



**Convention on the Elimination  
of All Forms of Discrimination  
against Women**

Distr.: General  
27 March 2006

Original: English

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**Committee on the Elimination of Discrimination  
against Women**

**Pre-session working group**

**Thirty-fifth session**

15 May-2 June 2006

**Responses to the list of issues and questions for  
consideration of the combined initial and second  
periodic report**

**Malaysia\***

**General**

1. *Please provide information on the process of preparation of the report, including on whether non-governmental organisations, particularly women's organisations, were consulted, and whether it was adopted by and presented to Parliament.*

The following actions were taken in preparing the report:

- i) A CEDAW Steering Committee, chaired by the Secretary General of the Ministry of Women, Family and Community Development (MWFCD) was established to monitor the implementation of CEDAW and to prepare the report. The Committee comprised members from relevant ministries and government agencies and the National Council of Women's Organisations (NCWO). NCWO is the umbrella body of women NGOs in Malaysia. The list of members of the Committee is shown in Annex 1.
  - ii) The draft report was discussed with representatives from various NGOs and was presented to the Cabinet for Government's approval.
2. *Please describe any progress concerning withdrawal of Malaysia's reservations with regard to articles 5(a), 7(b), 9(2), 16(1)(a), 16(1)(c), 16(1)(f) and 16(1)(g).*

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\* Issued without formal editing. annexes submitted by the State party will be distributed in the language received.

The MWFCDD has consulted and will continue discussions with the relevant agencies such as the Attorney General's Chambers, the Ministry of Foreign Affairs, Ministry of Home Affairs, Department of Islamic Development of Malaysia (JAKIM), Department of Orang Asli Affairs as well as the relevant authorities in-charge of natives in Sabah and Sarawak to withdraw the outstanding reservations.

3. *The report indicates the multi-ethnic population mix of Malaysia but the discussion of various articles of the Convention in the report does not show whether certain ethnic groups are particularly challenged in various areas and whether particular measures have been taken to address such challenges. Please provide such information.*

The Government's commitment in achieving gender equality cuts across the multi-ethnic groups in Malaysia. This is in line with the objectives of the National Policy on Women, to ensure an equitable sharing in the acquisition of resources, information, opportunities and benefits of development for men and women. The objectives of equality and justice must be made the essence of development policies which must be people oriented so that women, who constitute half the nation's population, can contribute and realise their potentials to the optimum. It is also to integrate women in all sectors of development in accordance with their capabilities and needs, in order to enhance the quality of life, eradicate poverty, ignorance and illiteracy, and ensure a peaceful and prosperous nation.

Since the establishment of MWFCDD in 2001, various studies and opinion polls were conducted to study the challenges faced by women from different ethnic groups such as a Study on Women in Rural Areas and Single Mothers: Solutions and Current Challenges; A Study on Family Transformation in the Context of Changing Trends in Women's Work and Lifestyles in Malaysia; Unpaid Work in Malaysia; and a public opinion poll on Mapping Moral Values.

In addition, the Government has taken various efforts to mainstream women from different ethnic groups into the development of the country. For example, the Department of Orang Asli Affairs has organised programmes that involved aborigine women to improve their quality of life and to be competitive with other ethnic groups. The programmes include the following:

- i) Entrepreneur Guidance Scheme  
This guidance scheme focuses on handicraft, sewing, carving etc. They received financial aid as well as shop lots to start up business.
- ii) Health Services  
Health services are made available for women in wellness clinics for mothers and children.
- iii) Mind Development Programme  
To create awareness and build self motivation among the youths and women of aborigine (orang asli) groups.

## iv) Skill Training

Sewing and carving training for aborigine (orang asli) women at certificate level.

**Articles 1 and 2**

4. *The report indicates that the Constitution was amended in 2001 to prohibit discrimination on the basis of gender and that all laws are being reviewed to ensure gender equality. Please indicate whether discriminatory laws are being reformed including those laws that relate to women's status and rights under Syariah laws. Please also indicate the time-line anticipated for the reform.*

On August 1, 2001, Article 8(2) of the Federal Constitution was amended to include the word 'gender'. By virtue of the amendment the Federal Constitution prohibits discrimination on the basis of gender in any law. Laws in Malaysia generally do not discriminate women. In line with Malaysia's accession to CEDAW, several legislation have been enacted or amended by the Government in order to eliminate discrimination against women. Examples of the laws are as provided in Annex II.

With respect to women's status and rights under Syariah laws, we wish to emphasise to the Committee that the Syariah not only accords recognition to women but also guarantees their rights. With the advent of Islam, women's status is alleviated from the position of women during the pagan era, where women were considered as lesser beings compared to men and were continuously oppressed by society.

The Islamic Family Law Enactments/Act (IFL) was drafted based on the principles enunciated above. The IFL contains provisions on marriage, divorce, maintenance, guardianship and other matters connected with family life. Rights guaranteed under the IFL are as below:

**Choosing a spouse and entering into marriage**

- (i) Under the Syariah, women are given the freedom to choose a spouse. IFL provides that a marriage shall not be recognised or registered unless both parties to the marriage freely consent to the marriage. Apart from the consent of both parties, the consent of the *wali* (the women's guardian for marriage) is also required.
- (ii) The requirement of the consent of the *wali* under IFL is not based on discrimination against women but on the concept that as guardian of the bride, the *wali* has been consulted and as guardian of the bride, he has the right to give consent to the marriage. It is the responsibility of the *wali* to ensure that the bride truly consents to the marriage.

### **Dissolution of Muslim marriage**

- (i) The IFL provides that where a man pronounces a divorce by *talaq* the pronouncement of divorce by *talaq* shall be done before a Syariah Court Judge and two witnesses. The pronouncement of divorce by *talaq* by the husband outside the Court and without the Court's permission is an offence and is punishable under the IFL.
- (ii) A woman has the right to petition to the Syariah Court for the dissolution of marriage by *fasakh* (annulment of marriage), *khul'* (divorce by redemption) and divorce by *ta'liq* (*divorce by repudiation*). Upon divorce, the wife is entitled to *'iddah* (a period of waiting from re-marriage after the death of a woman's husband or her separation or divorce from him) maintenance, *mut'ah* (consolatory gift) and the right to stay in the home where she used to live when she was married for so long as the husband is not able to get other suitable accommodation for her. The right to accommodation shall cease-
  - (a) if the period of *'iddah* has expired; or
  - (b) if the period of guardianship of the children has expired;
  - (c) if the woman has remarried;
  - (d) if the woman has been guilty of open lewdness.

### **Custody and guardianship**

The IFL provides that the mother shall be the best person entitled to the custody of her child whilst guardianship is vested in the father.

### ***Harta Sepencarian* (property jointly acquired by husband and wife during the subsistence of the marriage)**

- a. To enhance protection for women, the reviewed provision in the model law relating to the IFL contains a provision on the distribution of the *harta sepencarian* before the court grants permission or orders for the registration of a polygamous marriage. This provision ensures that women in Malaysia is guaranteed the right to equal distribution of properties jointly acquired by husband and wife during the subsistence of the marriage.
- b. The Law Reform (Marriage and Divorce) Act 1976 applicable to non-Muslims also stipulates equal distribution of property jointly acquired by husband and wife during the subsistence of the marriage when a divorce occurs. However, the model law relating to the IFL allows an application on distribution of property jointly acquired by husband and wife during the subsistence of the marriage to be made even without the occurrence of a divorce. This would ensure that the woman's share to the said property is always protected.

## **Polygamy**

- (i) We wish to emphasize to the Committee that Islam favours monogamy and polygamy under the Syariah is regarded as an exception. Both classical and contemporary Muslim jurists generally agree that the ability to treat co-wives justly as stated in the Qur'anic verse 4:3 is a prerequisite to the permissibility of polygamy.
- (ii) This is reflected in the IFL which provides for safeguards before a man can enter into a polygamous marriage. The safeguards include obtaining the permission of the Syariah Court before a polygamous marriage can be entered into and the right of the existing wife or wives to be present at the hearing of the application for a polygamous marriage. The Court shall consider matters such as the proposed marriage is just, the ability of the applicant to support all his wives and dependants, that the applicant is capable of according equal treatment to all his wives and that the proposed marriage would not cause *darar syarie* (harm according to what is normally recognised by Islamic law affecting a wife in respect of religion, life, body, mind, moral or property) to the existing wife or wives.

## **The right to own property and the right to inherit.**

With respect to the right to own property it should not be equated to the right to inherit. Under Syariah there are no provisions to disallow a woman from owning property.

A woman's share under the *faraid* is one half of the man's share. The variation in inheritance is consistent with the variation in financial responsibilities of man and woman. Under Syariah a man is obligated to maintain his wife, his children and in some cases his needy relatives. Therefore, based on this responsibility accorded to men under the Syariah the men inherit more share than women in order to fulfil his obligations. The responsibility for the maintenance of his wife is neither waived nor reduced because of his wife's wealth or because of her access to any personal income gained from work, rent, profit, or any other legal means.

Women under Syariah are not burdened by such responsibility. Her possessions before marriage do not transfer to her husband. She keeps her maiden name after her marriage and has no obligation to spend on her family out of such properties or out of her income after marriage. She is entitled to the *Mahr* which she takes from her husband at the time of marriage and if she is divorced she may get alimony from her ex-husband. As such the variation in inheritance rights is founded on the responsibilities accorded to men and women under the Syariah and is not a form of discrimination against women.

## **Appointment to public office**

Appointment to public office includes appointment to posts of Syariah Court Judges, *Mufti*, *Imam*, *Bilal* and *Kadi*. We wish to bring to the Committee's attention that these posts are not merely public posts but they are integrated with religious requirements. The appointment of women in all these posts may not be possible not on the basis of discrimination against women but due to the religious requirements relating to the functions of the posts. This is further explained in the following paragraphs -

### **Syariah Court Judge.**

One of the conditions of a valid marriage is solemnization of a marriage by a *wali*. In the absence of the father or his male relatives as a *wali* this power is assumed by *amir* (ruler) or appointed *Kadis*. The function of a Syariah Court Judge includes acting as a representative of the *amir* in solemnising a marriage as *wali hakim* (a *wali* authorised by the ruler) in place of a *wali mujbir* (father or grandfather of the bride). It is a religious requirement that the function of solemnizing a marriage can only be done by a man based on the role of a man as protector and provider of the family under Syariah. At present rulers of the States authorise persons holding the posts as "Registrars of Marriages, Conciliations and Divorces" to solemnize marriages. Therefore, where the role of Syariah Court Judges does not include the solemnization of marriage, women may be appointed to hold such positions.

### ***Imam, Bilal and Kadi***

Malaysia's legislation is also silent on the criteria of an *Imam*, *Bilal* or *Kadi*. However the functions of *Imam*, *Bilal* and *Kadi* also include assuming the role of a representative of the *amir* in solemnising a marriage as *wali raja* in place of a *wali mujbir*. Based on the role of a man under Syariah as protector and provider of the family, it is a religious requirement that only a man can solemnise a marriage. The integration of this religious requirement in the post of *Imam*, *Bilal* and *Kadi* does not permit a woman to hold this post. Nevertheless, a woman can be an *Imam* or *Bilal* among women.

### ***Mufti***

The provisions of the Federal Constitution and the Administration of Islamic Law Acts/Enactments do not contain a restriction on the appointment of women as *Mufti*. However, it is to be noted, that the post of the *Mufti* is not merely as the head of department but it is also a religious post where the *Mufti* is required to perform ceremonial functions as a leader to recite the *doa* (prayers) and as an *Imam* who leads people in *solah* (prayers). These are the *Mufti*'s public functions to be performed at all times at all levels of Government. He is also continuously engaged in the process of decision making pertaining to all aspects of life demanded by the *ummah* (people).

Due to her biological make up a woman may not be able to discharge these duties at all times as the religion prohibits a woman to recite the *doa* or perform *solah* during her menstruation.

It is evident from the above that the post of *Mufti, Imam, Bilal* or *Kadi* although regarded as ‘public posts’ are integrated with religious implications within its scope of functions and duties. The religious implications instilled in such posts do not allow for modifications to be made to allow women to hold the respective posts. From the explanation given above we wish to reiterate to the Committee that the restriction on women to be appointed to such posts is not based on discrimination against women.

5. *A recent Federal Court decision interpreted the equality provision in Article 8(1) of the Federal Constitution as extending only “to persons in the same class” and held that women, in that case, were a different class than men. Please explain the concept of “equality” under the Federal Constitution and whether this concept conforms to Malaysia’s obligations under the Convention.*

### **Concept of equality under the Federal Constitution**

Article 8(1) and (2) guarantees equality before the law for all persons and non-discrimination on the basis of religion, race, descent, place of birth or gender. However, the concept of equality and non-discrimination under the said articles is qualified.<sup>1</sup>

The qualification is based on the concept of reasonable classification or lawful discrimination which provides that a law must operate alike on all persons under like circumstances. It does not mean that the law operates alike in all persons in any circumstances. Where there is a classification founded on an intelligible differentia which distinguishes persons that are grouped together from others left out of the group and the differentia has a rational relation to the object sought to be achieved by the law in question, the discrimination is valid.

An example where the concept of reasonable classification is used in the law can be seen in the provision of Article 8(5) of the Federal Constitution. Article 8(5) provides that the provision on non-discrimination under article 8 does not invalidate or prohibit:

- (a) any provision regulating personal law;
- (b) any provision or practice restricting office or employment connected with the affairs of any religion, or of an institution managed by a group professing any religion to persons professing that religion;
- (c) any provision for the protection, well-being or advancement of the aboriginal peoples of the Malay Peninsular (including the reservation of land) or the

<sup>1</sup> *Datuk Haji Harun bin Haji Idris v Public Prosecutor* [1977]2 MLJ 155

reservation to aborigines of a reasonable proportion of suitable positions in the public service;

- (d) any provision prescribing residence in a State or part of a State as qualification for election or appointment to any authority having jurisdiction only in that State or part, or for voting in such an election;
- (e) any provision of a Constitution of a State, being or corresponding to a provision in force immediately before Merdeka Day;
- (f) any provision restricting enlistment in the Malay Regiment to Malays.

The qualification in the above paragraph is founded on the concept of lawful discrimination based on classification, for example, Muslims as opposed to non-Muslim (article 8(5)(b)), aborigines as opposed to others (article 8(5)(c)), residence in a particular State opposed to residents elsewhere (article 8(5)(d)).

It is to be noted that the concept of lawful discrimination on the basis of reasonable classification is not peculiar only to Malaysia, as in India discrimination law is good law where -

- (i) the classification is founded on an intelligible differentia which distinguishes persons that are grouped together from others left out of the group; and
- (ii) the differentia has a rational relation to the object sought to be achieved by the law in question. The classification may be founded on different bases such as geographical, or according to objects or occupations and the like. What is necessary is that there must be a nexus between the basis of classification and the object of the law in question.<sup>2</sup>

### **Conformity of the concept of equality under the Federal Constitution to Malaysia's obligation under CEDAW**

Article 1 of CEDAW defines "discrimination against women" and the operative articles in CEDAW went on to stipulate obligations on State Parties to take measures to eliminate discrimination against women in cultural and social patterns and other fields such as education, health, public posts etc.

The concept of equality under the Federal Constitution is in conformity with Malaysia's obligation under CEDAW as it provides for equality before the law and prohibits discrimination on the basis of gender in any law or in the appointment to any office or employment under a public authority or in the administration of any law relating to the acquisition, holding or disposition of property or the establishing or carrying on of any trade, business, profession, vocation or employment.

We wish to bring to the Committee's attention that discrimination as rationalised by the concept of "reasonable classification" is only allowed on permissible grounds

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<sup>2</sup> Shri Ram Krishna Dalmia & Ors. V. Shri Justice S.R. Tendolkar & Ors.  
AIR[1958] SC 538

which are provided by the law such as for the protection or advancement of a class of person. This is to be distinguished from discrimination of women which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women of human rights and fundamental freedom in the political, economic, social, cultural, civil or any other field as stipulated in article 1 of CEDAW.

By virtue of the provisions under article 8(1) and 8(2) there is no discrimination in the fields as mentioned in CEDAW unless it is necessary for the protection and advancement of women.

It is noted that article 4 of CEDAW allows for positive discrimination. It is submitted that discrimination made for the protection and advancement of women is embraced by article 4 of CEDAW.

Based on the applicability of the concept of reasonable classification to the principle of equality under article 8 of the Federal Constitution, several legislation which discriminate men from women have been passed by the Parliament as follows:

- section 34 of the Employment Act 1955 which provides that no employer shall require any female employee to work in any industrial or agricultural undertaking between the hours of ten o'clock in the evening and five o'clock in the morning nor commence work for the day without having had a period of eleven consecutive hours free from such work;
- section 35 of the Employment Act 1955 provides that no female employee shall be employed in any underground working;
- provisions on maternity protection in Part IX of the Employment Act 1955;
- section 493 of the Penal Code makes it an offence for a man who by deceit causes any woman who is not lawfully married to him, to believe that she is lawfully married to him and to cohabit or have sexual intercourse with him in that belief;
- section 498 of the Penal Code makes the act of enticing or taking away or detaining with a criminal intent a married woman an offence;
- section 289 of the Criminal Procedure Code provides that sentence of whipping is forbidden on women;
- Fourth Schedule to the Geneva Conventions Act 1962 provides for the protection and assistance from the effects of war to the sick and wounded, aged persons, children under fifteen, expectant mothers and mothers of children under seven;
- Article 27 of the Fourth Schedule to the Geneva Conventions Act 1962 specifically provides that women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault;

- Article 76 of the Fourth Schedule to the Geneva Conventions Act 1962 provides that women detainees shall be confined in separate quarters and shall be under the direct supervision of women.

We wish to bring to the Committee's attention that the unequal treatment between men and women in the above legislation is on the basis that it is necessary for the protection of women. In addition, a provision on maternity leave under the Employment Act 1955 is consistent with article 4(2) of CEDAW.

The Committee stated in its queries that "A recent Federal Court decision interpreted the equality provision in Article 8(1) of the Federal Constitution as extending only "to persons in the same class" and held that women, in that case, were a different class than men". As the Committee did not specify the parties to the case, we conclude that the relevant case on the issue is the case of Beatrice At Fernandez v. Sistem Penerbangan Malaysia & Anor [2005] 2 CLJ 713. In the said case, the applicant's services as a stewardess to the respondent (Sistem Penerbangan Malaysia) was terminated due to her pregnancy consistent with the provision under the collective agreement governing her employment with the respondent. The applicant alleged that the collective agreement has violated fundamental liberties under article 8 of the Federal Constitution.

In the said case the Court held among others that article 8 extends only to persons in the same class as it recognises that all persons by nature, attainment, circumstances and the varying needs of different classes or persons often require separate treatment. We wish to clarify to the Committee that in the said case the Court held that flight stewardesses are regarded as a class of their own as compared to the administrative staff or chief stewardesses or senior chief stewardesses. This is what the Court meant by "persons in the same class". As such the applicant who is a flight stewardess can only compare herself to other flight stewardesses. She cannot compare herself to the administrative staff or chief stewardesses or senior chief stewardesses which are a class of their own respectively. We wish to bring to the Committee's attention that the Court did not hold women were a different class than men in the said case but rather classification in the case was done on the basis of category of work.

6. *Article 8(2) of the Federal Constitution which prohibits discrimination, including on the basis of gender, has been interpreted by Malaysian courts as protecting individuals only from discrimination by state or public authorities. What measures have been taken to formulate anti-discrimination laws protecting women from discrimination by entities other than state or public authorities, in line with article 2, paragraphs (b) and (e) of the Convention.*

The Committee had not specified the parties to the case referred in the above inquiry, as such we conclude that the Committee is referring to the case of Beatrice At Fernandez v. Sistem Penerbangan Malaysia & Anor [2005] 2 CLJ 713. It was decided in the said case by the Federal Court that it was not possible to expand article 8(2) of the Federal Constitution to apply to "collective agreements". To invoke article 8 of

the Federal Constitution it has to be shown that a ‘law’ or an ‘executive action’ is discriminatory. The case further held that Constitutional law, as a branch of public law, deals with the contravention of an individual’s rights by the Legislature or the Executive or their agencies. It does not extend to infringement of an individual’s legal right by another individual. Therefore based on this decision, it would be accurate to conclude that article 8(2) of the Federal Constitution protects individuals only from discrimination by the State or its agencies.

Pursuant to the decision of the above case, the Committee has enquired on measures taken by the Court to formulate anti-discriminatory laws to protect women from discrimination by entities other than State or public authorities. In the hearing of the above case before the Court of Appeal, the Court held that “Where the invasion is by another private individual, the aggrieved individual may have his remedies under private law, but constitutional remedies will not be available.”

The Federal Court did not make any contradicting findings on the said issue. Therefore, where an individual is discriminated against by entities other than State or its agencies, the aggrieved individual can seek redress under private law. As such the absence of anti-discrimination laws is not a hindrance to protection from discrimination by entities other than State or its agencies.

An example can be seen from the reported case of *Kelab Golf Negara Subang v Mat Idris Siakat*, Industrial Court, Kuala Lumpur Award No. 33 of 2004. In the said case the issue before the court was whether the dismissal of the claimant was with or without just cause or excuse. It was alleged by the claimant there was no show cause letter issued by the company to two other employees who were similarly late to work as the claimant and the disparity in treatment accorded to the claimant amounted to discrimination. In concluding that the dismissal was without just cause and excuse the Industrial Court took cognisance that the company’s disparity in treatment by not punishing the two other employees who were similarly guilty of late coming in the same manner as the claimant amounted to a discrimination of the claimant.

### **Article 3**

7. *The report mentions that measures have been taken to develop a “Gender Disaggregated Information System to monitor the progress of women’s programmes and activities”. Please indicate the status of the development of this system and provide details of its scope and coverage.*

The Gender Disaggregated Database Information System (GDIS) was developed by MWFCDD in November 2002 and completed in May 2003. The database is used for analysis and formulation of policies. Information available in this database are as follows:

- i) Labour Force (1997-2003);
- ii) Poverty (1999, 2002);
- iii) Population and Housing Census (2000);
- iv) Public Sector Personnel (2003);
- v) Muslim and Non-Muslim Marriages (1995-2004);
- vi) Academic staff in the higher learning institutions (2001-2004);
- vii) Decision making level in the corporate sector (2000-2004);
- viii) Drug addicts ( 1998-2004);
- ix) Family, fertility, marriages, senior citizens, family practices from the National Population and Family Development Board (1994); and
- x) Child abuses, drug addicts, incest, rape, molest, domestic violence and sodomy (1997-2004).

The statistics are collected from relevant government agencies and the private sector. The MWFCDD updates the database annually and identifies the need for new data to further enhance the database.

8. *Please provide details of the work that has been undertaken by the Ministry of Women, Family and Community Development since its establishment, particularly the work of the gender focal points in the ministries, and of the Ministry's role and level of authority within the Government, as well as its human and financial resources.*

The work of MWFCDD since its establishment in 2001 is as shown in Annex III.

The Ministry, formerly known as the Ministry of Women and Family Development was expanded on 27 March 2004 to include community development under its jurisdiction and was renamed as the Ministry of Women, Family and Community Development.

The Gender Focal Points (GFPs) were established in 2005 based on the mandate from the Cabinet Committee on Gender Equality. Senior officers in each ministry and relevant government agencies are appointed as GFPs. To date, 39 GFPs have been appointed. The GFPs function as focal point/liaison officers for gender related matters at their ministries as well as to assist the ministry to get data, information and feedback on matters related to women and gender development. The functions of GFPs are as shown in Annex IV. The Ministry of Women, Family and Community Development (MWFCDD) has conducted gender sensitisation training including training on CEDAW and gender budgeting for GFPs to enable them to discharge their functions and responsibilities efficiently and effectively. This effort of gender sensitisation by the Government will encourage the elimination of gender inequality in all sectors including the possibility of reviewing areas of law which are perceived as discriminatory to women such as article 15(1) above.

Due to the fact that the MWFCDD is headed by a woman cabinet minister, the Ministry has direct access to cabinet in highlighting and promoting women's concerns and interests to the highest decision making body of the Government.

The Cabinet Committee on Gender Equality which was established in December 2004, and is chaired by the Prime Minister, is another avenue for the Ministry to highlight women's issues. As the main secretariat to the Committee, the Ministry is able to put forward specific recommendations and proposals towards achieving gender equality through government policies, strategies and programmes.

As the lead agency in promoting gender equality, the Ministry is given a mandate to head the Technical Working Group on Women. This TWG as an important mechanism in formulating the five-year National Development Plan and enables MWFCDD to mainstream gender perspectives into the National Development Plan. MWFCDD worked closely with the Economic Planning Unit, Prime Minister's Department on the preparation of the Ninth Malaysia Plan, 2006-2010.

The Ministry plays an important role at the state and parliamentary constituency levels through the National Council for Women and Family Development. The Council acts as an operating arm of the Ministry to implement programmes and activities such as legal literacy, campaign on violence against women (VAW), training and skills-building, information technology and communication and gender-sensitisation programmes.

The significant role played by the Ministry and the DWD is reflected through the increase in financial and human resources. For example, the number of personnel in the Ministry has increased from 67 in 2001 to 246 in 2006. As for the DWD, it has increased from 41 in 2001 to 153 in 2006. Likewise, the budget allocation has also increased for the Ministry from RM4,110,000.00 in 2001 to RM96,748,300.00 in 2006. Whereas for the DWD the budget allocation has increased from RM1,828,200.00 in 2001 to RM30,454,300.00 in 2006.

#### **Article 4**

9. *The report states that "gender-blind elements in the recruitment, posting and promotion in the public service often results in under-representation of women at the decision-making level". However, the report also acknowledges that "the Government has not practiced quota and preferential rules". Has consideration been given to using temporary special measures, such as the establishment of quotas or incentives to accelerate achieving equality, particularly in the field of women's participation in political and public life, in the light of article 4, paragraph 1 of the Convention and the Committee's general recommendation 25 on article 4, paragraph 1, of the Convention and general recommendation 23 on women in public life?*

In addressing the issue of under-representation of women at the decision-making level, the Government has adopted the policy of at least 30 per cent women in

decision-making level in the public sector in August 2004. The percentage of women in the premier grade positions in the public sector (JUSA) has increased from 82 (14.91%) out of 550 in 2000 to 314 (18.8%) out of a total of 1,670 in 2005.

## **Article 5**

10. *The report acknowledges that “women’s ability to . . . participate in society . . . has often been curtailed by widespread stereotyping of women as followers and supporters rather than leaders or equal partners”. The report indicates that the Ministry of Women and Family Development had requested the Ministry of Education to eliminate stereotypical images in textbooks. Please indicate the progress made in eliminating stereotypes from textbooks and also indicate what measures have been taken to eliminate stereotypes in the media.*

The Ministry of Education provides a guideline to writers and publishers of school textbooks to promote positive portrayals of women. The guideline stipulates that the content and presentation of materials and graphics in textbooks are not gender biased. Among others, the guideline forbids the stereotyping of women as inferior to men, or that women can only be followers or supporters rather than leaders or equal partners.

In addressing the sex stereotyping in electronic media, the Government has established the Communications and Multimedia Content Forum of Malaysia (CMCF). The Forum governs the media content by self-regulation in line with the Malaysian Communications and Multimedia Content Code in compliance with the Communications and Multimedia Act 1998 (Act 558) (CMA 98).

In its guidelines on content, the redress of societal discrimination against women is evident. For instance, under ‘Obscene content’, the portrayal of sex crimes (i.e. rape, attempted rape and statutory rape), child pornography and the portrayal of women, men or children as mere sexual objects or to demean them are strictly prohibited.

In terms of family values, the Code articulates ‘a need to avoid and overcome biased portrayal on the basis of gender.’ As such, women and men should be portrayed as equals both economically and emotionally in public and private spheres. Within the domestic realm in particular, women and men should be portrayed as equal beneficiaries of family or single-person life, in both work and leisure activities under all types of thematic circumstances. The Code also specifies that advertisements must not project women as an object of sex.

## **Violence against women**

11. *What kinds of data are being collected on the incidence of violence against women, including domestic violence and sexual violence in Malaysia, and what do they reveal in terms of trends?*

In Malaysia, data on the incidence of violence against women are collected based on reported cases i.e. domestic violence, incest, molest, rape and sexual harassment at the workplace. Domestic violence and sexual harassment cases reported to the police from 2000 to 2003 indicated a downward trend, from 3,468 and 112 cases in 2000 to 2,555 and 82 cases in 2003. However, in 2004 it rose to 3,101 and 119 cases respectively. Incest and molest cases indicated an upward trend from 2000 to 2004, each 213 and 1,234 cases in 2000 to 335 and 1,661 cases in 2004 except in 2003 it dropped to 254 and 1,399 cases respectively. Rape cases reported to the police indicated an annual increase in the number of cases from 1,217 in 2000 to 1,765 cases in 2004.

The table below shows the data on violence against women from 2000 to 2004:

**Table I : Data on Violence Against Women from 2000 to 2004:**

Cases reported to the police	2000	2001	2002	2003	2004
Domestic violence	3,468	3,107	2,755	2,555	3,101
Sexual harassment at the workplace	112	86	84	82	119
Incest	213	246	306	254	335
Molest	1,234	1,393	1,522	1,399	1,661
Rape	1,217	1,386	1,431	1,479	1,765

*Source: Royal Malaysian Police, Malaysia.*

12. *The report indicates that the Domestic Violence Act, 1994 protects victims of violence in the home but points out that marital rape is not considered a crime in Malaysia unless the parties are separated under a judicial decree, the wife has obtained an injunction against sexual relations with the husband or the woman is in her 'iddah period. Please indicate if, and how, victims of marital rape are protected under the Domestic Violence Act.*

Malaysia's Penal Code and Syariah law do not contain a provision on marital rape. The Penal Code provides an exception to section 375 on the offence of rape which stipulates that sexual intercourse by a man with his own wife by a marriage which is valid under any written law for the time being in force, or is recognised in the Federation as valid, is not rape. Based on the explanation to section 375 of the Penal Code a man can be charged with raping his wife as in Initial Report.

The Domestic Violence Act 1994 provides protection for victims of domestic violence. Under the Act, domestic violence is defined as the commission of the following acts -

- a. wilfully or knowingly placing, or attempting to place, the victim in fear of physical injury;
- b. causing physical injury to the victim by such act which is known or ought to have been known would result in physical injury;
- c. compelling the victim by force or threat to engage in any conduct or act, sexual or otherwise, from which the victim has a right to abstain;
- d. confining or detaining the victim against the victim's will; or
- e. causing mischief or destruction or damage to property with intent to cause or knowing that it is likely to cause distress or annoyance to the victim.

Based on the above provision of the law, victims of marital rape are accorded protection under the Domestic Violence Act 1994 on the commission of any of the above mentioned acts. The protection under the Domestic Violence Act 1994 includes the issuance of an interim protection order pending investigations of the domestic violence offence. The interim protection order prohibits the person against whom the order is made from inflicting further violence on the victim.

Where it is necessary for the protection and personal safety of the victim, a protection order can include other orders such as:

- (i) granting of the right of exclusive occupation to the victim of the shared residence or a specified part of the shared residence by excluding the person against whom the order is made from the shared residence or specified part thereof, regardless of whether the shared residence is solely owned or leased by the person against whom the order is made or jointly owned or leased by the parties;
- (ii) prohibiting or restraining the person against whom the order is made from entering any of the victim's place of residence or shared residence or alternative residence, as the case may be, or from entering any of the victim's place of employment or school or other institution or from making personal contact with the victim other than in the presence of an enforcement officer or such other person as may be specified or described in the order;
- (iii) requiring the person against whom the order is made to permit the victim to enter the shared residence, or to enter the residence of the person against whom the order is made, accompanied by any enforcement officer for the purpose of collecting the victim's personal belongings;
- (iv) requiring the person against whom the order is made to avoid making written or telephone communication with the victim and specifying the limited circumstances in which such communication is permitted.

Where the court is satisfied that the person against whom a protection order or interim protection order is made is likely to cause actual physical injury to the protected

person or persons, the court may attach a power of arrest to such protection order or interim protection order. Contravention of a protection order is an offence and is punishable under the Act.

Apart from the above, the victim may also claim for compensation if the victim had suffered personal injuries or damage to property or financial loss as a result of the domestic violence.

From the social aspect, the Department of Social Welfare (DSW) is also addressing the issue of Domestic Violence by giving counselling services as well as establishing mediation services.

13. *The Special Rapporteur on violence against women, its causes and consequences, in her report E/CN.4/2003/75/ Add.1 of 27 February 2003 (para. 1079), indicates that the “abuse of foreign domestic workers, mostly women, is a growing problem in Malaysia . . . [which] can take the form of beating, overworking, withholding the salary, malnourishment, and denial of contacts with the family.” Please indicate the actions taken to prevent such abuse and protect domestic workers, including measures being taken to address the underlying societal attitudes that perpetuate such abuse.*

Foreign domestic workers are protected under the provisions of Part III (Payment of Wages) of the Employment Act 1955 (the Act). Any domestic worker, whose salary has been unfairly withheld by her employer, is entitled under the law to lodge a complaint to the nearest Department of Labour (DL) for action to be taken against the errant employer.

The Government of Malaysia, with the collaboration of the Government of the source countries (eg. the Government of Indonesia), is currently formulating a memorandum on recruitment of domestic workers. It is meant to provide social protection and enhance working environment mechanism for the domestic workers. There are more than 300,000 domestic workers in Malaysia. However, according to records, less than 1% of workers have lodged their complaints on abuse cases to the Ministry of Human Resources (MOHR) and other relevant authorities, notwithstanding the fact that their safety is protected under the Criminal Procedure Code.

14. *The report indicates that the Ministry of Women and Family Development in consultation with the Ministry of Human Resources and other stakeholders is studying a proposal to formulate specific sexual harassment legislation. What is the status of this proposed legislation.*

The provisions pertaining to sexual harassment will be included in the Employment Act 1955, Occupational Safety and Health Act 1994 and the Industrial Relations Act 1967 which is now under the purview of the Attorney General’s Chambers.

The Government has already incorporated provisions pertaining to sexual harassment at the work place in the General Orders – Guideline of Handling Sexual Harassment at the Work Place in the Public Sector in 2005. This guideline has further details

pertaining to categories and type of sexual harassment, the effects and action to be taken to handle sexual harassment at work place as well as preventive actions.

## **Article 6**

15. *The Special Rapporteur on violence against women, its causes and consequences, in her report E/CN.4/2005/72/Add.1 of 18 March 2005 (paras. 192-196, 240-244), draws attention to the trafficking of Indonesian women to Malaysia for sexual exploitation and for the purpose of selling their children for illegal adoptions. However, the report does not provide any information on the incidence of trafficking. Please provide data on the number of women and girls who are trafficked to, from and through Malaysia.*

The Royal Malaysia Police and Immigration Department are the lead agencies in enforcing and monitoring offences relating to trafficking in persons. The two agencies have procedures and resources to combat this crime. These two agencies are assisted by other law enforcement agencies namely Department of Customs Malaysia, Anti Smuggling Unit and the Malaysia Maritime Enforcement Agency (MMEA).

There is no specific law in Malaysia relating to trafficking in persons. However, there are various provisions in existing laws to prosecute traffickers. The laws are as follows:

### **Legislation and Prosecution Measures**

- i) Federal Constitution – Article 6 (1) & 6 (2)
  - Prohibition of slavery and forced labour;
- ii) Penal Code – section 370,371,372,373,374;
- iii) The Child Act 2001 – Section 48 (1), 48 (2), 49 & 52;
- iv) The Internal Security Act 1960 – this is a preventive law;
- v) Restricted Residence Act 1933 – this is a preventive law;
- vi) The Anti-Money Laundering Act 2001 – confiscation of proceeds from illegal criminal activities including trafficking in persons; and
- vii) The Immigration Act 1959/63 (Amended 2002)- Section 56 (1)(d) provides for harbouring of illegal immigrants which is punishable by a fine not exceeding RM10,000 or imprisonment not exceeding 5 years.

The Government does not have any data on the numbers of women and girls being trafficked from Malaysia or through Malaysia to another country. However, the statistics on the numbers of arrested foreigners suspected to be involved in prostitution and action taken against syndicate of prostitutions are as shown in Annex V.

16. *The report indicates that trafficking “is not specifically criminalized in Malaysia” but there are laws in the country that are used to combat trafficking in persons. Please indicate whether the Government is considering enacting specific legislation to combat trafficking and describe the measures taken to provide specialized training with regard to trafficking to members of the police and the judiciary.*

The Ministry of Internal Security is currently in the process of establishing an Inter-Agency Committee on Trafficking in Persons. The establishment of specific laws on trafficking will be discussed by the Committee and there is a need to organise training for police personnel, Immigration officers, officers from the MWFC and its agencies, as well as the judiciary on how to identify victims of trafficking.

17. *The report indicates that the DSW is responsible for providing protection, rehabilitation and counselling to girls and women below 18 who have been involved in vice and prostitution”. Please provide information on the rehabilitative and protective measures in place for women and girls of all ages who are victims of trafficking for purposes of prostitution and other forms of sexual exploitation. Please also include a description of the effectiveness of these measures.*

The DSW is responsible for providing protection and rehabilitation to girls below 18 years who have been involved in vice and prostitution. The victims are placed in various institutions under the Department which provide protection and rehabilitation programmes such as formal education, religious/moral education, vocational training and counselling. They are also encouraged to participate in sports, recreational and cultural activities.

In terms of rehabilitation programmes to women involved in prostitution and sexual exploitation, the DWD offers support and counselling services. It has 14 centres called ‘Rumah Nur’ all over the country which offer these services. The Department also implements preventive measures in order to raise community awareness in terms of gender equality and women’s rights.

Seminars on Reducing Violence against Women and Legal Literacy Programmes have been implemented in 219 parliamentary constituencies all over the country by Women and Family Development Councils. The objective is to increase knowledge and awareness on violence against women and the legal rights of women. In 2004, 15,485 participants benefited from the seminars and 30,799 participants attended the Legal Literacy Programmes.

## **Article 7**

18. *According to the report, in 2000, women’s representation was only 10.4 per cent in the lower house of Parliament and 5.5 percent in the various State Assemblies and, in 2001, only 3 out of 28 cabinet ministers were women. Please indicate whether this situation has improved and detail the specific programmes that are being implemented to increase women’s representation in public and political life.*

Women's representation in the Lower House of Parliament has slightly declined from 10.4 per cent in 1999, to 9.6 per cent in 2004 (1999 and 2004 were the general election years). In the State Legislative Assembly, women members have increased from 5.5 in 1999 to 6.3 per cent in 2004. Women ministers remained at 3 out of a total of 33 Cabinet Ministers in 2004. Women's deputy ministers also remained at 3 out of 38 deputy ministers in the same period and 6 parliamentary secretaries are women out of a total of 22.

Although the percentage of women representation in the Lower House has declined, twelve out of 17 women (70.5 %) from the ruling party were given the posts either as minister, deputy minister or parliamentary secretary. This indicates greater recognition of women's contribution in the political arena. To increase the participation of women in political life, one of the measures undertaken by the main political parties is to establish a new wing for young women.

## **Article 8**

19. *The report acknowledges that the number of Malaysian women working in international organisations is very low but states that this is due to "cultural constraints" and "to respect the sensitivities of host countries". Please explain these statements and provide details of the measures the Government is taking to overcome obstacles to, and to encourage, women's participation in the work of international organisations.*

Table 8.3 indicates that the number of Malaysian women working in international organisations is low. This is due partly to their preference to work in the country as they could easily find employment and hold senior positions in the private and public sectors in Malaysia. In addition, employment opportunities in the international organisations are limited. For the positions in international organisations where government is consulted, the relevant authorities in the country have made strenuous efforts to recommend and nominate qualified Malaysian women to fill in the positions. There are also a number of Malaysian women who had applied directly to work with international organisations without going through government's channel and have been successful. These data need to be better captured as well. The Malaysian Government remains committed to encourage greater number of Malaysian women participation in international organisations. As such, international organisations including the United Nations and its agencies need to intensify their efforts to encourage and recruit Malaysian women to work for them.

## **Article 9**

20. *The report indicates that the citizenship law in Article 14 of the Federal Constitution is discriminatory in that while foreign-born children and foreign wives of Malaysian men can get Malaysian citizenship, the same is not true for foreign-born children (with foreign*

*fathers) and foreign husbands of Malaysian women. Please indicate measures being taken to amend this law and indicate the time frame anticipated for such law reform.*

The first issue raised in the Committee's inquiry above relates to equal rights between men and women with respect to the nationality of their children. The relevant law relating to the issue is explained below.

Article 14 of the Federal Constitution provides for citizenship by operation of the law for:

- every person born before Malaysia Day fulfilling the conditions as contained in Part I of the Second Schedule of the Federal Constitution; and
- for every person born after Malaysia Day and having any of the qualifications specified in Part II of the Second Schedule of the Federal Constitution.

Part I and II of the Second Schedule to the Federal Constitution provides that a person born outside the Federation whose father is at the time of birth is a citizen is by operation of the law a citizen of Malaysia.

Notwithstanding the provision of Part I and II of the Second Schedule to the Federal Constitution, we wish to inform the Committee that the right of a woman with respect to the nationality of her children can be exercised by the provision under article 15(2) of the Federal Constitution.

Article 15(2) of the Federal Constitution provides that subject to article 18 of the Federal Constitution (on the requirement of taking an oath and restriction on a person who has renounced or has been deprived of a citizenship), the Federal Government may cause any person under the age of twenty-one years of whose *parents one at least is* (or was at death) a citizen to be registered as a citizen upon application made to the Federal Government by the person's parent or guardian.

By virtue of this provision a woman can exercise her right to apply to the Federal Government for her children who are below the age of twenty one years old to be registered as a citizen of Malaysia.

The second issue raised by the Committee on the above inquiry relates to the rights of a foreign man married to a Malaysian woman to acquire Malaysian citizenship. Article 15(1) of the Federal Constitution provides that a foreign wife of a Malaysian man may be conferred citizenship upon making an application to the Government if the marriage is subsisting and the woman has resided in the Federation throughout the two years preceding the date of application and intends to do so permanently and is of good character.

With respect to a foreign man married to a Malaysian woman he can exercise his right to apply for Malaysian citizenship under article 19 of the Federal Constitution by naturalization.

Apart from the above, an administrative measure was also undertaken by the Government to assist Malaysian women who are married to foreign men. This is in the form of an

administrative order (*Pekeliling Imigresen Malaysia Bil. 29 tahun 2001*) which allows foreign men married to Malaysian women to stay in the country for one year as opposed to 3 months previously and their social visit pass can be renewed on a year-to-year basis. Also, foreign women who are divorced or separated from their Malaysian husbands after settling in Malaysia can apply for a social visit pass on a year-to-year basis, subject to approval by the Government.

## **Article 10**

21. *The report highlights that the management and policymaking levels in the Ministry of Education and the State Education Departments are “extremely male dominated” and while the number of female teachers in schools significantly exceeds the number of male teachers, less than 30 percent of the heads of primary and secondary schools and less than 9 percent of the heads institutes of higher learning, are women. The report indicates that even where women are better qualified than men, they “face problems getting into top or key positions”. Please indicate the measures that are being taken to bridge the gap between women’s qualifications and their appointment to key management and policymaking positions in the education sector.*

The criteria for promotions to high posts in the Ministry of Education (MOE), like any other Government departments, are many; including qualifications, seniority in service, and work performance. Gender is not a factor to be considered for promotions in the MOE. Generally, in the MOE, women are relatively junior in service compared to men, as explained in Para 196 and illustrated in Table 10.22 of the Initial Report. Compared to the situation in 2005, there has been an improvement in the female participation in the management and policy making levels in the MOE as shown in Annex VI.

## **Article 11**

22. *The report points out that the Government is “conducting a research with the aim to identify factors which caused a mismatch of academic qualifications and job opportunity in the labour market”. Please specify the results of this research and whether these have been used to make concrete policies to address the gap between women’s academic qualifications and their opportunities to participate in the labour market.*

The study on the mismatch between academic qualifications and job opportunity in the labour market started in December 2004 and the study is expected to be completed in June 2006. The initial finding of the study indicated that although female graduates have better academic qualifications compared to males, the private sector employers preferred to hire male workers because employers perceived that male graduates have better ability to work independently. However, this preference does not exist in the public sector. The important criteria needed by employers both in the public and private sectors are the ability to work independently, communication skills and discipline.

23. *According to the report, there are certain provisions in the Employment Act of 1955 for the “protection” of women, including provisions prohibiting women from working in any agricultural or industrial undertaking between 10 pm and 5 am or commencing work without having had a rest period of 11 consecutive hours, and provisions prohibiting women from carrying out underground work. The report indicates that “in a number of instances employers are reluctant to employ women on account of these provisions”. Please indicate whether the impact of these provisions on women’s employment has been evaluated, provide details of any such evaluation and plans to remedy their disadvantageous impact.*

Under the proviso to the subsection 34(1) of the Act, the Director General (DG) of the Department of Labour may, on application made to him in any particular case, exempt in writing any female employee or class of female employees from any restriction from working in any agricultural or industrial undertaking between 10 pm and 5 am or commencing work without having had a rest period of 11 consecutive hours. It has been a practice of the DG to apply blanket approval on applications on shift work. However, there is no such exemption to allow women to be employed in any underground work under section 35 of the Act. However, the Minister of Human Resource is empowered by section 36 of the Act to make an order to permit the employment of female employees, notwithstanding the prohibition of the underground work under section 35 of the Act. To date there are no academic studies to evaluate the impact of such provisions.

## **Article 12**

24. *The report indicates that while there is “indirect and qualitative evidence to suggest that some groups of women, e.g. disabled, migrant, aboriginal or indigenous women and those living and working in estates and plantations are marginalized in terms of access to health services and facilities, no reliable data is available”. Please indicate the measures that have been taken to collect such data and provide access to healthcare for these groups of women.*

Every individual in Malaysia has access to health care. Geographical access has been improved by building health facilities and providing essential health services in remote areas which includes flying doctor services and mobile clinics. Women from estates have access to health care especially for maternal and child health either at the health clinics or at mobile clinics. Data is captured at respective health facilities. Health care is also available for migrant workers at all health clinics and hospitals; however they are subjected to the ‘Fee Act for Foreigners’.

Health data for the aboriginal groups are collected by the Health Division of the Department of Orang Asli Affairs. Health services by the Ministry of Health are provided to those areas accessible by land whereas for areas accessible by air and river, the services are provided by the Department of Orang Asli Affairs. To further improve health care accessibility ‘Half way homes’ have been built for pregnant women who live in

remote areas. The pregnant women together with their families are brought here so that there is easy access to the hospitals if complications should arise during delivery.

Health care services for persons with disabilities have been established by the Ministry of Health since 1995. Though initially it provided services for those until 18 years old, it is now being expanded to include adults as well. Occupational therapist and physiotherapists are being placed at certain health clinics to improve the accessibility of the rehabilitative services. Data collection for the disabled is currently captured by the Department of Social Welfare.

25. *The report states that current HIV/AIDS prevention campaigns and strategies are inappropriate for women because they emphasize the importance of reducing sexual partners, fidelity in marriage and consistent condom use, whereas women are largely monogamous and are usually not in a position to ensure their husbands' fidelity or insist on use of condoms. Please describe alternative, culturally sensitive HIV/AIDS prevention strategies targeted at women that are being considered or implemented. Also indicate whether certain groups of women are particularly at risk of contracting HIV/AIDS and whether prevention campaigns are targeted at such groups.*

The number of HIV infection among women has increased from 9 cases (1.2%) in 1990 to 673 (10.0%) cases in 2003, while within the same period, AIDS cases have increased from none to 137 cases. The increase of HIV among women is more significant after 1998, upon the implementation of routine HIV screening among pregnant mothers through the 'Prevention of Mother To Child Transmission' (PMTCT) programme at public health clinics.

Based on the profile of women infected with HIV in 2003, the majority of the women were housewives (44.0%), followed by industrial workers (6.9%), prostitutes/GRO (4.7%), non-executive private sectors (4.7%), government servants (3.3%) and students (1.6%).

In the prevention and control of HIV/AIDS, the Ministry of Health together with various ministries and non-governmental organisations have developed several strategies for women such as:

### **Prevention of Mother to Child Transmission**

In 1998, Malaysia initiated the Prevention of Mother to Child transmission programme (PMTCT). It is a screening programme for all pregnant mothers attending government antenatal clinics to be screened free for their HIV status. Pregnant women who are tested positive are provided with free anti-retroviral treatment during and after the pregnancy. All babies born or detected to be HIV positive later are also provided with free treatment. This programme has successfully reduced MTCT from 30% without treatment (WHO estimate) to 3.82%.

### **Screening of blood and products**

Since the establishment of the screening programme in 1986 all blood and its products are screened for HIV.

### **Voluntary counselling and testing**

Voluntary counselling and testing centers for HIV are widely available and accessible and are provided free. These promotive and preventive programmes are provided at primary health care settings in the form of anonymous screening. This service aims to encourage those with high risk behaviour to come for free and confidential HIV testing. Females constituted 35.7% of the cases that were screened anonymously in 2003.

### **Surveillance of HIV/ AIDS**

Routine HIV screening for Intravenous Drug Users and sex workers in correctional institutions has been established since early 1989. This screening was expanded to include prisoners involved in high risk activities, foreign workers and patients with Sexually Transmitted diseases and TB infections. Through these surveillance activities, HIV/AIDS trends are being constantly monitored.

### **Health Promotion and Education**

To increase awareness on HIV/ AIDS a youth specific program 'PROSTAR' – Healthy Life without AIDS for youth' was launched in 1996. It is a joint initiative between the Ministry of Health and other ministries. It aims to empower youths to practice healthy lifestyle and enable them to withstand negative influences.

Besides the general campaign the Government has conducted specific campaigns on 'Women and AIDS' in 1997 to empower women and their partners in the prevention and control of HIV/AIDS.

Several health education materials have been published on HIV/AIDS and circulated to target groups. Among the general publications which are specific for women include the book on 'Wanita Mudah Dijangkiti HIV' in Bahasa Malaysia and 'Wanita – women are vulnerable to HIV' in English.

### **Treatment, Care and Support**

The Malaysian Government primarily assumes the overall responsibility for providing curative and preventive health care services for its citizens. HIV/AIDS treatment protocol and guidelines have been developed by the Ministry of Health. Combination therapy is provided free to children, pregnant women, patients who acquired the infection through infected blood/blood products and for health care workers who got infected at work. For the other categories the Government provides two free drugs.

Malaysia has taken the courageous step in breaking patent some of the anti-retroviral (ARV) drugs in 2003 and started importing generic ARVs. Currently, with the availability of fixed drug combination, ARV treatment is almost free.

### **Integration of Management of HIV at Health Centres and Polyclinics**

The management of HIV infected individuals is being integrated into the Primary Health Care, so that health care becomes more accessible. Currently, more than 250 clinics are offering this service which also includes risk assessment, HIV testing, counselling, medical examination, treatment, follow up, case notification, contact tracing, referral and home visits by trained health care providers. Family Medicine Specialists who are stationed in the health centres have been trained in providing anti-retroviral treatment for the patients.

### **Modified Syndromic Approach of STI management**

This programme is to encourage the public to seek treatment for Sexually Transmitted infections at the primary care level. More than 120 health clinics have implemented the management of STI using the Modified Syndromic Approach.

### **Prevention and control activities in Prison and Drug Rehabilitation Centres**

All new inmates admitted to the Drug Rehabilitation Centres and prisoners who have been identified with high risk behaviour are required to do HIV testing. Pre and post test counselling are also provided for the inmates.

## **Article 14**

26. *The report states that rural women are not involved in decision making at the district or higher level, have low representation in farmers' organisations and cooperatives, have limited scope to make decisions pertaining to village development and only have leadership roles in "women's only organisations, which are mainly social and welfare-based in nature". The report indicates that the Government is making efforts to mobilize rural women through women's groups and that it is conducting courses and training to enhance the skills and leadership ability of rural women. Please describe the impact of the Government's efforts to improve the participation of rural women in decision-making processes at all levels.*

Rural women's involvement in decision making at all levels of policy and programme planning is vital to ensure that their needs are being addressed. Therefore, the Government has put forward efforts to encourage participation of rural women in decision making roles such as becoming a member of the board of directors or holding important positions in an organisation. Under the Ministry of Rural and Regional Development, we can see a significant number of women participating in cooperatives

that are supervised by its agencies. For example, the cooperatives under KEDA (Kedah Regional Development Authority) shows a large number of participation by rural women and the participation has grown throughout the period of 2002 to 2005, as shown in Table VI, Annex VII.

The same case is also observed in the total number of women as members of the board of directors of these cooperatives for the same period of time as in Table VII, Annex VII.

Besides that, the Government has also put emphasis on courses and trainings for rural women in order to enhance their skills and leadership abilities. Several trainings and workshops were conducted by agencies under the Ministry of Rural and Regional Development to meet this objective as in Table VIII, Annex VII.

27. *The report indicates that there is a rise in female-headed households in Malaysia and that according to the 1991 census, 18.2 percent of rural households in Malaysia were headed by women. Please describe the Government's policies and programmes that address the specific needs of female-headed households in rural areas.*

In view of the increasing number of female-headed households and the rising incidence of poverty among them, efforts have been undertaken to ensure that these women have the capacity and capability to care for their families. Towards this end, research on the difficulties faced by women as head of households as well as the differing impacts of poverty on women and men have been undertaken to assist in the development of relevant programmes and projects. Several programmes aimed at reducing the incidence of poverty among rural people which includes female-headed households had also be formulated to improve their quality of life as well as that of their families.

The Government, through the Ministry of Rural and Regional Development has also provided the housing scheme for the hardcore poor (*Program Bantuan Rumah/PBR*), formerly known as (*Program Perumahan Rakyat Termiskin/PPRT*) under the *Skim Pembangunan Kesejahteraan Rakyat (SPKR)*. This programme was introduced during the Eighth Malaysia Plan (2001-2005) in order to ensure the targeted group can live in a safe and conducive environment. The total number of hardcore poor people according to gender who receives the housing scheme as at 2004 is illustrated as below.

**Table IX : Housing Schemes Given as at 2004**

<b>Programme</b>	<b>Male</b>	<b>Female</b>	<b>Total</b>
Housing Assistance Programme ( <i>Program Bantuan Rumah/ PBR</i> )	25,367 (70.0%)	10,871 (30.0%)	36,238

The Ministry also had provided several training programmes conducted by its agencies to achieve the above objectives. Among them are:

**Table X: Training Programmes Conducted by Agencies under Ministry of Rural and Regional Development**

No.	Name of agencies	Name of the programme	2004	2003
1	INFRA Institute For Rural Advancement	The Course on Family Well Being (Focused on the Single-Mother Category)	87 women	-
2	KEDA Kedah Regional Development Authority	Women Development Program (for Single-Mother)	176 women	334 women

In addition, the Ministry has encouraged rural women to participate in business as a means to reduce the incidence of poverty among the female-headed households. A good example, is the women's smallholder groups (PWPK) organised by RISDA (Rubber Industry Smallholders Development Authority). The women's smallholder groups have successfully recruited a total number of 9,792 members as shown in Annex VIII.

On the other hand, to enhance women's capabilities to contribute towards national development, capacity building programmes through smart partnership with the non-governmental organisations (NGOs) were implemented. The main strategy of this programme is to empower women by providing them greater access to knowledge through effective capacity building programmes as well as support services. The priority areas of the programmes are as below:-

- Gender sensitization
- Capacity building for NGOs
- Skills building
  - handicraft
  - food preparation, processing and catering
  - information and communication technology (ICT)
  - women's rights
  - enhancing legal literacy and knowledge
- Sexual harassment and violence against women
- Health and family development
- Community and welfare programmes

From 2001 until December 2004, a total of RM53.7 million has been disbursed to 546 NGOs to implement capacity building programmes which benefited about 450,000 women. To ensure the effectiveness and efficiency of the programmes by the NGOs, the

Ministry also provides non-monetary support such as capacity building courses, consultation, guidance and instilling good governance practices.

## Articles 15 and 16

28. *The report states that women's status in the family is "based on the culture and traditional beliefs of its various ethnic groups" and "a wife is expected to obey her husband" and his family and "there is little room for negotiation or deviation" from these norms and practices. Please indicate the steps the Government is taking, including through the education system and the media, to raise awareness of equality of women and men in marriage and to encourage debate on the status of women in the family.*

The Government is taking initiatives to raise awareness on the rights and responsibilities of men and women in the family through the following programmes:

### SMARTSTART

SMARTSTART is a pre-marital course designed for newlyweds and those intending to get married. The course emphasizes, *inter alia*, equitable sharing of tasks and responsibilities of men and women within the family, especially between the husband and wife. Beginning in 2004, 219 SMARTSTART courses were implemented at the grass root level by women community leaders and NGOs.

### Family Development Training

The training for family development conducted by the National Population and Family Development Board (NPFDB) promotes gender equality in the family. It focuses on parenting skills of both parents who play equal roles in family development. The training also takes into consideration adolescent development and of fatherhood so that sons and fathers are more gender sensitive and would value the partnership among family members in sharing household responsibilities. These programmes will help to lessen the effects of gender stereotyping within the family.

### Legal Aid Bureau

Women have equal access to legal assistance provided by the Legal Aid Bureau. The Legal Aid Bureau is a government funded legal aid agency. A total of 17,071 women sought legal aid from 2001 to 2004. Legal Aid activities implemented by the Legal Aid Bureau include:

- a) Litigate in civil and criminal proceedings that covers Magistrate Court, Session Court, High Court, Court of Appeal and Federal Court;
- b) Litigate in civil proceedings that covers Syariah Lower Court, Syariah High Court and Syariah Court of Appeal;

- c) Give legal advice on all matters specified in the Fourth Schedule of Legal Aid Act 1971;
- d) Provide mediation sessions for case settlement before the court;
- e) Provide research on civil and syariah legislation and collaborate with government agencies such as Baitumal, DSW, non-government organisations (NGOs), Legal Aid Centre and National Legal Aid Committee;
- f) Monitor and supervise Case Management System and Linked System (CMS) between E-Syariah Department of Syariah Judiciary Malaysia and CMS Legal Aid Bureau;
- g) Implement Legal literacy by carrying out activities such as giving talks on radio and to government agencies and NGOs; and
- h) Smart Partnership with Telekom Malaysia in Legalinfo of Legal Aid Bureau.

In addition, the Ministry of Education, through school subjects such as Religious Education and Moral Education teach students to love and respect each other in the family. They are also taught that open discussions and negotiations are the ways to solve interpersonal problems. The students are also taught that men and women are equal.

29. *The Islamic Family Law (Federal Territories) (Amendment) Bill 2005 contains several provisions that adversely affect Muslim women, such as making polygamy easier for men, giving a Muslim man the right to claim a share of his existing wife's assets upon his polygamous marriage and the right to get a court order to stop his wife from disposing of her assets, forcing a wife to choose maintenance or division of marital property upon a husband's polygamous marriage and extending the wife's right to fasakh divorce to the husband while not giving the husband's right of talaq to the wife. Please give details of whether women's groups, especially Muslim women's groups, were consulted in the preparation of this Bill and indicate whether any measures are being taken to address the de facto discriminatory aspects of this Bill to bring it in line with the provisions of the Convention.*

The assertion that the Islamic Family Law (Federal Territories) (Amendment) Bill 2005 contains several provisions that adversely affect Muslim women is a misconception. The Islamic Family Law (Federal Territories) (Amendment) Bill 2005 (hereinafter referred to as "the Bill") contains provisions to enhance the protection of women and their rights and to improve the administration of Islamic Family Law in Malaysia.

Pursuant to the criticisms levied on the Bill, the Attorney General had convened three meetings on the Bill attended by representatives from the Bar Council of Malaysia, Malaysian Syarie Lawyers Association, the Association of *Ulamak* Malaysia, relevant ministries and government departments, non-governmental organisations including Muslim women's group such as Sisters in Islam, *Muftis*, experts in Islamic Family Law, and academicians.

The meeting agreed as follows –

- a) that the Bill is not in contravention of Islamic Law according to any recognised Islamic school of thought;
- b) that the provisions of the Bill is intended to enhance the protection and rights of women in Malaysia and to improve the administration of Islamic Family Law in Malaysia;
- c) that the drafting of several provisions of the Bill needs to be amended to clearly reflect the intention of the provisions especially with respect to the understanding on what is meant by *harta sepencarian* (jointly acquired property by husband and wife during marriage).

With regards to the assertion that several provisions of the Bill adversely affect Muslim women, Malaysia's response is as shown in Annex IX.

### **Optional Protocol**

30. *Please indicate any progress made with respect to ratification of, or accession to, the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women.*

Malaysia will look into the possibility of ratifying or acceding to the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women when and only if all obligations of the country to the provisions of the Articles in CEDAW have been fulfilled.

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