

# **Submission on the implementation of the Convention on the Elimination of All Forms of Discrimination against Women in Malaysia by Human Rights Commission of Malaysia (SUHAKAM) for the 69th Pre-Sessional Working Group (24 Jul 2017 - 28 Jul 2017)**

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## **1. Law on Gender Equality**

1.1. The Federal Constitution of Malaysia was amended in 2001 to include ‘gender’ [Article 8] as one of the prohibitive grounds of discrimination in Malaysia. Consistent with the CEDAW Committee’s recommendation in 2006, there have been repeated calls by the civil society organisations and SUHAKAM for the Government to introduce an equality law that will operationalize this provision. While the Government had expressed intention to introduce gender equality law<sup>1</sup>, to date no such law has been adopted. *The Commission calls on the Government to expedite this process and in doing so to ensure that the consultative process is inclusive.*

## **2. Marital Rape**

2.1. Marital rape continues to be an exception of rape under the Malaysian Penal Code. Notwithstanding the introduction of section 375A of the Penal Code in 2006<sup>2</sup> which make it an offence for a husband to cause hurt or fear of death or hurt to his wife in order to have sexual intercourse with her<sup>3</sup>, *the Commission urge the Government to criminalise marital rape by removing the exception under section 375<sup>4</sup> and to add an explicit provision on marital rape.*

## **3. Sexual Harassment**

3.1. The amendment to the Employment Act 1955 provides a mechanism on how the employers should respond to the complaint on sexual harassment. The amended Act not only gives definition to sexual harassment [section 2(g)] but also what amounted to a complaint of sexual harassment [section 81A] and the need for inquiries upon complaint therewith. What is lacking in this legislation – it did not address the rights and liabilities of the victim and the harasser.

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<sup>1</sup> Ministry to hold discussions to formulate Gender Equality Act- Rohani. Bernama.com, 3 November 2016. <http://www.bernama.com.my/bernama/v8/ge/newsgeneral.php?id=1298885>

<sup>2</sup> Introduced in Penal Code (Amendment) Act 2006 [Act A1273]. Date of coming into force: 7 September 2007 [PU(B) 321/2007].

<sup>3</sup> Section 375A provides that “any man who during the subsistence of a valid marriage causes hurt or fear of death or hurt to his wife or any other person in order to have sexual intercourse with his wife shall be punished with imprisonment for a term which may extend to five year.”

<sup>4</sup> Exception to Section 375 – “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.”

3.2. The Practice Code on the Prevention of and Eradication of Sexual Harassment in the Workplace 1999<sup>5</sup> (known as 1999 Practice Code) was introduced by the Ministry of Human Resource of Malaysia in 1999 to address issues of sexual harassment in workplace. Although the Code describes what amount to sexual harassment (Article 4), this Code stands only as a mere guideline to advise the employer on what amount to sexual conduct and does not provide an avenue for the victim to act against the perpetrator.

3.3. The Commission was recently informed by the Ministry of Human Resources (MOHR) that since the amendment to Employment Act in 2012, 80 cases of sexual harassment were reported to the MOHR from January until September 2016. The number of complaints may not be accurate as not all victims choose to lodge a complaint with the MOHR and it should not be assumed that this number represents the actual situation as sexual harassment victims carry the fear of harassment and may be subject to re-victimisation by the authorities and feel disgraced or ashamed when meeting with people. Different approach from the current complaints mechanism should be taken to enable the victim to obtain the necessary assistance.

3.4. *The Commission recommends that training on sexual harassment be made compulsory for employers and employees and it should not be limited to within the private sectors but also government agencies especially within the enforcement authorities. Such training will educate employers and employees on harassment; reduce the incidence of harassment; and at the same time provide assistance to the victims to step forward and end the harassment.*

#### **4. Domestic Violence**

4.1. The Domestic Violence Act 1994 was amended in 2012 to widen the scope of domestic violence to include emotional, mental and psychological abuse [section 2(a)-(h)], and also provide Interim Protection Order (IPO) or Protection Order (PO) to be filed at any district to protect a victim by way of *ex parte* application (section 12A).

4.2. The amendment provides police with the power of arrest without warrant where there is a likelihood of actual physical injury or to protect the person under section 7(1) and (2) of the Act. However, there is no protection provided for victim in the case of violence against intimate partner who is not party to a marriage. While various NGOs provide assistance to the abused partners, effective legal protection and remedies are still lacking. *The Commission calls upon the*

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<sup>5</sup> Further information can be obtain from the following link:

<http://www.ilo.org/dyn/travail/docs/1627/CODE%20OF%20PRACTICE%20ON%20THE%20PREVENTION%20AND%20ERADICATION%20OF%20SEXUAL%20HARASSMENT%20IN%20THE%20WORKPLACE.pdf>

*government to consider reviewing the current legislation to provide legal protection to both married and non-married partners who are abused.*

## **5. Early and Forced Marriage**

- 5.1. Child marriage is a grave human rights violation, which could significantly impact a child's rights to health, education, equality, non-discrimination and to live free from violence and exploitation. The best interests of the child must prevail and must not be superseded by traditional practices when it comes to child marriages. It has been reported in 2010 that 16,000 girls aged below 15 in the Malaysia have entered in State or Court sanctioned marriages<sup>6</sup>. In 2015, the Shariah Court system received more than 1,000 applications from Muslims for permission to marry minors<sup>7</sup>. The said statistic shows an alarming number of applications, and emphasises the growing problem of child marriages in Malaysia.
- 5.2. The discriminatory nature of the law on marriage among females and males in Malaysia has created a gap that has been exploited by rapist who have married their rape victims in order to cover up and escape punishment for rape. The recent case of Ahmad Syukri Yusuf, who was granted a discharge not amounting to acquittal in July 2016 for statutory rape after he married his 14 years old victim<sup>8</sup> is an example of the inadequate laws to protect female victims from being forced to marry their rapist. The Commission commends the action of the Minister of Women, Family and Community Development (MWFC) in taking a pro-active stand in urging the Attorney General's Chambers to pursue the case and as a result, the High Court reinstated the statutory rape case and issued an order for the case to be heard by the Session Court.
- 5.3. The Commission is concerned with the omission of any provisions addressing child marriages in the newly amended Child Act 2001. Despite recommendations by the Commission to amend all domestic laws to raise the legal age of marriage for all to 18 years, to be in compliance with the Child Act 2001 which defines children as those below the age of 18<sup>9</sup>, no amendments have been forthcoming. *Therefore, the government should consider providing for specific provisions on child marriages as it is detrimental to the basic rights of women and children.*

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<sup>6</sup> Time to ban child marriage in Malaysia, Malaysiakini, 26 April 2016:

<http://www.malaysiakini.com/news/339618>

<sup>7</sup> PAS MP suggests child marriage the answer for lustful teens, Malay Mail Online, 6 April 2016:

<http://www.themalaymailonline.com/malaysia/article/pas-mp-suggests-child-marriage-the-answer-for-lustful-teens#sthash.yDmUdQW0.dpuf>

<sup>8</sup> <http://time.com/4438342/malaysia-rape-marry-victim/>

<sup>9</sup> Suhakam Press Statement, 18 April 2016,

[http://www.suhakam.org.my/wp-content/uploads/2016/04/Press-Statement\\_SUHAKAM-Welcomes-the-Child-Amendment-Bill-2015.pdf](http://www.suhakam.org.my/wp-content/uploads/2016/04/Press-Statement_SUHAKAM-Welcomes-the-Child-Amendment-Bill-2015.pdf)

## **6. Labour Participation, Economic and Social Benefits**

- 6.1. According to the Number of Employed Persons by Industry and Sex 2011,<sup>10</sup> Malaysian women dominated in several fields of employment: education, activities of households as employers; undifferentiated goods and services producing activities of households for own use, human health and social work activities and financial and insurance/*takaful* activities.
- 6.2. In the Number of the Registered Professionals by Sex in 2011 -2012,<sup>11</sup> there was an increase in the percentage of registered women professionals from 2010 to 2011. According to the data, only the dentistry profession is dominated by women with 63.2% in 2012 and 62.8% in 2011. Professions such as Architects, Engineers and Land Surveyor are still dominated by men probably due to gender stereotyping in the labour market for technical workforces.
- 6.3. The Tenth Malaysia Plan (2011-2015) offers a policy to increase the number of women participation in the key decision-making level. According to the statistics on the number of women as Secretary General, Deputy Secretary General and Director General in 2011-2012, the number went down from 45 positions (out of 213 positions) in 2011 to 42 positions (out of 233 positions) as of March 2012.<sup>12</sup> According to the Minority Shareholder Watchdog Group Malaysian Corporate Governance Index 2011, there were only 8.4% of women on the boards of Malaysia's Public Listed Companies (PLCs). The above figures show that the number of women in leadership and management positions remains depressingly low within both the public and private sectors.
- 6.4. The Government in response, launched the New Corporate Governance Blueprint 2011 targeted for the corporate sector to ensure that women make up at least 30% of those in decision-making positions by 2016. Companies were recommended to formulate policies to increase the number of women candidates as board members. The Blueprint also recommends for companies to disclose gender diversity policies in their annual reports, targets and measures to achieve 30% women participation by 2016.
- 6.5. The number of women in the Civil and Syariah judicial system is low. As of 18 March 2012, there were only 35.4% women represented in the Civil judicial system. As of 2011, there were 24.1% women in Syariah judicial system and this figure increased slightly to 25.4% in 2012.<sup>13</sup>
- 6.6. The Commission would like to commend the State of Selangor on the appointment of Ms. Noor

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<sup>10</sup> Ibid p. 16 and 17.

<sup>11</sup> Ibid p. 18, 2011 and 2012 – as at mid-year.

<sup>12</sup> Ibid p.69

<sup>13</sup> Ibid p. 72, consisting of Chief Registrar of the State Syariah Court, Syarie Judges, Sulh Officers and Syariah Officers.

Huda Roslan and Ms. Nenny Shuhaidah as judges of the State of Selangor Syariah High Courts of Malaysia on 27 June 2016. In the same event, seven (7) female judges were appointed to Lower Syariah Courts, four (4) appointed as Registrar of the Syariah High Court and another four (4) as Assistant Registrar.<sup>14</sup> *The government should, as per its commitment in its Universal Periodic Review (UPR)<sup>15</sup> in 2013 ensure that the empowerment of women is prioritised, especially with regard to increasing women's participation in labour force and increasing the number of women in key decision-making position.*

6.7. The Commission since 2010 has carried out a number of engagements with stakeholders on the issue of business and human rights. One of the key finding from these activities is the lack of awareness and recognition of the role and obligation of business to ensure that their operations do not in any way lead to human rights abuses. The Commission also observed that businesses are not accustomed to the concept of Corporate Social Responsibility (CSR) and the United Nations guiding Principle on Business and Human Rights (UNGP). *The Commission recommends that the government through the enactment of laws and policies encourage business entities to respect human rights and incorporate human rights elements in their business activities.*<sup>16</sup>

## **7. Participation of Women in Politics and Decision-Making**

7.1. The Commission commends the introduction of the strategies under the National Plan of Action for the Advancement of Women regarding women's participation in politics by the Government, However, there is still a disproportionate number of women leaders. The representation of women at the lower House of Parliament following the General Election<sup>17</sup> was merely 23 of out the 222 members, thus making up only 10.4% of the lower House of Parliament. This is also reflected in Cabinet, where only 3 out of 37 cabinet ministers and 7 out of 32 deputy ministers are women.<sup>18</sup>

7.2. The Commission applauds the election of Hannah Teoh in 2013, as the youngest and first woman Speaker of any legislative assembly in the country.<sup>19</sup> However, this does not change the fact that the number of women represented in decision-making positions are alarmingly low in Malaysia.

7.3. The Commission believes that women's participation in government should be equal at all levels. The prevalence of constitutional checks and balances and separation of power in modern constitutions,

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<sup>14</sup> *Dua Hakim Wanita Pertama Mahkamah Tinggi Syariah Malaysia dilantik*. Astro Awani, 27 June 2016. <http://www.astroawani.com/berita-malaysia/dua-hakim-wanita-pertama-mahkamah-tinggi-syariah-malaysia-dilantik-109363>

<sup>15</sup> Malaysia's Universal Periodic Report, 6 August 2013, A/HRC/WG.6/17/MYS/1, para 59.

<sup>16</sup> Preface. Strategic Framework on a National Action Plan on Business and Human Rights for Malaysia. Human Rights Commission of Malaysia. March 2015.

<sup>17</sup> 5 May 2013

<sup>18</sup> Malaysia's Combined third to fifth periodic reports to the CEDAW Committee, 1 September 2016, CEDAW/C/MYS/3-5, paras 61-62

<sup>19</sup> <http://www.thestar.com.my/news/nation/2013/05/31/subang-jaya-rep-hannah-yeoh-appointed-first-woman-speaker/>

have altogether altered the material attributes of leadership. The rules of Islamic jurisprudence also hold that a substantial change in the effective cause and rationale (*illah*) of a ruling should be followed by a corresponding change and suitable ruling through *ijtihad* (to derive and deduce religious opinion about a matter that is not mentioned in the sources of Islam).<sup>20</sup>

7.4. *Therefore, the government should, as per its commitment in its Universal Periodic Review (UPR)<sup>21</sup> in 2013 ensure that the empowerment of women is prioritised, especially with regard to increasing women's participation in politics and increasing the number of women in key decision-making position.*

## **8. Special Protection Measures: Appropriate measures to suppress all forms of trafficking and exploitation of women**

### 8.1. Anti-Trafficking in Persons and Anti-Smuggling of Migrants (Amendment) Act 2015

- a) The Commission welcomes the amendment made to the Malaysian Anti-Trafficking in Persons and Anti-Smuggling of Migrants (Amendment) Act 2015<sup>22</sup> (ATIPSOM). The amended Act strongly embodies the definition of “trafficking in persons” as defined by the Trafficking Protocols providing better protection to the victim, enabling them to move freely with the prospect to be gainfully employed<sup>23</sup> and the redress mechanism set up for victims of trafficking.<sup>24</sup> The Act also includes the definition for smuggling of migrants,<sup>25</sup> an act distinctive from trafficking. In addition, it also provides places of refuge to house the victims<sup>26</sup> (shelters now may not necessarily be a place run by the government) and the appointment of protection officers to look after and protect the victims, preparation of reports and supervision.<sup>27</sup>
- b) While the amendments strengthened the protection accorded to victims, it is not gender specific/sensitive. Specific measures need to be taken to ensure women are not further victimised when they are rescued and are able to be reintegrated into society. Therefore, a sustainable protection

<sup>20</sup> Annual Report of the Human Rights Commission of Malaysia (Suhakam), at page 108

<sup>21</sup> Malaysia's Universal Periodic Report, 6 August 2013, A/HRC/WG.6/17/MYS/1, para 59

<sup>22</sup> Act 1385

<sup>23</sup> Section 51A: Permission to move freely and to work.

(1) Subject to any regulations made under section 66, any person to whom an interim protection order has been granted, or any trafficked person to whom a Protection Order has been granted, may be given permission by the Council

(a) to move freely; or

(b) to be employed, engaged or contracted with to carry out work in any occupation during the period of the interim protection order or Protection Order, as the case may be.

(2) A foreign national who is granted permission to work under subsection (1) shall be subject to any restrictions and conditions as may be imposed by the relevant authorities relating to employment of foreign nationals in Malaysia.

<sup>24</sup> Section 66A: Order for payment of compensation to the trafficked person.

<sup>25</sup> Definition can be found under Interpretation as provided by Section 2 of the 2015 Act.

<sup>26</sup> Section 42(1): Place of refuge.

<sup>27</sup> Section 43(2).

solution should be developed to assist women victims to reintegrate into the society.

8.2. *The Commission calls for coordination on all political levels in Malaysia to pledge its commitment to effectively suppress trafficking and smuggling of women, regionally and internationally.* Advocacy campaign should be amplified to target groups and civil society to ensure various levels of the society are aware of the danger of trafficking, the relevant legislation and protection available to such victims. The Commission is dismayed by the lack of campaigns over the recent years by the MOHA, MFWD, Royal Malaysia Police (RMP) and other relevant agencies and would like to impress upon all on the importance of educating the public on the situations and dangers of trafficking and smuggling in Malaysia.

## **9. Discrimination on basis of sexual orientation and gender identity**

9.1. In Malaysia, people of different sexual orientation and gender identity face various discriminations at different level in many areas including employment, healthcare and education. To further understand the situation, the Commission conduct a research focusing on the discriminations faced by **transgender people in Kuala Lumpur and Selangor.**

9.2. Based on the initial findings of a research project by the Commission <sup>28</sup>the transgender people faced discrimination in the areas of employment, healthcare, education, housing due to their gender identity, gender expression and/or sexual orientation, by a number of authorities including the National Registration Department (NRD), the Road Transport Department (RTD), the Social Welfare Department (SWD), the Royal Malaysia Police (RMP), the Immigration Department and hospitals.

9.3. Violations of human rights also occurred within the community that include arbitrary and violent arrests by enforcement authorities and denial of employment due to their gender identity and gender expression further aggravate their vulnerable position. This is due to the position of the State that transgender persons are not recognised as part of society and the existing discriminatory laws and policies that provide for persecution and prosecution against transgender person. These alienations create barrier and limit their fundamental rights.

9.4. *Due to the wide range of discrimination faced by transgenders, the Commission opines that it is necessary for the Government to establish a task force to address issues of discrimination raised by transgender persons which would then be responsible to review legislations, including Shari'a laws and policies to ensure where applicable they are consistent with international human rights standards.*

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<sup>28</sup> Project on Elimination of discrimination against transgender in Kuala Lumpur and Selangor (right to employment, health care, education, housing and to be free from physical and psychology harassment). Ongoing project by The Human Rights Commission of Malaysia.

9.5. Specific policies need to be developed to accommodate the transgender community to ensure that their rights and dignity are respected and secured. This will ensure that they will not fall into the gap and left invisible in economics and social sphere. Therefore, public services including public facilities should be accessible and friendly to transgender and for example, a binary toilet in public spaces has made difficult for a transgender person to access. Official dealings with government should also transgender friendly and void from discrimination against the person.

## **10. Access to Justice in the Syariah Court**

10.1. The Commission commends the initiatives of the Syariah Court in States such as Selangor, where the Selangor Syariah Judiciary Department (JAKESS) has introduced mobile Syariah Courts<sup>29</sup> to provide better access to courts, and in particular the indigenous people. In addition, a fast-track divorce process for Muslim couples who have mutually agreed to dissolve their marriage has also been introduced.<sup>30</sup> Further, JAKESS also provides for temporary lodging for single mothers and those who do not have means to travel to the Syariah Courts for their cases.<sup>31</sup> Future initiatives by the Commission include to conduct watching brief in the Syariah Courts with the collaboration of the Syariah legal professional bodies.

10.2. Nevertheless, it must be highlighted that such initiatives are dependent on each Syariah Judicial Department in each state in Malaysia. *Consequently, the Commission recommends that such systems should be standardised and implemented across all Syariah Courts in Malaysia, to ensure that women in every state in Malaysia has fair and just access to justice.*

## **11. Other Vulnerable Group**

11.1. Women migrant workers, in particular those who are irregular, and women refugees and asylum seekers may, because of their status, fall further from available protection mechanisms. In absence of any legal or policy framework, cases of discrimination and violence against these vulnerable groups may go unreported.

11.2. *The Commission would like to reiterate its call to the government of Malaysia to accede to the remaining international conventions on Protection of the Rights of all Migrant Workers and Members of their family (1990); Convention relating to Status of Refugees (1951) and Protocols Relating to Status of Refugees (1967) and also the Convention against Transnational Organized Crime (Migrants*

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<sup>29</sup> <http://borneobulletin.com.bn/mobile-court-helps-orang-asli-hulu-langat/>

<sup>30</sup> <http://www.thestar.com.my/news/nation/2015/07/03/selangor-six-hour-divorce/>

<sup>31</sup> <http://www.jakess.gov.my/v4/index.php/perkhidmatan/bsk-transit>



*Protocol)<sup>32</sup> to promote better mainstreaming and protection to these vulnerable groups.*

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<sup>32</sup> Press Statement 26 May 2015.