



HUMAN RIGHTS COMMISSION OF MALAYSIA (SUHAKAM)

**A REPORT TO THE UNITED NATIONS COMMITTEE ON ELIMINATIONS OF
DISCRIMINATION AGAINST WOMEN**

ON THE

**IMPLEMENTATION OF THE CONVENTION ON THE ELIMINATION OF ALL
FORMS OF DISCRIMINATION AGAINST WOMEN (CEDAW)
IN MALAYSIA**

**Human Rights Commission of Malaysia (SUHAKAM)
Level 11 Menara TH Perdana, Jalan Sultan Ismail, 50450 Kuala Lumpur, Malaysia**

www.suhakam.org.my

May 2014

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1.0 INTRODUCTION

- 1.1 The Human Rights Commission of Malaysia (SUHAKAM) (hereafter referred to as “the Commission”) is an independent statutory body established under an Act of Parliament namely, the Human Rights Commission of Malaysia Act 1999 to promote and protect human rights in Malaysia.
- 1.2 This report is the Commission’s report to the CEDAW Committee. This report highlights the observations by the Commission on how the Government has implemented the comments and recommendations of Concluding Comments made by the CEDAW Committee.¹ In addition, reference was also made to the recommendations to the Government of Malaysia arising from the Universal Periodic Report (UPR) in 2009. The opinions expressed in this report are solely those of the Commission.
- 1.3 In preparing this report, the Commission took into consideration the consultations held with Civil Society Organisations (CSOs) and Government agencies in recent years. The Commission also monitored and conducted research in regard to the legislative and policy development of women’s rights in Malaysia.

2.0 BACKGROUND

- 2.1 Malaysia ratified CEDAW in 1995 and hence committed itself to the principles and human rights obligation at the international level. Initially, Malaysia had made several reservations to CEDAW.²
- 2.2 On 6 February 1998, 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). In July 2010, Malaysia took further positive step and withdrew reservations to Articles 5(a), 7(b) and 16(2).

¹ See CEDAW/C/MYS/CO/2

² Articles 2(f), 5(a), 7(b), 9 and 16.

2.3 Currently, the remaining articles under reservation are 9(2), 16(1) (a), 16(1) (c), 16(1) (f) and 16(1) (g). The reasons given for the remaining reservations were that these articles are in conflict with the Federal Constitution and Islamic Law.

3.0 PROTECTION AND PROMOTION OF WOMEN'S RIGHTS IN MALAYSIA

3.1 In addition to CEDAW, the other applicable international conventions, laws and national policies related to women's rights in Malaysia are as follows:-

- (i) International Labour Organisation Convention no. 100, Equal Remuneration Convention, 1951;
- (ii) International Labour Organisation Convention no. 29, Forced Labour Convention, 1930;
- (iii) National Policy on Women 1989;
- (iv) Amendment to Article 8(2) of the Federal Constitution in 2001 to prohibit any gender discrimination;
- (v) Second National Policy on women and the Women's Development Action Plan in August 2009;
- (vi) The third goal of the MDGs which aims to promote gender equality and empower women. The other MDGs related to women's issues are MDGs 4: reduce child mortality and MDGs 5: Improve maternal health.

3.2 While noting the overall improvement of issues involving women's rights in Malaysia, several issues remain to be of grave concern and should be progressively addressed by the Government.

3.3 CEDAW'S TRANSLATION INTO DOMESTIC LAW

3.3.1 Apart from the amendment to Article 8 of the Federal Constitution, by which the word "gender" was inserted as a prohibited ground of discrimination, there have been no significant initiatives to incorporate CEDAW into domestic laws. Although in year 2010, the Government had initiated some discussions in gathering input for a Gender Equality law, the fate of this law remains unknown. The Commission calls on the Government, in consultations with stakeholders, to

expedite the drafting of this law. It is the Commission's hope that the proposed law will promote and protect women rights and henceforth empower and elevate the status of women.³

- 3.3.2 In the interim, the Commission urges the Government to review statutory provisions and to the extent that they are inconsistent with the spirit of CEDAW, to amend them in line with the said treaty and international principles.

3.4 RIGHT TO CITIZENSHIP

- 3.4.1 In Malaysia, the children of a female Malaysian who is married to a non-Malaysian do not qualify automatically for citizenship. Such children only qualify for citizenship if they were born in Malaysia. On the other hand, the children of a Malaysian father and a non-Malaysian mother qualify for citizenship regardless of the place of birth, provided that the birth of the child born outside the country is registered at a Malaysian Consulate within a prescribed time, as prescribed under Article 14 of the Federal Constitution.⁴

- 3.4.2 Besides that, Article 15 of the Federal Constitution provides that citizenship may be conferred on the foreign wife of a Malaysian man upon an application made to the Government of Malaysia. However, there is no similar provision for the foreign husband of Malaysian woman.

- 3.4.3. While the Commission is aware of an administrative procedure that was introduced in 2010 that enables Malaysian women who are married to foreigners to apply for Malaysian citizenship for their children who were born outside Malaysia, nevertheless the Commission views the continued existence of Articles 14 and 15 as being discriminatory. Accordingly, the Commission urges the Government to ensure that the provisions in the Federal Constitution are consistent with the principle of non-discrimination as upheld by CEDAW, more specifically the Article 9(2).

3.5 SEXUAL ABUSE AND VIOLENCE WITHIN MARRIAGE AND MARITAL RAPE

- 3.5.1 While the Commission welcomes the move in making it an offence under a new section 375A of the Penal Code for a husband to cause hurt or fear of death or hurt to his wife in order to have

³ SUHAKAM Annual Report 2010, p.56.

⁴ Part II of the Second Schedule of Federal Constitution.

sexual intercourse with her,⁵ the Commission is nonetheless concerned that marital rape remains an exception to rape under section 375.⁶

3.5.2 Accordingly, the Commission strongly calls for the revocation of the exception under section 375 for the following reasons: -

- i. Marital rape, being a violent and degrading act perpetrated by a spouse is no less repugnant than rape perpetrated by a stranger;
- ii. Article 16(1) (c) of the CEDAW is clear that both spouses have equal rights in a marriage. A wife is not under the authority of her husband or subservient to her husband;
- iii. To endorse marital rape legitimises violence by a husband against a wife;
- iv. Marital rape reinforces the inferiority of women and the superiority of men and Article 5(a) of the CEDAW places an obligation upon the Government to *“modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of inferiority or the superiority of either of the sexes...”*;
- v. Marital rape is a violation of the human rights of women. Article 2 of the UN Declaration on the Elimination of Violence against Women, defines ‘marital rape’ as violence against women, which impairs upon a woman’s right to the full enjoyment of human rights and fundamental freedoms. Further, on 30 June 2004, Malaysia signed the Declaration on the Elimination of Violence against Women in the ASEAN region, which recognises that violence against women both violates and impairs their human rights and fundamental freedoms.
- vi. On 18 November 2012, Malaysia adopted the ASEAN Human Rights Declaration (AHRD), which reaffirms the importance of ASEAN’s effort in promoting human rights, including the Declaration of the Advancement of Women in the ASEAN Region and the Declaration on the Elimination of Violence against Women in the ASEAN Region.

⁵ Section 375A provides that “any man who during the subsistence of a valid marriage causes hurt or fear of death or hurt to his wife or any other person in order to have sexual intercourse with his wife shall be punished with imprisonment for a term which may extend to five year.”

⁶ Exception to section 375 - sexual intercourse by a man with his own wife by a marriage which is valid under any written law for the time being in force, or is recognised in the Federation as valid, is not rape.

3.5.3 The Commission welcomes the Government's commitment to improve women's rights and status in the country through the change of legislation, regulations, practices and shifting mindset that hinder the progress of women.⁷ This move is in line with the Commission's recommendation to the Government to review and replace all discriminatory laws in Malaysia.

3.6 RIGHT TO HEALTHCARE

3.6.1 The healthcare delivery in Malaysia has gradually improved and women are not excluded from receiving equal and equitable access to and delivery of healthcare services especially among the marginalized groups including the poor, indigenous and migrant groups. Malaysia has introduced services such as the flying doctor services, community nurse programme and mobile clinics. However, inadequate physical and economic access to healthcare services as well as irregular delivery of services still persist in some rural areas mainly due to factors such as bad weather and safety. In addition, people in the rural areas lack access to healthcare-related information such as information on available services and where to obtain such services.⁸

3.6.2 The Commission welcomes the Government's initiatives to encourage women to take better care of their health through a number of programmes. The Commission views favourably the Government's action in making mammogram examination available and free for more Malaysian women by continuing the subsidy programme as announced in the National Budget for 2013. The Subsidy Programmes are targeted at female citizens and permanent residents of Malaysia aged between 40 and 70 years and women aged 35-39 years with a family history of breast cancer.⁹ Furthermore, the Government sets aside of RM9 million for free breast prostheses and special bras for breast cancer patients in its National Budget 2014.

⁷ The commitments were made by the Prime Minister of Malaysia, YAB Dato' Seri Mohd Najib Bin Tun Haji Abdul Razak, who is also the Minister of Ministry of Women, Family and Community Development on 29 January 2013. See <http://www.bernama.com/bernama/v6/newsgeneral.php?id=924642>.

⁸ Human Rights Commission of Malaysia (SUHAKAM) 2011. Part I Background on SUHAKAM's Dialogues on Human Rights and Access to Equitable Healthcare. Report on Human Rights and Access to Equitable Healthcare. P. 11.

⁹Source: website of Ministry of Women, Family and Community Development
<http://mamogram.lppkn.gov.my/Pages/portal.aspx>

- 3.6.3 The Commission also views positively the Government's effort in providing free Human Papilloma Virus (HPV) Vaccination for women aged 18 and above in 2012 and Form One (first year of secondary school) students in 2010 to protect women and girls against cervical cancer.
- 3.6.4 The Commission further welcomes the introduction of a National Strategic Plan on HIV and AIDS (2011-2015) which is aimed at, *inter alia*, preventing and reducing the risk and spreading of HIV infection, improving the quality of life of people living with HIV, and reducing the social and economic impact resulting from HIV and AIDS on the individual, family and society.¹⁰ It is recognised that women, especially the young ones, are in the high-risk group in terms of vulnerability to AIDS.¹¹ More women are affected by HIV/AIDS due to the lack of exposure and knowledge on the disease and some due to their spouses' promiscuous activities. In relation thereto, the Commission strongly calls on the Government to put more effort towards providing information on AIDS to raise public awareness and educating the public on the prevention of AIDS, which in turn would reduce the stigma against the AIDS patients especially against women and girls.
- 3.6.5 The Government has introduced a national health plan entitled "Country Health Plan: 10th Malaysia Plan 2011-2015" which details the health plan in Malaysia focusing on health services delivery, governance and financing, health awareness and healthy lifestyle and empowerment of the individual and community to be responsible for their own health including women. While the Commission welcomes the plan, it is hoped that the plan would not remain good on paper only. In this regard, the Commission urges the Government to place equal, if not more, emphasis on realising the plan in particular in that ensuring the healthcare is accessible and within the reach of all regardless of gender or sexual orientation.

¹⁰ Ministry of Health, 2011, Malaysia National Plan on HIV and AIDS 2011-2015, p. 1.

¹¹ Human Rights Commission of Malaysia. Chapter 5 Women and Healthcare. *SUHAKAM's Report on the Status of Women's Rights in Malaysia*. p.35.

3.7 RIGHT TO EDUCATION

3.7.1 Based on available Government data,¹² the Commission takes cognisance that in general, women in Malaysia have achieved a high level of academic and literacy rate. In tertiary education, for instance, gender parity can be seen in many major academic disciplines. However, there are gender gaps in technical courses including engineering, manufacturing and construction.¹³

3.8 RIGHT TO EMPLOYMENT

Recently, there have been some developments affecting women's rights to employment as follows:

3.8.1 Incorporation Of Sexual Harrassment Into the Employment Act

- (i) In 1999, the Code of Practice on the Prevention and Eradication of Sexual Harassment in the Workplace was introduced. However, the Code was not made compulsory. Statistics from the Malaysian Ministry of Human Resources recorded that only 297 sexual harassment cases were solved from 1999 till 2010.¹⁴ The number of reported cases was significantly low, possibly because many cases could have gone unreported as victims are usually too embarrassed to relate these incidents to third parties more so in cases involving their superiors.
- (ii) It is essential to note that in the absence of a specific legislation on sexual harassment, these acts fall under the penal laws of Malaysia as provided under the Penal Code and, also the Employment Act 1955.
- (iii) In respect of public servants, they are bound by the "Guidelines on Handling Sexual Harassment at the Workplace in the Public Sector"- Service Circular No. 22 of 2005.

¹² Quoted from Ministry of Women, Family and Community Development, Statistics on Women, Family and Community 2012, Malaysia. p. 35. Literacy rate for female in Malaysia (age 15 and above) is 91.4% in 2011. Based on Ministry of Education, enrolment in Government and Government-assisted higher educational institutions in 2011, there is 48.6% (1,362,883) female students in primary level, 50.1% (1,142,577) in secondary (lower and upper) level and 65% (82,148) in form six and matriculation level.

¹³ Ibid p. 42.

¹⁴ http://itksm.mohr.gov.my/index.php?option=com_content&view=article&id=124%3Astatistik&catid=63%3Agangguan-seksual&Itemid=550&lang=ms

- (iv) In 2011, the Government incorporated the definition of 'sexual harassment' and other related provisions¹⁵ in the Employment Act 1955 to address sexual harassment in the workplace. While this is a commendable step, the Commission is of the considered opinion that the definition of 'sexual harassment' is not sufficiently comprehensive. This is because the employer, and not the employee, determines if sexual harassment has occurred and the definition is only confined to alleged occurrences at the workplace. At the same time, the process for complaints and the penalties are inadequately covered. The Commission is also concerned particularly about the complaints procedure in cases against an employer, as under the amendments, the Director-General of Labour is authorised to direct the employer to inquire into complaints, which could result in biasness.¹⁶
- (v) The Commission recommends that the Ministry of Women, Family, Community and Development (hereafter referred to as "the MWFCD") and the Ministry of Human Resources review the provisions regulating sexual harassment cases and consider having a separate and more comprehensive law on sexual harassment and not merely an amendment to the Employment Act 1955 which only addresses the issue of sexual harassment which occurs at the workplace.

3.8.2 Maternity Leave

- (i) The Commission welcomes the introduction of a new Government directive extending maternity leave from 60 days to 90 days for civil servants beginning on 15 October 2010 and thereafter. This is in line with the spirit of CEDAW and gives the mother the opportunity to bond with her child which is essential in early infancy.
- (ii) That said, the Government has capped this entitlement to a maximum of 300 days and a working mother is given the flexibility to customize the maternity leave between 60 to 90 days for each birth. The Commission is of the view that the maximum cap on maternity leave may

¹⁵ Part XVA Sexual Harassment, Section 81A, 81B,81C, 81D, 81E, 81F, 81G; Employment (Amendment) Act 2012, Act A1419 came into force on 1 April 2012.

¹⁶ SUHAKAM's Annual Report 2011, p.65.

limit a woman's reproductive rights.¹⁷ In addition most employers in the private sector still retain the 60-day maternity leave for their female employees. Therefore, the Commission calls on the Government to reconsider the limit imposed on maximum number of days for maternity leave and to ensure that the 90-day maternity leave is extended to women working in the private sector.

- (iii) On another matter, the Commission applauds the positive move by the Government to amend the definition of "confinement" under section 2 of the Employment Act to mean parturition from at least twenty-two weeks of pregnancy in the issue of a child, instead of the previous twenty-eight weeks. The effect is to allow women employees to enjoy maternity leave and other benefits, if applicable, in the event of a premature birth or miscarriage.¹⁸

3.8.3 Women Participation In Work Force

Recently, Malaysia was ranked at 100 out of 135 countries surveyed by the World Economic Forum's Global Gender Gap in its 2012 Report. The ranking may indicate gender inequality in Malaysia which includes women's involvement in the economic field. The following are the involvement of women in social development, judiciary, economic and political fields in Malaysia.

- (i) **Distribution of Labour Force**

According to the 2011 data on female labour force,¹⁹ there were 9.57 million (68.2%) women of ages 15-64. Of this number, 4.98 million (52.1%) were outside of the labour force. There were 4.58 million (LFPR: 47.9%) in the labour force and out of this number 4.43 (96.7%) million were employed and only 0.15 million (3.3%) were unemployed. Only 14.7% were professionals, 8.7% were technicians and associate professionals, and a large number of the women in the workforce were service and sales workers, while 3.6% were managers.

¹⁷ A total of 300 days of maternity leave may limit the number of children a working mother may have.

¹⁸ Part IX Maternity Protection, Employment Act 1955.

¹⁹ Quoted from Ministry of Women, Family and Community Development, Statistics on Women, Family and Community 2012, Malaysia. p. 23.

- (ii) Women Achievement In Labour Force
- a) According to Number of Employed Persons by Industry and Sex 2011,²⁰ Malaysian women dominated in several fields of employment, among others, education, activities of households as employers; undifferentiated goods and services producing activities of households for own use, human health and social work activities and financial and insurance/ takaful activities. In the field of education, 66.7% were women compared to only 33.3% men. However, the number of women in decision-making levels in the Education Sector in 2011 and 2012 such as primary school headmaster, secondary school principal and residential school principal was less than men. As of 31 January 2012, only 3,774 females held decision-making positions in the education system compared to 6,063 males.²¹
- b) According to the Number of the Registered Professionals by Sex in 2011 -2012,²² there was an increase in the percentage of registered women professionals from 2010 to 2011. From the existing data, only the dentistry profession is dominated by women with 63.2% in 2012 and 62.8% in 2011. Professions such as Professional Architects, Architects, Professional Engineers, Graduate Engineers, and Land Surveyor are still dominated by men; this is probably due to gender stereotyping in the labour market for technical workforces.
- (iii) Representation of Women In Politics
- a) As of 15 July 2013, only 2 female Ministers out of 32 Ministers; and as of 14 June 2013, there are only 5 female Deputy Ministers out of 25 Deputy Ministers. There are 16 female senators out of 54 Senators and 23 females out of 222 representatives in the House of Representative as of 1 October 2013. This scenario shows that the low participation of Malaysian women in the political arena compared to the men.
- (iv) Women Decision Makers In Malaysia In Public and Private Sector
- a) Under the Tenth Malaysia Plan (2011-2015), there is a policy to increase the number of women at key decision-making level. According to the statistics, the number of women as Secretary

²⁰ Ibid p. 16 and 17.

²¹ Ibid p. 73.

²² Ibid p. 18, 2011 and 2012 – as at mid-year.

General, Deputy Secretary General and Director General, 2011-2012, went down from 45 (out of 213 positions) in 2011 to 42 (out of 233 positions) as of March 2012.²³ According to the Minority Shareholder Watchdog Group Malaysian Corporate Governance Index 2011, there were only 8.4% of women on the boards of Malaysia's Public Listed Companies (PLCs). The above figures show that the number of women in leadership and management positions remains depressingly low.

b) In response, the Government launched the New Corporate Governance Blueprint 2011, under which the corporate sector is to ensure that women make up at least 30% of those in decision-making positions by 2016. A similar ruling was issued to the public sector in 2004. The companies are recommended to make a policy to increase the number of women candidates as board members. It was also recommended that the companies explicitly disclose in their annual report their gender diversity policies and targets and the measures to achieve the 30% women participation by 2016.

(v) Women In Civil and Syariah Judiciary

a) The number of women in the civil Judiciary was 34.4% as of 10 August 2011 and 35.4% as of 18 March 2012.²⁴ On the other hand, in 2011 there were 24.1% women in the syariah Judiciary, and increased to 25.4% in 2012.²⁵

3.8.5 Unfair Dismissal

(i) The Commission is pleased with the decision in *Noorfadilla bt Ahmad Saikin v. Chayed bin Basirun & Ors* (Originating Summons No. 21-248-2010) at the Shah Alam High Court where Justice Dato' Zaleha Yusof ruled that the act of revoking an offer of employment as a temporary teacher to a woman due to her pregnancy was unconstitutional and breached Malaysia's commitment and obligation as a state party to the United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). Subsequently, an

²³ Ibid p.69

²⁴ Ibid 71.

²⁵ Ibid p. 72, consisting of Chief Registrar of the State Syariah Court, Syarie Judges, Sulh Officers and Syariah Officers.

application of appeal to the decision was filed in the Court of Appeal. However, in June 2013, the Government withdrew its appeal application and SUHAKAM applauds this decision.

3.8.6 Age of Retirement

- (i) The recent move to increase the retirement age of employees in the private sector employees to 60 is very much applauded. The Minimum Retirement Age Act which was gazetted on 16 August 2012, increases the compulsory retirement age of private sector employees to 60. This Act came into effect on 1 July 2013. However, employers are allowed to apply to Ministry of Human Resource to defer the implementation until 31 December 2013. The Act also provides that an employer shall not prematurely retire an employee before he attains the minimum retirement age. The Act also strikes down any retirement age in any contract of service or collective agreement signed before the coming into effect of the Act, which is below the minimum retirement age of 60; such clause shall be deemed to be void. However, the new Act does not prevent an employee from retiring upon attaining the age of optional retirement which may be agreed upon between the employer and employee. The new Act will give equality to women especially in the private sector who need to continue working to support the family and also to receive extra pension allocations and contributions to the Employee Contribution Fund (EPF). However, there is nothing in the Act to prevent any employer from prescribing different retirement ages for male and female workers by maintaining the minimum retirement age for one group but a higher one for another.

- (ii) The Commission would like to highlight a decision by the Court of Appeal on 21 March 2012 which dismissed a judicial review application by eight (8) female workers claiming gender discrimination when forced to retire earlier than their male colleagues. A three-man bench led by Justice Datuk K.N. Segara upheld a 2010 High Court ruling,²⁶ which had overturned the Industrial Court's 2008 decision that it was discriminatory and unconstitutional for the company to provide for different retirement ages for men and women. A subsequent application to the

²⁶ *Gan Soh Eng & 8 others v. Guppy Plastic Industries Sdn. Bhd. (W-02-1194-2010)*.

Federal Court for leave to appeal was dismissed on 13 August 2012 on the ground that the matter had become academic in view of the recently-enacted Minimum Retirement Age Act.²⁷

3.8.6 Minimum Wages

- (i) The announcement by the Prime Minister of Malaysia to introduce minimum wage, RM900 to labour in Peninsular Malaysia and RM800 for labour in Sabah, Sarawak and the Federal Territory of Labuan is welcomed by the Commission. This order known as Minimum Wages Order 2012 was made under subsection 23(1) of the National Wages Consultative Council Act 2011. The introduction of minimum wage is meant to be a tool for combating poverty and preventing unfair dismissal especially of women from the low income group or who are single mothers. However, it is disappointing to note that the minimum wage does not apply to domestic workers which is a profession dominated by women.

3.9 OTHER WOMEN ISSUES

3.9.1 TRAFFICKING OF WOMEN AND GIRLS

- (i) Malaysia is geographically strategic for human trafficking due to its long sea border and its borders with Thailand, the Philippines and Indonesia. Therefore, Malaysia is identified as a transit and destination country for trafficked victims for forced labour and women and girls who are often subjected to sex trafficking.
- (ii) To eliminate trafficking activities, an Anti-Trafficking in Persons Act 2007²⁸ was introduced with the objectives, amongst others, to provide for the offence of trafficking in persons, the protection and support of trafficked persons, the establishment of the Council for Anti-Trafficking in Persons. In 2010, the Act was amended and renamed as the Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007 (ATIPSOM). This newly amended Act has widened the scope to include preventing and combating the smuggling of migrants. However, the Commission recommended that trafficking in persons and smuggling of migrants should be

²⁷ The Commission held a watching brief in this case at the Federal Court on 13 August 2012.

²⁸ The main source of reference for the Anti Trafficking in Persons Act 2007 is based on the international instruments i.e. UNTOC, TIP Protocol and Protocol against the Smuggling of Migrants by Land, Sea and Air.

treated as separate issue, as it will cause confusion and problems in identifying trafficked victims.²⁹

- (iii) In addition, the Government launched the National Action Plan against Trafficking in Persons which showed the Government's commitment to combat trafficking in Malaysia. The National Action Plan outlines a five year action plan (2010-2015) to determine the direction and focus on efforts towards achieving the national goal of preventing and suppressing the problem of trafficking in persons. The Action Plan also included the establishment of a Council for Anti-Trafficking in Persons (currently known as Council for Anti-Trafficking in Persons and Anti-Smuggling of Migrants) under the Home Ministry to monitor the crime and undertake appropriate measures to prevent and eliminate human trafficking and migrant smuggling. The Commission was appointed a member of the Council in the Committee on Protection and Rehabilitation, where the Commission's role is to focus on the human rights aspects of human trafficking and identify gaps that exist which aggravate the problem.
- (iv) As of 23 May 2012, there were two designated shelter homes to place women victims of trafficking under the purview of the Women Development Department. On the other hand, child trafficked victims are placed in a separate shelter home under the purview of the Social Welfare Department.
- (v) The Commission hopes that the human rights of the victims are safeguarded from the moment they are rescued, rehabilitated and up till the process of their integration into society. The Commission further 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.³⁰

²⁹ SUHAKAM's Annual Report 2010. p. 58.

³⁰ Human Rights Commission of Malaysia, Chapter 7, Trafficking of women, Report on the status of women's right in Malaysia, p. 51.

3.9.2 RIGHTS OF SINGLE MOTHERS

- (i) According to the 2000 Population and Housing Census of Malaysia, there were 126,810 single Mothers in Malaysia. On 20 October 2010, the Commission organised a seminar with the objectives of raising awareness among the participants on existing policies and available assistance for single mothers, as well as their rights as women, particularly single mothers; identifying issues and problems faced by single mothers in Malaysia; and finding solutions to those issues so that this group can fully enjoy their economic, social and cultural rights. Following the meeting, recommendations were made to the MWFCDC in relation to the issue of poverty, rights of employment, childcare centre and housing.
- (ii) Referring to the issue of housing for single mothers, Commission found that there exist difficulties in transferring the ownership of the public houses to widowed single mothers. Hence, the Commission recommends that the policy on houses built under the Public Housing Programme and the People's Housing Programme be reviewed. Meanwhile, the Commission recommends that the Government intensify its efforts in building more public housing lots in all areas including the rural and remote areas in Sabah and Sarawak.
- (iii) The Ministry of Women, Family and Community Development (MWFCDC) runs "A Single Mothers" Skill Incubator (I-KIT) Programme which is a core programme outlined in the 9th Malaysian Plan. This programme is aimed at providing skills and entrepreneur training to single mothers to reduce poverty include sewing handicraft, child care and food processing to improve the quality of single mothers' life.
- (iv) The Malaysia Government should set up affordable and accessible childcare facilities for all working parents including single mothers especially in the lower income group. As reported in The Sun newspaper on 18 July 2012, there are 87 on site children centres or nurseries registered with the Social Welfare Department, 71 of which are operating in Government offices while the remaining 16 in private firms. There are another 1,061 registered independent childcare centres or nurseries. However the number of child facilities is grossly insufficient considering the number of working mothers.

- (v) According to a response from the Deputy Minister Women, Family and Community Development (MWFCD),³¹ the Government has allocated RM200,000 for any ministry or department that wishes to set up nursery facilities in their premises. Civil servants earning below RM3,000 monthly are also entitled to RM180 in subsidies to send their children to the nurseries. In the National Budget 2014, the Government has expanded the RM180 subsidy to civil servants earning below RM5,000. The Government has since 1994 introduced a 10-year tax exemption for private sectors on expenditures to construct or purchase a building for a nursery.
- (vi) In addition, the MWFCD has also created an online portal called “eZi2Care” for those interested in attending basic courses on childcare. This will prepare the caregiver with necessary knowledge on ways how to handle children in the proper manner. However, this course was terminated in January 2013.
- (vii) MWFCD through “eZi2Care” also provides basic courses on childcare centres for those wishing to establish one. The establishment of day care centres will offer support services for working mothers. However, the Commission would like to highlight the lack of day-care centres for children, in particular those with disabilities, at the workplace.

3.9.3 THE CONFLICT BETWEEN SYARIAH AND CIVIL LAW IN RELATION TO MARRIAGE

- (i) Under the Malaysian judicial system, the affairs of Muslims and non-Muslim families are governed by different sets of family laws. Non-Muslim marriages are governed by the Law Reform (Marriage and Divorce) Act 1976, under the jurisdiction of civil High Courts. Muslims, on the other hand, are governed by the Islamic law Enactments of the respective States, under jurisdiction of the Syariah Courts. In cases where one of the spouses converts to Islam, a conflict of law situation may arise leading to jurisdictional issues in relation to family disputes, such as those relating to the custody and guardianship of children, maintenance for the wife and the children, and distribution of matrimonial assets. The latest case of a custody battle between a

³¹See The Sun, 26 March 2012, <http://www.thesundaily.my/news/331876>.

Hindu lady, S Deepa, and her converted Muslim husband is testamentary to the seriousness of the matter, which has arisen as a result of the overlapping and blurred distinction between the jurisdiction of the civil and Syariah courts in the Malaysian legal system. In this latest case, S. Deepa won full custody of her two children — a nine-year-old daughter and a six-year-old son — at the Seremban High Court on 7 April 2014. However, the converted husband reportedly snatched the boy from the mother two days later, insisting he too had full custody as awarded by the Syariah Court. The police have refused to act on Deepa's abduction complaint against the child's father, with Inspector-General of Police Tan Sri Khalid Abu Bakar citing the two conflicting court orders as the reason.³²

- (ii) Section 51 of the Law Reform (Marriage and Divorce) Act 1976 provides for the dissolution on ground of conversion to Islam. It enables the spouse who has not converted to petition for divorce in a civil High Court, provided that the petition shall not be presented before the expiration of the period of three months from the date of conversion of the other spouse. The Act further provides that the court upon dissolving the marriage may make provision for the wife or husband, and for the support, care and custody of the children of the marriage, if any, and may attach any conditions to the decree of the dissolution as it thinks fit. However, section 51 does not expressly provide that the spouse who has converted to Islam may petition for a divorce under the civil law; it only provides for a petition by the spouse who has not converted. It is noted that there are incidences where refusal or reluctance of a non-converting spouse to petition for a divorce has made the marital status uncertain.

- (iii) Concerned over this issue, the Commission strongly calls for a review of the above provision in particular, to provide a clear and comprehensive procedure for conversion in and out of Islam; and to deal with matters consequential upon conversion such as status of marriage, division of matrimonial property, custody of children and maintenance. Similar recommendations were

³² See The Malay Mail, 16 April 2014 available at <http://www.themalaymailonline.com/malaysia/article/child-conversion-ban-even-without-cabinet-decision-says-bar-chief>

sent to the Conference of Ruler in charge of Islamic matters in 2009³³ in which the Commission also urged for the uniformity of the applicable Islamic Laws throughout Malaysia.³⁴

3.9.4 RIGHTS OF MIGRANT DOMESTIC WORKERS, AND WOMEN REFUGEES/ASYLUM SEEKERS

(i) Migrant Domestic worker

(a) In general, migrant workers are covered by the Employment Act 1955. However, the Act does not accord full protection to migrant domestic workers. At the same time, there is no specific trade union for migrant domestic workers while other existing associations are generally male-dominated. Furthermore, the Minimum Wages Order 2012 does not apply to migrant domestic workers. This creates an environment where migrant domestic workers have no other recourse if their rights are violated by their employers. The Commission recommends that migrant domestic workers be provided with feasible recourse and remedies against abuses committed by employers and that they be allowed to remain and work in the country while seeking and awaiting redress. It is recommended that Malaysia enact a law or amend existing laws to protect the rights of the migrant domestic workers and ratify the International Labour Organisation's (ILO) Convention No. 189 concerning Decent Work for Domestic Workers.

(ii) Women Refugees/Asylum Seekers

(a) Malaysia has not ratified the Convention relating to the Status of Refugee 1951 and the 1967 Optional Protocol and the national laws do not differentiate between refugees, asylum seekers or undocumented immigrant. As of end of February 2013, there are some 101,290 refugees and asylum seekers registered with UNHCR in Malaysia. Refugees and asylum seekers comprise Myanmar, Sri Lankans, Somalis, Iraqis, Afghans and nationals from other countries. 30% of the registered refugees and asylum seekers are women.³⁵

(b) In July 2011, there was a swap agreement between Malaysia and Australia under which Australia would send persons seeking asylum there to be processed in Malaysia and in

³³ SUHAKAM's Annual Report 2009, p. 55.

³⁴ It is noted that the Government had accomplished uniformity the five models Syariah laws (Administration of Islamic law, Islamic Family Law, Syariah Court Evidence, Syariah Criminal Procedure and Syariah Court Civil Procedure), however not all the State and Federal Territories have adopted the five model laws.

³⁵ www.unhcr.org.my/about_Us-@-Figures_At_A_Glance.aspx

exchange, Australia would increase its intake of asylum seekers currently in transit in Malaysia. The agreement received strong reactions from various activists and NGOs in Malaysia and Australia because Malaysia is not a party to the Convention relating to the Status of Refugees 1951 and the worry that the human rights of those sent by Australia could be abused. It was subsequently struck down by the High Court of Australia.

- (c) Most of the women refugees and asylum seekers are not working and are very dependent on their spouses or family members. The absence of documentation is a major problem for them. If arrested, an undocumented refugee or asylum seeker could be detained at the immigration depot and released only after intervention from the UNHCR, based on a standing agreement between the UNHCR and the Malaysian Immigration Department on the matter.³⁶ However, this group is still open to arrest at the discretion of the enforcement authorities.
- (d) In Malaysia, refugees are able to access public and private healthcare facilities. However, as a matter of policy, migrant workers and refugees are paying higher fees for the same kind of treatment or public healthcare facilities that Malaysians enjoy. The maternal health of pregnant women refugees/asylum seekers is often affected due to the high costs of treatment.

3.9.5 SEXUAL MINORITIES

- (i) In the Malaysian context, transgender women, lesbian women and bisexual women face discrimination for various socio, religious and cultural reasons. Furthermore, there are laws that discriminate against this group especially if they are Muslims; the Syariah Criminal Offences Enactments of the various states criminalise certain acts such as cross dressing and women posing as men or vice versa.³⁷

³⁶ SUHAKAM's Annual Report 2011. p. 51.

³⁷ Paragraph 31 of the General Recommendations No. 28 on the Core Obligations of States Parties under Article 2 of the CEDAW provides that *.....states parties have an obligation to take steps to modify or abolish existing laws, regulations, customs and practices which constitutes discrimination against women. Certain groups of women, including women deprived of their liberty, refugees, asylum seeking and migrant women, stateless women, lesbian women, disabled women, women victims of trafficking, widows and elderly women, are particularly vulnerable to discrimination through civil and penal laws, regulations and customary law and practices.....*

- (ii) The Commission would like to highlight that the term of “gender” is emphasized in the paragraph 5 of the General Recommendation 28 on the Core Obligations of States Parties under Article 2 of the CEDAW that “..... *The term gender refers to socially constructed identities, attributes and roles for women and men and society’s social and cultural meaning for these biological differences resulting in hierarchical relationships between women and men and in the distribution of power and rights favouring men and disadvantaging women. This social positioning of women and men is affected by political, economic, cultural, social, religious, ideological and environmental factors and can likewise be changed by culture, society and community. The application of the Convention to gender based discrimination is made clear by the definition of discrimination contained in article 1.....*
- (iii) Therefore, it would be essential that this group should not be marginalised due to their sexual orientation and gender identities. The Commission is of the view that regardless of the sexual orientation, this group should be able to enjoy the full range of human rights without exception. Violence, abuse and violations of the rights of the sexual minorities cannot be justified or tolerated.³⁸

4.0 LEGAL REFORMS RELATING TO WOMEN RIGHTS

4.1 Notwithstanding the absence of a specific law incorporating the elements of CEDAW, the Commission is mindful of other laws which relate, directly or otherwise, to the protection of women. It is further observed that several laws have been amended to provide for legal protection and to prohibit acts of discrimination by taking into consideration the perspective of gender equality as follows:-

- i. The recent amendment in 2012 of the Domestic Violence Act 1994 has expanded the definition of ‘domestic violence’ to include not only physical injuries but psychological and emotional injuries as well. This amendment would have the effect of affording better protection to victims of domestic violence.

³⁸ SUHAKAM's Annual Report 2011. p. 61.

- ii. The amendment to the Land (Group Settlement Areas) Act 1960, to allow a wife, ex-wife or next of kin as a co-holder of a land by way of undivided shares.
 - iii. Amendments to the Pension Act 1980 in 2002 to allow the widow of a Government servant who has remarried to continue receiving pension from her late husband's account.
 - iv. The Employment (Part – Time Employees) Regulations 2010 were introduced to protect and guarantee the rights of part-time workers including provisions on contributions to the Employees Provident Fund (EPF) and SOCSO, overtime and rest days. These regulations will benefit to housewives, single mothers, pensioners, and person with disabilities who wish to work part-time.
- 4.2 Over the years, the Commission has been calling upon the Malaysian Government to ratify all international human rights instruments and not to place any reservations on provisions related to equality and non-discrimination.

5.0 OPTIONAL PROTOCOL TO THE CEDAW

- 5.1 The Commission has consistently called upon the Government to ratify the Optional Protocol (OP) to the CEDAW. In year 2010, a justification paper was sent by the Commission to the Ministry of Foreign Affairs to urge the Government to ratify the OP to the CEDAW. The Commission welcomes the initiative of the MWFC in consulting other government agencies with regard to the OP to the CEDAW in 2010. The Ministry's move is in line with the recommendation made by the CEDAW Committee to ratify the OP to the CEDAW in its Concluding Comments (CEDAW/C/MYS/CO/2). Ratifying the OP, which provides for two procedures of complaints namely the communication procedure and the inquiry procedure, would enable a person to make a complaint under OP when all domestic remedies have been exhausted.

6.0 CONCLUSION

- 6.1 The Commission hopes that the Government will continue to engage in implementing the concluding comments from the CEDAW Committee. In addition, the Commission encourages the Government to withdraw all the remaining reservations to CEDAW and to ratify the Optional Protocol to the CEDAW.