



Convention on the Elimination of All Forms of Discrimination against Women

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**Committee on the Elimination of Discrimination
against Women**
Thirty-fifth session
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Concluding comments of the Committee on the Elimination of Discrimination against Women: Malaysia

1. The Committee considered the combined initial and second periodic report of Malaysia (CEDAW/C/MYS/1-2) at its 731st and 732nd meetings, on 24 May 2006 (see CEDAW/C/SR.731 and 732). The Committee's list of issues and questions is contained in CEDAW/C/MYS/Q/2, and Malaysia's responses are contained in CEDAW/C/MYS/Q/2/Add.1.

Introduction

2. The Committee expresses its appreciation to the State party for its combined initial and second report, while regretting that it was overdue and did not fully comply with the Committee's guidelines for preparation of reports or refer to the Committee's general recommendations. The Committee commends the State party for the written replies to the list of issues and questions raised by the pre-session working group, and for the oral presentation and further clarifications in response to questions posed orally by the Committee.

3. The Committee commends the State party on its delegation headed by the Secretary-General of the Ministry of Women, Family and Community Development, and which included representatives of other ministries with responsibility for implementation of the Convention. The Committee expresses its appreciation for the frank and constructive dialogue held between the delegation and the members of the Committee, which provided further insights into the real situation of women in Malaysia.

4. The Committee commends the State party on the withdrawal of reservations, made upon ratification, to articles 2 (f), 9 (1), 16 (b), (d), (e) and (h). The Committee notes that the State party is considering withdrawing its reservations to article 5 (a) and 7 (b).



Positive aspects

5. The Committee commends the State party for achievements in the field of women's education. It congratulates the State party on the establishment of a Cabinet Committee on Gender Equality and gender focal points in various ministries; and for its amendments to (i) the Pensions Act to ensure that widows of civil servants do not lose their pensions upon remarriage; (ii) the Land (Group Settlement Areas) Act to allow wives or ex-wives of settlers to become joint owners of the settlement; and (iii) the Penal Code to increase penalties for rape and incest.

6. The Committee also commends the State party for its continued efforts to establish legal reforms on violence against women, including its current initiatives to amend (i) the Domestic Violence Act to broaden the definition of domestic violence and to improve measures to protect victims; and (ii) the Employment Act of 1955, the Industrial Relations Act of 1967 and the Occupational Safety and Health Act of 1994 by adding provisions prohibiting sexual harassment.

Principal areas of concern and recommendations

7. The Committee is concerned that the Convention is not yet part of Malaysian law and thus its provisions are not enforceable in domestic courts. While appreciating that the State party amended Article 8 (2) of the Federal Constitution in 2001 to prohibit discrimination on the basis of gender, the Committee is concerned about the narrow interpretation given to this article by Malaysian courts. The Committee expresses concern that neither the Federal Constitution nor other legislation of the State party contains a definition of discrimination against women, in accordance with article 1 of the Convention, or the principle of equality of men and women, in line with article 2 (a) of the Convention.

8. The Committee calls on the State party to take immediate measures to ensure that the Convention and its provisions are incorporated into national law and become fully applicable in the domestic legal system. The Committee urges the State party to incorporate in its Constitution and/or other appropriate national legislation, the definition of discrimination, encompassing both direct and indirect discrimination, in line with article 1 of the Convention. The Committee further recommends that the State party enact and implement a comprehensive law reflecting substantive equality of women with men in both public and private spheres of life. It also recommends that the State party include adequate sanctions for acts of discrimination against women and ensure that effective remedies are available to women whose rights have been violated.

9. While welcoming the State party's assurances that it is reviewing reservations to articles 5 (a) and 7 (b) with a view to removing them, the Committee is concerned that the State party is not ready to similarly review and remove reservations to articles 9 (2), 16 (1) (a), 16 (1) (c), 16 (1) (f), 16 (1) (g) and 16 (2). The Committee is particularly concerned at the State party's position that laws based on Syariah interpretation cannot be reformed.

10. The Committee urges the State party to review all its remaining reservations with a view to withdrawing them, and especially reservations to article 16, which are contrary to the object and purpose of the Convention.

11. While welcoming the fact that the Convention has been translated into *Bahasa Melayu*, Chinese and Tamil and disseminated to various women's non-governmental organizations and appreciating the State party's initiative to create a children's handbook on the Convention, the Committee is concerned that the provisions of the Convention are not widely known by judges, lawyers and prosecutors.

12. The Committee calls on the State party to ensure that the Convention and related domestic legislation are made an integral part of legal education and the training of judicial officers, including judges, lawyers and prosecutors, so as to establish firmly in the country a legal culture supportive of women's equality and non-discrimination.

13. The Committee is concerned about the existence of the dual legal system of civil law and multiple versions of Syariah law, which results in continuing discrimination against women, particularly in the field of marriage and family relations. The Committee is also concerned about the State party's restrictive interpretation of Syariah law, including in the recent Islamic Family Law (Federal Territories) Amendment Act 2005, which adversely affects the rights of Muslim women. The Committee is further concerned about the lack of clarity in the legal system, particularly as to whether civil or Syariah law applies to the marriages of non-Muslim women whose husbands convert to Islam.

14. The Committee urges the State party to undertake a process of law reform to remove inconsistencies between civil law and Syariah law, including by ensuring that any conflict of law with regard to women's rights to equality and non-discrimination is resolved in full compliance with the Constitution and the provisions of the Convention and the Committee's general recommendations, particularly general recommendation 21 on equality in marriage and family relations. In this regard, it encourages the State party to obtain information on comparative jurisprudence and legislation, where more progressive interpretations of Islamic law have been codified in legislative reforms. It also encourages the State party to take all necessary steps to increase support for law reform, including through partnerships and collaboration with Islamic jurisprudence research organizations, civil society organizations, women's non-governmental organizations and community leaders. The Committee further recommends that a strong federal mechanism be put in place to harmonize and ensure consistency of application of Syariah laws across all States.

15. While noting the work of the Ministry of Education in providing guidelines to writers and publishers of school textbooks to eliminate gender stereotypes from school books, the Committee is concerned about the persistence of patriarchal attitudes and deep-rooted stereotypes regarding the roles and responsibilities of women and men in the family and society. These stereotypes present a significant impediment to the implementation of the Convention and are a root cause of the disadvantaged position of women in a number of areas, including in the labour market and in political and public life.

16. The Committee calls upon the State party to implement comprehensive measures to bring about change in the widely accepted stereotypical roles of men and women. Such measures should include awareness-raising and educational campaigns addressing women and men, girls and boys, and religious leaders with a view to eliminating stereotypes associated with

traditional gender roles in the family and in society, in accordance with articles 2 (f) and 5 (a) of the Convention.

17. While appreciating the State party's policy of at least 30 per cent women in decision-making levels in the public sector and noting that the Ministry of Women, Family and Community Development is working with the United Nations Development Programme to develop an action plan to implement this policy, the Committee is concerned about the low level of representation of women in public and political life and in decision-making positions, including in the foreign service. The Committee is also concerned about the level of representation of women at decision-making level in private sector organizations.

18. The Committee encourages the State party to take sustained measures, including temporary special measures in accordance with article 4, paragraph 1, of the Convention and the Committee's general recommendation 25, and to establish concrete goals and timetables so as to accelerate the increase in the representation of women, in elected and appointed bodies in all areas of public life, including at the international level. The Committee invites the State party to also encourage political parties to use quotas. It recommends that the State party conduct training programmes on leadership and negotiation skills for current and future women leaders. It also encourages the State party to take measures that will lead to an increase in the number of women at the decision-making level in private sector organizations. It further urges the State party to undertake awareness-raising about the importance of women's participation in decision-making processes at all levels of society.

19. While appreciating that the Ninth Malaysia Plan (2006-2010) aims to increase women's participation in the labour force, the Committee is concerned at the lack of employment opportunities for women despite the high level of education attained by girls and women. The Committee is further concerned that the preliminary findings of a study conducted to determine factors contributing to the mismatch between women's educational achievements and their opportunities in the labour market indicate that employers have a preference for male employees due to strongly held stereotypes of men as being more independent workers. In this regard, the Committee notes with concern that restrictions on women's employment, as well as protective employment legislation, policies and benefits for women, perpetuate traditional stereotypes regarding women's roles and responsibilities in public life and in the family.

20. The Committee urges the State party to intensify its efforts towards accelerating the achievement of de facto equal opportunities for women with men in the area of employment through, inter alia, the use of temporary special measures in accordance with article 4, paragraph 1, of the Convention, and general recommendation 25. The Committee recommends that monitoring measures be introduced to ensure effective implementation of efforts to promote change concerning the stereotypical expectations of women's roles and the equal sharing of domestic and family responsibilities between women and men, including by making the flexible work arrangements envisaged in the Ninth Malaysia Plan equally available to women and men.

21. While noting the various initiatives taken by the State party to address violence against women, the Committee is concerned about the reluctance of the State party to criminalize marital rape. In particular, the Committee is concerned

that the proposal before Parliament on this issue is narrowly tailored to criminalize sexual assault based on use of force and death threats by the husband, rather than marital rape based on lack of consent of the wife.

22. The Committee requests the State party to enact legislation criminalizing marital rape, defining such rape on the basis of lack of consent of the wife.

23. The Committee is concerned that the State party has not enacted legislation on trafficking and has not established a comprehensive plan to prevent and eliminate trafficking in women and to protect victims. It is further concerned that women and girls who have been trafficked may be punished for violation of immigration laws and are thus revictimized. In addition, the Committee is concerned about the lack of systematic data collection on this phenomenon.

24. The Committee urges the State party to consider ratifying the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children Supplementary to the United Nations Convention against Transnational Organized Crime and to intensify its efforts to combat all forms of trafficking in women and girls, including by enacting specific and comprehensive legislation on the phenomenon. The Committee further calls upon the State party to increase its efforts at international, regional and bilateral cooperation with countries of origin and transit so as to address more effectively the causes of trafficking, and improve prevention of trafficking through information exchange. The Committee urges the State party to collect and analyse data from the police and international sources, prosecute and punish traffickers, and ensure the protection of the human rights of trafficked women and girls. The Committee urges the State party to ensure that trafficked women and girls are not punished for violations of immigration laws and have adequate support to be in a position to provide testimony against their traffickers.

25. While noting the memorandum of understanding between the State party and the Government of Indonesia that regulates the rights of Indonesian migrant workers in Malaysia and the establishment of a Cabinet Committee on Foreign Workers, the Committee is concerned about the lack of legislation and policies on the rights of migrant workers, particularly migrant domestic workers who are mostly women, including employment rights and rights to seek redress in cases of abuse.

26. The Committee urges the State party to enact comprehensive laws and establish procedures to safeguard the rights of migrant workers, including migrant domestic workers. The Committee calls upon the State party to provide migrant workers viable avenues of redress against abuse by employers and permit them to stay in the country while seeking redress. The Committee further urges the State party to make migrant workers aware of such rights.

27. The Committee is concerned that the State party has not enacted any laws or regulations concerning the status of asylum-seekers and refugees. In particular, the Committee is concerned that asylum-seekers and refugees, including women, are prosecuted for immigration-related offences and may be indefinitely detained at immigration detention centres or deported.

28. The Committee recommends that the State party adopt laws and regulations relating to the status of asylum-seekers and refugees in Malaysia, in line with international standards, in order to ensure protection for asylum-

seekers and refugee women and their children. The Committee further recommends that the State party fully integrate a gender-sensitive approach throughout the process of granting asylum/refugee status, in close cooperation with appropriate international agencies in the field of refugee protection, in particular the Office of the High Commissioner for Refugees.

29. The Committee is concerned that the report did not provide information about the position of women from various ethnic groups in all areas covered by the Convention. In addition, the Committee regrets that the information provided on rural women was out of date and did not present a current picture of the situation of rural women.

30. The Committee urges the State party to include in its next report, data disaggregated by sex and ethnicity in all areas covered by the Convention and current sex-disaggregated data and information on the de facto position of rural women in all sectors.

31. The Committee encourages the State party to ratify the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women and to accept, as soon as possible, the amendment to article 20, paragraph 1, of the Convention concerning the meeting time of the Committee.

32. The Committee requests the State party to ensure the wide participation of all ministries and public bodies in, and to continue to consult with non-governmental organizations during, the preparation of its next report. It encourages the State party to involve Parliament in a discussion of the report before its submission to the Committee.

33. The Committee urges the State party to utilize fully in its implementation of the obligations under the Convention, the Beijing Declaration and Platform for Action which reinforce the provisions of the Convention, and requests the State party to include information thereon in its next periodic report.

34. The Committee also emphasizes that a full and effective implementation of the Convention is indispensable for achieving the Millennium Development Goals. It calls for the integration of a gender perspective and the explicit reflection of the provisions of the Convention in all efforts aimed at the achievement of the Millennium Development Goals and requests the State party to include information thereon in its next periodic report.

35. The Committee notes that States' adherence to the seven major international human rights instruments¹ enhances the enjoyment by women of their human rights and fundamental freedoms in all aspects of life. Therefore, the Committee encourages the Government of Malaysia to consider ratifying the treaties to which it is not yet a party, namely, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms

¹ The International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Rights of the Child and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

of Racial Discrimination, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

36. The Committee requests the wide dissemination in Malaysia of the present concluding comments in order to make the people of Malaysia, including government officials, politicians, parliamentarians and women's and human rights organizations, aware of the steps that have been taken to ensure de jure and de facto equality of women, as well as the further steps that are required in that regard. The Committee requests the State party to continue to disseminate widely, in particular to women's and human-rights organizations, the Convention, the Optional Protocol thereto, the Committee's general recommendations, the Beijing Declaration and Platform for Action and the outcome of the twenty-third special session of the General Assembly, entitled "Women 2000: gender equality, development and peace for the twenty-first century".

37. The Committee requests the State party to respond to the concerns expressed in the present concluding comments in its next periodic report under article 18 of the Convention. The Committee invites the State party to submit its third periodic report, which was due in August 2004 and its fourth periodic report, which is due in August 2008, in a combined report in 2008.