



**HUMAN RIGHTS COMMISSION OF MALAYSIA
(SUHAKAM)**

**WRITTEN SUBMISSION TO THE COMMITTEE ON THE
CONVENTION ON THE ELIMINATION OF ALL FORMS OF
DISCRIMINATION AGAINST WOMEN (CEDAW)**

STATE PARTY: MALAYSIA

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PART I

Reservations

Malaysia as a member of the Human Rights Council reiterates its position in remaining consistently true to its commitment in upholding its mandate under CEDAW while maintaining its reservations to Articles 9(2), 16(1)(a), (1)(c), (1)(f) and (1)(g).

Article 1: Discrimination against women

The Federal Constitution of Malaysia (Federal Constitution) provides for rights and liberties for all persons, including gender equality and non-discrimination based on gender, as provided under Article 8(2).

SUHAKAM notes the definition of “*discrimination against women*” as provided by Article 1 CEDAW has yet to be fully implemented here. In ***Noorfadila binti Ahmad Saikin v Chayed bin Basirun and Ors [2012]*** the High Court accepted that as part of domestic law, the Government’s commitment, and obligations of their mandate to CEDAW.

SUHAKAM was a member of the Special Project Team (“SPT”) under the Ministry of Women, Family and Community Development (“MWFCD”) in promoting and drafting the Gender Equality Bill in 2019 and we have urged the Government to move forward and legislate the Bill which would promote and legislate for gender equality. In 2023, SUHAKAM was appointed as a member of the SPT for the amendment of the Persons with Disabilities Act 2008 [Act 685]. Among SUHAKAM’s advice to the Government was to include a specific provision on women with disability as provided in Article 6, Convention on the Rights of Persons with Disabilities (CRPD). SUHAKAM supports the recent Federal Court’s decision to strike out the ruling that Section 498 of the Penal Code (“PC”) is unconstitutional, recognising that it violated the principle of equality.

On 2 April 2024, the Human Rights Commission of Malaysia (Amendment) Act 2023 was passed, introducing several significant amendments. Notably, it mandates a quota of 30% women Commissioners and required the appointment of at least one differently abled Commissioner.

Article 2: Measures to eliminate discrimination

Parliament

SUHAKAM lauds the establishment of the Parliamentary Special Select Committee (PSSC) on Women, Children and Social Development in Parliament whereby SUHAKAM's Children's Commissioner serves as *ex-officio*. SUHAKAM Commissioners also serves as the *ex-officio* of the PSSC on Human Rights, Election and Institutional Reform. These important Committees demonstrate positive steps to provide a platform for legislators to discuss issues and reforms to be undertaken to elevate the status and improve support and protection for women, amongst others.

There were issues in relation to unparliamentary conduct by a few male Members of Parliament towards women MPs, wherein sexist remarks were uttered without any remorse or apology despite public uproar. This criticism indirectly creates a patriarchal culture in society, which devalues the function and social level of women. SUHAKAM strongly condemned such behaviour and urged for immediate steps to be taken by the Speaker to reprimand and take action against such behaviour, emphasizing the importance of dismantling patriarchal norms and promoting gender equality.

Women representation in political office is below the level in comparison to many other States. The Government targeted to achieve a minimum 30% women in all areas including leadership and management. It is crucial to enhance women's representation in Parliament. Global Data on National Parliament indicates at present there's 40 female Parliamentarians represented in Malaysian Parliament of which only 30 (13.51%) out of 222 are represented in *Dewan Rakyat* (House of Representatives) and 10 (16.39%) out of 61 are in *Dewan Negara* (Senate). SUHAKAM submits that increasing women's quota from 30% to 50% could enhance gender representation and promote greater gender equality pursuant to Article 8 Federal Constitution (FC), in decision-making processes.

Article 3: The development and advancement of women

Gender equality should be fully accepted, and laws implemented, as required under Goal 5 of the Sustainable Development Goals (SDGs) to enhance the role of women in the economic, social, and political spheres. As the world recovers from the effect of the Covid-19 pandemic, participation of women in social economic development in response to calls for inclusivity is vital.

SUHAKAM recommends the Government to be consistent with the implementation of non-discriminatory policies and laws relating to gender discrimination as enshrined under Article 8 FC.

SUHAKAM applauds the Government's effort to enhance protection for housewives through the enactment of the Housewives' Social Security Act 2022 ("HSSA 2022") that provide for social security benefits for insured housewives, for the improvement of health, safety, welfare and well-being. While the scheme encourages investment from the spouse, the Government must also ensure that the scheme protect and serve the purpose of the law and is sustainable for future generations.

Article 5: Gender Stereotyping

SUHAKAM reiterates its position that the pandemic created new barriers for women who face increased domestic violence, unemployment, unpaid or reduced salaries, poverty, and a hard time to provide basic needs for the family. All quarters must work together towards empowering women to uphold their rights and fully leverage their potential in pandemic preparedness and response, particularly in integrating their perspectives in the formulation and implementation of related policies and recovery programmes. SUHAKAM recommends for more concrete efforts towards awareness on gender stereotyping, including the rejection of biased, sexist, and discriminatory views on gender.

Gender Based Violence (GBV) against Women

In 2017, the Domestic Violence Act 1994 was amended where the definition of "*domestic violence*" was tightened for the protection of survivors. These amendments will greatly benefit women who face danger from domestic violence and abuse. However, it excluded abuse of unmarried intimate partners. SUHAKAM calls upon the Government to consider reviewing the current legislation by providing legal protection to both married and unmarried partners. SUHAKAM urges the Government to extend assistance to refugees/asylum seekers who are domestic violence victims and unable to seek protection due to their status.

SUHAKAM applauds the Government's efforts in amending the PC and Criminal Procedure Code by making physical and online stalking including tracking, an offence.

SUHAKAM believes this amendment enhances and strengthens protection and safety of women including the imprisonment term for violation of court's protection order.

Gender stereotyping on GBV is another issue worth highlighting, where in March 2020, MWFCDD published sexist posters/infographics on marital relationships and domestic violence. The posters/infographics were heavily criticised by the public, and SUHAKAM opines that MWFCDD should be more sensitive to gender issues, and they must exercise care and caution in all their publications.

During SUHAKAM's consultation on "*Covid-19 and Women*," it was found that cases of domestic violence significantly increased during the pandemic. NGOs received 898 calls in April 2020 and 848 calls in May 2020, compared to 250 calls in February 2020. Additionally, the Department of Social Welfare registered 17 Emergency Protection Orders between March and May 2020. However, temporary shelters for survivors were inadequate, particularly in rural areas like Sabah and Sarawak. SUHAKAM recommends increasing the number and capacity of temporary shelters, allocating adequate resources to the *Talian Kasih* helpline, disseminating information on protection services widely, categorising human rights protection and legal services as essential, and enhancing gender sensitivity among frontline responders.

SUHAKAM reiterates the importance to improve the implementation of the Anti-Sexual Harassment Act 2022 ("ASHA 2022"). One of the concerns is on institutional obligations to prevent sexual harassment, especially at the workplace. However, the provisions under the ASHA 2022 should be expanded to cover sexual harassment in educational institutions, and public spaces.

In March 2024, SUHAKAM and the Government co-organised a National Convention for Educators on the importance of reporting sexual crimes against school children pursuant to mandatory duty imposed under section 19 Sexual Offences Against Children Act 2017 ("SOAC 2017") and impact of non-compliance. In April 2023, significant amendments were made to the SOAC Act 2017, which aims to bolster the legal framework for safeguarding children against all forms of sexual exploitation and abuse online and remained in line with technological developments. These amendments include crucial provisions such as criminalizing livestream sexual acts

and addressing threats or extortion using sexual imagery of children. Additionally, the amendments replace the term "child pornography" with "child sexual abuse material" and empower courts to order convicted perpetrators to compensate victims. SUHAKAM views these amendments as positive steps forward, aligning with the imperative of protecting children as enshrined under CEDAW and Convention on the Rights of the Child (CRC).

SUHAKAM recommends that the definition also be directed at instances that create an offensive, hostile, or intimidating environment" (e.g.: sexual jokes or innuendos, etc.). Another concern is on victimisation where fear of retaliatory actions are major factors why sexual harassment, abuse and assault are underreported. SUHAKAM highlights the need for comprehensive legal protections, increased resources for survivor support services, and enhanced gender sensitivity training to combat gender-based violence effectively.

Marital rape

Despite there being Section 375A PC which provides for the offence of "*Husband causing hurt in order to have sexual intercourse*", it however does not make any explicit reference to the element of consent for an offence of "rape".

Article 6: Trafficking and exploitation of women

Pursuant to the forced labour and human trafficking issues in the United States' "Trafficking in Persons" (TIP) Report for 2021 and 2022, Malaysia in 2022 amended the Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007 and the Employment Act 1955. Malaysia has been upgraded to Tier 2 Watch-List. SUHAKAM calls for strengthened collaboration on forced labour challenges especially migration.

In March 2019, SUHAKAM and Fortify-Rights published a report titled "*Sold like Fish*", investigating mass human trafficking from Myanmar and Bangladesh to Thailand and Malaysia from 2012 to 2015. The report uncovered traffickers who deceived men, women, and children into forced marriages and domestic servitude in Malaysia, particularly targeting Rohingya women with promises of free travel to Malaysia.

PART II

Article 9: Nationality and citizenship

The Government has proposed Federal Constitution amendments recognising gender equality, to grant automatic citizenship to children born overseas to Malaysian mothers and non-Malaysian fathers. SUHAKAM supports this move however is concerned with 3 other amendments which will, among others, affect children born out of wedlock to Malaysian men and stateless children adopted by Malaysian parents. Further, SUHAKAM's concern remains regarding the retrospective application of citizenship for children born overseas to Malaysian mothers with non-Malaysian fathers. The Government is urged to adopt a comprehensive approach through conducting thorough research and consultations on the potential impacts of these amendments.

PART III

Article 10: Education

The educational gap between the Orang Asli and Orang Asal with those in other parts of Malaysia is very significant, despite there being policies and actions catered and targeted for them. There are many factors contributing to dropouts of students among Orang Asli and Orang Asal, one of them being underage marriage. Data provided by the Malaysian Government in Annex T of their State report shows an alarming number of underage marriage (under the age of 18). SUHAKAM submits that child marriage, driven by poverty, culture, etc. should be discouraged. Secondary education must be made compulsory, and the public must be made aware on the adverse impact of child marriage.

Sexual and reproductive health (SRH) education is influenced by religious and cultural precepts. The National Reproductive Health and Social Education Policy ("PEKERTI") was introduced in 2009 and was recently reviewed and renewed for 2022 until 2025. The renewed PEKERTI focuses on five main core approaches and lays down strategies to implement and execute the module. PEKERTI focuses on advocacy, prevention, comprehensiveness, human capital development, research and development, and monitoring and assessment. SUHAKAM urges the Government to revise and consolidate PEKERTI and the SRH syllabus to be implemented systematically at all schools in Malaysia.

In November 2024, the Office of the Children's Commissioner has launched a Policy Brief on the Right of Stateless Children to Education which serves as an advocacy tool to ensure such right is upheld in the various modalities that exist.

In February 2024, SUHAKAM held a roundtable discussion on period poverty with diverse stakeholders, focusing on issues such as SRH rights of women and the lived realities of menstruating women in Malaysia. The discussion highlighted that period poverty is not limited to lack of access to menstrual products but lack of menstrual education; privacy, and access to sanitary disposal, toilets, water, and hand-washing facilities. Although there are initiatives like PEKERTI, however, it primarily emphasizes on reproductive and social health education at the national level and there is a lack of knowledge dissemination to the grassroots.

Article 11: Employment

Despite higher female enrolment in tertiary education, Malaysia's female labour force participation rate in 2023 was 51.6%, while men were 78%, according to the World Bank Group. However, Department of Statistics Malaysia in December 2023 indicated that women earned approximately RM66.67 for every RM100 earned by men, resulting in a significant income gap and leaving women at greater risk than men of not achieving a financially secure retirement.

SUHAKAM encourages the Government to establish a fair and secure social protection system for workers in the gig-based services and develop comprehensive laws and policies. SUHAKAM proposes that the following matters be seriously considered, among others, clear definitions of gig workers, social protection, complaint mechanisms, and collective agreement terms of employment, such as income stability, maternity leave, annual leave, medical benefits, contributions to the Social Security Organisation (SOCSO), Employee Provident Fund (EPF), and insurance coverage, as well as adequate floor and fair pay. Furthermore, legislation should also include specific provisions for consumer rights and food hygiene preparation in gig-based services to foster a safe and reliable environment for both workers and consumers.

SUHAKAM also recommends the enactment of an employment equal opportunity law to help regulate and address all forms of discriminatory and unfair treatment and

practices at the workplace including those relating to recruitment, pay and promotion opportunities, and to ensure equal access to employment and protection of the right to free choice of employment and against unemployment.

Article 12: Equality in access to health care

Access to Health Care during Pandemic of COVID-19

SUHAKAM organised consultations with stakeholders in 2020, to discuss issues affecting women's rights during the Movement Control Order (MCO) including access to healthcare where SUHAKAM observed the Government's response during the MCO was skewed towards gender insensitivity. There was closure of public clinics providing affordable reproductive healthcare services which non-Malaysian women comprising refugees, migrants, etc. from gaining access to healthcare. In CEDAW Committee's 2018 Concluding Observations to the Government ("Concluding Observation"), it recommends that the Government must ensure all women, regardless of nationality or income, have effective access to affordable health care services, including childbirth, reproductive health, and family planning.

Access to healthcare by the vulnerable communities

Refugees and asylum seekers in Malaysia encounter circumstances where their health and well-being are compromised, due to xenophobic barriers that discriminate them especially women and children. SUHAKAM recommends that the Government institutes a long-term legislative approach to ensure refugees, migrants and asylum-seekers have access to various services such as antenatal and postnatal care, preventive care, health education, and family planning.

Female Genital Mutilation (FGM) and Female Circumcision (FC)

There is no legislation obligating the practice of FGM/FC in Malaysia.

Article 13: Social and economic benefits

Social Security for Women

SUHAKAM commends the Government's initiative, i-Suri under Employees' Provident Fund (EPF) for housewives in 2024. Housewives aged below 55 and registered under the National Poverty Data Bank (eKasih) only would receive special incentive of 50% for every RM1 contributed up to a maximum of RM300 in the current year. Further,

SUHAKAM welcomes EPF's i-Sayang, promoting social protection for the housewife below age 75.

The World Bank said Malaysia is already an “aging society” as of 2020 as over 7% of the population would be 65 and above, and that the country would be an “aged society” by 2044 and “super-aged society” by 2056 when that age group hits 14% and over 20% of the population. With declining fertility rates and an aging population, the demand for care is set to increase significantly in both the short and long term. It is crucial that care work should be valued equally to other forms of labour. SUHAKAM hopes the Government would transition female care workers from informal to formal employment. This would enhance their access to social protection schemes and improve their labour rights. Additionally, the availability of affordable formal care services would enable unpaid care providers, predominantly women, to enter or remain in the labour market and allocate more time to work.

PART IV

Article 16

Equality in marriage and family law

Syariah law falls under the purview of States and not the Federal Government. Only Muslims are subjected to the jurisdiction of the Syariah Courts. Matters on marriage and divorce for non-Muslims are under the jurisdiction of the Civil Courts, with the Law Reform (Marriage and Divorce) Act 1976 (“LRA 1976”) being the applicable legislation.

Certain incongruities exist between the Civil and Syariah laws, the latter under States' jurisdiction, the former at Federal level. This is the accepted reality which SUHAKAM recognises, but at the same time continues its efforts to persuade the Government to consider withdrawing reservations to Articles 16(1)(a), 1(f) and 1(g) CEDAW.

Child Marriage

SUHAKAM has made recommendations to raise the minimum age of marriage to 18 for both women and men in both civil and Muslim marriages. Syariah family law enactments in Selangor and Kedah raised the minimum marriageable age to 18 for both women and men in 2018 and 2022 respectively.

SUHAKAM will continue to play its role to encourage all States to raise the minimum age to marry to 18 for Muslim girl and for the LRA 1976 to be amended as currently the marriageable age is 16 for female and 18 for male.

In order to tackle the root causes of child marriages and child abuses, it is pertinent to enhance awareness on this subject. SUHAKAM organised numerous programmes on SRH in rural areas to raise awareness and protect children from abuse. In October 2023, SUHAKAM conducted an awareness campaign on child marriage with the indigenous community in Jeli, Kelantan to educate them about its negative impacts and promote children's rights. SUHAKAM launched the Malay-language version of UNICEF's advocacy brief, "Towards Ending Child Marriage in Malaysia" as commitment to end child marriage by 2030 in December 2022. This advocacy brief touches on the serious long-term consequences of child marriage, especially its impact on the lives and health of those affected.

In addition to this, SUHAKAM calls on the Government to provide for compulsory and comprehensive sex education in schools and to ensure that they are not exploited or forced into marriage or subjected to other forms of sexual abuse.

SUHAKAM will continue to persuade and recommend to the Government as State party to CEDAW and the CRC, for Malaysia to enact laws that would harmonise civil and syariah legal systems in the interest of Malaysia as a sovereign State and its commitments under CEDAW.

Unilateral Conversion of Children

The Federal Court decision in *Indira Gandhi* is a case on unilateral conversion of children. The Court upheld that the consent of both parents is necessary regarding the conversion of a child and the wellbeing of the child should be considered, especially when involving custody or religious upbringing.

SUHAKAM regards this decision as a positive development in line with CRC/CEDAW and will continue to support the principles it entails. Furthermore, the LRA 1976 was amended in 2017 where a party to a non-Muslim marriage who converted to Islam,

may then petition for divorce based on his/her conversion. The converted party could no longer be allowed to apply to the Syariah Court for divorce.

Conclusion

SUHAKAM is committed to work with and advise the Government as well as collaborating with civil society organisations, NGOs, and other stakeholders towards creating an environment in Malaysia, as a country that provides practical avenues. This should be accompanied by concerted actions via legislation, if necessary, on equality for women and eliminating all forms of discrimination against women in Malaysia in line with the common goal under CEDAW.