



Non-Governmental Public Action Programme

Published on 12 January 2009
ISBN: 978-0-85328-322-5

www.lse.ac.uk/ngpa/publications

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Sisters in Islam

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Nazila Ghanea-Hercock

LSE

www.lse.ac.uk/ngpa
tel +44 (0)20 7955 7205
fax +44 (0)20 7955 6039
email ngpa@lse.ac.uk

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Editor: Professor Jude Howell

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Non-Governmental Public Action Programme
c/o The Centre for Civil Society
Department of Social Policy
London School of Economics and Political Science
Houghton Street
London WC2A 2AE

Tel: +44 (0)20 7955 7205/6527 Fax: +44 (0)20 7955 6038 Email: ngpa@lse.ac.uk

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British Library Cataloguing in Publication Data
A catalogue record for this publication is available from the British Library.
ISBN: 978-0-85328-322-5

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Acknowledgements

This paper focuses on the impact of Non-Governmental Public Actors (NGPAs) on policy making. A short précis of this project was presented to the workshop on 'Transnational policy processes, policy outcomes and service delivery: the impact of non-governmental public actors', hosted by the ESRC Non-Governmental Public Action Programme, in association with Monash University's Institute for the Study of Global Movements, at the Institute of Commonwealth Studies, University of London, 2-4 May 2006. An earlier version of this paper was presented to the International Workshop: 'The impact of transnational non-governmental public actors (NGPAs) on policy processes and policy outcomes: translating advocacy into sustainable policy engagement'. The workshop was funded by the ESRC and the Commonwealth Foundation and held by the Institute of Commonwealth Studies, School of Advanced Study, University of London at the Brunei Gallery, SOAS, 11-12 September 2007. The research assistance of Nora Murat in carrying out some of the interviews in Malaysia is acknowledged, as is the guidance of Professor Richard Crook in spearheading this research as Project Director.

Abstract

This paper focuses on the impact of Non-Governmental Public Actors (NGPAs) on policy making, specifically in the context of Malaysian personal status laws. The focus will be on the NGPA Sisters in Islam (SIS) and their efforts to impact policies in relation to women's rights. Since personal status laws for Muslim and non-Muslim populations diverge in Malaysia, and since the work of SIS is specifically on the promotion of rights within an *Islamic* framework, the attention will be on Muslim women's rights as reflected in Muslim family law.

The challenge of this NGPA-policy relationship is not simply captured by the political and legal backdrop to the efforts of SIS. The additional challenges faced by SIS in Malaysian society are those of patriarchy and religion. In attempting to impact Muslim family law, SIS is seen to challenge politics, law making, religion and patriarchy.

SIS navigates this difficult terrain with a range of strategies. In order to analyse these strategies, detailed attention will be given to a key policy battle in the Muslim family law saga - that of the adoption of the 2005 Islamic Family Law (Federal Territories) (Amendment) Bill (IFL-FT). Through this, one is drawn into the complexity of policy and law making in Malaysia's federal structure, and especially in matters related to Islam. From this one gets an excellent snapshot of the impact of NGPA activism on government policy on Muslim personal status law.

1. Sisters in Islam (SIS)

SIS started as a study group amongst a number of well-educated female friends. They met at each other's homes for a decade (Interview with Zainah Anwar, 8 July 2006)¹ from 1987 within the Association of Women Lawyer's Syariah Sub committee² and formally established as 'SIS Forum (Malaysia) Berhad' in 1993.³ It has moved far beyond that, yet its friendship and study group base remains. It has definite policy objectives regarding women's rights yet it pursues those goals in a particular manner. Its evolution from study group to advocacy group was organic. SIS describes itself as "a group of Muslim professional women committed to promoting the rights of women within the framework of Islam".⁴ They first set up Muslim Women's Action Group to work on Islam and domestic violence in order to stem the tide of "creeping Shariah" (Interview with Norani Othman, 10 July 2006) in the public sphere. They did so by countering articulations of religious arguments they disagreed with by reference back to religious concepts and principles. It was this experience that convinced them to focus their activities around Islam.⁵ From domestic violence they broadened their advocacy to "questions like polygamy, wife beating, hijab, the concept of the Islamic state, *hudood* and the role of Shariah in the legal system." (Interview with Norani Othman, 10 July 2006)

¹ They met in the house of Ms Zainah Anwar, Executive Director of SIS, except for the 3 years that she was away in London working for the Commonwealth Secretariat.

² Sisters in Islam, Empowering Voices for Change, Annual Review, 2006, Selangor, SIS, 2007, p. 2

³ SIS home page <http://www.sistersinislam.org.my/index.htm> (accessed March 2008). Malaysian law registers NGOs as 'societies' further to the Societies Act 1966, though many NGOs – such as SIS – are forced to register as companies instead due to the strictures and timescales required to apply for 'societies' registration

⁴ Sisters in Islam, Muslim Women Speak leaflet, no date

⁵ The founding members of SIS at the public launch of the group in 1991 consisted of: Zainah Anwar was working as a journalist (she has also worked for the Commonwealth Secretariat, for the Women's Action Organisation, as a Commissioner of SUHAKAM – the Human Rights Commission of Malaysia, been a university lecturer at UiTM – Universiti Teknologi Mara and authored books); Salbiah Ahmad who was teaching at the Islamic University (UIA); Rashidah Abdullah who was working with and co-founder of the Asian-Pacific Resource and Research Centre for Women (ARROW); Rose Ismail who was a senior feature writer of the New Straits Times; Norani Othman, Professor of Sociology at Universiti Kebangsaan Malaysia; Askiah Adam who was a journalist; Amina Wadud, formerly an academic at the Islamic University (UIA); and Sharifah Zuriah Aljefri, an artist. Sisters in Islam, Empowering Voices for Change, Annual Review, 2006, Selangor, SIS, 2007, p. 3

SIS has long utilised the media as the most significant part of its advocacy work. Publications have included letters to the *Star* and *New Straits Times* from 1989⁶ and books published in the 1990s addressing issues such as polygamy, Islamic law *Shariah* ('Syariah' in Malay) and Islamic punishments in Malaysia *hudood*. Their strategy of airing issues in the media or using academic channels such as publishing books, and launching them in the presence of Ministers where possible, (Interview with Norani Othman, 10 July 2006) was established from those early days. The sum of its current methods is captured on its website as (1) legal services (through a legal clinic and legal literacy column), (2) public education (through study sessions, training workshops and public lectures), (3) research (pilot research on polygamy in 2004) and (4) advocacy (law reform and media advocacy).⁷ Advocacy spearheads SIS activities and is informed by its legal services; research was formally initiated with the polygamy issue in 2004 and public education has been given growing emphasis since 2006.

The various preparatory conferences and committees around the time of the 1995 UN Beijing World Conference for Women lent further impetus to SIS confirming its 'Muslim feminist' (Interview with Norani Othman, 10 July 2006) credentials and in positioning itself as such at the national level. SIS is not so much an Islamic (Interview with Zainah Anwar, 23 February 2008)⁸ women's NGO, but an NGO which acknowledges "practices of Islam" that discriminate against women - thus it is "both Muslim and feminist" and locates its "struggle for justice and equality"⁹ in Malaysia within Islam. SIS objects strongly to encroachments on the rights of Muslim women in the name of Islam. It seeks to capture the religious 'capital' of Islam in "advocating women's rights based on the teachings of the Qur'an".¹⁰ SIS has long described itself

⁶ Zainah Anwar, the Executive Director, had a bi-weekly column in the *New Straits Times* from March 2006 to July 2007, all available at <http://www.sistersinislam.org.my/zainahcolumns.htm> (accessed March 2008). SIS has also had a legal column in the paper *Utusan Malaysia* over some 6 years

⁷ SIS website, <http://www.sistersinislam.org.my/programme.htm> (accessed March 2008)

⁸ Zainah Anwar explains that SIS is not 'Islamic' in ideological terms, and certainly not Islamist. SIS is however a women's NGO concerned about the rights of Muslim women.

⁹ Sisters in Islam, *Empowering Voices for Change, Annual Review, 2006*, Selangor, SIS, 2007, p. 14

¹⁰ Human Rights Defenders Initiative, Zainah Anwar, *Setting the Qur'anic Record Straight*,

as an organisation “which believes in an Islam that upholds the principles of equality, justice, freedom and dignity”.¹¹ Whilst this no doubt continues, there seems to have been some shift in recognising that sometimes clashes arise that force a choice between Muslim, feminist and human rights ‘resources’. SIS therefore appears since 2003 to have positioned itself more as an organisation based on “understanding Islam from a rights perspective”.¹²

This is not to suggest that Islam merely represents religious ‘capital’ in a utilitarian and politicised sense. Of course it represents a lot more to well over a billion Muslim believers the world over. However, one can nevertheless recognise the ‘symbolic capital’ Ghanea (2004, pp. 706-707) of any religion or belief community, a capital that politicians, religious leaders/‘entrepreneurs’ and activists alike may seek to mobilise. Of course a religion and civilisation of over 1,400 years such as Islam cannot possibly be essentialised or captured in monolithic terms. To the contrary, the ‘capital’ potential of Islam is precisely due to its richness and diversity. Islam’s “process of symbolic production” Tibi (1994, p. 294) creates competition “over the right to manipulate the symbolic capital of Islam” Eikleman and Piscatori (1996, p. 28) - and this sets the context for the opportunity and challenge that lies before SIS. Of course, with SIS entering into this process of the utilisation of the symbolic capital of Islam, it contributes to the ‘price’ of Islam in policy making and political life in Malaysia. Zainah Anwar of SIS acknowledges that this may be the case, but says that if SIS hadn’t entered the debate progressive voices on women’s rights may not have been generated. (Interview with Zainah Anwar, 23 February 2008) SIS does, in fact, appear to have spawned by its very existence a whole range of other NGOs in Malaysia dedicated to countering its voice on the foundation of the same sources - those same texts that inform the ‘symbolic capital of Islam’.

Herein lies the catch-22 of locating the fight for women’s rights within an Islamic framework. Whereas “[I]f the advocates of the human rights of women fail to take

http://www.cartercenter.org/peace/human_rights/defenders/defenders/malaysia_zainah_anwar.html (accessed March 2008)

¹¹ SIS home page <http://www.sistersinislam.org.my/mission.htm> accessed March 2008

¹² The title of the short international course ran by SIS in August 2006. See Sisters in Islam, Empowering Voices for Change, Annual Review, 2006, Selangor, SIS, 2007, p. 52

religious discourse seriously, their opponents will mobilize it in Islamic communities, thereby denying them the vital political and practical support of those constituencies”; Afkhami (1995, p. 54) in Malaysia it would appear that this largely occurred in reverse order. SIS was one of the earliest NGOs (not political parties or actors) to mobilise on the basis of Muslim religious discourse. Its creation has in turn stimulated the creation of an exponential list of other NGOs dedicated to sidelining its claim to the voice of Muslim women.

As an NGPA, SIS is somewhat difficult to define. It cannot be encapsulated by the descriptions: ‘socially embedded membership group’, ‘predominantly southern based NGO using North-South linkages to focus on national level government’ or ‘elite policy-oriented group’; yet all three partially address its characteristics. SIS may best be described as an elite policy-oriented group, with its policy orientation being at the national level, but with its concerns addressing all Malaysian Muslim women, including those at the grassroots. It has North-South linkages but that does not have much bearing on its national policy work. As shall be seen below in the section on WLUML, this linkage primarily concerns the exchange of information and experience.

SIS is criticised for its closed, invitation-only membership of no more than 30¹³ and its elitism. Zainah Anwar acknowledges its “very small membership”, jokingly adding that she doesn’t believe in democracy! She explains the small membership by saying that SIS is an advocacy and campaigning organisation. “We don’t want to lose the political space that we have by a rash and massive membership. It is already hard to agree on all issues, even with the small membership, since the issues we deal with are so personal.” (Interview with Zainah Anwar, 8 July 2006) Another of the founding members of SIS, Professor Norani Othman, expresses the hope that the membership policy will change “as there can be strength in numbers. But it is because of the confrontation and aggression of the opposition that the movement can yet be hijacked, so membership has to remain as is for the time being.” (Interview with Norani Othman, 10 July 2006) Reference to ‘hijacking’ may sound alarmist, but in a political context in which political candidates are regularly approached to switch parties both before and after elections, and where the president of a mass revivalist movement was ‘co-opted’ into a senior government position and then went on to head

¹³ Sisters in Islam, Empowering Voices for Change, Annual Review, 2006, Selangor, SIS, 2007, p. 61

a key opposition party,¹⁴ it is not so. Parallel with this party switching, can be witnessed the increased politicisation (along party lines) of Malaysian civil society. Zainah Anwar observes that it was the Reformasi period¹⁵ that “damaged” (Interview with Zainah Anwar, 23 February 2008) civil society in this way.

SIS admits that it is criticised for accepting foreign funding, but since it is not assisted by the Malaysian government it has no other option. Increasingly, however, it is improving its fundraising within Malaysia from individuals, corporations and foundations.¹⁶ SIS is also criticised for being better known internationally than domestically - especially outside the Federal Territories. SIS does not pretend to be a social movement relying on its appeal to the masses. Many criticisms of it, however, say that it can no longer ignore the hinterland. The changing political and religious landscape may yet push SIS to consider that hinterland more seriously and address it more directly than merely through trainings, seminars and media columns - these themselves being criticised by some for appealing more to middle class educated women and to non-Malays and non-Muslims rather than Malay Muslims. Nevertheless, many of these criticisms would apply more generally to the vast majority of NGOs in Malaysia, except for the more recent ones that have been generated by, or would best be served by, particular political parties. For SIS, it would appear that its outreach comes mainly from its legal clinics and legal literacy columns in the media; and its study sessions, trainings and workshops.¹⁷ Its seminars and trainings (known as ‘forums’) though are regularly well-attended, with numbers sometimes running into hundreds. Its legal services also deal with some 800 requests per year, mainly in the form of letters, emails and telephone calls. (Interview with Zainah Anwar, 23 February 2008)

¹⁴ Prime Minister Mahathir was able to recruit Anwar Ibrahim over to UMNO despite his ABIM past meaning that “many believed [he] was likely to join Parti Islam Se-Malaysia (PAS, the major Malay opposition party)”. Diane K. Mauzy and R. S. Milne, ‘The Mahathir Administration in Malaysia: Discipline through Islam’, 56.4 *Pacific Affairs*, (1983), p. 618

¹⁵ The Reformasi movement was initiated by Anwar Ibrahim and his supporters in the wave of protests following his sacking as Deputy Prime Minister in 1998

¹⁶ Sisters in Islam, *Empowering Voices for Change, Annual Review, 2006*, Selangor, SIS, 2007, p. 61

¹⁷ SIS website, <http://www.sistersinislam.org.my/programme.htm> (accessed March 2008)

JAG

In a number of its campaigns, SIS has co-operated with a coalition of NGOs known as JAG or JAGGE (Joint Action Group for Gender Equality). This is a coalition of 6 NGOs: SIS, Women's Aid Organisation (WAO), All Women's Action Society (AWAM), the Malaysian Trade Union Congress Women's Committee (MTUC), Women's Development Collective (WDC) and Women's Centre for Change, Penang (WCC). JAG was informally established in 1985, working on the premise that "women's rights are integral and inseparable parts of human rights" and that in order to ensure equality and democracy in Malaysia it is essential to also consider the opinions of women.¹⁸

As will be seen below, SIS – as part of JAG – took the lead in the 2005 advocacy against the proposed 2005 Islamic Family Law (Amendments) Bill (later Act - henceforth 'IFL Bill') and their position was covered extensively in the English-speaking media and much more widely than before in the Malay media. Those who considered that "the important parts of the 2005 act were good and workable" were critical of JAG's actions, dismissing it as an overblown overreaction "against 'Islamisation', its role and prominence in society" and not really focused on the Bill itself. "It was a storm in a tea cup" says lawyer and member of the Bar Council Shariah Committee (Interview with Pawancheek Marican, 25 February 2008); "a misunderstanding" says another member and Shariah family law specialist (Interview with Kamarainiah Kamaruzaman, 25 February 2008). In general, Dr Mazeni Alwi from the Muslim Professional Forum held that organisations in JAG and SIS in particular have adopted "wholesale western liberal secularism, negating the traditions of Islam... disregarding and dismantling traditional views", (Interview with Dr Mazeni Alwi, 27 August 2007) though he added that the issues SIS raises around the injustices suffered by women are justified. Their reaction to the IFL was similar. They were not focusing on the issues, he claimed, but reacting to the increasing role of Islam in Malaysian society.

¹⁸ See All Women's Action Society (AWAM) Networks, JAG, http://awam.org.my/networks/jag_vaw.htm (accessed March 2008)

Criticisms of SIS for being reactionary to the growing role of Islam come from many quarters. Indeed SIS acknowledges this impetus as part of its own founding history¹⁹ and the academic literature on women's rights in Muslim countries supports such a stance.²⁰ Nevertheless, the role of Islam in public debate and policy making in Malaysia has in fact increased most sharply in the years subsequent to the founding of SIS, so the tempo of issues SIS may be compelled to object to is increasing and with it objections to the continued existence of SIS. With this increased opposition, however, also comes the potential for greater support for SIS from the disenfranchised. As one interviewee asserted

They [SIS] are a very valuable group, an interesting group of Muslim women who have progressive ideas on Islam. They want to engage the public intelligently, look at the Qur'an in a feminist perspective, give it a refreshing interpretation and use their brain and rational faculties. It's long overdue that we have such group. They have a positive role to play in terms of making Islam refreshed and rejuvenated. (Interview with IM, 17 April 2007)

¹⁹ Sisters in Islam, *Empowering Voices for Change, Annual Review, 2006*, Selangor, SIS, 2007, p. 2

²⁰ "[T]he advocates of the human rights of women should realize that they have no alternative but to engage in an Islamic discourse. Whatever they may think of it, the fact of the matter is that Islamic groups have already succeeded in 'Islamizing' the terms of reference of public discourse in most Islamic societies. .. Muslim human rights advocates are now responding to that 'Islamic' discourse rather than engaging in their own discourse or attempting to define, or to contribute to defining, its terms. This state of affairs need not be permanent or irreversible, but the way to change it is surely to engage, rather than seek to avoid, an Islamic discourse." Abdullahi 'An-Na'im, in Mahnaz Afkhami, Ed., *Faith and Freedom, Women's Human Rights in the Muslim World*, London, I. B. Tauris, 1995, p . 59

WLUML

SIS is also part of²¹ a loose North-South network known as Women Living Under Muslim Laws (WLUML). Established in 1984, WLUML describes its mission as “an international solidarity network that provides information, support and a collective space for women whose lives are shaped, conditioned or governed by laws and customs said to derive from Islam”.²² It is a network of organisations and individuals across over 70 countries, North and South, guided by a plan of action.²³ Organisations linked to this network typically campaign for the enhancement of the status of women in countries or states where Islam is the state religion, other states with Muslim majorities or Muslim communities governed by their own religious laws.²⁴ The key objective and challenge of WLUML is to challenge the myth of one, homogenous ‘Muslim world’. This deliberately created myth fails to reflect that: a) laws said to be Muslim vary from one context to another and, b) the laws that determine our lives are from diverse sources: religious, customary, colonial and secular. We are governed simultaneously by many different laws: laws recognised by the state (codified and uncoded) and informal laws such as customary practices which vary according to the cultural, social and political context.²⁵

Such action often posits WLUML associated groups against numerous vested interests, including both the political and clerical. Zainah Anwar has noted the support, knowledge base and network that WLUML has offered SIS “for example we didn’t have many links in the Middle East and Africa [before WLUML put us in touch with a larger number of activists there]”. (Interview with Zainah Anwar, 8 July 2006) However, the direct benefits of this network to SIS is occasional and not of daily practical significance.

²¹ The formal WLUML ‘partner’ in Malaysia is the Women’s Centre for Change (WCC) and not SIS

²² Women Living Under Muslim Laws, About WLUML, <http://www.wluml.org/english/about.shtml> (accessed March 2008)

²³ Women Living Under Muslim Laws, How did WLUML start?, Plans of Action, (this being the third such Plan, agreed in Dhaka in 1997), <http://www.wluml.org/english/pubs/rtf/poa/dhakapoa.rtf> (accessed March 2008)

²⁴ Women Living Under Muslim Laws, About WLUML, <http://www.wluml.org/english/about.shtml> (accessed March 2008)

²⁵ Women Living Under Muslim Laws, About WLUML, <http://www.wluml.org/english/about.shtml> (accessed March 2008)

2. Context

Civil Society Context

The civil society space in Malaysia is not what it seems. That space depends, amongst other things, on the issue at hand, the perceived political leanings of the group and its relationships - however passive. On the surface, it appears that there is a vibrant and outspoken civil society space in Malaysia. Debate is lively - in the papers, in professional circles, in public panels and in blogs. However, scratch below the surface and one becomes aware of threats to their operation. This is not to suggest that there aren't strongly outspoken and reactionary voices in Malaysian civil society, there certainly are - though even the most fundamental clashes are often voiced in good humour. However, it would seem that each of those voices is either being tolerated because of their standing and relationship base, or is calculated as being tolerable at least for the time being. Many of the most outspoken individuals and groups have also, at one time or another, received warnings regarding their activities; key individuals have been offered scholarships to tempt them to leave Malaysia's shores, bombarded with invitations to join or switch political parties or threatened with rehabilitation. The co-option and silencing is generally implemented in a fairly civilised manner but it does mean that self-censorship is rife.

In the first decades of independence (post-1957), all Chinese civil society organisations as well as trade unions, student leaders and labour movements, were suspected of being communist and repressed primarily through the provisions of the 1960 Internal Security Act (ISA) which "provided for detention without trial, and was intended to be used principally against militant communists or subversives". Mauzy and Milne (1983, p. 622) It was under this act that Anwar Ibrahim, later to serve as a Deputy Prime Minister (1993-1998), was arrested during an anti-government protest and imprisoned for 20 months. 1989 saw the signing of a peace treaty between the government and the Communist party, but the ISA provisions were now used against politicians, 'dissidents', Islamist 'deviationist' groups and in response to the protesters supporting Anwar Ibrahim - known as 'reformists'. Post-1990s, the ISA risk has shifted to any kind of political activism, and most recently against five Hindu Rights Action Force (HINDRAF) leaders subsequent to a peaceful street protest in November 2007. The scale of police action taken – leading to hundreds of arrests, the use of tear gas and batons and the continued indefinite detention without trial of five under the ISA –

against this demand for addressing discrimination against Malaysia's ethnic Indians shocked civil society to the core.

Added to the ISA risk factor, the requirements of formally registering as an NGO 'society'²⁶ are highly restrictive in Malaysia. Some NGOs by-pass this by registering as companies instead, under the guise that they just publish for example. This curtails their sphere of operation. The University and Colleges Act 1971, which prohibits university staff and students from engaging in political activities; the banning of publications under the Printing Presses and Publications Act 1984, including a number relating to gender and Islam;²⁷ and the restrictions on freedom of assembly - all serve to further restrict the space for manoeuvre. In the context of lobbying for legal change, it is problematised further by the fact that all draft laws are considered official secrets in according to the Official Secrets Act 1972 unless the condition of secrecy is specifically lifted.

Legal Context

Malaysia's "pluralistic" Peletz (1993, p. 69) legal system offers complexity not only due to its fourteen-state federal structure²⁸ and rule of its 9 sultans,²⁹ but also due to its differentiation of Shariah (*Syariah* in Malay) law for Muslims and other provision for non-Muslims. It was colonial rule that "regularised" the role of religion in the law in Malaysia for Muslims,³⁰ though what was accomplished has been described as "not

²⁶ This is in accordance with the Societies Act (1966 – the same year of the adoption of the ISA) "which was originally intended to register and control secret societies, subversive groups, and mutual-benefit organizations - was amended in April 1981, primarily to 'smoke out' those groups which the government believed to be acting 'politically,' although ostensibly formed for other purposes". Diane K. Mauzy and R. S. Milne, 'The Mahathir Administration in Malaysia: Discipline through Islam', 56.4 *Pacific Affairs*, (1983), p. 622. The authors argue that the terms of the Societies Act were relaxed in the early 1980s.

²⁷ 11 books were banned in January 2008, including Amina Wadud's *Qur'an and Women Rereading the Sacred Text From a Woman's Perspective*, New York, Oxford University Press, 1999

²⁸ Sabah and Sarawak situated on the island of Borneo joined Malaysia in 1963

²⁹ The fourteen states have only 9 sultans, one of whom serves as king or agung. The remaining four states have a Governor who is appointed by the Federal government

³⁰ As Horwitz argues "Beginning in 1900, the British regularized the kadis' courts and made them a subordinate part of the judicial hierarchy, with jurisdiction typically limited to the Muslim personal matters of marriage, divorce, succession to property, and (occasionally) breaches of Muslim morality and petty crimes."

the Islamization of law but the legalization of Islam". Horwitz (1994, p. 257) On independence in 1957, each state retained rights over religious matters. The division of powers between the federation and the states is such that family, civil and criminal law lies within the competence of the Federal Government and Legislature. However, according to the Federal Constitution,³¹ Muslim personal law and native personal law and custom falls within the competence of State Governments and Legislatures. So whilst family law in general is a federal matter, its Muslim variant (Muslim personal law) is a state matter. This means family matters for non-Muslims are dealt with at the federal level but for Muslims it is dealt with at the state level.

The Law Reform (Marriage and Divorce) Act 1976 (LRA, Act 164) – the family law statutes that apply throughout Malaysia for non-Muslims – has been enforced throughout Malaysia from 1982, laying down “a uniform law on marriage and divorce” Ibrahim (2001, p. 6) and providing for monogamous marriage for non-Muslims and non-Malays.³² In recent years, however, there has also been the attempt to harmonise Muslim family law across Malaysia, but this is a task that is “doubly difficult to achieve in a system at once federal and Islamic”.³³ What is required is the agreement between the states to harmonise their family laws and this agreement was struck in 1997, thought its results are still pending as shall be seen in section 4 below. NGPAs argue that non-Muslim, non-Malay women have more rights than Muslim Malay women in Malaysia, despite the historical context of Malay culture which was basically matriarchal.³⁴

Donald L. Horwitz, ‘The Qur’an and the Common Law: Islamic Law Reform and the Theory of Legal Change’ in 42.2 The American Journal of Comparative Law (1994), p. 256

³¹ Article 74(2) provides that Muslim law and personal and family law of persons professing the Muslim religion are matters in the State List, hence the concern of the state government and legislatures. Muslim family law addresses succession, inheritance, marriage, divorce, dowries, maintenance, adoption and guardianship. A dual system of family law therefore operates - one for Muslims and another for non-Muslims.

³² The claim that Malays cannot convert away from Islam is contested by lawyers emphasising Article 13 of the Malaysian Constitution which provides for freedom of religion. A number of cases have challenged this position in recent years.

³³ Donald L. Horwitz, ‘The Qur’an and the Common Law: Islamic Law Reform and the Theory of Legal Change’ in 42.2 The American Journal of Comparative Law (1994), p. 238

³⁴ Siraj argues that Malay culture was “basically matriarchal and under which land, the principal form of property, was held by females ... where on [e.g. in

Horowitz describes how the position of Islamic law in relation to national law differs in different Muslim countries. He describes Pakistan as a context where “there has been an attempt to install Islamic doctrine as higher law, against which ordinary law is to be measured, utilizing judicial review”. The Indonesian context he describes as an area where there has been the attempt to “domesticate the *Shariah* by integrating it into the wider corpus of Indonesian law. There is no authoritative Indonesian norm of the supremacy of Islamic law; instead there is a good deal of merger of Islamic and secular principles.” In contrast, he distinguishes Malaysia as being an area where “the Islamization of law” has proceeded methodically “in the span of a decade, dozens of new statutes and judicial decision have clarified, expanded, and reformulated the law applicable to Muslim. ... what has been attempted is the creation of two parallel, relatively autonomous systems, one secular and one Islamic”.³⁵ However, parallel universes only work where there is no interaction between the spheres. The increasingly contentious number of cases dealing with arising conflict of laws on matters such as conversion and apostasy, inheritance, divorce and the religious affiliation of children (subsequent to the conversion of one parent) led the Prime Minister (PM) to instruct the Attorney General in 2006 to open two simultaneous but separate consultations, one on the Islamic Family Law (Federal Territories) (Amendment) Act 2005 - as a direct outcome of SIS and JAG advocacy, and another on the Law Reform (Marriage and Divorce) Act 1976 - as a result of an increasing number of contentious cases in this regard. These consultations continued until 2007, and will be discussed further in section 4 of this paper.

areas of Negeri Sembilan and Nanning in Malacca] marriage the husband moves to the wife’s tribe, the rule on divorce is that the respective properties of the husband and the wife are returned and that the jointly acquired property is jointly divided (*chari bahangi*)”. M. Siraj, ‘Recent Changes in the Administration of Muslim Family Law in Malaysia and Singapore, 17.1 The International and Comparative Law Quarterly (1968), pp. 226-227

³⁵ Donald L. Horowitz, ‘The Qur’an and the Common Law: Islamic Law Reform and the Theory of Legal Change’ in 42.2 The American Journal of Comparative Law (1994), p. 236. The family laws applying to Muslims differ as different statutes apply in different parts of the country. The statutes regarding family law are the Islamic Family Law (Federal Territories) Act 1984 (Act 303 applies to the Federal Territories of Kuala Lumpur and Labuan. The Islamic Family Law Enactments that apply in each of the following 12 States of West or Peninsular Malaysia (Kelantan, Malacca, Kedah, Negeri Sembilan, Selangor, Perak, Penang, Terengganu, Pahang, Perlis, Sabah and Johor) date between 1983 and 1992, and the Enakmen Undang-Undang Keluarga Islam for Sabah and Sarawak dates from 1991.

3. Women's Rights in Islamic Contexts - A focus on Personal Status Law

Theoretical Context

The politicization of Muslim personal status laws regarding women is widely acknowledged. Zuhur (2002, p. 177) With personal status including laws and policies around marriage; divorce; parental rights especially custody, guardianship and adoption; inheritance; marital rape, violence within the family and 'honour killings' – and considering the fact that these issues are largely considered the province of religious courts for Muslims – the stakes are high. Whilst these areas are defined as the arena of Muslim personal status law “the principles therein extend as well to cultural aspects of patriarchy”. Zuhur (2002, p. 181) This is what links the questions of gender and the reform of personal status law.

Even in Muslim countries where the law is largely civil or secular, family law – which contains within it most aspects of personal status law – retains its Islamic vestiges. The questions surrounding marriage include whether only religious marriage is possible or whether there is the possibility of civil marriage instead, maintenance, whether Muslims can marry non-Muslims and whether polygamy is allowed within the law and, if so, questions of consent and marital assets that arise from this. Regarding divorce, the questions primarily surround the possibilities for women to seek divorce and of maintenance, custody and the distribution of marital assets on divorce.

One example of recent developments in the right of women to seek divorce comes from Egypt, where the legal system is considered a “predominantly secular system with the exception of family, understood to be derived from religious law”.³⁶ After “reform efforts dating back over a century”,³⁷ in 2000 Egypt brought into force a law allowing women divorce without having to prove abandonment, lack of financial support, or other previously required grounds for divorce. The new khul law³⁸ instead

³⁶ Lama Abu-Odeh, 'Egyptian Feminism: Trapped in the Identity Debate', (16:2, pp. 145-191) Yale Journal of Law and Feminism, 2004, p. 146

³⁷ Sherifa Zuhur, 'Empowering Women or Dislodging Sectarianism? : Civil Marriage in Lebanon' (14:1, pp. 177-208) Yale Journal of Law and Feminism, 2002, p. 195

³⁸ For a further discussion see Amira Mashhour, 'Islamic Law and Gender Equality - Could There be a Common Ground?: A Study of Divorce and Polygamy in

drew from Islamic traditional practice, allowing women divorce in instances where they “relinquish their share of the bride price and any gifts involved in the marital exchange”.³⁹ Access to this legal form of divorce was given through the creation of “family courts to oversee and enforce maintenance and insurance payments, thus transferring more responsibility to the bureaucratic or ‘civil’ realm, away from the auspices of religious officials”.⁴⁰ Access for women to divorce also emerged in Pakistan in the High Court in 1959 and in the Islamic Federal Shariat Court in 1983 on grounds of ‘incompatibility’ due to sexual relations, hatred and on dropping all financial claims against the husband.⁴¹ These examples demonstrate innovative means for enhancing women’s rights within the constraints of an Islamic framework.

Purposeful Islamic Reinterpretation

Muslim Feminists as a whole would argue that the discourse of equality between men and women is valid within Islam and can be supported by Islamic legal sources - particularly the Qur’an and Sunnah. They refer to Islamic texts in order to validate and justify their arguments. They do so by contextualising religious injunctions and laws, recognising the historicity of the legal provisions that emerged from them, and therefore seeing the need for textual reinterpretation of traditional patriarchal interpretations regarding women. A Muslim feminist position is thereby discovered and asserted.

The alliances, compromises, balances and unlikely suspects that come together in such an approach are interesting, but it also attracts a broad range of opponents, not least from secularists. One author argues

Women need secularism in the long run. Any reforms that are pitched as God-ordained, even though[t] they are liberal feminist reforms, may later prove hard to

Sharia Law and Contemporary Legislation in Tunisia and Egypt’ 27.2 Human Rights Quarterly, 2005

³⁹ Sherifa Zuhur, ‘Empowering Women or Dislodging Sectarianism? : Civil Marriage in Lebanon’ (14:1, pp. 177-208) Yale Journal of Law and Feminism, 2002, p. 195

⁴⁰ Sherifa Zuhur, ‘Empowering Women or Dislodging Sectarianism? : Civil Marriage in Lebanon’ (14:1, pp. 177-208) Yale Journal of Law and Feminism, 2002, p. 195

⁴¹ See Nadya Haider, ‘Islamic Legal Reform: The Case of Pakistan and Family Law’ (12:2, pp. 287-341) Yale Journal of Law and Feminism, 2000, pp. 330-339

critique. As we have learned from the modern history of feminism in the Islamic world, anything accepted as divinely ordained is resistant to change.⁴²

Abu-Odeh criticises such approaches in the Egyptian context, stating that “this new alliance [for women’s rights within an Islamic framework] argues for a full-fledged liberal feminism, one that is located in Islamic texts, and an agenda to Islamicize the rest of the legal system (albeit in a liberal fashion). ... In this new alliance, secularism is sacrificed for liberal feminism”.⁴³

Whilst SIS does not claim that it wants to maintain the Islamicisation of all aspects of Muslim family law or other law in Malaysia, the risk is that they are playing into the hands of the forces that do precisely that. Their Muslim feminist credentials also get them branded with a range of groups that they do not really ‘fit’ with and gathers harsher criticism to them than if they did not claim to be representing a Muslim approach. A number of interviewees, for example, objected to the very name of SIS, saying that while they claim to be ‘sisters *in Islam*’ they did not represent them as Muslim women. The Malaysian context in which they find themselves is not far removed from that of Egypt where Al-Ali notes that feminists find themselves “stigmatized as anti-religious and anti-nationalist”, and accused of “collaborating with ‘western imperialism’ by importing alien ideas and practices and propagating them throughout society”.⁴⁴ It is also analogous to the Lebanese context where the population largely holds that “feminism implies ‘Westernism,’ together with religious conservatives’ and Islamists’ more explicit opposition to feminist goals”, Zuhur therefore argues that “the local advocates of [women’s] empowerment face a psychological and sociological barrier that goes beyond legal conditions”.⁴⁵ She states that in such context the best that can be hoped for is the focus on political support for very incremental legal reform.

⁴² Lama Abu-Odeh, ‘Egyptian Feminism: Trapped in the Identity Debate’, (16:2, pp. 145-191) Yale Journal of Law and Feminism, 2004, p. 187

⁴³ Lama Abu-Odeh, ‘Egyptian Feminism: Trapped in the Identity Debate’, (16:2, pp. 145-191) Yale Journal of Law and Feminism, 2004, p. 148

⁴⁴ Nadjé Al-Ali, *Secularism, Gender and the State in the Middle East, the Egyptian Women’s Movement*, Cambridge, Cambridge University Press, 2000, p. 47

⁴⁵ Sherifa Zuhur, ‘Empowering Women or Dislodging Sectarianism? : Civil Marriage in Lebanon’ (14:1, pp. 177-208) Yale Journal of Law and Feminism, 2002, p. 202

SIS nevertheless stands by its still innovative approach of arguing for feminism from within an Islamic framework. The SIS position draws from those who argue for a reconstruction of Islamic law on the basis of the re-interpretation or fresh understanding of the Qur'an and Hadith (e.g. Khaled Abou El Fadl, Abdullahi Ahmad 'An-Na'im, Khalid Masud and Fati Osman); particularly one based on a feminist agenda (Ziba Mir Husseini, Kecia Ali and Amina Wadud - formerly a SIS member). This approach is all the more appropriate considering the "centrality of law in the Islamic tradition".⁴⁶ It has in fact been argued that "[o]utside of Europe and North America, there is hardly a country with an extensive Muslim population in which Islamic law has not been undergoing extensive revision or at least been the subject of considerable controversy."⁴⁷ The patriarchal elements of the Qur'an and Hadith can thereby be cast aside and new interpretations emerge of an allegedly 'true' understanding that the spirit of Islam justifies, even necessitates. According to al-Hibri, for example, thoughtful Muslims should no longer accept that interpretation [of patriarchal traditional jurists who relied on prevailing stereotypes as to gender roles in order to assert the guardianship of all men over women]; and Muslim women must rediscover the truth of the Qur'anic Equality Principle in order to achieve liberation and freedom without guilt.⁴⁸ Whilst a number of methodological routes for this can be found in Islamic law, *ijtihad* (legal decision making by independent reasoning) is the one that is most often highlighted by SIS.

⁴⁶ Donald L. Horwitz, 'The Qur'an and the Common Law: Islamic Law Reform and the Theory of Legal Change' in 42.2 *The American Journal of Comparative Law* (1994), p. 234

⁴⁷ Donald L. Horwitz, 'The Qur'an and the Common Law: Islamic Law Reform and the Theory of Legal Change' in 42.2 *The American Journal of Comparative Law* (1994), pp. 234-235

⁴⁸ Azizah al-Hibri, *Islam, Law and Custom: Redefining Muslim Women's Rights*, (12) *American University Journal of International Law and Policy* (1994), p. 35 quoted in Lama Abu-Odeh, 'Egyptian Feminism: Trapped in the Identity Debate', (16:2, pp. 145-191) *Yale Journal of Law and Feminism*, 2004, p. 163

4. Women's Rights in Malaysia - a focus on the Islamic Family Law (Federal Territories) (Amendment) Bill 2005

Why this focus?

The examination of the impact of SIS as a non-governmental public actor (NGPA) on Muslim personal status laws in Malaysia will be on its opposition to the IFL-FT Bill.

This focus will allow a detailed analysis of the policy impact of SIS on Muslim personal status laws at a time of heightened risk.

The backdrop to IFL-FT Bill was that “[i]t had been agreed in the Conference of Rulers on Aug 1, 1997 that six Islamic laws [including family law] would be standardised in all States. ... It was agreed that the Federal Territory model would be adopted by all states under the standardisation exercises”.⁴⁹ The decisions of the Conference of Rulers or Ruler’s Council – the annual gathering of sultans – don’t strictly have legal status but nevertheless are abided by. Though the Federal Territories’ IFL bill was to be the model law adopted by other states, by late 2005 all states – except Kedah and Terengganu – had adopted their revised IFL laws already. The government was adamant to push the IFL Bill through in the Federal Territory in order to complete the exercise. Not doing so, the government openly admitted would make it lose face. “We need to keep our end of the bargain and adopt the law. This is Government protocol”,⁵⁰ the authorities argued. Its relationship with the Rulers and religious authorities was on the line, on a matter (family law) on which the United Malays National Organization (UMNO, the party which has effectively ruled Malaysia since independence in 1957, though in coalition with a number of other parties in the Barisan Nasional or National Front) government feels particularly vulnerable vis-à-vis the opposition political parties. The political stakes could hardly have been any higher.

⁴⁹ Datuk Dr Abdullah Md Zin, Minister in the PM’s Department (Religious Affairs), as quoted in ‘The Sunday Interview’, New Sunday Times, 1 January 2006

⁵⁰ Chok Suat Ling, ‘Islamic Family Law Bill passed’, New Straits Times, 23 December 2005, p. 12

SIS had been active in arguing for amendments to the draft IFL-FT Bill since 2002,⁵¹ having received a copy of the draft in 2001.⁵² Together with other NGOs, SIS had presented 42 pages of objections to the amendments⁵³ and sent them to the Government in January 2002 through the then Minister in the PM's Department Datuk Seri Dr Rais Yatim and the Women, Family and Community Development Minister Datuk Seri Shahrizat Abdul Jalil.⁵⁴ Since draft laws are considered confidential under the Official Secrets Act, their lobbying efforts had halted there. They left it to Shahrizat Abdul Jalil⁵⁵ to take the issue up within the government and particularly Jakim (the Department of Islamic Development which is led by the Minister in the PM's Office in charge of Religious Affairs), "but it seems to no avail",⁵⁶ Zainah Anwar later admitted. That Minister, Jakim, the Attorney-General's Chambers, and the Malaysian Syariah Judicial Department had all been consulted and had agreed the draft before it came to be presented to the FT parliament and cabinet in late 2005.⁵⁷ The question of how NGPAs such as SIS could be caught off guard like this is unfortunately not surprising. This is partly due to the fact that NGPAs – and particularly SIS – are concentrated and concerned primarily with the Federal Territories. Secondly, however, is the broader reality that "[s]tate assemblies merit little publicity; as a consequence, much legislation on Islam is enacted with little public knowledge or debate".⁵⁸ SIS and other JAG

⁵¹ See 1997 SIS memorandum <http://www.sistersinislam.org.my/memo/040197.htm> and the 8/12/05 memorandum <http://www.sistersinislam.org.my/memo/08122005.htm> the 2003 state memorandum regarding Selangor <http://www.sistersinislam.org.my/memo/29052003.htm> and in general <http://www.sistersinislam.org.my/iflpage.htm> (accessed March 2008)

⁵² Zainah Anwar, as quoted in 'The Sunday Interview', New Sunday Times, 1 January 2006

⁵³ As attested by the daughter of the former PM, Marina Mahathir in Marina Mahathir, Columnists Musings, 'Ignominious end', The Star, 28 December 2005

⁵⁴ Zainah Anwar, as quoted in 'The Sunday Interview', New Sunday Times, 1 January 2006. It should be noted that Shahrizat Abdul Jalil lost her seat in the March 2008 elections

⁵⁵ In 2002 the Women's Department was part of the PM's Office. Later it was established as a Ministry in its own right the Women, Family and Community Development Ministry. The incumbent remained and still remains the same - Datuk Seri Shahrizat Abdul Jalil

⁵⁶ Zainah Anwar, as quoted in 'The Sunday Interview', New Sunday Times, 1 January 2006

⁵⁷ This according to Datuk Dr Abdullah Md Zin, Minister in the PM's Department (Religious Affairs), as quoted in 'The Sunday Interview', New Sunday Times, 1 January 2006

⁵⁸ Patricia Martinez, 'Malaysia in 2000: A Year of Contradictions', 41.1 Asian Survey (2001), pp. 192-193

partners were really alerted to the urgency of action needed in September 2005, when after just 2 days of debate the Dewan Rakyat (FT Parliament) adopted the same IFL Bill on 26 September 2005. As SIS member Rose Ismail reportedly argued the day after the adoption of the Bill,

The fact that we are now seeking to amend amendments [to the Bill] betrays a fundamental failure in the process of legislation and civil debate. ... the process by which Bills pass needs an urgent and critical review - it is clear that the Cabinet as well as MPs were inadequately briefed, and MPs were not given enough time to consider the Bill's passage.⁵⁹

SIS and JAG efforts came into full force in "a renewed campaign"⁶⁰ aimed at getting it defeated at the Senate level. The result was a qualified but dramatic success - the gazetting and implementation of the Islamic Family Law (Federal Territories) (Amendment) Act 2005 was put on hold. However, as of March 2008, although consultations have long ended amendments to it have not yet been made and the implementation of similar laws in other Malaysian states continues.

JAG objections to the IFL-FT Bill

JAG's main objections were centred on highlighting 'five main controversial amendments'⁶¹ in the Bill. These were:

1. "The right of the husband to claim a share of his existing wife's property upon his polygamous marriage. JAG is concerned that it will be abused by irresponsible husbands. [Section 23(9)(b)]
2. Making polygamy easier for men. The principal provision of the Islamic Family Law (Federal Territories) Act 1984 provides that the proposed marriage must be 'just and necessary' but this had been amended to 'just or necessary'. [Section 23(3) and 23(4)(a)]
3. Forcing a wife to choose maintenance or division of joint property upon a husband's polygamous marriage. JAG is of the view that the wife should not be asked to choose one or the other as she is entitled to both under Islamic law. [Section 23(9) "which 'forces' a wife to choose between

⁵⁹ Rose Ismail, Comment, 'A setback for Muslim women', New Sunday Times, 25 December 2005, p. 21

⁶⁰ Beh Lih Yi, 'Withdraw "discriminatory" bill, urge women's groups', Malaysiakini, 20 December 2005, available at <http://www.malaysiakini.com/news/44792> (accessed March 2008)

⁶¹ These were reported widely in the Malaysian media, for example see: Beh Lih Yi, 'Withdraw "discriminatory" bill, urge women's groups', Malaysiakini, 20 December 2005, available at <http://www.malaysiakini.com/news/44792> (accessed March 2008)

maintenance (nafkah) or a division of the matrimonial property (harta sepencarian) upon a husband's polygamous marriage"⁶²

4. Extending the wife's right to fasakh divorce to the husband, even though he still possesses the absolute right to pronounce the talaq to divorce his wife. JAG said the husband's right to divorce has further increased but the wife's right remains unchanged. [Section 52(1). Fasakh divorce allowed women 12 "conditions husbands don't fulfil to get the court to consider telling them to free their wives. Now they [men] get those 12 conditions as well!"⁶³]
5. A husband can now get a court order to prevent or restrain his wife from disposing her property even though under the hokum syara (Islamic laws), the wife has no responsibility to provide maintenance. JAG described this amendment as 'gross, unbelievable and unjust' as the husband has no right over his wife's property but the wife has right[s] over her husband's property in respect of maintenance for herself and their children. [Section 107A]"⁶⁴

JAG position on IFL Bill

JAG's policy action against the IFL Bill was multi-pronged and had to adapt to the changing situation as the adoption of the IFL-FT Bill proceeded. Their aim subsequent to the adoption of the Bill in parliament, but before its adoption at the senate, was for the Bill to "be withdrawn from being passed in the Dewan Negara [Senate] by Thursday [22 December 2006]"⁶⁵ and reviewed. In order to encourage the withdrawal of the Bill JAG "handed over a copy of the[ir] memorandum to every woman senator and some of their male counterparts"⁶⁶ the week before the Bill was to be voted on at the Senate. This resulted in women senators writing a letter to the government requesting a withdrawal and review of the Bill. The papers reported that this letter was as a result of the JAG memorandum.⁶⁷ JAG's memorandum to the Senators is publicly

⁶² See: Najiah Najib, 'Women senators to debate Bill in Parliament today', The Malay Mail, 22 December 2005

⁶³ Marina Mahathir, Columnists, Musings, 'Ignominious end', The Star, 28 December 2005

⁶⁴ Beh Lih Yi, 'Withdraw "discriminatory" bill, urge women's groups', Malaysiakini, 20 December 2005, available at <http://www.malaysiakini.com/news/44792> (accessed March 2008)

⁶⁵ Beh Lih Yi, 'Withdraw "discriminatory" bill, urge women's groups', Malaysiakini, 20 December 2005, available at <http://www.malaysiakini.com/news/44792> (accessed March 2008)

⁶⁶ Beh Lih Yi, 'Withdraw "discriminatory" bill, urge women's groups', Malaysiakini, 20 December 2005, available at <http://www.malaysiakini.com/news/44792> (accessed March 2008)

⁶⁷ Najiah Najib, 'Women senators to debate Bill in Parliament today', The Malay Mail, 22 December 2005

accessible.⁶⁸ The day before the proposed adoption of the Bill, Wednesday 21 December 2005, SIS attended Parliament and spoke to the media. Zainah Anwar said the Bill was discriminatory and “against Prime Minister Abdullah Ahmad Badawi’s promises”.⁶⁹

The Bill was, however, passed on Thursday 22 December so JAG’s aims shifted to (1) non-implementation of the adopted Bill either by the government not gazetting it or by the King (agong) refusing to give his assent to it, (2) the suspension of the application of similar laws in states outside the FT, (3) seeking a new model Muslim family law that would be adopted subsequent to full consultations on the matter in a Parliamentary select committee on Islamic family law. As will be seen below, they succeeded in (1), failed in (2) and consultations proposed in (3) were carried out but under the Attorney General’s chambers not in parliament.

JAG wanted to ensure that the Bill was not gazetted⁷⁰ and therefore not enforced.⁷¹ They added that “[T]here is precedent for this. The Domestic Violence Act was not gazetted for two years after it was passed by Parliament”.⁷² With this request came the threat that they would otherwise “petition the king not to give his assent to the bill. By refusing assent the king can delay the bill for only 30 days, after which it becomes law automatically, but such a move would seriously embarrass the government”.⁷³ The King needs to sign newly amended laws to bring it into force, but this is considered a formality. They further appealed that the Government “suspend the implementation” of the Bill “for the States which have adopted it”, calling for “existing

⁶⁸ Memorandum to Ahli Dewan Negara to Review the Islamic Family Law (Federal Territories) (Amendment) Bill 2005, Submitted by the Joint Action Group on Gender Equality (JAG), 8 December 2005, <http://www.sistersinislam.org.my/memo/08122005.htm> (accessed March 2008)

⁶⁹ Beh Lih Yi, ‘Gov’t to press ahead with controversial family law bill’, *Malaysiakini*, 21 December 2005, available at <http://www.malaysiakini.com/news/44850> (accessed March 2008)

⁷⁰ Judith Loh-Koh, ‘No good rationale for Bill’, *The Star*, 28 December 2005, p. 28

⁷¹ Rose Ismail, Comment, ‘A setback for Muslim women’, *New Sunday Times*, 25 December 2005, p. 21. See also Zainah Anwar in ‘The Sunday Interview’, *New Sunday Times*, 1 January 2006

⁷² Marina Mahathir, Columnists, Musings, ‘Ignominious end’, *The Star*, 28 December 2005

⁷³ Baradan Kuppusamy, ‘Outraged feminists move against new law on divorce, polygamy in Kuala Lumpur’, *South China Morning Post*, 27 December 2005

1984 Islamic Family Law”⁷⁴ to remain in force in the mean time. Additionally JAG sought “a new model Muslim family law capable of dealing with changing realities”⁷⁵ and “based on principles of justice and equality”.⁷⁶ The proposal was that “Parliament establish a select committee on Islamic family law to obtain feedback from women on their experiences with the Syariah system”.⁷⁷

JAG later welcomed “the promises by the Government for a total revamp of the Islamic family law, Islamic law making system and syariah system in this country” but remained concerned about “whether it will be met by swift action”.⁷⁸ ‘Swift action’ has been noticeably absent and since early 2006 the situation has been in limbo. Though consultations headed by the Attorney General were held with a number of parties, including SIS and other JAG actors, between 2006 and 2007, as of March 2008 no revised Bill has yet be presented by the government.

Media Opposition Campaign

JAG and particularly SIS actions created an enormous media frenzy. Letters published in the media denounced the Bill as “a gross violation of the basic principles of democracy”,⁷⁹ evidence of a “dictatorial style”⁸⁰ by the government, against “social justice and democratic principles”,⁸¹ “completely against the fundamental tenets of Islam”⁸² and as a chilling “setback for Muslim women and all Malaysians”.⁸³ They also denounced “Nazri [Minister in the PM’s office] and all the male chauvinists who

⁷⁴ Zainah Anwar, as quoted in ‘The Sunday Interview’, New Sunday Times, 1 January 2006

⁷⁵ Rose Ismail, Comment, ‘A setback for Muslim women’, New Sunday Times, 25 December 2005, p. 21

⁷⁶ Zainah Anwar, as quoted in ‘The Sunday Interview’, New Sunday Times, 1 January 2006

⁷⁷ Rose Ismail, Comment, ‘A setback for Muslim women’, New Sunday Times, 25 December 2005, p. 21

⁷⁸ Zainah Anwar, speaking for JAG, reported in: ‘Move fast on Act, say women, They want unfair law amended soon’, Star, 24 December 2005

⁷⁹ Ng Tze Yeng, ‘Family law bill a gross violation’, Malaysiakini, 23 December 2005, <http://www.malasiakini.com/letters/44929> (accessed August 2007)

⁸⁰ Ng Tze Yeng, Opinion, ‘Forcing the vote through is not right’, The Star, 24 December 2005

⁸¹ Alina Rastam, Kuala Lumpur, ‘A regressive move’, New Straits Times, 27 December 2005

⁸² F. Azizan, Kuala Lumpur, Opinion, ‘Family Law Bill unfair to women’, The Star, 24 December 2005

⁸³ Rose Ismail, Comment, ‘A setback for Muslim women’, New Sunday Times, 25 December 2005, p. 21

bulldozed this law through Parliament by bullying⁸⁴ and “the ugly fact the government of this country has been directly instrumental in pushing this bill through parliament”.⁸⁵ The “avalanche of protest from civil society groups and ordinary citizens”⁸⁶ was played out in the media for several months. AFP noted surprise at the tone of the letter pages “in the usually tightly-controlled media” and the shape of “open opposition”⁸⁷ that this campaign had taken.

The government reaction was disparate and somewhat confusing. Mohd Nazri Abdul Aziz and Sharizat Abdul Jalil insisted that the Bill had to be voted for and adopted as scheduled, the latter reportedly stating “no matter what, we must pass the bill, that’s our system”.⁸⁸ Despite Nazi noting that senators were free to debate the matter, he argued “let’s pass it first then the bill can come back as [an] amendment on the disputed clauses”.⁸⁹ For good measure he added that “Women can’t just say the old law was good and the new one is not. That is being too emotional.”⁹⁰ The position of Sharizat Abdul Jalil was hard to follow. She insisted that the law would be amended and the system totally revamped, but only after the IFL-FT Bill was adopted.⁹¹ She claimed her Ministry would speak to all the Rulers and change the mindset of the Syariah judges in order to safeguard women’s rights.⁹² She nevertheless acknowledged that the Bill was defective⁹³ and claimed “her ministry had objected to

⁸⁴ MAM, ‘The men ought to be ashamed’, *Malysiakini*, 30 December 2005

⁸⁵ Lilian Tan, ‘Don’t be fooled, Muslim women’, *Malysiakini*, 30 December 2005

⁸⁶ AFP, ‘Fury in Malaysia over Islamic bill on polygamy, divorce’, 29 December 2005

⁸⁷ AFP, ‘Fury in Malaysia over Islamic bill on polygamy, divorce’, 29 December 2005

⁸⁸ Beh Lih Yi, ‘Gov’t to press ahead with controversial family law bill’, *Malysiakini*, 21 December 2005, available at <http://www.malysiakini.com/news/44850> (accessed March 2008)

⁸⁹ Beh Lih Yi, ‘Gov’t to press ahead with controversial family law bill’, *Malysiakini*, 21 December 2005, available at <http://www.malysiakini.com/news/44850> (accessed March 2008)

⁹⁰ Datuk Dr Abdullah Md Zin, Minister in the PM’s Department (Religious Affairs), as quoted in ‘The Sunday Interview’, *New Sunday Times*, 1 January 2006

⁹¹ Chok Suat Ling, ‘Islamic Family Law Bill passed’, *New Straits Times*, 23 December 2005, p. 12

⁹² Chok Suat Ling, ‘Islamic Family Law Bill passed’, *New Straits Times*, 23 December 2005, p. 12 and Sa’odah Elias and Ian McIntyre, ‘Sharizat: PM also agreed to Syariah revamp’, *The Star*, 23 December 2005, p. 2

⁹³ Sa’odah Elias and Ian McIntyre, ‘Sharizat: PM also agreed to Syariah revamp’, *The Star*, 23 December 2005, p. 2

almost all the clauses in the Bill, more than those raised by the NGOs in their memorandum to her”.⁹⁴

Government action in Senate: A Stillborn law

The media frenzy and the JAG memorandum to the female senators had its desired effect and created uncertainty around the smooth passage of the Bill through Senate. Dr Abdullah Mohd Zain – the Minister in the PM’s Department in charge of religious affairs – held a briefing for senators on Tuesday 20 December 2005 urging senators to adopt the Bill and allow changes to be made later on.⁹⁵ The government acknowledged on the same day that women senators from BN (Barisan Nasional) and Parti Islam Se-Malaysia (PAS, a major opposition party) had stated “their objections on several of the controversial amendments which they felt were unjust towards Muslim women”⁹⁶ and had asked for the Bill to be retracted.⁹⁷ The government reaction was to build up its charm offensive and threaten to invoke the whip. Further briefings were held and it was clear that the matter had triggered the attention of the Cabinet and PM. Minister Mohd Nazri Abdul Aziz held a briefing for the senators on Wednesday 21 December 2005 at the request of the cabinet and threatened to invoke the whip on the women senators should they vote against the Bill.⁹⁸ This was further followed by yet another meeting between the senators and Sharizat Abdul Jalil the following day. In the final analysis, the government authorities invoked the whip and pushed the Bill through unanimously on the last day before the house adjourned on 22 December 2005, despite dramatic opposition and objections to the whip being

⁹⁴ Sa’odah Elias and Ian McIntyre, ‘Sharizat: PM also agreed to Syariah revamp’, The Star, 23 December 2005, p. 2

⁹⁵ This was reported by one of the senators to Suhaini Aznam and A. Letchumanan, ‘Women protest family law Bill’, The Star, 21 December 2005, p. 3

⁹⁶ According to Minister Mohd Nazri Abdul Aziz, reported in: Beh Lih Yi, ‘Gov’t to press ahead with controversial family law bill’, Malaysiakini, 21 December 2005, available at <http://www.malaysiakini.com/news/44850> (accessed August 2007). Other reports say that 19, not 16, women senators had signed the letter. See: Najiah Najib, ‘Women senators to debate Bill in Parliament today’, The Malay Mail, 22 December 2005

⁹⁷ According to Minister Mohd Nazri Abdul Aziz, reported in: This week’s round-up, ‘Controversial Bill passed’, Sunday Mail, 25 December 2005

⁹⁸ Sa’odah Elias and Ian McIntyre, ‘Sharizat: PM also agreed to Syariah revamp’, The Star, 23 December 2005, p. 2

used on a non-national security⁹⁹ issue. The media reported that the four hour debate on the matter in senate “was charged with emotion”¹⁰⁰ as 12 women senators had “the opportunity to vent their objections to five clauses in the Bill”¹⁰¹. The 12 voted for the Bill under protest¹⁰² and the Bill was adopted unanimously. The 7 PAS women senators had avoided the drama. “Curiously, none of the PAS women senators who had joined their Barisan Nasional counterparts in opposing the amendments turned up for the debate and vote.”¹⁰³ One Senator, Dayang Mahani Ahmad Raffae, admitted to crying when she saw the Bill and stated that she was going to vote for the Bill “‘against her conscience’. She apologised to her daughter and women in general.”¹⁰⁴ She added “‘I give my support on condition that the amendments will be taken into account’”.¹⁰⁵ Another senator added “‘Sixty per cent of the population are Muslim Malays, of whom half are women,’ she said. ‘Yet the bias against women is well known.’”¹⁰⁶

The government tried its best to appear to come out of this political battle unscathed. “After the sitting, a beaming Minister in the Prime Minister’s Department Datuk Seri Nazri Aziz emerged from the House to take a call from Prime Minister Datuk Abdullah Ahmad Badawi. ‘He is very concerned about women,’ Nazri said.”¹⁰⁷ Nazri had admitted that if the Bill hadn’t gone through “‘it would have meant trouble for me.’”¹⁰⁸ Other reports also tried to wash away the responsibility of the PM. “Sharizat said Prime Minister Datuk Seri Abdullah Ahmad Badawi agreed that the entire

⁹⁹ Suhaini Aznam, ‘Bill ignites battle of the sexes’, Sunday Star, 25 December 2005, p. 17

¹⁰⁰ ‘Debate charged with emotion’, New Straits Times, 23 December 2005

¹⁰¹ Suhaini Aznam, ‘Women senators unhappy, They voted under protest for Islamic Family Law Bill’, The Star, 23 December 2005

¹⁰² Suhaini Aznam, ‘Women senators unhappy, They voted under protest for Islamic Family Law Bill’, The Star, 23 December 2005

¹⁰³ Suhaini Aznam, ‘Bill ignites battle of the sexes’, Sunday Star, 25 December 2005, p. 17

¹⁰⁴ ‘Debate charged with emotion’, New Straits Times, 23 December 2005

¹⁰⁵ Suhaini Aznam, ‘Women senators unhappy, They voted under protest for Islamic Family Law Bill’, The Star, 23 December 2005

¹⁰⁶ Suhaini Aznam, ‘Women senators unhappy, They voted under protest for Islamic Family Law Bill’, The Star, 23 December 2005

¹⁰⁷ Suhaini Aznam, ‘Women senators unhappy, They voted under protest for Islamic Family Law Bill’, The Star, 23 December 2005

¹⁰⁸ Suhaini Aznam, ‘Bill ignites battle of the sexes’, Sunday Star, 25 December 2005, p. 17

implementation of Syariah laws need to be reviewed.”¹⁰⁹ The day after the Bill’s adoption at Senate, the PM was reported to have said that the Cabinet had decided that amendments to the IFL-FT Bill “could still be made to rectify any shortcomings”¹¹⁰ He apparently “acknowledged the fears expressed by some women that the Bill threatened their rights as spouses” and stated “that there was a need to fine-tune and streamline the Syariah law to ensure equality and justice prevailed”.¹¹¹

As soon as the Bill got through, government attentions shifted to making the best out of the political chaos and rescuing the reputation of Sharizat Abdul Jalil. Hours after the Bill was adopted she reportedly stated that she would “demand that all objections (to the Bill) be adopted”.¹¹² The NGOs and other observers, however, rebelled even more loudly. One of the most scathing attacks was by Marina Mahathir, the daughter of the former PM. Asking how the government could admit to passing “a law that was unjust and discriminatory to half the population” she asked How could this have happened? ... All because they wanted to keep a promise to standardise the Islamic family laws? Does that make sense? ... If they knew it was discriminatory to women, how could the Ministry [of Women, Family and Community Development], set up to ensure that women are treated justly in this country, have let it pass?¹¹³ The media coverage continued with stories of “the first casualties”¹¹⁴ of the Bill that had to be picked up by SIS.

Already on 4 January 2006, Cabinet was to discuss the new Bill, but decided to defer the discussion as it had only received notes on the matter that same day from the Women, Family and Community Development Ministry and the Attorney-General’s Chamber. However, Shahrizat was unable to attend that Cabinet meeting as, rather

¹⁰⁹ Chok Suat Ling, ‘Islamic Family Law Bill passed’, New Straits Times, 23 December 2005, p. 12

¹¹⁰ Sa’odah Elias and Ian McIntyre, ‘Unfair clauses in family law Bill will be rectified’, The Star, 23 December 2005, p. 1

¹¹¹ Sa’odah Elias and Ian McIntyre, ‘Sharizat: PM also agreed to Syariah revamp’, The Star, 23 December 2005, p. 2

¹¹² ‘Shahrizat to meet Jakim over Bill’, Sunday Star, 25 December 2005, p. 12

¹¹³ Marina Mahathir, Columnists, Musings, ‘Ignominious end’, The Star, 28 December 2005

¹¹⁴ AFP, ‘Fury in Malaysia over Islamic bill on polygamy, divorce’, 29 December 2005

conveniently perhaps, she had left for pilgrimage of Mecca.¹¹⁵ Finally on 12 January 2006, despite Shahrizat still being in Mecca, Cabinet decided not to gazette the controversial Bill. The Prime Minister had reportedly called for a round of discussions “with the possibility of amending the Act.”¹¹⁶ Datuk Seri Nazri Aziz said that the PM wanted “unity” and for NGOs to help “present a united front to overcome the controversy”.¹¹⁷ From Mecca, Shahrizat passed the responsibility over to the religious authorities claiming that the ulama must work to explain the benefits of the controversial Islamic Family Law ... the ulama were the experts in syariah and in the end they should be the ones to explain any ambiguity in the law. ‘My ministry has no expertise. We receive any complaint and we hand it over to the Malaysian Islamic Development Department (Jakim)’.¹¹⁸

What has happened since is that the PM asked the Attorney General to take the lead in holding separate consultations both with regards to the Islamic Family Law Act and Law Reform Act. The parties involved in consultations regarding the IFL included Jakim and SIS. The rounds of talks ended in 2007, but no decision has been forthcoming to date. It is expected that the government chose not to present these pieces of controversial legislation until after the general elections that were held in March 2008.

¹¹⁵ Jane Ritikos, ‘Discussion on Islamic Law Bill deferred’, *The Star*, 5 January 2006

¹¹⁶ Abdul Razak Ahmad and Deborah Loh, ‘Islamic Family Law Act on Hold’, *New Straits Times*, 12 January 2006, p. 1

¹¹⁷ Abdul Razak Ahmad and Deborah Loh, ‘Cabinet waits for Shahrizat’, *New Straits Times*, 12 January 2006, p. 4

¹¹⁸ Openg Onn, ‘Ulama Urged to Explain Benefits of Islamic Family Law’, *Bernama*, 15 January 2006 available at <http://www.bernama.com/bernama/v3/news.php?id=175596> (accessed March 2008)

5. Policy Assessments and Implications

Policy Context

The difficult environment for impacting personal status laws in Malaysia is aggravated by the fact that all draft legislation is considered an Official Secret and protected as such until the point at which it is presented by the government for adoption. Access to draft laws in such circumstances is therefore difficult and can only be shared in confidence. This compounds the difficulties facing SIS and other civil society actors trying to lobby for fair laws for women.

A mismatch of policy spheres?

The policy community that SIS seeks to influence is the federal governmental scene. However, the government's own calculations regarding Muslim personal status law is heavily determined by two things - firstly its perception of the position of the sultans and the *ulema* (Muslim doctors in law),¹¹⁹ and secondly the manoeuvrings of the opposition, particularly the Islamist opposition. SIS is not in the position to engage or influence these two spheres, and herein lies its weakness. It is neither able to seriously reach the state levels outside the Federal Territories nor challenge the claims of the opposition parties or *ulema* that they are out of touch with Malay women at the grassroots. Despite this handicap, SIS has been very successful in channelling media attention to the injustices it perceives regarding Muslim personal status law. "Generating public outrage"¹²⁰ is how Zainah Anwar describes it. It has a recognisable voice in the governmental and civil society space and that voice receives admiration by both its supporters and opponents. Of course this mismatch nevertheless has implications with regards to the intra-governmental machinery in Malaysia, creating a hierarchy within of untouchable 'Islamic issues' over which only certain voices are engaged and tolerated.

With the increase in conservative political forces in Malaysia, a shift in SIS strategy regarding its membership may be one way of addressing this policy sphere mismatch.

¹¹⁹ It is not that SIS refuses to engage with the *ulema*, for example, it has taken the opportunity to seek out friendly voices. Zainah Anwar gives the example of inroads developed since 2006 with the Mufti of Terengganu, the Mufti of Perlis and the former Deputy Mufti of Sarawak. Interview with Zainah Anwar, 23 February 2008

¹²⁰ Interview with Zainah Anwar, 23 February 2008

The recruitment of a younger generation of, especially non-urban, Malay, Muslim champions is becoming all the more necessary. More members and activities outside the Federal Territories will make SIS better able to engage with women at the grassroots. As one seasoned activist commented, using the example of Malaysia's Trade Unions, "a mass movement is not necessary, but it helps". (Interview with NR, 17 April 2007) Though SIS is clearly not a political party, it would benefit from mimicking the strategies of the political parties in this regard. This would firstly be so because of its own objective of creating public awareness of its views on women's rights, and secondly because of the need to acknowledge the extent of the political outreach and welfare activities carried out by political parties such as UMNO and PAS for women at the grassroots. (Interview with Nurul Izzah Anwar, 29 August 2007) More relevant though, is that this is the methodology of NGOs at the other end of the spectrum on the rights of Muslim women in Malaysia, notably Jamaah Islah Malaysia (JIM) and the Muslim Youth Movement of Malaysia (ABIM), which have become "more evidently politicised"¹²¹ despite a formally non-partisan position.¹²² At the time being SIS largely relies on lobbying largely through the mouthpiece of the media in the Federal Territories and sometimes the international media. Though its efforts to access the Malay media have increasingly yielded results, arguably it needs to do even more to reach out beyond circles that are English-speaking, KL-based and non-Muslim. This is because "it is the common people who really would benefit from their issues. There is no point of trying to influence the key people when the common people do not understand what they are doing". (Interview with NR, 17 April 2007) Despite this, SIS is given credit for its media presence even by those who are sceptical of its direction. "I take my hat off to them in their media work", says one interviewee. (Interview with Pawancheek Marican, 25 February 2008). Another adds, SIS has good media support and some other women's NGOs are not as eloquent as Zainah Anwar. She is impressive. But although SIS generally does good work, especially for women who have problems in Sharia courts, in Malaysia SIS is not very visible in various parts of the community and especially in rural areas. Many view SIS very negatively. Why do they attack issues dear to views of Muslims? The blame should not be on religious authorities alone, there are also a lot of government

¹²¹ Saliha Hassan, 'Islamic non-government organisations' in *Social Movements in Malaysia, From moral communities to NGOs*, Meredith L. Weiss and Saliha Hassan, Eds, London, Routledge Curzon, 2002, p. 104

¹²² See ABIM, *Spotlight: Pray and Vote Wisely*, <http://www.abim.org.my/content/view/184/25/> (accessed March 2008)

restrictions. They are smart but inconsistent. (Interview with Nurul Izzah Anwar, 29 August 2007)

Outreach

Outreach, though, will not come easily. Most of those criticising SIS for lack of outreach at the grassroots, themselves acknowledge that it will require much investment and commitment for SIS to win allies in the hinterland, let alone create mass mobilisation and awareness. One such example comes from this interviewee I think SIS really needs to look at their strategy and have more impact on the grassroots women who are more affected by their work. They need to engage more and make themselves more relevant. The public needs to know them and understand what they are doing. But their public image is not so good. (Interview with WY, 5 March 2007)

This engagement is necessary to enable SIS to come out of its alleged “isolation” (Interview with HU, 5 February 2007).

SIS strategy is under review in this regard. Since 2007 it has been trying to “build up critical voices at the grassroots” through its legal training. (Interview with Zainah Anwar, 23 February 2008) These trainings aim to empower women regarding the legal rights of women and how to respond effectively to discrimination. The objective is for the trainees to be able to advocate alone at the grassroots and build their own advocacy groups - not linked with SIS. SIS encourages trainees to seek out justice from the Bait-ul-mal,¹²³ members of parliaments and government officials. “Criticism should not just come from us”. (Interview with Zainah Anwar, 23 February 2008)

Framework

Another way of assessing this outreach dilemma is to consider more carefully the priorities and frameworks of SIS. Which framework does SIS primarily rely on in order to assert its claims - Islam or feminism and human rights? If the priority is to “speak on

¹²³ Bait-ul-Mal are the religious institutions charged with receiving the 2.5% alms of Muslims and distributing them to charity. In Malaysia this is under the direction of the state machinery. Article 97(3) of the Malaysian Constitution stipulates “If in accordance with State law or in respect of the Federal Territories of Kuala Lumpur and Labuan, in accordance with federal law any Zakat, Fitrah, Bait-ul-Mal or similar Islamic religious revenue is raised, it shall be paid into a separate fund and shall not be paid out except under the authority of State law or federal law, as the case may be.”

behalf of Muslim women” with credibility (Interview with HU, 5 February 2007), then outreach to the masses has to proceed with some urgency. If, however, its objective is to “understand Islam from a rights perspective”,¹²⁴ then its position would be based on human rights principles, hence its outreach objective would primarily be for the purpose of reaching women who need their assistance for empowerment and education on their rights. If SIS chooses to prioritise Islamic sources, then it invites challenge by Muslim leaders and political parties as to what credibility it enjoys for this assertion. Furthermore, a straight prioritisation of Islamic sources limits the scope of some of the issues that SIS fights for, such as polygamy. As one critic pointed out, “looking at SIS’s campaign it seems that SIS wants it [polygamy] banned but since they can’t have it that way they try to tighten the laws.” (Interview with MI, 13 April 2007) Another used the example of SIS arguing for inter-religious marriage to be available both to Muslim men and women, but “This does not exist in Islam”. (Interview with NQ, 4 April 2007) It is statements by SIS that “Our mission is to promote an awareness of the true principles of Islam”, (SIS website <http://www.sistersinislam.org.my/mission.htm>, accessed February 2008) invites precisely such challenges. Some even go so far as to argue that the whole direction of SIS work undermines the religious fabric of Malaysian society.

Well, in an indirect manner SIS is distorting faith and may even erode public’s belief in the ulema. ... They only want to attack authority including Jakim, Syariah Judiciary and the Mufti. ... They claim that they fight for the rights of Muslim women. But their approach and thinking are not based on Islam. They don’t want to refer to religious scholars. They only refer to current opinions and their teachers in the west. ... It does look that they are sincere in their fights but we cannot accept their method. (Interview with HN, 12 March 2007)

The middle ground of arguing for the rights of Muslim women instead leaves the options open of on what basis arguments need to be justified, which principles are drawn on and which option is taken in any particular case. The three objectives of

¹²⁴ The title of the short international course ran by SIS in August 2006. See Sisters in Islam, Empowering Voices for Change, Annual Review, 2006, Selangor, SIS, 2007, p. 52 and interview with PM, 15 September 2007

SIS, as given on its website, allow flexibility on these questions of priority, scope and method:

- To promote and develop a framework of women's rights in Islam, which takes into consideration women's experiences and realities;
- To eliminate injustice and discrimination against women by changing practices and values that regard women as inferior to men;
- To create public awareness, and reform laws and policies, on issues of equality, justice, freedom, dignity and democracy in Islam. (SIS website <http://www.sistersinislam.org.my/mission.htm>, accessed February 2008)

Regardless of the priorities of SIS, though, its impact on government policy will be significantly determined by the extent to which SIS is assumed to be speaking for the masses, this determining the political weight of its message. Also regardless of whether SIS is arguing for Muslim women or empowering them, whether it is using a human rights or feminist framework or Islamic framework; in any case its target is the cause of Muslim women. For this reason alone, the extent to which they are perceived as being “western feminist middle upper class women who are English speaking and who don't really know about Islam” (Interview with GS, 7 March 2007), damages their credibility and impact.

Perceived Independence

Others argue that the target audience of SIS is not in fact grassroots women but the government. (Interview with ZU, 16 March 2007) Whilst the temptation and risk of politicisation and political co-option is very high in Malaysia, and particularly sharp on questions related to Islam, SIS has managed to maintain its independence. Whilst not political in orientation, SIS has not been negligent of the political context in which it operates. Indeed it is clear from its strategies that it well understands the (unfortunate) politicisation of gender in Malaysia. SIS harnesses political and legal forces in the attempt to impact positive change for women's rights. Its political connections have been used carefully to convey the right signals of legitimacy and support, particularly through the media - particularly its use of “the three daughters of former and present Prime Ministers of Malaysia” – Puan Nori Abdullah, Puan Hanis Husein and Datin

Paduka Marina Mahathir – in opening their International Consultation on Trends in Family Law Reform in Muslim Countries in March 2006.¹²⁵

It is accused of being pro-UMNO and of criticising UMNO policies less than those of opposition parties and particularly PAS, but the reality is that it is evident that it has little affinity with the role assigned women in PAS. Its position, however, may also be influenced by the reality of UMNO's uninterrupted rule since independence as well as the political 'stock' from which SIS membership has largely stemmed. It needs to be cautious that the latter two reasons do not unduly compromise its perceived independence. A number of civil society actors do criticise SIS for this. Such accusations in general are rife amongst Malaysian NGOs and they do indeed keep a watchful eye over one another. SIS may benefit from reassessing its overly cautious concerns with any suggestion that it is 'cosying up' with the opposition parties. The criticism that it never opposes UMNO, however, is factually incorrect. By way of example, it has criticised the government over the use of the ISA against the five Hindu Rights Action Force leaders in December 2007,¹²⁶ and of course criticised it for the IFL-FT itself.

The double edged sword of transnational linkages

The transnational dimension to SIS partnerships offers it vision, case studies, networks and international exposure. However, these linkages are wisely downplayed in the public sphere, as it weighs heavily on the image of SIS domestically. Fighting on a feminist agenda already gets SIS labelled as 'western'. Its undoubted human rights activities serve only to add to this label. Added to this is the challenge of linking 'feminist' and 'human rights' to 'Muslim'. Opposition to this is so rife that the right of SIS to claim a 'Muslim' position is widely attacked.

Like most other civil society actors in Malaysia – other than those who are basically GONGOs or political opposition NGOs – SIS is also still largely reliant on 'western' funds for its activities. It is also clear that SIS is known better abroad and within the Federal Territories than elsewhere in Malaysia. Overt knowledge of the international

¹²⁵ Sisters in Islam website, <http://www.sistersinislam.org.my/ifl%20photos.htm> (accessed March 2008)

¹²⁶ SIS website, ISA a disgrace to Islam Hadhari and mockery to democracy, 13 December 2007, <http://www.sistersinislam.org.my/presstatement/13122007.htm> (accessed March 2008)

networks of SIS will therefore not aid its media image domestically. However, detailed knowledge of the experiences of Muslim feminist strategies and successes around the world are indeed valuable to SIS and serve to support its assertions in Malaysia. It is also evident that this makes SIS a more formidable voice to be reckoned with in the eyes of government authorities in Malaysia, and especially the office of the PM. In fact, considering the pan-Islamic 'credentials' of UMNO, as tirelessly pursued in both the ASEAN and Organisation of Islamic Conference (OIC) since the 1990s, it is apt that SIS itself be able to draw on regional and pan-Islamic experiences in its claims. "Muslims here are still more easily swayed when the examples are from other Muslim countries - maybe also by shaming them, showing them how progressive other Muslim countries are." (Interview with ZU, 16 March 2007) The WLUMML network has, quite rightly, not tried to steal the limelight from SIS. The loose, at arms length, network that it offers serves SIS well. In fact, SIS is currently going a step further and setting up an international movement which will network and strategise across a number of countries on issues such as Islamic Family Law.¹²⁷ With SIS setting up its own international movement, sharing strategies based on the learning and insights it has gained in Malaysia over the decades, the question of how its mission will depart from that of WLUMML is yet to be seen.

An image crisis?

Mistrust of SIS is fuelled by ethnic, political and religious factors - especially the latter. Whilst numerous interviewees stated that the uncompromising positions and bluntness of SIS detracts from its ability to impact policy, it is difficult to know what SIS could really do about this. The investment required of it to reach out to the grassroots would require a major commitment and may not pay off for a long time, and a change in its 'tone' could also come with a price. The challenge for SIS is to maintain the eloquence and clarity of its stance whilst softening its image and appealing more to the grassroots. Achieving both requires the skills of a trapeze artist. The internal dynamics of SIS have also been aggravated by a very large staff turnover and its first change in the Executive Directorship due in 2008. SIS needs to be very careful to not lose ground, or be caught off guard, over IFL or other debates in the coming years

¹²⁷ This movement is to be headed by Zainah Anwar, the first Executive Director of SIS. She steps down in 2008 from that position, and Maria Chin Abdullah – formerly of WDC, which is also part of JAG – becomes the second Executive Director.

whilst also seeking to move forward and improve on its domestic image and achievements.

In there for the long-term

SIS, and indeed all feminist Muslim NGPAs, needs to invest patiently for a very gradual long-term impact on policy. Zahara's example of one small victory (*khul* divorce) in Egypt after a century long effort is not extraordinary. Indeed quick victories will likely be followed by adverse reaction and retreat. Effectiveness needs to be considered in the light of hostility to the cause at hand. The impact of SIS needs to be an examination of both the general tone of the national debate on gender as well as specific episodes such as the IFL-FT Act. SIS and other JAG partners have been effective in not allowing Muslim personal status law being bulldozed through, treating women as mere pawns in a wider political battle. JAG and SIS action increased the political cost of a regression in the laws protecting Muslim women through the media uproar they created. "When things happened they were fast to react and people understood what they were trying to say." (Interview with IL, 27 March 2007)

The fact is that there is no concrete evidence just yet of "a real dent or mark in the laws" (Interview with ZU, 16 March 2007), except that the enactment of the IFL-FT Act was halted and consultations opened up, is a note for caution. This is not to downgrade the achievement though. Even one fierce critic acknowledged their achievements by noting that "[I]t is because of the actions of SIS which had made the Prime Minister delay the gazetting of the Act. This has ... disturbed the Attorney General's work who now has to re-look at the law because of insistence SIS." (Interview with HN, 12 March 2007) As of late 2007, consultations led by the Attorney General and including SIS ended, but a new Bill has not yet been presented by the government. It is expected that the government did not want to risk this controversy erupting once again, until after the twelfth general elections of March 2008. However, since the ruling coalition – the Barisan Nasional – lost its two-thirds majority for the first time in its history to a simple majority, it is hard to predict how its response to this shock will play out in terms of the IFL controversy. Added to this is the fact that the former Minister of Women, Family and Community Development, Sharizat Abdul Jalil, lost her Lembah Pantai parliamentary seat to Nurul Izzah Anwar. A new Minister of Women, Family and Community Development was announced on 19 March 2008, Dr Ng Yen Yen. Dr Yen Yen previously served as the Deputy Finance Minister. As a non-

Malay and part of the MCA (Malaysian Chinese Association, a political party in coalition with UMNO in BN), it is difficult to predict how outspoken she is likely to be on the rights of Muslim women. The fact that the previous Malay Muslim incumbent ultimately deferred this cause to the religious authorities, and considering the inter-racial and inter-religious tensions in Malaysian society, does not bode well. She does have a background in women's rights more generally though, for example and serving as Wanita (women's wing) MCA chief.

6. Conclusion

The battle over the claim to speak for religion, women and their rights will not go away. The political currency of religion is only on the rise in Malaysia. Back in 1986 PM Mahathir Mohamad said “[m]isinterpretation of Islam is ... one of the many forms of confusion threatening the Malays today. The challenge is tremendous - the stake survival itself”.¹²⁸ The struggles over religion take legal form in Malaysia and hold serious consequences for women’s rights. Contestation around the rights of Muslim women in Malaysia continues today - having controversially even been described as akin to apartheid by Marina Mahathir, the former PM’s daughter.¹²⁹

SIS knowingly entered this battleground and has fought for a voice ever since. Its tactics, especially regarding personal status laws for women, have primarily been fought in the media and have undoubtedly been successful. The ‘success’ in the IFL saga is that the 2005 IFL-FT Act has not been enacted since, but of course it could be at any time when and if the political calculation of its price shifts. In the meantime, SIS continues to keep “the debate alive ... SIS keeps on reminding people that there has to be debate and it has to go on” (Interview with YA, 12 April 2007).

¹²⁸ Mahathir Mohamad, Prime Minister of Malaysia, statement in 1986, quoted in Michael G. Peletz, ‘Sacred Texts and Dangerous Words: The Politics of Law and Cultural Rationalization in Malaysia’, in 35.1 *Comparative Studies in Society and History* (1993), p. 66

¹²⁹ Jonathan Kent, Malaysia women ‘suffer apartheid’, BBC News, <http://news.bbc.co.uk/2/hi/asia-pacific/4784784.stm> (accessed March 2008)

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