

STAKEHOLDER REPORT ON MALAYSIA

FOR THE 17TH SESSION IN THE 2ND CYCLE OF THE HRC'S UNIVERSAL PERIODIC REVIEW IN 2013

Prepared by:

**The Coalition of Malaysian NGOs in the UPR Process
(COMANGO)**

Endorsed by 54 organisations:

Pusat Kesedaran Komuniti Selangor (EMPOWER), Suara Rakyat Malaysia (SUARAM), Education and Research Association for Consumers, Malaysia (ERA Consumer), All Petaling Jaya, Selangor Residents' Association (APAC), All Women's Action Society (AWAM), Amnesty International, Malaysia, ASEAN Institute for Early Childhood Development, Association of Women's Lawyers (AWL), Association of Women with Disabilities Malaysia, Coalition to Abolish Modern Day Slavery in Asia (CAMSA), Centre for Independent Journalism (CIJ), Childline Malaysia, Christian Federation Malaysia, Community Action Network (CAN), Centre for Rights of Indigenous Peoples of Sarawak (CRIPS), Dignity International, Foreign Spouses Support Group, Good Shepherd Welfare Centre, Health Equity Initiatives, Jaringan Kampung Orang Asli Semenanjung Malaysia (JKOASM), Jaringan Rakyat Tertindas (JERIT), Justice For Sisters, Pusat Komunikasi Selangor (KOMAS), Knowledge and Rights with Young people through Safer Spaces (KRYSS), KLSCAH Civil Rights Committee, Land Empowerment Animals People (LEAP), Malaysians Against Death Penalty and Torture (MADPET), Malaysian Child Resource Institute (MCRI), Malaysian Physicians for Social Responsibility, Malaysia Youth & Student Democratic Movement (DEMA), Migration Working Group (MWG), PANGGAU, Persatuan Masyarakat Selangor dan Kuala Lumpur (PERMAS), PS The Children, PI Foundation, People's Service Organisation (PSO), Seksualiti Merdeka, Perak Women for Women Society, Persatuan Guru-Guru Tadika Semenanjung Malaysia (PGGT), Persatuan Komuniti Prihatin Selangor dan Kuala Lumpur, Persatuan Sahabat Wanita Selangor, Rainbow Genders Society, Sabah Women's Action-Resource Group (SAWO), Southeast Asian Centre for e-Media (SEACem), Sinui Pai Nanek Sengik (SPNS), SIS Forum (Malaysia) Bhd (SIS), Tenaganita, Voice of the Children (VOC), Writers' Alliance for Media Independence (WAMI), Women's Aid Organisation (WAO), Women's Centre for Change, Penang (WCC), Yayasan Chow Kit, Young Buddhist Association, Youth Section, Kuala Lumpur and Selangor Chinese Assembly Hall, Youth Section

A. BACKGROUND AND FRAMEWORK

Consultation process

This report was prepared after a national consultation held on 17-18 July 2012 with NGOs involved in diverse human rights issues in Malaysia. 34 NGOs attended, along with 1 representative each from the National Human Rights Commission of Malaysia (*SUHAKAM*) and the ILO,¹ and 2 from the United Nations.

1. Scope of international obligations

Malaysia has acceded to only 3 of the core human rights treaties: CEDAW²; CRC³; and CRPD⁴, and to 2 of the 3 optional protocols under CRC

Recommendations:

- 1.1. Remove all reservations and declarations on CEDAW, CRC and CRPD.
- 1.2. Accede to ICCPR,⁵ ICESCR,⁶ ICERD,⁷ CAT,⁸ ICRMW,⁹ ICPPED¹⁰ and their optional protocols, the Rome Statute of the International Criminal Court and ratify the 3rd optional protocol to CRC¹¹

2. Constitutional and legislative framework

- 2.1. The Federal Constitution (*FC*) is the supreme law of Malaysia. It is a constitutional monarchy, with the Kings having largely ceremonial roles. There are 9 sultans out of the 13 states in Malaysia. These 9 sultans take turns to become the King, rotating once every 5 years.
- 2.2. Although Malaysia claims to subscribe to the doctrine of Separation of Powers, the Executive is overwhelmingly dominant and powerful. This results in a *de facto* parliamentary supremacy rather than a constitutional supremacy. Laws are regularly passed with very short notice, no or very little consultation, and hardly any debate in Parliament. These practices often result in laws which are contrary to human rights e.g., the DNA Act 2009 and Peaceful Assembly Act 2012 (*PAA*).

¹ International Labour Organisation

² Convention on the Elimination of All Forms of Discrimination Against Women, with reservations on Articles 9(2), 16(1) (a), (c), (f), and (g), and a declaration on Article 11

³ Convention on the Rights of the Child, with reservations on Articles 2, 7, 14, 28(1)(a), and 37. The 2 optional protocols to which Malaysia acceded are the Optional Protocol on the Involvement of Children in Armed Conflict, and the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography.

⁴ Convention on the Rights of People with Disabilities with reservations on Articles 15 and 18

⁵ International Covenant on Civil and Political Rights

⁶ International Covenant on Economic, Social and Cultural Rights

⁷ Convention on the Elimination of All Forms of Racial Discrimination

⁸ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

⁹ International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

¹⁰ International Convention for the Protection of All Persons from Enforced Disappearance

¹¹ Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure.

- 2.3. A Judicial Appointments Commission (*JAC*) was established on 2 February 2009 to ensure a more transparent and fair selection of judges and to make recommendations about the judiciary.¹² Despite these measures, claims persist of corrupt judges who will fix cases when approached by lawyers who are part of a “Dream Team”¹³
- 2.4. The Judicial Academy (*JA*) was established on 16 December 2011 for judicial studies. We are concerned that in 2012 and until February 2013, there were no sessions on human rights.¹⁴
- 2.5. The Malaysia Law Reform Committee (*MLRC*) was established in December 2009 to review all laws to assess their relevance and to make recommendations to the government for reform. To date, no reports have been made public and its achievements are not known. No member of any NGO serves in its Steering Committee¹⁵

Recommendations

2.6. Train judges, other legal and judicial officers, and parliamentarians to increase their understanding of human rights, especially in relation its application to their work in line with Article 7 of the UN Declaration on Human Rights Education and Training.¹⁶

2.7. Publish annual reports on the work done by the JAC, JA and MLRC.

3. Institutional and human rights infrastructure and policy measures

3.1. SUHAKAM has retained its ‘A’ status with the ICC¹⁷ after amendments were made to the Human Rights Commission of Malaysia Act 1999.¹⁸ Now there is

¹² JAC website: <http://www.jac.gov.my/>

¹³ “Rogue lawyers boast of connections with retired judges and being able to fix cases”, The Star, 5 February 2013 at:

<http://thestar.com.my/news/story.asp?file=/2013/2/5/nation/12669727&sec=nation>

¹⁴ For the 2012 planner, see:

http://www.jac.gov.my/index.php?option=com_content&view=article&id=245&Itemid=174&lang=en For 2013 planner, see:

http://www.jac.gov.my/index.php?option=com_content&view=article&id=280&Itemid=173&lang=en

¹⁵ MLRC website:

http://www.bheuu.gov.my/index.php?option=com_content&id=152&lang=en

¹⁶ “7.1 States, and where applicable relevant governmental authorities, have the primary responsibility to promote and ensure human rights education and training, developed and implemented in a spirit of participation, inclusion and responsibility ”: <http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/G11/124/78/PDF/G1112478.pdf?OpenElement>

¹⁷ International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights

¹⁸ Human Rights Commission of Malaysia (Amendment) Act 2009:

http://www.suhakam.org.my/c/document_library/get_file?p_l_id=35723&folderId=124309&name=DLFE-7003.pdf and the Human Rights Commission of Malaysia (Amendment) (Amendment) Act 2009:

a selection committee that makes recommendations on potential Commissioners. Commissioners are appointed for a maximum of 2 3-year terms. The Commissioners appointed after the amendments have shown more willingness to deal with controversial issues e.g., on sexual orientation and gender identity (*SOGI*) rights by initiating dialogues with religious groups and other stakeholders, participated as observers in BERSIH 2.0 and BERSIH 3.0 rallies, holding an on-going public inquiry into the events of BERSIH 2.0, and appointed counsels to hold watching briefs in workplace gender discrimination and child rights cases.

- 3.2. However, SUHAKAM's annual reports that are submitted to Parliament are not debated.
- 3.3. Malaysia's membership in the ASEAN Inter-governmental Commission on Human Rights (*AICHR*) and the ASEAN Commission on the Promotion and Protection of Human Rights (*ACWC*) has not made ASEAN more human rights friendly. ASEAN focuses on business and the economy. The selection process for the AICHR representative was not open or participatory - no consultation was carried out with the stakeholders before the appointment was made. At this stage, its commitments to human rights in ASEAN are still largely only lip service. The ASEAN Human Rights Declaration 2012¹⁹ has further entrenched the principles of non-interference and cultural relativism, and made the nebulous issue of public morality important. There is also no mention of SOGI rights²⁰ or the rights of indigenous peoples.

Recommendations:

- 3.4. Debate SUHAKAM's report in Parliament.
- 3.5. Review the ASEAN Charter, and the terms of reference of AICHR and ACWC to give greater emphasis on the promotion, and especially the protection and realisation of human rights.
- 3.6. Institute an open, transparent and inclusive selection process for the representatives to AICHR and ACWC such as those carried out in Indonesia and Thailand.

http://www.suhakam.org.my/c/document_library/get_file?p_l_id=216838&folderId=216872&name=D_LFE-7708.pdf

¹⁹ See: <http://www.asean.org/news/asean-statement-communicues/item/asean-human-rights-declaration>

²⁰ See 'Malaysia: Human Rights Violation against Lesbian, Gay, Bisexual, Transgender, Intersex and Queer Persons' a report submitted by Knowledge and Rights with Young people through Safer Spaces (KRYSS), Seksualiti Merdeka and Justice for Sisters (*the SOGI Rights Report*), Paragraph 1.3, submitted to the OHCHR for the 2nd cycle of the UPR.

B. COOPERATION WITH HUMAN RIGHTS MECHANISMS

4. Cooperation with treaty bodies

- 4.1. Malaysia has been reviewed by the CEDAW and CRC Committees only once respectively despite their ratification in 1995. After those reviews, no further reports were filed by Malaysia to the CEDAW and CRC Committees
- 4.2. The 'CEDAW & Malaysia: Malaysian NGOs' Alternative Report²¹ (*CEDAW Alternative Report*) was prepared in April 2012 by women's groups, coordinated by the Women's Aid Organisation, to share their concerns over the slow pace of the attainment of substantive equality and in some instances, the roll-back in women's rights. Key concerns include: the guarantee of gender equality under Article 8(2) of the FC is only applicable when the party discriminating is a public authority and not private citizens or corporations;²² Malaysian women's inability to automatically confer citizen on their children if they had foreign spouses and their children were born abroad; the failure of the legal system to ensure that perpetrators of violence against women are held accountable and sentenced appropriately; and the discrimination faced by women, especially Muslim women during divorce and other matters related to marriage and family; and the escalation of discrimination and violence against lesbians, bisexual women and the transgendered.
- 4.3. Malaysia's implementation of the CEDAW Committee's recommendations is poor especially when they touch on matters which intersect with religion and culture²³ e.g., the requirement of the *wali*'s (guardian) consent for the prospective bride even though she is an adult.
- 4.4. Two of the most important recommendations by the CRC Committee that Malaysia has yet to implement are to:²⁴
 - 4.4.1. undertake a review and reform of the plural legal systems, without which inconsistencies in the definition of the child under national laws remain, with multiple contradictory definitions of the child under both civil and Syariah law; and
 - 4.4.2. to accede to other human rights instruments, including ICRMW and CRSR²⁵ otherwise it leaves migrant and refugee children with no framework to protect their rights.

²¹ See:

<http://wao.org.my/file/file/Malaysian%20NGO%20CEDAW%20Alternative%20Report%202012%206MB.pdf>

²² See the apex court decision in *Beatrice at Fernandez v Sistem Penerbangan Malaysia & Anor*, 2 CLJ [2005] 713

²³ CEDAW Committee Concluding Observations, Paragraph 14. See:

<http://sim.law.uu.nl/SIM/CaseLaw/uncom.nsf/fe005fcb50d8277cc12569d5003e4aaa/fc56cb848775733ec12571950031a010?OpenDocument>

²⁴ For a fuller report on child rights, see the report by the Child Rights Coalition Malaysia (*the CRC Malaysia Report*) submitted to the OHCHR for the 2nd cycle of the UPR

²⁵ Convention relating to the Status of Refugees

- 4.5. Malaysia has failed to submit any reports to the CRPD Committee, and so no reviews have been conducted.

Recommendations:

- 4.6. Strictly comply with the timelines for reporting to the CEDAW, CRC and CRPD Committees.
- 4.7. Fully comply with the recommendations made by the CEDAW and CRC Committees.

5. Cooperation with special procedures

- 5.1. Despite being a member of the UN Human Rights Council, Malaysia has only invited the Working Group on Arbitrary Detention during the period under review.²⁶

Recommendations:

- 5.2. Issue an open invitation to all the Special Procedures.
- 5.3. Accept requests by special procedures when they seek to visit Malaysia.

C. IMPLEMENTATION OF INTERNATIONAL HUMAN RIGHTS OBLIGATIONS, TAKING INTO ACCOUNT APPLICABLE INTERNATIONAL HUMANITARIAN LAW

6. Equality and non-discrimination

6.1. SOGI

- 6.1.1. Malaysia refuses to recognise SOGI rights as human rights. Lesbians, bisexuals, gays, transgendered, inter-sexed and queer persons (**LBGTIQ**) are vilified, face violence and are subjected to constant harassment by state and non-state actors alike.

- 6.1.1.1 For example, a massage centre in Penang was raided 4 times between 2010 and 2011 for offering 'gay massage';²⁷ a fitness centre was raided and the Police investigated the case under carnal intercourse against the order of nature;²⁸ a transgendered person ran away from a centre

²⁶ Read their report of the 2010 visit here: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/106/38/PDF/G1110638.pdf?OpenElement> The only other special procedure that Malaysia invited was the Special Rapporteur on the Right to Education, who came in 2007. Read his report here: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G09/125/06/PDF/G0912506.pdf?OpenElement>

²⁷ 'Premis tawar urutan gay diserbu' [Premises that offer gay massage raided], Kosmo! 25 March 2011

²⁸ 'Cops raid gay fitness centre' by Tan Shin Chow, The Star on 20 January 2012. See: <http://thestar.com.my/news/story.asp?file=/2012/1/20/nation/20120120172717&sec=nation>

for 'rehabilitation',²⁹ effeminate boys were sent to camps to make them more 'masculine',³⁰ and transgendered persons being attacked by unknown persons.³¹

6.1.2. Matters are made more complex when issues of sexual orientation and gender identity are inter-woven with religion - especially Islam - as Muslims are subject to both the Syariah and civil legal systems, and then politicised. The Prime Minister has labelled the LGBT community as enemies of Islam.³² Sexual orientation is used as tool to attack *Pakatan Rakyat (PR)*, the opposition coalition.³³ Anwar Ibrahim, the Leader of the Opposition and a Muslim, and has been prosecuted twice on charges of sodomy – and acquitted both times. With the support of the Ministry Information, Communications and Culture, a musical, *Asmara Songsang* (Deviant Love),³⁴ was shown at the *Istana Budaya* (Palace of Culture) in Kuala Lumpur on 1-2 March 2013, and will tour Malaysia after that. Besides portraying LGBTIQs in a negative light, there were also innuendoes about opposition members and leaders of civil society.³⁵

6.2 Racism

Malaysia is a multi-ethnic and multi-religious nation. Muslims make up approximately 61% of the population, and Malays make up around 55%.³⁶ Article 160(2) of the FC defines 'Malay' as being Muslim. Malays have special privileges under Article 153 of the FC. This intertwining of the race and religion has proven to be a powerful political tool for those who want to stay in power, or to get in power. Many actions and speeches of state and non-state actors violate Article 8(2) of the FC which states that there shall be no discrimination on the ground of race. There does not appear to be any efforts by the government to speedily eliminate racial discrimination in all its forms and manifestations. Some incidents include:

²⁹ 'Pondan lari dari pusat pemulihan' [Sissy runs away from rehabilitation centre], *Kosmo!* on 25 October 2011

³⁰ "Soft' boys are victims of society's prejudice against sissies', *The Borneo Post* on 1 May 2011 <http://www.theborneopost.com/2011/05/01/%E2%80%98soft%E2%80%99-boys-are-victims-of-society%E2%80%99s-prejudice-against-sissies/>

³¹ 'Transsexuals being targeted by gang' by Ong Han Sean in *The Star* on 16 February 2012. See: <http://thestar.com.my/news/story.asp?file=/2012/2/16/nation/10745364&sec=nation>

³² 'Najib: LGBTs, liberalism, pluralism are enemies of Islam' in *The Malaysian Insider* on 19 July 2012

<http://www.themalaysianinsider.com/malaysia/article/najib-lgbts-liberalism-pluralism-are-enemies-of-islam>

³³ The SOGI Rights Report, Paragraph 1.2

³⁴ 'Musical with negative portrayal of LGBT people tours Malaysia' by Anna Leach in *GayStarNews* on 18 February 2013. See: <http://www.gaystarnews.com/article/musical-negative-portrayal-lgbt-people-tours-malaysia180213>

³⁵ The SOGI Rights Report, Paragraph 2.6.1.

³⁶ See 'Population Distribution and Basic Demographic Characteristics', Population and Housing Census, Department of Statistics:

http://www.statistics.gov.my/portal/download_Population/files/census2010/Taburan_Penduduk_dan_Ciri-ciri_Asas_Demografi.pdf

- 6.2.1. a principal of a school asked Chinese students to return to China, and likened prayer strings used by Indians to dog leashes because it made them look like dogs. No discernable actions were taken against the principal.³⁷
- 6.2.2. The *Biro Tata Negara* (National Civics Bureau), is an agency in the Prime Minister's Department with an objective to nurture the spirit of patriotism and commitment to excellence among Malaysians, and train leaders and future leaders to support the nation's development efforts. However, we are concerned that they spread the idea of Malay supremacy among Malaysian-Malays, and instilling hatred against Malaysian-Chinese.³⁸
- 6.2.3. *Tanda Putera* (Sign of a Prince) is a movie made in collaboration with the National Film Development Corporation (*FINAS*) and the Multimedia Development Corporation (*MDEC*). They provided financing by using public funds. It portrays a tumultuous period in Malaysian history arising from the incidents around May 13 1969 where race and religion were politicised and violence erupted in some parts of Malaysia. While the release of the movie was postponed because of the potential unrest it may cause Malaysians just before the 13th General Elections (which must be held no later than June 2013), the United Malays National Organisation (*UMNO*) screened it to around 3000 Malay settlers on 18 February 2013.³⁹
- 6.2.4. *8TV*, a national television channel had to withdraw a series of public service messages during the fasting month of Ramadhan after complaints from viewers of them being racist and sexist. The advertisements showed a Chinese girl who behaved rudely and 'inappropriately' dressed (a vest-top). The message was not to be loud, obnoxious, or wear tight and revealing clothes in a Malay area.⁴⁰

6.3. Foreign spouses

Foreign spouses face difficulties in becoming permanent residents and citizens. Strict requirements are imposed on the applications for Social Visit Passes e.g., the presence of her spouse at the Immigration Department, and sometimes, a sponsor earning at least RM2,000 per month. Being non-citizens, foreign spouses bear higher fees for public services such as healthcare, banking and universities. Application for citizenship differs depending on whether they are foreign wives or husbands. Foreign wives are

³⁷ "DAP calls for removal of Johor principal" in *The Malaysian Insider*, 17 August 2010. See: <http://www.themalaysianinsider.com/malaysia/article/dap-calls-for-removal-of-johor-principal>

³⁸ 'Pagar makan padi?' [Fence eating the paddy?] by Ian Ban Cheng in *ALIRAN*, 16 January 2010. See: <http://aliran.com/1108.html#more-1108>

³⁹ 'Controversial May 13 film 'Tanda Putera' screened at FELDA meet' in *The Malaysian Insider* on 18 February 2013. <http://www.themalaysianinsider.com/malaysia/article/controversial-may-13-film-tanda-putera-screened-at-felda-meet>

⁴⁰ "News: Malaysia TV station Ramadan Ads sparks debate", YouTube, 3 August 2011 at: <http://www.youtube.com/watch?v=ke7p5rp-nbl>

only allowed to work with the written permission from their husbands – another instance of gender discrimination.⁴¹

Recommendations:

- 6.4 Repeal S377A of the Penal Code that criminalises consensual anal and oral sex.
- 6.4. The police, religious authorities, prosecutors and the judiciary should receive gender sensitisation and human rights training.
- 6.6. Prosecute offenders who commit violence, especially those committed against the LBGIIQ.
- 6.7. Review, amend and repeal laws so that they comply with the Yogyakarta Principles and other UN conventions.
- 6.8. Ratify ICERD, and provide the institutional legal framework for adopting international obligations into domestic laws.
- 6.9. Undertake a comprehensive study on the positive implications and define a clear distinction between the legal system of civil law and Syariah laws.
- 6.10 Refrain from politicising, and prohibiting individuals from their legitimate exercise of freedom of expression.
- 6.11 Amend laws and policies to provide foreign spouses the right to work on temporary passes and expedite applications for permanent residence and citizenship.
- 6.12 Ensure that foreign spouses (both wives and husbands) who are separated, divorced or widowed are able to enjoy the rights to reside and work independently.

7. Right to life, liberty and security of the person

7.1. Deaths and rapes in custody, and police shootings

- 7.1.1 Deaths and rapes in custody, fatal police shootings, and violence against suspects continue unabated even under the leadership of the new Inspector General of Police, Tan Sri Ismail Omar and the Enforcement Agencies Integrity Commission (*EAIC*),⁴² By 2012, the EAIC had only received a meagre 170 complaints with only 16 fully investigated.⁴³

⁴¹ The discrimination against foreign spouses is dealt with more comprehensively in the MWG-JUMP report submitted to the OHCHR for the 2nd cycle of the UPR (*the MWG-JUMP Report*), Paragraphs 8 to 11

⁴² Established in 2011.

⁴³ The remaining complaints were either in preliminary investigation stage or were referred to other relevant agencies for further actions due to lack of jurisdiction.

- 7.1.2. Deaths in custody stood at 209 from 2000 to September 2012. From 2007 to 2012, a total of 228 non-citizens died in police lock-ups, immigration depots and those who were referred to hospitals by the authorities.⁴⁴
- 7.1.3. 298 individuals were shot dead by the police from 2007 to August 2012. In 2011, 30 were shot dead. In 2012, it increased to 37. The standard explanation for fatal shootings was that the police were acting in self-defence.⁴⁵
- 7.1.4. 3 police officers gang-raped an Indonesian restaurant worker in a police station.⁴⁶

7.2. **The right to life encompasses the right to be free from violence.**

- 7.2.1. Research has shown that there is a connection between violence against animals and violence against humans: pet abuse is 1 of 4 predictors of domestic violence; 65% of persons arrested for animal crimes have been arrested for battery against another person; and of 36 convicted multiple murderers, 46% admitted torturing animals as adolescents.⁴⁷
- 7.2.2. Promoting and protecting animal rights is important in itself,⁴⁸ but may also have an impact on Malaysia's efforts to reduce violent crimes.

Recommendations:

- 7.3. Establish the Independent Police Complaints and Misconducts Commission (*IPCMC*) to look into issues relating to the police instead of placing it under the EAIC.
- 7.4. Ratify CAT, and invite the Special Rapporteur on CAT to make a country visit.
- 7.5. Immediately improve conditions of detention centres, lock-up, prisons and immigration detention centres
- 7.6. Regulate the lawful use of firearms according to international procedures on discharging firearms
- 7.7. Establish a Coroner's Court presided by a Coroner with sufficient knowledge and experience in pathological studies

⁴⁴ Written answer by the Home Minister to Sungai Siput MP Dr Micheal Devaraj's question in Dewan Rakyat dated 20/11/2012, Question no 31, Reference no 5218

⁴⁵ Written answer by the Home Minister to Sungai Siput MP Dr Micheal Devaraj's question in Dewan Rakyat dated 22/10/2012, Question no 35, Reference no 5157

⁴⁶ "Three cops charged with raping and forcing oral sex on Indonesian woman", The Star Online, 16 November 2012 at:

<http://thestar.com.my/news/story.asp?file=/2012/11/16/nation/20121116161705&sec=nation>

⁴⁷ See: 'Animal Cruelty and Human Violence', The Human Society of the United States http://www.humanesociety.org/issues/abuse_neglect/qa/cruelty_violence_connection_faq.html

⁴⁸ See: 'Malaysians go online to fight animal abuse' in MSN News on 22 March 2011 at <http://news.malaysia.msn.com/regional/article.aspx?cp-documentid=4724819>

- 7.8 Pass the proposed Animal Welfare Bill.⁴⁹ Provisions must be made for counselling for persons convicted of animal cruelty, and for cross-reporting where veterinarians and social workers must report suspected cases of animal abuse to the police and the Veterinary Services Department.
- 7.9 Conduct research on the connections between animal cruelty and violence against humans.

8. Administration of justice, including impunity, and the rule of law

- 8.1. Decisions appear to be made selectively by the police regarding which cases to investigate, and by the Attorney General's Chambers on which cases to prosecute. Sentencing in certain crimes, e.g., statutory rape cases do not reflect the gravity of the crime. All these lead to a perception that certain actions may continue with impunity, throwing a poor light on the administration of justice and the rule of law. For example:
- 8.1.1. Ibrahim Ali⁵⁰ called on all Muslims to seize and burn copies of Bibles that contain the word "Allah" and other Arabic verses.⁵¹ The Attorney General refused to take action until any Bibles were burnt. No action was taken against him despite his hate speech and incitement to violence.⁵²
- 8.1.2. The Court of Appeal substituted a lengthy jail term with a good behaviour bond for national bowler Noor Afizal for the statutory rape of a 13-year-old girl when he was 19 because there was no use of force.⁵³ It is also worrisome that research in the northern state of Penang shows that the conviction rate after a trial in a sexual crime is less than 3%.⁵⁴
- 8.2. The integrity of the police has often been questioned. As an example, in 2012, former Inspector General of Police, Musa Hassan revealed that Home Minister Hishammuddin Hussein had once given instructions directly to junior police officers and a district police chief without his knowledge. Musa added that often, politicians and "top people" will interfere in police's work by giving orders to immediately release certain individuals in certain cases. Musa also claimed that crime statistics were often under-reported.

⁴⁹ 'Animal abusers to face harsher penalties' in The Star Online on 9 November 2012 at <http://thestar.com.my/news/story.asp?file=/2012/11/9/nation/12296182&sec=nation>

⁵⁰ Independent Member of Parliament, but leans towards Barisan Nasional – the ruling coalition. He is also the leader of Pribumi Perkasa Negara, a Malay supremacist organization.

⁵¹ "Burn 'Allah' Bibles, Perkasa chief to Muslims" in Free Malaysia Today on 19 January 2013 at: <http://www.freemalaysiatoday.com/category/nation/2013/01/19/burn-allah-bibles-perkasa-chief-tells-muslims/>

⁵² "A-G 'not concerned' by Perkasa's call" in Free Malaysia Today on 21 January 2013 at: <http://www.freemalaysiatoday.com/category/nation/2013/01/21/a-g-not-concerned-by-perkasas-call/>

⁵³ 'Bowler wins rape case appeal, escapes jail term' in News Straits Times on 9 August 2012. See: <http://www.nst.com.my/nation/general/bowler-wins-rape-case-appeal-escapes-jail-term-1.122712>

⁵⁴ 'Seeking Justice for Victims of Sexual Crimes' (2009) by James Lockhead and Tan Pek Leng, Women's Centre for Change, Penang at Page 22, Table 2.8.

Recommendations:

- 8.3. Gender sensitise and conduct human rights training for the police, prosecutors, and judges so that they can appreciate its relevance, and link it to their work.
- 8.4. Establish the ICPMC as an oversight body for the Police.

9. Right to privacy, marriage and family life

9.1. Right to Privacy

Under the various Syariah Criminal Offences Enactments, the State has the authority to conduct moral policing, including *khalwat* (close proximity) raids. Such raids are often subject to abuse by religious enforcement authorities, and such invasions of privacy have, in some instances, resulted in fatal outcomes.⁵⁵

9.2. Inequality in Marriage and Family Life

- 9.2.1. Multiple sections within the Islamic Family Law in Malaysia discriminate against Muslim women, and there have been a roll-back in those rights e.g., equal rights to marriage, during marriage and its dissolution; right to matrimonial assets; and inadequate protection for a wife(s) upon a husband's entry into a polygamous marriage.⁵⁶
- 9.2.2. The Penal Code contains several gender discriminatory provisions, including: Section 498 that makes it a crime to entice away a wife for sexual intercourse; and Section 375A does not make marital rape a crime.⁵⁷

Recommendations:

- 9.3. Expedite the amendments to Act A1261, LRA and the 1993 Act
- 9.4. Amend S375 and repeal S498 of the Penal Code

⁵⁵ "Student falls to death fleeing khalwat raid", AsiaOne News, 25 April 2010, at: <http://www.asiaone.com/News/AsiaOne+News/Malaysia/Story/A1Story20100425-212282.html>
"Malaysians Against Moral Policing" at: <http://www.sistersinislam.org.my/news.php?item.468.75>

⁵⁶ See Appendix A: "Table Of Amendments To Islamic Family Law (Federal Territory) (Amendment) Act 2006 [Act A1261] (*Act A1261*)" prepared by the Joint Action Group for Gender Equality (*JAG*). The stalled amendments to the Islamic Family Law (Federal Territories) Act 1984, the Law Reform (Marriage and Divorce) Act 1976 (*LRA*) and Administration of Islamic Law (Federal Territories) Act 1993 (*the 1993 Act*) continue to place hardship on women and children. The 3 bills were tabled in Parliament in 2009 but were withdrawn when the Conference of Rulers said it needed more time to study the proposed amendments: 'Women groups hold Najib to his promise' by Stephanie Sta Maria in The Edge on 5 February 2013. See: http://www.theedgemaalaysia.com/index.php?option=com_content&id=230341&Itemid=77

⁵⁷ CEDAW Alternative Report, Pages 15-16 and 35.

- 9.5 Repeal or amend the Syariah criminal offences act and enactments that deny the right to privacy, and the provisions that overlap with federal crimes e.g., on indecency.

10. Freedom of religion or belief, expression, association and peaceful assembly, and right to participate in public and political life

10.1. Freedom of religion

State and non-state actors, especially Malay supremacists, use religion and race to further their causes. This results in the stifling of the inter- and intra-religious freedom in Malaysia. Some examples:

- 10.1.1. The Catholic weekly, The Herald was prohibited from using the word ‘Allah’ by the Ministry of Home Affairs, but the High Court quashed the Minister’s decision.⁵⁸
- 10.1.2. As a result of that court decision, ultra-Malays pressure groups attacked at least 10 churches with petrol bombs, Molotov cocktails and splashed paint.⁵⁹
- 10.1.3. 5,100 Malay-language Bibles were defaced by the Government.⁶⁰
- 10.1.4. A member of the opposition party, the Democratic Action Party (**DAP**) was accused of trying to replace Islam as the religion of Malaysia with Christianity.⁶¹ PERKASA President warned of violence against Christians. The *de facto* Law Minister Nazri Aziz justified not taking action against Ibrahim Ali because to do so would amount to stifling freedom of speech.⁶²
- 10.1.5. In 2011 the Selangor Islamic Religious Department (**JAIS**) raided Damansara Utama Methodist Church (DUMC) after receiving an anonymous tip that Muslims were attending a proselytization event.⁶³

⁵⁸ ‘Court rules Herald free to use the word ‘Allah’ in The Star Online on 31 December 2009 at: <http://thestar.com.my/news/story.asp?file=/2009/12/31/nation/20091231210348&sec=nation> A stay of the decision pending appeal to the Court of Appeal was granted. No date has been fixed ‘Stay granted over ‘Allah’ ruling’ in The Sun Daily on 7 January 2010 at: <http://www.thesundaily.my/node/147440>

⁵⁹ ‘Tenth church hit, attack in Seremban’ in The Malaysian Insider on 16 January 2010 at:

<http://www.themalaysianinsider.com/mobile/malaysia/article/Tenth-church-hit-attack-in-Seremban/>

⁶⁰ ‘Churches in Malaysia reject Bibles held up and desecrated by the government’ by Debra Chong in Asia.New.It on 18 March 2011 See: <http://www.asianews.it/news-en/Churches-in-Malaysia-reject-Bibles-held-up-and-desecrated-by-the-government-21061.htm>

⁶¹ ‘Christian plot: What have police uncovered?’ in Free Malaysia Today on 25 July 2011. See: <http://www.freemalaysiatoday.com/category/nation/2011/07/25/christian-plot-what-have-police-uncovered/>

⁶² ‘Nazri: No action against Ibrahim Ali’ in Malaysiakini on 17 May 2011 at: <http://www.malaysiakini.com/news/164348>

⁶³ ‘The DUMC Raid: Are we forgetting someone?’ by Alwyn Lau in The Malaysian Insider on 7 August 2011. See: <http://www.themalaysianinsider.com/sideviews/article/the-dumc-raid-are-we-forgetting-someone-alwyn-lau/>

- 10.1.6. There is no freedom of religion for Muslims of other sects as only the Sunni sect is permitted. Other Muslim sects, e.g., Shiite, are labelled as 'deviant' and actions may be taken against them.⁶⁴
- 10.1.7. When a Hindu temple was proposed to be moved to a Malay majority area, a cow head was desecrated. Though the court fined 2 of the perpetrators,⁶⁵ the Minister of Home Affairs defended their actions.⁶⁶
- 10.1.8. Non-Muslim clubs were closed down in public schools.⁶⁷
- 10.1.9. The Malay translation of *Allah, Liberty & Love* was banned by the Home Minister. Religious officials arrested a Muslim bookstore manager⁶⁸ and a Muslim director of a publishing house⁶⁹ for distributing a publication contrary to Syariah law. Both have now been charged in the Syariah court.
- 10.1.10. A 60-year old man and his 3 children could not be declared as Hindus even though they have sworn on oath that they have been Hindus their entire lives. They were treated as Muslim because the 60-year old man's parents were officially Muslim, but lived as Hindus.⁷⁰
- 10.1.11. A Hindu husband converted to Islam and converted their 3 infant children to Islam without his wife's knowledge or consent. The religious authorities insist that the father had the right to convert the children unilaterally to Islam.⁷¹

⁶⁴ 'In a Muslim State, Fear Sends Some Worship Underground' by Liz Gooch in The New York Times, 27 January 2011 <https://www.nytimes.com/2011/01/28/world/asia/28iht-malay28.html?pagewanted=all&r=0> See also: 'Malaysian Shiites face growing persecution' by Patrick Lim in Free Malaysia Today on 14 January 2012. <http://www.freemalaysiatoday.com/category/nation/2012/01/14/malaysian-shiites-face-growing-persecution/>

⁶⁵ 'Two men in infamous 'cow head' incident pay RM3,000' by Nurbaiti Hamdan in The Star on 28 July 2010

<http://thestar.com.my/news/story.asp?sec=nation&file=/2010/7/28/nation/6744677>

⁶⁶ 'Holy cow! Minister defends protesters' by Kee Thuan Chye in Malaysiakini on 6 September 2009. See: <http://www.malaysiakini.com/news/112228?ModPagespeed=noscript>

⁶⁷ 'In schools, a crackdown on non-Muslim clubs' by Debra Chong in The Malaysian Insider on 23 July 2010. See: <http://www.themalaysianinsider.com/print/malaysia/in-schools-a-crackdown-on-non-muslim-clubs/>

⁶⁸ 'Borders statement on banned book goes viral' in AsiaOne News on 23 June 2012 See:

<http://news.asiaone.com/News/AsiaOne%2BNews/Malaysia/Story/A1Story20120623-354832.html>

⁶⁹ "Zaid Ibrahim's son faces charges over Irshad Manji's book" in The Borneo Post on 8 March 2013. See: <http://www.theborneopost.com/2013/03/08/zaid-ibrahims-son-faces-charges-over-irshad-manji-book/> Zaid Ibrahim was *de facto* Law Minister until he resigned, and is now a member of the opposition.

⁷⁰ 'High Court dismisses application of father, children to prevent Islam forced onto them' by Rita Jong in The New Straits Times on 11 January 2013. See: <http://www.nst.com.my/latest/high-court-dismisses-application-of-father-children-to-prevent-islam-forced-onto-them-1.199721> and "Is the definition of a "Muslim" unconstitutional" <http://www.loyarburok.com/2012/02/02/definition-muslim-unconstitutional/>

⁷¹ Malaysian Custody Dispute Lost Between Courts: <http://www.loyarburok.com/2010/04/04/the-new-york-times-malaysian-custody-dispute-lost-between-courts/>

10.2. Freedom of assembly

- 10.2.1 In 2012, the PAA was passed. The Government immediately used the PAA to charge opposition members⁷² and harass NGOs.⁷³
- 10.2.2 The Government filed a civil suit⁷⁴ claiming damages against the Steering Committee members of BERSIH 2.0 for organising BERSIH 3.0, a sit-down protest held nationally and globally on 28 April 2012.

10.3. Freedom of Association

Human Rights Defenders have been subjected to constant intimidation and harassment in during the period under review.

- 10.3.1 There were many instances of violations of the freedom of association in connected with BERSIH 2.0. It's secretariat, EMPOWER, was raided, its staff and volunteers arrested and property seized on 29 June 2011.⁷⁵
- 10.3.2 SUARAM staff and volunteers were harassment by the Companies Commission of Malaysia (CCM), the police, MCMC, and the Registrar of Societies after it complained to the judiciary in Paris regarding the purchase of submarines. This Scorpene corruption scandal is also related to the murder of a Altantunya, a Mongolian.⁷⁶

10.4. Freedom of Expression

Malaysia continues to suppress freedom of expression and clamp down on internet rights. Some examples are as follows:

- 10.4.1. The Sedition Act, Printing Presses and Publications Act 1984 and the Official Secrets Act are repeatedly used to censor freedom of expression
- 10.4.2. Draconian amendments were made to add a new S114 (A) of the Evidence Act 1950 purportedly to prevent crime – especially against women – and for national security reasons. If a crime was to be committed in cyberspace, it

⁷² Anwar Ibrahim, Azmin Ali and Badrul Hisham Shaharin were charged under S4(2)(c) of the PAA 2012 (violating Order and taking part in rally), S188 (breaching Magistrates' Order) and S147 (abetting in rioting) of the Penal Code. 5 individuals related to Suara Rakyat Malaysia (SUARAM) were investigated under S9 of PAA 2012 for holding a press conference at the lobby of Companies Commission of Malaysia in solidarity with other members of civil society.

⁷³ Issues relating to the freedom of assembly will be dealt with in greater depth in the submissions of the Malaysian Bar to the OHCHR for the 2nd cycle of the UPR.

⁷⁴ Kuala Lumpur High Court Civil Suit No: 21-NCVC-102-05/2012. The trial is fixed on 15 to 18 July 2013. BERSIH 2.0 seeks electoral reform. Their 8 demands are to clean the electoral roll, reform postal voting, use indelible ink, to have a minimum campaign period of 21 days, free and fair access to mainstream media, strengthen public institutions, stop corruption, and stop dirty politics.

⁷⁵ 'Lawyers say questioning Empower chief an act of intimidation' by Melissa Chi and Lisa J Ariffin in The Malaysia Insider on 5 July 2011

<http://www.themalaysianinsider.com/malaysia/article/lawyers-say-questioning-empower-chief-an-act-of-intimidation/>

⁷⁶ Issues relating to the freedom of association will be dealt with in greater depth in the submissions of the Malaysian Bar to the OHCHR for the 2nd cycle of the UPR

would impose a presumption of guilt on individuals who administer, operate or provide spaces for online community forums, blogging and hosting services, liable for content that is published through its services. It allows hackers and cyber criminals to go free by making the person whose account/computer is hacked liable for any content/data that might have changed. It can make a person liable for content that the person did not publish when someone creates an account in that person's name. It threatens the principle of anonymity online, which is crucial in promoting a free and open Internet.⁷⁷

- 10.4.3 The police arrested, harassed, and inflicted violence against journalists during the Bersih 3.0 rally on 28 April 2012.⁷⁸
- 10.4.4 While the Government pledged to review printing presses laws, it is only willing to repeal the need for annual permits, not the need for permits altogether. This allows the Home Ministry to continue to threaten newspapers with show-cause letters, influence or manipulate editorial decisions, on top of directly or indirectly owning newspapers.
- 10.4.5 The Police banned the activities of Seksualiti Merdeka (*SM*) on 3 November 2011. They also questioned and recorded statements from individuals that they deem linked to SM,⁷⁹ annual event that sought to educate Malaysians on SOGI rights.

Recommendations:

- 10.5. Accede to ICERD. Review, amend and repeals laws and policies so that they comply with ICERD.
- 10.6. Take action against parties that make hate speech and incite violence.
- 10.7. Enact laws, make policies and take administrative steps so that that children are not converted to Islam without the consent of both parents.
- 10.8. Repeal the PAA, Printing Presses and Publications Act, Sedition Act, Official Secrets Act.
- 10.9. Amend Sections 211 and 233 of the Communications and Multimedia Act 1998 to make the terms more specific and include safeguards against abuse.

⁷⁷ Centre for Independent Journalism, FAQ on S114A Evidence Act 1950

⁷⁸ Koh Jun Lin, a photojournalist with *Malaysiakini*, was arrested after taking photos documenting alleged police violence against protesters. Radzi Razak, a journalist with *The Sun*, was hospitalized for injuries sustained during an attack by at least seven police personnel

⁷⁹ Among the 50 who were questioned were SM organiser Pang Khee Teik; Bar Council president Lim Chee Wee; Bersih 2.0 Chairperson S. Ambiga; Executive Director of EMPOWER (Secretariat of BERSIH 2.0) Maria Chin Abdullah; and Executive Director of Tenaganita, Irene Fernandez. The organisers of SM filed an application to the High Court in Kuala Lumpur (R2-25-301-12/2011) to the review the decision of the police. However, leave was not granted for the review and an appeal has been filed to the Court of Appeal but no date has been set down by the Court of Appeal.

- 10.10. Repeal S114(A) of the Evidence Act 1950. Limits imposed on free expression online should be proportionate, specific, reasonable, and minimally intrusive. In addition, they must be in compliance with the international human rights framework, with adequate safeguards against abuse.
- 10.11. Set up an independent body to substantively investigate reports of violence, and prosecute those responsible.
- 10.12. Draw up an SOP on treatment of media by security authorities during protests or any conflict situation in consultation with NGOs.
- 10.13. Set up of an independent, voluntary self-regulation for media rather than a statutory media council.
- 10.14. Amend the Election Laws to ensure fair access to media for all political parties and plurality of voices during elections, including political advertisements.
- 10.15. Enact the Freedom of Information Act.

11. Right to work and to just and favourable conditions of work

- 11.1. Domestic workers are defined as Servants, Helpers and Maids in the Employment Act, not as employees.
- 11.2. Malaysia continues to institutionalise bonded labour by placing foreign domestic workers in a trafficked situation when their wages are deducted for 6 – 9 months (debt bondage), isolated and confined with no day off.⁸⁰
- 11.3. The Employment Act 1955 discriminates against domestic workers in relation to a number of rights, including the right to maternity benefits, rest days, limited hours of work, holidays, as well as termination, layoff and retirement benefits. Almost all domestic workers are women and so these practices are an indirect discrimination against women. A large majority are non-citizens, and so they face indirect discrimination, too.
- 11.4. Minimum wages of RM900 for Peninsular Malaysia, and RM800 for Sabah and Sarawak came into force from 1 January 2013. Some force workers to sign that they received minimum wages, while actually paying them less.⁸¹

Recommendations:

- 11.5. Amend the Employment Act to include domestic workers in the definition of ‘employee’.

⁸⁰ For more information, refer to the MWG-JUMP Report.

⁸¹ See: <http://www.industrial-union.org/malaysia-minimum-wages-for-all> Minimum wage is a basic wage excluding overtime, existing allowances and other benefits. However, to avoid paying minimum wages some employers include other benefits as part of minimum wage

- 11.6. Closely monitor the implementation of the payment of minimum wages to prevent abuse.

12. Right to health

- 12.1. Non-citizens face discrimination with regard to access to health services because they are required to pay foreigner rates at government hospitals. Non-citizens in an irregular situation are also afraid of seeking medical treatment for fear of arrest. At government hospitals, nurses report the presence of non-citizens unable to provide valid identity documents. They are arrested upon completion of treatment. Women and their newborn babies were arrested immediately after delivery, denying them necessary post-natal care

12.2. HIV/AIDS

There has been a declining budget allocation for NGOs to respond to HIV-AIDS with prevention, support and care work. In 2012 and again in 2013, there was no budget allocation for HIV/AIDS work for NGOs to conduct HIV work among MSM. Sexual transmission has overtaken sharing needles to inject drugs as the main mode of transmission in 2011 with a sharp rise of HIV infection among MSM and women, especially wives⁸² The VDIS⁸³ Study in 2009⁸⁴ reported an incidence of 3.9% HIV prevalence among MSM.

Recommendations:

- 12.3. Ensure that every person in Malaysia pays the same rate for medical care and medicines.
- 12.4. Allocate sufficient funds to NGOs to do HIV-AIDS prevention, support and care work.
- 12.5. Increase the focus on prevention, especially among MSM, and women especially wives
- 12.6. Repeal S377A of the Penal Code that criminalises anal and oral sex.

13. Right to education

- 13.1. Asylum seeking children, refugee children, stateless children as well as children of migrant workers are not given primary education in government schools. With the exception of a small number of children who attend schools operated by refugee/ migrant communities and NGOs, these children do not have any access to education. These informal programmes are also not given recognition by the Ministry of Education, and these children do not have access to official exams.⁸⁵

⁸² See: http://www.ptfmalaysia.org/hiv_aids_in_malaysia.php

⁸³ Venur Day Time Sampling

⁸⁴ See: Malaysia: MSM Country Snapshots – Country Specific Information on HIV
http://aidsdatahub.org/dmdocuments/MSM_Country_Snapshots_-_Malaysia_online.pdf

⁸⁵ For more information, refer to the MWG-JUMP Report.

Recommendation:

- 13.2. Ensure that all children in Malaysia, regardless of their status, have access to education at the same costs

14. Persons with disabilities

- 14.1. There is no single government agency that oversees all disability-related issues, thus making it difficult for disability issues to be dealt with comprehensively. The Persons with Disabilities Act 2008 (*PWD Act*) does not provide for any recourse for breaches. The Act does not ensure that the persons with disabilities are not discriminated i.e education and employment opportunities and providing amenities for persons with disabilities. There is no PWD in the Senate since the death of Professor Dr Ismail Salleh in August 2009.
- 14.2. The majority of public transportation in the country is not disabled-friendly and some are dangerous to be used. Paltry financial aid and provision of monthly allowance for unemployed persons with disabilities is still grossly inadequate.

Recommendations:

- 14.3. Amend the PWD Act to provide sanctions for non-compliance with its provisions.
- 14.4. Make it a condition that their carriers must be disable friendly when granting licences to operators of public transportation.
- 14.5. Increase the amount of financial support to PWDs.
- 14.6. Appoint at least 1 PWD to the Senate

15. Minorities and indigenous peoples

- 15.1. Indigenous peoples continue to suffer a lack of recognition of their land rights, culture and advancement. They are continuously subjected to forced relocation, and forced assimilation policies affecting their cultures and religions without prior free and informed consent, discussion and compensation.⁸⁶
- 15.2. Government policies, especially in the last three years, are infringing on the needs of indigenous communities. The Sabah Development Corridor (*SDC*)⁸⁷ aimed at making Sabah a developed state by 2025 was launched in January

⁸⁶ The Jaringan Orang Asal Semenanjung Malaysia (*the JOAS Report*) has submitted a submitted to the OHCHR for the 2nd cycle of the UPR. A more in-depth discussion on the rights of indigenous peoples can be found there.

⁸⁷ "Sabah Development Corridor", Sabah Economic Development and Investment Authority (SEDIA) at: http://www.sedia.com.my/About_us.html

2008 and focused on agriculture (mainly oil palm), tourism and manufacturing in line with the State Development Agenda introduced in 2003 which aimed to fast-track development in the whole nation to create a high-income economy by 2020. These large scale plans have a negative impact on the rights of indigenous people over land, and natural resources, further eroding rights.⁸⁸

- 15.3. The Communal Titles⁸⁹ were introduced in 2009 by the Sabah State Government via the Land and Surveys Department. Participants were required to plant oil palm and/or rubber, and only a very small portion of the land is meant for the planting of food crops. It is contrary to their traditional economic ways of life. Many may opt to leave for towns to seek low-skilled, low-pay employment.

Recommendations:

- 15.4. Ensure that laws and policies, and their implementation are in line with UNDRIP.⁹⁰
- 15.5. Build capacities of indigenous peoples at all levels.

16. Migrants, refugees and asylum seekers

- 16.1. As of 31 August 2012, the total number of refugees stood at 98,787⁹¹ as compared to 95,000 in 2011.⁹² On 1 November 2012, the Home Minister disclosed that 35,000 non-citizens were whipped under S6(1) of the Immigration Act 1959/63 from 2005 to 2012. A total of 32,664 (93.3%) were found to have violated the Immigration Act 1959/63 while the remaining 2,336 (6.7%) were found guilty under the Penal Code, Dangerous Drugs Act 1952 and Drug Dependents (Treatment and Rehabilitation) Act 1983.⁹³
- 16.2. The 6P Program on undocumented migrants had ceased operation on 10 April 2012 after allegations of corruption.⁹⁴ Former Home Minister and current MP for Kangar, Mohd Radzi Sheikh Ahmad was one of the directors of SNI Universal Corporation Sdn Bhd, an agent appointed by the government in the 6P Amnesty program. SNI had committed several offences including collecting fees from non-citizens and falsely representing to the non-citizens

⁸⁸ "Jeffrey: Sabah Development Corridor failing", Free Malaysia Today, 24 February 2011 at: <http://www.freemalaysiatoday.com/category/nation/2011/02/24/jeffrey-sabah-development-corridor-failing/>

⁸⁹ "Communal titles a disaster for NCR in Sabah", *Sabahkini*, 3 March 2011 at: http://sabahkini.net/index.php?option=com_content&view=article&id=6370:communal-titles-a-disaster-for-ncr-in-sabah&catid=69:tanah-adat&Itemid=75

⁹⁰ United Nations Declaration on the Rights of Indigenous Peoples

⁹¹ Pemberitahuan Pertanyaan Dewan Rakyat daripada pertanyaan Datuk Paduka Abu Bakar bin Taib kepada Perdana Menteri bertarikh 18 Oktober 2012, soalan 27.

⁹² Refugees, Asylum Seekers, Undocumented Migrants and Trafficked Persons, SUARAM's Malaysia Human Rights Report 2011, Civil & Political Rights

⁹³ '35,000 foreigners whipped since 2005' in Free Malaysia Today on 1 January 2012, <http://www.freemalaysiatoday.com/category/nation/2012/11/01/35000-foreigners-whipped-since-2005/>

⁹⁴ '6P expected to fail', Free Malaysia Today, 2 March 2012 at: <http://www.freemalaysiatoday.com/category/nation/2012/03/02/program-6p-dijangka-gagal/>

that it is able to register and obtain work permits for them from a number of bogus employment agencies.⁹⁵

- 16.3. There are no special legislative provisions regarding the administrative detention of vulnerable groups, such as children, pregnant women, elderly, and physically and mentally disabled persons.

Recommendations:

- 16.6. Accede to CAT and abolish whipping and other forms of corporal punishment.
- 16.7. To fully cooperate with UNHCR in relation to arrest, detention and deportation of asylum seekers and refugees with valid official UNHCR documents or temporary documents pending refugee status determination.
- 16.8. Implement the recommendations of the Working Group on Arbitrary Detention to assume the responsibility of improving the conditions in immigration detention centres and to provide legal aid for immigration detainees.
- 16.9. Ensure non-citizens have unhindered access to justice by providing them legal aid services. Allowing them to reside and work until their cases are resolved without the need for the Special Pass currently in practice.
- 16.10. Review and amend on existing legislation on migrant workers, refugees and asylum seekers
- 15.11. Acceded to the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol.

17. Right to development and environmental issues

- 17.1. In 2010, United Nations have declared that access to safe drinking water and sanitation are essential to the realization of all human rights. According to the Malaysian Environmental Quality Report 2011, out of 464 rivers monitored, a total of 275 (59.3%) were found to be clean, 150 (32.3%) slightly polluted and 39 (8.4%) polluted. One of the main sources of pollution is ammonia nitrogen originated from livestock farming and domestic sewage. We extract more than 82.5% of surface water (including river) for our drinking water supply. Some incidents for example landfill leachate contamination⁴ has caused the shutdown of water treatment plant and cause water disruption to millions of consumers.
- 17.2. Despite public protests and cases brought before the court, the Lynas Advanced Materials Plant (*LAMP*) which refines rare earths from an Australian company, has been built and is now operational. The most pressing

⁹⁵ 'Ex-minister Radzi a boss in 'rogue' 6P firm' in Free Malaysia Today on 23 November 2012 at: <http://www.freemalaysiatoday.com/category/nation/2012/11/23/ex-minister-radzi-a-boss-in-%E2%80%98rogue%E2%80%99-6p-firm/>

concern is the risk of radioactive exposure, and other forms of environmental damage that will negatively impact the quality of life.

Recommendations:

- 17.3. Enforce existing laws on the protection of environment and animals strictly.
- 17.4. Usage of gazetted water catchment areas must be strictly supervised and actions taken to prosecute in the event of non-compliance.
- 17.5. Revoke the temporary operating licence of LAMP.

**TABLE OF AMENDMENTS TO ISLAMIC FAMILY LAW
(FEDERAL TERRITORY) (AMENDMENT) ACT 2006 [ACT A1261]**

Prepared by:
Joint Action Group for Gender Equality (JAG)

comprising:-

Sisters In Islam (SIS)
Women's Centre for Change, Penang (WCC)
Women's Aid Organisation (WAO)
All Women's Action Society (AWAM)
Persatuan Kesedaran Komuniti, Selangor (EMPOWER)

| | | | | |
|--|---|---|--|------------------------------------|
| <p>Existing Provisions: The Islamic Family Law (Federal Territories) (Amendment) Act 2006</p> | <p>Section 2 (a) Harta sepencarian means property jointly acquired by husband and wife during the subsistence of marriage in accordance with the conditions stipulated by Hukum Syara</p> | <p>Issues of Concern</p> <p>Lack of clarity in the gender neutral definition of <i>harta sepencarian</i></p> <p><u>Impact:</u> Courts have given judgments that enable a husband to claim or to freeze the wife's bank accounts and assets in order to claim his share of <i>harta sepencarian</i>.</p> <p><u>Solution:</u> To provide clear definition and explanation of <i>harta sepencarian</i> to prevent unjust impact of gender neutral language on the unequal status of the woman in the family and in law. e.g. To make clear that property acquired by the wife during marriage through her sole effort is not considered <i>harta sepencarian</i>.</p> | <p>Amendments agreed upon in 2006 by the Attorney-General's Chambers Syariah Community</p> | <p>Justification for Amendment</p> |
| | | <p>To amend Section 2 (a): <i>Harta sepencarian</i> includes –</p> <p>(a) Property acquired by the husband and wife through their joint efforts during the marriage; (b) Property acquired by the husband during the marriage through his sole efforts with indirect contributions from the wife; and (c) Any proceeds and added value from any development and improvement through the sole efforts of the other party to the marriage or the joint efforts of the parties to the marriage during the subsistence of the marriage in respect of -</p> <p>i) any property belonging to the husband or wife before the marriage; ii) any property acquired by the wife through her sole efforts during the marriage; or iii) any present, gift (<i>hibah</i>),</p> | <p>•The <i>masalah</i> (public interest) rationale that was used to incorporate <i>harta sepencarian</i> into Islamic Family Law recognises the contributions made by the spouse who provides intangible contributions to the acquisition of assets during the marriage; and this generally tends to be the wife.</p> <p>•The intent here is to protect the interest of the wife who looks after the husband and children. It values the unpaid work of women to sustain the family and the household on a daily basis. Full time homemakers, whether out of choice or circumstances and career women who forgo promotions and other opportunities because of family responsibilities, lose out in terms of economic worth. Their interests must be protected and their loss of economic value</p> | |

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| | | <p>will, <i>sedekah</i> or estate received or any other property acquired by the husband or wife before or during the marriage.</p> <p>Explanation:</p> <p>(a) Property acquired by the wife during the marriage through her sole efforts is not <i>harta sepencarian</i>.</p> <p>(b) Any contribution by the wife in taking care of the family and home or any other dealings relating to the acquisition of property shall be treated as joint efforts for the purpose of interpreting the definition of <i>harta sepencarian</i>.</p> <p>(c) Any contribution by the husband in discharging his duties to take care of family and home as stipulated by <i>Hukum Syara'</i> shall not be treated as joint efforts for the purpose of interpreting the definition of <i>harta sepencarian</i>.</p> <p>(d) Any contribution by the husband other than the contributions in (c) leading to the acquisition of property shall be treated as joint efforts for the purpose of interpreting the definition of <i>harta sepencarian</i>.</p> <p>(e) Property belonging to the husband or wife before the marriage, or</p> | <p>compensated.</p> <ul style="list-style-type: none"> • Islamic teachings prohibit the husband from taking away what has been given to the wife. • Surah al-Baqarah 2:229 states "it is not lawful for you (men) to take back any of your gifts (from your wives)" • Surah an-Nisa' 4:20 states: "But if you decide to take one wife in place of another, do not take away the least bit of what you had given the first wife, even if it had been a treasure (<i>qintaran</i>). Would you take it back by (committing) slander and a manifest sin?" • These amendments must make clear that whatever the wife acquires before the marriage, solely acquires during the marriage and gifts from her husband during the marriage cannot be regarded as <i>harta sepencarian</i>. |
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| <p>Section 23 (3)</p> <p>(3) An application for permission shall be submitted to the Court in the prescribed manner and shall be accompanied by a statutory iqrar stating the grounds on which the proposed marriage is alleged to be just or necessary, the present income of the applicant, particulars of his commitments and his ascertainable financial obligations and liabilities, the number of dependants, including persons who would be his dependants as a result of the proposed marriage, and whether the consent or views of the existing wife or wives on the proposed marriage have been obtained.</p> <p>Section 23 (4) (a)</p> <p>On receipt of the application, the Court shall summon the applicant and his existing wife or wives, the woman to be</p> | <p>Making polygamy easier for men</p> <p><u>Impact:</u></p> <p>By changing one word, from 'just and necessary' to 'just or necessary', this section makes it easier for husbands to commit polygamy. It significantly reduces his burden of proof to justify a polygamous act.</p> <p>This amendment appears to be a deliberate attempt to override the judgment of the Selangor Syariah Appeal Committee in the case of <i>Aishah vs Wan Mohd Yusof</i> (1990) 7 JH 152 where the husband claimed he wanted to contract a polygamous marriage in order to 'legitimise' his love for the other woman. The Syariah Appeal Committee observed that while this may be sufficient grounds to show why the proposed marriage was 'necessary', it had no relevance to the question of whether the</p> | <p>present, gift (<i>hibah</i>), will, <i>sedekah</i>, or estate received or any other property acquired by the husband or wife before or during the marriage is not <i>harta sepencarian</i>.</p> <p>To amend Section 23 (3):</p> <p>A court must find that a polygamous marriage is <u>just</u> in order to approve an application for such. The applicant's existing wife/wives can submit proof and witnesses to the Court if she/they disapprove/s of the subsequent marriage.</p> <p>This can include evidence of:</p> <p>(a) unjust past behaviour;</p> <p>(b) likelihood of a decreased economic status or living standard for the current dependents;</p> <p>(c) husband's salary being insufficient to maintain either his existing dependents or future ones which would result from the marriage.</p> | <p>These new amendments are closer to the principles of polygamous marriage laid down in Surah an Nisa' 4:3 and 4:129:</p> <p>"If you fear that you shall not be able to deal justly with the orphans, marry women of your choice, two or three or four; ... but if you fear that you shall not be able to deal justly (with them), then only one...that will be more suitable to prevent you from doing injustice" (4:3)</p> <p>• "You are never able to be fair and just as between women, even if it is your desire..." (4:129)</p> |
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| <p>wedded, the wali of the woman to be wedded and any other person who, in the opinion of the Court, may provide information relating to the proposed marriage, to be present at the hearing of the application, which shall be in camera, and the Court may grant the permission applied for if satisfied -</p> <p>that the proposed marriage is just or necessary, having regard to such circumstances as, among others, the following, that is to say, sterility, physical infirmity, physical unfitness for conjugal relations, wilful avoidance of an order for restitution of conjugal rights, or insanity on the part of the existing wife or wives;</p> | <p>proposed marriage was "just". The court held that emphasis must be placed on all the conditions required under sub-section 23. Each condition had to be proven separately, for a polygamous marriage to be allowed. Wan Yusof's application to practise polygamy was rejected.</p> <p>But with this new amendment, a husband can now simply tell the Court that the marriage is necessary (the usual excuse being 'to prevent zina'), but he does not have to convince the Court that it will be a just act on his part. Justice in polygamous marriages is not optional, but mandatory according to <i>Hukum Syara</i>.</p> <p>Solution:</p> <p>To amend the conditions from '<u>just</u>' or '<u>necessary</u>' back to the original '<u>just</u>' and '<u>necessary</u>' or to keep only <u>just</u>.</p> | <p>To amend Section 23(9) by deleting "any party" to now read:</p> <p>"Every Court... shall have the power on the application by the existing</p> | <p>• It is unjust to allow a husband who enters into a polygamous marriage to claim <i>harta sepencarian</i> from his existing wife.</p> |
| <p>Section 23 (9) (9) Every Court that grants the permission or orders a</p> | <p>The right of the husband to claim <i>harta sepencarian</i> upon his polygamous marriage</p> | | |

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| <p>marriage to be registered under this section shall have the power on the application by any party to the marriage</p> <p>(a) to require a person to pay maintenance to his existing wife or wives; or</p> <p>(b) to order the division between the parties of the marriage of any assets acquired by them during the marriage by their joint efforts or the sale of any such assets and the division of the proceeds of the sale.</p> | <p><u>Impact:</u></p> <p>The words "any party" means that the husband will also be able to claim <i>harta sepencarian</i> from his existing wife/wives, which could include the marital home and other assets belonging to his wife or jointly acquired.</p> <p><u>Solution:</u></p> <p>To amend the gender neutral language to ensure only the wife has the right to be financially compensated upon polygamous marriage.</p> | <p>wife/wives to the marriage ...</p> <p>In granting permission or ordering a marriage to be registered under this section, the Court shall—</p> <p>(a) make an order to require a man to pay maintenance to his existing wife or wives, his children and his other dependants; and</p> <p>(b) declare the apportionment of the <i>harta sepencarian</i> entitled to the existing wife in the subsisting marriage.</p> | <ul style="list-style-type: none"> • It is he who has chosen to disadvantage the existing wife and children by wanting to share the family's accumulated assets with another woman and subsequent dependents. • So it is the existing wife who needs to be compensated, to ensure that at least there is financial justice for her and the children. • This is to redress the injustice done to her by the unilateral change in the terms of the marriage contract, to compensate for the pain and suffering (<i>darar syarie</i>) and to ensure there is no drop in the standard of living of the existing family. |
| <p>Section 23(9) (a) & (b)</p> <p>(9) Every Court that grants the permission or orders a marriage to be registered under this section shall have the power on the application by any party to the marriage –</p> <p>(a) to require a person to pay maintenance to his existing wife or wives; or</p> <p>(b) to order the division between the parties of the marriage of any assets</p> | <p>To amend Section 23(9) (a) & (b):</p> <p>When approving an application for a polygamous marriage, the court will also</p> <p>(a) order the man to pay maintenance to his existing wife/wives and dependents; and</p> <p>(b) determine the wife's share of the matrimonial property up to that point in the marriage.</p> | <p>Under Islamic law, the husband is obliged to maintain his wife. It is not an option. Therefore the husband cannot be allowed to abscond on his duty to maintain his wife and children.</p> <p>• The additional right of the wife to claim a division of <i>harta sepencarian</i> is to protect her interest and that of the children and to ensure that at least financial justice is done to the existing family.</p> | |

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| <p>acquired by them during the marriage by their joint efforts or the sale of any such assets and the division of the proceeds of the sale.</p> | <p>Solution: The wife must be entitled to be maintained and to claim a share of harta sepencarian as financial compensation for the change in the terms of marriage contract and the drop in the standard of living</p> | | <ul style="list-style-type: none"> • Therefore the wife should not be asked to choose one or the other form of financial security. She is entitled to both under Islamic law. |
| <p>Section 52 (1) (1) A woman or man, as the case may be, married in accordance with Hukum Syara', shall be entitled to obtain an order for the dissolution of marriage or fasakh on anyone or more of the following grounds, namely - (a) that the whereabouts of the husband or wife have not been known for a period of more than one year; (b) that the husband has neglected or failed to provide for her maintenance for a period of three months; (c) that the husband or wife has been sentenced to imprisonment for a period of three years or more;</p> | <p>Extending the wife's right to fasakh divorce to the husband</p> <p>Impact: This section is unfair as a husband can now escape paying any form of compensation to his divorced wife, but also unnecessary as a husband still retains his right to divorce his wife without her consent or without cause. The husband's right to divorce is further increased but wife's right remains unchanged.</p> <p>Solution: Either to remove all fasakh grounds from the man or extend the man's right to talaq to his wife under talaq tafwid (delegated divorce) - where the husband delegates to his wife a</p> | <p>To amend Section 52(1): A woman can dissolve a marriage through fasakh if:</p> <p>(a) her husband is missing for a period of more than four months;</p> <p>(b) her husband has not given her maintenance for at least three months;</p> <p>(c) her husband has been: (i.) given a prison sentence of at least six months; or (ii.) banished or deported.</p> <p>(d) her husband, without reasonable cause, has refrained from conjugal relations (<i>nafkah batin</i>);</p> <p>(e) her husband has been impotent since the time of their marriage and she was unaware of such</p> | <ul style="list-style-type: none"> • The right of a man to fasakh is a minority juristic view. • Extending all fasakh grounds for divorce to men who are already privileged legally is most unjust. • It appears that when there is a conflict of juristic views among the <i>ulama</i> over a certain rule, there is a tendency to adopt an interpretation that advantages the husband. • Yet if there is a conflict of juristic views which may advantage the wife, such as the rule that extends the right of <u>delegated talaq</u> or <u>talaq tafwid</u> (where the wife is given the right to dissolve the marriage like a man would with <i>ta'laq</i>) these views are rejected. • We have no objections if the minority view that men are entitled to fasakh is adopted |

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| <p>(d) that the husband or wife has failed to perform, without reasonable cause, his or her, as the case may be, marital obligation (nafkah batin) for a period of one year.”;</p> <p>(e) that the husband was impotent at the time of marriage and remains so and she was not aware at the time of the marriage that he was impotent;</p> <p>(f) that the husband or wife has been insane for a period of two years or is suffering from leprosy or vitilago or suffering from a venereal disease in a communicable form;</p> <p>(g) that she, having been given in marriage by her father or grandfather before she attained the age of sixteen years, repudiated the marriage before attaining the age of eighteen years, the marriage not</p> | <p>general right to dissolve the marriage in the same manner as he may dissolve it through <i>talaq</i> – juristic opinion based on <i>Surah al-Ahzab, 33:28-29</i>).</p> | <p>before the marriage took place. Therefore, the marriage has not been consummated.</p> <p>(f) she was given in marriage before reaching puberty, renounced the marriage before reaching the age of eighteen, and has not consummated the marriage;</p> <p>(g) her husband treats her cruelly. For example, if he:</p> <ul style="list-style-type: none"> (i.) habitually assaults her or makes her life miserable by his cruel conduct; (ii.) associates with immoral women, i.e. prostitutes; (iii.) attempts to force his wife to lead an immoral life; (iv.) disposes of his wife's property or prevents her from exercising her legal rights regarding her property; (v.) obstructs her from practicing her religious practices; or (vi.) has more than one wife and does not treat her equitably. <p>(h) the marriage has lasted for at least four months and her husband has refused to consummate the marriage;</p> | <p>together with adopting the minority view that women are entitled to delegated <i>talaq</i>.</p> |
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| <p>having been consummated;</p> <p>(h) that the husband or wife treats her or him as the case may be,</p> <p>with cruelty, that is to say, <i>inter alia</i></p> <p>habitually assaults her or him or makes her or his life miserable by cruelty of conduct;</p> <p>associates with women or men of evil repute or leads what, according to <i>Hukum Syarak</i>, is an infamous life; or</p> <p>attempts to force her or her to lead an immoral life;</p> <p>or</p> <p>disposes of her or his property or prevents her or his from exercising her or his legal rights over it; or</p> <p>obstruct her or him in the observance of her or his religious obligations or practice; or</p> <p>if he has more than one wife, does not treat her equitably in</p> | | <p>(i) she did not consent to the marriage or the consent was not valid. An invalid consent is one that was forced or made under duress, one that was a mistake, or made in unsoundness of mind, or any other circumstance recognized under <i>Hukum Syara</i>;</p> <p>(i) at the time of the marriage, although the wife was capable of giving valid consent, she was continuously or intermittently a mentally disordered person and this mental disorder was such to make her unfit for marriage.</p> | |
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| <p>accordance with the requirements of Hukum Syarak;</p> <p>(i) that even after the lapse of four months that marriage has still not been consummated owing to the willful refusal of the husband or wife to consummate it;</p> <p>(j) That she did not consent to the marriage or her consent was not valid, whether in consequence of duress, mistake, unsoundness of mind, or any other circumstance;</p> <p>(k) that at the time of the marriage she, though capable of giving a valid consent, was, whether continuously or intermittently, a mentally disordered person within the meaning of the Mental Disorders Ordinance 1952 and her mental disorder was of such a kind or to such extent as to render her unfit for marriage;</p> <p>(l) any other ground that is recognized as valid for dissolution of marriage or</p> | | | |
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| <p>fasakh under Hukum Syara'</p> <p>Section 56</p> <p>(5) (56) In addition to her right to apply for maintenance, a woman who has been divorced without just cause by her husband may apply to Court for mut'ah or a consolatory gift. and the Court may, after hearing the parties and upon being satisfied that the woman has been divorced without just cause, order the husband to pay such sum as may be fair and just according to Hukum Syara'.</p> | <p>Right of wife to adequate mut'ah upon divorce</p> <p><u>Impact:</u></p> <p>As Islamic law limits maintenance to just the <i>iddah</i> period of three months, many divorced women, especially those financially dependent on their husbands, fall immediately into hardship, if not poverty. The payment of <i>mut'ah</i> as a form of compensation is therefore incumbent.</p> <p><u>Solution:</u></p> <p>To recognise a woman's right to <i>mut'ah</i> upon divorce as a matter of course, taking several factors into consideration.</p> | <p>To amend Section 56:</p> <p>(1) A woman has a right to apply for both maintenance and <i>mut'ah</i> upon her husband filing for divorce or upon her filing for divorce.</p> <p>(2) When a woman applies for <i>mut'ah</i>, the Court will consider the following when determining a reasonable and just sum:</p> <p>(a) The needs of the divorced woman to begin a new life;</p> <p>(b) The husband's financial status during the divorce;</p> <p>(c) The financial difficulties the wife will face;</p> <p>(d) The duration of the marriage; and</p> <p>(e) the wife's contributions during the marriage.</p> | <p>• <i>Mut'ah</i> should be available to a divorced woman under all circumstances. <i>Mut'ah</i> should not be regarded as a consolatory gift, but a financial compensation awarded to the wife for her years of unpaid work in taking care of the husband, children and the household. <i>Iddah</i> is only paid for three months and is not sufficient for a woman, especially a full-time homemaker without an independent source of income, to start over again.</p> <p>• Women often forgo careers, promotions, or other opportunities in order to serve their families. This sacrifice must be recognised at the time of divorce.</p> <p>• Surah al-Baqarah 2: 241 provides for <i>mut'ah</i> that is <i>ma'ruf</i> (reasonable).</p> <p>"For divorced women <i>mut'ah</i> (financial provision) (should be provided) on a reasonable (scale). This is a duty on the righteous."</p> |
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| <p>•Also, currently there are no guidelines to the Court on how to calculate <i>mut'ah</i>. This allows widely differing decisions that seem to be arbitrary.</p> | | | <p>Section 107A</p> <p>(1) <i>The Court may, on the application of any party to a marriage -</i></p> <p>(a) <i>where any matrimonial proceeding is pending; or</i></p> <p>(b) <i>in any proceeding where the Court may make an order under section 122,</i></p> <p>make an order prohibiting the wife or husband, as the case may be, from disposing of any assets acquired by them, jointly or solely, during the subsistence of their marriage if the Court is satisfied that it is necessary to do so.</p> <p>(2) <i>the failure to comply with an order made under subsection (1) shall be punishable as a contempt of Court.</i></p> |
| <p>•Under Islamic law, which is based on the premise that the wife does not have to provide maintenance for the husband, the husband has no rights over his wife's property.</p> <p>•However, the wife does have rights over her husband's property, in respect of the property being used or sold to provide for the maintenance of the wife and children.</p> <p>•The original provision in the IFL Act, 1984 is to enable the Court to set aside and prevent the disposition of property by a husband or parent whose intention is to reduce his means to pay maintenance to his wife or children, or his means to pay <i>mut'ah</i> to his former wife, or to deprive his wife of any rights in relation to the property.</p> | <p>To amend Section 107A:</p> <p>(1) Neither husband nor wife can act to deprive the other of <i>harta sepencarian</i> (marriage property).</p> <p>(2) A court may issue an order to prevent either husband or wife from disposing of any <i>harta sepencarian</i> when either party applies for such (an injunction) and:</p> <p>(a) There are matrimonial proceedings pending; or</p> <p>(b) There are proceedings where a court may make an order under section 122.</p> <p>(c) The Court shall, in granting the injunction, ensure that it will not affect the standard of living and welfare of the wife and children and any dependants.</p> <p>For clarity, Section 122 Power of Court to order division of <i>harta sepencarian</i> is also to be amended to now read:</p> <p>Section 122 (1) A Court shall have power –</p> | <p>A husband can now get a court order to stop his wife from disposing her property</p> <p><u>Impact:</u></p> <p>The section enables a husband to prevent/restrain the wife from disposing of her own property. This provision increases the rights of men (by giving them access to their wife's assets), yet women's rights have not been increased. A wife's own assets are no longer protected for her to deal with as she chooses. A woman who is financially dependent on her husband and has no independent source of income, is put in dire straits as she has no access to her savings and assets in order to maintain herself and her children should her husband obtains a caveat on her assets.</p> <p><u>Solution:</u></p> <p>To amend the section to ensure</p> | <p>Section 107A has been successfully used by husbands to obtain court orders to freeze</p> |

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| | <p>that the husband cannot prevent and/or restrain the wife from disposing her property.</p> | <p>(a) when making an order of divorce or</p> <p>(b) when a party to the marriage has obtained an order of divorce from any court makes an application to the Court;</p> <p>(c) when both parties to the marriage are Muslims and one of them dies; or</p> <p>(d) when an application is made by a party to the marriage under subsection 23(10),</p> <p>to—</p> <p>(A) order the division between the parties of any <i>harta sepencarian</i> or the sale of any <i>harta sepencarian</i> and the division between the parties of the proceeds of sale thereof; and</p> <p>(B) in the case of paragraph (c), determine the proportion and divide the <i>harta sepencarian</i> to the surviving party; and</p> <p>(C) in the case of paragraph (d), declare the apportionment of the <i>harta sepencarian</i> or the division of the <i>harta sepencarian</i> between the parties to the subsisting</p> | <p>the bank accounts and assets owned by their estranged or divorced wives in order to claim matrimonial property.</p> |
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