

**Annex to Malaysia's  
Joint NGO Report Submission**  
Contributed by the CSO CEDAW Coalition,  
Coordinated by Women's Aid Organisation (WAO)

Provision of documents, case studies and timelines to support the  
Malaysian Government's review at the 88th CEDAW Session

Annex A: Social media messaging Perpetuating Gender Stereotypes .....	1
Annex B: PM to discuss flexible hours for women civil servants .....	3
Annex C: Key revisions to the ATIPSOM 2007 .....	4
Annex D: Key incidents and case studies on discrimination against women in public life .....	5
Annex E: Gender-discriminatory citizenship laws in Malaysia and the impact on women and their children .....	7
Annex F: Lack of access to citizenship for foreign wives via Article 15(1) of the Federal Constitution .....	10
Annex G: Restrictive immigration policies and practices and its impact on women foreign spouses of Malaysians .....	12
Annex H: Case of Domestic Worker Abused, Neglected, Murdered .....	13
Annex I: Lived Reality of Sex Worker in Malaysia .....	17
Annex J: Domestic Violence Refugee Survivors' Hindered Access to Protection and Health Services in Malaysia .....	22
Annex K: Discrimination Under Islamic Family Law .....	27
Annex L: States in Malaysia that have agreed to increase age of marriage to 18 .....	30

The following 15 organisations/coalitions contributed to the report:

Association of Women Lawyers (AWL), Centre for Independent Journalism (CIJ), Development of Human Resources in Rural Areas (DHRRA), ENGENDER Consultancy, Family Frontiers, Global Shepherds, Justice for Sisters, KRYSS Network, Pertubuhan Wanita Orang Asal Malaysia (PWOAM), Person with Disabilities Coalition (PWDC), Sarawak Women for Women Society (SWWS), Sisters in Islam (SIS), Tenaganita, Women's Aid Organisation (WAO), Women's Centre for Change (WCC).

Shanthy Dairiam, Tashia Peterson, Amar-Singh HSS and Yuenwah San contributed in their individual capacity.

## Annex A: Social media messaging Perpetuating Harmful Gender Stereotypes during COVID-19



This Instagram post on the Ministry's official page outlines tips for working mothers to maintain focus and productivity at home and ensure that their household responsibilities are not forgotten, and family members are not monitored to ensure adherence to Movement Control Orders (MCO). The post's headline suggests that women should avoid wearing home clothes and instead wear makeup and dress well to maintain their appearance.



KEMENTERIAN PEMBANGUNAN WANITA,  
KELUARGA DAN MASYARAKAT



Jabatan  
Pembangunan  
Wanita

## Kebahagiaan rumah tangga dibina bersama

Bagaimana untuk elakkan pergaduhan suami isteri di rumah



Jika melihat pasangan melakukan sesuatu yang bercanggah dengan kehendak kita, elakkan dari berleter - gunakan perkataan "humorous" seperti 'cara sidai baju macam ni lah sayangku' (tiru nada Doraemon dan diikuti dengan gelak manja!

**#WanitaCegahCOVID19**

This Instagram post on the Ministry's official page outlines ways to maintain domestic happiness and avoid arguments at home. Wives are encouraged to avoid nagging and instead use humour to communicate. An example is provided: using the tone of voice of 'Doraemon' followed by an affectionate laugh when showing husbands how to do laundry.

## **Annex B: PM to discuss flexible hours for women civil servants**

On International Women's Day, the Prime Minister Anwar Ibrahim announced proposed flexible hours with lower pay rate for women civil servants to care for their families.

<https://www.freemalaysiatoday.com/category/nation/2024/03/08/pm-to-discuss-flexible-hours-for-women-civil-servants/>

Source: Free Malaysia Today

08 Mar 2024, 11:50 PM

PETALING JAYA: Flexible hours or shorter working hours may be in store for women in the public services, to enable them to better care for their families.

Prime Minister Anwar Ibrahim said the flexibility might involve different pay rates, Bernama reported.

"For example, instead of the usual working hours from 8am to 5pm, if they work for maybe four hours, the pay rate might be lower, but we can utilise women who feel pressured to take care of their children at home," he said.

The matter would be considered as part of a study being carried out into a new civil service salary scheme.

Speaking at the International Women's Day Celebration 2024 held here tonight, Anwar said he would discuss the matter with the chief secretary to the government and the director-general of public services, and on providing flexibility even with slightly lower salaries.

Anwar, who is also the finance minister, said Malaysia would be the first country in the world to provide such flexibility to female civil servants if it could be realised.

He said a change from conventional thinking was required, as there are women who have to leave their careers to take care of their families.

"We make the rules and procedures and if we feel the need to enhance the contribution of women, we can adjust these rules and procedures slightly," he said.

He said the study into the new salary scheme is in its final stages, and the results will be announced towards the end of this year. Civil service salaries have not been reviewed for 10 years.

## **Annex C: Key revisions to the Anti-Trafficking In Person and Anti-Smuggling of Migrants (ATIPSOM) Act 2007**

- **The definition of human trafficking is widened, and the definition of coercion is repealed** which allows the courts to interpret “coercion” widely i.e. to include non-physical forms of coercion such as psychological oppression, abuse of power, exploiting a trafficked victim’s vulnerability, and fraud or deception. This also expels the need for evidence of physical compulsion which may result in high conviction rates and reduce further traumatising for victims.
- **The amendments to ATIPSOM Sections 15A, 19, 26A, 26B and 26C prescribe heavier punishments** i.e. increased jail sentences and/or introduction of whipping to deter and adequately reflect the heinous nature of the offences. The increased jail sentences and the introduction of whipping for trafficking in persons offences amplifies one of the efforts underlined by the United Nations in the fight against human trafficking by meting out the appropriate punishments to the perpetrators and would serve as deterrent to committing the crime.
- With the **insertion of section 42(3)**, the Minister charged with the responsibility for women, family and community development becomes responsible for any matter relating to the management, administration and control over the place of refuge, the trafficked person in the place of refuge and the Protection Officer.
- **The inclusion of additional members from non-governmental organisations or other relevant organisations** in MAPO promotes greater collaboration between the government and NGOs and/or international organisations and allows for such organisations to better influence and advise on the relevant issues including developments at the international level against human trafficking and smuggling of migrants, formulation of policies and programmes to prevent and combat the mischief ATIPSOM seeks to eradicate, and make recommendations to achieve its aims.

## Annex D: Key incidents and case studies on discrimination against women in public life

Source: Centre for Independent Journalism (CIJ)

### 1) Sexism, harassment and attacks against women politicians

- I. Langkawi's Member of Parliament Datuk Mohd Suhaimi Abdullah made a sexist remark against Seputeh Member of Parliament Teresa Kok before the Dewan Rakyat after she questioned whether or not shorts could be worn in Langkawi.<sup>1</sup>
- II. Selangor ADUNs Jamaliah Jamaluddin and Lim Yi Wei received racist and sexist threats, and violent threats of rape and murder via Facebook in May 2020<sup>2</sup>. This came a month after MCA Youth chief Nicole Wong reported having faced months of sexual harassment against her and her daughter<sup>3</sup>.
- III. Kasthuri Patto, a former Member of Parliament (MP) was often the subject of attacks targeting her gender and her skin colour. In July 2020, during a Parliamentary sitting, a fellow male MP told Kasthuri that she was *gelap tak nampak* (too dark, cannot see) and to *pakai bedak* (use facial powder)<sup>4</sup>.
- IV. Posts with sexist slurs, derogatory terms and vulgarism were often aimed at women candidates during the 15th General Elections in 2022. Use of the term 'betina' were often targeted specifically at Hannah Yeoh. At the same time, Batu independent candidate Nur Fathiah Syazwana Shaharuddin (known as 'Cleopatra') was chastised for not covering her 'aurat' with a hijab.
- V. Kedah Chief Minister Datuk Seri Muhammad Sanusi Md Nor, PAS central election director and current Chief Minister of Kedah, has been flagged for making sexist remarks online and in person during the campaign period throughout Malaysia's 15th General Elections in 2022 and later during the State Elections in 2023.
  - a. He refused to apologise for comments made where he referred to women as "*betina*" ("female", often a term used to refer to animals) and claimed that a woman should not become the elected representative in Sik, Kedah.<sup>5</sup>

<sup>1</sup> NewStraitsTimes, "*I asked a valid question,*" says stunned Teresa over sexist remarks made by Langkawi MP' <<https://www.nst.com.my/news/politics/2023/10/973085/i-asked-valid-question-says-stunned-teresa-over-sexist-remarks-made>> accessed: 16 January 2024

<sup>2</sup> "Two state reps among latest victims of online sexual harassment", *The Sun Daily*. 26 May 2020. Available at <https://www.thesundaily.my/local/two-state-reps-among-latest-victims-of-online-sexual-harassment-NC2455069>.

<sup>3</sup> "MCA Youth chief lodges police report over threats to self, daughter", *Malaysiakini*. 21 April 2020. Available at <https://www.malaysiakini.com/news/521886>.

<sup>4</sup> "Batu Kawan MP says it again: The time for the Anti-Sexual Harassment Bill is now", *MalayMail*, 14 June 2022, Available at <https://www.malaymail.com/news/malaysia/2022/06/14/batu-kawan-mp-says-it-again-the-time-for-the-anti-sexual-harassment-bill-is-now/9921>

<sup>5</sup> New Straits Times, 'Kedah MB says he is not a sexist, maintains Sik needs a male rep' <<https://www.nst.com.my/news/politics/2022/11/850039/kedah-mb-says-he-not-sexist-maintains-sik-needs-male-rep>> accessed: 14 January 2024

- b. In a viral video, he questioned whether women can handle constituents calling them at all hours of the day, claiming, "We can only imagine women getting up [at 3 a.m.] with their hair all over the place."<sup>6</sup>

## 2) Attacks against women human rights defenders

- I. Members of the NGO Sisters In Islam (SIS) constantly have to defend their freedom of association, speech, and expression. Their publications have been banned, and a fatwa was issued against them alleging that they have deviated from Islam's teachings.
- II. Environmental activist Shakila Zen posted a video on TikTok of the #Lawan rally that occurred on 31 July 2021<sup>7</sup> after which she faced doxxing, online backlash, and was threatened via text messages with physical and sexual violence. On 30 August she received a package that contained a letter of threat and a replica of a bloody severed hand.<sup>8</sup>
- III. 17-year-old Ain Husniza Saiful Nizam sparked a viral movement on social media under the hashtag #MakeSchoolASaferPlace following a rape joke made in school by her Physical Education Teacher. She faced backlash from her school and surrounding community, both online and in person, including rape threats from her fellow schoolmate.
- IV. On July 27 2021, founder of Refuge for the Refugees Heidy Quah was charged in the Kuala Lumpur Sessions Court under Section 233(1)(a) for the offence of transmitting 'communication intended to offend and annoy' over a Facebook post she created in June, a year prior to the charge. This Facebook post merely expressed Quah's opinions about the state of refugee detention centres during the nationwide lockdowns due to the Covid-19 pandemic.

The subpar living conditions in these centres, coupled with the mass arrests of refugees and migrants, contributed to the detention centres becoming Covid-19 hotspots.<sup>9</sup> The charges against Quah were dropped, but not before she received an onslaught of online harassment and hate comments which included threats to her safety.<sup>10</sup>

- V. Lawyers Nik Elin Zurina Nik Abdul Rashid and her daughter Tengku Yasmin Nastasha Tengku Abdul Rahman have received consistent backlash after filing a petition challenging the constitutionality and jurisdiction of the State Legislative Assembly in enacting 18 Kelantan Shariah law provisions, 16 of which were nullified by the Federal Court in a decision dated 9 February 2024.

<sup>6</sup> The Star, 'GE15: Campaign marred by sexist slurs' (12 November 2022)  
<<https://www.thestar.com.my/news/nation/2022/11/12/campaign-marred-by-sexist-slurs>> accessed: 9 January 2024

<sup>7</sup> Women's Tribunal Report, *Women in Political and Public Life*, item 2.1  
<<https://www.womenstribunalreport.com/womeninpoliticalandpubliclife>> accessed: 16 January 2024

<sup>8</sup> INS, 'PSM Condemns Threats Against Environmental Activist Shakila Zen' (2 September 2021)  
<<https://www.theins.news/postview/441-psm-condemns-threats-against-environmental-activist-shakila-zen>> accessed: 16 January 2024

<sup>9</sup> Malay Mail, 'After 'U-turn' in activist Heidy Quah's case, CJI urges reforms to laws used to silence critics' (15 February 2023)  
<<https://www.malaymail.com/news/malaysia/2023/02/15/after-u-turn-in-activist-heidy-quahs-case-cji-urges-reforms-to-laws-used-to-silence-critics/55137>> accessed: 19 February 2024

<sup>10</sup> Amnesty International Malaysia, 'Joint Statement: Drop Charges Against Heidy Quah' (7 July 2021)  
<<https://www.amnesty.my/2021/07/27/joint-statement-drop-charges-against-heidy-quah/>> accessed: 19 February 2024

On February 10, Nik Elin lodged three police reports over the death threats received over this issue.<sup>11</sup> Nik Elin and her daughter have been subjected to hate speech, disinformation, and harassment both online and offline, including being labelled as '*takfir*' (blasphemous) and receiving death threats. As of 15 February 2024, the police have accounted for a total of 5 reports lodged over death threats received by Nik Elin and her daughter.<sup>12</sup>

## **Annex E: Gender-discriminatory citizenship laws in Malaysia and the impact on women and their children**

Source: Family Frontiers

### **a) Complete timeline of events in the public interest case of Suriani Kempe & Ors. v Government of Malaysia & Ors**

- 18 December 2020: The Association of Family Support & Welfare Selangor & KL ('Family Frontiers') filed a constitutional challenge with the Kuala Lumpur High Court, seeking a declaration that Malaysian women married to foreign spouses can automatically confer citizenship on their children who are born overseas. Along with six Malaysian mothers, Family Frontiers aims to uphold the spirit of the Federal Constitution, which promotes equality and prohibits discrimination. They have named the Government of Malaysia, the Minister of Home Affairs and the Director-General of the National Registration Department as its defendants.
- 22 January 2021: The Government attempted to strike out the case stating it was "scandalous, frivolous and vexatious", and that it was an "abuse of the court process". However, the High Court delivered a judgement in favour of the applicants on 6 May 2021, ruling that the case can proceed.
- 7 May 2021: In response to the failed strike-out, the Government filed an appeal at the Court of Appeal against the High Court judgement.
- 7 May 2021: In the interim, the Government filed a stay application to put the High Court hearing of the merits of the case into abeyance until the Court of Appeal has disposed of the strike-out matter.
- 19 August 2021: The High Court dismissed the Government's stay application and ruled that the merits of the case be heard on 24 August 2021.
- 20 August 2021: The Court of Appeal dismissed the Government's appeal against the High Court judgement dismissing the strike out of the case.
- 24 August 2021: The Kuala Lumpur High Court heard the merits of the originating summons.
- 9 September 2021: The Kuala Lumpur High Court ruled that Article 14(1)(b) of the Federal Constitution together with the Second Schedule, Part II, Section 1(b) of the FC, must be read in a

---

<sup>11</sup> Malay Mail, '*Nik Elin's daughter says mom started getting death threats, labelled infidels after brigading by lawyers aligned to certain political party*' (12 February 2024) <<https://www.malaymail.com/news/malaysia/2024/02/12/nik-elins-daughter-says-mom-started-getting-death-threats-labelled-infidels-after-brigading-by-lawyers-aligned-to-certain-political-party/117649>> accessed: 19 February 2024

<sup>12</sup> New Straits Times, '*More reports lodged over Nik Elin's death threats, says Home Minister*' (16 February 2024) <<https://www.nst.com.my/news/crime-courts/2024/02/1014113/more-reports-lodged-over-nik-elins-death-threats-says-home>> accessed: 19 February 2024



harmonious manner with Article 8 of the FC. In doing this, the High Court judge announced that the word 'father' must be read to include mothers and that their children are entitled to citizenship by operation of law.

- 13 September 2021: The Defendants (the Government of Malaysia, the Home Minister and the Director-General of the National Registration Department) filed a Notice of Appeal against the High Court decision and a stay of execution pending appeal application at the High Court.
- 15 November 2021: The High Court dismissed the Government's stay of execution application with RM5000 as costs to the plaintiffs.
- 16 November 2021: The Government filed an application for a stay at the Court of Appeal. The hearing date was fixed to be on 18 March 2022.
- 17 November 2021: The Government filed an application for an interim stay at the Court of Appeal.
- 6 December 2021: The Court of Appeal made no order for the interim stay, and instead brought forward the hearing date of the stay application from 18 March 2022 to 22 December 2021.
- 22 December 2021: The Court of Appeal unanimously dismissed the Government's application for a stay of execution of the Kuala Lumpur High Court judgement.
- 23 March 2022: The Court of Appeal heard the Government's appeal on the merits of the case.
- 22 June 2022: The Court of Appeal heard further submissions by both parties on the merits of the Government's appeal.
- 5 August 2022: The Court of Appeal, in a 2-1 decision, allowed the Government's appeal and overruled the High Court judgement.
- 26 August 2022: Family Frontiers applied for leave to appeal the decision at the Federal Court.
- 14 December 2022: The Federal Court granted Family Frontiers leave to appeal at the Federal Court.
- 29 January 2024: The Federal Court scheduled to hear the appeal on 25 June 2024.

#### **b) Lived reality of Sharon Chin: A Malaysian mother with three children rendered stateless by gender-discriminatory citizenship law**

Sharon Chin is a Malaysian mother of three stateless children and one Malaysian child, who obtained citizenship as she was able to travel back to Malaysia to give birth. Her three children cannot take on their father's nationality as he is a stateless person. Due to Malaysia's gender-discriminatory law, Sharon is also unable to pass on citizenship to her children who were born abroad.

Sharon never thought that her children would be stateless, as she expected her children to acquire Malaysian citizenship through registration. She made an application for Malaysian citizenship for all three children in 2015, but it was rejected three years later without any

reasons given. Until today, her second application made in 2019 for Malaysian citizenship for the three children remains pending at the Home Ministry office.

During the COVID-19 pandemic she was unable to return to visit her elderly parents for two years, as she was unable to bring her children back to Malaysia with her due to the closure of the borders to non-Malaysians. The family has exhausted all available options, including legal recourse, but with no success.

Every aspect of her children's lives is crippled due to the lack of citizenship. Sharon is fearful that her children will remain stateless forever. She wants to raise her children in Malaysia, as it is her home country. But without Malaysian citizenship, their access to essential healthcare and education is significantly restricted, and this removes Sharon's autonomy.

**c) Lived reality of Camelia: A Malaysian woman experiencing marital violence and lack of protection due to her child's non-citizen status**

Camelia is a Malaysian woman with a non-citizen daughter who was born abroad. Her daughter holds the citizenship of her foreign husband from whom Camelia is now separated. Her husband subjected Camelia to domestic abuse that led to her hospitalisation. Her husband was charged with domestic abuse and pleaded guilty, but was only given a verbal warning by the court. Upon moving to Malaysia with her daughter, Camelia's husband filed a court order against her to recover and return their child to his country. The court case is currently ongoing, and Camelia has since filed for divorce. Camelia's husband has accused her of child abduction, and asserts that custody of their daughter should be accorded to him as their daughter is not a Malaysian citizen and she is only able to live in Malaysia on a Long-Term Social Visit Pass.

Camelia's daughter has been diagnosed with severe autism after showing delays in reaching developmental milestones and in her speech-language. She fully depends on Camelia for daily care and support. Camelia experiences psychological and physical effects of the domestic abuse she suffered, and is still undergoing treatment for the injury resulting from the physical abuse. She maintains that living in Malaysia will provide her and her daughter with a safe environment, away from domestic abuse. But, without Malaysian citizenship for her daughter, Camelia and her daughter face possible risk of separation and continued violence.

## **Annex F: Lack of access to citizenship for foreign wives via Article 15(1) of the Federal Constitution**

Source: Family Frontiers

### **i) The existing process to obtain citizenship under Article 15(1) has deviated from the constitutional directive**

The process applied by the government for non-citizen wives to acquire Malaysian citizenship under Article 15(1) has strayed from the constitutional stipulation. Article 15(1) states:

“Subject to Article 18, any married woman whose husband is a citizen is entitled, upon making application to the Federal Government, to be registered as a citizen if the marriage was subsisting and the husband a citizen at the beginning of October 1962, or if she satisfies the Federal Government -

(a) that she has resided in the Federation throughout the two years preceding the date of the application and intends to do so permanently; and

(b) that she is of good character.”

Under the current immigration process, a non-citizen wife of a Malaysian man is only able to apply for Malaysian citizenship after she obtains permanent residence, a process that could take between 10-13 years prior to applying for citizenship. This is a stipulation that was also stated by the Government in paragraph 115 of the Report.

However, very few non-citizen spouses obtain MyPR. The process is unreasonably long, with no guarantee of approval and no clear reasons for rejections. This effectively obstructs the path to citizenship for the foreign wife.

### **ii) Restricted access to permanent residence among non-citizen spouses of Malaysians**

In a 2022 survey conducted by Family Frontiers among 65 non-citizen spouses of Malaysians who applied for Permanent Residence (PR) since 2014, alarming findings surfaced regarding the lengthy processing time for their PR applications:

Not a single respondent received approval for their application. Further analysis of the survey data revealed distressing details:

**No Approvals:** None of the respondents received approval for their PR applications, highlighting a systemic failure in the processing system.

**Waiting Without Response:** 9.3% of respondents have been waiting for 2 years without any response.

**Extended Waiting Periods:** A staggering 32.6% of respondents waited for 2-4 years, 27.9% waited for 4-6 years, and 30.2% endured waiting periods exceeding 6 years. These prolonged delays paint a grim picture of the inefficiency plaguing the PR application process.

All the applications were still in process with zero approvals. Lately, the Government has been offering a new pass, a Residence Pass, rather than a Permanent Residence. Compared to Permanent Residence status, this pass contains restrictions including a validity period of five years and leaves the foreign spouse completely dependent on the Malaysian spouse.

The lack of Permanent Residence among non-citizen spouses of Malaysians has critical socioeconomic implications on Malaysian binational families, particularly for female foreign spouses. This includes difficulty in securing employment opportunities, increased economic hardship and other economic challenges such as difficulty opening a bank account, securing financial loans and owning properties. Foreign spouses are also faced with the fear of family separation, including the fear of being removed (and separation from children and family in Malaysia) following the death of a Malaysian spouse or divorce or separation. Access to permanent residence will grant female foreign spouses autonomy and financial freedom which is a step towards eliminating abuse and violence against women.

## **Annex G: Restrictive immigration policies and practices and its impact on women foreign spouses of Malaysians**

Source: Family Frontiers

### **i) Statement of prohibition from employment on spouse visas and its impact on economic autonomy**

A survey conducted by Family Frontiers with 516 Malaysian binational families in 2020 found that 3 out of 4 (77.2%) foreign spouses believed that the prohibitory statement on their visa makes it difficult to secure a job in Malaysia. While 75% of foreign spouses possessed a Bachelor's Degree or higher, 49% of foreign spouses residing in Malaysia were unemployed at the time of the survey.

The prohibitory statement has critical impacts on the autonomy of female foreign spouses. The foreign spouse is made to be entirely financially dependent on the Malaysian spouse, effectively compromising the economic autonomy and liberty of female foreign spouses. Those in abusive marriages may be forced to stay in such marriages due to this dependency, as well as immigration stipulations that require the Malaysian spouse to be physically present at each visa renewal. Malaysian binational families forced into being single-income households are pushed to situations of dire economic hardship in the current climate of the rising cost of living.

### **ii) Lived reality of Asha: A foreign wife of a Malaysian who lost opportunities for self-realisation and economic autonomy due to restrictive immigration policies and practices**

Asha is a 66-year old foreign spouse who is currently living in Malaysia. She moved to Malaysia in 1984 along with her Malaysian husband after both of them completed their studies overseas. She faced numerous challenges while living in Malaysia. It took Asha more than two decades to secure Permanent Residence (PR) in Malaysia, a process that typically takes many years to process without a guaranteed outcome. Non-citizen spouses can only apply for citizenship after holding a PR for two years, and even then, approval is uncertain.

During her 30 years of living in Malaysia, Asha has faced restrictions at every turn. Despite holding an LLB degree, she was unable to freely pursue her career, including practising law and making an economic contribution in Malaysia, until she obtained her PR which was secured rather late in her life. Financially, her family solely relied on her husband's income, which limited their opportunities in terms of their children's education and savings for their future.

The current system makes non-citizen wives dependent on their Malaysian husbands for their residency status. This poses a challenge in cases of divorce or the husband's death, as the PR application can be withdrawn, leaving the wife on a short-term visa with severely limited work rights. Furthermore, this situation perpetuates the constant fear of potential separation from their Malaysian-born children.

This only adds to the vulnerabilities of non-citizen wives and their children, especially if the Malaysian spouse neglects their responsibilities. Despite Asha's "lost years", she has contributed significantly to the country, both financially and socially.

### **iii) Limited access to legal status and its impact on separated, divorced, and widowed foreign spouses of Malaysians**

Divorced and widowed non-citizen spouses without Permanent Residence and without children are often forced to leave the country; those with children are left to acquire a six-month pass (Social Visit Pass) that is to be sponsored by a Malaysian, perpetuating a system of precarity and dependence. The spouse's right to work is at the discretion and interpretation of the attending officer; many are not permitted to work during this period and are left at the mercy of the benevolence of others, despite being caregivers and providers for their Malaysian children and family. Those seeking remedy for domestic violence are allowed to remain in the country for a short term, while those seeking custody of their children are often met with disappointment and eventual dismissal from the country. Many are forced to stay in abusive marriages to be able to remain in the country with their children. Female foreign spouses may be less likely to leave abusive situations to protect their or their children's legal status, or due to the lack of economic liberty. Foreign spouses previously married to Malaysians are also faced with limited rights to child custody.

## Annex H: Case of Domestic Worker Abused, Neglected, Murdered

Source: Tenaganita, WAO (extracted from Women's Tribunal Malaysia)

Malaysia's first [Women's Tribunal](#) was held in 2021, stories from women across the country were documented as witness testimonies and a report published in December of 2021. The Judges, Shanthi Mary Dairiam, Zainah Anwar and Nadia Malyanah provided clear recommendations for the state in response to witness statements.

In 2018, a cruel case of human rights violations that [led to the death of 21-year-old domestic worker Adelina Lisao](#) in Penang, was exposed. Inhumane living conditions, severe neglect and abuse of Adelina led to multiple organ failure and death. There were [no convictions made](#) on the employer until February 2024, when the [employer was ordered to pay MYR750,000](#) to the family of the late domestic worker.

Below is a witness testimony provided by Glorene Das, Executive Director of Tenaganita, an organisation providing services for migrant, refugee and domestic worker survivors of violence.

### Witness Testimony | Adelina Lisao (Deceased)

Every single time I watch this video (on domestic workers), it is a reminder that **domestic workers throughout the world continue to be treated worse than slaves, simply because they are unrecognised.**

Adelina Lisao's case captured the attention of many across the world when she passed away on 11 February 2018 due to organ failure as a result of neglect, physical and emotional abuse, and forced labour at the hands of her employer in a private home for two years.

The passport was kept by the employer from the beginning of her employment. She never saw her passport. Her work permit was also not renewed by the employer, which led her to become undocumented by the system. Subsequently, after her death, the employer's daughter was charged under section 56(1) of the Immigration Act 1959/63, for employing Adelina without valid legal documents.

From our case file, it is documented that one of the neighbours had sent an email seeking assistance to help Adelina; the email was sent to our sister organisation, namely Women's Centre for Change (WCC) in Penang, sometime in February 2018. Then WCC sent that email requesting help to Tenaganita. Upon receiving the email, the Tenaganita Team took a drive to the house (the address had been provided) but we could not see anyone from outside. We continued to monitor the place, but no one came out of the house, so we left. We then reported the matter to the police, but since it was not an official police report, they did not proceed. Our report was seen as hearsay without evidence. It was a few weeks later when Bukit Mertajam Member of Parliament (MP) Steven Sim's staff called us for help, that we realised it was the same house, and the same help was being requested.

The case documentation stated that Adelina was instructed by the employer to wash the drains and toilets using highly toxic chemical detergent. However, the detergent got on her hands and legs while she was washing (apparently an accident), which led to her having wounds on her hands and legs, which were never given medical care by the employer. When the wounds started oozing pus, the employer sent her to sleep outside the house next to their pet dog, a Rottweiler, as seen in the pictures given to

the press by MP Steven Sim and his staff members.

MP Steven Sim called our Penang Team thereafter, to see how we could intervene. He also mentioned that he had called the police to rescue her. Adelina was rescued, then brought to the police station together with the employer, for statements. When Tenaganita arrived at the police station, we found Adelina to be so weak. She needed immediate treatment, so we pressured the police to bring her to the hospital for treatment before taking her statement. Then she was taken to the hospital immediately.

In a brief conversation with the doctors attending to Adelina that night, we were informed that she could be discharged the next day, so it would be good to make the necessary preparations in our shelter in Penang to care for her. In that same conversation, we were also told that this was not an accident as claimed by the employer, as wounds were also found on her thighs and perineal region of her body.

When Adelina was admitted to hospital, our Penang Team was there to see and speak with her. They even gave her some food, which she was so afraid to take as the employer was watching. However, it was evident that she was on borrowed time, as she slipped into unconsciousness and passed away.

Below are the observations of my team members in Penang:

- (1) Her absolute fear of the two people who brought her to the police station. She would not accept food or drink without their permission.
- (2) Her shocking physical state. We were so concerned that she might lose a foot, but did not imagine she would lose her life.
- (3) At the police station, the police were kind and tried to question her for a short while but it was obvious it was not the time to question her, as she needed medical attention.
- (4) Despite the employer's daughter saying Adelina had eaten a good meal when she was admitted to hospital, she was hungry and one of my team members (Sally Alexander) fed her because of her condition.
- (5) When she sat on the edge of the bed, fluid from her injuries dripped on the floor, which required the nurses to mop up the floor.

On the next day, Sunday morning, she was in a lot of discomfort. When my team member Sally Alexander returned from a short break, Adelina was unresponsive. Despite the medical team trying to resuscitate her, she never regained consciousness and died shortly after while waiting for a bed in the Intensive Care Unit. **The autopsy report showed that Adelina had a swollen face, dog-bite marks and acid burns. She was 21 years old when she died.**

I reiterate the words of Adelina's mum to us: "*Dia mati bukan akibat penyakitnya tetapi kerana dia didera.*" ("She did not die because of her sickness, but because she was tortured"). The world saw these images of Adelina.

A person is dead and her blood is on all our hands. Allowing perpetrators such as the employer to walk free makes us all complicit in the death of Adelina, and many others who shared the same fate.

Adelina's life is the sad reality of thousands more domestic workers, who are susceptible to all forms of exploitation. It is high time that we make an effort to increase protection for all domestic workers.

I strongly believe that the only efficient way to eliminate serious abuse and exploitation towards any person is for perpetrators to be prosecuted and jailed for lengthy periods of time. **We must put an end to the climate of impunity afforded to employers or any perpetrators**, who abuse, cheat, severely harm, and even carry out acts that lead to the deaths of, domestic workers, with little consequence to them. **It is clear to me that the main reason the abuse of domestic workers is so widespread is the lack of legal protection: the Employment Act 1955, which supposedly protects the rights of domestic workers, does not even recognise them as workers, but instead defines them as servants.**

As a result, many employers feel that they can subject their domestic workers to sustained abuse and torture with impunity, which sometimes ends tragically — as in the case of Adelina, and many others before her.

On the other hand, those who seek to free themselves from abusive and exploitative work by running away, are criminalised or prosecuted under the Immigration Act 1959/63 because they automatically become undocumented. From our experiences of such cases, it becomes clear that the authorities and enforcement agencies, including the Judiciary, continue to punish the victim, as the onus of proof of being legal is on the victim, while the controls are with the employer or the agent.

For many years, I have stated over and over again that **it is only when rights of workers are protected through laws, and when domestic workers are recognised as workers, will employers, agents and Malaysians as a whole ensure respect and dignity for domestic workers.** The statutes and the legal process cannot, and must not, exclude domestic workers. This form of persistent and intentional discrimination against women from the more marginalised groups, speaks volumes of how we fail to respect persons and ensure their dignity. Our Government has acceded to CEDAW (Convention on the Elimination of All Forms of Discrimination against Women) but has not lived up to our commitment and accountability.

This is why we applauded when the former Human Resources Minister, M. Kulasegaran, mentioned that the Ministry is proposing a Domestic Workers Act. This new legislation is necessary and very important, because of the unique nature of domestic work and the underlying need for rights protection based on violations we have already seen. Tenaganita and the Domestic Workers Coalition have been working for several years in a bottom-up process involving domestic workers, in drafting the bill. We have handed over the draft bill to the relevant departments and ministries. We also hope for a process by the Ministry in the development of Domestic Workers Act that is PARTICIPATORY and TRANSPARENT in consultation with civil society organisations (CSOs), individuals, concerned groups, and especially domestic workers.

We are aware that there are ongoing discussions on the proposals to the Employment Act 1955 pertaining to Domestic Workers, but these are just interim measures.

In the course of our work along with other organisations, we often learn that the worker is never given a rest day off per week, and she faces multiple other violations such as the withholding of her passport, and physical, psychological and sexual abuse, to name a few.

Another reason is the lack of inspections. This is sometimes because of the legal and practical challenges of inspecting private homes, which may not be considered workplaces in some countries. As a result, victims often have limited opportunities to complain.



Because these cases become increasingly complex, having one law that covers the entirety of domestic work and potential issues that may arise in this line of employment is needed, to speed up the legislation process and increase domestic workers' access to justice.

We definitely want significant changes, and therefore hope the Government and its Ministries take cognisance of this. **We call for a separate law in which domestic work is recognised as work; and the women are identified as workers, and not as servants.**

If anything constructive emerges from Adelina's tragedy, it is a plea for stronger protective regulation and legislation in Malaysia, and better monitoring of the welfare of domestic workers.

### **Additional Information**

On 18 April 2019, Adelina's employer, S. Ambika, walked free. The High Court granted her a full acquittal. This decision was shocking, as it sent out a very worrying message to all perpetrators that they can walk away with impunity after severely abusing domestic workers, even to the point of death. These decisions by the Malaysian Judiciary also put migrant workers at a great disadvantage.

We received information that the employer was acquitted after her lawyer cited section 254(3) of the Criminal Procedure Code, and urged the court to take into account the employer's age and deteriorating health. The High Court Judge acquitted her, stating, "The accused is over 60 years old and has several health issues, and the court has given priority to that matter" — despite the Deputy Public Prosecutor's request for a discharge not amounting to acquittal.

Right after that, Tenaganita launched a petition online, with rallies of protest and campaigns with regional partners in the different countries, pressuring both Indonesian and Malaysian Governments to appeal the case, to continue seeking justice for Adelina.

The petition was basically addressed to the Attorney General (AG), Minister in the Prime Minister's Department (Law and Parliamentary Affairs) Datuk Liew Vui Keong, and Human Resources Minister M. Kulasegaran, demanding a full explanation on all the decisions made, and what transpired during the court proceedings that led to the acquittal of S. Ambika.

**We continued to campaign, stating that we would no longer accept torture and violence in our homes and in our neighbourhoods, could not accept the failure of our justice system, and could not accept the inaction by our elected officials. We want comprehensive action to stop the violence against domestic workers in Malaysia.**

Then the decision was appealed but, a year later, the bench in the Court of Appeal affirmed the decision put forth by the High Court, claiming that the decision was not erroneous. This decision was a regressive step for the Malaysian justice system — it conveyed a severely harmful message condoning heinous acts of abuse and exploitation. The climate of impunity afforded to those who are undeserving, continues.

We were then informed that the Attorney General's Chambers filed an appeal against the decision by the Court of Appeal at the highest court — that is the FEDERAL COURT — and the decision is likely to be out in December 2021.

## Annex I: Lived Reality of Sex Worker in Malaysia

Source: CIJ, WAO (extracted from Women's Tribunal Malaysia)

Malaysia's first [Women's Tribunal](#) was held in 2021, stories from women across the country were documented as witness testimonies and a report published in December of 2021. The Judges, Shanthi Mary Dairiam, Zainah Anwar and Nadia Malyanah provided clear recommendations for the state in response to witness statements.

In relation to sex work and sex workers rights: Sex workers in Malaysia are criminalised by the State and experience marginalisation on a day-to-day basis by a variety of actors. These challenges, which are often intersectional, lead to various forms of discrimination, including:

- harassment and threat of detention by personnel from various law enforcement agencies, including the police vice squad, Immigration Department, anti-drugs agency and religious enforcement agencies;
- abuse and violence perpetrated by pimps, clients, partners and law enforcement personnel;
- disempowerment due to obstacles in filing complaints and seeking redress for abuses committed by the aforementioned law enforcement personnel, and;
- limited access to information and services on sexual and reproductive health care.

Sex work is criminalised under the Penal Code<sup>1</sup> and various state-level syariah criminal offences<sup>2</sup> enactments. Under these:

### 1. Penal Code

The most prevalent law used to prosecute sex workers in Malaysia is Section 372B of the Penal Code, which criminalises solicitation for prostitution or "any immoral purpose." Currently, there is no law that expressly states that purchasing sexual services is banned under Sharia Law or the Penal Code. However, the Penal Code criminalises brothel-keeping (section 373), living on prostitution revenues (section 372A), and serving as an intermediary/manager (section 373). (s372A). Section 372(3) of the Penal Code defines "prostitution" as "the act of a person giving that person's body for sexual enjoyment for hire, whether in money or in kind.

### 2. Syariah law enactments

Section 21(1) of the Syariah Criminal Offences (Federal Territories) Act 1997 (Act 559) criminalises soliciting prostitution, and Section 23 criminalises (1) a man or a (2) woman having sexual intercourse out of wedlock which can affect both male and women sex workers alike. Sex work however is not just between heterosexual individuals, but also between people who are attracted to the same sex, which Section 25 criminalises as sodomy. Moreover, transgender women sex workers (TGSW) can be arrested under Section 28 for "impersonating a woman in public space". In Malaysia, these Syariah Law sections apply to Muslims in all states, but the penalties vary. Syariah Law is governed by the rulers of each state (i.e. The Sultan or The Yang Di-Pertuan Agong).

Criminalisation leaves the most vulnerable groups, especially cisgender<sup>13</sup> and trans women<sup>14</sup> sex workers, exposed to physical and sexual abuse from clients and the authorities.

Below is an excerpt of a sex workers testimony extracted from the Women's Tribunal that reflects multiple violations of her rights as a woman in Malaysia and amplifies the intersectionality of sex work.

### Witness Testimony | Latha\*

I am here today to share with you my testimony as an activist and former sex worker, and to share why we need to decriminalise sex work in Malaysia. My father died when I was only five years old and I was raised by my mother, who was the sole breadwinner having to feed five children. She was a construction labourer, and struggled to make ends meet. At the age of 10, I began to work odd jobs: first at my school canteen and then elsewhere, to help provide for my family. Then when I was in Form Three, I was stopped from going to school before my end-of-year exams as my older brother was suspicious of me being in a 'relationship'. After leaving school, I began working as a contract cleaner at an exhibition centre.

When I was working there, a man who was working as a security guard approached me. He proposed to me, and suggested we get married but my family objected, as he was a drug user. Feeling obliged — as I had promised to be in a relationship with him — I agreed to elope. We had a simple ceremony of tying the *thali* [sacred wedding thread] in front of a photo of deities. It was not official, and I was only 15 years old. We were staying at his family home in an oil palm estate in Selangor with his parents and siblings — a total of seven of us. Within three days of being with him, he started to hit me and become abusive. Every time his family complained about me, he would abuse me physically, verbally, and sexually. He had many affairs. Once when I was 16, he made me watch as he had sex with another woman. He used to hit me with thorned oil palm branches until I was blue and black, and tried to go home. Unable to tolerate this, I even attempted suicide by drinking massage oil (Axe brand medicated oil) but was abused even more for my attempt.

I couldn't go home to my family when he hit me, because they said that since I had chosen this marriage, I have to endure it. During my first pregnancy, when I was 18, as per custom I went to my mother's house and stayed there until the child was born, but my husband had disappeared. I was in shock and couldn't even find him for the delivery. He behaved this way in all of my pregnancies. In fact, when I was pregnant with my fifth child, I made the decision to leave him; he had even abused me in public. At this stage, my mother had asked me to abort the baby and we had tried many ways but were unsuccessful. We were worried about how I was going to raise another child with barely enough to feed four. I struggled to make ends meet, barely making any money as a road cleaner.

---

<sup>13</sup> Dr. Vinogiri Krishnan, EMPOWER and Solving Lab Consultancy. Shedding Light on SGBV in Malaysia. Page 16, section 2.3.

<sup>14</sup> Breena Au, Sulastri Ariffin, Thilaga Sulathireh, EMPOWER and Justice for Sisters. Freedom of Expression and Transgender Women in Malaysia. Page 124

It reached a point where I needed money for milk, as I had all my children a year after each other and didn't have enough milk to feed them. I went back to my mother-in-law's house to ask her for some money to help me. There, she asked me to check with her eldest son. When I went over to his house, he asked me to come to work with him. I knew that my sister-in-law was a sex worker, but I was told that I would only be doing cleaning. Desperate to find food for my children, I agreed to work for him as a cleaner.

They took me to a hotel in Kluang, and I did housework for a while. We then moved to Mentakab where we stayed at a hotel. Here, when my sister-in-law went to the shop, my brother-in-law raped me and left me in a room. After this, a stranger walked into the room. I screamed so loudly that the brothel owner came to see what was happening. My brother-in-law then pressured me to become a sex worker, and claimed that there was no other way for me to earn a living. I ended up staying there for a month. I was young and in need, and afraid to question them at the time — I *tak ada berani* [did not have courage] yet. At this brothel, they didn't give us our pay; they would only give us food, clothes and shelter. Then, finally, there was a raid on the brothel, and I managed to leave.

After the raid, I went to my mother-in-law's house briefly and then left, saying that I was going to my maternal home. However, I knew that my family would kick me out and not accept me, as I had left my children there and had been away for three months. I ended up waiting at a bus stop in Sentul that night. Five drunk men stopped after leaving a nearby club. They were armed. They took me by force and gang-raped me at the Korea Hotel in Kuala Lumpur. Somehow I managed to escape, and stopped a taxi. After sharing with the taxi driver what had happened to me, he took me to the police station to make a report, but I was fearful and didn't dare to make a report, so I went back to the bus stop.

Another man approached me. I negotiated a rate and asked for food and shelter. He took me back to a hotel where I met another sex worker, who became my friend. I stayed with her for a few days and finally had the courage to go back to my mother's house. When I went home, I was kicked out, with my children. Not knowing where else to go or who else to turn to, I went to the same friend, who let us stay with her. Initially, I wasn't doing any sex work but I began to feel like I should shoulder some responsibility in housing myself and my children, so I resumed my work.

Eventually, I began volunteering with the PT Foundation and they helped provide me with shelter. Through this I began to feel more empowered, and became actively involved in advocacy work. I started to take media interviews and slowly began working in the NGO [non-governmental organisation] sector. It was only when I began travelling — my first trip was to Cambodia for a human rights training — that **I realised that sex workers have rights**. So, gradually, I highlighted various issues faced by sex workers, and even used to go to the courts and police stations when any of us were arrested, to help.

At that point, many women's and other NGOs didn't have a good understanding of sex workers' experiences — how we were often treated in a demeaning way, or how we felt used. Somehow, I was able to start an organisation that focused on empowerment and monitoring legal experiences as well as access to legal aid. However, I was only able to run it for five years.

It was important to me that I run the organisation to work for sex workers' rights and decriminalising sex work, as I have also endured violence by police and know the different issues that we face. Once, I was arrested and taken to the Jalan Travers lock-up. I was made to strip naked and do squats while the women police officers verbally abused me and called me derogatory terms. Another time, we were arrested and made to clean the police station, and we were also threatened with media exposure. Once I had learned more about my rights, I was a lot braver, but this meant that I became more of a threat to the authorities. One day, the police had come to arrest a neighbour but ended up brutally abusing him in public before taking him to the *balai* [police station]. Seeing that, I was so angry, I called up my legal aid contact and was told to make a police report, and so I did. I made a report against the police officer — some stations were reluctant to take the report, but I said that I would go to every *balai* till someone writes the report. Ever since then, I have been tracked and traced; I will sometimes get calls telling me that they know who I am and what I do.

**I have faced so many violations as a sex worker — I have been beaten, and bitten.** Initially, I had no knowledge about sexually transmitted diseases (STDs) or HIV/AIDS. After working with the NGO, I learned about them and was more aware. This is important information as, in reality, I had many customers who did not use condoms. We even used to stuff cotton into our vaginas when we were on our period, as we couldn't stop work. I also faced a lot of stigma from society, and doctors and nurses. When I went for an HIV test, I was afraid of facing the doctors — as soon as they found out I was a sex worker, they tried to avoid me and wouldn't even allow me to open the door to the clinic. I had to sit at a distance from others. One of them even said to me, "Serves you right if you get sick because you do this kind of job." This was very demeaning, and I felt ostracised. **Sex workers deserve protection too.**

But then, I met a client who was very kind to me. He was not a Malaysian citizen and was an undocumented migrant; he was very caring, and would just come to talk sometimes. I *jatuh cinta* [fell in love] with him — even introduced him to my children — and was really taken by his compassion. I soon began living together with him and planned to get married, but my family was against it because I had to convert to Islam. Once I began living with him, I stopped working as a sex worker. I worked part-time at an NGO and also as a mini-bus conductor, and he was extremely supportive and always pushed me to achieve my dreams and continue with advocacy. With his support, I became chairperson at NSWB Asia.

However, he had a heart attack and stroke — so I went back to sex work using an app. This way, clients booked the hotel and I informed my circle of where I was going, and who with, for safety. These are all the precautions we have to take to stay safe as sex workers.

Up till today, no one in my family knows of my profession. I suspect that my brother knew or heard from someone, but it is not in the open. **There is so much stigma around sex work, and we are often asked to change our job because it is not accepted.** However, **sex work will never end, so it is much more important to decriminalise sex work so that workers are protected, kept safe from violence, and given awareness and access to healthcare.**

\* Pseudonym

## Annex J: Domestic Violence Refugee Survivors' Hindered Access to Protection and Health Services in Malaysia

Source: Women's Aid Organisation (WAO)

Women's Aid Organisation, is a non-profit organisation offering critical and comprehensive support services to all survivors of gender-based violence (GBV). Through the case management support that we offer refugee GBV survivors, we have observed a glaring gap in refugee access to protection and health services.

When refugee survivors come forward to make a report or attempt to access protection from authorities, refugees or those under consideration for refugee status often face the risk of being arrested or are in fact arrested and detained due to their documentation status. This has resulted in a deep distrust of authorities and reluctance to seek help.

Consequently, this distrust is reflected in the high demand of support from NGO-operated services (such as WAO) that may be perceived as less risky or threatening by refugees in comparison to authorities (e.g. Talian Kasih (gov hotline), police). Despite these high numbers (refer to Table 1), we can expect that many GBV cases within refugee communities often go unreported. Aside from the distrust of authorities, there is often significant pressure from within the community to protect 'their own' and remain silent about these violations.

**Table 1: Number of calls/WhatsApp/cases received by WAO from refugees for GBV support from 2021-2023.**

	2021	2022	2023
<b>Hotline</b>	251 calls	101 calls	109 calls
<b>Whatsapp/SMS</b>	316 conversations	353 conversations	622 conversations
<b>Case Management Support</b>	241 cases*	944 cases	453 cases
<b>Shelter Provision</b>	17 women 28 children	21 women 24 children	32 women and 37 children

- *Data is lesser than actual as case management data collection began in October 2021 due to spike in cases.*

### A. Refugees Survivors' Hindered Access to Health Services

Refugee survivors often face multiple obstacles in accessing health services at One-Stop Crisis Centres (OSCCs) located in the Emergency Departments of government hospitals nationwide. OSCCs were introduced in the early 1990s in Malaysia as a way of providing free and accessible health services to survivors of gender-based violence.

In recent years, however, survivor refugees have been subjected to discriminatory treatments by hospital staff and are often denied access to health treatments and examinations (which involve the collection of evidence) necessary to prosecute a case.

Several reasons have been cited for this lack of access, namely:

- 1) Survivor documentation status
- 2) 2019 Circular of Fees (Medical) (Cost of Services) Order 2014 requires refugees to pay to access treatment/examination (an explicit exception should be made for OSCC cases)
- 3) Survivors' lack of access to the E-payment system
- 4) Varying policies across different hospitals (e.g. in USM Kelantan, they have decided to ensure refugees receive free service)

**Case Study 1: Child Refugee Survivor made to pay for termination or pregnancy procedure despite being an OSCC**

A case we took to Hospital Ampang where we believe the refugee child was raped - the child is 13 years old, pregnant and made a police report. Borang Pol. 59 (Form) was issued and the police were present during examination. However, the victim and her sister were told that she needed to pay 50% of the bill (amounting to about RM1500). She was only released when a WAO social worker agreed to provide her contact details and assist with connecting the child's family with an organisation for funding. The both of them were also requested to pay at the counter what they had in their pocket - all of RM20.

When WAO social worker spoke to the head of Medical Social Work, she was informed that the child still needed to pay 50 % of the cost for the examination. In following up with the hospital, we were informed that the OSCC processes for the case were completed but the survivor could not be discharged as they were waiting on a release letter from JKM. The doctor informed us that the letter was not part of the OSCC process and asked the social worker to go to the tax department to waive the fees. JKM release letters have been standard practice in our experience with the OSCC.

**Case Study 2: Child survivor refused SCAN assessment due to being a refugee**

A refugee woman (UNHCR card holder) and her daughter were physically abused by her husband. Her daughter was punched in her face to the point that it caused a loose tooth.

After completing the medical check-up for the client, the doctor requested the SCAN team to assess the girl. After a long wait, the doctor informed WAO and survivor that the SCAN team would not assess the daughter for the following reasons:

- a) She is a foreigner;

- b) She is being assisted by NGO; and
- c) Her case does not fall under JKM's purview.

After some back and forth we were informed that the SCAN team insisted that they do not have to assess the child as she is a foreigner.

Finally, the doctor agreed to issue a referral to the SCAN team. WAO was advised by the nurse to wait for a call from the SCAN team for an appointment for the daughter (at least three working days). And if there was no follow-up on the appointment, we were to call HKL to request an appointment date, yet no names or referral letter were provided. The doctor only gave an appointment card for the girl.

The nurse also highlighted that, as HKL has a separate building for children, the SCAN team cannot leave the building and come to OSCC to assess children's survivors. According to her, the SCAN team assesses children if their situation requires urgent attention. A Medical Social Worker (MSW) contacted WAO later to say that there was no case/file opened for the daughter under the emergency Department. When we asked how to proceed, we were informed that:

- a) a new police report needed to be lodged in order to obtain the Borang Pol59 again
- b) to then go to HKL OSCC, and request for a referral to Hospital Tunku Azizah OSCC.

WAO informed the social worker that the emergency department has issued an appointment card under the survivor's name but no record was found at the OSCC. It has been 2 weeks since the incident and report, and the survivor still has not been examined by the SCAN team

### **Case Study 3: Difficulty in accessing medical treatment due to fee for refugees**

The refugee survivor was referred to WAO through MEWRO. She was physically abused by her husband at her home. The perpetrator entered the home while she (and her two children) was asleep. The abuse took place and she only realized the next morning when her neighbor explained what happened as they found her unconscious. WAO social worker assisted the survivor with lodging an action report at Pondok Polis Hospital Kuala Lumpur and was then in contact with the Inspecting Officer, who suggested for us to seek medical treatment/checkup at HUKM as the process of getting a medical report would be expedited.

Upon arrival at HUKM, we were informed by the registration counter that despite being provided with Pol 59 form and Borang Pemeriksaan Awal Perubatan Melibatkan Kes Polis (Early Medical Investigation Form), the survivor would have to pay RM 100 for registration and for any other subsequent treatment, there would be another fee because she was a refugee. Despite the client having the appropriate documentation in place. When asked, the IO mentioned the process of getting the full medical report from HKL would take a long time and that was why she suggested HUKM.



If an NGO had not been present with the survivor, they may not have been able to afford the medical assessment at HUKM's OSCC despite being a survivor of domestic violence.

## **B. Refugees Survivors' Hindered Access to Protection and Reporting Structures**

Refugee survivors are often hesitant to come forward to report GBV incidences or seek protection due to the fear and possibility of being arrested/detained/repatriated. As illustrated through the following case studies, this fear is not unfounded as many refugee survivors have in fact been arrested or detained due their documentation status.

### **Case Study 4: Child Refugee survivor of domestic violence and child marriage at risk of refoulement**

On 23 March 2022, WAO was contacted about a 16-year-old refugee child who is a survivor of domestic violence in an underage marriage. The child wanted to leave the marriage, and the abuser called the police to report her immigration status in revenge. She was brought to the station, and despite being a survivor of domestic abuse, she was penalised and put at risk of refoulement. Upon intervention by D11, UNHCR, and WAO, the child is currently in a safe place.

The Child Refugee had suffered continuous abuse from her adult husband before and throughout the marriage in March 2022. As a result of abuse inflicted on 21, 23 and 24 March she suffered injuries to her hands, stomach, and face. When the police were called (by the husband) on the 24th of March 2022, they allegedly extorted the child by asking her and those assisting her to reimburse the perpetrator with RM20,000 that the perpetrator bore to bring her from Myanmar to Malaysia.

She was handcuffed and brought to the police station at 1 am, where she was remanded and detained without being allowed to call anyone and was at immediate risk of refoulement. Further, grounds for the arrest of the Child Refugee were not stated, no effort was made by the police to ensure she understood what was happening before she was taken to the station and JKM was not contacted in the interest of the child's welfare at any point in time.

However, on the 26th of March, the survivor was transferred to another station and continued to be detained. She was detained from the 25th to 28th of March (Friday to Monday), even though her investigating officer (IO) had received a copy of her UNHCR document on the 25th. Around the 28th of March, she was allowed to connect with UNHCR and with the help of a letter from the UNHCR the child was released from police custody and is now in a safe place.

Survivor's account:

"I was brought to jail for 2 days. I wasn't allowed to go out or talk to anyone, and I didn't know what was going on. Sometimes I cried and asked for my phone to talk to someone, but the officers were angry and wanted to hit me. They couldn't hit me because I was far from the jail door. After 2 days, they brought me out to a different room and I spoke to UNHCR. The next day, I was released and my brother-in-law called me and told me that I was released and he is coming to pick me up from the station. While I was waiting for him, my husband's relatives were also at the station and trying to ask the police where I will be going or who is coming to fetch me. One of my husband's cousin threatened to kill me and my brother-in-law. I'm not allowed to lock my phone or change the phone password. When I do, the police will ask me to unlock it for them because they want to see who I am talking to."

**Case Study 5: Survivor detention for reporting domestic violence and the IO and JKM let protection order time limit lapse**

The survivor was physically abused by her husband in Teluk Intan. Her husband recorded the video of the abuse, sent it to her family in Myanmar and threatened them not to interfere in their marital issues. The next day, the survivor ran away and managed to come to Kuala Lumpur to a community leader's house in Klang to ask for help.

The community assisted her to lodge an action report at Bandar Baru Klang Police Station. However, they were unaware that she could be arrested for being undocumented. When a WAO social worker contacted her to assess her case, she was already on her way to IPD Teluk Intan for statement-taking, which is when the IO detained her.

The community leader and WAO social workers managed to contact the IO and learnt that she was brought to court to be charged under Section 6(1)(c) Immigration Act. We were advised to obtain identification or documentation for the survivor on an urgent basis. She was remanded for almost 2 months and was released in October when LPU under UNHCR managed to get her charge dropped by the DPP.

In detention, the social worker contacted the IO (for her DV case) to issue a referral letter so that we can assist her application for a Protection Order (PO). The IO was unaware of the Protection Order and had to check with his superior. We sent him a sample of the referral letter and informed him that it was time sensitive and that we needed the letter on an urgent basis. The IO later informed us that he checked with JKM Hilir Perak about the survivor's issue and he was informed by the JKM officer that a PO was not required as she was in detention. It was revealed that the PO could not be given for the following reasons:

- 1) Documentation status - she was undocumented.
- 2) JKM advised the IO that PO was not needed as she was in detention.

WAO informed the IO and JKM officer that there may be an issue with time limitation to issue a PO as it had been more than 7 days since the perpetrator was charged in court. We were

informed that since the case was ongoing, JKM can explain to the judge about her situation. However, we were told that the officer needed to check with Penasihat Undang-Undang and update us. Upon checking with Penasihat Undang-Undang, they informed us that the PO can no longer be applied for as it has been more than 7 days since the perpetrator was charged. They advised the survivor to lodge a new police report should a new incident take place and apply for IPO.

The conflicting advice given affected the survivor's right to a PO. Despite explaining the PO and its validity for a year with the possibility of extension, and reiterating that time is of the essence, the IO and JKM believed that she did not require the PO. Now that she is released, we were informed that she could no longer apply for the PO. Should the IO have issued a referral letter earlier and JKM applied the PO despite her being in detention, this issue would not arise.

## **Annex K: Discrimination Under Islamic Family Law**

Source: Sisters in Islam

While the Law Reform Marriage and Divorce Act (1976) regulates marriage relations for persons who do not profess the Islamic faith, Muslims are governed under Islamic Family Laws (IFL), which are legislated at the state level, without option.

### **1. Equality among Spousal Rights in Muslim Marriages**

Paragraph 118 of the Malaysia's State Party Report states that "Malaysia guarantees that Muslim women have equal rights in all family and marriage matters, including equal capacity as men to enter into marriage and its dissolution, covering matters related to maintenance, custody and guardianship of their children and inheritance." However, a number of issues remain as some related laws continue to discriminate against Muslim women. These include the following:

- Muslim women still require a guardian (wali) to enter into a marriage, regardless whether she is single, divorced or widowed, even though various interpretations in Islamic jurisprudence do not stipulate such a requirement, particularly for divorced or widowed Muslim women. This in totality denies women's agency to decide her rights to enter into a marriage.
- Muslim men can pronounce unilateral divorce (talaq). Women do not have this right, thus would have to apply for other forms of divorce (e.g.: fasakh) which is usually a protracted process involving complex legal documentation and can take up to two years in court, if not more. She would not be able to carry on with her life as immediately as the husband. Her personal/marital life is on hold until the divorce proceedings are over and the divorce is pronounced by the court. Conditions on which a woman may apply to the court for fasakh include if her husband: has failed to provide maintenance; has been insane or has a communicable sexually transmitted disease; treats her cruelly, including habitual assaults or making her life miserable by cruel conduct; does not treat her equally with

other wives (if he has multiple wives); disposes of her property or hinders her legal rights over her property; attempts to force her to lead an immoral life; or associates with “women of ill repute.” The Syariah Court requires the wife to provide strong grounds before pronouncing divorce through fasakh. Fasakh divorce takes a much longer time. The normal range is between six months to a year but there have been cases, which have stretched from five to ten years. These extensive delays are often the result of husbands using technical legal processes to delay the hearing of the case, husband not turning up for hearing, husband filing significant numbers of matters so as to disrupt the hearing of the matter at hand and so on.

- Muslim mothers have the right to custody but not guardianship. Legal guardianship remains with the Muslim fathers, even if the mother has custody of the children. There are also no grounds to challenge a father's right to guardianship i.e: his incapability to provide for the family, or the act of domestic violence, whereas the law listed down grounds to challenge a mother's right to custody;

### ***How right of custody is lost<sup>15</sup>***

*83. The right of hadhanah of a woman is lost—*

*(a) by her marriage with a person not related to the child within the prohibited degrees if her custody in such case will affect the welfare of the child but her right to custody will revert if the marriage is dissolved;*

*(b) by her gross and open immorality;*

*(c) by her changing her residence so as to prevent the father from exercising the necessary supervision over the child, except that a divorced wife may take her own child to her birth-place;*

*(d) by her abjuration of Islam;*

*(e) by her neglect of or cruelty to the child.*

The position of the law itself is discriminatory towards women. While the father's position remains untouchable and unquestionable regardless if it's not in the best interest of the child.

- Inheritance remains a highly challenging area when it comes to equal distribution between men and women, for instance between sons and daughters. While there are efforts to work around this by granting 'hibah' or a 'gift' to the daughters while the estate holder is still alive, we assert that this is not a solution that is available for. Where e.g., the beneficiaries are reliant on the savings of the deceased including the contributions made to the Employees Provident Fund (EPF), again equal distribution is not possible as faraid rules apply automatically, even if equal distribution is the wish of the deceased. In addition, the existing 'faraid' rules affect how other people can inherit from Muslim women, regardless if she is married or not, with or without children. Baitulmal, the government

<sup>15</sup>Islamic Family Law (Federal Territories) Act 1984, Section 83 <http://jafbase.fr/docAsie/Malaisie/FamilleIslamique.PDF>

body for inheritance management of Malaysia's Muslim citizens<sup>16</sup> stands to have a significant portion, if not all, of her estate.

## 2. Polygamy (Amendments and timeline)

- Since 1994, several rounds of law reform have chiselled away at rights of wives in polygamous marriages. For example, **polygamy committed without the court's permission can be registered as legal, upon payment of a small fine - creating a legal loophole which led to a proliferation of men who divorce their wives at will and who take second, third and fourth wives without the permission of the court.**
- The fifth condition for polygamy— 'no drop in standard of living of existing family' – was repealed, thus eliminating an important condition that a man has to fulfil before the court would consider giving him permission to marry again.
- Ten years forward, more legal rights were given to men and the use of gender-neutral language extended to men rights that historically were seen as the rights of women. Amendments were first introduced in the state of Selangor in 2003, and thereafter the Islamic Family Law (Federal Territories) (Amendment) Act 2006 was passed in Parliament applicable for Federal Territories. For example, the husband now has the right to claim a share of the matrimonial assets upon his polygamous marriage (section 23(9));
- This provision created a gross injury upon the rights of an existing wife where a husband who is going to marry a new wife would be able to seek the sale of the matrimonial home and make claims on the matrimonial assets in order to support his new family.
- Malaysia's State Party Report states that 'in making sure that the existing wife's concerns are heard and considered before the court decides the husband's application to contract a polygamous marriage, the Syariah Judiciary Department (JKSM) has issued Practice Direction No. 7 of 2021 which stipulates that the Syariah court is to summon the existing wife as a party in the application case."<sup>8</sup>
- However, it is important to note that the Practice Direction No.7 of 2021 issued by the Syariah Judiciary Department (JKSM) is only persuasive in nature. Thus, the husband's application for a polygamous marriage can continue regardless of whether the existing wife and/or family is consulted or not.

---

<sup>16</sup> MyGovernment Portal. Managing Application to Redeem Inheritance (Baitulmal). Accessed: 10 April 2024  
<https://www.malaysia.gov.my/portal/content/27712>

## **Annex L: States in Malaysia that have agreed to increase age of marriage to age of 18**

Source: Sisters in Islam

In 2019, the Women, Family and Community Development Minister revealed the states that have agreed and disagreed to increase the minimum age of marriage to 18 years old as per the following.

<b>Agree to Amend State Islamic Family Law</b>	<b>Disagree to Amend State Islamic Family Law</b>
Federal Territories	Sarawak
Penang	Pahang
Sabah	Terengganu
Johor	Perlis
Melaka	Negeri Sembilan
Perak	Kedah
	Kelantan