

Recent Developments

著者	Sharifah Suhanah Syed Ahmad, Roy Rajasingham
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Chapter 8

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1. THE NATIONAL COMMISSION ON HUMAN RIGHTS (SUHAKAM)

The National Commission on Human Rights, or SUHAKAM going by its abbreviated Malay name, was formed “to protect and promote human rights of all Malaysians, irrespective of their racial, religious or cultural origins.”¹⁵⁸ The “human rights” appear to be confined to those fundamental rights enshrined under the Federal Constitution.¹⁵⁹ Among the objectives of the Commission would be the study and verification of human rights infringement and to assist the government studies various international instruments that Malaysia has yet to ratify and make recommendations.¹⁶⁰ At the moment, the Commission is looking into allegations of police brutality committed against peaceful protestors.

Among the responsibilities, which the Commission had undertaken, is law reform. The Commission will be looking into laws, which have been criticized as being repressive, such as the Internal Security Act, the Official Secrets Act, the Printing Presses and Publications Act, and the Police Act. The Commission will make recommendations for law reform, after consultation with the government, non-

¹⁵⁸ New Straits Times, 3 November 1998, p. 2.

¹⁵⁹ Part II of the Federal Constitution: liberty of the person; prohibition against slavery and forced labour; protection against retrospective criminal laws and repeated trials; equality before the law; prohibition of banishment and freedom of movement; freedom of speech, assembly and association; freedom of religion; educational rights and rights to property.

¹⁶⁰ Malaysia has so far ratified six of the 25 conventions on human rights: (i) convention against apartheid in sports; (ii) convention on the prevention and punishment of the crime of genocide; (iii) convention on the rights of the child; (iv) convention on the elimination of all forms of discrimination against women; (v) convention on the nationality of married women, and (vi) convention against slavery.

governmental organizations and the Bar Council.¹⁶¹

2. PROPOSED FAMILY COURT

Another important development to have taken place recently relates to the proposal for the establishment of a Family Court. This was proposed by the National Advisory Council for the Integration of Women in Development (NACIWID). Basically, the call for a separate Family Court is related to the problems with the judicial system where there is a huge backlog of unsettled family dispute cases, as well as long processes and delays in reaching settlements.

The problems are compounded when the parties are Muslims, as some issues pertaining to family law fall within the jurisdiction of the Syariah Court, while others may fall within the jurisdiction of the civil courts. Hence, women and children are being “thrown back and forth between the Syariah, civil and magistrate courts to settle the different issues of property, custody, divorce, maintenance and social welfare.”¹⁶² The idea, therefore, is to have a one-stop centre to deal with all the issues. Previously, the High Court in Kuala Lumpur heard family matters through its Family and Property Division (only for Kuala Lumpur).

There seem to be agreement on some aspects of the character of this new court: first, that the court be people-friendly, paying particular attention to the needs of children. Therefore, places such as playrooms are proposed, as well as childcare and counseling services.¹⁶³

Secondly, that the system adopted should emphasize conciliation and co-operation, rather than conflict and contention. Mediation and counseling of parties are to play an important role.

Other problems are more difficult to resolve, for example, the issue of jurisdiction. In Malaysia, the Syariah laws are matters of state and as such, they may vary or differ from state to state. The Federal government, under whose jurisdiction the civil court system vests, does not have jurisdiction in respect of Islamic or Syariah laws, including the Syariah Court System.

¹⁶¹ New Straits Times, 21 February 2001, p. 6.

¹⁶² Prof. Puan Sri Dr Fatimah Hamid Don, NACIWID’s vice-chairman, quoted in New Straits Times, 25 September, 2000.

¹⁶³ Bar Council Seminar on the Setting up of a Family Court in Malaysia – 9 and 10, November, 2000.

At the time of writing, it remains unclear precisely what shape the proposed Family Court would take, and how the thorny issues pertaining to jurisdiction are going to be resolved. What is clear is that “Malaysian family law and Malaysian court system is in urgent need of reform.”¹⁶⁴

¹⁶⁴ YN Foo, of the Malaysian Bar.