforce is to draft Malaysia's Roadmap to implement the 2030 Agenda. However, segregating these goals by cluster has resulted in a silo-ed approach to implementation. There is also resistance by the other taskforces to applying gender-sensitive analysis. The Steering Committee, which sits above the clusters and taskforces, has initiated discussions on interlinking the Goals. However, it has not reached any viable solution.
- 3.2.3 While women's rights CSOs are well represented in the 'inclusivity' cluster, the involvement of CSOs is scarce in the remaining clusters.
- 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.
- 3.4 Malaysia has **not ratified the optional protocol** to CEDAW.
- 3.5 The **grouping of women, children, family and community together under the same ministry maintains patriarchal norms.**²⁷

Critical questions

- Q5. What are the government's plans to ratify the Optional Protocol to CEDAW?
- Q6. Has the government undertaken any efforts to implement gender-sensitive budgeting, including allocating funds to increase trained personnel to respond to violence against women, and to enhance services to address women's health issues?

Article 4: Temporary special measures

- 4.1 The government has made limited use of temporary special measures, and even where it has used them, it has not developed specific guidelines or concrete plans for their implementation, monitoring, and evaluation to ensure effectiveness.²⁸

²⁶ Cluster 1 Inclusivity - Goal 1, 2, 5 and 10; Cluster 2 Well-Being - Goal 3 and 16; Cluster 3 Human Capital - Goal 4; Cluster 4 Environment & Natural Resources - Goal 6, 7, 12, 13, 14 and 15; and Cluster 5 Economic Growth - Goal 8, 9, 11, and 17.

²⁷ As the CEDAW Committee noted in its concluding observations after its session with South Korea, the merging of "family affairs and gender equality in a single mandate may directly or indirectly reinforce traditional patriarchal norms and be detrimental to the achievement of gender equality." (*Concluding Observations of the Committee on the Elimination of Discrimination against Women: Republic of Korea*, 49th Session, released 29 July 2011, CEDAW/W/C/KOR/CO/7, paragraph 16.)

²⁸ For example, The Tenth Malaysia Plan is vague about the government's efforts to increase the participation of women in decision-making positions to at least 30%. In its Report, the government states that women made up 32.5% of those at the decision-making level in the public sector; however, whether the target has actually been reached depends on what positions constitute decision-making positions. (See Footnote 55)

Article 5: Gender stereotypes and discriminatory customs and practices

- 5.1 **Government rhetoric often reinforces gender stereotypes** and women's role as the primary care-givers. Despite announcements encouraging employers to offer part-time work and flexible arrangements, the government's rhetoric surrounding these announcements places the obligation on women to undertake the 'triple burden' of working in the home, caring for children, and seeking paid employment.²⁹ **Government rhetoric rarely encourages fathers to seek flexible work arrangements** so that childcare and housework can be shared.
- 5.2 Members of Parliament (MPs) routinely make **sexist comments**.³⁰ Despite the fact that such remarks have been banned in Parliament through an amendment to the rules of conduct,³¹ such remarks continue to be made without repercussion, indicating the broader acceptance of sexist mind-sets.³²
- 5.3 There are efforts to **segregate sexes in public transport**.³³ Although this may make women feel temporarily safer, it does not tackle the root causes of sexual harassment and violence against women (VAW).
- 5.4 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* (Malay women who appear masculine) and a *fatwa* against women who shave their heads. Although these *fatwas* have not been gazetted, and are therefore not legally binding, the attempt to control Muslim women's bodily integrity is concerning.
- 5.5 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.^{34,35}

²⁹ 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.)

³⁰ "Time for Parliament to clean up its act." 27th November 2016. Free Malaysia Today. Available at: <http://www.freemalaysiatoday.com/category/opinion/2016/11/27/time-for-parliament-to-clean-up-its-act/>

³¹ "Malaysia bans sexist remarks in Parliament." 27th November 2012. The Indian Express. Available at: <http://archive.indianexpress.com/news/malaysia-bans-sexist-remarks-in-parliament/1036991/>

³² "When Malaysian MPs' remarks in Parliament shocked Malaysians." 7th April 2017. Today. Available at: <http://www.todayonline.com/world/asia/when-malaysian-mps-remarks-parliament-shocked-malaysians>

³³ "Bus free to segregate passengers by sex: Malaysian Land Public Transport Commission." TODAY. 30 December 2016. Available at: <http://www.todayonline.com/world/asia/bus-free-segregate-passengers-sex-malaysian-land-public-transport-commission>

³⁴ "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>

³⁵ 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 seised, 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

- 5.6 **Moral policing** on the basis of religious values attempts to regulate the private lives of citizens and opens them up to abuse, selective prosecution, and victimisation, especially for marginalised groups. Moral policing is undertaken with government support by both religious enforcement officers and the police.
- 5.7 **Gender segregation initiatives** have been undertaken in states such as Kelantan and Terengganu, attempting to regulate everything from seating at movie theatres to men and women riding together on motorcycles.^{36,37}
- 5.8 **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.
- 5.9 **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.³⁸ Media portrayals of gender and sexual diversity often use disparaging words. In advertising, women are often portrayed in submissive roles.
- 5.10 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 alike.^{39,40,41,42,43}

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.

³⁶ "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>

³⁷ "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>

³⁸ "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>

³⁹ 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.)

⁴⁰ 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>)

⁴¹ 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>)

⁴² 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/>)

⁴³ 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-

5.11 **Attempts to police women's bodies and attire remain pervasive**, from restrictions on women's entry into government offices based on clothing,⁴⁴ to scrutiny by private citizens and religious authorities of their attire at sporting events^{45,46} to warnings by religious authorities to women against dressing 'provocatively' during the month of Ramadan,^{47,48} to threats made by a private group against Hindu women wearing sarees for the festival of Thaipusam that they would be sprayed with paint.⁴⁹ While this latter threat was condemned by police, there have been little to no consequences for other such acts.

5.12 Change of name, gender, and last digit of the serial number, which was initially allowed for trans people based on operative status, has become more challenging over the years.⁵⁰ 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.

5.13 The Mukhayyam Programme is a spiritual camp by JAKIM that aims to rehabilitate and bring trans women back to the 'right path' or 'original state'.^{51,52} JAKIM reported that between 2010 and 2014, it had 'rehabilitated' 1,000 transgender women through the programme.^{53,54}

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>)

⁴⁴ Press Release | Rein In Overzealous Dress Code Enforcement and Reject Clothing or Moral Policing. 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

⁴⁵ "Muslim gymnast criticized for 'revealing' leotard as she wins double-gold." 18th June 2015. The Telegraph. Available at: <http://www.telegraph.co.uk/women/womens-life/11683079/Muslim-gymnast-criticised-for-revealing-leotard-as-she-wins-gold.html>

⁴⁶ 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>)

⁴⁷ "Muslim women in Pahang told to dress 'decently' during Ramadan." 25th June 2015. Today. Available at: <http://www.todayonline.com/world/asia/muslim-women-pahang-told-dress-decently-during-ramadan>

⁴⁸ "Respecting the month of Ramadan" 18th June 2016. The Star Malaysia. Available at: <http://www.pressreader.com/malaysia/the-star-malaysia/20160618/281775628445794>

⁴⁹ "Group warned against spray-painting women on Thaipusam." 9 January 2017. Free Malaysia Today. Available at: <http://www.freemalaysiatoday.com/category/nation/2017/01/09/group-warned-against-spray-painting-women-on-thaipusam/>

⁵⁰ 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.

⁵¹ "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>

⁵² The programme also offers microcredit assistance as well as information on HIV and Islam.

⁵³ 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>)

Critical questions

- Q7. Despite the government removing its reservation to Article 5(a), it has done very little to modify cultural stereotypes and traditional practices. What are the government's plans to address stereotypes around the roles of men and women as caretakers, moral policing, and the routine policing of women's bodies?
- Q8. The government's understanding of gender remains binary. How does the government intend to update its knowledge of gender?

Article 6: Trafficking of women

- 6.1 The May 2015 discovery of mass graves and abandoned human trafficking camps along the Malaysia-Thailand border highlighted the deadly human smuggling and trafficking trade in Malaysia.⁵⁵ Despite initial arrests made, **all Malaysian officials were released and none were prosecuted for crimes related to the "death camps" or human trafficking across the Thai border.**⁵⁶
- 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 CSOs are not allowed to be closely involved with trafficking cases once an investigation has begun. Although Malaysia's National Action Plan on Anti-Trafficking in Persons 2016-2020 stated that CSOs will be responsible for sheltering trafficking survivors by 2020, the Plan does not include a detailed framework for how CSOs will take over sheltering activities.

Critical questions

- Q9. Why were no Malaysian officials prosecuted for crimes related to the death camps or human trafficking after the discovery of mass graves and abandoned human trafficking camps along the Malaysia-Thailand border?

⁵⁴ 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)

⁵⁵ "Asia migrant crisis: New mass graves on Malaysia-Thai border." *BBC News*, 23 August 2015.

⁵⁶ "Malaysians likely behind Thailand's Songkhla human trafficking camp, says NGO." *Straits Times*, 6 May 2015.

Article 7: Participation in public life and decision-making

- 7.1 **The political environment is hostile to women.** MPs routinely make sexist comments in and outside of Parliament, creating an antagonistic environment for women.^{57, 58, 59}
- 7.2 **Numerous attacks have been directed at women leaders,** including those currently or formerly in government, political candidates belonging to opposition political parties, and civil society activists.⁶⁰ Human rights activist and Bersih 5 rally leader Maria Chin Abdullah was arbitrarily arrested and detained in solitary confinement under Malaysia's Security Offences (Special Measures) Act (SOSMA).^{61,62} **Such treatment is a disincentive for women to participate in the public sphere.**
- 7.3 A policy goal of women holding 30% of public sector decision-making positions was announced in 2004; however it seems that **this 30% target is far from being reached.** 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.⁶³
- 7.4 **Women's representation in Parliament and Cabinet remains low.** In 2016, 24 out of 222 seats (10.8%) in the House of Representatives (Dewan Rakyat) were filled by women. The government's Report highlights an increased percentage

⁵⁷ Malaysia bans sexist remarks in Parliament." 27th November 2012. The Indian Express. Available at: <http://archive.indianexpress.com/news/malaysia-bans-sexist-remarks-in-parliament/1036991/>

⁵⁸ "When Malaysian MPs' remarks in Parliament shocked Malaysians." 7th April 2017. Today. Available at: <http://www.todayonline.com/world/asia/when-malaysian-mps-remarks-parliament-shocked-malaysians>

⁵⁹ "Time for Parliament to clean up its act." 27th November 2016. Free Malaysia Today. Available at: <http://www.freemalaysiatoday.com/category/opinion/2016/11/27/time-for-parliament-to-clean-up-its-act/>

⁶⁰ 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.

⁶¹ "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>

⁶² Maria Chin was also arbitrarily arrested the month prior to her arrest under SOSMA under the Printing Presses and Publications Act (PPPA) for a purported issue related to the flyers for the Bersih 5 rally. Lawyers referred to the arrest as being in bad faith and selective. (See "Lawyers: Maria's arrest over Bersih flyers 'selective', form of harassment." Malay Mail Online. Available at: <http://www.themalaymailonline.com/malaysia/article/lawyers-marias-arrest-over-bersih-flyers-selective-form-of-harassment#sthash.KFU4UKT3.dpuf>

⁶³ 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.)

since 2004, but doesn't mention the lack of improvement since 2008.^{64,65} In 2016, only three out of 34 cabinet ministers⁶⁶ (8.8%) and six out of 34 deputy ministers (17.6%) were women.⁶⁷

- 7.5 The number of women judges in the Federal Court remains low at three out of 11 (27%).⁶⁸
- 7.6 **Only one political party in the coalition government has a quota** in place to ensure women's political participation.⁶⁹
- 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. Only indigenous women from east Malaysia have been elected into office.⁷⁰

Critical questions

Q10. Has the government developed concrete plans—including to introduce a fund to support women candidates, and to encourage all political parties and the Election Commission to implement temporary special measures—to increase the low numbers of women candidates in the electoral processes, as elected representatives, in Federal Court, and in public office or decision-making positions, including women from marginalised groups?

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.⁷¹ Furthermore, only 3.4% of women officers in the Malaysian Foreign Service hold positions at top decision-making levels.

⁶⁴ In 2013 this percentage was 10.4% and in 2008 it was also 10.4%.

⁶⁵ 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%.

⁶⁶ Since 1957, there have never been more than three women Ministers in Cabinet at one time.

⁶⁷ *Ministry of Women, Family and Community Development, Statistics on Women, Family and Community 2016*, page 102

⁶⁸ 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>)

⁶⁹ "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/>

⁷⁰ "International Women's Day 2017: Being bold for systemic change — Janarthani Arumugam." Malay Mail Online. 8 March 2017. Available at: <http://www.themalaymailonline.com/print/what-you-think/international-womens-day-2017-being-bold-for-systemic-change>

⁷¹ 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)⁷¹ 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*, p. 71.

Article 9: Citizenship

- 9.1 Malaysia maintains its reservation to Article 9(2) of CEDAW. Provisions of the FC on transmitting citizenship to children from Malaysian mothers to children born overseas remain discriminatory. **Only Malaysian fathers can confer their citizenship to their children via a streamlined process;⁷² mothers must go through a more arduous process.^{73,74,75,76}** The waiting time for the approval of such citizenship applications is two years, and grounds for rejections are not provided, which reduces the success rate of appeals and necessitates another two-year wait.
- 9.2 **Non-citizen wives married to Malaysian husbands are completely dependent on their husbands to maintain their legal status in the country.⁷⁷** The Malaysian spouse is required to be present for every application for the Long Term Social Visit Pass¹ and its frequent renewals, along with applications for Permanent Residence and Citizenship; they also must provide endorsement to work. This can equate to decades of dependence. 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**

⁷² 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.

<http://www.jpn.gov.my/en/maklumat-warganegara/permohonan-taraf-kewarganegaraan-di-bawah-perkara-14-perlembagaan-persekutuan-pengesahan-taraf-kewarganegaraan-kelahiran-luar-negara/>

⁷³ "Sex and the citizenry: the global laws that leave women and children in limbo." *The Guardian*. 11 February 2016. <https://www.theguardian.com/global-development/2016/feb/11/sex-citizenry-malaysian-law-women-children-limbo-nationality-citizenship>

⁷⁴ 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.

⁷⁵ "Malaysian women can register children born abroad." *The Star*, 12 April 2010.

⁷⁶ 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. (JPN website) <http://www.jpn.gov.my/en/maklumat-warganegara/permohonan-taraf-kewarganegaraan-di-bawah-perkara-14-perlembagaan-persekutuan-pengesahan-taraf-kewarganegaraan-kelahiran-luar-negara/>)

⁷⁷ The Malaysian spouse is required to be present for every application for the Long Term Social Visit Pass (LTSVP)⁷⁷ 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)

vulnerable in cases of domestic violence, estrangement, abandonment, or death of the husband.⁷⁸

- 9.3 The application criteria, approval process, and duration for obtaining the Long Term Social Visit Pass and Permanent Residence⁷⁹ vary at the discretion of Immigration Officers, with practices such as giving shorter term visas to couples without children.⁸⁰ **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.**

Critical questions

- Q11. Does the government intend to amend the language of Schedule II of the FC to allow both Malaysian men and women to confer their citizenship on their children born overseas to one Malaysian parent, thereby removing the existing discrimination against women?
- Q12. Does the government plan to review and streamline the process of birth registrations/citizenship applications and clear the backlog for children born overseas to Malaysian mothers?
- Q13. Does the government plan to review, reform, and amend all gender-biased laws, policies, regulations, and practices with respect to citizenship, Permanent Residence, Long Term Social Visit Pass, and endorsement to work to ensure women are accorded the same rights as men, and publish a clear, all-inclusive and transparent policy that removes all overt and covert gender and nationality bias, to prevent widespread administrative discretion and interpretation by officers?

Article 10: Education

- 10.1 There is a **gender gap in technical courses** at universities and at the postgraduate degree level, in which more men are enrolled than women in vocational and technical subjects such as Engineering, Mathematics, and Physics.⁸¹

⁷⁸ 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.

⁷⁹ Although tougher rules are imposed on non-citizen husbands, the social, economic and psychological impact, affects the Malaysian wife tremendously.

⁸⁰ 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.

⁸¹ 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

- 10.2 **Transgender and gender diverse students ('effeminate' boys,⁸² 'masculine' girls⁸³) face discrimination in both public schools and higher learning institutions based on gender identity and expression.** They are stigmatised and, because of the lack of an enabling environment, often drop out or are forced to abandon their studies. They are sometimes forced to attend camps to 'convert' them to conform to gender stereotypes.⁸⁴ Schools regard homosexuality and 'gender confusion' as an offence and students can be punished.^{85,86}
- 10.3 There is a continued lack of comprehensive **sex education** in all schools that is rights-based.
- 10.4 Female teachers outnumber male teachers; however, there is no information available on the number of female teachers who transition to decision-making positions as compared to men.
- 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.

Critical questions

- Q14. Please provide data for the reporting period on the educational attainment of girls who have been married below the age of 18, and on the percentage of teenage girls who continue their education after pregnancy? If the government does not collect this data, please explain the reason for this.
- Q15. How does the government intend to address gender binary policies, gender stereotypes, and gender gaps in educational institutions?

Article 11: Employment

- 11.1 In 2015, **the labour force participation rate for women, which has remained consistently low for many years, was 54.1%**⁸⁷ (the rate for men was at 80.6%). Additionally, what is not reflected in the available information is

⁸² "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>

⁸³ "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>

⁸⁴ "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>

⁸⁵ 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.

⁸⁶ Some university administrations are also initiating 'research' which involves asking students to identify other students of diverse sexual orientations and gender identities.

⁸⁷ *Ministry of Women, Family and Community Development, Statistics on Women, Family and Community 2016*, page 32

the type of work women are engaged in, which tends to be lower-wage,⁸⁸ and the fact that women have less opportunities for advancement.⁸⁹ Statistics on employment disaggregated based on ethnicity are not available.

- 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.⁹⁰ However many of these women may actually be working in the informal sector or working for a family business. Alternatively, 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 been implemented widely.⁹¹ **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,⁹² and the complaint mechanism.⁹³** We applaud the landmark ruling of the Federal Court in the case of *Mohd Ridzwan Bin Abdul Razak Appellant and Asmah Binti Hj. Mohd Nor*,⁹⁴ which 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 to define, address, and provide additional remedies for sexual harassment⁹⁵ including to allow complainants to seek redress without the time, expense, and public nature of going to court, and without proving harm.
- 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.”**⁹⁶ This leads to severe difficulty in securing employment. Combined with the mandatory requirement of getting permission to work from the Malaysian spouse, this has

⁸⁸ “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>

⁸⁹ Ibid.

⁹⁰ *Ministry of Women, Family and Community Development, Statistics on Women, Family and Community 2016*, page 43

⁹¹ “Legislate against sexual harassment.” The Malaysian Bar. 6 November 2009. Available at: http://www.malaysianbar.org.my/letters_others/legislate_against_sexual_harassment.html

⁹² 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.

⁹³ Alagappar, 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>

⁹⁴ *Mohd Ridzwan Bin Abdul Razak Appellant and Asmah Binti Hj. Mohd Nor*. In The Federal Court Of Malaysia (Appellate Jurisdiction) Civil Appeal No: 01(F)-13-06/2013 (W). 2 June 2016. Available at: [http://www.foongchingleong.com/judgements/Mohd%20Ridzwan%20bin%20Abdul%20Razak%20v%20Asmah%20Binti%20Hj%20Mohd%20Nor%20\(FC\).pdf](http://www.foongchingleong.com/judgements/Mohd%20Ridzwan%20bin%20Abdul%20Razak%20v%20Asmah%20Binti%20Hj%20Mohd%20Nor%20(FC).pdf)

⁹⁵ 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.

⁹⁶ “Ease the burden of foreign spouses.” 1 April 2016. Available at: <http://www.thestar.com.my/opinion/letters/2016/04/01/ease-the-burden-of-foreign-spouses/>

acute implications for non-citizen wives, as it limits employment opportunities until the non-citizen spouse obtains Permanent Residence (PR), a process which itself is mired in bureaucratic delays.⁹⁷ Additionally, the Malaysian employer's contribution of 12% of the salary to the social security fund (EPF) is not mandatory for foreign spouses,⁹⁸ nor do foreign spouses receive social security protection under SOCSO, which provides benefits to employees who suffer from employment-related injuries, or invalidity pension.

Critical questions

- Q16. Has the government considered using any temporary special measures—including employer incentives such as tax breaks—to increase not only the percentage of women participating in the labour force, but the percentage of women in management and decision-making positions in the private sector?
- Q17. In light of the negative implications of economic dependency of non-citizen wives on their husbands, what are the government's plans to remove barriers to employment and the right to work, including removal of the statement of prohibition from employment on the visa and requirement to obtain permission to work from their Malaysian husbands?
- Q18. Does the government plan to make employers' contribution to EPF and SOCSO for non-citizen spouses mandatory, given that inadequate social protection has a negative outcome for women?

Article 12: Health

- 12.1 Data on health needs to be disaggregated by gender in order to understand how and why diseases affect women and men differently.
- 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.⁹⁹

⁹⁷ 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.

⁹⁸ "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/>

⁹⁹ Chee-Koon Chan. "The Malaysian health system in transition: The ambiguity of public and private." Available at: http://www.municipalservicesproject.org/sites/municipalservicesproject.org/files/publications/OccasionaIPaper26_Chan_Malaysian_health_system_in_transition_Aug2014.pdf

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.^{100,101} The use of modern methods of contraception is lower, at 34%.¹⁰²
- 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.^{103,104}
- Information and counselling from government hospitals are often provided within a religious framework, rather than a reproductive health rights framework.
- Women do not have access to full information on reproductive rights so are not equipped with the knowledge to make informed decisions.
- There are privacy violations in government hospitals, with anecdotal evidence of unmarried Muslim women over 18 years of age giving birth in hospitals and not being allowed to leave until the woman's parents have been contacted.
- For sterilisation procedures, women need the consent of their husbands.

12.4 Women are the **fastest growing part of the population being infected with HIV**.¹⁰⁵

12.5 **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.

12.6 **Sex education is inadequate** and based on religious morals rather than a rights-based approach to bodily integrity. The sex education curriculum for schools was approved by Cabinet in 2006, but has yet to be fully implemented.

¹⁰⁰ ARROW and The Federation of Reproductive Health Association (FRHAM), Country Profile on Universal Access to Sexual and Reproductive Health: Malaysia, 2015, <http://arrow.org.my/wp-content/uploads/2015/04/Country-Profile-SRH-Malaysia.pdf>

¹⁰¹ 2014 Family Planning Survey in Malaysia: <http://www.lppkn.gov.my/index.php/pusat-sumber/2016-02-26-02-25-15/2016-03-04-00-42-00/file>

¹⁰² Ibid.

¹⁰³ "In second shot at abortion case, Nepali woman pleads not guilty." 29 January 2015. Malay Mail Online. Available at: <http://www.themalaymailonline.com/malaysia/article/in-second-shot-at-abortion-case-nepali-woman-pleads-not-guilty#sthash.zH1ne55i.dpuf>

¹⁰⁴ "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."

¹⁰⁵ 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 2014.¹⁰⁵ 92.4% of women with HIV acquired it through heterosexual transmission.

The government banned a children's educational book on human reproduction in February 2012 on the grounds that it would corrupt moral values.¹⁰⁶

- 12.7 Raids on entertainment venues are common. **The presence of condoms can be used as evidence against an individual and works against ensuring and protecting public health.**¹⁰⁷ This hinders people from practising safe sex.
- 12.8 **Access to health care is limited for some groups of women**, including refugee women, indigenous women, migrant women, transgender women, and female prisoners – including pregnant women¹⁰⁸ and transgender women.¹⁰⁹

Article 13: Social and economic rights

- 13.1 The government spends very little on benefits^{110, 111} 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.¹¹²
- 13.2 Non-citizen wives of Malaysian husbands face difficulty in opening individual bank accounts, leaving them economically dependent on their husbands.
- 13.3 Non-citizen spouses 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-

¹⁰⁶ According to the 2014 Population and Health Survey, (Laporan Penemuan Utama KPKM-5 : <http://www.lppkn.gov.my/index.php/pusat-sumber/2016-02-26-02-25-15/2016-03-04-00-42-00/file>) only 45% of people surveyed had knowledge about contraceptives. This statistic was even lower within the 13-17 age bracket, where only 38.4% of people surveyed had knowledge about contraceptives. The consequences of these statistics are reflected in the increasing rate of teenage pregnancy, where a 300% increase was recorded between 2010 and 2012. (<http://www.mm Gazette.com/oh-dear-im-pregnant-dr-john-teo/>)

¹⁰⁷ "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/>

¹⁰⁸ 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/>)

¹⁰⁹ 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/>)

¹¹⁰ "Welfare will not bankrupt Malaysia." Free Malaysia Today. 17th July 2013. Available at: <http://www.freemalaysiatoday.com/category/opinion/2013/07/17/welfare-will-not-bankrupt-malaysia/>

¹¹¹ "RM1.4bil allocation for elderly, disabled and single mothers." New Straits Times. 24 March 2012.

¹¹² Unpublished paper by Prema Devaraj, Women's Centre for Change (WCC), Penang, 2010.

income families and also results in many non-citizen wives not having the ability to purchase or own property.

Critical questions

Q19. Does the Government plan to 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 The representation of women in village committees is very low.¹¹³

14.2 Penan communities in Sarawak experience a denial of their rights to land and access to services. Many are dependent on the logging companies to provide basic services, such as transport. Women and girls are particularly vulnerable and have experienced abuse. A National Task Force was formed and a report produced with some economic remedies proposed, but redress for the abuse is limited.¹¹⁴

14.3 Due to poor infrastructure such as roads many settlements/villages/longhouses are not easily accessible in rural parts of peninsular and east Malaysia, and as a result school attendance is irregular,¹¹⁵ and girls are put at risk of sexual abuse and other forms of violence.¹¹⁶ This results in a high school dropout rate for girls.¹¹⁷

14.4 There is a lack of consistent and planned skills training for rural women.

14.5 Women are not represented in decision-making with regard to rural projects.

Article 15: Equality in the law

15.1 The law treats women unequally to men, for example:

15.1.1 The Penal Code and state *Syariah* laws criminalise “enticing a married woman,” perpetuating a view that women are the property of their husbands.

¹¹³ 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))

¹¹⁴ “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

¹¹⁵ “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>

¹¹⁶ NGO service provider’s report

¹¹⁷ “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>

- 15.1.2 Most states have Syariah evidence laws equating the testimony of two female witness' to that of one male witness.¹¹⁸
- 15.1.3 Laws discriminate against women on the basis of their gender identity, gender expression, and sexual orientation.
- 15.1.4 Malaysian mothers to children born overseas do not have the same rights to confer their citizenship to their children as fathers.

Article 16: Marriage and family relations

- 16.1 In 2005, Parliament passed the Islamic Family Law (Federal Territories) (Amendment) Act 2005, which contained several provisions discriminatory to women. The then Prime Minister noted the concerns of women's groups and stated that further amendments may be made to the law to remove the discriminatory elements.¹¹⁹ 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). This has created much difficulty for parties especially in cases when a husband converts to Islam. 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.¹²⁰
- 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.¹²¹
- 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

¹¹⁸ Section 86 of the Syariah Court Evidence (Federal Territories) Act 1997.

¹¹⁹ 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)).

¹²⁰ 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,¹²⁰ 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.

¹²¹ 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.

mother and her relations, while the father has no rights to the child and vice versa.¹²²

Critical questions

Q20. When there is a difference of opinion about minimum age of marriage within the Muslim community and strong calls for reform, why is the government allowing for this issue to be decided based only on interpretations of Muslim family law by some groups, rather than using a best-interests-of-the-child framework?

General Recommendation 19: Violence against women

19.1 **Although the Domestic Violence Act 1994 (DVA) has been in operation since 1996, the implementation of this law has been poor. 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.¹²³

19.2 In 2011, amendments to the DVA were passed by Parliament. The **definition of domestic violence was expanded to include “psychological abuse, including emotional injury.”** While this is a positive amendment, many other problems remain with the legislation. Additional positive amendments were brought to Parliament in 2017, but still leave some gaps, including the protection of non-married intimate partners under the act.¹²⁴

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.¹²⁵

19.4 Stalking has not been criminalised in Malaysia.¹²⁶

¹²² Sections 80 and 85 of the Islamic Family Law (Federal Territories) (Amendment) Act 2005.

¹²³ 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.” Page 38. 10 September 2015. Women’s Centre for Change.)

¹²⁴ The Domestic Violence (Amendment) Bill 2017 was tabled for reading in the Dewan Rakyat in April 2017, and is planned to be passed in the Dewan Rakyat in July 2017.

¹²⁵ 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.” 10 September 2015. Women’s Centre for Change.)

¹²⁶ 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.

- 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.**¹²⁷ 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.^{128, 129}
- 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.”¹³⁰
- 19.7 According to Section 377C of the Penal Code, **rape with an object is not considered rape** – it is considered sex “against the order of nature.”
- 19.8 **The State carries out violence against women as punishment for crimes under *Syariah* law.**¹³¹ For example, women found guilty of *musahaqah* (lesbianism) can be punished by whipping.¹³²
- 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 alone. In these cases, the trans women were subjected to brutal violence, including being beaten to death with a

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.

¹²⁷ 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/>)

¹²⁸ “Rape victims should marry their rapists, Malaysian MP tells parliament.” The Guardian. 5th April 2017. Available at: <https://www.theguardian.com/world/2017/apr/05/victims-should-marry-their-rapists-malaysian-mp-tells-parliament>

¹²⁹ “Women’s group: A life of rape for victims who marry rapists.” 5th April 2017. Malay Mail Online. Available at: <http://www.themalaymailonline.com/malaysia/article/womens-group-a-life-of-rape-for-victims-who-marry-rapists>

¹³⁰ 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.

¹³¹ 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.

¹³² Six states in Malaysia impose maximum fines of RM 3,000, three years of imprisonment, and six strokes for *musahaqah*,

hammer, strangled, gagged, stabbed multiple times, physically assaulted, pushed from a building, and drowned in a water retention pond.¹³³

- 19.10 **Online gender-based violence (GBV) is a growing area of concern.** Although there is little data on the frequency and forms of online GBV in Malaysia, reported instances include distribution of intimate photos or videos without consent; harassment (women receiving insulting messages via text or social media);¹³⁴ stalking; dissemination of private information; identity theft; hate speech; and rape and death threat/violence.^{135,136}

Critical questions

- Q21. Increased training of police and other state responders, both with regard to their obligations under the law as well as gender sensitivity, can improve response and implementation of existing laws on VAW. Does the government have an action plan, including allocating more resources to law enforcement, to address VAW?

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

¹³³ "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/>

¹³⁴ 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.

¹³⁵ 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 aerosal 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/>)

¹³⁶ 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>)

Coalition provided detailed recommendations to address gaps in the Regulations; however the government put these regulations on hold.¹³⁷

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. The impact of this discrimination is greater on some areas of women's human rights, such as women's sexuality rights, including the right to sexual behaviour and practices, 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. 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 the human rights of trans people and women in same-sex partnerships are respected, protected and promoted.
- There is **no avenue for redress for victims of discrimination and violence on the basis of sexual orientation and gender identity.**
- 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.’**

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, subjecting them to risk of harm including infectious diseases and death. **Female detainees are subject to sexual and GBV,¹³⁸ other forms of abuse, poor sanitation, and a lack of adequate**

¹³⁷ 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>). Furthermore, although the initiative by the government is welcomed, these Guidelines, which are not legally-binding, are not effective for better protection of domestic workers.

¹³⁸ Erica Holzaepfel and Diane Paul through Social Impact, Inc on behalf of the United States Department of State, *Evaluation Report: Evaluating the Effectiveness of Gender Based Violence Prevention Programs with Malaysia*, (2013) available at: http://www.ecoi.net/file_upload/1226_1441694758_233056.pdf

food, water,¹³⁹ and medical care.¹⁴⁰ Even pregnant and lactating women are detained and lack access to facilities and services appropriate to their needs.¹⁴¹ 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.^{142,143} 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.
- 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.

Critical questions

- Q22. Given that granting asylum seeker and refugee women legal status would alleviate many of the vulnerabilities and protection risks these women face in the form of poverty, detention, exploitation and SGBV, lack of access to justice, employment and lack of affordable healthcare, why has the government not yet adopted or implemented a policy to adopt effective measures for improving the protection of refugee women (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) including granting legal status, and what is the government's plan to do so?

¹³⁹ 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>

¹⁴⁰ Ibid.

¹⁴¹ Ibid.

¹⁴² 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 [5]. 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.

¹⁴³ Asia-African Legal Consultative Organization (AALCO), *Bangkok Principles on the Status and Treatment of Refugees* ("Bangkok Principles"), 31 December 1966. Available at: <http://www.refworld.org/docid/3de5f2d52.html>

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

Q23. Given the vulnerabilities of asylum-seeker and refugee girls and pregnant and lactating women, why has the government not yet adopted or implemented a policy to allow for an alternative to immigration detention for these groups and what is the government's plan to do so?