

2g5: Gender

Preamble

This policy area focuses on two key communities, namely the LGBTIQ+ and Malaysian mothers with overseas-born children. It highlights the need for better treatment to be accorded to these groups, by pointing out the gaps in current policies and proposing legal reforms to prevent and eliminate discrimination toward to them.

I: Equal Treatment for LGBTIQ+ community

The LGBTIQ+ community in Malaysia face many unique legal and social challenges that are not experienced by other minority groups due to the politicisation of their lives and very existence. Most of the discrimination against them stems from certain individuals and groups in power, whose rhetoric toward the LGBTIQ+ community has encouraged the rise of an anti-LGBTIQ+ movement among religious conservatives and the political right. The Federal Government endorses and funds rehabilitation camps for conversion therapy, and some state legislators have even initiated laws that criminalise the LGBTIQ+. As a result of such pressure and actions against them, many LGBTIQ+ persons lack access to healthcare, the justice system and even education.

1. Stop all prosecution and initiatives to prosecute LGBTIQ+ persons based on sexual orientation, gender identity and gender expression.

(Arabelle Yong, L-INC Foundation, Proposal 2G5-1)

2. Place a moratorium on laws that criminalise the LGBTIQ+ community.

This will ensure their access to healthcare, justice, and assure them of their personal security and safety, as well as freedom from violence.

3. End all discriminatory speech toward LGBTIQ+ persons.

4. Engage SUHAKAM and LGBTIQ+ human rights groups to address the systemic impact of criminalisation and pathologisation of LGBTIQ+ persons.

(Arabelle Yong, L-INC Foundation, Proposal 2G5-1)

II: Citizenship rights of Malaysian women

Until the 9 September 2021 court ruling stating otherwise, Malaysian women in binational marriages did not have the same right as their male counterparts to confer citizenship on their overseas-born children by operation of law. Hitherto, women were limited by Article 15(2) and its related Second Schedule, which states that citizenship of a person born outside of Malaysia is upon application if their mother is a citizen, whereas Article 14(1)(b) allows such citizenship by operation of law if their father is a citizen.

It also did not help that the application process via Article 15(2) was fraught with delays—ranging between 2 and 10 years merely to receive a response, repeated rejections without reasons and no guarantee of approval. Malaysian women in such circumstances faced a myriad of challenges, including inconsistent bureaucratic requirements during the application process, vulnerability to gender-based violence and compromised autonomy in the public, private and civic spheres.

Although the recent court ruling appears to have put a stop to this injustice perpetrated on Malaysian women, the Government is appealing the decision, and nothing has changed yet in the Federal Constitution.

5. Amend Article 14(1)(b) of the Federal Constitution to ensure Malaysian women can confer citizenship by operation of law on an equal basis as Malaysian men on their children born overseas.

Align it in accordance with Article 8(2), which prohibits discrimination on the basis of gender.

(Melinda Anne Sharlini, Family Frontiers, Proposal 2G5-2)

6. Develop a clear and accessible standard operating procedure (SOP) to enhance reliability and transparency in the processing of citizenship and visa applications for non-citizen children of Malaysians.

The SOP must be made available on the Department of Immigration and National Registration Department's website. It should include a reasonable timeframe until a decision can be expected and detailed procedures to appeal a decision.

7. Allocate resources necessary to process the backlog of citizenship applications within a reasonable amount of time.

8. Allow the submission of citizenship applications at Malaysian missions overseas.

This includes those applying for their children over the age of one year old.

Concluding Remarks

Gender equality has long been a critical issue in Malaysia. Although Malaysia ratified CEDAW and UNCRC in 1995, even after 26 years, little progress has been made to localise the Conventions with regard to LGBTIQ+ and citizenship rights issues for women. The gap between the promise made by the Government via the conventions and the lived realities of the Rakyat must be narrowed immediately.