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### **Submission to the 86<sup>th</sup> Pre Session-Working Group Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW) February/March 2023**

#### **Malaysia: Discrimination Faced by Women Workers including Women Migrant Workers (for the list of issues and concerns)**

**Submitted by Persatuan Sahabat Wanita Selangor (PSWS), Tenaganita and North  
South Initiative (NSI). This document is permitted to be posted on the CEDAW  
website for the public.**

#### **Concern 1: Discriminatory Provisions in the First Schedule of the 1955 Employment Act and Minimum Wages Order 2022**

##### **i. Employment Act 1955**

In the 6<sup>th</sup> Periodic Report submitted by the Malaysian government in April 2022, they have omitted any explanation of measures taken to amend the 1955 Employment Act (First Schedule) that discriminates against domestic workers (which is a highly feminized sector in Malaysia). The explanation provided in paragraph 108 of the report is vague.

Prior to recent amendments, the Malaysian Employment Act 1955 referred to domestic workers as “domestic servants” and the role was interpreted as “a person employed in connection with the work of a private dwelling – house and not in connection with any trade, business, profession carried on by the employer in such dwelling house and includes a cook, house servant, butler, child’s nurse, valet, footman, gardener, washer man or washerwoman, watchman, groom and driver or cleaner of any vehicle licensed for private use”. In recent amendments in the Employment Act, references to “domestic servants” have been amended to “domestic employee”.

However, despite this name change, the Employment Act continues to exclude domestic workers from all fundamental rights of workers including those that cover maternity, annual leave, rest days and medical leave through provisions that excludes them in the First Schedule of the Act. So, while an apparent act of recognition of domestic work is denoted in the name change to “domestic employee”, the continued denial of their rights in the First Schedule connotes a continuing and entrenched view of domestic workers as servants and not workers.

The amendment, while cosmetic in nature with no real value added was a micro step forward to help change the world view of Malaysians away from one that sees domestic workers as modern-day slaves. Specifically, Subsection 5 of Section 2(1) of the Employment Act’s First Schedule denies domestic workers of important provisions including Sections 12 (Notice of Termination of Contract), 14 (Termination of Contract for Special Reasons), 16 (Employees on Estates to be provided with minimum number of days’ work in each month), 22 (Limitation on advances to

employees), 61 (Employers duty to keep register) and 64 (Employers duty to display notice boards) and Parts IX (Maternity Protection), XII (Rest days, Hours of Work, Holidays and Other Conditions of Service) and XIIA (Termination, Lay-Off and Retirement Benefits).

## ii. Minimum Wages Order 2022

### **Exclusion of domestic workers from the minimum wage of RM1500**

In the Minimum Wages Order 2022<sup>1</sup>, domestic workers are explicitly excluded from being entitled to the minimum wage of RM1500. This is clearly mentioned in the heading of non-application and reads as follows:

*This Order shall not apply to a domestic servant as defined under subsection 2(1) of the Employment Act 1955 [Act 265], subsection 2(1) of the Sabah Labour Ordinance [Cap.67] and subsection 2(1) of the Sarawak Labour Ordinance [Cap. 76]<sup>2</sup>*

The previous Human Resources Minister, Saravanan Murugan exercising the powers conferred by section 23 of the National Wages Consultative Council Act 2011 [Act 732], made this order which was gazetted on the 27<sup>th</sup> of April 2022.

This specific exclusion of domestic workers denies them the same rights and protection enjoyed by workers in other sectors. This exclusion also creates challenges for domestic workers in making overtime claims and additional wages for work on public holidays. By continuously denying domestic workers equal rights under the law, the government fails to recognize that domestic work is work in a sector that is highly feminized in nature.

In ratifying the Convention on Elimination of All Forms of Discrimination against Women (CEDAW), Malaysia is committed to international obligations to protect the rights of all women in the country. Article 11(d) of CEDAW, highlights “the right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value”

We kindly request the Committee to query the Malaysian government on what measures are being undertaken to remove the discriminatory provisions in the Employment Act 1955 (First Schedule). The explicit exclusion of domestic workers from the minimum wage as indicated in the Minimum wages Order 2022 is a violation of women’s rights in employment.

The current discriminatory provisions are clearly non-compliant and in violation of Articles 1, 2, 11 and 15 of the CEDAW Convention. The Malaysian government should provide a detailed answer as well as clear timelines for amending these discriminatory provisions as soon as possible.

<sup>1</sup> Federal Legislation Portal [https://lom.agc.gov.my/act-view.php?type=pua&no=P.U.%20\(A\)%20140/2022&lang=BI&language=BI](https://lom.agc.gov.my/act-view.php?type=pua&no=P.U.%20(A)%20140/2022&lang=BI&language=BI)

<sup>2</sup> Federal Legislation Portal [https://lom.agc.gov.my/act-view.php?type=pua&no=P.U.%20\(A\)%20140/2022&lang=BI&language=BI](https://lom.agc.gov.my/act-view.php?type=pua&no=P.U.%20(A)%20140/2022&lang=BI&language=BI)

## **Concern 2: Discrimination faced by Women Migrant Workers in Malaysia including limited access to justice**

We are concerned that the challenges faced by women migrant workers in Malaysia, including their access to justice is inadequately addressed in the 6<sup>th</sup> periodic report submitted by the State. The information provided in paragraphs 107 and 108 does not reflect the realities on the ground.

### **i. Cases of exploitation and abuse with limited access to justice**

Cases of exploitation and abuse of domestic workers have been a longstanding problem in Malaysia. Between June 2009 and November 2011, following reports of Indonesian domestic workers being abused in Malaysia, Indonesia issued a ban against Indonesian domestic workers coming to Malaysia. Despite the ban, in 2015, an Indonesian non-governmental organization, Migrant Care reported an average of 50 cases of abuse against Indonesian domestic workers annually (Dina Murad, Sunday Star, 21 March 2021).

In April 2022, the Indonesian ambassador to Malaysia noted that between 2021 and April 2022, 392 Indonesian domestic workers had sought refuge in the Indonesian embassy from abusive and delinquent local employers such as the case of a high-ranking police officer who did not pay his domestic worker for 17 years (Indonesian Envoy: 392 domestic workers sought shelter since 2021, Malaysiakini, 23 April 2022).

Similarly, Cambodia moved to protective measures for its citizens between 2011 and 2017 because of cases of Cambodian domestic workers being subjected to abuse and being held in “slave-like living conditions” (Dina Murad, Sunday Star, 21 March 2021). Consequently, a ban was enforced preventing Cambodians seeking positions as domestic workers in Malaysia until 2017.

#### *Selected examples of cases to highlight the abuse faced by women migrant workers*

2016 - Suyanti Sutrinso, a 19-year-old Indonesian, was rescued from her employers’ home in Mutiara Damansara with injuries to her eyes, hands, legs and internal organs. She had a blood clot near her brain, a cheek fracture, an injured right lung, and a broken scapula. Her employer was found guilty of attacking her and sentenced to 8 years in prison eventually (Worst domestic worker abuse cases of Singapore, Malaysia and Hong Kong, Asiaone, 25 March 2019).

2018 - Adelina Sao, a 21-year-old Indonesian, was rescued from her employers’ home in Bukit Mertajam where she had been severely abused, starved and forced to sleep outside the home with the dog. She later died in hospital of multiple organ failure. She had worked without pay for 2 years at her employers’ home. Her employers were charged for murder as well as for employing a foreign worker without a valid work permit (Worst domestic worker abuse cases of Singapore, Malaysia and Hong Kong, Asiaone, 25 March 2019). In 2019, her employer charged with murder was granted a full acquittal (Employer acquitted of domestic worker Adelina’s death, walks free, Tenaganita Press Release, 19 April 2019)

The attempts to seek redress or protection is an arduous one for domestic workers in such situations of abuse. There are unacknowledged challenges to getting such protection. Firstly, the work visa of the domestic worker is linked to the employer’s address. So, leaving the employer’s residence renders the worker undocumented as the work visa is automatically cancelled. Such

conditions of the work visa do not take into consideration the possibilities for the worker's life being endangered in the employer's residence. In cases where the police or labour ministry get involved, a special pass is issued by the immigration department to the worker to continue staying in the country. But these passes are only issued where abuse is apparent. So, although the domestic worker is the victim, she is doubly victimised by a system that causes her to lose the few protections she has.

We kindly request the Committee to query the Malaysian government on the measures to ensure access to justice of women migrant workers who face abuse and discrimination while working in Malaysia as detailed in the General Recommendation 33, which calls on governments to ensure that women are not intersectionally discriminated against where intersecting factors such as gender, socioeconomic status and national origin, among other factors, intersect to access to justice. These measures should be detailed and include clear timelines for implementation.

## ii. Problems relating to Recruitment Fees and Remuneration

According to the ILO Research Brief<sup>3</sup>, 'Migration cost survey among Indonesian and Filipina domestic workers in Malaysia', unfair recruitment practices such as high recruitment fees are among reasons for forced labour among domestic workers, where women find themselves indebted to agents and employers. In this connection, the ILO research brief notes that 64% of survey respondents were charged recruitment fees ranging from USD 311 (rough estimate of RM1380) for Filipina domestic workers and USD 549 (rough estimate of RM2440) for Indonesian domestic workers. The same survey found that many of the workers experienced salary deductions primarily for brokers', recruiters', and agents' fees.

Other reasons for salary deductions included electricity and water bills, mobile phone costs, medication, and salary advances. The nature of these deductions shows the arbitrariness of deductions, all at the whim of employers. Workers are placed in vulnerable situations and are subject to economic abuse. Salary deductions for these survey respondents ranged from less than 10% to 40% of their total wages earned over their employment period. A majority of those with salary deductions stated that they had periods of salary deduction when 51% - 100% of their salaries were deducted. More crucially, the survey notes that one in five of those who experienced salary deductions appeared unaware of the exact reasons for these deductions. This raises grave concerns about the exploitation of worker ignorance of their rights and dues and an indicator of forced labour conditions.

In ratifying the Convention on Elimination of All Forms of Discrimination against Women (CEDAW), Malaysia is committed to international obligations to protect the rights of all women in the country. Article 11(d) of CEDAW, highlights "the right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value", while article 11(f) underlines "the right to protection of health and to safety in working conditions". Malaysia's ratification of ILO's Protection of Wages (No.95) commits the country to ensuring that workers are notified of

<sup>3</sup> Research brief: Migration cost survey among Indonesian and Filipina domestic workers in Malaysia [https://www.ilo.org/asia/publications/WCMS\\_758614/lang--en/index.htm](https://www.ilo.org/asia/publications/WCMS_758614/lang--en/index.htm)

terms of payment of wages prior to their employment and that they are paid directly and in a timely manner.

We kindly request the Committee to query the Malaysian government on all measures taken to ensure the protection of women migrant workers in Malaysia as detailed in General Recommendation 26. We request that the Malaysian government be asked to provide concrete and detailed explanation of these measures including timelines for implementation.

### **Concern 3: Discriminatory implementation of social protection/security for women migrant workers**

In para 78, the State report mentions that Social Security Organisation (SOCSO) provides social security coverage to employees and their dependents through social security schemes such as Employment Injury Insurance Scheme and Invalidity Pension Scheme, and promotes occupational safety and health awareness. What it omits to mention is that this provision excludes migrant workers including women migrant workers from certain schemes.

Employees' Social Security Act 1969 (Act 4) and Employment Insurance System Act 2017 (Act 800) were extended to the domestic worker sector in Malaysia on 1 June 2021 and registration was opened on 16 June 2021. Data from SOCSO in June 2021 showed that 104,400 domestic workers would benefit from these protections. Of this total number of domestic workers, 15,000 were Malaysian citizens and permanent residents while 89,000 were migrant domestic workers (The Star; 19 June 2021).

A majority of domestic workers in the country, therefore, are migrant workers, but Act 4 and Act 800 do not adequately protect this majority. This is because while domestic workers who are Malaysians or permanent residents are covered under both Acts, migrant domestic workers are only partially protected under Act 4, specifically under the Employment Injury Scheme. This covers the worker for any illness or accident that occurs in the course of their work. However, they are excluded from the Invalidity Scheme under Act 4 and completely excluded from Act 800. The Invalidity Scheme covers workers for any invalidity or death occurring outside their workplace, while Act 800 is crucial in providing cover for unemployment. There has been no clear answers provided as to why this discrimination based on nationality is being practised.

We kindly ask the Committee to query the Malaysian government for the reasons for discriminating against migrant workers, including women migrant workers from these social protection measures. This measure of exclusion based on nationality is a clear violation of women's rights under CEDAW as well as relevant ILO conventions which has been ratified by the State of Malaysia.

General Recommendation No.26 makes recommendations on State obligations in relation to migrant women workers who "are in low-paid job, may be at high risk of abuse and discrimination and who may never acquire eligibility for permanent stay or citizenship..." (pg.3) (Section 4). These obligations, in summary, call for the State to ensure that migrant women workers have access to all protections and equal treatment in living and working

conditions. In denying migrant domestic workers protection under Act 4 and Act 800, the State is violating its obligations under this convention.

This submission for consideration by the CEDAW Committee during the pre-session on Malaysia was written by:

**Persatuan Sahabat Wanita Selangor (PSWS)**

PSWS was established in 1984 with the goal of working on rights of women workers. Initial work was with plantation/agricultural women workers. This work has evolved to include all women workers in the informal and precarious sectors in Malaysia, including working with women migrant workers. More information at <http://persatuansahabatwanita.org/>

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Endorsed by the following organisations:

**Tenaganita**

Tenaganita is a human rights and non-profit organisation dedicated in helping, building and protecting migrants, refugees, women and children from exploitation, discrimination, slavery and human trafficking since 1991. More information at <https://tenaganita.net/>

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**North South Initiative (NSI)**

NSI based in Malaysia aims to build synergy between the North and South in addressing human rights, social justice and sustainable development issues. Primary mission is the empowerment of marginalized groups, i.e. the Indigenous Peoples, Minority Students, Youths Living in Conflict Zones, Migrant Workers, Refugees, etc. More information at <https://nsinitiative.net/about/>

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