



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

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

**Information received from Malaysia on follow-up to the
concluding observations on its combined third to fifth
periodic reports***

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* The present document is being issued without formal editing.



I. Introduction

1. During the 69th Session of the CEDAW Committee on 20 February 2018, Malaysia appeared before the United Nations (UN) Committee on the Elimination of Discrimination against Women for the review of its combined third to fifth periodic reports on the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

2. The Committee, in its Concluding Observations on the combined third to fifth periodic reports of Malaysia ([CEDAW/C/MYS/CO/3-5](#)) dated 14 March 2018, requested Malaysia to provide, within two years, written information on the steps taken to implement the recommendations contained in paragraphs 12 (b) (constitutional and legislative framework), 22 (b) (female genital mutilation), 46 (b) (refugee and asylum-seeking women) and 54 (a) (marriage and family relations).

II. Specific issues

Gender equality

3. In response to paragraph 12 (b), a Special Project Team (SPT) on Gender Equality Bill has been formed under the purview of the Ministry of Women, Family and Community Development (MWFCD), comprising experts in gender equality from government agencies, academia and non-governmental organisations (NGOs) as well as individual experts who had been engaged to assist the Government in drafting a gender equality bill. Among matters deliberated and considered by the experts include the necessity to institutionalise a clear definition of discrimination in a direct or indirect form; as well as rights and responsibilities to provide equal access to opportunity, resources and ensure equal benefits to all. These considerations are also part of the recommendations by the gender mainstreaming project entitled Strengthening and Enhancing the Inclusiveness of Women Towards an Equitable Society in the 11th Malaysia Plan (2016–2020) cooperatively done by MWFCD and United Nations Development Programme. Based on series of consultation conducted with relevant stakeholders including Members of Parliament and local councillors to ensure inclusive participation from all level of society, a policy decision was made for another SPT on Sexual Harassment to be established with a view to improve legislation on sexual harassment. The Government views that sexual harassment is a form of gender-based discrimination and that focusing on this specific area would provide a practical foundation for drafting a gender equality bill later. Efforts to enhance the laws governing both sexual harassment and gender equality will take into consideration the relevant issues pertaining to discrimination against women as enumerated in Article 1 of the Convention and Target 5.1 of the Sustainable Development Goals (SDGs) and shall be consistent with the Federal Constitution of Malaysia. MWFCD plans to submit the proposal for an improved legislation on sexual harassment for Cabinet's approval after mid-2021, followed by tabling in the Parliament before end of 2021. Thereafter, the drafting of the Gender Equality Bill is expected to resume.

4. While the progress on these two legislations take place, existing legislative framework is also reassessed in view of addressing gender inequality. For example, the Employment Act 1955 [*Act 265*] is currently under review by the Ministry of Human Resources to ensure its relevance to the current and future needs in the workforce. One of the major improvements is to incorporate a new section on prohibition of discrimination which takes into account gender-based discrimination to ensure improvisation of employee protection and benefits.

Female genital mutilation

5. In furtherance of the recommendation in paragraph 22 (b), the Government has actively conducted various engagements on female circumcision through constructive dialogues among government agencies, religious authorities, civil society organisations, medical experts and professionals as well as academicians since 2018. These engagements have involved the leadership at ministerial level, demonstrating the Government's commitment in addressing the matter. In principle, it was understood that the *fatwa* on this matter falls under the purview of the States and thus, should be respected in accordance with Article 74(2) and Item 1, List II of the Ninth Schedule of the Federal Constitution.

6. Each State in Malaysia has its own laws under the Syariah law system including the establishment of the State's *Fatwa* Committee. The Conference of the *Fatwa* Committee of the National Council for Islamic Affairs is not issuing a *fatwa*, but provides opinion on any issues relating to Islamic law referred to it.

7. In April 2009, the Conference of the National Council for Islamic Affairs issued an opinion that female circumcision is part of Islamic teachings and should be observed by Muslims except when the procedure is deemed harmful, it should be avoided. The opinion issued by the Conference is not binding. Only a *fatwa* issued by the *Fatwa* Committees at the States' level and published in official *Gazette* will be binding upon Muslims in respective States in Malaysia. The Government wishes to update the Committee that, to date, no such *fatwa* on female circumcision has been issued by the *Fatwa* Committees at the States' level and published in the official *Gazette* of the States.

8. Despite the foregoing, MWFCO has continuously conducted in-depth discussions, consultations and engagements with the Department of Islamic Development Malaysia (JAKIM) and the relevant stakeholders, in line with the Federal Constitution, to bridge the gap and understanding on this matter.

Asylum-seeking women and refugees

9. In response to the recommendation in paragraph 46 (b), the Government reiterates that even though Malaysia is not a State Party to the United Nations Convention relating to the Status of Refugees 1951 (Refugees Convention) as well as the 1967 Protocol Relating to the Status of Refugees (Refugees Protocol), the Government has adopted a national administrative measures through the National Security Council Directive to manage and provide temporary refuge to refugees and asylum seekers on humanitarian grounds, and has continued to cooperate with the United Nations High Commissioner for Refugees (UNHCR) to manage these groups of persons.

10. The refugees holding a UNHCR card are entitled to 50 per cent subsidised medical treatment in government hospitals and clinics and access to education for children in Alternative Learning Centres (ALCs) operated by various NGOs.

11. During the COVID-19 outbreak, the Government has been coordinating closely with UNHCR and NGOs to reach out to all refugee and asylum-seeking communities in neighbourhoods across the country, to ensure that they are included in the national response measures, especially to prevent infection from spreading among the communities. Malaysia has also taken an important decision to provide free testing and treatment for refugees and asylum seekers with COVID-19 symptoms, with the assurance that they will not face arrest for Immigration offences during the screening period.

12. Malaysia has also cooperated with the Qatari Government through the Qatar Fund for Development (QFFD) that supports humanitarian relief around the world. In December 2019, QFFD Clinic, a humanitarian clinic was launched through collaboration with three leading medical NGOs namely Mercy Malaysia, Islamic Medical Association of Malaysia (IMARET) and Malaysia Relief Agency (MRA). This three-year project has benefited around 180,000 refugees in the country. The maiden clinic in Ampang, Kuala Lumpur has provided basic medical treatments and vaccination to child refugees with a minimal charge of RM10.00 for every visitation which includes consultation, treatment and medicine.

13. Generally, Malaysia has integrated the specific needs of women, girls and children in its management of refugees. For example, children below the age of 12 would be placed together with their mothers and all women and men are separated in their respective shelters. Pregnant women are also given the access to essential pre- and post-natal care.

14. Malaysia has the right to decide as a matter of its national policy to determine the applicability of the principle of *non-refoulement* in particular domestic law. The national policy is made pursuant to Malaysia's domestic laws, and all relevant measures have taken into account its sovereign responsibility within its own territory as recognized by international law and this include protecting national security, public order, morals, rights and freedom of Malaysian citizens as well as non-citizens.

Marriage and family relations

15. In response to the recommendation in paragraph 54 (a), Malaysia remains committed to protect women against violation of their human rights in all family and marriage matters. The judgment of the Federal Court in the case of *Indira Gandhi a/p Mutho v Pengarah Jabatan Agama Islam Perak & Ors and Other Appeals* [2018] 1 MLJ 545 reflects that all women in Malaysia enjoy equal rights and equal access to justice irrespective of their religion, ethnic identity or community. It is pertinent to highlight that the judgment is not about enabling the court to review all decisions and provisions of the Syariah law system. In this case, the Federal Court had allowed an application for judicial review of the actions of the Registrar of Muallafs in exercising a statutory function as a public authority in issuing the Certificates of Conversion (Certificates) of the Applicant's children, on the basis that the Certificates were *ultra vires*, contrary to, or inconsistent with certain provisions in the relevant laws or the Federal Constitution.

16. The Federal Court held that the jurisdiction to review the actions of public authorities, and the interpretation of the relevant state or federal legislation as well as the Federal Constitution, lie squarely within the jurisdiction of the civil courts.

17. The Federal Court also concluded that the consent of both the Appellant, non-converting spouse and her husband who has converted to Islam, are required before a Certificate of Conversion to Islam can be issued in respect of the children. Hence, the Certificates are void and shall be set aside as they had been issued without the Appellant's consent, thus, contravening Article 12(4) of the Federal Constitution and sections 5 and 11 of the Guardianship of Infants Act 1961 [*Act 351*].

18. Malaysia has also taken legal measures to further enhance safeguards against violations of women's human rights in family and marriage matters via the latest amendments to the Law Reform (Marriage and Divorce) Act 1976 [*Act 164*] which came into operation on 15 December 2018. The aim of the latest amendments to Act 164 is to ensure that the rights of spouses whose marriages were solemnised under the civil law are protected despite the conversion to Islam by one spouse.

19. The amended section 51 of Act 164 has allowed either one or both the Muslim and non-Muslim spouses to petition for a divorce under the civil law, and the civil courts would have jurisdiction over all matters incidental thereto including the maintenance of the spouse, and the care and custody of the children of the civil marriage. The female spouse whose marriage was once solemnised under the civil law can now have all her matrimonial matters settled under the civil law and her rights would not be left behind due to the conversion to Islam.

20. Likewise, the newly inserted section 51A into Act 164 provides that the matrimonial assets of a deceased spouse who has converted to Islam before the dissolution of the civil marriage would be distributed among the interested parties of the civil marriage in accordance with the Distribution Act 1958 [*Act 300*]. This will ensure the rights of the non-Muslim, female spouse to her matrimonial assets, is protected despite the conversion of her husband.

21. The amendments of Act 164 have demonstrated that the Government has progressively given paramount consideration to women in safeguarding their rights in family and marriage matters against violation by strengthening and enhancing the existing law to be in compliance with the Federal Constitution and the Convention. The decision of the Federal Court in the Indira Gandhi case has also exemplified that the Government is consistent in ensuring the independence, impartiality, integrity and credibility of the judiciary systems in protecting women's rights in Malaysia.
