



1 What is the nature of state / police protection of victims of domestic violence in Malaysia?

Question 1 of a June 2009 RRT Research & Information research response¹ examines the issue of the level of state protection for victims of domestic violence in Malaysia, as does question 8 of a May 2009 RRT Research & Information research response.²

Malaysia's *Domestic Violence Act (1994)*, enacted 1 June 1996, states that the definition of domestic violence includes physical injury, fear of physical injury, unlawful detention and mischief or destruction to property "knowing that it is likely to cause distress to the victim." The Act also states that domestic violence is perpetrated by persons against a spouse, former spouse, a child, an incapacitated adult, or "any other member of the family."³

The Malaysian state news agency *Bernama* indicated in a December 2008 article that the Act may be amended to expand the definition of what constitutes domestic violence. According to *Bernama*, the Women, Family and Community Development Minister had indicated that amendments may include "emotional, mental and psychological forms and the usage of drugs and intoxicating substances without the consent of victims" as forms of domestic violence.⁴

A June 2009 report by the UN Human Rights Council states that Malaysia's "Domestic Violence Act was amended to expand the definition of 'domestic violence' to include emotional, mental and psychological forms of domestic violence; to extend the duration of interim protection and to introduce a new provision on the right to compensation to the victim." Furthermore, the Penal Code was amended to provide that "any man who during the subsistence of a valid marriage causes hurt or fear of death 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 5 years."⁵

A 2006 report by Nor Azilah Binti Haji Jonit for the United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI), based in Japan, provides detailed information on the types of protection available for victims of domestic violence under Malaysia's *Domestic Violence Act 1994*. According to Jonit,

¹ RRT Research & Information 2009, *Research Response MYS35010*, 9 June – Attachment 1

² RRT Research & Information 2009, *Research Response MYS33296*, 21 May – Attachment 2

³ *Laws Of Malaysia Act 521 – Domestic Violence Act 1994* (1 June 1996, P.U. (B) 226/1996), Attorney-General's Chambers of Malaysia website, p.6 <http://www.agc.gov.my/agc/Akta/Vol.%2011/Act%20521.pdf> – Accessed 14 January 2010 – Attachment 3

⁴ 'Malaysia Reviewing Domestic Violence Act 1994, Says Ng' 2008, *Bernama*, 3 December <http://www.bernama.com/bernama/v3/news.php?id=376108> – Accessed 23 March 2009 – Attachment 4

⁵ UN Human Rights Council 2009, *Universal Periodic Review: Report of the Working Group on the Universal Periodic Review – Malaysia*, Human Rights Commission of Malaysia website, 3 June, p.5 http://www.suhakam.org.my/c/document_library/get_file?p_l_id=10408&folderId=31978&name=DLFE-3502.pdf – Accessed 14 January 2010 – Attachment 5

Malaysia's courts can provide both interim protection orders and long-term protection orders; however, from the wording of the provisions for the protection orders, both orders only prohibit the perpetrator from further domestic violence. Neither order constitutes an order to maintain a distance from the victim(s).⁶

A June 2009 essay published on The Malaysian Bar website states that despite the existence of a specific domestic violence act, "domestic violence is not stated as a specific crime in the DVA". The Act defines domestic violence as one that results in physical injury. However, according to the author, Mohamad Hafiz Hassan, "this act per se is not a crime in the DVA. Neither are other acts that constitute domestic violence, such as threatening to injure, or causing injury, force and detention against a spouse, former spouse, child, incapacitated adult or family members." Recent amendments to the Act appear to include such acts in the expanded definition of domestic violence. The Criminal Penal Code does include assault causing injury as a crime; however, Mohamad Hafiz Hassan states that "[u]nder the CPC, the police must first determine the nature of the offence, i.e. whether it is sizeable or non-sizeable. The police are only required to conduct immediate investigations in cases of sizeable offences. As for non-sizeable offences, police will conduct an investigation upon receipt of an order to investigate from the deputy public prosecutor. An investigation of a non-sizeable offence without such order would render whatever evidence collected illegal."⁷ According to the Penang-based Women's Centre for Change (WCC), "[c]harges can only be brought against the abuser for crimes which are defined in the Penal Code, but not all instances of domestic violence so defined (sic)."⁸

2006 advice posted on The Malaysian Bar website advises what people should do if they or relatives are victims of domestic violence. Furthermore, the advice details the obligations of various agencies, including the police and the District Social Welfare officer, once a report of domestic violence has been lodged. According to the site, police may detain the alleged aggressor for 24 hours, or, following an order from the Magistrates Court, for up to fourteen days. The Magistrate's Court may provide an "an Interim Protection Order i.e an Order restraining an aggressor which is valid for 12 months and can be renewed for a further 12 months"; the right of the victim to the exclusive residence of the family home; "an order prohibiting entry to the victim's school or place of work"; as well as "any other Order that may be required for the safety of the victim."⁹ According to the Act, any person "who wilfully contravenes a protection order or any provision... shall, on conviction, be liable to a fine not exceeding two thousand ringgit or to imprisonment for a term not exceeding six months or to both." Any person who violates the terms of the protection order using violence may be subject to "a fine not exceeding four thousand ringgit or to imprisonment for a term not exceeding one year or to both."¹⁰

⁶ Jonit, N.A. 2006, 'Country Report – Malaysia', UNAFEI Japan website, p.119

http://www.unafei.or.jp/english/pdf/PDF_rms/no69/09_P118-130.pdf – Accessed 13 January 2010 – Attachment 6

⁷ Hassan, M. H. 2009, 'Is domestic violence a crime?', The Malaysian Bar website, 18 June

http://www.malaysianbar.org.my/general_opinions/comments/is_domestic_violence_a_crime_.html – Accessed 12 January 2010 – Attachment 7

⁸ Women's Centre for Change 2008, 'Gender Discriminatory Laws In Malaysia', Nam Institute for the Empowerment of Women website, November, p.5 – Attachment 8

⁹ 'Domestic Violence' 2006, The Malaysian Bar website, 14 August

http://www.malaysianbar.org.my/domestic_violence_.html – Accessed 23 March 2009 – Attachment 9

¹⁰ *Laws Of Malaysia Act 521 – Domestic Violence Act 1994* (1 June 1996, P.U. (B) 226/1996), Attorney-General's Chambers of Malaysia website, p.6 <http://www.agc.gov.my/agc/Akta/Vol.%2011/Act%20521.pdf> – Accessed 14 January 2010 – Attachment 3

The US Department of State *Country Report on Human Rights 2008 – Malaysia* states that “Under the Domestic Violence Act, anyone who willfully contravenes a protection order by using violence against a protected person may be punished by imprisonment of up to one year and a maximum fine of RM2,000 (approximately \$588). In extreme cases involving “grievous hurt” inflicted using a deadly weapon, the maximum imprisonment increases to 20 years.” However, the report also contains criticisms of the perceived inadequacies of the Act, referring to the requirement that “separate reports of abuse be filed with both the Social Welfare Department and the police, causing delay in the issuance of a restraining order. Cases also require visible evidence of physical injury, despite its interpretation to include sexual and psychological abuse.” Other criticisms from Malaysia women’s groups include their belief that in cases of rape, the predominantly male police force lacked sympathy with the victims; and despite the existence of sexual investigation units at “each police headquarters”, police required “training in handling domestic abuse and rape cases.”¹¹

Malaysia’s *The Star Online* newspaper reported in February 2009 that The United Nations Special Rapporteur on Violence against Women made a statement saying that many women in Malaysia did not report domestic violence due to their lack of faith in the system.¹² *The Star Online* reported in December 2008 that there had been a 15 percent increases in reports of domestic violence between 2006 and 2008; however, the article quotes the director of Criminal Investigations Department, who states that the recorded figures were just “the tip of the iceberg...Many more cases are not being reported to the police because it is so deeply embedded in our culture, making the problem almost invisible.”¹³

A 2005 article in *The Star Online* cites criticism of the Malaysian government’s collection of data on domestic violence; the definition of domestic violence; the failure to legislate marital rape as a crime; as well as the provision of shelters, counsellors, etc for victims of domestic violence.¹⁴ In 2007 the *Associated Press (AP)* reported that Malaysia’s penal code was amended to state that “a husband who is found guilty of causing his wife “hurt or fear of death” to have sex with him can now face up to five years in jail.” However, the AP reported that the amendment “stops short of making marital rape a crime because another provision – that a husband has the right to have sex with his wife.” The AP quotes Maria Chin Abdullah, executive director of the Women’s Development Collective, as stating that because the amendment to the criminal code does not provide for a minimum sentence, those found guilty theoretically can be imprisoned for “as little as a day”.¹⁵

Bernama, the Malaysian state news agency wrote in a 2008 article that many Malaysian hospitals have established “One-Stop Crisis Centres (OSCC)” in order to provide a combination of service for victims of domestic violence, including “protection, safe accommodation, support, counselling and legal assistance.” According to *Bernama* there are approximately one hundred such centres throughout Malaysia. The article also cites a Dr Faisal Salikin at the Kuala Lumpur Hospital (HKL) who states that “HKL’s OSCC receives

¹¹ US Department of State 2009, *Country Report on Human Rights 2008 – Malaysia*, 25 February, Section 3 – Attachment 10

¹² Ng, C.Y. 2009, ‘UN expert: Law reforms needed to better protect women’, *The Star Online*, 12 February <http://thestar.com.my/news/story.asp?file=/2009/2/12/nation/20090212195150&sec=nation> – Accessed 13 January 2010 – Attachment 11

¹³ ‘Domestic violence on the rise’ 2008, *The Star Online*, 21 December <http://thestar.com.my/news/story.asp?file=/2008/12/21/nation/2867697&sec=nation> – Accessed 22 December 2008 – Attachment 12

¹⁴ ‘Still some way to go in the fight against violence towards women’ 2005, *The Star Online*, 4 May – Attachment 13

¹⁵ Malaysia stops short of criminalizing marital rape, activists say’ 2007, *Associated Press Newswires*, 14 September – Attachment 14

50 patients of physical abuse and 25 rape cases a month.” Dr Faisal also state that “more than 80 per cent of the victims are Malays.”¹⁶

List of Sources Consulted

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UK Home Office <http://www.homeoffice.gov.uk/>

US Department of State <http://www.state.gov/>

Attorney-General’s Chambers of Malaysia website <http://www.agc.gov.my/agc/index.htm>

United Nations (UN)

UN Human Rights Council www.un.org/en/rights/

United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI) <http://www.unafei.or.jp/english>

UN High Commissioner for Refugees (UNHCR) Refworld website
<http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain>

United Nations Division for the Advancement of Women website
<http://www.un.org/womenwatch/daw/>

Non-Government Organisations

Human Rights Watch <http://www.hrw.org/>

Amnesty International <http://www.amnesty.org>

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International News & Politics

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Malaysia News

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Topic Specific Sites

The Malaysian Bar Association <http://www.malaysianbar.org.my>

The Human Rights Commission of Malaysia <http://www.suhakam.org.my/home>

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