

## 2c: Women

### Preamble

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This proposal addresses the challenges that are faced by women in Malaysia regardless of whether their allegiance to the country is by birth or by marriage. Opportunities for women empowerment are inadequate in terms of legislation and constitutional reform to address gender equality in the public and private spheres.

The biggest challenge that women face in Malaysia is the patriarchal cultural narrative that limits opportunities for girls and women in the workplace, and political participation, as well as sidelines the needs of women and girls in healthcare and safety against gender-based violence. As most policies are made by men of the same age group, i.e. above 50 years old, we see the disparity of regulations that protect women and the lack of discourse in making decisions to empower women.

The proposal addresses the main corners where women are below the Malaysia Gender Gap Index, in areas concerning economic participation and opportunity, health and survival and political empowerment. The proposal will address these areas under the following themes: domestic violence, sexual and gender-based violence; systemic and comprehensive healthcare for women; women's participation in politics and public life, including national machinery and policies for advancement of women; and child/underage marriage.

When the population of women in Malaysia is almost at 50%, according to 2020 official statistics, it is in the duty and interest of the decision makers to be gender inclusive to increase women in decision-making levels to address the other gaps for women and eliminate the current culture of associating and upholding traditional gender roles.

### I: Constitutional & Legislative Reform

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Malaysia is a signatory to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). Apart from some remaining reservations, the government has pledged commitment to acknowledge and

adhere to the Convention's Articles, in order to safeguard women's rights. However, as CEDAW has yet to be fully incorporated into the national legal system, its provisions are not enforceable in national courts. There is concern that there is no legal definition of "respect for human rights", and the rule of law is regarded as the core objective in this policy area. Proposals relating to deaths in custody, torture, the death penalty and oppressive laws are symptoms within a broader institutional framework which fails to recognise the inherent dignity and the equal and inalienable rights of the People. Reforming the prison system, drug policies and legal aid, as delineated below, are some structural attempts towards creating a more just society. To safeguard human rights, and to establish accountability of government leaders wielding public power, Malaysia must function within a system of certain and foreseeable law, where everyone has the right to be treated by all decision-makers with dignity, equality and rationality and in accordance with the laws, and to have the opportunity to challenge decisions before independent and impartial courts through fair procedures. Although the basic concept of equality before the law and equal protection of the law is provided for in the Federal Constitution, there is no practical obligation on the government to ensure that this principle is realised. Article 1 of CEDAW addresses discrimination, yet the courts give a narrow interpretation of the prohibition of gender-based discrimination under Article 8 (2) of the Federal Constitution, restricting it to acts committed by the authorities and not protecting women against discrimination by private actors, such as private employers. The provisions of CEDAW thus need to be incorporated into the domestic legal system and a CEDAW-compliant gender equality law needs to be enacted.

## **1. Introduce anti-stalking laws.**

**(Rusni Tajari, Women's Aid Organisation (WAO), Proposal 2C-1)**

A 2020 study by WAO and market researcher Vase.ai found that over a third of Malaysians have experienced stalking that caused them to feel fear. In Malaysia, stalking is not yet recognised as a crime, and there is no legal provision for stalking survivors to get protection and restraining orders. There is an existing comprehensive push to make stalking a crime in Malaysia, and work on amending the Penal Code and Criminal Procedure Code started in 2020, but more needs to be done to expedite the process.

- i. Enact anti-stalking offence in the Penal Code to define and criminalise stalking.

- ii. Introduce a restraining order on stalkers in the Criminal Procedure Code and make protection available to survivors

## **2. Amend the Employment Act 1955 to comply with the ILO and CEDAW Concluding Observations**

The Employment Act 1955 must be in compliance with the International Labour Organization (ILO) Convention 100 and the CEDAW Concluding Observations of Malaysia in 2018 to reduce the gender gap. Efforts must be made to foster a more gender equal workplace and encourage fathers and mothers to equally share in care and domestic responsibilities.

- i. Introduce at least seven work days paternity leave in the private sector.
- ii. Extend paid maternity leave in the private sector from 60 days to 90.
- iii. Introduce prohibitions against discrimination based on gender, religion, race and disability status for employees and job seekers.
- iv. Introduce the right to request for flexible working hours and be protected from discrimination that may arise as a consequence of doing so.
- v. Strengthen protection against sexual harassment in the Employment Act, in addition to passing an independent sexual harassment act.
- vi. Officially define discrimination to cover direct and indirect forms.
- vii. Include positive duties for employers, including but not limited to: awareness-raising efforts and preventive measures to eliminate gender stereotyping and gender ideologies at the workplace; provision of day care facilities; transportation for night work; programmes for re-entry after childbirth; access to facilities and reasonable accommodations for persons with disabilities; and temporary special measures to give an advantage to workers on the basis of gender, disability, or minority or other disadvantaged status.
- viii. Introduce the principles of equal pay for work of equal value and equal opportunity for promotion as provided for in the ILO Convention 100.  
*(Rusni Tajari, WAO, Proposal 2C-2)*
- ix. Give parents an option to extend paternity leave up to six months.  
*(Badlishah Sham Baharin, GBM/IKRAM, Proposal 2C-3)*

- x. Streamline the Labour Ordinance of Sabah (Sabah Cap. 67) and the Labour Ordinance of Sarawak to have the same provisions as the Employment Act and the suggested amendments as per above.

### **3. Immediately table and enact the Sexual Harassment Bill.**

Existing laws or prohibitions regarding sexual harassment in the Employment Act and the Code of Practice do not sufficiently address sexual harassment in all contexts. A new law is needed to do the following:

- i. Comprehensively define sexual harassment (direct and indirect).
- ii. Expand protections against sexual harassment, and create standards for all organisations and settings.
- iii. Create an oversight mechanism and tribunal to offer redress that is less expensive and burdensome than going through the civil court.

(Rusni Tajari, WAO, Proposal 2C-4)

- iv. Make it a requirement for all public and private institutions to set up an internal special committee to handle reported cases within the organisation.

(Roohaida Othman, IKRAM, Proposal 2C-5)

To promote understanding and gain support for the law, a public awareness campaign on sexual harassment must be conducted at all levels. In schools, it should be done in all languages used in Malaysia, including Bahasa Isyarat Malaysia (BIM).

(Roohaida Othman, IKRAM, Proposal 2C-5)

### **4. Set a timeline to finalise and table the Gender Equality Bill.**

(Rusni Tajari, WAO, Proposal 2C-6)

A Gender Equality law has not been enacted despite the recommendation by the Committee on the Elimination of Discrimination Against Women in its Concluding Observations in 2006. Work on drafting the law began in 2019 but has since stalled.

## II: Domestic Violence & Sexual Gender-based Violence

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Domestic and sexual violence against women and children, already a grave concern in Malaysia, has been exacerbated by the COVID-19 pandemic and movement restrictions. The number of cases reported is merely the tip of the iceberg due to underreporting. The situation is made worse for women who experience discrimination on the grounds of their disability, age, citizenship status and sexual orientation, among others. The marginalisation of women and girls with disabilities is compounded by disability-related factors, such as the need for physical care and support, and limitations in communication with possible sources of help in the case of those who are deaf, blind, have learning or physical disabilities, or both.

Beyond the private sphere of the home, these problems also transpire in the workplace, hence the Employment Act should provide for adequate safeguard measures to protect vulnerable groups.

Victims of domestic and sexual violence face various barriers accessing justice. Despite the existence of legislation that protects them, they are often unaware of their rights and poorly informed of the procedures to accessing justice. Even where the crimes are reported, the cases are poorly handled by the government agencies involved, which tend to work in silos and lack sensitivity when handling victims.

**5. Amend the Domestic Violence Act 1994 to include non-married intimate partners.**

**6. Criminalise marital rape.**

**7. Amend Section 375 on the Penal Code to be gender neutral and to provide comprehensive protection against all form of sexual violence.**

**8. Ensure more governmental consultation and dialogues with women and children non-governmental organisations (NGOs) working on sexual and gender-based violence.**

(Rusni Tajari, WAO, Proposal 2C-7)

- i. Create diverse and meaningful public engagement and consultation to ensure full participation of all persons, including persons with disabilities.
- ii. Create accessible pathways for government stakeholders to improve communication and collaboration with all CSO groups, including the disabled community.

**9. Adopt evidence- and rights-based policy and legislation.**

**10. Allocate annual grants for CSOs that are providing critical services on the ground for women and children.**

Be more proactive in meeting the needs of women and children with disabilities by way of providing encouragement and incentives to these CSOs.

**11. Ensure that women and girls with disabilities have equitable access to protection from all forms of violence on a par with non-disabled women and girls.**

**12. Train government agencies to be more sensitive and professional when interacting with victim-survivors.**

Collaborate with women's rights CSOs who work with victim-survivors, with attention given to women and girls with disabilities.

**13. Collaborate with women's rights CSOs to raise awareness.**

Include awareness of diverse groups, including women and girls with disabilities.

**14. Government agencies should work in an integrated manner to ensure the seamless provision of support for victim-survivors to access their rights.**

Include SOPs for provision of BIM interpreting throughout the support process and for supporting blind victims, victims with learning disabilities, victims with physical disabilities and victims with multiple disabilities.

**15. Develop a public, comprehensive data collection system which includes CSO data.**

(Karen Lai, Women's Centre for Change (WCC), Proposal 2C-8)

**16. Increase the number of permanent officers within the Social Welfare Department to manage cases.**

**17. Increase the number of shelter homes nationwide.**

**18. Organise a campaign to stop domestic violence in all settings.**

(Badlishah Sham Baharin, GBM/IKRAM, Proposal 2C-9)

**19. Increase the training budget to improve police services pertaining to the management and treatment of women who come forward to report crime and those who are placed in custody.**

Address the treatment of women in police custody in the proposed IPCMC, the formation of which has been long demanded by civil society.

**20. Uphold and protect the rights of women and girls with disabilities.**

Tackle discrimination and/or any form of exclusion, oppression or injustice that undermines, in any way, the health, well-being and advancement of women and girls with disabilities.

### **III: Systematic & Comprehensive Healthcare for Women**

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Currently, there is no systematic response mechanism to address domestic violence at the primary healthcare level. Consequently, many survivors who seek care at primary healthcare centres do not receive adequate support.

**21. Institute a systematic healthcare response to domestic violence or gender-based violence.**

- i. Make information on domestic violence easily accessible and available in multiple languages and formats, including audio format, in the waiting rooms and washrooms of Klinik Kesihatan venues and hospitals.

- ii. Require healthcare providers to inquire about the possibility of having experienced domestic violence, when patients present with identifiable symptoms or clinical conditions associated with domestic violence.
- iii. Train healthcare providers to recognise, respond to and refer cases of domestic violence in an appropriate and sensitive manner, including cases involving women and girls with disabilities who might have specific communication needs.
- iv. Establish a referral system for domestic violence at the primary healthcare level.

(Rusni Tajari, WAO, Proposal 2C-10)

## **22. Empower and expand the services of the One Stop Crisis Centre (OSCC) model in hospitals to local health clinics.**

Ensure a victim-survivor-centred response, such as making available BIM interpretation if needed and information in diverse formats, including Braille and audio for blind persons, and translation services.

## **23. Ensure that women and girls with disabilities have access to sexual and reproductive health knowledge and services, on an equitable basis with their peers.**

The information must be available in formats and languages that they can understand.

## **24. Address period poverty by recognising and supporting the bodily autonomy and integrity of women and girls.**

- i. Provide women and girls with access to information and services on sexual reproductive health and rights (SRHR), including information on female hygiene.
- ii. Improve the infrastructure for female hygiene management in public areas including schools to create a safe and clean environment for women and girls.
- iii. Make feminine hygiene products economically accessible.
- iv. To enable effective action, gather gender-disaggregated data to identify groups of women and girls who suffer from period poverty by location, demographics, community groups etc.



- v. Ensure that women and girls can make informed decisions about their bodies, and prohibit non-consensual medical intervention or procedures on bodies of women and girls.

## IV: Women's Political Participation in Political & Public Life

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Women make up almost half the population but only hold 14.9% representation in the Dewan Rakyat. Too few women are in leadership and law-making roles, compared with men. It is important to institutionalise women participation in political and public life.

**25. Develop a strategy to implement and institutionalise a 30% minimum quota for diverse women representation in state- and federal-level decision-making bodies, including the legislature and in the private sector.**

**26. Parliament and state legislature rules should implement a zero-tolerance policy on gender-based violence and discrimination.**

(Rusni Tajari, WAO, Proposal 2C-11)

**27. Actively enable and support marginalised women, namely women and girls with disabilities, in participating in political and public life.**

- i. Empower women to hold positions of responsibility, with influence or decision-making authority, in women's organisations and in the entities of any sector (e.g., as local councillors, senators, ministers, board members, senior executives, managers and advisers). and facilitate the active participation of women and girls with diverse disabilities in decision-making bodies in all sectors.
- ii. Adopt the principle of reasonable accommodation to ensure that they have equitable access to mainstream development opportunities in general.
- iii. Support and facilitate their participation in, and completion, of programmes on literacy, economic empowerment, social progress, culture and sports, and leadership development. This includes

programmes and projects under the auspices of the United Nations Country Team.

- iv. Actively enable and support them to participate in, and fully complete, any internship, apprenticeship, coaching, mentoring and job coach programmes over the course of each calendar year.
- v. Initiate and carry through the implementation of policy and programme measures that specifically foster capability development (including any type of language, literacy, leadership, facilitation, negotiation, strategic advocacy, public speaking and self-empowerment skills development), whose target beneficiaries include women and girls with disabilities.

## V: National Machinery & Policies for Advancement of Women

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In the 26 years since Malaysia has ratified CEDAW, the government has produced only two periodic reports and reviews; for the UN Convention on the Rights of the Child (UNCRC), there has been only one report and review over the same period; and for the Convention on the Rights of Persons With Disabilities (CRPD), there has been no report or review in the 11 years since it was ratified. Without any monitoring mechanisms, Malaysia will not be able to identify and address the needs that are mandated in the Convention. This will affect Malaysia's progress in instilling policies that promote advancement of women into the national machinery.

### **28. Incorporate gender equality mainstreaming and gender-responsive budgeting at all levels of government.**

- i. Institute gender mainstreaming and gender-responsive budgeting into the Twelfth Malaysia Plan and national fiscal policies.
- ii. Incorporate gender responsive-budgeting in economic recovery packages to identify the gendered impacts of the pandemic for targeted and impactful interventions.

### **29. Roll out the National Women's Policy and Women Development Action Plan for 2021–2030.**

(Rusni Tajari, WAO, Proposal 2C-12)

The policy, which will provide a structure and directive for all stakeholders of the women's rights movement to play their role in working together with the government to empower women in Malaysia by providing a safe, lucrative life with equitable and substantive opportunities. The action plan should have an intersectional approach that includes the following actions:

- i. Ensure systematic collection and dissemination of gender-disaggregated and disability status data to implement effective and evidence-based policies.
- ii. Undertake regular gender training across government ministries, with attention to gender-disability intersectionality.
- iii. Set up a multi-ministerial committee and build their capacity to understand their obligations under the ratified treaties.
- iv. Through the same multi-sectoral committee, develop plans to implement the concluding observations of the treaty bodies.
- v. Incorporate international obligations and set up a one-stop centre to compile human rights data into Malaysia's five-year development plans that should take into account the principles laid down in the Sustainable Development Goals pertaining to promoting gender equality and empowerment of women and children.
- vi. Eliminate all gender discrimination in law.
- vii. Lift all reservations to CEDAW.
- viii. Ensure that women's rights are represented in the discussion and implementation of the national agenda on climate change.
- ix. Recognise the multiple discriminations faced by women and girls with disabilities due to gender-disability intersectionality, which are compounded by poverty in many cases.
- x. Facilitate the inclusion of women and girls with disabilities, including via reasonable accommodation and active support for their leadership in policies, programmes and projects, on an equal basis with non-disabled women and girls.

## VI: Women (& Men) In Malaysian Binational Marriages

As a result of gender-discriminatory citizenship laws, Malaysian women did not have equal rights to confer citizenship on their overseas-born children by “operation of law”; instead, they had to go through a process fraught with delays,

repeated rejections without reasons and no guarantee of approval. It took the persistence of several women's rights activists to pursue the issue in the courts before the breakthrough came on 9 September 2021, when the High Court granted Malaysian women equal rights to confer automatic citizenship on their overseas-born children. Although the government is appealing the decision, its motion to stay the application was dismissed on 22 December, which means affected children can now obtain citizenship-related documents. At the time of writing, it is understood that the Court of Appeal would still hear the Government's appeal on March 23, 2022.

Foreign spouses of Malaysian men also face compromised autonomy in the private and public spheres, and are affected economically due to restrictions on their right to work, lack of access to permanent residence and heightened uncertainty of legal status in case of divorce or demise of the Malaysian spouse. There is an increased risk of domestic violence while they are made to be wholly dependent on the Malaysian spouse for their legal and economic status in the country.

### **30. Review citizenship laws, immigration policies and practices that obstruct or impede gender equality and equal rights for women.**

(Melinda Anne Sharlini & Bina Ramanand, *Family Frontiers*, Proposals 2C-13 & 2C-14)

- i. Withdraw the appeal against the 9 September 2021 High Court decision.
- ii. As announced by the Minister of Home Affairs in Parliament on 8 November 2021, and the Law Minister on 15 November, the Government should amend Article 14(1)(b) read with Section 1(b), Part II of the Second Schedule of the Federal Constitution (in accordance with Article 8(2)) to ensure Malaysian mothers can confer their citizenship by operation of law on an equal basis as Malaysian fathers on their children born overseas.
- iii. Amend the Federal Constitution (in accordance with Article 8(2)) to ensure that non-citizen spouses of Malaysian women are entitled to citizenship by registration, similar to non-citizen spouses of Malaysian men.
- iv. Amend the Federal Constitution (in accordance with Article 161A(6)(b)) to ensure that a person will be considered a native of Sabah if they were

- born in Sabah or born to a parent domiciled in Sabah at the time of the birth, not just the father, in the spirit of Article 8(2) on gender equality.
- v. Withdraw reservations to Article 9(2) of CEDAW.
  - vi. Remove the statement of prohibition of employment attached to the Long-Term Social Visit Pass of non-citizen spouses, and the requirement to obtain approval to work from the Immigration department.
  - vii. Allow non-citizen spouses of Malaysians:
    - a) to renew their visa without the presence of their spouse;
    - b) equal rights to work—ensure mandatory employers' EPF contributions are available to working non-citizen spouses, and ensure they have full benefits under SOCSO; and
    - c) equal rights to economic and social services such as opening individual bank accounts, purchasing affordable housing without being subjected to foreign investment directives, and contributing to national funds.
  - viii. Allow separated, divorced and widowed spouses to:
    - a) access permanent residence if they have Malaysian children, and allow them to renew their legal status without the presence of the Malaysian spouse; and
    - b) reside and work permanently and independently of the Malaysian spouse, taking into account the best interest of the children and the family unit.

## VII: Child/Underage Marriage

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**31. Set a firm minimum age limit for marriage across all laws (civil, syariah, native) with no exceptions.**

**32. Revisit the Women Development Action Plan to address child marriage.**