

JAG Statement on the Breach of Noorfadilla's Constitutional Rights

KUALA LUMPUR, [February 19th 2016] -- The Joint Action Group for Gender Equality (JAG) is deeply concerned with the judgement of the Shah Alam High Court recently, on damages awarded to Noorfadilla Ahmad Saikin. We wish to highlight in particular, the huge reduction of damages made, and the harmful language and justifications used in the judgement passed on February 15th. The message being sent by this judgement is clear, discrimination on the basis of gender faced by Noorfadilla is not of concern to the state.

In this recent ruling, Judicial Commissioner Datuk Azimah Omar criticised Noorfadilla for her lack of honesty in disclosing her pregnancy. The use of such language is harmful as it suggests that women must disclose their pregnancy during a job interview, which is not a requirement of Malaysian law, and implies that a woman's ability to work effectively is inherently linked to her pregnancy status.

Pregnancy, or the desire to have children, bears no challenge on a woman's ability to perform her job. It is unacceptable that women must disclose their intentions in regards to children to their employer. It is unacceptable that wanting children should be barrier to women's economic empowerment. The state does not and should not have the power to take away the right and liberty of a woman to have children by requiring disclosure of pregnancy at job interviews. Any form of law requiring full disclosure of pregnancy is an implicit exertion of state power and control over a woman's reproductive rights.

JAG is also concerned that the judge had accused Noorfadilla of using the court as a "conduit or instrument for profiteering." Datuk Azimah commented that Noorfadilla, "Knowingly acted to garner the benefit to employment", and would be unable to earn RM300,000 in ten years of work, inappropriately framing her as a benefiter of her circumstances rather than as a woman who has faced discrimination.

As a brief summary of the case, in 2008, Noorfadilla applied for a temporary teaching position in a government school. In 2009, she was offered and accepted the teaching job and was given a memo informing her of her placement. She was then asked whether she was pregnant, and after confirming so, the Ministry of Education Officer withdrew Noorfadilla's placement memo. Noorfadilla filed an application in court to declare that the revocation of her appointment as a temporary teacher by the government owing to her pregnancy was unlawful, discriminatory and unconstitutional. High Court Judge Dato' Zaleha binti Yusof's judgement in 2011 stated that the Convention of the Elimination of All Forms of Discrimination against Women (CEDAW) "has the force of law and binding on members states, including Malaysia."¹ That was the first time in Malaysian legal history that CEDAW was recognised in Malaysia and the court ruled the

¹ Judge Dato' Zaleha binti Yusof, *In the High Court of Malaya at Shah Alam in the State of Selangor Darul Ehsan, Originating Summons No.: 21-248-2010 between Norfadilla binti Ahmad Saikin and Defendants*, "Grounds of Judgement", 12 July 2011, p12.

actions of government in this case to be in violation of Article 8(2) of the Federal Constitution.

The treatment of Noorfadilla in this judgement, is a clear breach of Malaysia's obligation under CEDAW, as recognised by the judgement of the High Court back in 2011. CEDAW ensures that employers may not dismiss employees on the grounds of pregnancy, and this High Court judgement has undermined Malaysia's commitment and diluted what was an earlier ground-breaking judgement.

The Joint Action Group for Gender Equality (JAG) comprises:

1. The All Women's Action Society (AWAM)
2. Association of Women Lawyers (AWL)
3. Perak Women for Women (PWW)
4. Persatuan Kesedaran Komuniti Selangor (Empower)
5. Persatuan Sahabat Wanita, Selangor (PSWS)
6. Sisters In Islam (SIS)
7. Women's Aid Organisation (WAO)
8. Women's Centre for Change (WCC)