

Oral Statement for the UPR Pre-session on Malaysia by SIUMAN Collective.

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SIUMAN (the Malay word for "sane") is an Organisation of Persons With Disabilities (OPD) fighting for socioeconomic and political equity and equality for the mentally ill in Malaysia, initiated amidst the COVID-19 pandemic in 2021.

Before I start, I'd like to bring up the fact that my presence here was not a given, and I had to go through extra immigration processes to prove that I am fit to travel. This is because I hold a Persons With Disabilities (PWD) registration card that identifies me as someone with a mental disorder. I have no effective remedy barring a drawn out legal process that requires significant resources if my request is denied. This is illustrative of the lack of meaningful protections and inclusion accorded to PWD in Malaysia.

I will address the gaps in the legislative framework of disability rights followed by our recommendations.

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Legislative Framework

CRPD

Malaysia ratified the Convention on the Rights of Persons with Disabilities (UN CRPD) in 2010, and had earlier introduced the Persons with Disabilities Act (PWDA) in 2008. It should be noted that there are reservations to Article 15 and 18, and interpretative declarations to Article 3, 5 and 30. These reservations and interpretative declarations have shaped and informed, and arguably hampered, the domestication of CRPD principles in Malaysia.

Malaysia has signalled its intent to report to the CRPD committee but has yet to take any significant steps in consultation with civil society organisations or community members.

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The Federal Constitution

The Federal Constitution (FC) of Malaysia does not explicitly recognise disability within Article 8(2) (Equality). This is in contrast to our CEDAW ratification, when gender was added to Article 8(2). This distinction inadvertently denies clear and direct protection against discrimination for PWD due to the dualist legal framework practised by Malaysia.

The Federal Constitution also explicitly contains arbitrary conditions that discriminate and disqualifies PWD from standing as election candidates or being appointed as Senator by

virtue of the inclusion of 'unsound mind' as a category for disqualification. The broad interpretation of unsound mind, a concept based in law as opposed to medical conditions and capacity, combined with the lack of explicit discrimination protections results in broad-based discrimination against PWD in taking up public office.

Curiously, the definition of unsound mind is broad and all encompassing in this context, but when it involves a PWD in conflict with the law, only a state of psychosis would qualify as unsound mind.

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Persons With Disabilities Act 2008 (PWDA 2008)

Malaysia acknowledges the CRPD principles around the social model of disability and this is reflected in the PWDA 2008.

However this is rendered academic as the PWDA does not mandate any discrimination protections, universal access or reasonable accommodations in any aspect of life for PWD. This is further aggravated by the preamble which makes PWD rights relative to nondisabled rights, while Part V protects the government in discriminating against PWD.

Government imposed goals of greater participation of PWD in civil service have largely failed to meet its objective and continue to be a pipedream. There are also varying degrees of discrimination in workplaces that the PWDA fails to address. The shortfall was dismissed by the Minister of Human Resources when he indicated that only 8 cases of discrimination in employment were recorded, failing to acknowledge that employment legislation precludes any discrimination in the hiring process. It must also be noted that these 8 cases involved nondisabled persons.

On a more positive note, we welcome the decision by the government to decriminalise suicide attempts and adopt a more healthcare-centric approach to address those engaging in suicidal behaviours. However, the word "dangerous" was included in the amendments to the Mental Health Act 2001 (MHA 2001) to describe persons engaging in suicidal behaviour, and there is lack of reporting and oversight mechanisms in the apprehension of persons engaging in suicidal behaviour.

This brings up larger issues of healthcare access, as services and processes are not accessible to all PWD, with many unacknowledged barriers to access, along with a lack of protections for health information in the Personal Data Protection Act 2010 (PDPA 2010). It must also be noted that vulnerable communities such as refugees and migrants face significant barriers to healthcare access.

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Summary of Recommendations

SIUMAN recommends that the Government of Malaysia, through its relevant ministries, to perform a full audit on the implementation of National PWD Action Plan 2016-2022, to table and debate the outcome of the audit in the parliament, and to do this within one year.

SIUMAN also recommends that the Government of Malaysia remove all reservations to CRPD, ratify the UN CRPD Optional Protocol, amend PWD Act 2008 to mandate access and discrimination protections for PWD, while meaningfully including PWD in the process, within one year.

SIUMAN calls on the Government of Malaysia to audit all legislation with a PWD element, including but not limited to the Penal Code and the Mental Health Act, to ensure compliance with UN CRPD standards within two years.

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