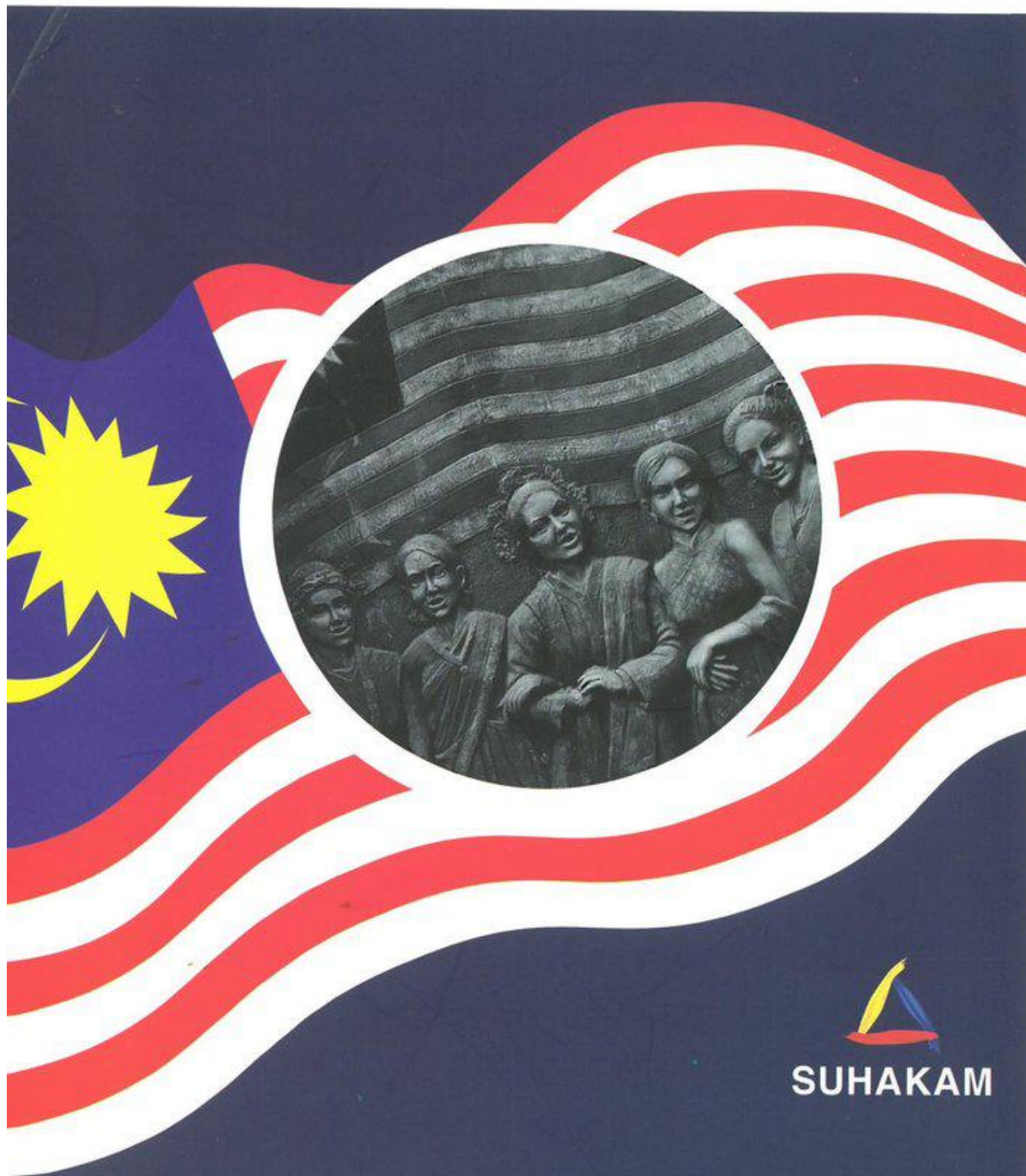


REPORT ON THE STATUS OF **WOMEN'S RIGHTS IN MALAYSIA**



SUHAKAM'S REPORT ON THE STATUS OF WOMEN'S RIGHTS IN MALAYSIA



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FOREWORD

This report on the Status of Women's Rights in Malaysia as of April 2010 is the product of SUHAKAM's work on women's rights spanning various meetings, dialogues, roundtable discussions, research studies, visits and roadshows. Various groups have contributed to the preparation of this Report. I would like to offer sincere thanks to my fellow Commissioner YM Tunku Datuk Nazihah Tunku Mohamed Rus and SUHAKAM Secretary Puan Hashimah Nik Jaafar who sit in the Women's Right Committee at SUHAKAM and share their valuable thoughts, experiences and suggestions in furthering the cause of women's rights. The officers from many corners and working groups in SUHAKAM who are members of the Coordinating Committee and who helped to author most of the chapters of this report have given their best thoughts on human and women rights. I owe them a special vote of thanks. I would like to thank in particular K.Simon, Syahirah, Eda Mazuin, Jasliza, Akhdiat, Wan Kasim, Intan, Shazeera, Mariam, Noor Azlina and Junaiha. I would also like to thank the chairman and members of all working groups/committees in SUHAKAM for allowing their officers who are authors of the different chapters to use material on women's rights that have been compiled by the respective working groups/committees. On behalf of SUHAKAM, I would like to record appreciation to our colleagues from the Ministry of Women, Family and Community Development and from other ministries and agencies, our friends from the women NGOs, and other distinguished individuals for their ideas, information-sharing and active participation at our meetings and workshops on women's rights. Let us continue to work together in the interest of human and women rights.

Most of all I would like to thank our Chairman, Tan Sri Abu Talib Othman for inspiring the formation of this committee and thus enabling the production of this report.

Regards,

TAN SRI DR. ASIAH ABU SAMAH

Chairperson of the Women's Rights Committee, SUHAKAM

9 April 2010

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CHAPTER 1

Prologue To The Report

PROLOGUE TO THE REPORT

INTRODUCTION

The women of Malaysia today may not be fully aware how fortunate they are that most of the serious women's rights issues have been fought and won by those who came before them. In fact they already had their paths cleared for them even before the country gained independence from colonial rule nearly 53 years ago. Although enrolment in the school system was still dominated by males in the 1950s (see chapter on Women's Right to Education), yet women were queuing up in great numbers to exercise their democratic right to cast their votes in the first general election ever held in the country in 1955. These women never had to fight for their suffrage. This right was already theirs to exercise, thanks to the struggles put up by their sisters in the western world three decades earlier.

Fifty years ago too Malaysia, or rather Malaya, like her neighbours in Southeast Asia, was busy rebuilding herself after the devastation of the Pacific War (or the Second World War in the West). This renewed zeal for reconstruction and development was further accelerated with the achievement of independence in 1957 spurred on with the spirit of self-determination and nationalism. One of the areas of national development that saw very encouraging growth was education. This was the area of growth that benefited the female sector of the population most. As a matter of policy, the doors of access to education had always been as wide open for the girls as well as for the boys even during colonial times. Malaysia since it became a nation never knew discrimination in that quarter. All girls in the country basically had the same access to education as the boys. If there were girls in any part of the country who were not in school it was more likely due to financial, cultural or geographical circumstances rather than to lack of access.

It is believed that it was this open access policy more than any other factor that helped place the women of Malaysia where they are today. However, there were other factors that tended to narrow certain doors for girls or women despite this open access policy in education.

Firstly, as a result of the cultural conditioning by their parents, elders and society around them over the years, girls growing up during the early decades of the twentieth century were rather withdrawn and preferred to adopt secondary roles to their male counterparts. Before the Second World War, many of the girls in the school system were educated only up to the end of primary school. Either their parents did not encourage them to continue to the secondary level or they themselves were not strongly inclined to pursue their studies. Another practical reason was the distance between their homes and the nearest secondary school. This was especially true for girls who lived in the rural areas. In the early decades of last century, all secondary schools were located in urban areas. As the majority of the population resided in rural areas, not many pupils, particularly girls, could continue their schooling to the secondary level. The educational statistics bear this out. For example in 1947 there were only 3,212 girls as opposed to 9,298 boys in secondary schools in the country.¹ Even in the year of independence, 1957, the boys still outnumbered the girls in secondary schools (31,180 boys to 17,055 girls). As a result, men were predominant in almost all sectors of employment, even in the teaching and clerical services.

The second factor, which is related to the first, was the myth that certain courses in the school and higher education curriculum were unsuitable for the female sex. Such courses included certain types of technical education and engineering programmes which were then considered only suitable for males. Only in the 1970s did we see girls starting to cross the barrier, and they persevered and even did well without losing their femininity, proving the earlier prophets of doom wrong.

There was also the phenomenon where girls tended to self-censor and chose courses which were believed to be 'lighter' and easier to manage during their later wedded and motherhood years. As such many chose to be teachers, clerks, typists or factory hands.

It was not until several women managed to elevate themselves through sheer hard work and grit thereby breaking the proverbial 'glass ceiling' that more women began to realize that they too could climb as high as they were willing to, despite all the obstacles and pitfalls that awaited them along the way.

The role of Women NGOs working hand in hand with government agencies in promoting women's rights issues cannot be under-estimated. The contributions of their parent body National Council of Women Organisations (NCWO)

¹ Source: Ministry of Education Malaysia. *Educational Statistics of Malaysia 1938 to 1967*, Dewan Bahasa dan Pustaka (1967)

together with groups like All Women Action Malaysia (AWAM), Women Aid Organisation (WAO), and several others in raising the level of awareness with regard to women's rights and helping push for acceptance of certain principles of women's rights like non-discrimination against women as a whole, equal pay for equal work, more women in decision-making positions, and greater integration of women in national development, have been enormous.

Impact of CEDAW and the Constitutional Amendment

The 1980s and 1990s continuing into the early years of the twenty-first century proved to be ground-breaking years for women. Not only did Malaysia see the appointment of the first lady Judge but the first lady Director-General of Education as well as the appointment of a few lady Secretary-Generals of Ministries. In the diplomatic service, a few lady ambassadors were appointed since the 1980s. In the political arena of course there had been lady ministers in the Cabinet since 1969. But what was more encouraging was the appointment of a lady minister specifically to look into issues concerning women, the family and the community with the creation of the Ministry of Women, Family and Community Development (MWFCD) in 2001.

What was seen as a watershed for the advancement of women in the country was Malaysia's ratification of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in 1995. The Convention had been with the United Nations since 1979. Although Malaysia had waited 16 years before she decided to sign and ratify this Convention, it was better late than never. And it took another six years before she decided to review the provision in the Federal Constitution on discrimination. In 2001, after submissions from the MWFCD, SUHAKAM and Women NGOs, the government decided to amend Article 8(2) of the Constitution by including gender as a basis for non-discrimination.

These two defining events, the ratification of CEDAW and the amendment to Article 8(2) of the Constitution, provided the constitutional human rights safeguards that the women of Malaysia had been struggling for. But the battle was not over yet, because the ratification of CEDAW and the Article 8(2) amendment meant that several laws and enactments in the country needed to be brought in line with these two instruments. After Malaysia's ratification of CEDAW in 1995 meant that Malaysia was obliged to ensure that there were no more discriminatory laws or practices against women both in the public

and private sectors as well as in society at large. This was further legally reinforced by the amendment to Article 8(2) of the Federal Constitution referred to above. However, in reality, discrepancies still occur within the private and even government sectors. In a roundtable discussion in 2008 and a workshop hosted by SUHAKAM in 2009, it was pointed out that there are corporate bodies in the private sector which still do not adhere to the principle of equal pay for equal work. In the government sector although this principle is in force, some degrees of discrimination still occur in career mobility and job placement. In many public agencies it has been observed that the practice of considering the best MAN rather than the best PERSON for a promotion still exists. Currently, there is a great deal of hype about too many females in certain professions, especially the teaching profession, leading to suggestions and maybe even unstated policy by now for the introduction of a quota system in the intake of women into these professions.

CEDAW focuses on three main areas of women rights:

1. Civil rights and the legal status of women (including right to vote, to hold public office, and right to non-discrimination in education and employment)
2. Reproductive rights (including shared responsibility for child-rearing by both sexes and right to maternity protection and childcare and right to reproductive choice)
3. Cultural factors influencing gender relations (including need to modify traditional roles of women and men in the family and society to eliminate gender bias; and the need to remove gender stereotypes from school programmes, textbooks and teaching methods).

CEDAW not only outlines the main provisions for elimination of all forms of discrimination against women but in fact it is also an action plan that requires ratifying nations to eventually achieve full compliance. In the Malaysian situation, the amendment to Article 8(2) of our Constitution can be considered as partial compliance to the Convention. So is the establishment of the MWFCD with its stated functions and commitment towards ensuring that gender perspectives are to be incorporated into the formulation of policies and plans of the Ministry. One of the functions of the Ministry is "to review existing laws and regulations and to suggest new legislation that are able to afford better protection for the livelihood and development of women..."² In addition the government has set up a high-level committee initially chaired by the Prime Minister himself to look

² Source: http://en.wikipedia.org/wiki/Ministry_of_Women,_Family_and_Community_Development

into issues concerning women rights and women in development. One of the outcomes of this high-level committee was the creation of what came to be known as Gender Focal Points (GFPs) in each ministry/government agency.

Each GFP is supposed to act as a focal point in her/his ministry/agency for ensuring that no form of discrimination against female employees and against women in general occurs in the relevant ministry/agency and that gender mainstreaming is being pursued as a clear policy in the ministry/agency. SUHAKAM has had the opportunity of meeting and interacting with these GFPs. Our considered view is that there needs to be more intensive and extensive engagement among SUHAKAM, the MWFC, Women Rights NGOs and these GFPs to ensure that they are clear about their roles as far as gender issues are concerned in their organizations. SUHAKAM also feels that the institution of GFPs should be extended beyond government ministries and agencies into the private and corporate sectors. Perhaps there should be a unit in the MWFC that looks into this issue and works closely with the GFPs in the relevant ministries and agencies to ensure compliance with CEDAW.

More will be discussed in the final chapter with regard to the relative roles, functions and impact of government ministries, SUHAKAM, civil society and others in the protection and promotion of women's rights. In the ensuing chapters of this Report the intention is to explore issues that are pertinent to the promotion and inculcation of women's rights in the country. Such issues include Reservations by the government on the Convention; a review on SUHAKAM's efforts at promoting women rights; women's rights seen from the perspectives of Education, Health and Employment; vexing issues of Trafficking of Women and Sexual Harassment at the workplace; and issues involving vulnerable women groups such as the disabled, the indigenous people and migrant workers. These issues have been selected for analysis because in the 10 years of SUHAKAM's existence since 2000, these are the major issues of women's rights that have engaged us at SUHAKAM.

CHAPTER 2

Convention On Elimination Of Discrimination Against Women (CEDAW) Reservations And Optional Protocol

CONVENTION ON ELIMINATION OF DISCRIMINATION AGAINST WOMEN (CEDAW) RESERVATIONS AND OPTIONAL PROTOCOL

A. BACKGROUND

The United Nations adopted CEDAW on 18 December 1979³. Malaysia ratified CEDAW on 4 August 1995, almost 16 years after its adoption by the UN. At that time, Malaysia declared that:-

Malaysia's accession is subject to the understanding that the provisions of the Convention do not conflict with the provisions of the Islamic Syariah law and the Federal Constitution of Malaysia⁴.

VIENNA CONVENTION ON THE LAW OF TREATIES

"....By an interpretative declaration, a State aims at clarifying what meaning or extent it attributes to a given treaty to some of its provisions. The qualification of an unilateral declaration as reservation or interpretative declaration depends on the legal effects it intends to produce, a matter which is far from being always clear..."

When Malaysia attended the Fourth World Conference on Women in Beijing in September 1995, the leader of the Malaysian delegation, Datin Seri (now Tun) Dr Siti Hasmah Haji Mohamed Ali, was able to explicitly express Malaysia's commitment to implement Beijing Platform for Action and to review the reservations that Malaysia had placed on CEDAW:-

The fact that we are meeting at this Fourth World Conference affirms our Commitment and preparedness to change. The Platform for Action is a Mandate for us to operationalise the commitment to lead to a fundamental change. The Malaysian Government is committed to equal rights and responsibilities, equal opportunities and equal participation of men and women⁵.

³ UN Resolution 34/180.

⁴ <http://www.un.org/womenwatch/daw/cedaw/reservations-country>

⁵ Tun Dr Siti Hasmah Haji Mohd. Ali in her address to the Beijing Conference in September 1995, quoted from *Malaysia's Report to the United Nations Committee on the Elimination of Discrimination against Women*, Ministry of Women, Family and Community Development (2004)

WHAT IS A RESERVATION?

According to Article 2 (1)(d) Vienna Convention on the Law of Treaties 1969, the term "reservation" means a unilateral statement, however phrased or named, made by a State, when signing, ratifying, accepting, approving or acceding to a treaty whereby it purports to exclude or modify the legal effects of certain provisions of the treaty in their application to that State. On the other hand, Section 19 states that a reservation maybe made except for the following reasons:

- (a) the reservation is prohibited by the treaty;
- (b) the treaty provides that only specified reservations, which do not include the reservation in question, may be made; or
- (c) in cases not failing under subparagraphs (a) and (b), the reservation is incompatible with the object and purpose of the treaty.

Malaysia had made reservations in respect of (and therefore did not consider itself bound by) Articles 2(f), 5(a), 7(b), 9, 16 of CEDAW. While, in relation to Article 11, Malaysia interpreted the provisions of this article as a reference to the prohibition of discrimination on the basis of equality between men and women only.

After the Beijing Conference and upon a review of these reservations, Malaysia withdrew its reservations in respect of Articles 2(f), 9(1), 16(1)(b), 16(1)(d), 16(1)(e) and 16(1)(h) on 6 February 1998 and leaving the remaining Articles 5(a), 7(b), 9(2), 16(1)(a), 16(1)(c), 16(1)(f), 16(1)(g) and 16(2). The reason given for the reservations was that these articles were in conflict with the Federal Constitution and Islamic law.

Since the accession of CEDAW in 1995, Malaysia had only submitted one Country Report to the United Nations CEDAW Committee in 2007. Despite the long gap in submitting the Country Report, civil society led by the Women NGOs had attempted to compile a shadow report on the implementation of CEDAW, in order to highlight various issues on gender discrimination in Malaysia.

SUHAKAM on the other hand, was involved in the one day Women's Session during the 11th United Nations Human Rights Council in 2009 and made an intervention on behalf of the national human rights institutions that attended the meeting. Among the key points made by SUHAKAM during the session was to call upon governments to work together with their national human rights institutions especially in the implementation of CEDAW and in the review of the reservations made to the Convention.

B. SUHAKAM'S RECOMMENDATIONS TO WITHDRAW RESERVATIONS

Since 2003, SUHAKAM undertook three different roundtable discussions to gather more inputs and responses from government agencies, civil society and the general public with regard to the implementation of CEDAW in the country. The roundtables were conducted in Kuala Lumpur, Sabah and Sarawak in 2003-2004. Apart from recommendations on how to implement and monitor the effectiveness of CEDAW on the ground, participants had also raised concerns around the reservations made by the government on the major articles in the Convention.

Following on the recommendations made by this series of roundtable discussions organized with government and civil society, and acting on the request from the MWFC, SUHAKAM submitted its recommendations on the withdrawal of the reservations to CEDAW in July 2005.

SUHAKAM recommended specifically for the removal of reservations on Articles 5(a), 7(b) and 9(2) of CEDAW. Below are the justifications given for the withdrawal of the reservations:⁶

Article 5(a) – Cultural and customary practices should not be confused with religious tenets. Under Islamic law, a man is responsible as a protector of his wife and children. However, it does not necessarily mean that men are superior to their wives. Islam recognizes the respective rights and roles of men and women especially in family relationships. Thus, State Parties are required to eliminate prejudices, customs and practices based on the idea that men are superior to women.

Article 7(b) – Article 8 of the Federal Constitution (FC) prohibits discrimination on the ground of gender. Nothing in the Quran and Sunnah excludes women from taking a leadership role of their choice so long as they have the required skills and expertise and are not exposed to any hazard. Thus, the State has to ensure that women have the right to participate in the formulation and implementation of government policy, to hold public office and to perform all functions at all levels of government. Even in the appointment of *Imam* and *Kadi*, it is recognized that a woman can take up these positions subject to certain conditions.

⁶ SUHAKAM's Annual Report 2005

Article 9(2) – SUHAKAM views the different regulations applicable to men and women in terms of nationality of their children as discriminatory. From a legal point of view, Articles 14 -18 of the Federal Constitution provide for matters related to citizenship in the country. Article 15, specifically provides for the registration of the wife and children of a male Malaysian who marries a non-Malaysian. Article 15 (1) states:

“Subject to Article 18, any married woman whose husband is a citizen is entitled, upon making application to the Federal Government, to be registered as a citizen if the marriage was subsisting and the husband a citizen at the beginning of October 1962, or if she satisfies the Federal Government

- (a) that she has resided in the Federation throughout the two years preceding the date of the application and intends to do so permanently; and
- (b) that she is of good character

However, a female Malaysian who marries a non-Malaysian may not automatically extend her nationality to her children. SUHAKAM is of the view that there is a need to re-examine this position by referring to Article 8(2) of the Federal Constitution. Article 8(2) clearly prohibits discrimination based on ground of gender; hence, there is a need to read the Article on nationality together with Article 8(2) in order to extend the principles of gender equality in the administration of issues related to nationality and citizenship. From an Islamic point of view, both men and women are equally entitled to citizenship. Islam emphasizes the equality of all people, regardless of race, ethnicity, gender or social status. Islam has prescribed different roles and responsibilities for men and women, with each gender complementing the other. Centuries before the modern world recognized women's rights, Islam acknowledged the equality of the two genders, and abolished the barbaric ritual of burying infant daughters alive, an outrageous crime practised by the Arabs before the time of the Holy Prophet (peace be upon him).

Islam made women aware of their rights and gave them an identity, a personality, freedom, and independence. These rights, among others, include the rights to inherit, to own property, to obtain a divorce, to collect a dowry, and to gain child custody.

SUHAKAM has not however provided recommendations on Article 16(1) (a) of CEDAW until the research commissioned to study the said Article was completed. In 2008, upon completion of the said research, SUHAKAM suggested for Article 16(1) (a) of CEDAW to be withdrawn to give due weight and better implementation of Article 16 in general. The perspectives considered in recommending the said withdrawal is not only by looking at the written Islamic laws but also the general practices of the Syariah system in the country.

Article 16 (1) (a) in general, addresses and recognizes the right of women to enter into marriage of their own choice and consent, without objection from their parents or relatives. In seeking review of this particular provision, SUHAKAM made the following observations:

- i. The meaning of Article 16(1)(a) does not contradict the practice of solemnization of marriage by a *wali* (guardian) as stipulated in Syariah law.
- ii. Malaysia withdrew its reservations to Article 16(1)(b) in 1998. The Article in general ensures equal rights of men and women to marry the person of their choice and that marriage may only be entered with the consent of the woman involved. Where the issue of a woman's right to enter a marriage based on her free will and own choice is concerned, Article 16(1)(a) should be read conjunctively with Article 16(1)(b) since the provisions are interlinked. Therefore, it is advisable to have the reservation to Article 16(1)(a) withdrawn as well.

Since 2003, SUHAKAM had engaged with the MWFCDD on reviewing these reservations not only through provision of written inputs but also through consultations and inter-agency meetings. SUHAKAM, in 2008, sat on the inter-agency coordinating meeting to review the reservations to CEDAW together with various stakeholders including religious scholars since the justification for the removal of the reservations involved were based on the existing Syariah laws in the country.

On 23 February 2010, during the Roundtable Discussion (RTD) on issues pertaining to Sexual Harassment and Discriminating Practices against Women at the workplace organised by SUHAKAM, the representative from the MWFCDD had announced and confirmed that the Government has agreed in principle to withdraw Articles 5(a), 7(b) and 16(2) of the Convention. Thus, on 6 July 2010,

the Ministry of Women, Family and Community Development had withdrawn its reservation made on Articles 5(a), 7(b) and 16(2) of the Convention. However, the reservation on 16(1)(a) still stands by the look of it in terms of Islamic perspective and non Muslim perspective.

C. OPTIONAL PROTOCOL (OP) TO CEDAW

In 1993, the United Nations World Conference on Human Rights in Vienna recommended the examination of the possibility of introducing the right to petition under the CEDAW Convention. Thus, on 6 October 1999 the General Assembly adopted the Optional Protocol (OP) which contains 21 articles. As of May 2009, 79 Countries (excluding Malaysia) have signed and/or ratified/acceded to OP-CEDAW.

The objectives of the OP are:

1. To improve on and add to existing enforcement mechanisms for women's human rights;
2. To improve States and individual understanding of CEDAW;
3. To stimulate States to take steps to implement CEDAW;
4. To stimulate changes in discriminatory laws and practices;
5. To enhance existing mechanisms for the implementation of human rights within the UN system; and
6. To create greater public awareness of human rights standards relating to discrimination against women.

The biggest advantage of ratifying the Optional Protocol will be that it allows individuals or groups of citizens of the State Party to directly access the reporting mechanism provided under

WHAT IS IN THE CEDAW OPTIONAL PROTOCOL?

1) A procedure that allows individual women, or groups of women, to submit claims of violations of rights protected under the Convention to the Committee. Criteria that must be met before submitting claims including those domestic remedies must have been exhausted.

(2) The Protocol also creates an inquiry procedure enabling the Committee to initiate inquiries into situations of grave or systematic violations of women's rights. In either case, States must be party to the Convention and the Protocol.

The Protocol includes an "opt-out clause", allowing States upon ratification or accession to declare that they do not accept the inquiry procedure. Article 17 of the Protocol explicitly provides that no reservations may be entered to its terms.

Adopted from: <http://www.un.org/womenwatch/daw/cedaw/protocol/>

the Protocol if the person suffers from discrimination and has exhausted all domestic mechanisms and remedies available in the country. Malaysia has yet to ratify the OP and the matter is still under the consideration of the government. The MWFCD is of the view that further awareness raising programmes should be undertaken in order to increase stakeholder's understanding and reception of the OP. SUHAKAM is in the midst of doing a study with the aim of making appropriate recommendations to the Government on the issue of ratification of the OP.

CHAPTER 3

**An Overview Of Efforts Undertaken By
SUHAKAM To Raise Level Of Awareness
And Understanding Of CEDAW
And Gender Mainstreaming**

AN OVERVIEW OF EFFORTS UNDERTAKEN BY SUHAKAM TO RAISE LEVEL OF AWARENESS AND UNDERSTANDING OF CEDAW AND GENDER MAINSTREAMING

SUHAKAM since its establishment in 2000 has been monitoring the implementation of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). The following describes efforts taken by SUHAKAM in promoting and protecting rights of women in this country.

1. Amendment to Federal Constitution and Domestic Laws

One of the first steps taken by SUHAKAM after its formation was to recommend to the Government to amend Article 8 (2) of the Federal Constitution to include "gender" as a prohibited ground for discrimination. Besides that, SUHAKAM also recommended to the Government to incorporate its international commitment to integrate CEDAW into domestic law.

2. Human Rights Day 2001

Women's Right was one of the main themes for the Malaysian Human Rights Day Conference on 9 September 2001 organized by SUHAKAM. The main recommendations made during the conference were:

- a. To promote and protect the rights of Malaysian women to ensure they are treated as equal before the law.
- b. To prohibit any form of discrimination on the basis of sex and gender or any other factor.

3. Roundtable Discussion: Rights and Obligations under CEDAW

A roundtable discussion (RTD) was organized by SUHAKAM in March 2003 on the rights and obligations under CEDAW. The objectives of the RTD were to ascertain the level of implementation of CEDAW in Malaysia and to provide an avenue and an opportunity for all to discuss the implementation of CEDAW.

Recommendations made at the RTD include:

a. Review the interpretation of Syariah Law

The issue of treatment of women under Islamic Family Law is compounded by the lack of homogeneity of interpretation, administration and application of Islamic Law in the different states in Malaysia. (In fact since its establishment SUHAKAM had repeatedly urged the relevant authorities to ensure uniformity in the enactment and application of Syariah Law throughout Malaysia). Further, the RTD urged that in interpreting Syariah law, there should be a balance of rights and responsibilities between men and women.

b. Review of the reservations to CEDAW

The RTD recommended a review on Malaysia's reservations to Articles 5(a), 7(b), 9(2), 16(1) (a), (c), (f), (g) and 16 (2) of CEDAW which were still in force then. Although a number of the original reservations have been withdrawn in 1998, the fact that SUHAKAM and women rights advocates in this country have to be mindful of these remaining Reservations when doing their promotion or advocacy work, does put unnecessary limitations to their efforts.

c. The enactment of Acts of Parliament incorporating CEDAW

The RTD recommended to the government to translate the provisions of CEDAW into domestic law. The amendment to Article 8(2) of the Federal Constitution can be viewed as a stepping stone towards the enactment of other acts of Parliament to ensure equal rights to women and all other rights as enshrined in CEDAW.

d. Proposal for gender mainstreaming

As a step towards gender mainstreaming, the RTD suggested every agency to incorporate gender perspective in their policies and programmes.

e. The need for gender disaggregated data

The RTD called upon the Government, in particular the MWFCD, to collect, analyze and disseminate gender disaggregated data that take into consideration the real situation and experiences of women in Malaysia.

f. Increased involvement of SUHAKAM and civil society in the formulation of Malaysia's report to the CEDAW Committee.

The RTD urged the MWFCD to increase the involvement of SUHAKAM and other relevant members of civil society in the formulation of Malaysia's report to the UN CEDAW Committee in Geneva.

4. Forums on CEDAW in Sarawak and Sabah

Two forums were held – one in Kuching, Sarawak and the other in Kota Kinabalu, Sabah on 30 March and 2 April 2004 respectively. The forums were aimed at promoting a better understanding of CEDAW, and in increasing the awareness and protection of women's rights by both men and women.

The main recommendations from the two forums include:

- a. To build more shelter homes for victims of domestic violence in Sabah and Sarawak.
- b. To establish a network linking the State Government agencies and NGOs in Sabah and Sarawak.
- c. To continue to increase awareness of women's rights in Malaysia.

Formation of Women's Rights Committee at SUHAKAM

To strengthen SUHAKAM's work on promotion and awareness on women's rights, the Education and Promotion Working Group of SUHAKAM formed a Sub-Committee on Women's Rights in February 2008. The-sub committee comprised of representatives of SUHAKAM, MWFCD, Non Governmental Organizations (NGOs) working on women's issues and a number of gender

and women's rights experts and resource persons.

Its pioneer project was a CEDAW Orientation Course for SUHAKAM staff and resident facilitators which was held from 9 – 10 April, 2008. The objective was to increase understanding of gender and women's rights especially within the CEDAW framework and mechanism and to strengthen their capacity in dealing with women's issues. The course not only strengthened SUHAKAM staff's capacity and understanding of women's rights, but also created more opportunities for the Commission to share its work on CEDAW with civil society groups and widen its network with those working on women's rights issues.

SUHAKAM also collaborated with MWFCF in conducting courses for Government agencies. As a start, SUHAKAM was invited to the training programme for Gender Focal Points (GFPs) on 2 December 2008 organized by the Ministry. SUHAKAM conducted a session on 'The Government's Role in Implementing CEDAW'.

5. CEDAW Workshops for Trade Union Leaders

SUHAKAM expanded its reach by organizing a training workshop on CEDAW for representatives of NUBE, FMM, MEF, CUEPACS, MTUC and SOCSO⁷ on 27 - 28 May 2009. It was to promote gender awareness within the trade unions. The highlights of the course were the introduction to the development of women's rights at the international level, explanation of the core principles and articles of CEDAW, and discussion on its implementation. Two issues were discussed; Gender Equality and the Employer's Role and Responsibility in Guaranteeing Women's Rights in the Workplace.

Issues Raised by Participants of the Workshop:

a. Gender pay-gap

Many women earn less than men for the same job or for jobs of equal value. Although certain jobs require similar skills, qualifications or experiences, the pay is less and are undervalued when dominated by women. Evaluation of

⁷ NUBE - National Union of Bank Employees
 FMM - Federation of Malaysian Manufacturers
 MEF - Malaysian Employers Federation
 CUEPACS - Congress of Unions of Employees in the Public and Civil Services
 MTUC - Malaysian Trades Union Congress
 SOCSO - Social Security Organization

performance and, hence, pay level and career development, are biased in favour of men.

b. Segregation in the labour market

Women and men often predominate in different sectors. The Malaysian labour market shows that women and men tend to work in different kinds of jobs. It is observed that women predominate in the lower-valued and lower-paid occupations within the same sector. This is statistically proven in a report by the Ministry of Human Resources (Table 1).

Table 1: Number of Workers by Occupation and Sex in Malaysia

Occupation	Male	Female	Total
Senior officials and managers	208,439	195,665	404,104
Professionals	109,430	79,932	189,362
Technicians and associate professionals	188,317	92,533	280,850
Clerical workers	137,820	369,287	507,207
Service workers, and shop and market sales workers	365,355	301,558	666,913
Skilled agricultural and fishery workers	128,173	23,569	151,742
Craft and related trade workers	79,740	16,627	96,367
Plant and machine operators and assemblers	280,813	208,287	489,100
Elementary occupation	585,454	201,341	786,795
TOTAL	2,083,541	1,488,899	3,572,440

Source: Laporan Penyata Guna Tenaga Kebangsaan 2008, Institut Sumber Manusia Kebangsaan, Kementerian Sumber Manusia

c. Sexual Harassment

Sexual harassment is another major problem for women workers. Harassment can occur at any level, being perpetrated by superiors, peers or subordinates. The employer has a duty to provide a safe working environment and to uphold the employee's dignity and self-respect. In 1999, the Ministry of Human Resources introduced a Code of Practice on the Prevention and Eradication of Sexual Harassment in the Workplace. As its adoption and implementation is entirely voluntary, many employers have not adopted it. Those who have done so do not appear to have implemented it well or wholly. (This issue will be further elaborated in a later chapter in this Report).

6. CEDAW Workshop for Gender Focal Points (GFPs)

The CEDAW Training Workshop for Gender Focal Points or GFP⁸ of Government agencies/ministries was held from 16 – 17 November 2009. Attended by 28 officers (GFP/representative), the two-day workshop aimed at giving exposure and equipping GFPs with the knowledge and skills required to implement the commitments of the country with regard to CEDAW. The workshop is important for the GFPs and officers involved as it equipped them with the required knowledge and skills in the implementation of CEDAW. Further, it was also part of the effort in upgrading the capacity of the officers on the issues of advancement of women and gender as a whole within their respective organizations. The workshop programmes covered the following major components of CEDAW:

- a. The evolution of women's rights.
- b. The three significant principles of CEDAW related to substantive equality, non-discrimination and state obligation together with case studies relating to issues such as stereotyping, gender bias and gender socialization.
- c. The dialogue session on the significance of GFP roles and ways of its enhancement.
- d. The planning session (plan of action) on how CEDAW can be implemented by respective ministries and the mechanism / strategy to be outlined upon the concluding comment / observation made by CEDAW Committee in 2006.
- e. The significance of CEDAW in promoting women's development within a rights framework and to develop skills in using the Convention to advance women's rights in the local context through law and policy reform.

SUHAKAM encouraged the GFP to further the plan of action (POA) by formulating policies, drafting strategies, implementing and monitoring programmes upon returning to their respective ministries or agencies. In this regard, the Women's Sub-Committee suggested a monitoring plan to be set up in reviewing the progress of the POA developed from this workshop. It is hoped that these plans can be further refined in the coming months and years.

⁸ GFPs are senior officers from Ministries and relevant Government agencies (Grade 54 and above) whose responsibility is to ensure that the principles of CEDAW are observed in their respective ministry/agency. GFPs were established in 2005 based on the mandate from the Cabinet Committee on Gender Equality in its meeting on December 6, 2004. SOCSO - Social Security Organization

7. RTD on Sexual Harassment

SUHAKAM through the Women Rights Committee (WRC) organized a roundtable discussion (RTD) on issues pertaining to Sexual Harassment and Discriminatory Practices against Women at Workplace on 23 February 2010. The one-day RTD was chaired by Commissioner Tan Sri Dato' Dr Asiah Abu Samah and attended by 20 participants from various Government agencies and NGOs.

The objectives of the RTD were:

- a. To find a better solution and proper legal avenues for the victims of sexual harassment.
- b. To discuss specific legislation for curtailing sexual harassment offences.
- c. To create awareness that the existing Code of Practice 1999 is insufficient to prevent and eradicate sexual harassment of women at the workplace.
- d. To have collaborative discussion with the Ministry of Human Resources and the Ministry of Women, Family, and Community Development (MWFCD) pertaining to cases on sexual harassment towards women at workplace, and to discuss ways of overcoming these in the short term while waiting for long-term measures.

Four working papers were presented followed by lively and critical discussion of the issues raised. It is anticipated that the report on the Roundtable Discussion will be used as a platform to convince the Governmental bodies especially the AG Chambers and the MWFCD to incorporate the principles and policy in the Code of Practice into legislation as one of the means of protecting victims of sexual harassment.

CHAPTER 4

Women And Right To Education

WOMEN AND RIGHT TO EDUCATION

As stipulated in the Universal Declaration of Human Rights (UDHR) and Convention on the Rights of the Child (CRC) everyone in Malaysia has the right of access to education. While Article 10 of CEDAW emphasises that the government ought to take appropriate measures to eliminate discrimination against women to ensure that they enjoy equal rights with men in the field of education.

The right to free and compulsory primary education, without discrimination and of good quality, has been reaffirmed in all major international human rights conventions. Many of these instruments encourage, but do not make post-primary education compulsory. These rights have been further elaborated to address issues like quality and equity, moving forward the issue of what the right to education means, and exploring how it can be achieved. Government must ensure that basic education is available, accessible, acceptable and adaptable for all. The right of girls to education is one of the most critical of all rights – because education plays an important role in enabling girls and women to secure other rights.

Education not only develops the personality and rationality of individuals, but qualifies them to fulfil certain economic, political and cultural functions and thereby

WHAT DOES CEDAW SAYS ABOUT EDUCATION?

States Parties should undertake appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in area of education on a basis of equality of men and women. The Article clearly states that this cover same conditions, opportunity of participation and accessibility to curricula, assessments, benefits in education including scholarships, facilities and equipments relevant in education. In addition to that, the Article urge the State parties to eliminate stereotyped concept of role of men and women at all levels through promoting coeducation and review of textbook, programmes and teaching methods in school as well as reducing female dropout rates in school.

Adopted from Article 10 of CEDAW

improves their socio-economic status.

Education, besides equipping basic literacy and numeric skills for girls, provides them with an understanding of basic health, nutrition and family life, giving them choices and the power to decide over their own lives and bodies. Women's education leads directly to better reproductive health, improved family health, economic growth, for the family and for society, as well as lower rates of child mortality and malnutrition.

Educating girls and women is an important step in overcoming poverty. Inequality and poverty are not inevitable. The focus on poverty reduction enables the right to education to be a powerful tool in making a change in the

**CRC COMMITTEE GENERAL
COMMENT NO.1
Aims of Education**

"...Discrimination on the basis of any of the grounds listed in article 2 of the Convention, whether it is overt or hidden, offends the human dignity of the child and is capable of undermining or even destroying the capacity of the child to benefit from educational opportunities. While denying a child's access to educational opportunities is primarily a matter which relates to article 28 of the Convention, there are many ways in which failure to comply with the principles contained in article 29 (1) can have a similar effect. To take an extreme example, gender discrimination can be reinforced by practices such as a curriculum which is inconsistent with the principles of gender equality, by arrangements which limit the benefits girls can obtain from the educational opportunities offered, and by unsafe or unfriendly environments which discourage girls' participation..."

lives of girls and women. Poverty has been universally affirmed as a key obstacle to the enjoyment of human rights. The rise in numbers of women heading households especially in rural and poorest section of the society has also led to the feminisation of poverty. As a result, poverty affects girls and women more than men especially in accessing their basic rights that includes right to education. Denial to the right to education leads to the exclusion of women from the labour market and further marginalizing them into informal sectors and home based activities that most of the time does not allow women to earn money for the work done. This further perpetuates women's state of poverty.⁹

In Malaysia, the framework and implementation of the education

⁹ Katrina Tomasevski, 2005

system is guided by the National Education Philosophy (NEP). The aim of education, according to the NEP is to produce a wholesome individual citizen who is balanced from the physical, mental, emotional and spiritual aspects. Furthermore, the school curriculum for teaching and classroom learning is guided by two main guidelines, the New Primary School Curriculum or *Kurikulum Baru Sekolah Rendah* (KBSR) for the primary level which was introduced in 1981 and the New Secondary School Curriculum or *Kurikulum Baru Sekolah Menengah* (KBSM) for the secondary level which was introduced in 1988. However, it is important to note that the guidelines for the education system lack emphasis and focus on integrating gender perspective. As a result, the study or lesson on understanding the differences between a man and a woman stops at understanding both sexes' biological functions. No further encouragement can be found on understanding the stereotyped functions or socially construct roles of men and women in the society. Such a gap impacts greatly on how women and men are being portrayed in textbooks and how boys and girls are viewed in leadership roles.

The literacy rate in Malaysia has steadily increased over the years - total adult literacy rate is 92% (2008)¹⁰. The general school enrolment rate is over 92% in 2007.

Table 2: Enrolment by Sex in Primary Schools (Malay Medium), between 1938-1967

YEAR	1938	1957	1960	1963	1967
Total	56,904	441,557	485,976	523,974	591,560
Boys	40,613	253,450	264,497	276,919	298,051
Girls	16,291	188,117	221,479	247,055	293,509
%girls (over total)	28.6	42.6	45.5	47.1	49.6

Table 3: Enrolment by Sex in Primary Schools (English Medium), between 1938-1967

YEAR	1938	1957	1960	1963	1967
Total	32,141	130,360	177,439	216,404	289,056
Boys	21,742	79,713	109,519	131,366	170,517
Girls	10,399	50,647	67,920	85,038	118,539
%girls (over total)	32.3	38.8	38.2	39.2	41.0

¹⁰ Adult literacy rate - Percentage of persons aged 15 and over who can read and write. (UNICEF: www.unicef.org/infobycountry/malaysia_statistics.html)

Table 4: Enrolment by Sex in Secondary Schools (Malay Medium), between 1957-1967

YEAR	1957	1960	1963	1967
Total	2,135	4,953	19,910	128,069
Boys	1,674	3,257	11,980	76,454
Girls	641	1,696	7,930	51,615
%girls (over total)	27.6	34.2	39.8	40.3

Table 5: Enrolment by Sex in Secondary Schools (English Medium), between 1957-1967

YEAR	1957	1960	1963	1967
Total	48,235	72,499	135,233	286,254
Boys	31,180	46,855	82,560	171,537
Girls	17,055	25,644	52,673	114,717
%girls (over total)	35.3	35.3	38.9	40.0

Source for Tables 2-5: *Educational Statistics of Malaysia 1938-1967*, Dewan Bahasa dan Pustaka (1967)

Tables 2-5 above show the enrolment rate among boys and girls in the years 1938 to 1967. Although the number of boys are higher at both primary and secondary levels in both Malay and English medium, the number of girls have gradually increased to 40 over percent by 1967.

Compared with the above, current data (Tables 6 and 7) show the number of boys and girls in both primary and secondary schools are almost equal. In 2009; the enrolment rate of girls is 48.5% at primary level and 50.1% at secondary level. This indicates that over the years, the number of girls in schools have gradually increased and are equal with the number of boys in schools.

Table 6: Enrolment of Students in 2008 and 2009 in Primary Schools

Year	2008	2009
Boys	1,621,693	1,601,363
Girls	1,532,397	1,511,538
% girls (over total)	48.5	48.5

Table 7: Enrolment of Students in 2008 and 2009 in Secondary Schools

Year	2008	2009
Boys	1,106,747	1,148,785
Girls	1,098,748	1,155,234
% girls (over total)	49.8	50.1

Source for Tables 6 & 7: *Educational Statistics of Malaysia, EPRD (2009)*

However, the number of female students at the higher learning institutions is higher than that of male students. In 2007, 58.2% of the total enrolment at diploma level, 61.9% at first degree, 52.9% at masters' degree and 38.1% at PhD level were females.

Table 8: Enrolment in Public Universities, 2001- 2008

Year	2001	2002	2003	2004	2005	2006	2007	2008
No. of Universities	14	15	17	17	18	17	18	20
Male	103,747	116,591	110,645	116,799	121,157	119,304	126,839	143,338
Female	142,242	166,615	172,594	179,412	191,008	189,787	204,189	226,687
Total	245,989	283,206	283,239	296,211	312,165	309,091	331,025	370,025
% Female (over total)	57.8	58.8	60.9	60.2	61.2	61.4	61.7	61.3

Source : *Ministry of Higher Education, 2008*

According to the Statistics Department of Malaysia, 65% or 26,200 out of 40,366 candidates who were offered first degree courses at public universities in 2009 were females. Recent records also indicate that females in the school system and in the universities not only outnumbered the males in many fields, but their performance are better than their male counterparts.

As such, Malaysia has no major issues with regard to right of access to education among women. However, there are still issues that affect their total enjoyment of these rights. Below is a delineation of these issues:

1. Gender Segregation in Education and Training¹¹

Although the number of women in tertiary education has increased, their participation in the entire range of courses available is not as equitable. Gender segregation arising from gender stereotyping which mediates

¹¹ ADB's Country Briefing Paper on Women in Malaysia, 1998

students' choice of courses is still prevalent. Certain courses especially in the vocational and technical fields have been male-dominated. Strong male preference for fields related to industries like building and wood-work, metal-work, and electrical work continues. The females are dominant in courses related to Education, Arts and Social Science and, interestingly, IT and Communication (see Table 9).

Table 9: Student Enrolment at First Degree in Public University by Field of Study and Sex, 2008

Field of Study	Male (%)	Female (%)	Total
Education	28.9	71.1	31,538
Arts & Science Social	29.4	70.6	115,200
Technical	60.9	39.1	61,960
Information Technology & Communication	41.9	58.1	14,231

Source: Ministry of Higher Education Malaysia, 2008

On the other hand, women have been oriented towards service-centred courses like teaching, nursing, clerical, hotel and catering, tailoring, IT, communication and finance/commerce. In institutions of higher learning, women are more inclined to enrol in courses traditionally considered more suitable for them such as arts and education, but less in courses related to science and technology, which normally promise higher-paid jobs. Likewise, providers of non-formal education and training tend to conduct programs that relate to women's traditional role rather than their more productive role. For example, in addressing the incident of poverty among women, including single mothers, the Government agencies as well as NGOs provide skills enhancement programmes in tailoring, cooking, beauty therapy, childcare, handicraft and tourism.

Entrepreneurship courses offered to women are more often limited to areas like food processing, tailoring and handicraft. Women, especially from the lower income group, tend also to participate highly in programmes which relate to their traditional role.

Gender segregation denies the same opportunities for access to programmes and creates a gap between men and women not only in education but also later in the employment.

SUHAKAM would thus like to recommend to both Government and non-government agencies to de-emphasize this tendency towards gender segregation in planning and implementing training programmes. A change in the perception of traditional role of men vis-à-vis the role of women is needed to achieve full equality between men and women within the family and in society at large, as stated in the preamble of CEDAW.

2. Gender Stereotyping in School

The portrayal of girls and women in textbooks and other learning materials contribute to gender stereotyping in the school system. Boys are normally portrayed as being tough and masculine while girls are portrayed as soft, gentle and feminine. For example, images or photos that show boys doing farming or other tougher work and girls sweeping and washing clothes lead to a bias in the perception of division of labour.

This is not in line with CEDAW [Article 10(c)] where it had emphasized on the elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education. The article has further recommended revision of textbooks and school programmes and the adaptation of teaching methods in order to eliminate gender stereotyping.

3. Boys and Men are Leaders

It is a common phenomenon that leaders in school like head prefects and class monitors are dominated by boys although girls could have outnumbered boys in the school or even in the classroom. Boys are perceived to be more capable to fill such positions. Apart from this, the associations or clubs in schools also tend to select or appoint boys as the chair or the head. Girls are normally allocated the position of deputy or secretary/treasurer.

In the entire school system, women teachers outnumbered their male counterparts. According to the Human Resources Ministry, the ratio of male and female teachers is about 30:70. This ratio is supported by data reflected in Table 10. However, according to the National Union of the Teaching Profession (NUTP) most decision-making positions like school principals and headmasters are still dominated by males.

Table 10: Number of Male and Female Teachers in Primary and Secondary Schools in 2008 and 2009

Year/Level	2008	2009
Primary		
Male	65,626	68,456
Female	145,286	153,809
%female (over total)	68.8	69.2
Secondary		
Male	52,761	54,451
Female	106,258	115,685
%female (over total)	66.8	67.9

Source: *Educational Statistics of Malaysia, EPRD (2009)*

Although efforts have been taken by various parties to increase the number of women educationists at the decision-making level, the results are not very encouraging. This is due to the gender stereotype mentioned earlier where many decision makers (and to a large extent the women themselves) do not feel that females are very suitable as school heads. On the other hand SUHAKAM has observed, through its human rights educational promotion work with schools, that some of the best school principals in the education system are ladies.

CHAPTER 5
Women And Healthcare

WOMEN AND HEALTHCARE

Malaysia in general, has a relatively strong healthcare system and this is demonstrated by its rather high standard of health that is comparable to developed countries. The infant and toddler mortality rate in Malaysia has impressively decreased over the past few years. This improvement is attributed to Malaysia's strong policy on vaccination and childcare from birth. Under-5 mortality has reduced from 42 deaths per 1000 live births in 1980 to 12 deaths per 1000 live births in 2004.¹²

Table 11: Population Statistics of Malaysia¹³

	1999	2006	2008
Population ('000)	22,712.0	26,640.2	27,730.0
Population Density (Sq Km)	69	81	-
Population by Age Group ('000 Persons)			
Below 15 years	7,618	8,632.0	8,873.6
15-64 years	14,234	16,858.6	17,608.6
65 years and above	860	1,149.5	1,247.9
Annual Population Growth Rate (%)	2.3	1.5	-
Crude Birth Rate (per 1000 population)	25.4	18.7	-
Still Birth Rate (per 1000 total births)	3.9	4.5	-
Perinatal Mortality Rate (per 1000 total births)	7.9	7.3	-
Neonatal Mortality Rate (per 1000 live births)	5.2	3.9	-
Infant Mortality Rate (per 1000 live births)	8.5	6.6	-
Toddler Mortality Rate (per 1000 Toddler population)	0.7	0.5	-
Maternal Mortality Rate (per 1000 live births)	0.3	0.3	-
Life Expectancy at Birth (in years) :			
Male	69.9	71.8	71.9
Female	74.9	76.3	76.4
Percentage Distribution of Live Births by Birth Weight (Peninsular Malaysia)			-
Under 2.5kg	9.7	10.1	
2.5kg and above	90.3	89.9	

The health and healthcare-related programmes by the Government creates a strong structure for policy, regulation and service delivery of healthcare in Malaysia. The programmes involve integrated multi-agency approach and partnership with international agencies in areas of maternal and child health, mortality, immunization, screening of communicable and incommunicable diseases, occupational safety, food nutrition programme, clean water supply and environmental health programmes. The strategic programmes mentioned

¹² "Mortality Country Fact Sheet 2006". World Health Organization. 2008 <<http://www.who.int/countries/mys/en/>> Accessed 3 April 2010

¹³ Source: Ministry of Health, Malaysia (2010)

ARTICLE 12 OF CEDAW

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.
2. Notwithstanding the provisions of paragraph 1 of this article, States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.

above were introduced under the Family Health Programme in 1996. Two areas which were emphasized under the Programme are health of the family and diseases affecting women with specific attention to human immunodeficiency virus /acquired immunodeficiency virus (HIV/AIDS). In addition, the Government introduced the Nutrition Rehabilitation Programme for Pregnant Mothers in 1997 to further improve the health status of pregnant women by providing adequate nutrition especially for women in the low-income group. In the latest 9th Malaysian Plan, the Government allocated RM10.28 billion for disease prevention, RM2.3 billion to set up a

National Institute of Cancer, National Forensic Institute and National Institute for Oral Health and eight new hospitals.

The right to health is one of the major issues facing women in Malaysia. Since its inception, SUHAKAM has identified and compiled data related to healthcare in Malaysia through various roundtable discussions and consultations related to the implementation of Millenium Development Goals (MDGs) in Malaysia. To date, SUHAKAM has published several reports on this topic: Public Forum on Right to Health; Achieving Health MDGs; The Human Rights Approach to Millennium Development Goals (MDGs); the Penans in Ulu Belaga and their Right to Land and Socio-Economic Development and *Hak Masyarakat Asli Sarawak*. These reports discuss the right to health of women and their access to healthcare services.

SUHAKAM has also received complaints and memoranda relating to the right to health. Many of the complaints and memoranda call upon the Government to ensure the realization of the right to health by providing equal access to healthcare services especially for the economically and socially deprived groups, including the poor, indigenous and migrant groups. These complaints and memoranda also highlight the specific challenges faced by women in realizing their right to health.

Realizing the need to address the various concerns related to the right to health in Malaysia, SUHAKAM has focused its attention on the Government's plan to implement the National Health Financing Mechanism (NHFM). SUHAKAM has geared its efforts towards working closely with Government agencies and various social groups by providing a platform for both parties to dialogue and by incorporating human rights perspectives into the discussion. SUHAKAM is particularly concerned about the issue of equal and equitable access to and delivery of healthcare services. As a result of SUHAKAM's collaboration with various stakeholders on the issue of right to health, SUHAKAM has been invited by the Ministry of Health to be a member of the Technical Committee of the Consultation Project for the National Health Financing Mechanism. As part of this Technical Committee, SUHAKAM has coordinated a round of dialogues on the right to health and access to equitable healthcare. Being part of this Technical Committee has also enabled SUHAKAM to identify key issues related to the right to health especially issues and concerns affecting women.

**ECONOMIC, SOCIAL CULTURE
COMMITTEE 'S GENERAL
COMMENT ON RIGHT TO HEALTH**

"...the Covenant proscribes any discrimination in access to health care and underlying determinants of health, as well as to means and entitlements for their procurement, on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, physical or mental disability, health status (including HIV/AIDS), sexual orientation and civil, political, social or other status, which has the intention or effect of nullifying or impairing the equal enjoyment or exercise of the right to health. The Committee stresses that many measures, such as most strategies and programmes designed to eliminate health-related discrimination, can be pursued with minimum resource implications through the adoption, modification or abrogation of legislation or the dissemination of information..."

In deliberating the state of healthcare for women in Malaysia from a rights-based approach, SUHAKAM has referred to relevant international standards including the International Covenant on Economic, Cultural and Social Rights (ICESCR). The Committee on Economic, Social and Cultural Rights (CESCR) has elaborated that there are four principles of the right to health as expressed under the ICESCR: health services must be available, accessible, and acceptable and of good quality. SUHAKAM uses these standards and principles in monitoring the level of healthcare in Malaysia.

Specific health issues facing women in Malaysia are related to their reproductive rights, including maternal and family planning services. In 1966, The National Population and Family Development Board (NPFDB) was established to improve the reproductive health status of women and men. The NPFDB also encourages family planning. Its role has now expanded to include policy and advisory roles by assisting planners and programme managers to integrate population and family development perspectives into sectoral development programme planning. It also facilitates policy makers to consider population and family development factors in the formulation of national development policies and strategies. The NPFDP also provides services to women, include awareness programmes, health information, medical check-ups and materials related to the use of contraception.

Accessibility

The Malaysian health policy does not explicitly incorporate gender as a major concern. However, the available healthcare programmes is sensitive to the demographics and physical needs of the public at large. As a result, women are considered equal recipients of healthcare services. For example, services such as the Flying Doctor Service, community nurse programmes and mobile clinics are implemented by the Government to reach out to communities in remote areas. However, these services are irregularly provided since they are weather dependent. In addition, the inadequate medical infrastructures in the remote areas negatively affect the quality of health services delivered, especially maternity services. SUHAKAM is aware of the problems faced by the indigenous communities: because these communities often live very far from a clinic or hospital, pregnant women need to be warded in hospitals very much in advance before their due date in order to ensure that they can receive adequate maternity support and professional assistance upon delivery. As a result, expecting mothers are unnecessarily separated from their families for long periods. This can be distressing because these are times where they need emotional support from their spouse and family.

Non-discrimination

Everyone has the right to access health services, regardless of gender. However, there is yet to be a comprehensive national health policy that integrates gender equality and recognizes the various conditions and situations that may negatively affect women's access to healthcare, including the specific

needs of indigenous women, women with disabilities, undocumented women, as well as refugees and migrant women. In Malaysia, double fee policy is imposed on migrant workers. This means migrants are paying a first class fee but entitled to third class treatment or healthcare facilities. The outpatient fee for migrants which used to be RM2 (compared to RM1 for Malaysians) is now increased to RM50 since 2004. With respect to persons with disability, there is a lack of protection and healthcare programmes to safeguard against sexual abuse. SUHAKAM is of the view that women require facilities which are not only specific to the illness, physical conditions and status of nationality, but also sensitive to needs and medical requirements of a woman. By having a healthcare system for women in different situations, the Government can ensure that the healthcare facilities provided are not discriminatory and accessible to all women.

Acceptability

Healthcare services provided must be culturally appropriate, sensitive to gender and has respect to confidentiality. As such, it is important to look into how the Malaysian healthcare facilitates or provides medical solutions for communicable diseases such as HIV/AIDS. This is due to the fact that HIV/AIDS remains a challenge for the government to handle as it has over the years, led to social stigmatization of patients and sufferers and feminization of the disease. Since The 8th Malaysia Plan, it is recognized that women, especially the young ones, are in the high-risk group in terms of vulnerability to AIDS. Realizing this, greater emphasis and effort has been given towards providing information on AIDS in order to increase public awareness. However, despite these efforts, the number of women infected by HIV has increased from 481 in 2000 to 745 in 2007. In the same time period, the percentage of women infected by HIV increased

BEIJING PLATFORM AND ACTION PLAN

"...98. HIV/AIDS and other sexually transmitted diseases, the transmission of which is sometimes a consequence of sexual violence, are having a devastating effect on women's health, particularly the health of adolescent girls and young women. They often do not have the power to insist on safe and responsible sexes practices and have little access to information and services for prevention and treatment. Women, who represent half of all adults newly infected with HIV/AIDS and other sexually transmitted diseases, have emphasized that social vulnerability and the unequal power relationships between women and men are obstacles to safe sex, in their efforts to control the spread of sexually transmitted diseases..."

from 9.4% to 16.4% (reported cases only). According to the National Action Plan for Women, the Ministry of Women, Family and Community Development recommended two steps to confront this problem: firstly, it is suggested that a legislation to protect women suffering from HIV/AIDS to be introduced; and secondly, HIV testing to be made available comprehensively for the public. Both steps are yet to be introduced although these mechanisms are expected to be in place by 2010. HIV testing has also been made mandatory for migrant workers under the National Aids Action Plan. Migrant workers are required to sign a consent form upon taking the test although reports have shown that they are rarely aware of the fact that they are being tested for HIV. In addition to that, those who are tested are not provided with proper counseling support before or after the test is conducted. The present system does not actually educate migrants about HIV/AIDS prevention or infection. For example, female migrants face problems such as abusive and exploitative working conditions and sexual harassments which are contributing risk factors to their health.

SUHAKAM acknowledges the success and improvement that Malaysia has achieved in areas of female life expectancy and birth mortality. However, there is a need to integrate gender sensitivity in the current approach to healthcare system and facilities for women due to the emerging needs, for example in the areas of HIV/AIDS, mental health and health support for women who are victims of violence. Rights of women to healthcare should not be limited to reproductive rights only. It is for this very reason that SUHAKAM in its discussions and dialogues with government agencies, civil society and the public, emphasized the need for every stakeholder to ensure its commitment to health as a human right as guaranteed by the Federal Constitution of Malaysia (Article 5). Further, it is vital for the government to observe its obligations under the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) especially in areas concerning access to healthcare that is not discriminatory and accessible to all women. In addition, SUHAKAM also recommends that the Government ratifies the International Covenant on Economic, Social and Cultural Rights (ICESCR) which includes the right to health as one of the key rights.

CHAPTER 6

Women And Right To Employment

WOMEN AND RIGHT TO EMPLOYMENT

Women have been making significant contributions to every aspect of Malaysia's development, especially in social, cultural and economic sectors. Currently, Malaysian women play a greater role in the labour force both in the professional and non-professional sectors.

However, some women in Malaysia, as in other countries, have had to encounter institutional and social barriers as they struggled for equality of opportunity in the labour market. Today, women make up almost half (49 per cent) of Malaysia's total population.

Statistics show that there are more highly educated women than men. In 2007¹⁴, women accounted for 61.9 per cent of all university students with total number of 59,207 women. Generally, in Malaysia, women do well in education and have the qualification, but some of them drop out of the workforce mainly because of family responsibilities and some discriminatory practices at workplace.

Table 12: Labour Force Participation Rate

ITEM	BREAKDOWN BASED ON SEX	YEAR		
		1990	2000	2007
LABOUR FORCE	TOTAL ('000)	7,000.2	9,616.1	10,889.5
	MALE ('000)	4,489.8	6,275.2	6,963.5
	FEMALE ('000)	2,510.3	3,340.9	3,926.0
LABOUR FORCE PARTICIPATION RATE	OVERALL TOTAL	66.5%	65.4%	63.2%
	MALE	85.3%	83.0%	79.5%
	FEMALE	47.8%	47.2%	46.4%

Table 12 (source: MWFCF) shows that the female labour force participation rate¹⁵ was 47.8 per cent in 1990, 47.2 per cent in 2000 and 46.4 per cent in 2007. This is lower compared to the male labour force which is 85.3 per cent, 83 per cent and 79.5 per cent for the same time period. The relatively low labour participation of women compared to men is inconsistent with the high number of women in tertiary education and women graduates. Furthermore, according to the 2009 Gender Gap Index published by the World Economic Forum, only 47% of women were working compared to 83% of the men.¹⁶

¹⁴ <http://www.kpwkm.gov.my/BI/Upload/33.table3.3.pdf>

¹⁵ "Labour force" refers to the population aged 15–64 that is economically active; those who supply labour for the production of goods and services during a specified period.

¹⁶ "The Global Gender Gap Report 2009." World Economic Forum. <<http://www.weforum.org/pdf/gendergap/report2009.pdf>> Accessed 2 April 2010.

Despite their high academic achievements women in employment still have to contend with several challenges in the work place, as enumerated in the following paragraphs.

(i) Women in Decision Making

In addressing the issue of under-representation of women at the decision making level, the government in August 2004 adopted a policy of having women filling at least 30 per cent of all decision making positions at all levels. This policy was long overdue because as far back as in 1995 the Fourth World Conference on Women in Beijing had resolved that 30 per cent of all decision making positions in UN member states should be filled by women.

30% WOMEN IN DECISION MAKING POSITION

During the UN Fourth World Conference on Women held in Beijing in 1995, Malaysia had committed to increase women's participation in decision-making. The Malaysian government's policy of women in at least 30 per cent of decision making positions is one of the steps taken to fulfil that commitment.

Though it comes almost 10 years after the Beijing Conference, this policy is a mark of the government's recognition of Malaysian women's significant contribution to the country's development efforts and if effectively implemented should help reduce the gender imbalance at the decision making level.

Table 13: Men and Women at Decision Making Level in the Public Sector

POSITION	2008			
	TOTAL	MALE	FEMALE	%FEMALE
SECRETARY GENERAL	25	23	2	8%
DIRECTOR GENERAL	74	62	12	16.2%
CEO (STATUTORY BODIES)	70	60	10	14.3%
TOTAL	169	145	24	14.2%

Women should also be given equal opportunities for promotion and career advancement. Article 11 (d) CEDAW states that women, on a basis of equality with men, have:

the right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work.

Tables 14 and 15 show the distribution of women workers by occupation

and the number of registered professionals respectively. It can be seen that most women workers are concentrated in the clerical and service areas. In addition, most professions, with the exception of the dental profession, are dominated by men. However, in the accountancy and legal professions, women make

**GOVERNMENT 'S OBLIGATION
UNDER THE BEIJING DECLARATION
& PLATFORM FOR ACTION**

Para 58 of the Beijing Declaration & Platform for Action states, "(h) to generate economic policies that have a positive impact on the employment and income of women workers in both the formal and informal sectors and adopt specific measures to address women's unemployment, in particular their long-term unemployment;

(i) to formulate and implement, when necessary, specific economic, social, agricultural and related policies in support of female-headed households..."

Table 14: Distribution of Female Employment by Occupation, 2007

Occupation	Percentage of positions held by women (%)
Professional	7
Legislators	5
Technician	15
Clerical Workers	19
Service Workers	19
Craft	4
Skilled Agricultural	9
Machine Operator	10
Elementary Workers	12

Source: Ministry of Women, Family and Community Development

Table 15: Number of Registered Professionals (Female), 2008

Profession	Total	Male	Female	Female (% of total)
Accountant	25,019	13,369	11,650	46.6
Architect	1,217	866	351	28.8
Dentist	3,213	1,292	1,921	59.8
Lawyer	12,471	6,702	5,769	46.3
Engineer	42,893	35,596	6,297	14.7
Veterinary Surgeon	1,524	977	547	35.9
Quantity Surveyor	1,050	849	201	19.1

Source: Ministry of Women, Family and Community Development

up almost half of the workforce.

(ii) Maternity Protection

Although the number of women at the managerial and executive positions has been increasing steadily, those positions are generally still dominated by men. Most employers consider women a disadvantage because they are entitled to maternity leave and tend to prioritise family over work.

The infamous Beatrice Fernandez case (2005) is an example of discrimination

ILO CONVENTION ON MATERNITY PROTECTION 2000 (C83)

Article 8

1. It shall be unlawful for an employer to terminate the employment of a woman during her pregnancy or absence on leave referred to in Articles 4 or 5 or during a period following her return to work to be prescribed by national laws or regulations, except on grounds unrelated to the pregnancy or birth of the child and its consequences or nursing. The burden of proving that the reasons for dismissal are unrelated to pregnancy or childbirth and its consequences or nursing shall rest on the employer.

2. A woman is guaranteed the right to return to the same position or an equivalent position paid at the same rate at the end of her maternity leave.

against women by the employer. Ms Fernandez was a flight stewardess who was dismissed by her employer when she became pregnant. The collective agreement of the company had included a clause permitting the employer to terminate the service of its employee upon pregnancy. Beatrice applied to court to have her dismissal declared wrongful and the collective agreement invalidated for being discriminatory and unconstitutional. She lost her case.

The dismissal of Ms Fernandez is a clear violation of women's rights. Article 11(2)(a) CEDAW prohibits any kind of discrimination against women on the grounds of pregnancy, maternity or marital status. In addition, Article 11(2)(b) CEDAW also requires the government to impose

safeguards such as providing women with paid maternity leave or comparable benefits without the risk of losing their jobs.

Meanwhile, childcare arrangements are not easily available for working mothers. Even if available, many fall short of the desired quality. Quality childcare arrangement is necessary particularly because presently working mothers are entitled to only 60 days maternity leave. Therefore, they need to

be able to depend on quality care for their babies once they have to return to work.

The 60-day maternity leave is short compared to the situation in other countries where women are entitled to at least 90 days maternity leave.

Table 16: Maternity/Paternity Leave in Other Countries (2004)

Country	Duration of Maternity Leave	Percentage of wages paid in covered period
Angola	90 days	100%
Brazil	120 days	100%
Cameroon	98 days	100%
China	90 days	100%
Cuba	126 days	100%
India	84 days	100%
Indonesia	90 days	100%
Laos	90 days	70%
Thailand	90 days	100% paid for the first 45 days then 50% paid for next 45 days.

Source: United Nations Statistics Division¹⁷

There have been numerous calls for the government to amend the Employment Act 1955 to increase the maternity leave to 90 days. The Act was first amended in 1998 where maternity leave was increased from 42 days to 60 days. Currently, the Selangor and Kelantan state Governments grant 90 days maternity leave to their civil servants.

(iii) Minimum Wage and Gender Pay Gap

There is presently no legislation governing minimum wages in Malaysia. As a result, many workers in the private sector are not protected from exploitation and are unable to afford a decent standard of living. The Malaysian Trade Union Congress (MTUC) and other NGOs have repeatedly urged the Government to enact legislation to set a minimum wage of RM900 exclusive of other allowances.

The problem of gender pay gap also remains in the private sector, particularly with respect to the low income jobs. Many women in the manufacturing and agricultural sectors are paid less than men for the same work.

¹⁷ United Nations Statistics Division. "Statistics and Indicators on Women and Men: Table 5c - Maternity Leave Benefits" (22 April 2005) UN Doc ST/ESA/STAT/SER.K/WWW/16/Rev.5.

(iv) Retirement Age

The Employment Act 1955 is silent on the age of retirement. However, the private sector has adopted the practice of the public sector where the retirement age was, until recently; 55 years. The current retirement age for those working in the public sector is 58 years irrespective of their sex. However, women in the private sector continue to be discriminated with respect to the age of retirement. Some enterprises and companies have set the retirement age at 50 for women and 55 for men. Taking into consideration women's longer lifespan and increased responsibilities of the modern working women, including the higher number of single mothers, there should not be any difference in the retirement age of women and men. Instead, the retirement age should be increased to 60 years and everyone, regardless of gender, should be entitled to opt for early retirement at 55 years. It is time the Employment Act 1995 be amended to incorporate the same retirement age for men and women in all employment sectors, whether public or private.

EQUAL PAY FOR EQUAL WORK

The Government of Malaysia has an obligation under the Equal Remuneration Convention (No. 100) to ensure no gender pay gap. Article 2(1) of this Convention states that "Each Member shall, by means appropriate to the methods in operation for determining rates of remuneration, promote and, in so far as is consistent with such methods, ensure the application to all workers of the principle of equal remuneration for men and women workers for work of equal value." Malaysia ratified this Convention in 1997.

ARTICLE 11 OF CEDAW

"...(e) The right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave;..."

(v) Social Protection

During an economic or financial crisis, women workers tend to be the first to be retrenched. According to the Deputy Minister of the Women, Family and Community Development Ministry¹⁸, statistics show that half of the workers retrenched in the current economic crisis which began in 2009 were women, despite them making up only 35% of the country's total workforce. The justification given by employers to explain their decision to retrench women employees is that women prioritise their family responsibilities over work and take maternity leave often.

¹⁸ "Women first to be retrenched," The Star, 23 February 2009.

Table 17: Unemployment Rate

Year	1990	1995	2000	2004	2007
Male (%)	4.0	2.8	3.0	3.4	3.1
Female (%)	5.4	3.8	3.2	3.8	3.4

Source: Department of Statistics of Malaysia

Table 17 shows that the unemployment rate among women is higher than that of men. Given women's vulnerability to unemployment, the Government needs to set up a retrenchment fund to protect these workers. Human rights standards like the International Covenant on Economic, Social and Cultural Rights, the ILO Convention and CEDAW have emphasized on social security for employees including at the time of unemployment.

CHAPTER 7

Trafficking Of Women

TRAFFICKING OF WOMEN

Introduction

Human trafficking is a modern day form of slavery which violates the fundamental rights and liberties of a person. The Universal Declaration of Human Rights (UDHR) clearly prohibits slavery of human beings. The spirit of this principle is also reflected in other international human rights treaties such as the International Covenant on Civil and Political Rights (ICCPR), Convention on the Rights of the Child (CRC) and Convention on the Elimination on all forms of Discrimination on Women (CEDAW), where the latter two have been acceded to by Malaysia. At the national level, Article 6 of the Federal Constitution also prohibits slavery and forced labour.

Malaysia is identified as a transit and destination country for trafficked victims. Women and children are trafficked for commercial sexual exploitation and men, women and children are exploited for forced labour. Economic growth and job opportunities in the country are among the reasons why victims are tricked into trafficking. Malaysia's long borders at sea and its borders with Thailand, the Philippines and Indonesia make the country geographically strategic for human trafficking transactions.

Definition of "Trafficking in Persons"

According to a universally accepted definition under the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, "trafficking" in persons is defined as:

The recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.

Exploitation shall include, at a minimum, the exploitation of the

prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or removal of organs.

Human trafficking is a severe form of human rights violation which uses human beings as objects of trade. Through lies, deceit and fraud, individuals fall for promises of high paid jobs and luxurious life. Victims however end up being enslaved, indebted and exploited with little or no chance to escape. In some instances, victims are drugged to the point of addiction to instill obedience towards traffickers. Victims of human trafficking often end up being exploited in prostitution, forced labour and street begging. Under Malaysian law, selling of babies is also considered as human trafficking.

SUHAKAM's Efforts on Human Trafficking

SUHAKAM has given serious attention to the problem of human trafficking especially since participating in the 7th Annual Meeting of the Asia Pacific Forum (APF) in 2002 where the issues of trafficking in persons were highlighted. In the earlier phase, SUHAKAM's work concentrated on raising awareness because knowledge about human trafficking was low. To achieve this, SUHAKAM collaborated with local and international NGOs, government agencies, embassies and other National Human Rights Institutions (NHRIs). SUHAKAM recognizes the need for a concerted effort between all stakeholders as well as individuals who each has his roles and responsibilities to combat human trafficking. Strategic partnership and close ties with other agencies are crucial, given the very complex nature of human trafficking.

In 2003, SUHAKAM began to intensify its work on human trafficking. SUHAKAM held discussions with relevant stakeholders including government agencies, enforcement bodies, NGOs, and academicians to further analyse the problems related to human trafficking. Subsequently in 2004, dialogues with the embassies of Thailand, Indonesia, Cambodia, Vietnam, China, the Philippines, Myanmar and Russia were held. An international discussion on human trafficking was seen as necessary given the global scale of human trafficking and the threats that it poses to countries worldwide. Since then, SUHAKAM continues to hold dialogues focusing on wider scope with embassies as the issues gain more global attention in recent years.

A Forum on Trafficking of Women and Children — A Cross Border and Regional

Perspective was held on 13 and 14 April 2004 in Kuala Lumpur. The Forum gathered stakeholders to discuss and agree on next steps by all concerned bodies and individuals in order to address human trafficking in the country. The Forum, among others stressed the role of embassies in alerting their nationals to avoid employment agencies which run fraudulently, as trafficking is often disguised as lucrative job opportunities. The role of the tourism industry in promoting human trafficking, particularly in relation to sex tourism was emphasized at the Forum, and the industry was urged to exercise vigilance and uphold respect towards the rights of women and children. The Forum also urged local municipalities to uniformly control activities of entertainment outlets and to adopt stringent measures in granting licences to them. Actions must be taken against those who carry out inappropriate activities in violation of building laws.

**UN ECONOMIC AND SOCIAL COUNCIL
RECOMMENDED PRINCIPLES
ON HUMAN RIGHTS AND
HUMAN TRAFFICKING (2002)**

According to the UN Economic and Social Council, any effort to tackle human trafficking must be based on human rights principals. It states that:

- "...1. The human rights of trafficked persons shall be at the centre of all efforts to prevent and combat trafficking and to protect, assist and provide redress to victims.
2. States have a responsibility under international law to act with due diligence to prevent trafficking, to investigate and prosecute traffickers and to assist and protect trafficked persons.
3. Anti-trafficking measures shall not adversely affect the human rights and dignity of persons, in particular the rights of those who have been trafficked, and of migrants, internally displaced persons, refugees and asylum-seekers..."

SUHAKAM is very pleased that many of the recommendations formulated at the Forum have been adopted. This indicates that common understanding is achievable when dealing with such serious crime. For example, the Forum recommended for the accession to the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children. The said Protocol was acceded to by the Government in 2009. The Forum also recommended for the enactment of a specific anti-trafficking law and the establishment of a national task force for human trafficking. Presently, the Anti Trafficking in Persons (ATIP) Act 2007 is used against human traffickers. The Act also establishes an Anti Trafficking in Persons (ATIP) Council to monitor the crime and undertake appropriate measures to prevent and eliminate human trafficking.

In 2004, SUHAKAM released its first report on human trafficking entitled "Trafficking in Women and Children". It reports SUHAKAM's work and findings on human trafficking. The report includes the results of all of SUHAKAM's research, analysis and field work on human trafficking up to 2004. The report also lays down the concepts and provides many real life examples of how women are cheated into exploitation. Since the release of the report, SUHAKAM continues to address human trafficking through studies, awareness programmes, dialogues and recommendations to the Government when necessary.

In 2009, SUHAKAM visited Thailand and met the Thailand National Human Rights Commission, Government agencies and NGOs to learn about their best practices in combating human trafficking. Among the ASEAN countries, SUHAKAM finds that Thailand has better practices in dealing with human trafficking. Among good practices that SUHAKAM observed during the visit was the close collaboration between the Government agencies and local and international NGOs. In these collaborations, priority is given to the best interest of the victims. The NGOs are given the trust to assist the Thai Government in matters such as victim's identification, protection and safe repatriation.

During the visit, SUHAKAM offered to cooperate with Alliance Anti Traffic (AAT) and Acting for Women in Distressing Situations (AFESIP) which are international NGOs specializing in human trafficking. SUHAKAM and the said NGOs decided to undertake an awareness raising campaign concentrating on the Malaysian-Thai border, as border areas are among the potential routes taken by traffickers. When SUHAKAM visited the entertainment area bordering Thai (Sadao)-Malaysia, it was observed that sexual exploitation of women is extremely rampant. Middlemen and the prostitutes themselves were found to offer sex openly to potential clients at every corner. SUHAKAM is of the view that political will and intervention from both Thai and Malaysian Governments are needed to end such exploitation of women.

Following the visit, in collaboration with the Pasir Mas District Office, an awareness raising programme for the community and state government officials was conducted in Rantau Panjang, Kelantan in 2010. The Rantau Panjang area was chosen because of its proximity with Thailand. SUHAKAM, Alliance Anti Traffic (AAT), Acting for Women in Distressing Situations (AFESIP) and Tenaganita joined forces to disseminate knowledge and raise awareness on human trafficking. The event was well attended, but SUHAKAM found that

much more steps need to be taken to instill awareness and knowledge on human trafficking among all levels of the society.

SUHAKAM is a member of the South East Asia National Human Rights Forum (SEANF) along with NHRIs from Thailand, Indonesia and the Philippines. Through the 2007 Bali Declaration of Cooperation, the SEANF agreed to develop projects focusing on five areas of common concern. Human trafficking was identified to be among issues of priority. Subsequently, SEANF undertook to develop a Memorandum of Understanding (MoU) against Trafficking of Women and Children. The MoU was signed by SEANF members at the 7th Technical Working Group Meeting held in Manila, Philippines in March 2010. SEANF is hopeful that more South East Asian countries would become signatories to the MoU to solidify efforts to suppress human trafficking in the region. SEANF members recognize that human trafficking occurs widely in South East Asia and that most victims are women and children. Hence it is important for the NHRIs to collaborate with one another in order to enhance their role and responsibility in protecting human rights in the region.

ANTI - TRAFFICKING IN PERSONS ACT 2007

Due to consistent and concerted efforts from various stakeholders, positive developments in combating human trafficking have materialized. For example, the Anti Trafficking in Persons (ATIP) Act was enacted in 2007 and the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children was acceded to by the Government in 2009.

Before the enforcement of ATIP Act (2007) and the establishment of the ATIP Council, only a few organizations and NGOs in Malaysia were involved in human trafficking work, such as Tenaganita and Rumah Nur Salam. These NGOs faced extreme difficulties and risks in their work as they had to work on their own and there was no established mechanism against human trafficking as at present.

Prior to the ATIP Act, there was no concrete definition of "trafficking in persons" in Malaysia and the existing laws such as Internal Security Act, Emergency Ordinance, Immigration Act and the Penal Code did not fully criminalize human trafficking. With the absence of distinct laws and low level of awareness on trafficking, trafficked persons were not recognized as victims. Instead, they were considered as criminals and illegal immigrants for violating immigration

laws, as some were not properly documented. Such circumstance occurred due to the unrecognized difference between trafficked victims and illegal immigrants. SUHAKAM considers such scenario as further victimizing the trafficked individuals.

Among the key features of ATIP Act 2007 are direct criminalization and imposition of penalties on traffickers, extra-territorial jurisdiction, protection and rehabilitation for victims of traffickers and the establishment of the ATIP Council.

The mandate of the ATIP Council includes to coordinate the implementation of the ATIP Act and to formulate policies and programmes to suppress and prevent human trafficking. These include protection and education programmes to increase public awareness on human trafficking. The Council focuses on five key areas that are integral to the success of suppressing human trafficking. They are: legislation, enforcement, protection and rehabilitation, coordination, as well as public awareness and publicity.

SUHAKAM is a member of the ATIP Council. SUHAKAM's role in the Council is to focus on the human rights aspects of human trafficking and identify gaps that exist which aggravate the problem. In 2010, the Council launched a National Strategic Plan for Anti Trafficking in Persons (2010-2015) to give full force to the effort in combating human trafficking aiming at reducing human trafficking in Malaysia, protecting trafficked victims and bringing traffickers to justice.

Since the enforcement of the ATIP Act, from February 2008 to January 2010, there have been a total of 108 cases of human trafficking, with total rescue of 1083 victims. Within that time frame, most of the women came from China ranks the highest (232 victims), followed by women from Indonesia (163).

The ATIP Act also provides for the establishment of home shelters for victims. To date, there are three shelters for trafficked victims; two in Kuala Lumpur and one in Sabah. There shall be more shelters built to host trafficked victims as it is foreseeable that the number of victims will increase, corresponding with strong enforcement and implementation of the law. The shelters presently are facing problems of overcrowding and lacking of staff. SUHAKAM hopes that such problems would be addressed soon.

Malaysia's effort to combat human trafficking also involves international and regional cooperation. As a signatory to ASEAN Declaration against Trafficking

in Persons Particularly Women and Children, Malaysia cooperates with other ASEAN countries including Indonesia, Thailand and the Philippines in combating human trafficking in the region. Malaysia has also begun cooperating with the Australian government to prevent human trafficking and smuggling.

Despite the enactment of ATIP Act 2007 and Malaysia's efforts to curb human trafficking, a 2009 report published by the U.S Department of State's Trafficking in Persons (TIP) placed Malaysia on Tier 3 for failure to comply with the minimum standards for the elimination of trafficking and commented on the lack the efforts to address human trafficking. The report cited Malaysia's failure to address problems of forced labour. The Malaysian Government took note of the report and the ATIP Council has made reference to it in drafting the national action plan. SUHAKAM agrees with the Government's view that while the report should be considered, it must also be taken into account that time is needed to see the effectiveness and proper implementation of the newly established ATIP Act. SUHAKAM also stated the need for such reports to be objective.

Looking at the high number of female victims involved, there is a need to step up the enforcement of laws and the measures for protection. SUHAKAM hopes that the human rights of victims are guaranteed from the moment they are rescued, rehabilitated and up to the process of reintegration into society. SUHAKAM also recommends that awareness raising among all levels of the society, in particular women and children, be intensified. International, regional and multi-agency cooperation must be strengthened and expanded due to the cross border nature of human trafficking.

CHAPTER 8

Sexual Harassment Of Women At The Workplace

SEXUAL HARASSMENT OF WOMEN AT THE WORKPLACE

INTRODUCTION

Sexual harassment is one of the most common forms of violation of a person's body and dignity and it is a problem faced by many working women. Sexual harassment at the workplace has been publicly recognised as a serious problem that violates a person's dignity and creates an intimidating and hostile environment not only for the affected parties, but potentially also for others who may witness or be aware of the harassment.

There have been many known cases of sexual harassment at the workplace but these have not been reported to the authorities or dealt with appropriately. In Malaysia, cases of sexual harassment at the workplace or misconduct of an employer towards an employee were seen as far back as 1939 (at the time, in Malaya) where the Klang Indian Association organised a strike condemning the molestation of female workers by Europeans and 'Black Europeans'. Later in 1950, 106 women and men rubber tappers from Panavan Karupiah Estate in Perak went on strike against sexual molestation.¹⁹

The first known survey on sexual harassment in this country was conducted by the Women's Section of the Malaysian Trades Union Congress (MTUC) in 1987. The study reported that 11 to 90 per cent of the female respondents experienced sexual harassment in the workplace.²⁰ In the 1990s, a survey of 586 public administrators (422 men and 164 women) in the northern states of Peninsular Malaysia reported that 43.4 per cent of the men and 53 per cent of the women interviewed faced at least one form of sexual harassment.²¹

The Ministry of Human Resources (MOHR) has formulated a Code of Practice on the Prevention and Eradication of Sexual Harassment in 1999. However, there is a general dissatisfaction with this Code of Practice because although it aims at regulating the conduct of employers/employees at the workplace, it does not have the force of law. It acts as a mere practical guideline. The existing legal avenues like the Employment Act of 1955 does not deal with the

¹⁹ Ariffin, Rohana. "Malaysian Women's Participation in Trade Unions." *Daughters in Industry*. Ed. Heyzer, Noeleen. Kuala Lumpur: Asian and Pacific Development Centre, 1988 and

²⁰ Marican, Sabitha. *The Perception of Sexual Harassment Among Public Administrators at the Workplace*. School of Social Development, Universiti Utara Malaysia, 1999.

²¹ Marican, Sabitha. *The Perception of Sexual Harassment Among Public Administrators at the Workplace*. School of Social Development, Universiti Utara Malaysia, 1999.

problem of sexual harassment and the provisions in the Malaysian Penal Code are not adequate enough in providing aid to the victim of sexual harassment as it places a higher burden of proof on the victim to establish a case.

WHAT CONSTITUTES SEXUAL HARASSMENT?

Sexual harassment may take many forms, some of which may be subtle while others may be more explicit, but all of which are bound to cause much embarrassment to the victim.²² The followings may be considered as typical examples:

- Unsolicited compliments regarding a person's figure, dressing, make-up, style of movement, way of talking, etc.
- Sexually tainted jokes, rumours, comments, news items, etc. made in the presence of a person of the opposite sex
- Physically molesting female staff by touching parts of their bodies
- Persistently trying to strike up a conversation, even after the other person has indicated that he/she is not keen to do so
- Verbal advances and suggestions of a lewd and sexual nature
- Unwarranted telephone calls, especially if such calls are made to the person's office or home at unearthly hours
- Repeatedly or persistently inviting a person for lunch/ dinner, dates, or for a drink or ride
- Sending love letters or posting love notes on the internet
- Sending or showing pornographic materials to another person in order to embarrass him/her
- Instructing a subordinate employee to stay back alone, after normal working hours, on the pretext of having urgent work to be done.

Sexual harassment is not about personal relationships between men and women. Sexual harassment is a manifestation of abuse of power. Therefore, great care and caution should be taken into consideration in finding solution to this problem as this is a sensitive issue which relates to a woman's dignity.

CONSEQUENCES OF SEXUAL HARASSMENT

The impact from the act of sexual harassment can be very significant both on the victim as well as the organization.

²² Laxman, L. et al. 'A study on Sexual Harassment in Small and Medium Enterprises in Malaysia'. Universiti Teknologi Mara <<http://eprints.utm.my/2682/1/71875.pdf>> Accessed 4 April 2010.

1. Personal Impacts

Sexual harassment can lead to negative consequences for the victim, including:

- a. lesser satisfaction with their jobs
- b. greater intention to resign or retire
- c. impact on the health condition of the victim

At times, female victims also experience tension, anger, and anxiety while a limited number experience depression or guilt. There are also instances where victims may also feel the need for medical or psychological attention.

2. Organizational Impacts

Sexual harassment may also have an impact on the successful operation of an organisation. This may lead to:

- a. high turnover
- b. absenteeism
- c. decrease in productivity
- d. lack of incentive to innovate
- e. inefficiency

It is only on rare occasions that people who are offended, humiliated or intimidated by workplace misbehaviour would bring their concerns to the attention of their superior officers due to embarrassment or fear of jeopardizing their own position.

THE ROLE OF MOHR AND THE CODE OF PRACTICE

Recognising that sexual harassment is a widespread problem, the Ministry of Human Resources launched the Code of Practice on the Prevention and Eradication of Sexual Harassment in the Workplace (The Code) in 1999. The Ministry of Human Resources has defined sexual harassment as *“unwanted conduct of a sexual nature having the effect of verbal, non-verbal, visual, psychological or physical harassment that might, on reasonable grounds, be perceived by the recipient as placing a condition of a sexual nature on her/his employment; or that might, on reasonable grounds, be perceived by the recipient as an offence or humiliation, or a threat to her/his well-being, but has no direct link to her/his employment”* (Ministry of Human Resources, 1999).

The Code of Practice outlines the statement of purpose, definition of harassment, forms of harassment, guiding principles and procedures for employers in setting up a mechanism for employers to act fairly when dealing with cases on sexual harassment. To introduce this Code of Practice to employers/employees in public and private sectors, the Ministry has conducted several seminars and workshops. To date, 85 seminars / workshops have been conducted by the Ministry.

Statistics issued by Ministry of Human Resources (MOHR: March 2001), indicate that despite seminars/workshops conducted on the Code, only 4,500 employers, mostly from multi-national companies, have voluntarily adopted the Code. This constitutes approximately 1.125% of the 400,000 employers registered with Perkeso. The rate of adoption of the Code is 0.56% per annum. This slow rate of adoption of the Code is due to the fact that the Code is a mere practical guideline to employers/employees and trade unions and does not have legal impact. Further to this, the Code of Practice 1999 does not seem to stipulate a standard time frame in the complaint procedure.

The incident highlighted in this paragraph is taken from a testimony shared by a medical practitioner at SUHAKAM on 23 February 2010 during a Round Table Session. The victim, a medical practitioner by profession, had been a victim of sexual harassment by her superior at her workplace, for which she had lodged a complaint to the relevant authorities. After 11 months of waiting the victim's case was called for an inquiry. During the inquiry proceeding, the victim had to put up with all sorts of intimidating questions almost tarnishing her credibility as a witness/victim thus lowering her dignity before the members of the Inquiry Board. At the point of decision (that too after a long wait and after several reminders to the authorities by various parties), the perpetrator was found guilty but was penalised with only a fine and a demotion in his job. The entire incident has left a deep scar on the victim who, by her own admission as well as in the opinion of her colleagues at her place of work, has lost her sense of dignity and self-worth whereas the perpetrator is still in the same department and left to practise his harassment skills on other female victims under his charge. The Code of Practice therefore fails to sanction severe liabilities on the guilty offender. It enables the authorities only to take a disciplinary action on the perpetrator, and that too not commensurate with the offence incurred.

Looking at some industrial court cases direction, as in the case of **Project Lebuhraya Utara Selatan Bhd.vs Azahar Ahmad Industrial Court, Kuala**

Lumpur Case No: 6/4-156/97 15 April 1988²³. This was a case of a young female employee who was harassed by the supervisor at her workplace while she was on a night shift duty. The supervisor was caught committing an immoral act by taking advantage of the young female employee whilst she was performing her duty. The supervisor was dismissed from his employment on the ground of misconduct having outraged the modesty of a female employee during working hours. The court further cautioned that in such nature it is the duty of the employer to maintain strict discipline at the work place when there are female employees working during the night. No employer should allow behaviour of such a nature to occur. Thus, any form of indecent or immoral action on the part of an employee during working hours or in the workplace or in the course of carrying out their duties would amount to misconduct.

Further to the above, the landmark case of **Jennico Associates Sdn Bhd vs Lilian Therera de Costa** was the first case in Malaysia which recognized sexual harassment at workplace is as an 'offence'.²⁴ The complainant/victim, was a former director of a hotel who had claimed that she was subjected to both forms of physical and verbal harassment from her managing director. Due to fault finding from her managing director and the continuous emotional trauma had finally made her to resign. The case has further proven and affirmed the convictions of long held by proponents of gender equity that sexual harassment needs to be taken seriously.

COMPLAINTS REPORTED BY VICTIMS

Currently, there is no specific legislation governing sexual harassment cases at the workplace. Based on statistics obtained from the Jabatan Tenaga Kerja (the Labour Department), only 20 complaints were received in 1999, 61 complaints in 2000 and 22 in 2009. From word of mouth and other sources, it is believed that there were many more incidents of harassments than those that have been reported. Thus, it is obvious that the majority of victims prefer not to seek justice against the harasser as there are many factors the affected victim has to consider such as one's reputation, the family, opinion among colleagues, social relationship and also the security of the job itself.

Nevertheless, in the absence of stronger legal protection for victims, the following steps have been recommended for victims and would-be victims:-

1. Tell the harasser at the very first instance that you are not

²³ Project Lebuhraya Utara Selatan Bhd vs Azahar Ahmad [1998 2 ILR 51]

²⁴ Jennico Associates Sdn Bhd vs Lilian Therera de Costa, Award No.606/96 [1998 3 CLJ 583]

- amused with his behaviour and warn him not to repeat it;
2. Avoid losing control of your emotions or temper;
3. Should he repeat his action, give him a second and final warning in a plain and straightforward manner;
4. Do not show him that you are afraid of or are intimidated by him in any way;
5. If you know others who are also victims of this particular harasser, get them together and confront him;
6. If his actions persist, take up the matter and report him to your superiors;
7. If the problem still persists, make a written complaint to the Personnel Manager and at the same time refer the matter to the union, if you are a union member;
8. If that does not stop, take action by lodging a police report against the harasser under the relevant Penal Code.

Before a complaint is taken, it is practicable to review relevant records such as the complainant's personnel file, alleged harasser's personnel file, performance reviews, promotional and salary records. Such data may well be completely irrelevant to the legitimacy of the complaint, but it is the investigator's duty to check into all possible aspects of the complaint.

LEGISLATIVE PROTECTION : INADEQUATE

1. Employment Act 1955

The Employment Act of 1955 only covers general conditions of employer/employees obligations but the Act does not include any specific clause on sexual harassment. In addition, the 1955 Act also excludes a significant group of employees, such as contract workers and domestic workers from those who can approach the Department for help.

2. Industrial Relations Act (IRA) 1967

The Industrial Relations Department only treats cases on unfair dismissal by the employer under the IRA 1967 and it does not render any legal assistance to victims of sexual harassment.

3. Penal Code

Currently, there is no crime of sexual harassment per se. When a victim of sexual harassment lodges a police report a process of criminal investigation will take place. Unfortunately, the Penal Code is not of much help to the victim because the burden of proof is on the victim to establish a prima facie case. The following provisions are invoked by the police when a complaint of sexual harassment is taken from the victim: Liability on assault (S351); outraging of modesty (S354); outraging of decency (S377-D); criminal intimidation (S503); and using words or gestures to insult the modesty of a woman (S509).

However, the victim has to be prepared to face certain obstacles when the harasser is being prosecuted in the court of law. The standard of '*beyond reasonable doubt*' is placed on the victim to produce proof of evidence. This situation often creates a problem to the complainant as sexual harassment normally happens when there is no witness around.

Chances of Seeing Justice Being Done

- a. By bringing up a sexual harassment case, the victim and the harasser will be cross-examined thoroughly.
- b. The difficulties in proving an allegation is the main reason for few cases reported on sexual harassment. Thus, witnesses and evidence are the victim's most important "assets" as the standard of beyond reasonable doubt used to establish a case is a high degree standard.
- c. Its is difficult to have and/or to collect evidence in sexual harassment case as the act is committed between the perpetrator and the victim
- d. Sexual harassment case may face years of expensive litigation.
- e. Furthermore, the victim will be forced to speak publicly about embarrassing events, be shunned by colleagues and discriminated against by supervisors.
- f. In any sexual harassment case, the victim must promptly report to management and the police.
- g. Long delay in reporting such cases is among the problems faced by the police in sexual harassment probe as it may be difficult to determine the intent of the perpetrator.

- h. Since the Section 509 of the Penal Code deals more with physical aspects of sexual harassment, not all sexual harassment perpetrators may be successfully brought to justice.

The Proposed Sexual Harassment Bill

The above existing laws and procedures have not adequately protected the victims. Very often after reporting a sexual harassment case the complainant feels further victimised by the process of investigation she has to go through.

In response to this, the Joint Action Group against Violence Against Women (JAG), headed by WCC Penang launched a campaign for a sexual harassment law. On March 2001, JAG submitted a proposed Sexual Harassment Bill to the Ministry of Human Resources for the government's consideration.

The Bill serves two fundamental points: firstly, it requires employers to prevent sexual harassment and secondly to provide an effective access for the victim to have legal redress.

RECOMMENDATIONS

1. Need for Legislation on Sexual Harassment

Considering the inadequacies of current laws and Code of Conduct in practice, the government needs to take affirmative action to eradicate sexual harassment in the workplace to ensure that all working women are entitled to work in a safe and healthy environment free from sexual harassment. It is strongly recommended for both ministries, the Ministry of Human Resources and Ministry of Women, Family and Community Development, to review the provisions regulating sexual harassment cases and to consider having a separate, comprehensive piece of legislation on sexual harassment and not merely an amendment to the Employment Act of 1955.

An effective legislation is required to set up standard procedures to highlight what is deemed as acceptable and unacceptable conduct at the workplace. It would be wise for the Authorities to review the guidelines in the current Code of Practice and convert this Code into law to safeguard the rights of women at the workplace.

Armed with this new legislation it is hoped that the Ministry of Human Resources will formulate a policy to get employers to take firm steps to create a sexual harassment-free environment in their organisations. Employers must also be required to inquire into sexual harassment complaints and where appropriate to take action against every perpetrator without any discrimination.

2. The Employment Act 1955 is inadequate

The Employment Act is restrictive in its application and its protective measures. The act is lacking in defining the scope of 'unwarranted physical contact' neither does it create preventive measures on tackling sexual harassment issues. Basically the act outlines the general conditions on employer / employee relationship. In addition, the Employment Act 1955 also excludes a significant group of employees such as contract workers and domestic workers who can approach the Labour Department for help.

3. To implement an effective training programme

It is urged that all Government bodies, employers, trade unions, non-governmental organizations community and youth organizations consider conducting training programmes, counselling sessions and rehabilitation programmes for employers/employees and victims of sexual harassment. Further efforts and research concerning counseling and rehabilitation programmes are also urged to be conducted so as to prevent the recurrence of such harassment.

CONCLUSION

Malaysia as a signatory to the United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), is obliged to take all appropriate measures, including legislation, to eliminate any sort of discrimination involving sexual harassment.

Article 8 (2) of the Federal Constitution has been amended in 2001 to ensure that there is no form of discrimination against women on the basis of gender. This guarantees women in Malaysia enjoy the same rights, freedom and opportunities as their male counterparts.

In Asia, Hong Kong and the Philippines have developed specific legislation to combat sexual harassment. International organisations such as the United Nations, International Monetary Fund and the World Bank have also drawn up recommendations regarding gender specific violence which include sexual harassment in the workplace. The implementation of the Domestic Violence Act in 1994 sent a strong statement to others in the region that Malaysia is committed to achieve its goal of equality for all citizens.

CHAPTER 9
Rights Of Disadvantaged Women

RIGHTS OF DISADVANTAGED WOMEN

The disadvantaged are a group of people that have barriers in accessing and/or enjoying the same tools that are found useful by the society at large. A disadvantaged group may face more than one barrier. Therefore, overcoming this problem would require the removal of such barriers.

1. RIGHTS OF THE DISABLED

There are many groups of people that are disadvantaged, and this includes persons with disabilities. By early 2010, it is estimated that Malaysia has a population of 29 million. The UN estimates a prevalence of 10 per cent disability in any population. Due to lack of recent figures on the number of disabled people in Malaysia, it is therefore assumed that there are currently about 2.9 million persons with disabilities in the country.

Persons with Disabilities

The World Health Organisation²⁵ defines 'disability' as follows:

Disabilities is an umbrella term, covering impairments, activity limitations, and participation restrictions. An impairment is a problem in body function or structure; an activity limitation is a difficulty encountered by an individual in executing a task or action; while a participation restriction is a problem experienced by an individual in involvement in life situations. Thus disability is a complex phenomenon, reflecting an interaction between features of a person's body and features of the society in which he or she lives.

"...Women with disabilities are recognized to be disadvantaged, experiencing exclusion on account of their gender and their disability.

Women and girls with disabilities are particularly vulnerable to abuse. A small 2004 survey in Orissa, India, found that virtually all of the women and girls with disabilities were beaten at home, 25 per cent of women with intellectual disabilities had been raped and 6 per cent of disabled women had been forcibly sterilized..."

UN Factsheet on Persons with Disabilities

The Persons with Disabilities Act²⁶ interprets persons with disabilities as including:

²⁵ World Health Organisation (WHO), <http://www.who.int/topics/disabilities/en/>

²⁶ Act 685, Persons with Disabilities Act 2008, also known as Akta OKU 2008, was passed in Parliament on 24 December 2007, gazetted on 24 January 2008 and entered into force on 7 July 2008

those who have long term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society.

Issues Affecting Persons with Disabilities and Disabled Women

Previous studies on the special needs of the disabled have examined the various dimensions of ethnicity and socio-economic status, but largely ignored the issue of gender.²⁷ In Malaysia, the Persons with Disabilities Act specifically deals with the rights of the disabled. Malaysia is a signatory to the United Nations Convention on the Right of Persons with Disabilities (CRPD) and has

ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). Despite the laws available to persons with disabilities in this country, the implementation of such laws is lacking. The disabled continue to face problems and discrimination. Women with disabilities are particularly at risk.

Social stigma

Disabled women are one of the most marginalised groups in society. In Malaysia, although the rights of the women are being championed, these achievements have not been extended to their disabled counterparts. Socially, a disabled woman is stigmatised and viewed as unworthy. They are also viewed as unable to care for themselves and cannot raise a family.

There have also been reported cases of forced sterilisation of disabled women.²⁸ It is said that sterilising disabled women will prevent them from being

ARTICLE 6 OF CRPD - Women with disabilities

1. States Parties recognize that women and girls with disabilities are subject to multiple discrimination, and in this regard shall take measures to ensure the full and equal enjoyment by them of all human rights and fundamental freedoms.

2. States Parties shall take all appropriate measures to ensure the full development, advancement and empowerment of women, for the purpose of guaranteeing them the exercise and enjoyment of the human rights and fundamental freedoms set out in the present Convention.

²⁷ Haq, F.S. "Career and Employment Opportunities for Women with Disabilities in Malaysia" Asia Pacific Disability Rehabilitation Journal.

²⁸ The controversial topic of who is allowed to be a parent surrounds the issue of forced sterilization and abortion. The rights of women with disabilities to experience motherhood was questioned and in many cases decided for them. Often, the decision is based solely on the disability without taking into consideration the person behind the disability. Source: Forced Sterilization & Women with Disabilities, DAWN

sexually abused. However, it is often the case that the woman's consent has not been obtained prior to the sterilisation. In cases where the woman is severely disabled and is unable to make her own decisions, it is difficult to determine whether the decision to sterilise her really is in her best interest.

Abuse

A disabled woman is vulnerable to physical, sexual and mental abuse.²⁹ More often than not, the perpetrators are the people trusted by the victim, such as their family members or their caregivers. Very few cases of abuse are reported. Not only are the victims traumatised, they are also fearful of the possible repercussions. In addition, because of the stigma suffered by the disabled, many disabled women who have been abused fear that they will not be believed.

Women with disabilities need to be made fully aware of how to prevent abuse, to recognise abuse and where to report a case of abuse.

Caregivers play a very important role in maintaining the well-being and safety of women with disabilities. Caring for a disabled person can be physically and emotionally stressful. Therefore, it is important that caregivers are given appropriate training to enable them to properly care for those under their responsibilities. In an exposé conducted by The Star in July 2009, it was found that Taman Sinar Harapan³⁰, a shelter home for the disabled was gravely

PERSONS WITH DISABILITIES ACT 2007 Lifelong protection and social support system

38. (1) The Government shall provide the necessary lifelong protection and social support system including ensuring that the welfare of persons with severe disabilities remain unaffected after the death of their parents or their caregivers in order to enable the persons with severe disabilities to lead a better quality of life.

²⁹ In a reported case, a disabled woman was found dead believed to be murdered at an abandoned temple in a squatter area in Ipoh, Perak. The body of S. Kanavathy, 53, who was semi-paralysed, was found slumped on a chair in the temple at 2.45pm with slash wounds to her head, neck and hands. Ipoh police chief ACP Azisman Alias said the victim lived alone at the abandoned temple. The body has been sent to the hospital for post-mortem. The victim's brother S. Sannumugam, 60, said he last met his sister about a week ago and that she had asked him RM100 to seek treatment at a clinic for back pain. "Before this, she was staying near my house due to her inability to care for herself because of an accident 15 years ago. However, for the past one month she moved to stay at the temple because she liked to be on her own," he said when met at the crime scene. Source: Bernama

³⁰ Taman Sinar Harapan is registered with the Social Welfare Department as an institution for the disabled or orang kurang upaya with learning difficulties and require care, training, rehabilitation and shelter. As of December 2008, there are a total of 776 residents living in the seven Taman Sinar Harapan institutions in Malaysia. The objectives of the institutions are to provide care, shelter and rehabilitation for abandoned disabled people with learning difficulties, orphans and those in need of rehabilitation; to provide training on self-management and daily living skills so that they would be able to be independent; to give pre-vocational training; to offer the residents a chance to interact with friends and the general public through social activities; and to provide social skills training and cooperate with volunteer groups to help integrate the resident back into society.

mistreating their residents. Some male residents were chained to their beds and were left naked. The reason given by home authorities was that the residents had the tendency to turn violent and would use their shirts to harm their roommates.

In *Kee Lik Tian v Public Prosecutor*,³¹ a 49-year old man was alleged to have raped a “mentally retarded” schoolgirl, in contravention of section 376 of the Penal Code. The court held that despite her mental capacity, she was deemed to be a credible witness. This case went on to be appealed on the grounds that the defense could re-examine the girl i.e. the witness as to her mental capacity and thus her credibility as a witness. This demonstrates that justice must be seen to be served, and that a disabled person is not excluded from going through the due process of law if she has been attested to be a credible witness.

Healthcare

Generally, a disabled woman's access to healthcare is very poor, particularly because of the high medical costs involved. In addition, there is also the prevalent notion that the disabled cannot be rehabilitated. In the case of *Yang Salbiah & Anor v Jamil bin Harun*³², a seven year-old girl was run down by a bus and has resulted in her being in a vegetative state. Upon appeal, the court awarded her substantial damages. This clearly indicates that the court gave due consideration to the state of health of the plaintiff regardless of her gender.

Chapter 3 of the Persons with Disabilities Act governs a disabled person's access to health, the prevention of further disabilities and the availability of health personnel. Section 35 (2) Persons with Disabilities Act specifically states that “the Council, the private sector and non-governmental organization shall take appropriate measures to ensure persons with disabilities have access to health services, including health related rehabilitation, **that are gender sensitive.**” (emphasis added) This demonstrates that no one is to be discriminated on the basis of their gender.

³¹ *Kee Lik Tian v PP*, [1984] 1 MLJ 306. The Appellant went to the playground of the retarded girl's school, who was 12 ½ years of age on the date and at the time alleged in the charge, found her playing there and persuaded her to follow him to an oil palm plantation nearby where he had sexual intercourse with her. The court found that the girl was a credible witness despite her being mentally retarded, and sentenced the Appellant to four years imprisonment.

³² *Yang Salbiah & Anor v Jamil bin Harun* [1981] 1 MLJ 292 In this case the appellant, Yang Salbiah, was run down by a bus and became vegetative. The learned trial judge awarded a global sum of \$75,000 as general damages with the “usual” order as to interest and costs. The appellant appealed against the quantum of damages and was awarded \$129,178

Education

Education gives the disabled the opportunity to develop their full potential and enable them to contribute to society. The right of disabled persons to education is provided under the Education Act 1996, specifically under *Peraturan-Peraturan Pendidikan (Pendidikan Khas 1997 Bahagian II 3 (2))* which provides special education and facilities for children with special needs. Special education is provided in pre-schools, primary and secondary schools where the learning approach is specially tailored to the needs of the disabled.

On the other hand, most schools or learning centers lack disabled-friendly facilities. In the case of *Jakob Renner & Ors v Scott King*,³³ the plaintiff suffers from a physical disability and was prevented from continuing his education at the defendant's school on the grounds that it would incur the extra financial expenditure to the school in order to make the school disabled friendly. The court held in favour of the plaintiff.

Section 28 of the Persons with Disabilities Act ensures that persons with disabilities shall not be excluded from receiving education on the grounds of their disabilities. It also ensures that the Government and private educational institutions must provide the necessary accommodation in order to suit the needs of persons with disabilities.

It is interesting to note that Article 8 Federal Constitution states that "all persons are equal before the law and entitled to the equal protection of the law". However, on the rights in respect of education, Article 12 Federal Constitution is silent on gender, whereby it states that "without prejudice to the generality of Article 8, there shall be no discrimination against any citizen on the grounds only of **religion, race, descent or place of birth.**" (emphasis added). Therefore, steps must be taken to clearly provide that no discrimination on the grounds of gender is allowed.

³³ *Jakob Renner & Ors v Scott King* [2000] 5 MLJ 254 The first plaintiff, who suffered from some physical disability affecting his motor movements, had studied at the defendant school at their Melawati campus for his elementary schooling for six years. He was however not allowed to transfer to the Ampang campus to continue middle school on the grounds of his physical handicap. The principal factor in excluding the first plaintiff was because of the apparent financial expenditure that was to be incurred in making the school disabled friendly. The plaintiffs' appeals to the defendant school were rejected and the plaintiffs applied for an interlocutory injunction to restrain the defendants from preventing the first plaintiff from continuing his education at the Ampang campus of the defendant school. Pending the disposal of the application for interlocutory injunction, the first plaintiff was granted an ad interim injunction. The plaintiffs contended that there was a serious question to be tried as their case was founded on the first plaintiff's legitimate expectation to continue with his education and that the balance of convenience leaned in favour of the first plaintiff.

Employment

Disabled women are discriminated against when searching for employment. They are usually prejudiced on two grounds: for being a woman and for being disabled. Prospective employers are unwilling to employ disabled persons since they are seen as a liability and unable to perform their tasks. This is also due to the fact that the employers are reluctant to make the necessary accommodations to their workplace to make it disabled-friendly, although they are required to do so under the Uniform Building By-Law UBBL 34A. This by-law requires that "all buildings be approved with access to enable disabled persons to get into, out of and within the building for which access is provided wholly or mainly for the inspection, maintenance or repair of the building, its services or fixed plant or machinery; and be designed with facilities for used by disabled persons." Therefore the employer has the duty to ensure that the workplace is accessible to persons with disabilities.

PERSONS WITH DISABILITIES ACT 2007

Section 29 Persons with Disabilities Act states that persons with disabilities shall have the right to access employment on equal basis with persons without disabilities. Under this provision, employers shall not discriminate against employees on the basis of their disability.

Employment of women with disabilities is a neglected area of disability studies. In Malaysia, no statistics are available to on the participation of men and women with disabilities in the workforce.³⁴

In its effort to include persons with disabilities in the country's workforce, the Government introduced a policy to have 1 per cent persons with disabilities in the civil service in May 2008. In line with this policy, in July 2008 the Government began collecting information on persons with disabilities who have the necessary qualifications to hold various positions within the Government.

The Malaysian Government and Women with Disabilities

Policies that benefit women with disabilities must be formulated, including the introduction of social security policies which encourage women to work as well as assist them in their roles as a mother or wife. This includes the establishment of day-care centers by the employers for children of women with disabilities at the workplace. The employers can also offer the women with

³⁴ Haq, F.S., 'Career and Employment Opportunities for Women with Disabilities in Malaysia.' Asia Pacific Discovery Rehabilitation Journal. Vol.14, No.1 (2003) <<http://www.aifo.it/english/resources/online/apdrj/apdrj103/diswomen-malaysia.pdf>> Accessed 4 April 2010.

disabilities the option of more flexible working hours in consideration of their disabilities.

The Government should ratify the Convention on the Right of Persons with Disabilities and its Protocol in order to show its commitment to the rights of the disabled in the country.

The Government should also gather statistics on the number of persons with disabilities in Malaysia. In addition, it is also important to gather updated information on the number of women with disabilities.

2. RIGHTS OF INDIGENOUS WOMEN IN MALAYSIA

Indigenous peoples have been identified as one of the disadvantaged groups in Malaysia. As other women in the mainstream society, women in this marginalized community are also facing issues of gender inequality, in fact in a much bigger way than women in mainstream society. It is important to note that the issue of gender inequality has started to emerge lately in the contemporary society of the indigenous peoples. According to research³⁵, there were not many issues on gender in the past but these are more apparent now among the Orang Asli community. Various hypotheses have been put forward to explain why sexual differentiation and social inequality have spread into indigenous society. The most common is that of the internalization of external cultures.³⁶

Some pertinent issues that have been identified in relation to women in the indigenous society include the following:

The Right to Health

a. Orang Asli Women in Peninsular Malaysia

One major concern that arises is the right to healthcare, especially the issue of maternity. In Peninsular Malaysia, Orang Asli women who live in the interior would have limited access to health services. In fact for them, the health services provided by the government are crucial due to factors of affordability and accessibility.

As such, the government of Malaysia has taken steps to improve the health

³⁵ Colin Nicholas, *Orang Asli Women and the Forest: Research on Orang Asli Gender Relations*, COAC (2003)

³⁶ *ibid.*

**ARTICLE 24 OF U.N
INTERNATIONAL DECLARATION
ON INDIGENOUS PEOPLE**

1. Indigenous peoples have the right to their traditional medicines and to maintain their health practices, including the conservation of their vital medicinal plants, animals and minerals. Indigenous individuals also have the right to access, without any discrimination, to all social and health services.

2. Indigenous individuals have an equal right to the enjoyment of the highest attainable standard of physical and mental health. States shall take the necessary steps with a view to achieving progressively the full realization of this right.

services including setting up an Orang Asli Hospital in Gombak, Selangor. The hospital is specially built to cater to the Orang Asli community including pregnant women. The government through the JHEOA and the relevant health agency has taken steps to place expectant Orang Asli women in the hospital to ensure access to doctors, nurses and to register the birth of the babies. However, the women are taken too early to the hospital, as early as 3 months before delivery. As such they are separated from their loved ones and have to live in the hospital far from their families.

By the 1990s, critical problems concerning Orang Asli women's health had been well documented

but apparently few of these problems have been properly addressed by the health-care system.³⁷ Maternal health care was the only thriving parts in the Gombak Hospital while problems such as maternal anemia, under nutrition and associated prenatal deaths have taken back stage.

Table 18: State of Health Among Orang Asli³⁸

	Orang Asli	Reference
Medical Clinics	Only 67 of 774 Orang Asli villages (9%) had a clinic (1990s)	H.F. Lim, 1997
Under-nutrition	Semai women in Pahang: 35% had protein energy malnutrition (1990s)	Osman and Zaleha, 1995
Anemia	Semai women in Perak: 64% of pregnant and 40% of non-pregnant women were anemic, 23% of men were anemic	Khor, 1985
Goiter	Semai women in Pahang: 64% were goiterous vs 35% for men	Osman and Zaleha, 1995
Intestinal worms	Temiar females in Perak: 73% had worms vs 48% for males	Karim et., 1995
Maternal deaths	Women: 60% of the 42 West Malaysians who died during home delivery	Sunday Star, 29 September 1996

The data in Table 18 clearly show the poor condition of health among Orang Asli women. In 1994, 42 deaths were recorded among Malaysian women

³⁷ Colin Nicholas, *Orang Asli Women and the Forest: The Health of Orang Asli Women*, 2003.

³⁸ Table 1: Extracted from Adela Baer, *Orang Asli Women of Malaysia: Perceptions, Situations and Aspirations*, 2006

giving birth at home, and 60% (25) of these were Orang Asli women. It also shows that Orang Asli women were the most malnourished adult group in West Malaysia. For example, 35% of the Semai women in Pahang had protein-energy malnutrition in the 1990s. Anemia is also widespread among Orang Asli women. According to the table, 64% of pregnant and 40% of non-pregnant women in Semai community were anemic.

b. Indigenous Women in East Malaysia

In East Malaysia, the indigenous peoples, for example the Penans live deep in the jungle of Sarawak. Penan women have problems of access to health services. Sometimes access to their settlement is only available with helicopters and speed boats which will incur cost. Clinics are available in some rural areas but they are not equipped with sufficient medicines and health facilities or health personnel.

The following are two cases quoted to reflect the health condition among indigenous women in East Malaysia:

Case 1

Alice (not real name), a young Penan mother had cancer of the nose. She lived by a river in rural Sarawak, She could not afford the RM200 trip to Miri Hospital. She had to walk an hour to the closest rural clinic for treatment. The nurse in the clinic has advised Alice to get treatment in Miri Hospital but the clinic has no allocation to pay for Alice's travel. Patients were only flown to Miri by helicopter in emergencies, even that service is unreliable. However, due to effort by a kind doctor, Alice was brought to Miri Hospital and the doctor started to diagnose Alice. But it was found the cancer had already eaten its way into the base of skull. Alice was given treatment and she has to stay in Miri away from her family. Alice was only able to visit her small children on two or three occasions. There was also hardship for Alice, when she had to endure nausea, caused by the inexperienced doctors in the use of potent medicine. Her doctors were unaware that Alice's retching could have been prevented easily by giving her one of the newer anti-histamines. After getting treatment, Alice cancer was in remission and she was able to return home. But after two years the cancer returned and Alice was offered treatment again. This time Alice has to decline and preferred to stay at home with the children though she understood the consequences of her move. After sometime, Alice died at home.

Case 2

Juni visited her social worker for the first time when she was seven months into her pregnancy. She had just seen a doctor. Her doctor sent her to the social worker because Juni had no birth certificate, no identity card. Her father, Seman, had an IC, but her mother, Flora, didn't. Flora had been born far from the town, and she'd never been to the Registration Department. Flora and Juni went to the social worker's office, hoping they'd receive help to have their ICs done. The social worker, Ana, asked her to fill in some forms and gave them a small amount of money to help with the fare to get home, and sent her away. Juni had to keep going to hospital, because she'd suffered from epilepsy since she was a small child. She needed medicines to prevent seizures. She was a slow learner too, and had never finished primary school. She was 19, the oldest of seven siblings. She helped her mother around in their small home.

Each trip was a burden on the family. Seman was a farmer, Flora a housewife. They had to pay RM30 for a taxi to take them from their village to the nearest town, then another RM10 for the transport to get to the big town. When Juni became pregnant, it came as a shock to everyone. She did not understand what was happening to her body. She was raped by an old man in her village called Jagu. Flora and Seman both said Jagu had even admitted to the crime, in public. Flora told the social worker Jagu had raped another girl in the village 20 years ago, a girl who couldn't talk or hear. The girl has grown up now and has children of her own.

Adapted and modified from Malaysiakini. Antidote column by Keruah Usit – Alice in Cancerland and Juni: Daughter, Sister, Unwilling Mother, April/May 2009.

Article 14(b) of CEDAW stipulates that the Government has to take all appropriate measures to eliminate discrimination against women in rural areas levels and ensure they have access to adequate health care facilities, counseling and services in family planning. While Article 3 of UDHR says "everyone has the right to life, and to live in the freedom and safety from harm".

In both cases above, the basic human rights that are at stake are both right to

health and right to identity. In the case of Alice, her right to health is endangered by the fact that she lacks accessibility to proper medical care to treat her illness and that leads to her death. As for the case of Juni, the fact that she doesn't have official documentation, affects her right to identity and indirectly, affects her access to public and health facilities accorded to other citizens. Juni was also sexually abused by a man in her village but the parents could

not take action against the perpetrators due to lack of official documentation and this hinders them further from accessing other public services.

**ARTICLE 14 of CEDAW
WOMEN IN THE
RURAL AREAS**

"...2(b) To have access to adequate health care facilities, including information, counseling and services in family planning..."

On 13 September 2007, a resolution was adopted by the General Assembly on the adoption of United Nations Declaration on the Rights of the Indigenous Peoples. The Declaration promotes and upholds the protection of the indigenous community's human rights in politics, economic and social aspects. Article 22 of the Declaration gives specific attention to the rights and special needs of women. It further recommends that States take measures to protect indigenous women against all form of violence and discrimination. Although the Declaration is not binding, it is persuasive in nature and could serve as a framework for the government to set up a proper mechanism to monitor and protect indigenous women from cases as discussed above.

c. Sexual Harassment of the Penan Girls/Women

Penan children are often dependent on the logging companies for transportation to and from school due to the distance and access from their settlement. There have been allegations by NGOs in Sarawak that the logging companies in the Baram Region have violated the dignity and the human rights of the Penans especially the school girls and women.

In September 2009, the government released a report³⁹ confirming that Penan women and girls as young as ten have been raped and sexually abused by logging company workers in Sarawak. A government team visited a number of Penan communities to investigate the claims. The team found that, 'allegations of sexual abuse of Penan girls and women by outsiders dealing with the Penan, including logging company workers and traders are certainly true.'⁴⁰

³⁹ The national task force report on rape and sexual abuse of Penan girls in Baram released 8 September 2009

⁴⁰ *Laporan Jawatankuasa Bertindak Peringkat Kebangsaan Bagi Menyiasat Dakwaan Penderaan Seksual Terhadap Wanita Kaum Penan di Sarawak, 2009*

ARTICLE 34 OF CRC SEXUAL EXPLOITATION AGAINST CHILDREN

States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

- (a) The inducement or coercion of a child to engage in any unlawful sexual activity;
- (b) The exploitative use of children in prostitution or other unlawful sexual practices;
- (c) The exploitative use of children in pornographic performances and materials.

According to the report, one girl told the government team that she was raped when she rode in a logging truck to go to school. Another said she had two children after being raped by a worker who repeatedly broke into her room.

A witness recalled that the government used to provide vehicles to take children home from school during the term breaks. However, this had been discontinued. They had therefore to rely on the timber companies as the only means of transportation.

In the absence of any viable alternatives such as proper tarred roads or school buses, Penan children who live in the interior are entirely reliant on the timber companies for transport. In some cases they have to travel four to

six hours by truck to school.

Article 28 of the Convention on the Rights of Children (CRC), recognizes the right to education for children. Moreover, the Malaysian government in 2006 has made primary education compulsory. As such, the agencies responsible should increase efforts to ensure that children have access to school. The CRC also states that the government has the responsibility to protect children from any form of maltreatment and abuse.

d. Traditional Role of Women

The women in indigenous community have to perform their traditional role as other women in modern society. In the Semai community, for example, women are the first to wake up and prepare meal for their husband and children. This is also a cultural practice in the community. The women have also to do other house work like sweeping and tidying house, washing clothes and cooking. Even a daughter as young as eleven years old is expected to share her mother's workload.

The government agencies have also influenced the role of women in the indigenous community. Some policies and actions by the government agencies had impact on the Orang Asli community. For example, the appointment of male leaders (but never females) as village headmen - "*Tok Batin*". The agencies also recognize heads of households as men rather than as a husband and wife combination.

3. RIGHTS OF FEMALE MIGRANT WORKERS

In the last twenty to thirty years, there has been a steady increase in the inflow of migrant workers to Malaysia. This is mainly due to the escalating impact of globalization and the level of development within the Southeast Asia region especially in Malaysia.

According to Dr. Azizah Kassim's report⁴¹ on Migrant Workers and Undocumented Persons in Malaysia, in 2006, 31% of documented migrant workers in peninsular Malaysia are women as compared to 29.6% in 2003.

In terms of nationality, Indonesians represent the highest number of female migrant workers in the country. As of 2006, 52.7% of the female migrant workforce is from Indonesia. Other countries which are the major senders of female migrant workers are the Philippines, Thailand, Myanmar and Cambodia.

A majority of the female migrant workforce is involved in domestic services, serving as house maids or helpers. A significant number of female migrant workers can also be found working in restaurants, in laundry services, in manufacturing and in the spa industry.

Female migrant workers in Malaysia suffer from various forms of human rights violations. Most notably, they are subjected to wage discrimination, restricted right to marriage and family life, vulnerability and socio-cultural problems.

CEDAW CONCLUDING COMMENTS ON MALAYSIA'S INITIAL AND 2ND PERIOD REPORT

"...26. The Committee urges the State party to enact comprehensive laws and establish procedures to safeguard the rights of migrant workers, including migrant domestic workers. The Committee calls upon the State party to provide migrant workers viable avenues of redress against abuse by employers and permit them to stay in the country while seeking redress. The Committee further urges the State party to make migrant workers aware of such rights..."

⁴¹ Kassim, A. "Migrant Workers and Undocumented Persons in Malaysia." Malaysian Human Rights Commission of Malaysia. March 2008, p.65.

a. Wage Discrimination

Gender seems to be a factor in determining rates of wages paid to workers in some industries. In a cocoa plantation in Tawau, Sabah, female workers are paid a daily wage of RM6.00 while male workers earn RM7.00 a day.⁴² However, the employer claims that both male and female workers are equally efficient and capable. This is a clear form of discrimination on the sole basis of gender and is inconsistent with Article 8(2) of the Federal Constitution.

b. Right to Marriage and Family Life

According to the guidelines and terms and conditions of foreign workers' employment in Malaysia issued by the Manpower Department (*Jabatan Tenaga Kerja*) in 2006, foreign workers are not allowed to get married or bring along their family members while working in Malaysia. Regulations also dictate that female foreign workers are prohibited from getting pregnant and should they become pregnant, they are deemed "unfit" to discharge their duties and will be deported immediately.⁴³ The guideline prohibiting foreign workers to get married should apply equally to male and female workers as it can be observed that there has been an increase in foreign male workers getting married to locals. This may be due to lack of enforcement by the authorities. The authorities must ensure that there is no discrimination in the implementation and enforcement of any laws or regulations.

c. Vulnerability of Migrant Domestic Workers

Migrant domestic workers are exposed to violations of many of their rights. Many of the migrant domestic workers are deprived of their right to freedom of movement and are subjected to long hours of work without leave or reasonable overtime compensation. Many of them are also exposed to sexual harassment and other forms of physical or psychological abuse by their employers.

RESOLUTION CONCERNING A FAIR DEAL FOR MIGRANT WORKERS IN A GLOBAL ECONOMY, ILO 2004

"...13. Comprehensive national approaches to improving social welfare and social inclusion and cohesion in the context of labour migration are necessary and should be promoted. Important measures may include: ...reflecting the differences in conditions facing men and women migrants through measures to improve conditions and reduce specific vulnerabilities faced by female migrants; promoting access to health care for migrant workers and their families, including promoting HIV/AIDS prevention; .."

⁴² *ibid*, p.61.

⁴³ *ibid*, p.44.

In the recent discussions between the governments of Malaysia and Indonesia with regard to Indonesian domestic workers in Malaysia, it was agreed that domestic workers are to be given at least a one-day leave every week. Nevertheless, authorities and relevant agencies must see to it that this policy is strictly implemented and practised by the employers. A standard minimum wage for Indonesian domestic workers was also discussed by the two governments. However, the discussions were inconclusive.

Some domestic migrant workers are also faced with multiple job tasks for a single pay; where they are made to do other work besides that for which they have been hired. There have been cases of Indonesian maids who were tasked to work at the employers' business outlets, sometimes to assist with the accounts of the businesses. In addition, there have been reports of Filipino maids who were made to provide English lessons to the employers' children.

d. Socio-Cultural Issues

A significant number of undocumented female migrant workers in Malaysia are involved in vice-related activities such as prostitution. Many of these workers who mainly work as *Guest Relation Officers* (GROs) are reported to have been tricked or forced into such activities. The authorities believe that the syndicates involved normally use karaoke outlets to promote these GROs.⁴⁴ Many of the female migrant workers who are involved in these activities are nationals of Thailand, the Philippines, Vietnam and China. According to an article in *Utusan Malaysia* in October 2007, females from China constitute the highest number of foreign prostitutes in Malaysia.

Since many of these female migrant workers are brought into the country for the purpose of exploitation, they can be classified as victims of trafficking in persons. With the enactment of the Anti-Trafficking in Persons Act in 2007 and the establishment of the Council for Anti-Trafficking in Persons, it is hoped that this issue can be addressed more effectively and that steps to mitigate the problem can be identified and implemented.

⁴⁴ New Straits Times, Friday, 11 January 2008

CHAPTER 10

The Way Forward For Women's Rights In Malaysia

THE WAY FORWARD FOR WOMEN'S RIGHTS IN MALAYSIA

The survey of several selected women rights issues in the earlier chapters have shown that Malaysia is not in such a deplorable situation where the issue of implementation of CEDAW is concerned. In fact in some areas like education and employment she can claim credits in terms of participation of girls and women in these sectors. What follows is a synthesis of some of the issues raised in the preceding chapters and some suggestions and recommendations for the future.

RESERVATIONS TO CEDAW AND ACCESSION TO THE OPTIONAL PROTOCOL

Malaysia signed and ratified CEDAW in August 1995. As explained in the Chapter on Reservations to CEDAW, after the undertaking to review these Reservations made at the Beijing Conference, and after several appeals made by the NGOs, supported by the Women Ministry and by SUHAKAM, several of these Reservations have been withdrawn and a few more are under consideration for withdrawal (please refer to chapter on CEDAW Reservations). But this has been a long and painful process. It has been 15 years since our accession to this Convention and we are still debating on some of these Reservations. Many other Islamic nations (notably Egypt and Indonesia) have ratified the Convention without any reservations. How much longer do the women of Malaysia have to wait before this issue of Reservations can be settled?

As has been explained, the Optional Protocol (OP) to CEDAW was introduced to strengthen the implementation of CEDAW. From the study done by SUHAKAM thus far, it would appear that the OP is not in any way inconsistent with any religious belief or any cultural sensitivity in the country. Therefore, there is no good reason why the Government should not accede to the Protocol.

RIGHT TO EDUCATION

One of the areas of national development which Malaysia has been blessed

with ever since she emerged as a nation is education. As discussed in the Prologue chapter and the chapter on Right to Education, a lot of what the country has achieved politically, socially and economically is due to our liberal policy on education. This liberal policy has benefited both the male and female members of the population. And it is also this liberalism that is causing a lot of concern in some quarters of the population at the moment. The females are showing signs that they are bypassing the males in terms of academic performance as well as performance in their careers. It is believed that other more developed nations have faced this phenomenon earlier, but they seem to have handled the issue within their stride.

Even if females are outstripping males in numbers and performance in certain areas of pursuit such as education, the Arts and Social Science, IT and Communication, but the males still lead in science and technology-based courses at the tertiary level. Only in dentistry do we find females outnumbering the males within this group of courses.⁴⁵ For the next few years men and boys will still be dominant in science and technology, but with the increasing improvement of girls' performance at the school level, educational planners may have cause for worry about balance in performance between males and females, and about what implications this will have for the employment market. Whatever policies are planned for education and employment in the future, it is hoped that this will not be done at the expense of the realization and fulfillment of women's rights.

The issue of choice of courses, enrolment numbers and performance of females vis-à-vis males aside, the need to increase efforts in 'gender-sensitising' the entire school community should be given priority. This could be done by infusing the concept of gender into relevant areas of the primary and secondary school curriculum, or for that matter even at the tertiary level. The issue of gender-stereotyping in textbooks and other materials in use at the school level has been discussed in the chapter on Education earlier. In some countries like the United Kingdom and Australia, their respective Human Rights Institutions work closely with the school system to ensure that gender sensitization content and instructional strategies are integrated into the school programmes. This is an area in human rights education that SUHAKAM would like to work closely with the education authorities in the country in the future.

⁴⁵ Source: Ministry of Higher Education Malaysia, 2008

THE RIGHT TO HEALTH

As discussed earlier, Malaysia has a pretty well-developed health system, particularly in the urban areas. Health services to the rural areas have also improved compared to say 50 years ago, but the remote areas still suffer from poor infrastructure, facilities and personnel. If Malaysia seriously hopes to achieve developed nation status by 2020, she has to double or even treble her efforts in improving health services in the rural and remote areas of the country (especially in Sabah and Sarawak) as well as in some urban areas. Most of the innovative and state-of-the-art changes that have been the source of pride of the health service have been instituted in the more developed urban areas. In the rural and remote regions of the country, most of the infrastructure is still very basic and the hospitals and clinics there are severely understaffed. The 1 Malaysia clinics just introduced in several areas of need have somewhat helped to overcome this deficiency, but again they too are short of trained medical personnel. Using the yardstick of the four principles of right to health formulated by the UN Committee on Economic, Social and Cultural Rights, viz. availability, accessibility, acceptability and good quality, Malaysia's health system may not come through too well.

The issue of costs for medical service and care has also been a bone of contention. The government-run hospitals and clinics are usually over-crowded and over-subscribed. This naturally affects the quality of service rendered, particularly the long waits that patients are subjected to. The private hospitals provide more efficient service but their charges are prohibitive. Hence the recent move to explore the possibility of privatizing the health service has caused a great deal of anxiety and discomfort.

Where access to health is concerned, women and the elderly, and to a certain extent children, are the most vulnerable. Among the most vulnerable are the disabled, the indigenous women and migrant workers who work as household maids and in the service and agricultural sectors. To add to this vulnerability, the scourge of HIV/AIDS has inflicted increasing numbers of female victims in recent years, as was indicated in the chapter on Health. This is a very worrying trend as women, being victims of their male partners, are quite helpless in this respect.

It is imperative for the authorities to deal with these problems in a more systematic and effective manner as soon as possible. It is imperative too for

the government to provide greater funding for the health service. Drastic steps need to be taken infrastructure-wise and training-wise to improve facilities and increase the number and efficacy of our medical professionals. The private sector has been of great help in this training effort but they too face problems of staffing, costs and expertise.

WOMEN AND EMPLOYMENT

The number of women employed in the government, industrial and corporate sectors have increased incrementally in the last 30-40 years. This is basically due to better educational opportunities and greater accessibility. Despite the huge numbers of female educationists, nursing staff, lawyers, accountants, dentists and clerical staff, there are concerns with regard to terms of service and opportunity for advancement in their careers. Firstly, it has been noticed that in any economic crisis, the women will be the first group to be terminated, the main reason being the age-old maxim that men are the bread-winners for the family, therefore they have to be given priority. Secondly, these impressive numbers of women are in the middle or lower strata of occupation like teachers, nurses, clerks and typists. The number of females in high-powered decision-making position is still low (only 14.2%) despite the 30 percent target of the Beijing Conference of 1995.

Another example of unfair treatment of women working in the private sector is the presence of Gender Pay Gap in some companies, particularly of women who work in the manufacturing and agricultural sectors. The government sector used to have a policy of differential retirement ages for male and female employees. But this has been equalised at 55 and recently at 58 years of age. But in some private sector organizations this differential still exists where men retire at 55 and women at 50.

One of the areas of discrimination of concern is the right to maternal health and protection. A basis of dissatisfaction among women employees in Malaysia is the length of maternity leave they are entitled to. For most Malaysian female employees it is still 60 days, as compared to Indonesia and Thailand where they get 90 days. Even Cameroon in Africa offer 98 days maternity leave with Brazil topping the list at 120 days. The Ministry of Women, Family and Community Development put up a strong case for 90 days but this was turned down by the government.

TRAFFICKING OF WOMEN

Although Malaysia features mainly as a destination and transit for trafficking of women, where most of the victims involved are foreigners rather than locals, the fact that Malaysia is contributing to this illegal trafficking and the fact that the victims are women, makes it a serious form of discrimination against women. It is a very undesirable form of trade as it involves humans, worse still women, whose dignity and self-esteem is sadly violated in any act of trafficking. SUHAKAM welcomes the formulation of the Anti-trafficking Act of 2007 and the consequent setting up of the Council to map out strategies to combat this undesirable trade.

A strong sense of frustration is normally felt at roundtable discussions or roadshows regarding this issue because there seem to be so many loopholes in the system despite the new law and the perpetrators seem to be so well shielded from the authorities. From the recent roadshow which was organized by SUHAKAM on the Kelantan-Thai border, it was obvious that we still have a long way to go in combating this problem. There seems to be a pervading sense of apathy among the local population, who, if they are willing to cooperate, could assist in a big way in preventing occurrences of trafficking.

SEXUAL HARASSMENT AT THE WORKPLACE

Another problem that women have to face at their place of work is the issue of sexual harassment. This is an age-old issue that had been taking place for a long time but seldom talked about or reported. Victims of sexual harassment normally prefer to keep such experiences to themselves due to many factors. Firstly there is the issue of fear that news of such happenings may affect their reputation and dignity particularly if they are still single. Secondly the harasser may be her own immediate superior at the office. Thirdly, as the chapter on sexual harassment argued, up to now there is still no piece of legislation that provides protective cover for the victims of such harassment. Thus, when SUHAKAM organized an RTD on this issue recently, women NGOs and victims of sexual harassment strongly appealed to the Government, through the Human Resources Ministry (MOHR) and Ministry of Women, Family and Community Development (MWFCD), to introduce legislation on this issue. SUHAKAM strongly supports this plea for legislation. It has been observed that although there is a Code of Practice introduced by the MOHR since 1999, not many government or corporate agencies have adopted it.

VULNERABLE AND DISADVANTAGED WOMEN

Chapter 9 of this Report looked into the issues surrounding three groups of vulnerable disadvantaged women in the country, viz. the disabled, the indigenous women and the migrant workers. These migrant workers may be non-nationals but they have their rights while they are guest-workers in our country.

The disabled are handicapped enough; but the disabled women are even more handicapped especially if they have to seek a living on their own. It is heartening to note that finally our government has finally acceded to the Convention on the Rights of Persons with Disabilities (CRPD). At least, even if the CPRD does not have the force of law, it helps ensure that the disabled in this country gets better attention from the authorities.

The indigenous group (orang asal/asli), particularly their women, have been left far behind in terms of enjoying their rights guaranteed under CEDAW and enjoying the fruits of development of the country. There are high dropout rates within the school system, and health services enjoyed by a majority of the mainstream population hardly reaches them. In view of these problems, it is time that the government focuses its attention on how to uplift the lot of the orang asal/asli without them having to sacrifice their basic way of life and culture. From SUHAKAM's various interactions with them, we note that they are interested in participating in the country's development, but at their own pace and taking into consideration their unique needs and situation.

Female migrant workers in the country have been steadily increasing over the years despite the enforcement of several regulations by the government. It is believed they form almost 30 per cent of the total foreign work force in the country. Despite guarantees of a free day off and reasonable wages by the government, many of these female migrants are subject to various kinds of violations of human rights by their employers. Based on a workshop, CEDAW For Trade Union Leaders, conducted by SUHAKAM, it was revealed that there are grave pay gaps in their wages compared to their male counterparts even when they are engaged in the same job.

CONCLUSION

Notwithstanding the issues highlighted above, we note that the implementation of CEDAW principles in the country is receiving attention at various levels, although attention given in some quarters is better than in others. With regard to reservations on CEDAW, SUHAKAM appreciates the fact that earlier reservations on Articles 2(f), 9(1), 16(1)(d), 16(1)(e) and 16(1)(h) had been withdrawn in 1998, but as pointed out in Chapter 2, the reservations on Articles 9(2), 16(1)(a), 16(1)(c), 16(1)(f) and 16(1)(g) still stand.

One very positive step the Government has taken to ensure compliance with CEDAW within the government sector is the creation of Gender Focal Points (GFPs) in the relevant ministries/agencies a few years ago. The GFPs, if properly briefed and trained, could be a potent force in raising awareness of the principles of CEDAW among government employees and in ensuring compliance with these principles. However, these GFPs are left very much to their own devices: most are unsure of what their roles should be within their ministries/agencies. There needs to be constant and closer engagement between the lead government agency, viz. the Ministry of Women, Family and Community Development and these GFPs for the latter to be truly familiar with their roles.

As pointed out earlier, CEDAW only provides guiding principles for action by state parties. It does not have the force of law unless steps are taken to incorporate these principles into applicable laws, as emphasized in Article 2(f) of CEDAW. Malaysia still has quite a bit to do in this respect. Malaysia's accession to the CRC and lately to the CRPD does help in reinforcing these principles, but it would be of further help if Malaysia in the near future were to review the long-standing remaining reservations to CEDAW as well as to accede to the other pertinent international treaties like the Covenant on Economic, Social and Cultural Rights (CESCR), Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and of course to the Optional Protocol to CEDAW. We wish to reiterate that the longer the government takes to review the remaining reservations to CEDAW, the less complete will our compliance be with the said Convention. And SUHAKAM does not see any point in the procrastination over the accession to the CEDAW Optional Protocol as it does not contravene any religious belief or cultural sensitivity in the country.



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