

Consideration of reports submitted by States parties under article 18 of the Convention

Combined third to fifth periodic reports of States parties due in 2012

Malaysia

Appendix A: Responses to the CEDAW Committee's Concluding Comments on Malaysia's Initial and Second Periodic Report

In May 2006, the CEDAW Committee (the Committee) released its concluding comments on Malaysia's initial and second periodic report on its implementation of the United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW/C/MYS/CO/2).

This appendix provides the Government's responses to the recommendations made by the Committee and in particular the recommendation to respond to the concerns expressed in the present concluding comments in its next periodic report under Article 18 of the Convention

1. DOMESTICATION OF THE CEDAW CONVENTION

Concluding Comments and Recommendations from the CEDAW Committee	Remarks
<p>to take immediate measures to ensure that the Convention and its provisions are incorporated into national law and become fully applicable in the domestic legal system.</p> <p>to incorporate in its Constitution and/or other appropriate national legislation, the definition of discrimination, encompassing both direct and indirect discrimination, in line with Article 1 of the Convention.</p> <p>enact and implement a comprehensive law reflecting substantive equality of women with men in both public and private spheres of life.</p> <p>include adequate sanctions for acts of discrimination against women and ensure that effective remedies are available to women whose rights have been violated.</p>	<p><i>See also explanation in paragraph 1 of Chapter 2 of this Report.</i></p> <p>Domestically, implementation of the Convention has been pursued comprehensively since it was ratified in July 1995.</p> <p>Implementation of the Convention by way of national legislations and other measures, among others, are as follows:</p> <p>(i) <u>Article 8(2) of the Federal Constitution</u> The principle of non-discrimination and equality before the law is guaranteed under Article 8 of the Federal Constitution. Article 8(2) provides that except where expressly authorised by the Constitution, there shall be no discrimination against citizens on the ground only of religion, race, descent, place of birth or <u>gender</u>. Article 8(2) was amended as part of Malaysia's commitment as a State Party to CEDAW.</p>

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	<p>In addition to the amendment to Article 8(2) of the Federal Constitution to include 'gender' as a prohibited ground of discrimination, several other pieces of legislation have been enacted or amended by the Government to eliminate discrimination against women. Greater details on legislative amendments are as set out in the Government's comments to Article 2 of the Convention.</p> <p>In addition to legislative steps taken to ensure the implementation of the provisions of the Convention, the Malaysian Judiciary has also taken similar steps to affirm Malaysia's obligations to the Convention. In 2010 the High Court in the case of <i>Noorfadilla binti Ahmad Saikin v Chayed bin Basirun & Ors</i>, held that the Government's retraction of its offer to a temporary teacher on the ground of her pregnancy, was a violation of Article 8(2) of the Federal Constitution. The High Court found that it had the obligation/duty to have regard to Malaysia's obligation under the Convention in defining gender discrimination and equality in relation to the Federal Constitution. This case is discussed in greater detail in the Government's comments to Article 11 of the Convention.</p> <p>Malaysia contends that equal opportunity must be coupled with legal rights. Equality should not be understood as everyone should have or be given the same thing or rights. This is in view of other laws in relation to rights of such person or class of persons which may be in conflict if rights beyond what is stipulated are given for the sake of equality. Thus, in order to invoke equality, opportunities must first be afforded legally to such person or class of persons.</p> <p>With regard to adequate sanctions and effective remedies to women whose rights have been violated, it is reiterated that as equal rights of women by virtue of Article 8(2) is guaranteed, legal protection and avenues to seek remedies in relation to such rights are adequately available by way of judicial process including judicial review. Malaysia further reiterates that legal protection and provisions on non-discrimination based on gender, including avenues to seek remedies, are adequately provided in Malaysian legal system and comparable with some other jurisdictions.</p> <p>(ii) <u>Women cannot be subjected to whipping – Section 289 of the Criminal Procedure Code</u></p>

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	<p>In Malaysia, women cannot be subjected to whipping. Section 289 of the Criminal Procedure Code provides that no sentence of whipping shall be executed by installments, and none of the following persons shall be punishable with whipping:</p> <ul style="list-style-type: none"> a) <u>females</u>; b) males sentenced to death; c) males whom the Court considers to be more than fifty years of age, except males sentenced to whipping under section 376, 377C, 377CA or 377E of the Penal Code. <p>(iii) <u>Gender equality under Syariah law</u></p> <p>The Government reiterates that gender equality is equally guaranteed in the application of Syariah laws. As stated in our comments in Article 16 of the Convention, Malaysia maintains two parallel family legal systems, based on the English common law and Shari'a law respectively. The Government reiterates its position that its reservations on paragraphs (a), (c), (f) and (g) of Article 16 (1) of the Convention fall within the ambit of Islamic Law or Shari'a.</p> <p>The Government is committed to achieve gender equality and equity in the breadth of laws that impact women such as personal rights, rights and responsibilities pertaining to marriage, guardianship, wardship, trusteeship and adoption of children, inheritance and property. The Government consistently promotes and uphold the rights of Muslim women, as sanctioned by Shariah.</p> <p>Greater details on legislative amendments which are relevant to the subject of equality in marriage and family law are as set out in the Government's comments to Article 16 of the Convention.</p> <p>(iv) <u>Sexual harassment in the workplace</u></p> <p>Protection of persons against sexual harassment is safeguarded under Malaysia's legislation and comes within different ambit of law. For instance, under the Employment law, the Employment Act 1955 [Act 265] which was amended by the Employment (Amendment) Act 2012, defines sexual</p>

Concluding Comments and Recommendations from the CEDAW Committee	Remarks
	<p>harassment as any unwanted conduct of a sexual nature whether verbal, non-verbal, visual, gestural or physical, directed at a person which is offensive or humiliating or is a threat to his well-being, arising out of and <u>in the course of his employment</u>.</p> <p>Further to the above, the Code of Practice on the Prevention and Handling of Sexual Harassment in the Workplace which was issued by the Ministry of Human Resources in 1999 provides practical guidance to employers, employees, trade unions and others relevant parties on the protection of the dignity of <u>men and women at work</u>.</p> <p>In view of the above, it is highlighted that the legislation and guideline provide sufficient legal protection in that both men and women can resort to the above legislation and guideline on matters involving sexual harassment in the workplace.</p> <p>A general sexual harassment on the other hand, is not defined in other legislation. However, under the Penal Code, offences relating to sexual harassment can be the offence of outraging modesty.</p> <p>As stated in section 509 of the Penal Code, the act of outraging modesty is an outward action against any person. Thus, similar with protection against sexual harassment under employment law, law on sexual harassment generally is applicable to both men and women who is insulted by words, sound or gesture, and object intended to such person. The penalty for such offence is also strict with a punishment of imprisonment for a term which may extend to five years or with fine or both.</p> <p>Number of sexual harassment cases in the workplace reported under the Code Of Practice On The Prevention And Eradication Of Sexual Harassment In The Workplace from 2008-2014 is 180 cases.</p>

2. REMOVAL OF RESERVATIONS

Concluding Comments and Recommendations from the CEDAW Committee	Remarks

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<p>to review all its remaining reservations with a view to withdrawing them, and especially reservations to Article 16, which are contrary to the object and purpose of the Convention.</p>	<p>As a follow-through to the constructive dialogue with the CEDAW Committee in May 2006, efforts have been intensified towards the possible withdrawal of the remaining reservations through consultations with the relevant government agencies, state governments, non-governmental organisations (NGOs) and other stakeholders. This had resulted in the withdrawal of reservations to Articles 5(a), 7(b) and 16(2) on 19 July 2010.</p> <p>The Government maintains its reservations to Articles 9(2), 16(1)(a), 16(1)(c), 16(1)(f) and 16(1)(g) of the Convention on the grounds that the said provisions are not compatible with the Federal Constitution and Islamic law as codified in all States in Malaysia. The maintenance of our reservations to portions of Articles 9 and 16 are discussed in detail in the Government's comments to Articles 9 and 16 of the Convention respectively.</p> <p>In addition to the above, the Government wishes to clarify on the observations made by certain organisations which relate to Malaysia's remaining reservations to the Convention.</p> <p>With regard to Malaysia's implementation of Article 7(b) of the Convention particularly on the appointment of female Syariah Court judges, the Government had announced the appointment of the first two female Syariah Court judges for the Federal Territories of Putrajaya and Kuala Lumpur in 2010.</p> <p>On the issue of inheritance, family law for Muslims in Malaysia is based on Syariah law in which, there are rationalisations as to specific different treatment between men and women. For instance, the share of a woman's inheritance is half of that of a man's inheritance as men have more responsibilities and are considered as the protectors and maintainers of women. Thus, it is appropriate that a man should have a larger share of inheritance than a woman.</p> <p>In relation to the issue of polygamous marriage, it is foremost clarified that such marriage is permitted under Syariah law. Nevertheless, in Malaysia, the women's rights under polygamous marriage are well protected. As explained in paragraph 181 of the Report, several provisions in the Islamic Family Law</p>

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	<p>(Federal Territories) Act 1984 were amended to impose a condition for the man who wishes to contract another marriage to obtain the court's written permission prior to the marriage. In addition, the amendments provides that the court shall have the power on the application by any party to the marriage to require a person to pay maintenance to his existing wife or wives, or to order the division between the parties of the marriage of any assets acquired by the husband during the marriage by their joint efforts or sole efforts of the husband, as the husband were to practise a polygamous marriage.</p> <p>In relation to the issue of female circumcision (FGM), a national <i>fatwa</i> decided upon in April 2009 states that it is obligatory for Muslim women to undergo circumcision unless it will result in some form of harm to the woman. However, it is clarified that a fatwa shall only be binding on a Muslim residing in Federal Territories/States when the fatwa is published in the Gazette by the respective Federal Territories/States. In this regard, it is noted that the fatwa on female circumcision by the National Fatwa Council has not been gazetted by any Federal Territories/States yet.</p> <p><i>FGM</i>, according to WHO, comprises all procedures involving partial or total removal of the external genitalia and / or injury to the genital organs for reasons of tradition and culture or for reasons other non-therapeutic. While the fact that FGM is totally against circumcision as prescribed by the Shariah In Islam the jurists' consensus defines female circumcision refers to cutting the skin on the upper part of the vagina for women. Unlike men, women do not need circumcision to remove the skin, which may be whole. But quite simply a small part of the area.</p> <p>With regard to criminalising same-sex relationship, State-level Syariah law criminalises women in same-sex relationships, trans-people and cross-dressing. In this regard, the States emphasizes that CEDAW is for the protection of the women and not the others. In this context, the Government is of the view that none of the women's rights is affected and there must always be parameters for every rights accorded. Thus, the Government has no intention to amend the laws criminalising those acts.</p>

3. JUDICIAL TRAINING

Concluding Comments and Recommendations from the CEDAW Committee	Remarks
<p>to ensure that the Convention and related domestic legislation are made an integral part of legal education and the training of judicial officers, including judges, lawyers and prosecutors, so as to establish firmly in the country a legal culture supportive of women's equality and non-discrimination.</p>	<p>Continuous efforts have been undertaken by the Government to sensitize the judiciary to women's rights issues so as to internalise the concept of gender equality. As such, ongoing courses are being held by the Judicial and Legal Training Institute (ILKAP) to provide specialised judicial, legal and law enforcement training on, inter alia, the principles of the Convention, particularly the definition of discrimination and substantive equality. These gender sensitisation programmes for judges is one of the strategies outlined in the Strategic Planning (2008-2012) of the Ministry of Women, Family and Community Development.</p> <p>In addition to the above, as part of the Government's effort to ensure wide dissemination of the Convention, the Attorney General's Chambers published the Malaysia Human Rights Series on CEDAW in October 2009. The main purpose of the publication is to provide an easily accessible reference to, among others, the text of the Convention, the General Recommendations of the Committee, Malaysia's Country Report and Concluding Comments of the Committee. The Human Rights Series has been disseminated to relevant agencies as well as legal and judicial officers including judges, lawyers and deputy public prosecutors.</p> <p>Recognising that women are especially vulnerable in the realm of trafficking in persons, a series of trainings were conducted for enforcement agency officers namely, the police and the immigration officers to enhance their understanding and knowledge regarding the Act as well as their skills in handling the victims. In addition, the MWFCDD has conducted two trainings for the protection officers involved in handling the victims of human trafficking.</p>

4. HARMONISATION OF LAWS

Concluding Comments and Recommendations from the CEDAW Committee	Remarks

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<p>to undertake a process of law reform to remove inconsistencies between civil law and Syariah law, including by ensuring that any conflict of law with, regard to women's rights to equality and non-discrimination is resolved in full compliance with the Constitution and the provisions of the Convention and the Committee's general recommendations, particularly General Recommendation 21 on equality in marriage and family relations.</p>	<p>The Government of Malaysia continues to view seriously its commitment to undertake necessary measures in addressing inconsistencies between civil law and Syariah law in Malaysia. The Government of Malaysia emphasizes that inconsistencies between the two systems need to be addressed in a sensible manner to ensure that a solution will be achieved without prejudice to any parties' interests, including women.</p> <p>In doing so, the Government views that the applicable laws, particularly the Federal Constitution, shall always be observed in addressing the issue. Elements which are unique to Malaysia, including its diverse social and cultural values, religions and local sensitivities, shall also be taken into account.</p> <p>One of the significant efforts that had been undertaken by the Government of Malaysia was the establishment of a Syariah Community. It comprises experts in Syariah laws, non-governmental organisations and academicians to harmonize provisions of civil law and Syariah law particularly Islamic family law. Further details on matters that had been deliberated by the Syariah Community are specified in the earlier paragraph of this Report.</p> <p>It is pertinent also to understand that the role of the Syariah Community is limited to facilitating the process of harmonization of laws. Any decision will be made by the State Governments which are constitutionally granted with the exclusive power over their respective Syariah laws.</p> <p>At present, consultation and engagement with the State Governments in regard to the proposed amendments to the Law Reform (Marriage and Divorce) Act 1976 [Act 164], the Administration of Islamic Law (Federal Territories) Act 1993 [Act 505] and the Islamic Family Law (Federal Territories) Act 1984 [Act 303] are still on-going. Any proposed amendments to Syariah law subsequent thereto, if any, shall subject to consent of the Conference of Rulers.</p> <p>Apart from the Syariah Community, An Ad-hoc Committee on the Amendments of the Law Reform (Marriage and Divorce) 1976 was also established under the purview of the Attorney General's Chambers to amend, among others the relevant provisions related to divorce including the custody of a child upon the conversion of a spouse.</p>

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	<p>Continuous efforts as stated in the foregoing paragraphs demonstrate the Government of Malaysia's strong will in addressing the issue of inconsistencies between civil law and Syariah law adequately, without undermining the applicable laws. Despite the time frame, the Government remains committed to facilitate all parties in finding a solution, and subsequently achieve consistency between the 2 sets of law.</p> <p>In the case of <i>Shamala a/p Sathiyaseelan v Dr Jeyaganesh a/l C Mogarajah & Anor</i> [2011] 2 MLJ 281, 5 constitutional questions were referred to the Federal Court from the Court of Appeal. These constitutional questions which were related to inconsistencies between Syariah law and civil law were raised by Shamala, the appellant.</p> <p>However, the reference was dismissed by the Federal Court based on, among others, the fact that the appellant had avoided the contempt proceedings taken against her. To allow her leave to appeal would in effect grant her benefit without her having performed her part of the obligations for which she maybe in contempt.</p>
<p>to obtain information on comparative jurisprudence and legislation, where more progressive interpretations of Islamic law have been codified in legislative reforms.</p> <p>to take all necessary steps to increase support for law reform, including through partnerships and collaboration with Islamic jurisprudence research organizations, civil society organizations, women's non-governmental organizations and community leaders.</p> <p>recommends that a strong federal mechanism be put in place to harmonise and ensure consistency of application of Syariah laws across all States.</p>	<p>On 12 February 1988, the 32nd Meeting of the National Council for Islamic Affairs, Malaysia (MKI) established the Syariah and Civil Law Review Committee to standardization Islamic Law throughout Malaysia. The role of the Committee is to:</p> <ul style="list-style-type: none"> (i) review, revise and enact Islamic law as to standardize and ensure consistency of application of Syariah laws across all States; (ii) review and revise the existing laws towards harmonization of civil laws and Syariah laws; and (iii) provide legal advice to the Government towards the standardization and uniformity of Syariah laws. <p>Up to 2012, the Committee has achieved the following:</p> <ul style="list-style-type: none"> (i) coordination and streamlining of six model laws (subject to the decisions

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	<p>on implementation by State governments, which are constitutionally granted the exclusive power over Shariah laws in Malaysia) as follows:</p> <ul style="list-style-type: none"> a) Administration of Islamic Law; b) Islamic Family Law; c) Syariah Court Evidence; d) Syariah Criminal Procedures; e) Syariah Court Civil Procedures; and f) Syariah Criminal Offences <p>(ii) separation of the Syariah Court from the States' Islamic Religious Department; and</p> <p>(iii) restructuring of the Syariah Court to three hierarchy system (Syariah Subordinate Court, Syariah High Court and Syariah Appeal Court).</p>

5. REMOVAL OF GENDER STEREOTYPES

Concluding Comments and Recommendations from the CEDAW Committee	Remarks
<p>to implement comprehensive measures to bring about change in the widely accepted stereotypical roles of men and women. Such measures should include awareness-raising and educational campaigns addressing women and men, girls and boys, and religious leaders with a view to eliminating stereotypes associated with traditional gender roles in the family and in society, in accordance with Articles 2(f) and 5(a) of the Convention.</p>	<p>The Government is aware of its obligation to ensure that family education incorporates gender perspective that values equal partnership between men and women recognising their rights and responsibilities within the home and in the education of their children. Among the programmes to strengthen the family institution are detailed in the Government's comments on Article 5 to the Convention. For instance, training programme has been conducted by Malaysia's National Population and Family Development Board to create awareness and provide skills and knowledge on parenting and stress management. From the year 2007-2011, 459 parenting skills programmes have been implemented involving 19,856 participants.</p> <p>The Government wishes to elaborate on the measures which have been undertaken even by the highest body i.e. legislative with regard to the elimination of gender stereotypes. For example, a sexist statement made on 9 May 2007 by a Member of Parliament, Datuk Bung Mokhtar Radin to a</p>

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	<p>female Member of Parliament, Ms. Fong Po Kuan, was dealt with accordingly on 10 May 2007, in that, the Member of Parliament was reprimanded and eventually made a public apology.</p> <p>Apart from the above, Standing Order 36(4) of the House of Representatives was amended on 27 November 2012 to include 'sexist remark' which reads as follows:</p> <p><i>“(4) It shall be out of order for Members of the House to use offensive language or make a sexist remark.”</i></p>

6. PARTICIPATION OF WOMEN IN DECISION-MAKING ROLES

Concluding Comments and Recommendations from the CEDAW Committee	Remarks
<p>to take sustained measures, including temporary special measures in accordance with Article 4, paragraph 1, of the Convention and the Committee's General Recommendation 25, and to establish concrete goals and timetables so as to accelerate the increase in the representation of women, in elected and appointed bodies in all areas of public life, including at the international level</p> <p>to also encourage political parties to use quotas.</p>	<p>In addressing the issue of under-representation of women at decision-making levels, the Government announced the policy of at least 30% Women in Decision-Making Positions in the Public Sector in August 2004. This policy aims to reduce gender imbalance at the decision-making level in the public sector.</p> <p>To fast track women into decision-making positions in all sectors, an Internal Strategic Document Towards Achieving At Least 30% of Women in Decision-Making Levels in Malaysia has been formulated by MWFC in 2008. As such, it covers crucial sectors as follows:</p> <ul style="list-style-type: none"> (i) Legislative – Parliament and political parties, state legislatures, executive councils and local councils; (ii) Executive – ministries, statutory bodies and universities; and (iii) Private sector. <p>The Government subsequently approved the policy of at least 30% Women in Decision Making Positions at All Levels in the Corporate Sector in 2011.</p>

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	<p>This policy was introduced to government-linked companies, public-listed companies, statutory bodies and financial institutions through the Malaysian Code of Corporate Governance to which the Securities Commission acts as the regulating body. Companies are required to disclose policies and targets with respect to composition of women on their boards in their annual report. A transition period of 5 years was put in place for companies to implement the policy.</p> <p>As of 2014, women in the top management positions in the public and private sector stands at 32.5% and 11.5% respectively.</p>
<p>recommends conduct of training programmes on leadership and negotiation skills for current and future women leaders. It also encourages the State party to take measures that will lead to an increase in the number of women at the decision-making level in private sector organizations.</p> <p>to undertake awareness-raising about the importance of women's participation in decision-making processes at all levels of society.</p>	<p>The Government has conducted various training programmes to prepare women to become leaders. Female students in institutions of higher learning and new graduates are trained in communication and presentation skills while women who are already in the labour force were groomed to become leaders through courses on management and other skills training such as grooming courses, social etiquette and stress management.</p> <p>In the 10th Malaysia Plan (2011-2015), a special committee, chaired by the Minister of Women, Family and Community Development was established to implement gender sensitization programmes in the public sector in relation to recruitment, career development and succession planning. The objective of this committee is to increase the representation of women in key decision-making positions within Parliament, state legislative assemblies, the judiciary and ministries.</p> <p>The MWFCDD through its agency, the NAM Institute for The Empowerment of Women (NIEW) has designed the Women Directors' Programme to equip women with coaching, training, and soft skills. This programme is to prepare potential and qualified women leaders to fully understand their roles as board directors and to perform effectively through a structured curriculum. From 2012-2014, NIEW has trained 974 women.</p>

7. WOMEN AND WORK

Concluding Comments and Recommendations from the CEDAW Committee	Remarks
<p>to intensify its efforts towards accelerating the achievement of de facto equal opportunities for women with men in the area of employment through, inter alia, the use of temporary special measures in accordance with Article 4, paragraph 1, of the Convention, and General Recommendation 25.</p> <p>recommends that monitoring measures be introduced to ensure effective implementation of efforts to promote change concerning the stereotypical expectations of women's roles and the equal sharing of domestic and family responsibilities between women and men, including by making the flexible work arrangements envisaged in the Ninth Malaysia Plan equally available to women and men.</p>	<p>As a State party to the Convention, the Government is committed to take appropriate measures to ensure that women on an equal basis with men enjoy, inter alia, the right to work and employment.</p> <p>The main challenge faced by the Government lies in increasing the participation of women in the labour force.</p> <p>Among the measures that have been undertaken by the Government to encourage greater participation of women in the labour force are set out in the Government's comments to Article 11 of the Convention.</p> <p>In addition to the measures set out in Article 11 above, certain government agencies have allowed female employees flexible working hours. For example, the Ministry of Works, in January 2010 started its "Work from Home" apprentice programme which has benefitted 38 people who are mostly women. This programme was also implemented by the Attorney General's Chambers of Malaysia in October 2012, which has benefitted 65 female officers as of the date of reporting.</p>

8. VIOLENCE AGAINST WOMEN

Concluding Comments and Recommendations from the CEDAW Committee	Remarks
<p>to enact legislation criminalizing marital rape, defining such rape on the basis of lack of consent of the wife.</p>	<p><i>See also explanation in paragraphs 7 (page 37) of Chapter 2 of this Report.</i></p> <p>In 2004, the Penal Code was amended vide the Penal Code (Amendment) Act 2004. The amendment inserted a new Section 375A which provides that "any man who during the subsistence of a valid marriage causes hurt or fear of death or hurt to his wife or any other person in order to have sexual intercourse with his wife shall be punished with imprisonment for a term which may extend to five years". Any man who is found guilty of this offence shall be punished with imprisonment for a term which may extend to five years.</p>

Concluding Comments and Recommendations from the CEDAW Committee	Remarks
	<p>As stated in the earlier paragraphs of this Report, section 375A mainly intends to further strengthen legal protection for wives from being hurt by their husbands to have sexual intercourse, although the term “marital rape” is not explicitly stipulated in the provision.</p> <p>Apart section 375A, there are other existing provisions in the Penal Code which can be resorted by wives, depending on facts of the case. Among others, a husband can always be charged for an offence of causing injury in which the punishment may go as high as 20 years imprisonment. Such a punishment is generally similar to punishment for rape, and significantly higher than certain other countries that make specific provision for “marital rape”.</p> <p>Therefore, although the form of law on “marital rape” in Malaysia may be different from other jurisdiction, the above legal provisions prove that Malaysia, in substance, pays due attention to the issue of “marital rape” and is committed to provide sufficient protection for victims.</p>

9. TRAFFICKING IN PERSONS

Concluding Comments and Recommendations from the CEDAW Committee	Remarks
<p>to consider ratifying the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children Supplementary to the United Nations Convention against Transnational Organized Crime and to intensify its efforts to combat all forms of trafficking in women and girls, including by enacting specific and comprehensive legislation on the phenomenon.</p>	<p>Malaysia acceded to the <i>Protocol to Prevent, Suppress and Punish Trafficking in Persons especially Women and Children</i> on 28 March 2009.</p> <p>To reflect the Government’s commitment towards combating all forms of trafficking, the Anti-Trafficking In Persons and Anti-Smuggling In Migrants Act 2007 was enacted. The Act meets all the requirements of the UN Protocol as it incorporates provisions of law to punish the crime of trafficking in persons and a comprehensive framework to protect and assist victims of trafficking.</p>

Concluding Comments and Recommendations from the CEDAW Committee	Remarks
<p>to increase its efforts at international, regional and bilateral cooperation with countries of origin and transit so as to address more effectively the causes of trafficking, and improve prevention of trafficking through information exchange.</p> <p>to collect and analyse data from the police and international sources, prosecute and punish traffickers, and ensure the protection of the human rights of trafficked women and girls.</p> <p>to ensure that trafficked women and girls are not punished for violations of immigration laws and have adequate support to be in a position to provide testimony against traffickers.</p>	<p>The Government has increased its efforts to effectively address the causes of trafficking by concluding Treaties on Mutual Legal Assistance in Criminal Matters with the following countries:</p> <ul style="list-style-type: none"> • ASEAN Member Countries (by virtue of the ASEAN Mutual Legal Assistance Treaty) • Australia; • United States of America; • United Kingdom; • Hong Kong; • Republic of Korea; and • Republic of India. <p>To further cement the Government's commitment in addressing transnational crimes, which include the crime of trafficking in persons, the Government has concluded cooperative agreements on a bilateral basis with a number of States. These include:</p> <ol style="list-style-type: none"> (i) The Memorandum Of Understanding Between The Government Of Malaysia And The Government Of The United States Of America On Assistance In The Field Of Transnational Crimes - signed on 17 July 2012; (ii) Memorandum of Understanding between the Government of Malaysia and the Government of the People's Republic of Bangladesh on the Cooperation in Preventing and Combating Transnational Crimes – signed on 26 November 2012; (iii) Agreement On Cooperation In Combating Transnational Crime Between the Government Of Malaysia And The Government Of The People's Republic Of China – signed on 2 August 2012; (iv) The Agreement Between The Attorney General's Chambers Of Malaysia And The Attorney General's Office Of The Republic Of Indonesia On Legal Cooperation Activities – signed on 2 April 2012. <p>In addition to the aforementioned instruments, the Government has also</p>

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	<p>discussions with Experts from the Home Office in the United Kingdom to exchange information on methods adopted and best practices to curb trafficking.</p> <p>Additionally, Malaysia in collaboration with the Asian-African Legal Consultative Organization (AALCO) has also hosted a Workshop on Trafficking in Persons, Smuggling of Migrants and International Cooperation at the end of 2010. This workshop was pursuant to the mandate given at the 48th Annual Session of AALCO and intended to be a basic introduction and awareness enhancing forum on trafficking in persons and smuggling of migrants with the aim of tacking the challenges faced by AALCO Member States.</p> <p>The collection and collating of data and information is being carried out by all Committees established under the supervision of the Council for the Anti-Trafficking in Persons and Anti-Smuggling of Migrants (MAPO). At the Council's monthly meetings, data and information collected are tabled from all Committees, which are:</p> <ul style="list-style-type: none"> (i) Legislation Committee headed by the Attorney-General's Chambers, (ii) Enforcement Committee chaired by the Royal Malaysian Police; (iii) Victim Protection and Rehabilitation Committee chaired by the Ministry of Women, Family and Community Development; (iv) Committee to Study the Issues of Labour Trafficking chaired by the Ministry of Human Resources; and (v) Media and Publicity Committee chaired by the Ministry of Information, Communication and Culture. <p>Cases involving women and girls who have been trafficked are investigated under the Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007 [Act 670]. Victims are not subjected to any form of punishment under the Malaysian laws. Instead, they are given protection in any one of the 9 shelter homes which have been gazetted by the Government.</p> <p>As stated in the earlier paragraph, Malaysian Act 670, defines "trafficked person" as any person who is the victim or object of an act of trafficking in persons, which shall encompass women. Act 670 further explains "trafficking in persons" to mean all actions involved in acquiring or maintaining the</p>

Concluding Comments and Recommendations from the CEDAW Committee	Remarks
	<p>labour or services of a person through coercion, and includes the act of recruiting, conveying, transferring, harbouring, providing or receiving a person for the purposes of the Act. In this regard, it is clarified that trafficked persons are always regarded as victims who will be given protection regardless of whether they come to the country on voluntary basis or otherwise.</p> <p>Apart from the existing laws, Malaysia has also launched the National Action Plan Against Trafficking in Persons on 31 March 2010. The National Action Plan was developed to clearly determine the direction and to consolidate efforts towards achieving the national goal of preventing and suppressing the problem of trafficking in persons.</p>

10. MIGRANT DOMESTIC WORKERS

Concluding Comments and Recommendations from the CEDAW Committee	Remarks																					
<p>to enact comprehensive laws and establish procedures to safeguard the rights of migrant workers, including migrant domestic workers.</p> <p>The Committee calls upon the State party to provide migrant workers viable avenues of redress against abuse by employers and permit them to stay in the country while seeking redress. The Committee further urges the State party to make migrant workers aware of such rights.</p>	<p>Malaysia has signed seven Memoranda of Understanding with source countries for foreign workers, as follows:</p> <table border="0"> <tr> <td>(i)</td> <td>Sri Lanka</td> <td>29 August 2003</td> </tr> <tr> <td>(ii)</td> <td>China</td> <td>15 September 2003</td> </tr> <tr> <td>(iii)</td> <td>Thailand</td> <td>9 October 2003</td> </tr> <tr> <td>(iv)</td> <td>Pakistan</td> <td>20 October 2003</td> </tr> <tr> <td>(v)</td> <td>Bangladesh</td> <td>26 November 2012</td> </tr> <tr> <td>(vi)</td> <td>Vietnam</td> <td>1 December 2003</td> </tr> <tr> <td>(vii)</td> <td>Indonesia</td> <td>10 May 2004</td> </tr> </table> <p>These Memoranda of Understanding provide specific provisions on the protection of the rights of migrant workers.</p> <p>In addition thereto, Malaysia has also signed the ASEAN Declaration on the protection and promotion of the rights of migrant workers in January 2007 and Malaysia also actively participates in the workings of the ASEAN</p>	(i)	Sri Lanka	29 August 2003	(ii)	China	15 September 2003	(iii)	Thailand	9 October 2003	(iv)	Pakistan	20 October 2003	(v)	Bangladesh	26 November 2012	(vi)	Vietnam	1 December 2003	(vii)	Indonesia	10 May 2004
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Concluding Comments and Recommendations from the CEDAW Committee	Remarks
	<p>Instrument on Migrant Workers to implement the Declaration.</p> <p>With regard to permitting migrant workers to stay in the country during the pendency of their cases of abuse, under subsection 34(1) of the Immigration Act 1959/63 the Director General of Immigration is vested with the power to allow migrants to remain in Malaysia pending the determination of their appeal.</p> <p>The Government wishes to highlight that there are other treatment accorded to migrant workers. A lawful migrant worker is entitled to equal benefits and rights under the employment laws of Malaysia. These rights include wages, weekly holidays, leave, workmen's compensation, medical care, housing accommodation and social security.</p> <p>The Employment Act 1955 is an Act relating to employment which governs the rights and benefits of employees who are employed under a contract of service under which such employee's wages do not exceed RM2000.00.</p> <p><u>Annual leave</u></p> <p>Section 60D provides that every employee shall be entitled to a paid holiday on 11 gazetted public holidays in any one calendar year. Section 60E provides that his annual leave should be calculated as follows:</p> <ul style="list-style-type: none"> (i) 8 days for 12 months of continuous service with the same employer if he has been employed by that employer for a period of less than 2 years; (ii) 12 days for 12 months of continuous service with the same employer if he has been employed by that employer for a period of 2 years or more but less than 5 years; and (iii) 16 days for every 12 months of continuous service with the same employer if he has been employed by that employer for a period of 5 years or more. <p>As regards domestic workers, the contract of service would normally be for 2 years only. Thus, no annual leave is accorded due to the short term of such contract.</p>

Concluding Comments and Recommendations from the CEDAW Committee	Remarks
	<p><u>Sick leave</u></p> <p>Section 60F provides that an employee is also entitled to paid sick leave of 14 days in a year if he has been employed for less than 2 years, 18 days if he has been employed for between 2-5 years and 22 days if employed more than 5 years. However, it is to be highlighted that this section does not applicable to the domestic workers.</p> <p><u>Lay-off and termination</u></p> <p>Lay-off does not apply to domestic workers because of the short term of the contract of service. In this regard, termination of the contract of service will be made in accordance with the terms stipulated in the contract. Besides, it is not practical to accord domestic workers with similar termination and lay-off scheme as other migrant workers due to the heavy investment in getting their service.</p> <p><u>Rights and benefits of domestic workers</u></p> <p>The rights and benefits accorded to domestic workers must be distinguished from that accorded to other migrant workers. While seeking to take cases against their employers, domestic workers are only eligible for monthly visas which require a payment of RM100 per monthly renewal.</p> <p>Domestic workers are also not entitled to the minimum monthly wage of RM900.00 as their accommodation, foods, utilities and basic needs are taken care of by the employer in accordance with the provisions contained in the MOU between Malaysia and source counties on the recruitment and employment of domestic workers. In this regard, the rate of wage for a domestic worker is agreed upon by the employer and domestic worker based on the contract of employment. The payment of the monthly wage shall be deposited into the bank account of domestic workers but cash payment is permitted to be made with the consent of domestic workers.</p> <p>Domestic workers will also be permitted to keep possession of their own passports. However, the employers may keep the passport with their prior consent.</p>

Concluding Comments and Recommendations from the CEDAW Committee	Remarks
	<p>As regards the policy on no pregnancy during the contract of service for domestic workers, the Government is of the view that such policy is justified on the basis that the contract of service would normally be for a short period of time i.e. two (2) years.</p> <p>In addition, the employer shall provide the domestic worker with insurance to cover medical treatment expenses and risk compensation. This requirement is provided for in the MOU between Malaysia and source countries on the recruitment and employment of domestic workers. At present, the negotiation on the recruitment and employment of domestic workers is done through the government-to-government (G to G) mechanism.</p>

11. ASYLUM SEEKERS AND REFUGEES

Concluding Comments and Recommendations from the CEDAW Committee	Remarks
<p>adopt laws and regulations relating to the status of asylum seekers and refugees in Malaysia, in line with international standards, in order to ensure protection for asylum seekers and refugee women and their children.</p>	<p>Although there are no laws or regulations relating to the status of asylum seekers and refugees in Malaysia, the Government of Malaysia has adopted a policy concerning refugees in the form of administrative measures which provides for the mechanism to allow illegal immigrants who possess UNHCR Cards, on humanitarian grounds, to remain temporarily in Malaysia. It is important to note that UNHCR Card Holders in Malaysia enjoy freedom of movement. In addition, they are also–</p> <ul style="list-style-type: none"> (i) not prevented from receiving education in private schools; (ii) not denied with access to healthcare facilities, including maternal and child healthcare services; and (iii) not arrested and charged for illegal entry except for their involvement in activities that are against the laws. <p>The Immigration Department uses its discretion in determining whether</p>

Concluding Comments and Recommendations from the CEDAW Committee	Remarks
	<p>detained people claiming to be refugees should be released or deported. In this regard, Malaysia understands that the applicability of the principle of <i>non-refoulement</i> shall be moderated based on reasonable grounds and pertinent facts of the case. For instance, a refugee who has been convicted by a final judgment of a particularly serious crime, which constitutes a danger to the community of that country, cannot claim protection under the principle.</p> <p>The treatment given to refugees is evident of the fact that although Malaysia is not yet a party to any treaties relating to refugees particularly the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, Malaysia continues to fulfil its moral obligations in providing assistance to such persons in compliance with customary international law.</p> <p>Malaysia continues to engage with UNHCR and other relevant international agencies in providing such assistance and has established various arrangements among our governmental agencies to further improve the cooperation in addressing the refugee issue. Malaysia has proven itself as an active participating member state in the Bali Process, a regional grouping established to deal with amongst others issues of irregular movement of people.</p> <p>Notwithstanding Malaysia's continuous commitment and initiatives in assisting these people in need of protection, Malaysia believes that it is appropriate to address the refugee issues from its root causes in order to create a long lasting solution to the issue. In doing so, few concerns could be taken into consideration such as the difficulties and challenges faced by the receiving or transit countries and the need to ensure a favourable situation in the country of origin of the refugees for the purposes of their return and reintegration.</p> <p>Malaysia understands that UNHCR is responsible to look into the welfare of refugees/asylum seekers particularly in finding suitable third countries to receive them since Malaysia is only a transit point. UNHCR also need to find a mechanism to solve the problem of forged UNHCR cards which has caused difficulties to the Government of Malaysia to implement its policy on refugees. Among others, forged UNHCR Cards has resulted in a problem in determining the status of refugees or asylum seekers, in which the latter</p>

Concluding Comments and Recommendations from the CEDAW Committee	Remarks
	refers someone who claims to be a refugee but has not yet been definitively evaluated.

12. DATA AND INFORMATION

Concluding Comments and Recommendations from the CEDAW Committee	Remarks
to include in its next report, data disaggregated by sex and ethnicity in all areas covered by the Convention	Data disaggregated on sex is provided in Malaysia's country report and is done in the normal and common way of collecting sex and ethnicity disaggregated data.

13. RATIFICATION OF THE OPTIONAL PROTOCOL

Concluding Comments and Recommendations from the CEDAW Committee	Remarks
encourages the State party to ratify the Optional Protocol and to accept, as soon as possible, the amendment to Article 20, paragraph 1, of the Convention concerning the meeting time of the Committee.	<p>In terms of the implementation, Malaysia understands the OP provisions must be internalized in our domestic legislations and national policies, among others, to provide for the communications procedure for individual complaints to CEDAW and the inquiry mechanism as envisaged in the OP.</p> <p>This is because the Malaysian legal system provides avenues for recourse to all Malaysian women who consider their rights under the Convention breached. As mentioned in Article 15, Malaysian women continued to have equal rights before the law, legal capacity and access to legal services which can benefit them in addressing the issue of women's equality and discrimination.</p> <p>Malaysia also has in place the necessary complementing legislative and policy framework to deal with the issues related to discrimination against women. The Malaysian Human Rights Commission has the statutory responsibility, among others, to address human rights issues including women issues. Malaysia also has a specific Ministry dealing with women issues</p>

Concluding Comments and Recommendations from the CEDAW Committee	Remarks
	<p>which has effective and constant engagement with women's non-governmental organization and other stakeholders and experts on this issue.</p> <p>At the moment, there is no huge impediment for Malaysia to accede to the OP. However, there is a policy consideration that needs to be determined before Malaysia finally decides to accede to the OP. Malaysia will continue its commitments to fighting discrimination and guaranteeing equality for women pursuant to its existing laws and national policies.</p>

14. PREPARATION OF NEXT PERIODIC REPORT

Concluding Comments and Recommendations from the CEDAW Committee	Remarks
<p>to ensure the wide participation of all ministries and public bodies in, and to continue to consult with non-governmental organizations during, the preparation of its next report. It encourages the State party to involve Parliament in a discussion of the report before its submission to the Committee.</p>	<p>The Government through the Ministry of Women, Family and Community Development has gathered the inputs from various ministries, government agencies and departments, non-governmental organizations (NGOs) such as the National Council of Women's Organizations (NCWO) in the preparation of the Report.</p>
<p>to utilize fully in its implementation of the obligations under the Convention, the Beijing Declaration and Platform for Action which reinforce the provisions of the Convention, and requests the State party to include information thereon in its next periodic report.</p> <p>integration of a gender perspective and the explicit reflection of the provisions of the Convention in all its efforts aimed at the achievement of the Millennium Development Goals and...</p> <p>to include information thereon in its next periodic report.</p>	<p>Towards the implementation of the Beijing Platform for Action, the Government places great emphasis in accelerating the agenda of equality between men and women to fulfil its commitment. In this regard, the Government has focused its effort pertaining to women at decision-making levels.</p> <p>The Government considers that gender equality is both a Millennium Development Goal (MDG) in its own right and also a key means to achieving all the MDGs. Ensuring that women and men, girls and boys, are equally able to contribute fully to their own social and economic development, and that development benefits are fairly shared, are essential cornerstones to achieving the programme's mission of sustainable development to reduce poverty.</p> <p>The Government recognises that ensuring the economic and social well-being of women and girls through the implementation of the Convention is essential</p>

Concluding Comments and Recommendations from the CEDAW Committee	Remarks
	<p>to achieving the Millennium Development Goals. Gender perspectives are, therefore, frequently mainstreamed into policy processes.</p> <p>Malaysia MDG Reports 2010 was published by UNICEF in April 2011 comprising its overview and progress reports.</p>

15. RATIFICATION OF HUMAN RIGHTS TREATIES

Concluding Comments and Recommendations from the CEDAW Committee	Remarks
<p>encourages the Government of Malaysia to consider ratifying the treaties to which it is not yet a party (International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All forms of Racial Discrimination, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families).</p>	<p>Malaysia continues to strengthen efforts to meet with her obligations in guaranteeing the elimination of discrimination against women in all its forms. Although Malaysia firmly believes that the obligations may be fully realized without having to accede to all core international human rights instruments, Malaysia notes the recommendation by the Committee following its observation.</p> <p>In furtherance to Malaysia's accession to CEDAW on 5 July 1995 and the Convention on the Rights of Child on 17 February 1995, Malaysia had taken another step forward in relation to accession of core international human rights instruments by acceding to the Convention on the Rights of Persons with Disabilities on 19 July 2010.</p> <p>Malaysia further acceded to two (2) Optional Protocols to the CRC namely the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography and the Optional Protocol on the Involvement of Children in Armed Conflict on 12 April 2012.</p> <p>At this juncture, there are six (6) remaining core international human rights instruments to which Malaysia is not a Party to namely as follows:</p> <ul style="list-style-type: none"> (i) International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families; (ii) Convention Relating to the Status of Refugees; (iii) International Covenant on Civil and Political Rights;

Concluding Comments and Recommendations from the CEDAW Committee	Remarks
	<p>(iv) International Covenant on Economic, Social and Cultural Rights;</p> <p>(v) International Convention on the Elimination of Racial Discrimination; and</p> <p>(vi) Convention against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment.</p> <p>Malaysia notes calls from various parties to consider being a Party to the core international human rights instruments. Malaysia had among others clarified that accession to these instruments will entail substantive review and changes in the Malaysian laws and policies, which requires immediate actions to be undertaken from legislative and administrative aspects. As any accession to a treaty is the sovereign right of the State, Malaysia should be allowed policy space to decide on the possible accession when her domestic legal framework is in place to ensure full compliance with international obligations. The decision to accede to any international human rights instruments will be decided based on the domestic requirements of the country.</p> <p>At this juncture, Malaysia has no intent to accede to the Conventions, particularly ICERD in which accession will result fundamental changes to the basic structure of the Federal Constitution. The provision of non-discrimination as provided under the Federal Constitution is qualified based on the concept of lawful discrimination or reasonable classification which provides that a law must operate alike on all persons under like circumstances. The concept is only allowed on permissible grounds which are provided by the law such as for the protection and advancement of a class of person.</p> <p>Although Malaysia is not yet a State Party to the aforementioned instruments, Malaysia continues to view seriously her commitment to comply with the fundamental principles expounded in the core international human rights instruments.</p> <p>This is evident from the efforts that have been taken by Malaysia, particularly in the recent years, to internalize the norms and principles of the core international human rights instruments with the enactment and review of legislations and policies. One of the significant efforts was the legal and political transformation programme undertaken by the Government in 2011 as specified earlier in this Report. These efforts are testament of the fact that Malaysia is moving in the right</p>

Concluding Comments and Recommendations from the CEDAW Committee	Remarks
	direction in adopting the best measures in terms of legislations and policies so as to ensure that Malaysia complies to the extent possible with the international human rights standards.

16. DISSEMINATION OF INFORMATION

Concluding Comments and Recommendations from the CEDAW Committee	Remarks
<p>the wide dissemination of the concluding comments in order to make the people of Malaysia, including government officials, politicians, parliamentarians and women's and human rights organisations aware of the steps that have been taken to ensure de jure and de facto equality of women, as well as the further steps that have to be taken that are required in that regard.</p> <p>to continue to disseminate widely the Convention, the Optional Protocol thereto, and the Committee's general recommendations, the Beijing Declaration and Platform for Action and the outcome of the 23rd special session of the General Assembly, entitled "Women 2000: Gender equality, development and peace for the twenty-first century" .</p>	<p>The concluding comments were extended to relevant government agencies to enable them to take necessary actions on the recommendations made by the CEDAW Committee.</p> <p>The MWFCD has disseminated the information through the National Council on Women, non-governmental organisations especially the National Council of Women's Organisations (NCWO) and programmes under the Department of Women Development.</p>

17. SUBMISSION OF NEXT PERIODIC REPORT

Concluding Comments and Recommendations from the CEDAW Committee	Remarks
<p>to respond to the concerns expressed in the present concluding comments in its next periodic report under Article 18 of the Convention. The Committee invites the State party to submit its third periodic report, which was due in August 2004 and its fourth periodic report, which is due in August 2008, in a combined report in 2008.</p>	<p>Malaysia has responded to the concerns expressed by the CEDAW Committee, herein and throughout the reports.</p>